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The contents of this document are subject to a Non-Disclosure Agreement and shall not be disclosed.

AMENDED AND RESTATED

RENEWABLE POWER PURCHASE AND SALE AGREEMENT

between

SOUTHERN CALIFORNIA EDISON COMPANY

and

WM ENERGY SOLUTIONS, INC.

(QFID 1093)

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AMENDED AND RESTATED

RENEWABLE POWER PURCHASE AND SALE AGREEMENT

between

SOUTHERN CALIFORNIA EDISON COMPANY

and

WM ENERGY SOLUTIONS, INC.

PREAMBLE

This Amended and Restated Renewable Power Purchase and Sale Agreement ("Agreement"), together with the exhibits, attachments, and any referenced collateral, credit support or margin is entered into between:

- (a) Southern California Edison Company ("SCE"), a California corporation, whose principal place of business is at 2244 Walnut Grove Avenue, Rosemead, California 91770,; and
- (b) WM Energy Solutions, Inc. ("Seller"), a Delaware corporation, whose principal place of business is at 1001 Fannin, Houston, Texas 77002. SCE and Seller are sometimes referred to herein individually as a "Party" and jointly as "Parties."

This Agreement is made and effective as of the following date: July 1, 2004 ("Effective Date").

RECITALS

1. SCE and Seller entered into a Power Purchase and Sale Agreement on December 20, 2002 ("Original Agreement"). Under the Original Agreement, the Parties agreed, *inter alia*, that Seller would provide the entire electrical output from two landfill gas generators at the El Sobrante Landfill for a maximum period of ten years.
2. The California Public Utilities Commission ("CPUC") approved the Original Agreement with certain modifications on January 30, 2003 in Resolution E-3809. Among other things, Resolution E-3809 found that any procurement pursuant to the Original Agreement is deemed transitional procurement by SCE from a renewable

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resource for purposes of determining SCE's compliance with any obligation that it may have pursuant to CPUC Decision ("D.") 02-08-071 and D.02-10-062 or other applicable law to procure an additional one percent (1%) of its annual electricity sales from renewable resources, and that any procurement pursuant to the Original Agreement is deemed part of SCE's "baseline" quantity of eligible renewable resources for purposes of Section 399.15 of the Public Utilities Code or other applicable law.

3. The Parties desire to replace and supersede the Original Agreement as of the Effective Date, subject to CPUC Approval as provided herein, in order to:
- (a) Allow Seller to increase the Net Nameplate Contract Capacity from 2,490 kW to 3,770 kW, using an additional landfill gas generator at the El Sobrante Landfill;
 - (b) Delete the Public Goods Charge Funds terms in the Original Agreement, as required by CPUC Resolution E-3809;
 - (c) Transition from payments based upon Metered Amounts to payments based upon Scheduled Amounts;
 - (d) Delete certain terms and conditions from the Original Agreement that have already been fully performed;
 - (e) Correct typographical errors; and
 - (f) Make other agreed-upon changes to the arrangement between the Parties.

As set forth in detail in Section 8.11, the Parties intend the Original Agreement to remain in force and effect for the limited purposes of allowing SCE and Seller to bill and collect any payments for obligations incurred, but not billed or collected, prior to the Effective Date of this Agreement and for purposes of providing insurance and indemnification for any claims that are not covered by this Agreement, but would be covered by the Original Agreement had it not been superseded and amended.

Capitalized terms in this Agreement have the meanings set forth in Article One.

SPECIAL CONDITIONS

A. Generating Facility:

- (i) Generating Facility Name and Address (the "Site"):

**El Sobrante Gas-to-Energy Project
El Sobrante Landfill**

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**10910 Dawson Canyon Road
Corona, California 91719**

- (ii) Eligible Renewable Resource Type: **Landfill Gas**
- (iii) The Generating Facility's Net Nameplate Contract Capacity shall be **3,770 kW**.
- (iv) Expected Annual Net Energy Production is **30,321,000 kWh**.
- (v) Electrical output from the Generating Facility shall be delivered to the interconnecting utility grid at a nominal **12,000 Volts**.
- (vi) Check one of the following:
 - Existing Generating Facility.
 - New Facility.
- (vii) Check if Existing On-site Uses to be served.

Nature of Load: administrative office, weigh station, and other existing on site uses associated with landfill.

Amount: **74 kW**.

B. Capacity Option and Contract Capacity:

- Firm Capacity Option.

The Firm Contract Capacity shall be **2,490 kW**.

C. ISO Grid Delivery Point:

Delivery of power to the ISO shall be at the ISO Grid Delivery Point located at Valley Substation (Global Resource ID **VALLEY_7_UNITA1**).

D. Name and Location of SCE Designated Switching Center:

Mira Lima Substation

E. Term:

The Term commences on the Effective Date and ends at 11:59 p.m. Pacific Prevailing Time on February 28, 2014; provided, however, that Seller has the right, in its sole discretion, to terminate this Agreement, effective at 11:59 p.m. Pacific Prevailing Time on February 28, 2009, without liability of any kind for such termination, by providing SCE with Notice of Seller's intention to terminate under this Special

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Condition E at least nine (9) months before the effective date of such termination i.e., on or before May 31, 2008.

F. Energy Price:

The Energy Price is **\$42.50 per MWh.**

G. Firm Contract Capacity Price:

The Annual Firm Contract Capacity Price is **\$95 per kW-year.**

H. Credit:

(i) Seller Credit Protection.

SCE's Rounding Amount: **\$250,000**

(ii) SCE Credit Protection.

(a) Seller's Rounding Amount: **\$250,000**

(b) Seller's Guarantor: **Waste Management, Inc.**

(c) **Guaranty Amount: \$6,000,000**

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ARTICLE ONE: DEFINITIONS

The following terms shall have the following meaning for purposes of this Agreement.

- 1.1 "Affiliate" means, with respect to a Party, any entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with such Party. For this purpose, "control" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.
- 1.2 "Agreement" has the meaning set forth in the Preamble.
- 1.3 "Allocation Factor" has the meaning set forth in Section 3.2.1(b).
- 1.4 "Annual Capacity Demonstration Test" has the meaning set forth in the 3.1.3(c) and Exhibit F.
- 1.5 "Annual Contract Capacity Price" is the price designated in Special Condition G.
- 1.6 "Applicable Laws" means all constitutions, treaties, laws, ordinances, rules, regulations, interpretations, permits, judgments, decrees, injunctions, writs and orders of any Governmental Authority or arbitrator that apply to either or both of the Parties, the Generating Facility or the terms of this Agreement.
- 1.7 "Arbitrator" has the meaning set forth in Article Ten.
- 1.8 "Bankrupt" means with respect to any entity, such entity:
 - (a) Files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it;
 - (b) Makes an assignment or any general arrangement for the benefit of creditors;
 - (c) Otherwise becomes bankrupt or insolvent (however evidenced);
 - (d) Has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets;
 - (e) Is generally unable to pay its debts as they fall due.
- 1.9 "Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall begin at 8:00 a.m. and end at 5:00 p.m. local time for the Party sending the Notice or payment or performing a specified action.
- 1.10 "Capacity Attributes" has the meaning set forth in Section 3.1.1.

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- 1.11 "Capacity Demonstration" has the meaning set forth in Exhibit F.
- 1.12 "Capacity Performance Factor" has the meaning set forth in 3.1.3(a).
- 1.13 "Capacity Replacement Damage Amount" has the meaning set forth in 3.1.3(f) and Exhibit A.
- 1.14 "CEC" means the California Energy Commission.
- 1.15 "CEC Certification and Verification" means that the CEC has certified that the Generating Facility is an ERR for purposes of the RPS Legislation and that all electric energy produced by the Generating Facility qualifies as generation from an ERR for purposes of the RPS Legislation.
- 1.16 "Change in ISO Tariff" means that the ISO Tariff has been changed and such change has a material adverse impact on either Party, or the ISO has been dissolved or replaced and any successor to the ISO operates under rules, protocols, procedures or standards that differ in a material respect from the ISO Tariff, after the Effective Date.
- 1.17 "Claiming Party" has the meaning set forth in Section 3.3.2(b).
- 1.18 "Claims" means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys' fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.
- 1.19 "CPUC" means the California Public Utilities Commission.
- 1.20 "CPUC Approval" means that the CPUC has issued a final decision, no longer subject to appeal, without conditions or modifications unacceptable to either Party, that:
- (a) As was the case with the Original Agreement, finds that any electric energy sold or dedicated to SCE pursuant to this Agreement (hereinafter, "Agreement Procurement") constitutes procurement by SCE from an ERR for purposes of determining SCE's compliance with any obligation that it may have to procure ERRs pursuant to CPUC Decision ("D.") 02-08-071 and D.02-10-062, the RPS Legislation, or other applicable law concerning the procurement of electric energy from renewable energy resources;
 - (b) Finds that all Agreement Procurement counts, in full and without condition toward any annual procurement target and/or incremental procurement target established by the RPS Legislation or the CPUC which is applicable to SCE;

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- (c) Finds that all Agreement Procurement counts, in full and without condition toward the requirement in the RPS Legislation that SCE procure 20% (or such other percentage as may be established by law) of its retail sales from ERRs by 2017 (or such other date as may be established by law); and
- (d) Finds that this Agreement, and SCE's entry into this Agreement is reasonable and prudent for all purposes, including, but not limited to, recovery in rates of payments made pursuant to this Agreement, subject only to further review with respect to the reasonableness of SCE's administration of this Agreement.

CPUC Approval will be deemed to have occurred on the date that a CPUC decision containing the above findings becomes final and non-appealable.

- 1.21 "Credit Rating" means with respect to any entity, on the relevant date of determination, the respective ratings then assigned to such entity's unsecured, senior long-term debt or deposit obligations (not supported by third party credit enhancement) by S&P or Moody's. If no rating is assigned to such entity's unsecured, senior long-term debt or deposit obligation by either S&P or Moody's, then "Credit Rating" shall mean the general corporate credit rating or long-term issuer rating assigned by S&P or Moody's, as the case may be.
- 1.22 "Defaulting Party" has the meaning set forth in Section 4.1.
- 1.23 "Delivered Amounts" means the Metered Amounts less Delivery Losses.
- 1.24 "Delivery Losses" means all electrical losses occurring between the ISO Approved Meter and the Delivery Point and electrical losses occurring over the ISO Grid as such losses are assigned by the ISO to the Generating Facility including if applicable, but not limited to:
 - (a) If the ISO Approved Meter is not installed on the high voltage side of the Generating Facility's substation bus bar, transformer and other electrical losses occurring between the ISO Approved Meter and the high voltage side of the Generating Facility's substation bus bar;
 - (b) Any applicable DLF, or if no DLF is applicable, then electrical losses between the high voltage side of the Generating Facility's substation bus bar and the ISO Grid Delivery Point; and
 - (c) Electrical losses determined by utilizing the GMM, or TMM if applicable, assigned to the Generating Facility.
- 1.25 "Delivery Point" means ISO Zone SP-15. Notwithstanding anything to the contrary in Article Nine, after a Change in ISO Tariff that impacts the trading points or trading rules thereof in ISO Zone SP-15, the "Delivery Point" shall be a valid ISO Scheduling point in SP-15 that is either:

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- (a) The SCE load aggregation point, if defined by the ISO; or
 - (b) If an SCE load aggregation point is not defined by the ISO, the ISO-defined trading hub designated by SCE as most closely representing SCE's bundled customer load.
- 1.26 "Derate" means reducing the Firm Contract Capacity as set forth in Sections 3.1.3(d) and 3.1.3(e).
- 1.27 "Derated Capacity Quantity" the meaning set forth in Exhibit A
- 1.28 "Designated Switching Center" means the SCE facility identified in Special Condition D.
- 1.29 "DLF" means a measure of all net electrical losses as determined by the CPUC associated with the transmission of electric energy through the electric system from the high voltage side of the Generating Facility's substation bus bar to the interface with the ISO Grid Delivery Point, also known as the distribution loss factor.
- 1.30 "Early Termination Date" has the meaning set forth in Section 4.2(a).
- 1.31 "Effective Date" has the meaning set forth in the Preamble.
- 1.32 "Effective Date of Deration" means the date SCE gives Notice to Seller that the Firm Capacity Contract has been derated.
- 1.33 "Emergency" means an actual or imminent condition or situation which jeopardizes SCE Electric System Integrity or the integrity of other systems to which SCE is connected, as determined by SCE in its reasonable discretion, or any condition so defined and declared by the ISO.
- 1.34 "Energy Payment" has the meaning set forth in Section 3.2.1(c).
- 1.35 "Energy Price" means the energy price set forth in Special Condition F.
- 1.36 "Environmental Attributes" has the meaning set forth in Section 3.1.1.
- 1.37 "Equitable Defense" means any bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.
- 1.38 "ERR" means a generating facility that qualifies as an eligible renewable energy resource for purposes of the RPS Legislation.
- 1.39 "Event of Default" has the meaning set forth in Section 4.1.
- 1.40 "Event of Excess Deliveries" has the meaning set forth in Section 4.1(m).

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- 1.41 "Expected Annual Net Energy Production" means the Generating Facility's expected annual Metered Amounts set forth in Special Condition A(iv).
- 1.42 "FERC" means the Federal Energy Regulatory Commission.
- 1.43 "Firm Capacity Payment" has the meaning set forth in Section 3.2.1(e).
- 1.44 "Firm Contract Capacity" means the electrical capacity of Seller's Generating Facility committed to SCE as set forth in Special Condition B or adjusted pursuant to Section 3.1.3(e).
- 1.45 "Force Majeure" means any occurrence, other than a Forced Outage, that causes a Party to be unable to perform its obligations hereunder that was not anticipated as of the Effective Date, that is not within the control of that Party, and that the Party has been unable to overcome by the exercise of due diligence, including but not limited to flood, drought, earthquake, storm, fire, pestilence, lightning and other natural catastrophes, epidemic, war, riot, civil disturbance or disobedience terrorism, strike or labor dispute, or actions or inactions of any Governmental Authority. Lack of wind, sun or other fuel source of an inherently intermittent nature shall not constitute a Force Majeure under this Agreement. Damage or destruction of the facilities providing landfill gas to the Generating Facility Units, which prevent the delivery of landfill gas to the Generating Facility for the production of Product and Firm Contract Capacity, that could not have been prevented by the exercise of due diligence by Seller, and that was not foreseeable and was caused by forces outside the control of Seller, shall be considered a qualifying Force Majeure event.
- 1.46 "Forced Outage" means any outage of the Generating Facility or Seller's Interconnection Facilities resulting from a design defect, inadequate construction, operator error, or a breakdown of the mechanical or electrical equipment that fully or partially curtails the electrical output of the Generating Facility.
- 1.47 "Generating Facility" means all of Seller's generators, together with all materials, equipment systems, structures, features and improvements necessary to produce electric energy at such facility, excluding the Site, land rights and interests in land.
- 1.48 "GMM(s)" means the generation meter multipliers as determined by the ISO representing the calculation of all electrical losses assigned to the Generating Facility associated with the transmission of electric energy delivered by the Generating Facility over the ISO Grid, which values are, as of the Effective Date, posted by the ISO on its website. The values used in the Agreement will be those appearing on the ISO website on the third (3rd) Business Day of the calendar month following the month for which such values are being applied.

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- 1.49 "Governmental Authority" means:
- (a) Any federal, state, local, municipal or other government;
 - (b) Any governmental, regulatory or administrative agency, commission, or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power;
or
 - (c) Any court or governmental tribunal.
- 1.50 "Governmental Charges" has the meaning as set forth in Section 7.2.
- 1.51 "Guarantor" means the person or entity, if any, referred to in Special Condition H(ii)(b).
- 1.52 "Guaranty Agreement" means, if a Guarantor has been identified, the guaranty agreement from the Guarantor attached as Exhibit H.
- 1.53 "ISO" means the California Independent System Operator Corporation or successor entity that dispatches certain generating units and loads and controls the transmission facilities of entities that:
- (a) Own, operate and maintain transmission lines and associated facilities or have entitlements to use certain transmission lines and associated facilities; and
 - (b) Have transferred to the ISO or its successor entity operational control of such facilities or entitlements.
- 1.54 "ISO Approved Meter" means the meter installed in accordance with Section 3.1.5(a) used to measure Metered Amounts.
- 1.55 "ISO Control Area" means the electrical regions under operational control of the ISO.
- 1.56 "ISO Electric System Integrity" means the state of operation of the ISO electric system in a manner that the ISO deems necessary to minimize the risk of injury to persons or property and enable the ISO to provide adequate and reliable electric service.
- 1.57 "ISO Grid" means the system of transmission lines and associated facilities of the participating transmission owners that have been placed under the ISO's operational control.
- 1.58 "ISO Grid Delivery Point" has the meaning as used in Special Condition C to this Agreement.
- 1.59 "ISO Tariff" means the California Independent System Operator Corporation Operating Agreement and Tariff, including the rules, protocols, procedures and

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standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC.

