

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
DOCKET NOS. UE-060266/UG-060267
ICNU'S RESPONSE TO PSE'S DATA REQUEST NO. 56

Data Request No. 56:

(Ref. Staff's, ICNU's and Public Counsel's Testimony on Power Costs, p. 14)

Please provide copies of all contracts in the public domain that specify operating parameters for combined cycle plants that were used or reviewed in preparing Joint Parties' testimony regarding the minimum up times and minimum down times used in their AURORA analyses.

Response to Data Request No. 56:

This is a joint response from Staff, Public Counsel, and ICNU. Mr. Schoenbeck will answer questions regarding this response.

Three contracts were relied upon by Mr. Schoenbeck in the preparation of the Joint Testimony. Two of these contracts were previously provided to PSE as part of the Joint Testimony workpapers (the KRCC contract and the Sunrise contract). The third contract—Mountainview—was inadvertently omitted from the workpapers and is now being provided as an attachment to this response. Please see Attachment PSE DR No. 56 to ICNU. Mr. Schoenbeck is aware of additional contracts specifying minimum up and down times executed between the California Department of Water Resources and other entities owning CT/CCCT facilities several years ago. These additional contracts can be reviewed/downloaded from the CDWR web site.

Date: August 11, 2006
Respondent: Donald Schoenbeck
Witness: Donald Schoenbeck

Mountainview Power Company, LLC
1st Revised Rate Schedule FERC No. 1

Title Page

POWER PURCHASE AGREEMENT

Between

SOUTHERN CALIFORNIA EDISON

And

MOUNTAINVIEW POWER COMPANY, LLC

Issued by: Ronald L. Litzinger, President
Issued on: March 31, 2005

Effective Date: March 16, 2004

Filed to comply with order of the Federal Energy Regulatory Commission, Docket No. ER04-316-000,
issued February 25, 2004, 106 ¶ FERC 61,183.

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SCHEDULES AND EXHIBITS

Schedule 5.01	Permit Limits
Schedule 7.01	Calculation of Capital Recovery Charge
Schedule 7.02	FERC Accounts Used in Calculating Pre-Authorized Charge
Schedule 7.03	FERC Accounts Used in Calculating O&M Charge
Schedule 8.03	Annual Escalation Procedures
Exhibit A	Form of Dispatch Notice

**POWER PURCHASE AGREEMENT
(TOLLING)**

This POWER PURCHASE AGREEMENT (this "Agreement") is made and entered into as of the hour ending 24:00 on **March 16, 2004**, by and between **Southern California Edison**, a California corporation ("Buyer"), and **Mountainview Power Company, LLC**, a Delaware limited liability company ("Seller").

WITNESSETH:

WHEREAS, Seller owns the Mountainview Power Project, a 1,054 MW natural gas-fired, combined cycle power plant consisting of two units, each comprised of two combustion turbines and an associated steam turbine and generator, together with ancillary facilities and rights, currently under development in San Bernardino County, California (the "Facility").

WHEREAS, Seller desires to sell and Buyer desires to purchase all of Contract Capacity and associated Net Electrical Output from the Facility pursuant to the terms and conditions set forth in this Agreement.

WHEREAS, Seller and Buyer acknowledge that Buyer intends to utilize the Contract Capacity and associated Net Electrical Output purchased pursuant to this Agreement for the benefit of Buyer's retail customers.

WHEREAS, Seller and Buyer acknowledge that the charges and payments made by Buyer under this Agreement are intended to reimburse Seller for costs associated with the acquisition, construction and operation of the Facility.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**ARTICLE I
DEFINITIONS**

Section 1.01 Definitions. The following terms shall have the respective meanings in this Agreement:

"Accepted Electrical Practices" means those practices, methods, applicable codes and acts engaged in or approved by a significant portion of the electric power industry during the relevant time period, or any of the practices, methods and acts which, in exercise of reasonable judgment in light of the facts known at the time a decision is made, could have been expected to accomplish a desired result at reasonable cost consistent with good business practices, reliability, safety and expedition. Accepted Electrical Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of others, but rather to those practices, methods and acts generally accepted or approved by a significant portion of the electric power industry in the relevant region, during the relevant time period, as described in the immediately preceding sentence.

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"Actual Heat Rate" means the quotient, expressed in Btu/kWh, of (i) the HHV of the Fuel consumed by the Facility in a specified time period, divided by (ii) the amount of Net Electrical Output produced by the Facility during that same time period.

"Affected Party" shall have the meaning set forth in Section 15.01 hereof.

"AFUDC" or "Allowance for Funds Used During Construction" means an amount representing the cost of funds used to finance construction work-in-progress associated with the Facility, computed on a monthly basis by applying the rate determined in accordance with Electric Plant Instruction 3(A)(17) of FERC's Uniform System of Accounts to Capital Costs. AFUDC shall be included in Plant-in-Service as set forth on Schedule 7.01.

"Applicable Laws" means all laws, ordinances, rules, regulations, orders, interpretations, Permits, judgments, decrees, injunctions, writs and orders of any Government Agency or arbitrator that are applicable to either or both parties, the Facility or the terms of this Agreement.

"Approved Capital Addition" shall have the meaning set forth in Section 8.09 hereof.

"Auxiliary Power" means standby, start-up, and auxiliary electric demand and energy service required for the testing and operation of the Facility.

"Availability Notice" shall have the meaning set forth in Section 4.02 hereof.

"