- 1.60 "kW" means a kilowatt of electric energy generating capacity.
- 1.61 "kWh" means a kilowatt-hour of electric energy
- 1.62 "Lease" means an agreement whereby Seller leases the Site described in Special Condition A(i) from a third party, the term of which lease begins on or before the commencement of the Term and extends at least through the last day of the Term.
- 1.63 "Letter of Credit" means an irrevocable, nontransferable standby letter of credit issued by a U.S. commercial bank or a U.S. branch of a foreign bank with such bank having a Credit Rating of at least "A-" from S&P and "A3" from Moody's, in a form acceptable to the Party in whose favor the letter of credit is issued. All Letter of Credit costs shall be borne by the applicant for such Letter of Credit.
- 1.64 "Letter of Credit Default" means with respect to a Letter of Credit, the occurrence of any of the following events:
- (a) The issuer of such Letter of Credit fails to maintain a Credit Rating of at least "A-" by S&P or "A3" by Moody's;
 - (b) The issuer of the Letter of Credit fails to comply with or perform its obligations under such Letter of Credit;
 - (c) The issuer of such Letter of Credit disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Letter of Credit;
 - (d) Such Letter of Credit expires or terminates, or fails or ceases to be in full force and effect at any time, in any such case without replacement; or
 - (e) The issuer of such Letter of Credit becomes Bankrupt; provided, however, that no Letter of Credit Default shall occur or be continuing in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned to a Party in accordance with the terms of this Agreement;
- 1.65 "Market Price" means the Ex Post Price for uninstructed deviations or any successor price for short term imbalance energy, as such price or successor price is defined in the ISO Tariff Appendix A, that would apply to the Generating Facility, which values are, as of the Effective Date, posted by the ISO on its website. The values used in the Agreement will be those appearing on the ISO website on the third (3rd) Business Day of the calendar month following the month for which such prices are being applied.

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- 1.66 "Market Quotation Average Price" means the average of quotations solicited in good faith at a specific point in time from not less than three (3) Reference Market Makers; provided, however, that the Party soliciting such quotations shall use reasonable efforts to obtain good faith, then-current quotations from at least five (5) Reference Market Makers and, if at least five (5) such quotations are obtained, the Market Quotation Average Price shall be determined by disregarding the highest and lowest quotations and averaging the remaining quotations. The quotations shall be based on the midpoint (average) of firm and transactable offers to sell and bids to buy. The quote must be obtained assuming that the Party obtaining the quote will provide sufficient credit support for the proposed transaction. In the event the Parties are unable to obtain such quotations, the Parties shall negotiate in good faith to reach agreement on a valuation of the relevant product. In the event the Parties calculate differing Market Quotation Average Prices based on the above procedure for the equivalent relevant product, then the average of the Parties' two Market Quotation Average Prices shall be used in implementing provisions of this Agreement that reference Market Quotation Average Prices. For any time periods which are sufficiently far into the future at the time forward market pricing is to be estimated such that forward market quotations are not available, forward market pricing will be determined by extrapolating from the last year of available forward market quotations by using the average rate of escalation over the last three (3) years of such available market quotations.
- 1.67 "Metered Amounts" means the electric energy produced by the Generating Facility and expressed in kWh that qualifies as eligible renewable energy for purposes of the RPS Legislation in effect as of the Effective Date, as measured by the ISO Approved Meter.
- 1.68 "Metering Interval" means the smallest interval for which measurements of electrical output, as measured by meters installed at the Generating Facility, are recorded and transmitted to SCE.
- 1.69 "Moody's" means Moody's Investor Services, Inc.
- 1.70 "MWh" means a megawatt-hour of electric energy.
- 1.71 "Net Nameplate Contract Capacity" means the 3,770 kW, as set forth in Special Condition A(iii).
- 1.72 "Non-Defaulting Party" has the meaning set forth in Section 4.2.
- 1.73 "Notice" means notices, requests, statements or payments provided in accordance with Section 8.6 and Exhibit B.
- 1.74 "Original Agreement" has the meaning set forth in the Preamble.
- 1.75 "On-site Uses" means electrical energy produced by the Generating Facility that serves the electrical load of facilities that do not directly support, or are not required

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for operation of the Generating Facility that are located on the Generating Facility site provided that prior to March 1, 2009, such uses shall be limited to those uses and amounts specified in Special Condition A(vii).

- 1.76 "OMAR" means the Operational Metering Analysis and Reporting System operated and maintained by the ISO as the repository of settlement quality meter data or its successor.
- 1.77 "Operate," "Operating" or "Operation" means to provide (or the provision of) the engineering, purchasing, repair, supervision, training, inspection, testing, protection, use, management, replacement, retirement, reconstruction, and maintenance of or for the Generating Facility in accordance with Prudent Electrical Practices.
- 1.78 "Party" or "Parties" have the meaning set forth in the Preamble.
- 1.79 "Peak Months" means those months defined as summer months in SCE Tariff Schedule No. TOU-8, currently Special Condition 15, entitled "Qualifying Facilities Time Periods."
- 1.80 "Performance Assurance" means collateral in the amount set forth in Special Condition F in the form of cash, a Letter of Credit, or other security acceptable to the requesting Party.
- 1.81 "Pledgor" has the meaning set forth in Section 6.3.
- 1.82 "Probationary Period" has the meaning set forth in Section 3.1.3(b).
- 1.83 "Product" means:
- (a) All electric energy produced by the Generating Facility, net of Station Use, On-site Uses, and Delivery Losses; and
 - (b) All associated Environmental Attributes and Capacity Attributes.
- 1.84 "Prudent Electrical Practices" means those practices, methods and acts that would be implemented and followed by a prudent operator of facilities similar to the Generating Facility in the western United States during the relevant time period, which practices, methods and acts, in the exercise of prudent and responsible professional judgment in the light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result consistent with good business practices, reliability and safety. Prudent Electrical Practices shall include, at a minimum, those professionally responsible practices, methods and acts described in the preceding sentence that comply with manufacturers' warranties, restrictions in this Agreement, and the requirements of Governmental Authorities, WECC standards, the ISO and Applicable Laws.
- 1.85 "Reference Market-Maker" means any:

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- (a) Marketer, trader or dealer in energy products:
 - (i) Whose long-term senior unsecured debt is rated “BBB-” or better by S&P and “Baa3” or better by Moody’s; or
 - (ii) Who is providing sufficient credit support such that the Party obtaining the quote has included, and currently includes, such marketer, trader, or dealer among the companies with which it has management pre-approval to transact for the relevant product; or
- (b) Broker representing quotes from such marketers, traders, or dealers meeting the foregoing criteria.

A Reference Market-Maker shall not be an Affiliate of either Party.

- 1.86 “RPS Legislation” means the State of California Renewable Portfolio Standard Program, as codified at California Public Utilities Code Section 399.11, *et seq.*
- 1.87 “S&P” means the Standard & Poor’s Rating Group.
- 1.88 “SCE” has the meaning set forth in the Preamble.
- 1.89 “SCE Collateral Threshold” means the collateral threshold, if any, for SCE as set forth in Exhibit C.
- 1.90 “SCE Electric System Integrity” means the state of operation of the SCE electric system in a manner that SCE deems necessary to minimize the risk of injury to persons or property and enable SCE to provide adequate and reliable electric service to its customers.
- 1.91 “SCE Outage” or “SCE Outages” has the meaning set forth in Section 3.3.1(a).
- 1.92 “SCE Rounding Amount” means the amount, if any, set forth in Special Condition H(i) for SCE.
- 1.93 “Schedule,” “Scheduled” or “Scheduling” means the action of Seller and SCE, or their designated representatives, including any third party provider of scheduling services, if applicable, of notifying, requesting, and confirming to each other or to the ISO, as appropriate, the “ISO Approved Quantity” of electric energy from the Generating Facility being delivered by Seller to SCE in the form of Scheduling Coordinator Trades for any given day, hour, or relevant period at the Delivery Point, all in accordance with the provisions of Section 3.1.2. The “ISO Approved Quantity” of electric energy means the quantity of Seller’s Scheduling Coordinator’s schedule request as approved by the ISO in its final schedule published in accordance with the ISO Tariff.

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- 1.94 "Scheduled Amounts" means the Scheduled quantity, expressed in kWh, of electric energy, in the form of Scheduling Coordinator Trades, confirmed to SCE on any given day, hour, or relevant period at the Delivery Point.
- 1.95 "Scheduling Coordinator" or "SC" means an entity certified by the ISO for the purposes of undertaking the functions specified by ISO Tariff Section 2.2.6, as amended by FERC from time-to-time.
- 1.96 "Scheduling Coordinator Trades" or "SC-to-SC Trades" means Scheduling Coordinator to Scheduling Coordinator trades of electric energy by the Seller, or Seller's authorized agent, to SCE in accordance with the ISO Tariff.
- 1.97 "Secured Party" the meaning set forth in Section 6.3
- 1.98 "Seller" has the meaning set forth in the Preamble.
- 1.99 "Seller Collateral Threshold" means the collateral threshold, if any, for Seller as set forth in Exhibit C.
- 1.100 "Seller Rounding Amount" means the amount, if any, set forth in Special Condition H(ii)(a) for Seller.
- 1.101 "Settlement Interval" means a ten (10) minute time interval beginning on the hour (e.g. 12:00 to 12:10, 12:10 to 12:20, etc.).
- 1.102 "Site" means the real property on which the Generating Facility is located, as further described in Special Condition A(i).
- 1.103 "Site Control" means that Seller satisfies the criteria of Section 3.1.4(a)(i).
- 1.104 "Station Use" means electric energy produced by the Generating Facility that is used to power the auxiliary equipment including, but not limited to, rotating motors, lubricating oil systems, plant lighting, fuel handling systems, landfill gas compressors, control systems, and other miscellaneous equipment that is required to Operate the Generating Facility.
- 1.105 "Tariff Schedule No. TOU-8" means SCE's time-of-use tariff for retail electric service provided to those customers with demand exceeding 500 kW, or any successor thereto as may be updated or modified from time to time by the CPUC, as now in effect or as may hereafter be authorized by the CPUC.
- 1.106 "Term" has the meaning used in Special Condition E and Article Two.
- 1.107 "Termination Payment" has the meaning set forth in Section 4.3.
- 1.108 "TMM(s)" means the tie meter multipliers as determined by the ISO representing the calculation of all electrical losses over the ISO Grid associated with the transmission

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of electric energy delivered at an ISO Control Area boundary, which values are, as of the Effective Date, posted by the ISO on its website. The values used in the Agreement will be those appearing on the ISO website on the third (3rd) Business Day of the calendar month following the month for which such values are being applied.

- 1.109 "TOD Period" has the meaning set forth in Section 3.2.1(b).
- 1.110 "TOD Period Energy Payment" has the meaning set forth in Section 3.2.1(c)
- 1.111 "TOD Period Firm Capacity Payment" has the meaning set forth in Section 3.2.1(e)
- 1.112 "Transmission Provider" means any entity or entities responsible for the interconnection of the Generating Facility with the ISO Grid or transmitting the Metered Amounts on behalf of Seller from the Generating Facility to the Delivery Point under its applicable tariff or transmission service agreement.
- 1.113 "Uninstructed Imbalance Energy" has the meaning set forth in Appendix A of the ISO Tariff.
- 1.114 "WECC" means the Western Electricity Coordinating Council, the regional reliability council for the Western United States and Canada.

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ARTICLE TWO: TERM AND CONDITIONS PRECEDENT; TERMINATION

2.1 Effective Date.

This Agreement commences on the Effective Date.

2.2 Length of Term.

The length of the Term shall be as set forth in Special Condition E.

2.3 Termination.

This Agreement will terminate as follows:

- (a) This Agreement shall terminate automatically if, on or before the date which is one hundred fifty (150) days after SCE files the request for approval with the CPUC, or by such later date as may be agreed to in writing between Seller and SCE, CPUC Approval has not been obtained. In its sole discretion, SCE may waive CPUC Approval at any time by giving Notice of such waiver to Seller. If this Agreement is terminated pursuant to this Section 2.3, the Parties' rights and obligations shall effective immediately upon such termination be governed by the Original Agreement as though it had never been amended and superseded by this Agreement, except that as soon as practicable after the termination SCE shall recalculate the payments already made under this Agreement pursuant to Section 3.2.2(a)(iii) using the formulas from the original Agreement. SCE will provide Seller with a copy of its calculation within thirty (30) days of the date of termination. If SCE owes the Seller money according to the recalculation, then SCE shall pay the Seller the recalculated amount within forty-five (45) days of the date of termination. If Seller owes SCE money, Seller shall pay the recalculated amount within forty-five (45) days of the date of termination. Disputes concerning this payment shall be handled according to the terms of the Original Agreement.
- (b) In the event of an uncured default or a default for which there is no cure, as set forth in Sections 4.1 and 4.2.
- (c) At the expiration or earlier termination of the Term as described above.

2.4 Obligations Surviving Termination.

The obligations that are intended to survive the termination are all of those which arise from Seller's or SCE's covenants, representations and warranties applicable to, or to be performed, at or during any time period prior to the termination, as well as the indemnity obligations to the extent provided in Section 8.3 and the obligation of confidentiality set forth in Section 8.8.

ARTICLE THREE: PARTIES' OBLIGATIONS

3.1 Seller's Obligations.

3.1.1 Conveyance of Entire Output – Conveyance of Environmental and Capacity Attributes.

Seller shall use best efforts and Prudent Electrical Practices to Schedule and convey the *entire* Metered Amounts during the Term to SCE.

In addition, Seller shall dedicate and convey any and all Environmental Attributes and Capacity Attributes during the Term to SCE and SCE shall be given sole title to all Capacity and Environmental Attributes during the Term.

SCE will have the exclusive right, at any time or from time-to-time during the Term, to sell, convey, transfer, allocate, designate, award, report or otherwise provide any and all such Capacity and Environmental Attributes to third parties.

Seller shall retain all Capacity Attributes and Environmental Attributes attributed to or associated with the Generating Facility after the Term. SCE shall be responsible for any costs associated with SCE's accounting for or otherwise claiming Environmental and Capacity Attributes.

Seller shall convey title to and risk of loss of all Scheduled Amounts to SCE at the Delivery Point.

"Capacity Attributes" means any current or future defined characteristic, certificate, tag, credit, ancillary service attribute, or accounting construct, including any accounting construct counted toward resource adequacy requirement, associated with a unit of generating capacity of the Generating Facility during the Term. An example of a Capacity Attribute would be an "ACAP" credit, or "Available Capacity" credit as defined in the ISO's Market Design '02 Proposal or any subsequent ISO Tariff incorporating such similar terms.

"Environmental Attributes" mean any and all current or future credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to electrical generation from the Generating Facility during the Term of this Agreement. Environmental Attributes include but are not limited to:

- (a) Any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants;
- (b) Any avoided emissions of carbon dioxide (CO₂), methane (CH₄) and other greenhouse gases (GHGs) that have been determined by any legitimate governmental body or association of governmental representatives, such as, but not limited to, the United Nations Intergovernmental Panel on Climate

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Change, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and

- (c) The reporting rights, such as, but not limited to, Green Tag Reporting Rights, to these avoided emissions. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser's discretion, and include, without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program.

Environmental Attributes do not include:

- (x) Production tax credits associated with the construction or operation of the Generating Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Generating Facility that are applicable to a state or federal income taxation obligation;
- (y) Fuel-related subsidies or 'tipping fees' that may be paid to Seller to accept certain fuels, or local subsidies received by the Seller for the destruction of particular pre-existing pollutants or the promotion of local environmental benefits; or
- (z) Any subsidies or awards paid by the CEC.

3.1.2 Seller's Obligations to Schedule and Deliver.

- (a) Seller shall be responsible for providing or securing any and all Scheduling, interconnection and transmission service rights (including all regulatory approvals) required to effect delivery and Scheduling of the electric energy from the Seller's Generating Facility at the Delivery Point in the form of Scheduling Coordinator Trades.
- (b) Seller shall pay all Transmission Provider, Scheduling Coordinator and any other charges directly caused by, associated with, or allocated to the interconnection of the Generating Facility to the Transmission Provider's electric system, and the Scheduling and delivery of electric energy from Seller's Generating Facility at the Delivery Point.
- (c) Seller shall Schedule or cause to be Scheduled the electric energy generated by the Generating Facility in accordance with all applicable ISO requirements and the provisions of Exhibit D. If there is a difference between the ISO requirements and Exhibit D, Seller shall be responsible for following the more stringent requirements and conforming to the earlier of any filing deadlines.

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- (d) Under no circumstances shall SCE be required to pay for more energy, and, if applicable, Firm Contract Capacity than is Scheduled by Seller.

3.1.3 Seller's Firm Contract Capacity Performance Requirements.

Seller shall be subject to the following capacity performance requirements and damages for failure to perform as set forth herein:

- (a) On-Peak Performance Requirement.

Seller shall achieve a Capacity Performance Factor in each Peak Month for all on-peak TOD Period hours of at least 0.80 (i.e., eighty percent (80%)). Seller shall not be subject to such performance requirements for the remaining hours of the year. For each on-peak TOD Period in each Peak Month, the Capacity Performance Factor shall be calculated pursuant to the following formula:

$$\text{CAPACITY PERFORMANCE FACTOR} = [A] / [B \times C]$$

Where A = Sum of all kWh of Delivered Amounts in all hours of the on-peak TOD Period in the month with the Delivered Amounts to be included in such sum limited in each hour of delivery by the level of Firm Contract Capacity.

B = Adjusted Period Hours as defined below.

C = Firm Contract Capacity specified in Special Condition B (or as may be reduced pursuant to Sections 3.1.3(e) or 3.1.3(h)), in kW.

Adjusted Period Hours = Total on-peak TOD Period hours in the month less hours (or portions of hours) involving (i) an SCE Outage in accordance Section 3.3.1 or (ii) Force Majeure hours in accordance with 3.3.2.

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(b) Failure to Meet On-Peak Performance Requirement.

If Seller fails at any time after September 1, 2004 to meet the requirements specified in Section 3.1.3(a), above, SCE may place Seller on probation for a period of fifteen (15) months (unless SCE extends the period due to Force Majeure events during such period) (the "Probationary Period"), effective as of the first day of the calendar month after Seller's failure. If Seller fails to meet the requirements specified in Section 3.1.3(a) at any time during the Probationary Period, then SCE may elect to Derate Seller's Firm Contract Capacity in accordance with the provisions of Section 3.1.3(e).

(c) Annual Capacity Demonstration Test.

At least once a year after the commencement of the Term, at SCE's request, Seller shall demonstrate the ability to provide Firm Contract Capacity in accordance with the procedures in Exhibit F (the "Annual Capacity Demonstration Test"). Seller's Annual Capacity Demonstration Test shall be conducted at Seller's expense. If Seller fails to demonstrate the ability to provide Firm Contract Capacity pursuant to the procedures in Exhibit F, the provisions of Sections 3.1.3(e), 3.1.3(f) and 3.1.3(g) shall apply. The provisions of this Section 3.1.3(c) shall apply in addition to, and not as an alternative to, the provisions of Section 3.1.3(b).

(d) Performance Requirements During Emergency.

At SCE's request, Seller shall achieve a Capacity Performance Factor of 1.0 for all hours during periods of an Emergency. This performance factor shall be calculated using the formula set forth in Section 3.1.3(a), except that, throughout the formula, on-peak hours shall be replaced with all hours during the Emergency. At SCE's request, Seller shall achieve a Capacity Performance Factor (pursuant to the formula set forth in Section 3.1.3(a)) of 1.0 for all hours during periods of an Emergency. If Seller has previously scheduled an outage, in accordance with the provisions of Sections 3.1.4(d)(iv) and 3.1.4(d)(v), coincident with an Emergency, Seller shall make all reasonable efforts to reschedule the outage. If Seller fails to deliver Firm Contract Capacity during an Emergency, and there are no circumstances that in SCE's reasonable judgment excuse the failure, then SCE may, within ninety (90) days of such failure, Derate the Firm Contract Capacity effective immediately upon the Effective Date of Deration. The new Firm Contract Capacity shall be the highest of:

- (i) The lowest level of Delivered Amounts during any applicable Metering Interval during the period of Emergency; or
- (ii) The level of Firm Contract Capacity that SCE deems appropriate.

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The provisions of Section 3.1.3(f) shall apply to any Deration of Seller's Firm Contract Capacity.

(e) Deration.

If Seller fails to:

- (i) Meet the requirements specified in Section 3.1.3(a) during a Probationary Period regardless of whether Seller has been previously Derated during the Probationary Period; or
- (ii) Demonstrate the ability to provide Firm Contract Capacity during an Annual Capacity Demonstration Test pursuant to Section 3.1.3(c),

Then SCE may Derate, or additionally Derate if previously Derated, the Firm Contract Capacity effective immediately upon the Effective Date of Deration. In such event, the new Firm Contract Capacity shall be the highest of:

- (iii) The lowest level of Delivered Amounts in any on-peak hour during any Peak Month of any Probationary Period;
- (iv) The lowest level of Delivered Amounts during any applicable Metering Interval of the Annual Capacity Demonstration Test; or
- (v) The level of Firm Contract Capacity that, in SCE's judgment, Seller may reasonably be expected to deliver for the remainder of the Term.

The provisions of Section 3.1.3(f) shall apply to any Deration of Seller's Firm Contract Capacity.

(f) Capacity Replacement Damage Amount.

In the event Seller's Firm Contract Capacity is Derated pursuant to Sections 3.1.3(b) through (e) above, the Parties acknowledge that the damages sustained by SCE associated with Deration would be difficult or impossible to determine, or that obtaining an adequate remedy would be unreasonably time consuming or expensive, and therefore agree that Seller shall pay SCE as liquidated damages the Capacity Replacement Damage Amount, which is intended to compensate SCE for its cost to replace the Firm Contract Capacity that will not be purchased by SCE under this Agreement as a result of the Deration, irrespective of whether SCE actually purchases such replacement capacity by reason of the Deration. The Capacity Replacement Damage Amount shall be calculated as set forth in Exhibit A.

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(g) Continuing Obligations of Seller.

Notwithstanding any payment of a Capacity Replacement Damage Amount, or Deration in accordance with this Section 3.1.3, Seller shall remain obligated to dedicate and sell all Metered Amounts and all Environmental Attributes and Capacity Attributes attributed to the Generating Facility or associated therewith to SCE as set forth in Section 3.1.1.

(h) Minimum Firm Contract Capacity.

As long as Seller maintains a minimum Firm Contract Capacity of 1,000 kW, Seller may, at any time after February 28, 2009, reduce Firm Contract Capacity at any time and by any amount for the sole purpose of increasing Seller's On-site Uses, without liability for such reduction, provided that Seller give SCE Notice of its planned reduction of Firm Contract Capacity at least six (6) months prior to the effective date of the Firm Contract Capacity reduction with such reduction being effective on the first day of a calendar month. The Notice shall state the amount of the reduction and the date on which the reduction shall be effective.

3.1.4 Generating Facility.

(a) Site Control.

- (i) At all times during the Term, Seller shall have Site Control, which means that Seller shall:
- (1) Own the Site;
 - (2) Be the lessee under a Lease;
 - (3) Be the holder of a right-of-way grant or similar instrument; or
 - (4) Be the managing partner or other person or entity authorized to act in all matters relating to the control and operation of the Site and Generating Facility.
- (ii) Seller shall provide SCE with prompt written Notice of any change in the status of Seller's Site Control.
- (iii) If, at any time during the Term, SCE reasonably believes that Seller has lost Site Control, SCE may send Seller a Notice requesting confirmation of Seller's Site Control. Whether SCE has sent Seller a Notice as set forth in the preceding sentence, if Seller does not have Site Control for the Term, Seller shall advise SCE in writing at least sixty (60) days before Site Control is scheduled to expire and Seller shall provide to SCE, no later than twenty (20) days before Seller's

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Site Control is scheduled to expire, evidence that Seller's Site Control has been renewed or extended. If Seller fails to provide evidence to SCE's satisfaction within twenty (20) days before Site Control was originally set to expire that Seller's Site Control has been renewed or extended, or Seller fails to provide SCE with confirmation to SCE's reasonable satisfaction of Site Control within twenty (20) days of a written request for confirmation of same, then SCE may, at any time after such twenty (20) day period, declare an Event of Default in accordance with Section 4.1 and terminate this Agreement.

(b) Site Location.

This Agreement is Site specific.

(c) Design.

At no cost to SCE, Seller shall be responsible to:

- (i) Design and construct the Generating Facility.
- (ii) Perform or obtain all studies, pay all fees, obtain all necessary approvals and execute all necessary agreements to Schedule and deliver Seller's electric energy including, but not limited to, agreements covering transmission, distribution, metering, Scheduling and interconnection.
- (iii) Acquire all permits and other approvals necessary for the construction, Operation, and maintenance of the Generating Facility.
- (iv) Provide to SCE the Generating Facility:
 - (1) Site plan drawings;
 - (2) Process flow diagrams (if applicable);
 - (3) Piping and instrument diagrams (if applicable);
 - (4) Electrical single line diagrams describing generation, loads, metering and protection; and
 - (5) Major electrical equipment specifications.
- (v) After commencement of the Term, as soon as practicable provide SCE advance Notice of any proposed changes in Seller's Generating Facility along with all applicable specifications and drawings of any such changes.

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(d) Operation.

- (i) Seller shall Operate the Generating Facility in accordance with Prudent Electrical Practices.
- (ii) Seller shall keep a daily operations log for the Generating Facility that shall include information on availability, maintenance outages, circuit breaker trip operations requiring a manual reset, and any significant events related to the Operation of the Generating Facility, including, but not limited to: real and reactive power production, changes in Operating status, protective apparatus operations, and any unusual conditions found during inspections. Changes in generator output setting shall also be logged for Seller's generator(s) if it is "block-loaded" to a specific kW capacity. Such information shall be made available to SCE upon twenty (20) days written request.
- (iii) Seller shall maintain complete records of the Generating Facility's fuel consumption, if a biomass or landfill generating facility, steam consumption if a geothermal generating facility, maintenance performed, kilowatts, kilovars and kilowatt-hours generated and settings or adjustments of the generator control equipment and protective devices. Such information shall be provided or made available to SCE within twenty (20) days of any Notice from SCE requesting that the information be provided.
- (iv) Seller shall give Notice to SCE of Seller's:
 - (1) Forecast of the timing and duration of scheduled maintenance and Seller's forecast of daily Delivered Amounts from the Generating Facility for the following four month period by January 1, May 1, and September 1 of each year during the Term; and
 - (2) Forecast of the timing and duration of scheduled maintenance and Seller's forecast of daily Delivered Amounts from the Generating Facility for the following calendar year by September 1 of each year during the Term.
 - (3) Scheduled outages by using SCE's automated telephone-based Interactive Voice Response System (IVR), or its replacement, with as much advanced notice as practicable, at the telephone number(s) listed in Exhibit B; and
 - (4) Unexpected or unscheduled outages by telephoning SCE's Generation Operations Center as soon as practicable, at the telephone number(s) listed in Exhibit B.

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- (v) Seller shall promptly prepare and provide to SCE upon request all reports of actual or forecasted outages that SCE may reasonably require for the purpose of enabling SCE to comply with Section 761.3 of the California Public Utilities Code or any applicable law mandating the reporting by investor-owned utilities of expected or experienced outages by facilities under contract with such investor-owned utilities to supply electric energy.
- (vi) Seller shall comply with the Scheduling requirements and procedures set forth in Section 3.1.2(c) and Exhibit D at its sole expense.
- (vii) At least thirty (30) days prior to the commencement of any Operation of the Generating Facility in parallel with SCE's electric system, Seller shall provide SCE with all facility and metering information as may be requested by SCE, including, but not limited to, the following:

For the ISO meter:

- Generating Station/Unit ID,
- ISO Global Resource ID,
- ISO Meter Device ID,
- Password,
- Data path (network (ECN) or modem),
- If modem, phone number,
- Copy of meter certification,
- List of any ISO metering exemptions (if any), and
- Description of any compensation calculations such as transformer losses and line losses.

For the Generating Facility:

- Utility transmission/distribution one line diagram,
- Physical location, address or descriptive identification,

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- Latitude and longitude,
- Telephone number on site,
- Telephone number of control room,
- Telephone number for operational issues,
- Telephone number for administrative issues.

(e) No Representation by SCE.

- (i) Any review by SCE of the design, construction, Operation of the Generating Facility is solely for SCE's information. By making such review, SCE makes no representation as to the economic and technical feasibility, operational capability, or reliability of the Generating Facility.
- (ii) Seller shall in no way represent to any third party that any such review by SCE of the Generating Facility, including, but not limited to, any review of the design, construction, operation, or maintenance of the Generating Facility by SCE, is a representation by SCE as to the economic and/or technical feasibility, operational capability, or reliability of the Generating Facility. Seller is solely responsible for economic and technical feasibility, operational capability, and reliability of the Generating Facility.

3.1.5 Metering.

- (a) Seller shall install and pay for any and all metering services and related equipment required by SCE, the ISO, the Transmission Provider and Seller's Scheduling Coordinator. Such equipment shall include, but not be limited to, an ISO approved revenue quality meter or meters, ISO approved data processing gateway, telemetering equipment and data acquisition services sufficient for recording and reporting all electric energy produced by the Generating Facility less Station Use (collectively the "ISO Approved Meter").
- (b) Seller shall grant SCE reasonable access to the meter(s) for meter readings, testing and any purpose necessary to effectuate this Agreement.
- (c) Seller shall provide instructions to the ISO granting authorizations or other documentation sufficient to provide SCE with access to the ISO Approved Meter and to Seller's settlement data on OMAR. Seller shall promptly inform SCE of meter quantity changes after being informed of any such changes by the ISO.

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3.1.6 SCE's Access Rights.

With reasonable prior written Notice, SCE shall have the right of ingress and egress with respect to Seller's Generating Facility at all reasonable hours for any purpose reasonably connected with this Agreement or the exercise of any and all rights secured to SCE by law or its tariff schedules and rules on file with the CPUC.

3.1.7 Obligations to Provide Notice in Event of Cessation or Termination of Service Agreements.

Seller shall provide Notice to SCE within three (3) Business Days of termination of, or cessation of service under, any agreement necessary for the interconnection to the Transmission Provider's electric system or delivery of the electric energy to the Delivery Point, for Scheduling to SCE, or for metering the Metered Amounts.

3.2 SCE's Obligations.

3.2.1 Energy and Capacity Payments.

(a) Terms of Sale and Purchase.

For Seller's *full* compensation under this Agreement, SCE will make separate monthly payments to Seller for Firm Contract Capacity, if any, and electric energy Scheduled by Seller during the Term calculated in the manner described below. SCE shall not be obligated to pay Seller for Firm Contract Capacity and any energy electric that is not Scheduled as a result of any circumstance, including, without limitation:

- (i) An outage of the Generating Facility;
- (ii) A Force Majeure under Section 3.3.2; or
- (iii) A reduction or curtailment of Schedules ordered by the ISO; or
- (iv) A reduction or curtailment of Schedules pursuant to the terms of an agreement with a Transmission Provider.

Payment for Firm Contract Capacity, if any, and energy delivered by Seller to SCE will be based upon the Scheduled Amounts in any TOD Period.

(b) Time-Differentiated Payments.

The Firm Capacity Payments, if any, and Energy Payments shall be time-differentiated according to the time-of-delivery and season as those terms are defined in Tariff Schedule No. TOU-8, currently Special Conditions 1 and 15. Each time-of-delivery and seasonal period defined in Tariff Schedule No. TOU-8 is referred to herein as a "TOD Period." The Energy Payment

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and Firm Capacity Payment allocation factors used to time-differentiate the payments shall be the factors approved by the CPUC in Decision 96-12-028 to time-differentiate energy payments in SCE's standard power purchase contracts with Qualifying Facilities for each TOD Period, as such factors are updated from time-to-time by the CPUC ("Allocation Factor").

(c) Energy Payment Calculations.

During the Term, SCE shall pay Seller a monthly Energy Payment equal to the sum of the monthly TOD Period Energy Payments for each of the three TOD Periods for the applicable month.

For *each* TOD Period in the month, a monthly TOD Period Energy Payment amount shall be calculated pursuant to the following formula:

$$\text{MONTHLY TOD PERIOD ENERGY PAYMENT} = A \times B \times C$$

Where A = Energy Price specified in Special Condition F in \$/kWh (i.e., \$/MWh/1000).

B = Energy Payment Allocation Factor for the TOD Period being calculated.

C = The sum of Scheduled Amounts in all hours of the TOD Period in the month.

(d) Payment Adjustments.

If in any Settlement Interval, a Generating Facility's Scheduled Amounts deviates from the Generating Facility's Delivered Amounts by more than plus or minus three percent ($\pm 3\%$) of the Generating Facility's Delivered Amounts, then Seller's monthly Energy Payment may be subject to an adjustment calculated by SCE in accordance with the procedures and formulae set forth in Exhibit E.

(e) Firm Capacity Payment.

During the Term, if Seller meets the performance requirements set forth in Section 3.1.3(a), then Seller will receive a monthly Firm Capacity Payment equal to the sum of the monthly TOD Period Firm Capacity Payments calculated for each TOD Period in the month, provided that, for any Peak Month, in order to receive a monthly Firm Capacity Payment, Seller must achieve a Capacity Performance Factor for all on-peak TOD Period hours in that month of at least 0.80 as specified in Section 3.1.3(a).

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For each TOD Period in the month, a monthly TOD Period Firm Capacity Payment shall be calculated pursuant to the following formula:

MONTHLY TOD PERIOD FIRM CAPACITY PAYMENT

$$= A \times B \times C \times D$$

Where A = The Annual Contract Capacity Price set forth in Special Condition G in \$/kW-year.

B = Capacity Allocation Factor to convert annual capacity prices to monthly payments for the TOD Period being calculated.

C = Firm Contract Capacity specified in Special Condition B (or as may be reduced pursuant to Sections 3.1.3(e) or 3.1.3(h)) in kW.

D = TOD Period Capacity Performance Factor for the TOD Period being calculated as set forth below:

$$\text{TOD PERIOD CAPACITY PERFORMANCE FACTOR} = [E] / [F \times G]$$

Where E = Sum of all Scheduled Amounts delivered by Seller in all hours of the TOD Period in the month, with the Scheduled Amounts to be included in such sum limited in each hour of delivery by the lesser of:

- (i) The level of Firm Contract Capacity; or
- (ii) The kWh of Delivered Amounts in the hour of delivery.

F = Total TOD Period hours in the month.

G = Firm Contract Capacity set forth in Special Condition B (as may have been reduced pursuant to Sections 3.1.3(e) and 3.1.3(h)), in kW.

3.2.2 Payment Statement and Payment.

- (a) SCE shall mail to Seller no later than thirty (30) days after the end of each calendar month during the Term each of the following:

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- (i) A statement showing:
 - (1) The Scheduled Amounts for each TOD Period during the monthly period for which the payment is being made;
 - (2) A calculation of the amount payable to Seller for electric energy and, if applicable, Firm Contract Capacity, for the monthly period pursuant to Sections 3.2.1(c) and 3.2.1(e);
 - (3) A calculation of any payment adjustments pursuant to Section 3.2.1(d); and
 - (4) A calculation of the net amount due Seller; and
 - (ii) SCE's check in payment of said net amount.
 - (iii) Within thirty (30) days of the execution of this Agreement, SCE shall recalculate the statements for the months retroactively to the Effective Date and apply any amounts due to Seller pursuant to the underpayment provision enumerated in Section 3.2.2(b).
- (b) Except for meter inaccuracies which are provided for in Section 3.2.2(d) and as otherwise provided in this Section 3.2.2(b), if within forty-five (45) days of receipt of SCE's payment statement, Seller does not give Notice to SCE of an error, then Seller shall be deemed to have waived any error in SCE's statement, computation and payment, and the statement shall be conclusively deemed correct and complete; provided, however, that if an error is identified by Seller as a result of settlement, audit or other information provided to Seller by the ISO after the expiration of the original forty-five (45) day period, Seller shall have an additional forty-five (45) days from the date on which it receives the information from the ISO in which to give Notice to SCE of the error identified by such settlement, audit or other information. If Seller identifies an error in Seller's favor and SCE agrees that the identified error occurred, SCE shall reimburse Seller for the amount of the underpayment caused by the error and apply the additional payment to the next monthly statement that is calculated. If Seller identifies an error in SCE's favor and SCE agrees that the identified error occurred, SCE may offset the amount of overpayment caused by the error against amounts otherwise owed to Seller and apply the offset to the next monthly statement that is calculated. In the event that the recomputation results in a net amount still owing to SCE after offsetting any amounts owed to Seller, the next monthly statement shall show a net amount owing to SCE. At SCE's discretion, SCE may offset this net amount owed to SCE in any subsequent monthly statements to Seller or invoice Seller for such amount, in which case Seller must pay the amount owing to SCE within thirty (30) days of receipt of such invoice. The Parties shall negotiate in good faith to resolve any disputes regarding claimed errors in a statement. Any disputes which the Parties are unable to resolve through

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negotiation may be submitted for resolution through the dispute resolution procedure in Article Twelve.

- (c) SCE reserves the right to apply amounts that would otherwise be due to Seller under this Agreement as an offset in payment of:
 - (i) Any amounts owing and unpaid by Seller to SCE under this Agreement; or
 - (ii) Any amount owed to SCE by Seller arising out of, or related to, any other SCE agreement, tariff, obligation or liability.

Nothing in this Section 3.2.2 shall limit SCE's rights under applicable tariffs, other agreements or applicable law.

- (d) In the event either Party determines that a calculation of Metered Amounts for any purpose hereunder is incorrect as a result of inaccurate meters or the correction of data by the ISO in OMAR, SCE shall, if it can reasonably confirm such inaccuracy, recompute Metered Amounts for the period of the inaccuracy based upon an adjustment of inaccurate meter readings in accordance with the ISO Tariff. SCE shall also promptly recompute any payment affected by the inaccuracy. Any amount due from SCE to Seller, or Seller to SCE, as the case may be, shall be made as an adjustment to the next monthly statement that is calculated after SCE's recomputation using corrected measurements. In the event that the recomputation results in a net amount owed to SCE after offsetting any amounts owing to Seller as shown on the next monthly statement, any such additional amount still owing to SCE shall be shown on Seller's monthly statement. At SCE's discretion, SCE may offset any remaining amount owed SCE in any subsequent monthly payments to Seller or invoice Seller for such amount, in which case Seller must pay the amount owing to SCE within thirty (30) days of receipt of such invoice. Any disagreement between the Parties regarding the claimed inaccuracy or correction may be submitted to arbitration pursuant to the provisions of Article 10 hereof.

3.3 Events Affecting Performance.

3.3.1 SCE Outages.

- (a) Consistent with ISO protocols and Prudent Electrical Practices, SCE may require Seller to interrupt or reduce deliveries of energy and, if applicable, capacity, from the Generating Facility, or to disconnect the Generating Facility from the SCE electrical system, and shall not be obligated to accept or pay for such interrupted or reduced deliveries under any of the following circumstances:

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- (i) When the interruption or reduction is necessary to construct, install, maintain, repair, replace, remove, investigate, or inspect any of SCE's equipment or any part of the SCE electric system;
 - (ii) When such interruption or reduction is necessary due to congestion, voltage or stability conditions occurring on the SCE electric system or the ISO Grid, provided that SCE shall not interrupt or reduce deliveries pursuant to this Section 3.3.1(a) solely in order to take advantage, or make purchases, of less expensive energy from another source; or
 - (iii) If SCE determines that interruption or reduction is necessary because of an Emergency, Forced Outage, Force Majeure, or compliance with Prudent Electrical Practices (collectively, "SCE Outage" or "SCE Outages").
- (b) Notwithstanding any other provision of this Agreement, SCE shall have the right to disconnect the Generating Facility from the SCE system or the ISO Grid at any time if SCE determines that:
- (i) Continued parallel operation of the Generating Facility may endanger SCE personnel or the public; or
 - (ii) Continued parallel operation of the Generating Facility may endanger SCE Electric System Integrity, or the ISO Electric System Integrity.
- (c) Notwithstanding any other provision of this Agreement, the ISO may require Seller to interrupt or reduce deliveries of energy and, if applicable, capacity, from the Generating Facility and shall have the right to disconnect the Generating Facility from the ISO Grid at any time in accordance with the operating and facility requirements as outlined in applicable ISO tariffs and protocols. SCE shall not be obligated to accept or pay for such interrupted or reduced deliveries of energy and capacity.
- (d) Whenever practicable, SCE shall give Seller Notice of the possibility that interruption or reduction of deliveries may be required.

3.3.2 Force Majeure.

- (a) No Default if Performance Failure other than Nonpayment Caused by Force Majeure.

Neither Party shall be considered to be in default in the performance of any of its obligations set forth in this Agreement; except for obligations to pay money, when and to the extent failure of performance is caused by Force Majeure.

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(b) Requirements Applicable to the Claiming Party.

If a Party, because of Force Majeure, is rendered wholly or partly unable to perform its obligations when due under this Agreement, that Party (the "Claiming Party"), shall be excused from whatever performance is affected by the Force Majeure to the extent so affected. In order to be excused from its performance obligations hereunder by reason of Force Majeure:

- (i) The Claiming Party, within fourteen (14) days after the initial occurrence of the claimed Force Majeure, must give the other Party Notice describing the particulars of the occurrence; and
 - (ii) The Claiming Party must provide timely evidence reasonably sufficient to establish that the occurrence constitutes Force Majeure as defined in this Agreement;
 - (iii) The suspension of the Claiming Party's performance due to Force Majeure shall be of no greater scope and of no longer duration than is required by the Force Majeure;
 - (iv) The Claiming Party shall use best efforts to remedy its inability to perform. This section shall not require the settlement of any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Claiming Party involved in the dispute, are contrary to its interest, or the institution, prosecution or settlement of any judicial action to secure or defend any permits or approvals required from any governmental authority for the Generating Facility on terms which, in the sole judgment of the Claiming Party involved in the dispute, are contrary to its interest. It is understood and agreed that the settlement of strikes, walkouts, lockouts or other labor disputes and the institution, prosecution or settlement of any judicial action to secure any permits or approvals required for the Generating Facility, shall be at the sole discretion of the Party having the difficulty; and
 - (v) When the Claiming Party is able to resume performance of its obligations under this Agreement, the Claiming Party shall give the other Party prompt Notice to that effect.
- (c) In the event that either Party's ability to perform cannot be corrected when the Force Majeure is caused by the actions or inactions of a Governmental Authority, the Parties may amend this Agreement to comply with the legal or regulatory change, or action or inaction which caused the nonperformance.
- (d) Either Party may terminate this Agreement on Notice, which shall be effective five (5) Business Days after such Notice is provided, in the event of Force Majeure which extends for more than two hundred seventy (270) consecutive

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days, or for more than two hundred seventy (270) days in any consecutive three hundred sixty five (365) day period.

3.3.3 Obtaining and Maintaining CEC Certification and Verification.

Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification throughout the Term.

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ARTICLE FOUR: EVENTS OF DEFAULT: REMEDIES

4.1 Events of Default.

An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

- (a) Any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made if the representation or warranty is continuing in nature, if:
 - (i) Such misrepresentation or breach of warranty is not remedied within fifteen (15) Business Days after Notice; or
 - (ii) Such inaccuracy is not capable of a cure, but the non-breaching Party's damages resulting from such inaccuracy can reasonably be ascertained and the payment of such damages is not made within ten (10) Business Days after a Notice of such damages is provided by the non-breaching Party to the breaching Party;
- (b) Except for an obligation to make payment when due, the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default or to the extent excused by a Force Majeure) if such failure is not remedied within thirty (30) days after Notice of such failure, which Notice sets forth in reasonable detail the nature of the Event of Default, provided that if such Event of Default is not reasonably capable of being cured within the thirty (30) day cure period specified above, the Party shall have such additional time (not exceeding an additional one hundred twenty (120) days) as is reasonably necessary to cure such Event of Default, so long as such Party promptly commences and diligently pursues such cure;
- (c) A Party fails to make when due any payment (other than amounts disputed in good faith) due and owing under this Agreement and such failure is not cured within five (5) Business Days after Notice of such failure;
- (d) The failure of such Party to satisfy the creditworthiness and collateral requirements in Article Six and such failure is not cured within five (5) Business Days following a Notice to cure from the Non-Defaulting Party;
- (e) A Party becomes Bankrupt;
- (f) Such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party

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under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;

- (g) With respect to such Party's Guarantor:
 - (i) If any representation or warranty made by a Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated and the misrepresentation or breach of warranty is not remedied within fifteen (15) Business Days after Notice;
 - (ii) The failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any guarantee made in connection with this Agreement and such failure shall not be remedied within ten (10) Business Days after Notice;
 - (iii) A Guarantor becomes Bankrupt;
 - (iv) The failure of a Guarantor's guaranty to be in full force and effect for purposes of this Agreement (other than in accordance with its terms);
or
 - (v) A Guarantor repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of any guaranty;
- (h) If at any time during the Term, Seller does not:
 - (i) Own the Generating Facility;
 - (ii) Own the Site, remain the lessee under a Lease for the Site, or otherwise have such requisite authority as delineated in Section 3.1.4(a)(i);
 - (iii) Does not provide either the written Notice or the required confirmation as required by Sections 3.1.4(a)(ii) and 3.1.4(ii);
- (i) With respect to Seller, excluding periods of Force Majeure, if at any time during the Term, the Metered Amounts in any consecutive six (6) month period are not at least five percent (5%) of the Expected Annual Net Energy Production set forth in Special Condition A(iv), and Seller fails to demonstrate to SCE's reasonable satisfaction, within ten (10) Business Days after Notice from SCE, a legitimate reason for Seller's failure to produce, Schedule and deliver such five percent (5%);
- (j) If at any time during the Term, Seller intentionally or knowingly delivers, Schedules, or attempts to deliver or Schedule at the Delivery Point for sale under this Agreement electric energy that was not in fact generated by the

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Generating Facility, except in the ordinary course of Scheduling where the Scheduled Amounts may exceed the Delivered Amounts in any given hour as permitted by and subject to Section 3.1.1;

- (k) If at any time during the Term, the Generating Facility consists of an ERR type(s) different than that specified in Special Condition A(ii) of this Agreement; provided, however, that an Event of Default shall not have occurred if the Generating Facility fails to qualify as an eligible renewable resource due to a change in the RPS Legislation occurring after the Effective Date;
- (l) If at any time during the Term, either:
 - (i) The Generating Facility fails to qualify as an ERR; or
 - (ii) Any electrical output from the Generating Facility sold or to be sold to SCE hereunder fails to qualify as output from an ERR,provided, however, that an Event of Default shall not have occurred if the failure to qualify results solely from an amendment or modification of the RPS Legislation occurring after the Effective Date;
- (m) If at any time during the Term, the Metered Amounts in any one hour interval, in kWh/hr, exceed one hundred five percent (105%) of the Net Nameplate Contract Capacity set forth in Special Condition A(iii) to this Agreement, (an "Event of Excess Deliveries"), without the prior written consent of SCE, and within five (5) Business Days after Notice, Seller fails to demonstrate to SCE's satisfaction that it has identified the reason that the Event of Excess Deliveries occurred and that it has or is employing best efforts to ensure that no additional Events of Excess Deliveries will occur during the Term;
- (n) If at any time during the Term, Seller, without SCE's prior consent in writing, installs in excess of the Net Nameplate Contract Capacity set forth in Special Condition A(iv), and if such Net Generating Facility Capacity is not removed within five (5) Business Days after Notice to cure from the Non-Defaulting Party;
- (o) If at any time during the Term, Seller, without SCE's prior consent in writing, removes from the Site equipment upon which the Net Nameplate Contract Capacity has been based, except for the purposes of replacement, refurbishment, repair or maintenance, and such equipment is not returned within five (5) Business Days after Notice from SCE.
- (p) Termination of, or cessation of service under, any agreement necessary for the interconnection of the Generating Facility to the Transmission Provider's electric system or delivery of the electric energy to the Delivery Point, for Scheduling to SCE, or for metering the Metered Amounts.

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4.2 Early Termination.

If an Event of Default with respect to a Defaulting Party shall have occurred and has not been cured within ten (10) Business Days, or other cure period provided in the applicable section(s) of this Agreement, the other Party (the "Non-Defaulting Party") shall have the right to (i) designate a day, no earlier than the day the applicable Notice of the Event of Default is effective and no later than twenty (20) calendar days after the Notice is effective, as an "Early Termination Date," and (ii) to suspend performance under the Agreement.

4.3 Termination Payment.

As soon as practicable after an Early Termination Date is declared, the Non-Defaulting Party shall provide Notice to the Defaulting Party of the sum of all amounts owed by the Defaulting Party to the Non-Defaulting Party under the Agreement,¹ less any amounts owed by the Non-Defaulting Party to the Defaulting Party (the "Termination Payment"). If the Termination Payment is positive, the Defaulting Party shall pay such amount to the Non-Defaulting Party within ten (10) Business Days after the Notice is provided. If the Termination Payment is negative (i.e., the Non-Defaulting Party owes the Defaulting Party more than the Defaulting Party owes the Non-Defaulting Party) then the Non-Defaulting Party shall pay such amount to the Defaulting Party within thirty (30) calendar days after the Notice is provided.

The Parties shall negotiate in good faith to resolve any disputes regarding the calculation of the Termination Payment. Any disputes which the Parties are unable to resolve through negotiation may be submitted for resolution through the dispute resolution procedure in Article Ten.

¹ If an Early Termination Date is declared before June 1, 2008, and Seller exercises its right to terminate the second five years of the Term of the Agreement in accordance with Special Condition E, either prior to or immediately following Notice of an Early Termination Date, then the remaining years of the Agreement Term used under this Section 4.3 shall be based on the first five years of the Term of the Agreement only, rather than the entire ten (10) year Term. Otherwise, the entire ten (10) year Term shall be used.

ARTICLE FIVE: LIMITATIONS OF LIABILITIES

EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED, UNLESS THE PROVISION IN QUESTION PROVIDES THAT THE EXPRESS REMEDIES ARE IN ADDITION TO OTHER REMEDIES THAT MAY BE AVAILABLE. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, AND SUBJECT TO THE PROVISIONS OF SECTION 8.3 (INDEMNITY), NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

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ARTICLE SIX: CREDIT AND COLLATERAL REQUIREMENTS

6.1 Financial Information.

If requested by one Party, the other Party shall deliver:

- (a) Within one hundred twenty (120) days following the end of each fiscal year, a copy of its annual report, if any, containing audited consolidated financial statements for such fiscal year; and
- (b) Within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of its quarterly report, if any, containing unaudited consolidated financial statements for such fiscal quarter.

A Party shall also supply annual and quarterly statements for its Guarantor of its obligations. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the producing party diligently pursues the preparation, certification and delivery of the statements.

6.2 Performance Assurance.

- (a) During the Term of the Agreement, the Parties shall calculate the Performance Assurance Amount as set forth in Section 6.2(c) below. If at any time and from time to time during the Term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Performance Assurance Amount, less any Performance Assurance already posted with the requesting Party, is greater than the other Party's Collateral Threshold, then upon Notice by the requesting Party, the responding Party shall provide the Performance Assurance, as set forth in Section 6.2(b) below, within ten (10) Business Days of the request. However, requests under this Section 6.2(a) can be made no more frequently than once per week.
- (b) If calculation performed pursuant to Section 6.2(c), below, establishes that the Performance Assurance Amount, less any Performance Assurance already posted with the requesting Party, is greater than the other Party's Collateral Threshold, then the appropriate Party shall provide Performance Assurance, as follows:

Performance Assurance Owed by SCE:

If the Performance Assurance Amount, calculated pursuant to Section 6.2(c) below, less any Performance Assurance already posted with Seller by SCE is positive, SCE shall deliver to Seller Performance Assurance in the amount of the Performance Assurance Amount

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calculated less the SCE Collateral Threshold and less any Performance Assurance already posted with Seller by SCE. In each case, the amount of Performance Assurance to be delivered will be rounded up for any fractional amount to the next SCE Rounding Amount, as applicable;

Performance Assurance Owed by Seller

If the Performance Assurance Amount, calculated in Section 6.2(c) below, adding any Performance Assurance already posted with SCE by Seller is negative, Seller shall deliver to SCE Performance Assurance in the amount of the absolute value of the Performance Assurance Amount calculated less the Seller's Collateral Threshold and less any Performance Assurance already posted with SCE by Seller. In each case, the amount of Performance Assurance to be delivered will be rounded up for any fractional amount to the next Seller Rounding Amount, as applicable.

- (c) The Performance Assurance Amount shall be equal to the sum of the present value amounts of the annual Performance Assurance Amounts ("PPA_i") calculated over the remaining Term² as set forth below and discounted in accordance with Section 6.2(d):

$PAA = A + \text{sum of the present value amounts of } PAA_i \text{ for the remaining Term, where}$

$PAA_i = \{[P_{0i} - P_{ti}] \times B \times C\}$, for each calendar year, or partial calendar year "i" remaining under the Term as of the day, (t), the PAA is being computed, where

A = All amounts owed by SCE to Seller less any amounts owed by Seller to SCE under this Agreement, but not yet paid, whether or not such amounts are billed or due, for performance already provided pursuant to the Agreement.

i = Each calendar year or partial calendar year remaining under the Term.

P_{0i} = The Market Quotation Average Price \$ per MWh for SP-15 (7 x 24) energy for each calendar year or partial calendar year, i,

² For calculations of the Performance Assurance Amount before June 1, 2008, the remaining Term for purposes of Section 6.2(c) shall be based upon a termination date of February 28, 2009. Beginning June 1, 2008, if Seller has not invoked its sole right to terminate this Agreement pursuant to Special Condition E, calculation of the Performance Assurance Amount shall be based on the termination date of February 28, 2014.

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remaining on the Term *as of the Effective Date (0)*. However, when "i" is the current year, the Market Quotation Average Price will be for the calendar year $i + 1$. When "i" is the last year, if the last year is not the first year or the second year, the Market Quotation Average Price will be for the calendar year $i - 1$.

P_i = The Market Quotation Average Price \$ per MWh for SP-15 (7 x 24) energy for each calendar year or partial calendar year "i" remaining on the Term of the Agreement *as of the day the PAA is being computed (t)*. However, when i = the current year, the Market Quotation Average Price will be for the calendar year $i + 1$. In the last year, the price will be year $i - 1$.

B = The Firm Contract Capacity in MW (*i.e.*, kW/1000) times the number of hours in the year (or remaining in the year if "i" is the current year, or remaining in the Agreement if "i" is the last year of the Agreement).

C = 0.90 [the Generating Facility's Capacity Factor for the purposes of calculating Performance Assurance].

- (d) For purposes of this Section 6.2, the calculations described above shall be performed assuming that the annual amount of Performance Assurance Amount is due as of July 1st of each whole year and on the midpoint date of any partial year. The present value of the dollar amounts for each full or partial year shall be calculated using a discount rate of ten (10) percent and discounted to the date that the Performance Assurance Amount is being calculated using the Excel spreadsheet "XNPV" function. A sample calculation illustrating determination of the Performance Assurance Amount is attached as Exhibit G to the Agreement.
- (e) Any Performance Assurance due a requesting Party under Sections 6.2(b) and 6.2(c), above, will be delivered or adjusted within ten (10) Business Days of the date that the calculation of the Performance Assurance Amount is delivered to the other Party under Section 6.2(a). In the event that a responding Party fails to provide the Performance Assurance within ten (10) Business Days of the date such calculation is delivered to the requesting Party under Section 6.2(a), then an Event of Default under Article Four shall be deemed to have occurred and the Non-Defaulting Party will be entitled to the remedies set forth in Article Four.

6.3 Grant of Security Interest/Remedies.

To secure its obligations under this Agreement and to the extent either or both Parties deliver Performance Assurance hereunder, each Party (a "Pledgor") hereby grants to

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the other Party (the "Secured Party") a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, such Secured Party, and each Party agrees to take such action as the other Party reasonably requires in order to perfect the Secured Party's first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, the Non-Defaulting Party may do any one or more of the following:

- (a) Exercise any of the rights and remedies of a Secured Party with respect to all Performance Assurance, including any such rights and remedies under law then in effect;
- (b) Exercise its rights of setoff against any and all property of the Defaulting Party in the possession of the Non-Defaulting Party or its agent;
- (c) Draw on any outstanding Letter of Credit issued for its benefit; and
- (d) Liquidate all Performance Assurance then held by or for the benefit of the Secured Party free from any claim or right of any nature whatsoever of the Defaulting Party, including any equity or right of purchase or redemption by the Defaulting Party.

The Secured Party shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Pledgor's obligations under the Agreement (the Pledgor remaining liable for any amounts owing to the Secured Party after such application), subject to the Secured Party's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

6.4 Guaranty.

A copy of the Guaranty Agreement is attached as Exhibit H. The Parties acknowledge that Seller's Collateral Threshold for purposes of this Section 6 and Exhibit C shall be based on the Credit Rating of Seller's Guarantor.

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ARTICLE SEVEN: GOVERNMENTAL CHARGES

7.1 Cooperation to Minimize Tax Liabilities.

Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the Parties to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.

7.2 Governmental Charges.

Seller shall pay or cause to be paid all taxes imposed by any Governmental Authority ("Governmental Charges") on or with respect to the Metered Amounts (and any contract associated with the Metered Amounts) and the Scheduled Amounts arising prior to and at the Delivery Point, including, but not limited to, *ad valorem* taxes and other taxes attributable to the Generating Facility, land, land rights or interests in land for the Generating Facility. SCE shall pay or cause to be paid all Governmental Charges on or with respect to the Scheduled Amounts from the Delivery Point. In the event Seller is required by law or regulation to remit or pay Governmental Charges which are SCE's responsibility hereunder, SCE shall promptly reimburse Seller for such Governmental Charges. If SCE is required by law or regulation to remit or pay Governmental Charges which are Seller's responsibility hereunder, SCE may deduct such amounts from payments to Seller made pursuant to Sections 3.2.1 and 3.2.2; if SCE elects not to deduct such amounts from Seller's payments, Seller shall promptly reimburse SCE for such amounts upon request. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law.

7.3 Providing Information to Taxing Authorities.

Seller or SCE, as necessary, shall provide information concerning the Generating Facility to any requesting taxing authority.

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ARTICLE EIGHT: MISCELLANEOUS

8.1 Representations and Warranties.

On the Effective Date, each Party represents and warrants to the other Party that:

- (a) It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- (b) Except for CPUC Approval in the case of SCE, and all permits and agreements necessary to install, interconnect and Operate the Generating Facility in the case of Seller, it has or will timely acquire all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;
- (c) The execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;
- (d) This Agreement constitutes a legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses;
- (e) There is not pending, or to its knowledge, threatened against it (or any of its Affiliates in the case of Seller) any legal proceedings that could materially adversely affect its ability to perform under the Agreement;
- (f) No Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;
- (g) It is acting for its own account and its decision to enter into this Agreement is based upon its own judgment, not in reliance upon the advice or recommendations of the other Party and it is capable of assessing the merits of and understanding, and understands and accepts the terms, conditions and risks of this Agreement. It has not relied upon any promises, representations, statements or information of any kind whatsoever that is not contained in this Agreement in deciding to enter into this Agreement; and
- (h) It has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to make or take delivery of the Product as contemplated in this Agreement.
- (i) To the best of its knowledge, no Event of Default with respect to the Original Agreement was continuing at the time the Original Agreement was amended and superceded by this Agreement.

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- (j) No claim or demand has been made by any third-party that that might give rise to the other Party's insurance or indemnification obligations under the Original Agreement and the Party making these representations and warranties has no basis for asserting its own claim or demand that might give rise to the other Party's insurance or indemnification obligations.

8.2 Additional Warranties.

- (a) Seller warrants that it will deliver to SCE the Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person.
- (b) Seller represents and warrants that it holds the rights to all Environmental and Capacity Attributes which it is conveying to SCE hereunder.
- (c) Seller represents and warrants that throughout the Term, all energy and/or Firm Contract Capacity produced by the Generating Facility and claimed by Seller to be dedicated or allocated to On-site Uses are dedicated or allocated to On-site Uses permitted in accordance with Sections 1.75 and 3.1.3(h) hereunder.

8.3 Indemnity.

- (a) Each Party as indemnitor shall defend, save harmless and indemnify the other Party and the directors, officers, employees, and agents of such other Party against and from any and all loss, liability, damage, claim, cost, charge, demand, or expense (including any direct, indirect, or consequential loss, liability, damage, claim, cost, charge, demand, or expense, including attorneys' fees) for injury or death to persons, including employees of either Party, and physical damage to property including property of either Party arising out or in connection with the gross negligence or willful misconduct of the indemnitor relating to its obligations under this Agreement. This indemnity shall apply notwithstanding the active or passive negligence of the indemnitee. However, neither Party shall be indemnified hereunder for its loss, liability, damage, claim, cost, charge, demand or expense to the extent resulting from its sole negligence or willful misconduct.
- (b) Each Party releases and shall defend, save harmless and indemnify the other Party from any and all loss, liability, damage, claim, cost, charge, demand or expense arising out of or in connection with any breach made by the other Party of its representations and warranties in Sections 8.1 and 8.2.
- (d) The provisions of this Section 8.3 shall not be construed to relieve any insurer of its obligations to pay any insurance claims in accordance with the provisions of any valid insurance policy.

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- (e) Except as otherwise provided in Sections 8.3(a) and 8.3(f), neither Party shall be liable to the other Party for consequential damages incurred by such other Party.
- (f) Notwithstanding anything to the contrary in this Agreement, if Seller fails to comply with the provisions of Section 8.9, Seller shall, at its own cost, defend, save harmless and indemnify SCE, its directors, officers, employees, and agents, assigns, and successors in interest, from and against any and all loss, liability, damage, claim, cost, charge, demand, or expense of any kind or nature (including any direct, indirect, or consequential loss, damage, claim, cost, charge, demand, or expense, including attorneys' fees and other costs of litigation), resulting from injury or death to any person or damage to any property, including the personnel or property of SCE, to the extent that SCE would have been protected had Seller complied with all of the provisions of Section 8.9.

The inclusion of this Section 8.3(f) is not intended to create any express or implied right in Seller to elect not to provide the insurance required under Section 8.9.

- (g) Except to the extent inconsistent with the provisions of Sections 8.3(a) through (f), above, each Party shall indemnify, defend and hold harmless the other Party from any and all Claims arising from or out of any event, circumstance, act or incident first occurring or existing during the period when control and title to Product is vested in such Party as provided in Section 8.2(b).
- (h) Each Party shall indemnify, defend and hold harmless the other Party against any Governmental Charges for which such Party is responsible under Article Seven.
- (i) All indemnity rights shall survive the termination of this Agreement for twelve (12) months.

8.4 Assignment.

Neither Party shall voluntarily assign its rights nor delegate its duties under this Agreement, or any part of such rights or duties, without the written consent of the other Party, which shall not be unreasonably withheld, conditioned or delayed. Any such assignment or delegation made without such written consent shall be null and void.

8.5 Governing Law.

THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES
HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED
AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF

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CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

8.6 Notices.

All notices, requests, statements or payments shall be made as specified in Exhibit B. Notices (other than scheduling requests) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service or facsimile. Notice by facsimile or hand delivery shall be effective at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day, unless a different date for the Notice to go into effect is stated in another section of this Agreement. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. A Party may change its designated representatives, addresses and other contact information by providing notice of same in accordance herewith. All notices, requests, statements or payments for this Generating Facility must reference QFID 1093.

8.7 General.

- (a) This Agreement constitutes the entire agreement between the Parties relating to its subject matter.
- (b) This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.
- (c) No amendment or modification to this Agreement shall be enforceable unless reduced to a writing signed by all Parties.
- (d) This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement).
- (e) Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.
- (f) The term "including" when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation.
- (g) The word "or" when used in this Agreement shall include the meaning "and/or" unless the context unambiguously dictates otherwise.

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- (h) The headings used herein are for convenience and reference purposes only. Words having well-known technical or industry meanings shall have such meanings unless otherwise specifically defined herein.
- (i) Where days are not specifically designated as Business Days, they are calendar days.
- (j) This Agreement shall be binding on each Party's successors and permitted assigns.
- (k) No provision of this Agreement is intended to contradict or supersede any applicable agreement covering transmission, distribution, metering, scheduling or interconnection. In the event of an apparent contradiction between this Agreement and any such agreement, the applicable agreement shall control.
- (l) Whenever this Agreement specifically refers to any law, tariff, government department or agency, regional reliability council, Transmission Provider, or credit rating agency, the Parties hereby agree that the reference shall also refer to any successor to such law, tariff or organization.
- (m) SCE has assigned a "QFID" number to this Agreement for tracking purposes only, and SCE is not requiring that the Generating Facility be a "qualifying facility" for purposes of state or federal law.

8.8 Confidentiality.

The terms of the Confidentiality Agreement dated October 21, 2002 between the Parties, attached as Exhibit I, shall apply to the Term of this Agreement.

8.9 Insurance.

- (a) Throughout the Term, Seller shall obtain and maintain in force as hereinafter provided commercial general liability insurance, including contractual liability coverage, with a combined single limit of not less than \$2,000,000 for each occurrence. The insurance carrier or carriers and form of policy shall be subject to review and approval by SCE which approval shall not be unreasonably withheld, conditioned or delayed.
- (b) Throughout the Term, as provided in Special Condition E, Seller shall:
 - (i) Furnish a certificate of insurance to SCE, which certificate shall provide that such insurance shall not be terminated nor expire except on thirty (30) calendar days' prior written Notice to SCE;
 - (ii) Maintain such insurance in effect for so long as Seller's Generating Facility is operated in parallel with the SCE electric system; and

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- (iii) Furnish to SCE an additional insured endorsement with respect to such insurance in substantially the following form:

“In consideration of the premium charged, SCE is named as additional insured with respect to all liabilities arising out of Seller's use and ownership of Seller's Generating Facility.

The inclusion of more than one insured under this policy shall not operate to impair the rights of one insured against another insured and the coverages afforded by this policy will apply as though separate policies had been issued to each insured. The inclusion of more than one insured will not, however, operate to increase the limit of the carrier's liability. SCE will not, by reason of its inclusion under this policy, incur liability to the insurance carrier for payment of premium for this policy.

Any other insurance carried by SCE which may be applicable shall be deemed excess insurance and Seller's insurance primary for all purposes despite any conflicting provisions in Seller's policy to the contrary.”

8.10 Nondedication.

Notwithstanding any other provisions of this Agreement, neither Party dedicates any of the rights that are or may be derived from this Agreement or any part of its facilities involved in the performance of this Agreement to the public or to the service provided under the Agreement, and such service shall cease upon termination of the Agreement.

8.11 Rights and Obligations Remaining In Effect Under the Original Agreement.

The Original Agreement remains in force and effect for the limited purposes of:

- (a) Allowing Seller and SCE to bill and collect any payments for obligations incurred, but not billed or collected, prior to the Effective Date of this Agreement;
- (b) For purposes of providing insurance, indemnification, and limitations of liability and damages, for any loss, liability, damage, claim, cost, charge, demand, or expense (including any direct, indirect, or consequential loss, liability, damage, claim, cost, charge, demand, or expense, including attorneys' fees) that arose before the effective date of this Agreement and are not covered by this Agreement, but would have been covered by the Original Agreement had it not been superseded and amended; and

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- (c) Such other provisions as are necessary or appropriate to effectuate the Parties' intent in the Original Agreement relating to Section 8.11(b) above, including, but not limited to governing law and contract construction and interpretation.

Nothing in Sections 8.11(b) or 8.11(c) above is intended to abridge or expand the rights and obligations of either Party which would exist but for this Agreement.

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ARTICLE NINE: CHANGE IN ELECTRIC MARKET DESIGN

If a Change in ISO Tariff renders this Agreement or any terms herein incapable of being performed or administered, then either Party, on Notice, may request the other Party to enter into good faith negotiations to make the minimum changes to the Agreement necessary to make the Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens and obligations set forth in the Agreement as of the Effective Date. Upon receipt of a Notice requesting negotiations, the Parties shall negotiate in good faith.

If the Parties are unable, within sixty (60) days of the sending of the Notice requesting negotiations, either to agree upon changes to the Agreement or to resolve issues relating to changes to the Agreement, then either Party may submit issues pertaining to changes to the Agreement to arbitration as provided in Article Ten.

A change in cost shall not in itself be deemed to render the Agreement or any terms therein incapable of being performed or administered.

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ARTICLE TEN: ARBITRATION

The Parties agree that any and all disputes, claims or controversies arising out of, relating to, concerning or pertaining to the terms of this Agreement which disputes, claims or controversies the Parties have been unable to resolve by informal methods after undertaking a good faith effort to do so, shall be submitted for final and binding arbitration under the procedures described in this section. The arbitration shall be initiated by making a written demand for binding arbitration before a single, neutral arbitrator (the "Arbitrator") which may be made at any time following the unsuccessful conclusion of informal good faith dispute resolution efforts, including those informal good faith resolution efforts required by Article Nine.

The Parties will cooperate with one another in promptly selecting the Arbitrator and shall further cooperate in scheduling the arbitration to commence no later than one hundred eighty (180) days from the date of the initial written demand for binding arbitration. If, notwithstanding their good faith efforts, the Parties are unable to agree upon a mutually acceptable Arbitrator, the Arbitrator shall be appointed as provided for in California Code of Civil Procedure Section 1281.6.

Upon a Party's written demand for binding arbitration, such dispute, claim or controversy submitted to arbitration, including the determination of the scope or applicability of this Agreement to arbitrate shall be determined by binding arbitration before the Arbitrator, in accordance with the laws of the State of California, without regards to principles of conflicts of laws.

Except as provided for herein, the arbitration shall be conducted by the Arbitrator in accordance with the rules and procedures for arbitration of complex business disputes for the organization with which the Arbitrator is associated; absent the existence of such rules and procedures, the arbitration shall be conducted in accordance with the California Arbitration Act, California Code of Civil Procedure Section 1280 *et seq.*

However, notwithstanding the rules and procedures that would otherwise apply to the arbitration, and unless the Parties agree to a different arrangement, the place of the arbitration shall be in Los Angeles County, California and all direct testimony in the arbitration shall be submitted in the form of affidavits or declarations under penalty of perjury.

In addition, to the extent that the arbitration is conducted in accordance with the California Arbitration Act, the Parties hereby incorporate Section 1283.05 of the California Code of Civil Procedure, except that each side in the arbitration shall be entitled to take a maximum of three depositions.

Each Party shall cooperate in making available for cross-examination at the arbitration hearing its witnesses whose direct testimony has been so submitted. Judgment on the award may be entered in any court having jurisdiction.

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The Arbitrator shall, in any award, allocate all of the costs of the binding arbitration (other than each Party's individual attorneys' fees and costs related to the Party's participation in the arbitration, which fees and costs shall be borne by such Party), including the fees of the Arbitrator, against the Party who did not prevail. Until such award is made, however, the Parties shall share equally in paying the costs of the arbitration.

In WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date first written:

WM ENERGY SOLUTIONS, INC.,
a Delaware corporation

**SOUTHERN CALIFORNIA EDISON
COMPANY**, a California corporation

By: Charles E. Williams
Charles Williams
Vice President
Renewable Energy

By: Stuart R. Hemphill
Stuart R. Hemphill
Director, QF Resources

Date: 11/2/05

Date: 5/10/06

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The Arbitrator shall, in any award, allocate all of the costs of the binding arbitration (other than each Party's individual attorneys' fees and costs related to the Party's participation in the arbitration, which fees and costs shall be borne by such Party), including the fees of the Arbitrator, against the Party who did not prevail. Until such award is made, however, the Parties shall share equally in paying the costs of the arbitration.

In WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date first written:

WM ENERGY SOLUTIONS, INC.,
a Delaware corporation

By: Charles E. Williams
Charles Williams
Vice President
Renewable Energy

Date: 11/2/05

**SOUTHERN CALIFORNIA EDISON
COMPANY**, a California corporation

By: Stuart R. Hemphill
Stuart R. Hemphill
Director, QF Resources

Date: 5/10/06

APPROVED
STEPHEN E. PICKETT
Sr. Vice President and
General Counsel
By: Stephen E. Pickett
Attorney
11/7, 2005

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EXHIBIT A

CAPACITY REPLACEMENT DAMAGE AMOUNT

- (1) The Capacity Replacement Damage Amount shall be calculated as of the Effective Date of Deration using the present value over the remainder of the Term³ of the annual difference, if any, of the assumed annual payments for the quantity of capacity that is the difference between the original quantity of Firm Contract Capacity and the quantity of Firm Contract Capacity after the Deration (the "Derated Capacity Quantity") based on the going-forward market price of firm capacity, A_i , (calculated as set forth below), and the annual payments, B_i , that would be made under this Agreement for the Derated Capacity Quantity for the remainder of the Agreement's term, but for the Deration. All present value calculations shall use a discount rate of ten (10) percent and all annual dollar amounts shall be discounted to the Effective Date of Deration. For purposes of the above calculation, these quantities are determined as follows:

Capacity Replacement Damage Amount = sum of the present value amounts of the annual difference in Firm Capacity Payments [$A_i - B_i$] for each year for the remainder of the Term after the Effective Date of Deration, provided this present value is greater than zero.

Where,

A_i (Going-Forward Market Payments for Derated Capacity Quantity) are the annual payments in dollars that SCE would otherwise have to make to purchase the Derated Capacity Quantity, without regard to whether SCE actually procures such replacement capacity, from a source other than Seller for the remainder of the Term after the Effective Date of Deration. In each such year, the value of A_i in that year shall be based on the following:

$$A_i = [A_1 - (A_2 + A_3)] \times [\text{Derated Capacity Quantity in kW}] \times \text{Annual Hours,}$$

where

A_1 = Forward market electricity price in \$/kWh, which is the Market Quotation Average Price as of a date within 30 days of the Effective Date of Deration solicited by or on behalf of SCE for firm SP-15 (7x24) electric energy for year "i" of the remainder of the Term after the Effective Date of Deration,

A_2 = Fuel cost component in \$/kWh, which equals $(F_1 + F_2 + F_3) \times 0.0072$,
where

³ If Deration occurs on or before June 1, 2008, the Capacity Replacement Damage Amount shall be based on the termination date of February 28, 2009. Beginning June 1, 2008, if Seller has not invoked its sole right to terminate this Agreement pursuant to Special Condition E, calculation of the Capacity Replacement Damage Amount shall be based on the termination date of February 28, 2014.

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F_1 = Basin gas forward price (\$/MMBtu), which is the Market Quotation Average Price solicited by or on behalf of SCE for natural gas at the San Juan and Permian producing basins as of a date within 30 days of the Effective Date of Deration for year "i" of the remainder of the Term after the Effective Date of Deration,

F_2 = Firm interstate transportation charge (\$/MMBtu), which is the average of El Paso Natural Gas Company's firm tariff rates, plus corresponding fuel charges, to move gas from the San Juan and Permian basins to the California border. For purposes of this calculation, and for all years, SCE shall use the rates in effect on the Effective Date of the Deration, and

F_3 = Intrastate transportation charge (\$/MMBtu), which is the sum of the GT-F5 rates pursuant to Southern California Gas Company's Tariff Schedule GT-F5 (including the Interstate Transition Cost Surcharge provided therein) and the rate pursuant to Southern California Gas Company's Tariff Schedule G-MSUR. For purposes of this calculation, SCE shall use the rates in effect on the Effective Date of the Deration for all years,

A_3 = Variable Operation and Maintenance Component in \$/kWh, which shall be equal to \$0.002 /kWh in all years for purposes of this calculation;

and B_i (Firm Capacity Payments For Derated Capacity Quantity) are the annual capacity payments in dollars that SCE would have made to Seller at the price set forth in Special Condition G to purchase the Derated Contract Quantity for the remaining Term of this Agreement following the Effective Date of Deration, assuming Seller would have operated at a Period Capacity Performance Factor of 1.0 for all TOD Periods during each of these years.

- (2) The calculations described in this Exhibit A shall be performed using whole years, assuming, for calculation purposes only, that the annual difference in Firm Capacity Payments is due and payable to SCE as of July 1st of each year, but prorating the year in which the Deration occurs based on the Effective Date of Deration. The sum of the present value amounts of the annual difference in Firm Capacity Payments for each year shall be calculated as of the Effective Date of Deration using the Excel spreadsheet "XNPV" function. A sample calculation illustrating the determination of the Capacity Replacement Damage Amount is attached hereto.
- (3) Seller shall pay SCE the Capacity Replacement Damage Amount within thirty (30) days of Seller's receipt of SCE's invoice for the Capacity Replacement Damage Amount calculated under Section 3.1.3(f). SCE may collect the Capacity Replacement Damage Amount by withholding it from future payments under Section 3.2.2.

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SAMPLE CAPACITY REPLACEMENT DAMAGE AMOUNT CALCULATION

Example of Capacity Replacement Damage Amount Calculation

(Assumes Saller with a PPA ending in 2015 is derated by 1 MW at the end of 2004)

Column	1	2	3	4	5	6	7	8	9	10
Reference	A_1	F_1	F_2	F_3	$= F_1 + F_2 + F_3$	$A_2 = col 5 * .0072$	A_3	$= A_2 + A_3$	$= A_1 * col 8$	$= col 9 * 8760$
Midpoint of Calendar year	Forward Market Price (\$/MWh)	Basin Gas Forward Price (\$/MWh)	Firm Interstate Transportation Charge (\$/MWh)	Intrastate Transportation Charge (\$/MWh)	Fuel Cost Component (\$/MWh)	Fuel Cost Component (\$/MWh)	Variable Operation and Maintenance Component (\$/MWh)	Total COGT Variable Cost (\$/MWh)	Capacity Cost In Forward Market Price (\$/MWh)	Going Forward Market Price of Capacity (\$/MW-yr)
7/1/2005	\$0.03990	\$3.00	\$0.5000	\$0.2300	\$3.7300	\$0.026866	\$0.002000	\$0.028866	\$0.011044	\$96.75
7/1/2006	\$0.04030	\$3.04	\$0.5025	\$0.2312	\$3.7737	\$0.027171	\$0.002000	\$0.029171	\$0.011129	\$97.49
7/1/2007	\$0.04070	\$3.08	\$0.5050	\$0.2324	\$3.8174	\$0.027485	\$0.002000	\$0.029485	\$0.011215	\$98.24
7/1/2008	\$0.04111	\$3.12	\$0.5075	\$0.2336	\$3.8611	\$0.027800	\$0.002000	\$0.029800	\$0.011310	\$99.08
7/1/2009	\$0.04152	\$3.16	\$0.5100	\$0.2348	\$3.9048	\$0.028115	\$0.002000	\$0.030115	\$0.011405	\$99.91
7/1/2010	\$0.04194	\$3.20	\$0.5125	\$0.2360	\$3.9486	\$0.028430	\$0.002000	\$0.030430	\$0.011510	\$100.83
7/1/2011	\$0.04236	\$3.24	\$0.5150	\$0.2372	\$3.9924	\$0.028745	\$0.002000	\$0.030745	\$0.011615	\$101.75
7/1/2012	\$0.04278	\$3.29	\$0.5175	\$0.2384	\$4.0462	\$0.029133	\$0.002000	\$0.031133	\$0.011647	\$102.03
7/1/2013	\$0.04321	\$3.34	\$0.5204	\$0.2396	\$4.1000	\$0.029520	\$0.002000	\$0.031520	\$0.011690	\$102.40
7/1/2014	\$0.04364	\$3.39	\$0.5230	\$0.2408	\$4.1538	\$0.029907	\$0.002000	\$0.031907	\$0.011733	\$102.78
7/1/2015	\$0.04408	\$3.44	\$0.5256	\$0.2420	\$4.2076	\$0.030295	\$0.002000	\$0.032295	\$0.011785	\$103.24

Column	11	12	13
Reference			$A_1 = col 11 * col 12$
Midpoint of Calendar year	Going Forward Market Price of Capacity (\$/MW-yr)	Derated Capacity Quantity (MW)	Going Forward Market Payments for Derated Capacity Quantity (\$)
7/1/2005	\$96.75	1,000	\$96,750
7/1/2006	\$97.49	1,000	\$97,490
7/1/2007	\$98.24	1,000	\$98,240
7/1/2008	\$99.08	1,000	\$99,080
7/1/2009	\$99.91	1,000	\$99,910
7/1/2010	\$100.83	1,000	\$100,830
7/1/2011	\$101.75	1,000	\$101,750
7/1/2012	\$102.03	1,000	\$102,030
7/1/2013	\$102.40	1,000	\$102,400
7/1/2014	\$102.78	1,000	\$102,780
7/1/2015	\$103.24	1,000	\$103,240

14	15	16
		$B_1 = col 14 * col 15$
Contract Capacity Price (\$/MW-yr)	Derated Capacity Quantity (MW)	Contract Payments for Derated Capacity Quantity (\$)
\$95.00	1,000	\$95,000
\$95.00	1,000	\$95,000
\$95.00	1,000	\$95,000
\$95.00	1,000	\$95,000
\$95.00	1,000	\$95,000
\$95.00	1,000	\$95,000
\$95.00	1,000	\$95,000
\$95.00	1,000	\$95,000
\$95.00	1,000	\$95,000
\$95.00	1,000	\$95,000
\$95.00	1,000	\$95,000
\$95.00	1,000	\$95,000

17
$A_1 - B_1$
Difference Between Going Forward Market Payments and Contract Payments for Derated Capacity Quantity (\$)
\$1,750
\$2,490
\$3,240
\$4,080
\$4,910
\$5,830
\$6,750
\$7,030
\$7,400
\$7,780
\$8,240

XNPV @ 10% Capacity Replacement Damages \$34,066

All numbers shown herein are for illustrative purposes only and in no way constitute a forecast of market prices, SCE's estimate of market prices, or any representation of valid market-makers quotes or offers to sell.

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EXHIBIT B

NOTICE LIST

Name: WM ENERGY SOLUTIONS, INC.
("Seller")

All Notices are deemed provided in accordance with Section 8.6 if made to the address and/or facsimile numbers provided below:

Street: 1001 Fannin, #4000

City: Houston, Texas Zip: 77002
Attn: Contract Administration

Phone:
Facsimile:
Duns: 194672085 (parent company)
Federal Tax ID Number: 76-0695139

Contract Administration:

Attn: Paul Pabor
Phone: (713) 328-7345
Facsimile: (713) 328-7411
E-mail: ppabor@wm.com

Scheduling:

Attn: Clayton Simpson
E-mail: csimpson2@wm.com
Phone: (210) 623-8880
Facsimile: (713) 287-2423

Name: SOUTHERN CALIFORNIA EDISON COMPANY ("SCE")

All Notices are deemed provided in accordance with Section 8.6 if made to the address and/or facsimile numbers provided below:

Street: 2244 Walnut Grove Ave., Quad 4-D

City: Rosemead, California Zip: 91770
Attn: Director, QF Resources

Phone: (626) 302-1212
Facsimile: (626) 302-1103
Duns: 006900818
Federal Tax ID Number: 95-1240335

Contract Administration:

Attn: Susan Kappelman
Phone: (626) 302-8586
Facsimile: (626) 302-1103
Email: Susan.Kappelman@SCE.com

Day Ahead Scheduling:

Attn: Manager of Day-Ahead Operations
Phone: (626) 302-3308
Facsimile: (626) 307-4416
Email: Thomas.Watson@SCE.com

Real Time Scheduling:

Attn: Manager of Real Time Operations
Phone: (626) 302-3229
Facsimile: (626) 307-4416
Email: John.Pespisa@SCE.com

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Invoices:

Attn: Clayton Simpson
Phone: (210) 623-8880
Facsimile: (713) 287-2423
E-mail: csimpson2@wm.com

Invoices:

Attn: Paul Amero
Phone: (626) 302-9567
Facsimile: (626) 302-1102
Email: Paul.Amero@SCE.com

Payments:

Attn: Clayton Simpson,
Phone: (210) 623-8880
Facsimile: (713) 287-2423
E-mail: csimpson2@wm.com

Payments:

Attn: Cindy Shindle
Phone: (626) 302-9272
Facsimile: (626) 302-1102
Email: Cindy.Shindle@SCE.com

Wire Transfer:

BNK:
ABA:
ACCT:

Wire Transfer:

BNK: JP Morgan Chase Bank
ABA: [REDACTED]
ACCT: [REDACTED]

Credit and Collections:

Attn: Ginger Kaladas, Credit &
Collections Manager
Phone: (510) 613-2838
Facsimile: (510) 284-1336
E-mail:

Manager of Credit and Collateral:

Attn: Manager of Finance
Phone: (626) 302-1129
Facsimile: (626) 302-2517
Email: Michael.Carter@SCE.com

**With additional Notices of an Event of
Default or Potential Event of Default to:**

Attn: Western Group General Counsel
Phone: (480) 624-8400
Facsimile: (480) 951-5280

**With additional Notices of an Event of Default
or Potential Event of Default to:**

Attn: General Counsel
Phone: (626) 302-1903
Facsimile: (626) 302-2970

Generation Operations Center:

626-302-3285 or 626-302-3205

IVR Scheduling:

626-302-1145

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EXHIBIT C

CALCULATION OF COLLATERAL THRESHOLDS

A Party's Collateral Threshold shall be the amount set forth below under the heading "Collateral Threshold" opposite the lower of applicable Credit Ratings for the Party's outstanding long-term senior unsecured, unsubordinated debt, as determined by Moody's and/or S&P, as the case may be, on the relevant date of determination:

<u>Collateral Threshold</u> <u>(in thousands of dollars)</u>	<u>Credit Rating</u> <u>(Moody's)</u>	<u>Credit Rating</u> <u>(S&P)</u>
\$100,000	Aa3 or above	AA- or above
\$80,000	A1 or A2	A+ or A
\$68,000	A3	A-
\$35,000	Baa1	BBB+
\$25,000	Baa2	BBB
\$15,000	Baa3	BBB-
\$0	Ba1 or below	BB+ or below

provided, however, that a Party's collateral threshold shall be zero if an event of default or potential event of default with respect to the Party or a Party's Guarantor has occurred and is continuing.

EXHIBIT D

SCHEDULING REQUIREMENTS AND PROCEDURES

1. Introduction.

The Parties shall abide by the Scheduling requirements and procedures described below and shall make reasonable changes to these requirements and procedures from time-to-time, as necessary to:

- (a) Comply with ISO Tariff changes;
- (b) Accommodate changes to their respective generation technology and organizational structure; and
- (c) Address changes in the operating and scheduling procedures of both SCE and the ISO, including but not limited to, automated schedule and outage submissions.

2. Procedures.

(a) Introduction.

In general, Generating Facilities must meet all of the following requirements before Scheduling with SCE.

(b) Information Exchange.

Seller shall provide to SCE information regarding Seller's Scheduling Coordinator ("SC") at least thirty (30) days before the expected commencement of the Term, or any change in Seller's SC. This information shall include the:

- (i) SC's name.
- (ii) SC's SCID as assigned by the ISO (e.g., SCE's ID is "SCE1").

Seller's SC and SCE shall then exchange their appropriate contact information including: names of authorized scheduling personnel, phone number, FAX numbers and e-mail addresses.

(c) Notification of Schedule Estimates.

Seller shall provide SCE an electronic file containing a non-binding rolling thirty (30) day estimate of hourly Schedules for the Generating Facility, beginning at least thirty (30) days prior to Initial Operation. These files shall:

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- (i) Be constructed using reasonable file formats, templates, and naming conventions agreed to by the Parties.
 - (ii) Include Seller's contact information.
 - (iii) Be sent to "esmstpoutage@sce.com" with a copy to "presched@sce.com" or as otherwise instructed by SCE.
 - (iv) Be updated by close of business each Wednesday.
 - (v) Limit hour-to-hour Schedule changes to no less than two hundred fifty (250) kW.
- (d) SC-to-SC Trade Procedures.

Scheduling between the Parties will be via Scheduling Coordinator Trades ("SC-to-SC Trades"), as specified below:

- (i) Unless otherwise agreed, SCE requires telephonic notification of all Day-Ahead and Hour-Ahead schedules, followed by written electronic confirmation (e-mail preferred, FAX accepted).
- (ii) Day-Ahead Schedules shall be communicated to SCE's Day-Ahead Group no later than 8:30 a.m. the day prior to the effective date of the Schedule. Seller must simultaneously inform its Scheduling Coordinator and SCE of Day-Ahead Schedule changes.
- (iii) Hour-Ahead schedules shall be communicated to SCE's Real-Time Group no later than ½ hour prior to the ISO's Hour-Ahead scheduling deadline.
- (iv) The SC-to-SC Trade quantity must match the Generating Facility Schedule.

3. Outage Scheduling Procedures.

Seller shall be responsible for all expenses and costs associated with all requirements and timelines for generation outage scheduling contained in the ISO's Scheduled and Forced Outage Procedure T-113 as posted on the ISO's website.

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EXHIBIT E

PAYMENT ADJUSTMENTS FOR SCHEDULING DEVIATIONS BY SELLER

In accordance with the provisions of Section 3.1.2(b), if in any Settlement Interval, a Generating Facility's Scheduled Amounts deviate from the Generating Facility's Delivered Amounts by more than plus or minus three percent ($\pm 3\%$) of the Generating Facility's Delivered Amounts, then Seller shall be subject to a payment adjustment calculated by SCE in accordance with the procedures and formulae set forth below.

(1) UNDER-SCHEDULING ADJUSTMENT.

If during any Settlement Interval:

- (a) The Scheduled Amounts is less than ninety-seven percent (97%) of the Delivered Amounts, and
- (b) The Market Price is greater than the time-differentiated Energy Price payable during the Settlement Interval;

Then Seller's monthly payment amount shall be reduced by each Under-Scheduling Settlement Interval Adjustment Amount calculated by the following formula:

UNDER-SCHEDULING SETTLEMENT INTERVAL ADJUSTMENT AMOUNT =

$$[A - B] \times [D - (C \times E)]$$

- Where A = The Delivered Amounts in the Settlement Interval being calculated.
- B = The Scheduled Amounts in the Settlement Interval being calculated.
- C = Energy Price specified in Special Condition F to this Agreement in \$/kWh (i.e., \$/MWh/1000) payable during the Settlement Interval being calculated
- D = Market Price for the Settlement Interval being calculated in \$/kWh.
- E = Energy Payment Allocation Factor applicable to the Settlement Interval being calculated.

No under-scheduling adjustment shall be assessed against Seller for a Settlement Interval in which the Scheduled Amounts is less than the Delivered Amounts if, during such Settlement Interval, the Market Price is equal to or less than the time-differentiated Energy Price payable during the Settlement Interval.

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(2) OVER-SCHEDULING ADJUSTMENT.

If during any Settlement Interval:

- (a) The Scheduled Amounts is greater than one hundred three percent (103%) of the Delivered Amounts, and
- (b) The Market Price is less than the time-differentiated Energy Price payable during the Settlement Interval;

Then Seller's monthly payment amount shall be reduced by each Over-Scheduling Settlement Interval Adjustment Amount calculated by the following formula:

OVER-SCHEDULING SETTLEMENT INTERVAL ADJUSTMENT AMOUNT =

$$[B - A] \times [(C \times E) - D]$$

Where A = The Delivered Amounts in the Settlement Interval being calculated.

B = The Scheduled Amounts in the Settlement Interval being calculated.

C = Energy Price specified in Special Condition F to this Agreement in \$/kWh (i.e., \$/MWh/1000) payable during the Settlement Interval being calculated

D = Market Price for the Settlement Interval being calculated in \$/kWh.

E = Energy Payment Allocation Factor applicable to the Settlement Interval being calculated.

No over-scheduling adjustment shall be assessed against Seller for a Settlement Interval in which the Scheduled Amounts is greater than the Delivered Amounts if, during such Settlement Interval, the Market Price is greater than or equal to the time-differentiated Energy Price payable during the Settlement Interval.

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EXHIBIT F

ANNUAL CAPACITY DEMONSTRATION TEST PROTOCOL and CRITERIA

(1) Annual Capacity Demonstration Test Date:

- (a) An Annual Capacity Demonstration Test ("Capacity Demonstration") shall be held on a non-holiday weekday, within the Peak Months (currently defined as June, July, August and September), that is agreed to by SCE and Seller. If, by August 1 of a particular year, SCE and Seller have not agreed upon a date for the Capacity Demonstration, SCE shall select a date for that year. At its discretion, SCE may request that the Capacity Demonstration be held on a non-holiday weekday or in a non-Peak Month.
- (b) Either Party may request to reschedule the originally scheduled Capacity Demonstration date upon three (3) Business Days' Notice sent by facsimile transmission or e-mail to the other Party. However, the Capacity Demonstration may only be rescheduled once per year. Moreover, once the Capacity Demonstration has commenced, it cannot be terminated or rescheduled for any reason whatsoever.

(2) Capacity Demonstration Period:

The Capacity Demonstration period shall commence at 12:00 pm (noon) on the selected day and end at 12:00 pm (noon) of the next day (unless SCE has elected to request that the Capacity Demonstration take place over a different period).

(3) Satisfactory Demonstration:

- (a) Seller shall demonstrate the ability to Operate at a rate of delivery of Delivered Amounts which is equal to or greater than the current Firm Contract Capacity during each and every Metering Interval within the Capacity Demonstration period.
- (b) For the Capacity Demonstration, the rate of delivery (kWh/h) means the energy (kWh) recorded by the testing tools, as defined below, within a Metering Interval times the number of intervals within an hour. For example, a 15 minute energy recording would be multiplied by four to obtain the rate of delivery in kWh/h units.

(4) Testing Tool:

The rate of delivery is to be determined using SCE's Meter and Data Recorder or ISO Meter and Data Recorder.

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(5) Representation and Access:

- (a) SCE representatives (normally one to three) may attend the setup and operation of the Capacity Demonstration.
- (b) SCE representatives may also concurrently conduct a site inspection of the Generating Facility and associated facilities, systems and equipment.
- (c) SCE shall have access to and copies of control room logs, control system display screens, and instrumentation data before, during and after the demonstration.
- (d) Generating Facility personnel may be present during both the Capacity Demonstration and site inspection at the Seller's option.

(6) Cost of Capacity Demonstration:

Each Party shall bear its own costs of the Capacity Demonstration.

(7) Remedial Action for Failing the Capacity Demonstration:

- (a) Should the Seller fail to demonstrate the ability to achieve and sustain Firm Contract Capacity for each and every Metering Interval during the Capacity Demonstration, the Firm Contract Capacity may be reduced pursuant to Section 3.1.3(e), which shall cause Seller to be liable to SCE for the Capacity Repayment Damage Amount pursuant to Section 3.1.3(f) of the Agreement by reason of such capacity reduction.
- (b) If the Seller fails to demonstrate Firm Contract Capacity due to an abnormal and unforeseeable operating condition, as verified and determined at SCE's sole discretion, an additional Capacity Demonstration may be scheduled, provided there is time remaining within the current year's Peak Months or such other month as SCE may select. Lack of wind, sun, water or other fuel source of an inherently intermittent nature shall not be deemed an abnormal and unforeseeable operating condition.

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EXHIBIT G

SAMPLE CALCULATION OF PERFORMANCE ASSURANCE AMOUNT

Sample Calculation of Performance Assurance Amount for 1 MW contract assuming computation date is at start of 2004 and the original agreement was through 2017, and assuming SCE owes Seller \$10,000 for past deliveries.

CASE 1: Performance Assurance Owed by Seller to SCE (See Section 6.2(b)); Interest rate = 10%

Contract year	Year	Date	P_t	P_{ot}	B	$PAA_t =$ $\{(P_t - P_{ot}) \times B\}$
			Market Quotation Average Price \$/MWh	Performance Assurance Threshold Price \$/MWh	Seller's Expected Annual Net Energy Production from Special Condition A(vii), as adjusted from time-to-time MWh	Annual Performance Assurance Amounts \$
2	2004	7/1/2004	41.52	45.00	8784	(\$30,568.32)
3	2005	7/1/2005	42.35	45.00	8760	(\$23,214.00)
4	2006	7/1/2006	43.20	45.00	8760	(\$15,768.00)
5	2007	7/1/2007	44.05	45.00	8760	(\$8,234.40)
6	2008	7/1/2008	44.94	45.00	8784	(\$527.04)
7	2009	7/1/2009	45.84	45.00	8760	\$7,358.40
8	2010	7/1/2010	46.76	45.00	8760	\$15,417.60
9	2011	7/1/2011	47.70	45.00	8760	\$23,652.00
10	2012	7/1/2012	48.65	45.00	8784	\$32,061.60
11	2013	7/1/2013	49.62	45.00	8760	\$40,471.20
12	2014	7/1/2014	50.61	45.00	8760	\$49,143.60
13	2015	7/1/2015	51.62	45.00	8760	\$57,991.20
14	2016	7/1/2016	52.65	45.00	8784	\$67,197.60
15	2017	7/1/2017	53.70	45.00	8760	\$76,212.00

XNPV of the Sum of the Amounts of PAA _t for the Remaining Term of the Agreement	\$68,962
A = All Amounts Owed by SCE to Seller Less Amounts Owed by Seller to SCE	\$10,000
Seller's Performance Assurance Amount	\$58,962

CASE 2: Performance Assurance Owed by SCE to Seller (See Section 6.2(c)); Interest rate = 10%

Contract year	Year	Date	P_t	P_{ot}	B	$PAA_t =$ $\{(P_{ot} - P_t) \times B\}$
			Market Quotation Average Price \$/MWh	Performance Assurance Threshold Price \$/MWh	Seller's Expected Annual Net Energy Production from Special Condition A(vii), as adjusted from time-to-time MWh	Annual Performance Assurance Amounts \$
2	2004	7/1/2004	39.99	40.64	8784	\$5,797.44
3	2005	7/1/2005	40.78	41.45	8760	\$5,869.20
4	2006	7/1/2006	41.60	42.28	8760	\$5,956.80
5	2007	7/1/2007	42.43	43.13	8760	\$6,132.00
6	2008	7/1/2008	43.28	43.99	8784	\$5,236.64
7	2009	7/1/2009	44.15	44.87	8760	\$6,307.20
8	2010	7/1/2010	45.03	45.77	8760	\$6,482.40
9	2011	7/1/2011	45.93	46.69	8760	\$6,657.60
10	2012	7/1/2012	46.85	47.62	8784	\$6,763.68
11	2013	7/1/2013	47.79	48.57	8760	\$6,832.80
12	2014	7/1/2014	48.75	49.54	8760	\$6,920.40
13	2015	7/1/2015	49.73	50.53	8760	\$7,008.00
14	2016	7/1/2016	50.72	51.54	8784	\$7,202.88
15	2017	7/1/2017	51.73	52.57	8760	\$7,358.40

XNPV of the Sum of the Amounts of PAA _t for the Remaining Term of the Agreement	\$51,505
A = All Amounts Owed by Seller to SCE Less Amounts Owed by SCE to Seller	(\$10,000)
SCE's Performance Assurance Amount	\$61,505

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EXHIBIT H

GUARANTY AGREEMENT

CONFIDENTIAL

GUARANTY AGREEMENT

1. Guaranty. For valuable consideration, Waste Management, Inc., a Delaware corporation ("Guarantor") unconditionally guarantees payment to Southern California Edison Company, a California corporation ("Beneficiary"), its successors and assigns, of all amounts owed to Beneficiary by WM Energy Solutions, Inc., a Delaware corporation ("Principal") under that certain Master Power Purchase and Sale Agreement between Beneficiary and Principal dated December 20, 2002; Project Name: El Sobrante Gas-to-Energy Project; Nameplate Capacity: 2490 kW, as amended from time to time ("Agreement"). Upon the failure or refusal by Principal to pay any amounts owed to Beneficiary by Principal under the Agreement (the "Obligations"), the Beneficiary may make a demand upon the Guarantor. Such demand shall be in writing and shall state the amount Principal has failed to pay and an explanation of why such payment is due, with a specific statement that Beneficiary is calling upon Guarantor to pay under this Guaranty. Guarantor shall promptly, but in no event less than ten business days following demand by Beneficiary, pay such Obligations in immediately available funds. A payment demand satisfying the foregoing requirements shall be deemed sufficient notice to Guarantor that it must pay the Obligations. Other than such demand for payment, the Guarantor hereby expressly waives all notices between the Beneficiary and the Debtor including without limitation all notices with respect to the Agreement and this Guaranty, and any notice of credits extended and sales made by the Beneficiary to the Principal and all other notices whatsoever. The liability of Guarantor hereunder is a continuing guaranty of payment when any amount is owing without regard to whether recovery may be or has become barred by any statute of limitations or otherwise may be unenforceable.

2. Guaranty Limit. The liability of Guarantor hereunder shall not exceed at any one time the sum of \$6,000,000 in US dollars for principal, plus all interest that has accrued on any amount owed hereunder, to be paid to Beneficiary, its successors and assigns, and Guarantor hereby binds itself, its heirs, executors, administrators, successors and assigns, jointly and severally. In addition to the amounts for which payment is guaranteed hereunder, Guarantor agrees to pay reasonable attorneys' fees and all other costs and expenses incurred by Beneficiary in enforcing this agreement or any action or proceeding arising out of or relating to this agreement.

3. Independent Liability. The obligations of Guarantor hereunder are independent of the obligations of Principal. The liability of Guarantor hereunder is independent of any other guaranty of payment received by Beneficiary in connection with the Agreement and is not affected or impaired by any dissolution, reorganization, or insolvency of Principal, or any payment to Beneficiary by Principal that Beneficiary subsequently returns to Principal pursuant to court order in any bankruptcy or other debtor-relief proceeding, or any indemnity agreement Principal may have from any party.

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4. Termination. The term of this Guaranty is continuous unless terminated in accordance with the following requirements. This Guaranty may be terminated with regard to future transactions; provided that, Guarantor must provide Beneficiary with written notice of such termination, and any such termination shall become effective no earlier than sixty (60) calendar days from the date Beneficiary receives such written notice from Guarantor. Unless otherwise agreed in writing by Beneficiary, no such notice or termination shall release Guarantor from any liability as to any amount or performance that is at the time owing under the Agreement.

5. Waivers of Defenses by Guarantor. (a) Guarantor waives, to the fullest extent permitted by law, the benefit of any statute of limitations affecting its liability under this agreement or the enforcement of this agreement. (b) Guarantor waives any right to require Beneficiary to (i) proceed against Principal, (ii) proceed against or exhaust any security held from Principal or any other party acting under a separate agreement, or (iii) pursue any other remedy available to Beneficiary. (c) Beneficiary may, at its election, foreclose on any security held by Beneficiary, whether or not the means of foreclosure is commercially reasonable, or exercise any other right or remedy available to Beneficiary without affecting or impairing in any way the liability of Guarantor under this agreement, except to the extent the amount(s) owed to Beneficiary by Principal have been paid. (d) Guarantor waives all rights and defenses arising out of an election of remedies by Beneficiary, even though that election of remedies may impair or destroy Guarantor's rights of subrogation and reimbursement against Principal by operation of Section 580d of the California Code of Civil Procedure or otherwise. (e) Until all amounts owed by Principal to Beneficiary are paid in full, Guarantor shall have no right of subrogation, waives any right to enforce any remedy that Beneficiary has or may have against Principal, and waives any benefit of and any right to participation in any security from Principal now or later held by Guarantor. (f) Guarantor assumes all responsibility for keeping itself informed of Principal's financial condition and all other factors affecting the risks and liability assumed by Guarantor hereunder, and Beneficiary shall have no duty to advise Guarantor of information known to it regarding such risks.

6. No Waiver of Rights By Beneficiary. No right or power of Beneficiary under this agreement shall be deemed to have been waived by any act or conduct on the part of Beneficiary, or by any neglect to exercise a right or power, or by any delay in doing so, and every right or power of Beneficiary hereunder shall continue in full force and effect until specifically waived or released in a written document executed by Beneficiary.

7. Assignment, Successors and Assigns. This guaranty shall be binding upon Guarantor, its successors and assigns, and shall inure to the benefit of, and be enforceable by, the Beneficiary, its successors, assigns and creditors, and can be modified only by a written instrument signed by the Beneficiary and the Guarantor. The Beneficiary shall have the right to assign this Guaranty to any person or entity without the prior consent of

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the Guarantor; provided, however, that no such assignment shall be binding upon the Guarantor until it receives written notice of such assignment from the Beneficiary. The Guarantor shall have no right to assign this Guaranty or its obligations hereunder without the prior written consent of the Beneficiary, which shall not be unreasonably withheld. Any reasonable uncertainty on the part of the Beneficiary concerning the ability on the part of any potential assignee of the Guarantor to carry out the Guarantor's obligations hereunder shall be considered a reasonable basis for withholding consent, unless and until the potential assignee can satisfy the Beneficiary, in its sole discretion, that the assignee is capable of performing the obligations of the Guarantor hereunder.

8. Representations of Guarantor. Guarantor hereby represent and warrants that (a) it is a corporation duly organized, validly existing and in good standing in all necessary jurisdictions and has full power and authority to execute, deliver and perform this Guaranty, (b) it has taken all necessary actions to execute, deliver and perform this Guaranty and (c) this Guaranty constitutes the legal, valid and binding obligation of Guarantor, enforceable in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws effecting creditors' rights generally and to general equitable principles, (d) execution, delivery and performance by Guarantor of this Guarantee does not conflict with, violate or create a default under any of its governing documents, any agreement or instruments to which it is a party or to which any of its assets is subject or any applicable law, rule, regulation, order or judgment of any governmental authority and (e) all consents, approvals and authorizations of governmental authorities required in connection with Guarantor's execution, delivery and performance of this Guaranty have been duly and validly obtained and remain in full force and effect.

9. Governing Law. This agreement is made under and shall be governed in all respects by the laws of the State of California, and its provisions may not be waived, altered, modified or amended except in writing executed by an officer of each of Guarantor and Beneficiary. If any provision of this agreement is held invalid under the laws of California, this agreement shall be construed as though the invalid provision has been deleted, and the rights and obligations of the parties shall be construed accordingly.

10. Construction. All parties to this agreement are represented by legal counsel. The terms of this agreement and the language used in this agreement shall be deemed to be the terms and language chosen by the parties hereto to express their mutual intent. This agreement shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted, or in favor of the party receiving a particular benefit under this agreement. No rule of strict construction will be applied against any person.

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11. Notice. Any notice given hereunder by either Guarantor or Beneficiary shall be made by facsimile to the person and at the address for notices specified in the Agreement (with notices to Guarantor being sent to the facsimile and address specified therein for Principal). Such notice shall be effective upon actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next business day after receipt if receipt is outside of the recipient's normal business hours. Either party may periodically change any address to which notice is to be given it by providing notice of such change as provided herein.

GUARANTOR:

WASTE MANAGEMENT, INC.

By: *Ronald H. Jones*
Position: Ronald H. Jones
Date: 1/2/03 Vice President & Treasurer

Lee A. McCormick
Lee A. McCormick
Assistant Treasurer
1/2/03

Agreed to by Beneficiary for purposes of establishing the creditworthiness of Principal, as partial security for the Agreement.

BENEFICIARY:

SOUTHERN CALIFORNIA EDISON COMPANY

By: *Stephen E. Pickett*
Position: Chief Executive Officer
Date: February 11, 2003

APPROVED
STEPHEN E. PICKETT
Sr. Vice President and
General Counsel
By: *E. Matthews*
Jan 11 Attorney
20.03

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EXHIBIT I

CONFIDENTIALITY AGREEMENT

Confidential Information

The contents of this document are subject to a Non-Disclosure Agreement and shall not be disclosed.

CONFIDENTIALITY AGREEMENT
between
SOUTHERN CALIFORNIA EDISON COMPANY
and
WM ENERGY SOLUTIONS, INC.

SOUTHERN CALIFORNIA EDISON COMPANY ("SCE"), a California corporation, and WM Energy Solutions, Inc. ("Participant"), a Delaware corporation, hereby enter into this Confidentiality Agreement ("Agreement"). SCE and Participant shall sometimes be referred to in this Agreement individually as a "Party" and jointly as the "Parties."

RECITALS

- A. In accordance with Decision No. 02-08-071 of the California Public Utilities Commission ("Commission"), SCE initiated a request for proposals ("RFP") to supply energy and associated firm capacity from eligible renewable resources ("ERRs"), with a goal of executing power purchase agreements with ERRs whose proposals are selected as part of the RFP.
- B. Participant submitted a proposal in response to the RFP. Information exchanged between the Parties relating to this proposal are confidential under the terms of a non-disclosure agreement between the Parties dated October 10, 2002.
- C. As of the Effective Date of this Agreement, the Parties desire to enter into discussions and/or negotiations regarding the terms and conditions of a power purchase agreement based upon Participant's proposal (the "Negotiations"), wherein each Party will disclose confidential and proprietary information to the other Party ("Recipient"). The Parties desire to enter into this Agreement to keep any such Negotiations confidential.

AGREEMENT

NOW, THEREFORE, the Parties agree as follows:

- 1. For purposes of this Agreement, all oral or written communications exchanged between the Parties on or after the Effective Date of this Agreement as part of the Proposal shall be referred to as "Confidential Information." Any information exchanged by the Parties in hard copy or electronic form must comply with the provisions of Section 4 herein to be considered Confidential Information.
- 2. The Parties agree to treat Confidential Information given to one Party by the other Party as confidential with respect to third parties and shall not disclose Confidential Information.

Confidential Information

The contents of this document are subject to a Non-Disclosure Agreement and shall not be disclosed.

given by one Party to another except as specifically authorized herein or as specifically agreed to by both Parties in writing. Accordingly, Confidential Information may only be disclosed by the Recipient to its employees, directors, financial advisors, attorneys or accountants who have a strict need to know solely for the purpose of assisting the Recipient in the Negotiations ("Permitted Disclosee"). However, Confidential Information may not be shown to any consultant for Participant without SCE's express prior written consent. Recipient shall be responsible for any breach of this Agreement by it or any of its Permitted Disclosees. Except as specifically authorized herein, and subject to the restrictions on disclosure set forth herein, Recipient and its Permitted Disclosees shall not use Confidential Information for any purpose, including, without limitation, any personal, business, governmental, commercial or litigation (administrative or judicial), other than the conduct of the Negotiations or in a dispute arising out of this Agreement, as set forth below.

3. Notwithstanding anything to the contrary set forth herein, the obligations set forth in this Agreement shall not apply to and the term "Confidential Information" shall not include:

- a. Information which is in the public domain as of the effective date of this Agreement or which later comes into the public domain from a source other than Recipient or its Permitted Disclosee;
- b. Information which the Recipient can demonstrate in writing was already known to the Recipient prior to the effective date of this Agreement;
- c. Information which comes to Recipient from a *bona fide* third party source not under an obligation of confidentiality;
- d. Information which is independently developed by the Recipient without use of or reference to Confidential Information or information containing Confidential Information; or
- e. The fact that Participant submitted a proposal in response to the RFP and/or is declared a willing bidder pursuant to the RFP.

4. Confidential Information submitted to a Recipient in hard copy or electronic form shall bear on each page the following legend:

*"CONFIDENTIAL INFORMATION.
THE CONTENTS OF THIS DOCUMENT ARE SUBJECT TO
A CONFIDENTIALITY AGREEMENT AND SHALL NOT BE DISCLOSED."*

5. The Parties agree not to introduce (in whole or in part) into evidence or otherwise voluntarily disclose in any administrative or judicial proceeding, any Confidential Information given to it by the other Party, except as provided below. If a Party receives a valid and enforceable subpoena or order by a court of competent jurisdiction, or by demand or information request from an administrative agency or other governmental authority seeking disclosure of Confidential Information, that does not involve a dispute between the Parties arising from this

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Agreement, such Party shall notify the disclosing Party prior to disclosure so that either or both may seek a protective order or otherwise use reasonable efforts to limit disclosure of the Confidential Information. Recipient will provide all reasonable assistance to enable the disclosing Party to obtain a protective order or other reliable assurance that the Confidential Information will be accorded confidential treatment. If, in the absence of a protective order or the receipt of a waiver hereunder by the disclosing Party, Recipient is, on the reasonable advice of its counsel, compelled to disclose the Confidential Information or else stand liable for contempt or suffer other significant penalty, Recipient may disclose only such of the Confidential Information to the compelling party as is required by law. In the case of a proceeding involving a dispute between the Parties arising out of this Agreement, a Party may introduce or produce Confidential Information solely to the extent necessary to present or defend its position in such dispute or as required by law, and, where possible, shall use best efforts to keep such Confidential Information under seal.

6. Notwithstanding the foregoing, SCE may disclose Confidential Information to any duly authorized governmental or regulatory agencies, including without limitation the Commission, any division thereof, in order to demonstrate the reasonableness of its actions regarding the RFP, the Negotiations or any agreement entered into as result of the Negotiations. Although SCE will seek confidential treatment of any Confidential Information submitted by it to the Commission by means of a motion for protective order under Public Utilities Code Section 583 and General Order 660-C, SCE may disclose Confidential Information under this Paragraph even if no protective order is issued by the Commission. In such case, SCE shall use reasonable efforts to seek confidential treatment of the Confidential Information so disclosed.

7. Nothing in this Agreement is intended to waive any attorney-client, work-product or other privilege applicable to any statement, document, communication, or other material of a Party or the Parties.

8. The Parties acknowledge and agree that breach of this Agreement would cause irreparable harm. If a Recipient or any of its Permitted Disclosees breaches or defaults in the performance of any of the covenants contained herein or violates any of the restrictions set forth herein, monetary damages would not be adequate relief and the other Party may enforce its rights hereunder by obtaining a restraining order and injunction from any court of competent jurisdiction against any further breaches or defaults by Recipient or its Permitted Disclosee(s).

9. If the Negotiations cease without resulting in a written agreement between the Parties, upon written request by a Party within 45 days after the cessation of Negotiations, Recipient shall promptly return to such Party all copies of such Party's Confidential Information received, including all copies and summaries thereof, and shall delete all Confidential Information from Recipient's notes, abstracts and other documents. Alternatively, Recipient may certify in writing the destruction of all Confidential Information. If Negotiations result in a written agreement between the Parties, the Parties shall return or destroy Confidential Information as soon as it is no longer needed by either Party to fulfill regulatory obligations.

10. Any notice or communication given pursuant to this Agreement shall be in writing and (i) delivered personally, in which case delivery is given upon written acknowledgment of

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receipt; (ii) mailed by registered or certified mail; postage prepaid, in which case delivery is given on the earlier of the actual date of delivery, as set forth in the return receipt, or three (3) days from the date posted, or (iii) delivery by telecopy, in which case delivery is given upon actual receipt of the entire document. In any of these cases, the writing shall be sent or delivered as follows (subject to change by either Party by notifying the other Party pursuant to this paragraph).

If to SCE: Southern California Edison Company
2244 Walnut Grove Avenue
Rosemead, CA 91770
Attention: Director, QF Resources
Telephone: (626) 302-1823
Facsimile: (626) 302-1103

If to Participant: WM Energy Solutions, Inc.
1001 Fannin, #4000
Houston, TX 77002
Telephone: (713) 512-6200
Facsimile: (713) 209-9711

With copy to:
7025 N. Scottsdale Road, Suite 200
Scottsdale, AZ 85253
Telephone: (480) 624-8400
Facsimile: (480) 951-5280

11. This Agreement shall be effective as of the date of the last signature to this Agreement (the "Effective Date") and shall terminate five years from such date or earlier upon the mutual written consent of the Parties.

12. This Agreement shall be interpreted in accordance with the plain meaning of its terms and not strictly for or against any of the Parties hereto. This Agreement shall be construed as of each party were its author and each Party hereby adopts the language of this Agreement as if it were its own.

13. Any waiver of the requirements and provisions of this Agreement shall be in writing. The failure of either Party to enforce at any time any of the provisions of the Agreement or to require at any time performance by the other Party of any of such provisions, shall in no way be construed as a waiver of such provision or a relinquishment of the right thereafter to enforce such provision.

14. This Agreement may not be modified except by a written agreement executed by both Parties.

15. This Agreement shall be interpreted, governed and construed under the laws of the State of California (without giving effect to its conflict of laws provisions that could apply to the

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law of another jurisdiction) as if executed in and to be wholly performed within the State of California.

16. This Agreement fully expresses the Parties' agreement concerning the subject matter hereof and supersedes any prior agreements or understandings regarding the same subject matter. Each Party represents that, in entering into this Agreement, it has not relied upon any promises, inducement, representation, warranty, agreement or other statement not expressly set forth in this Agreement.

17. The signatories hereto represent that they have been duly authorized to enter into this Agreement on behalf of the Party for whom they sign.

18. If any provision hereof is unenforceable or invalid, it shall be given effect to the extent it may be enforceable or valid, and such enforceability or invalidity shall not affect the enforceability or invalidity of any other provision of this Agreement.

19. This Agreement may be signed in counterparts, each of which shall be deemed an original.

WM ENERGY SOLUTIONS, INC.,
a Delaware corporation
1001 Fannin, #4000
Houston, TX 77002

By: [Signature]
Name: Duane C. Woods
Title: Vice President

Date: 10/21/02

SOUTHERN CALIFORNIA EDISON COMPANY,
a California corporation
2244 Walnut Grove Avenue
Rosemead, CA 91770

By: [Signature]
Lars E. Bergman
Director, QF Resources

Date: October 21, 2002

APPROVED
STEPHEN E. PICKETT
Sr. Vice President and
General Counsel
By: [Signature]
Attorney
June 11, 2002

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- (c) Such other provisions as are necessary or appropriate to effectuate the Parties' intent in the Original Agreement relating to Section 8.11(b) above, including, but not limited to governing law and contract construction and interpretation.

Nothing in Sections 8.11(b) or 8.11(c) above is intended to abridge or expand the rights and obligations of either Party which would exist but for this Agreement.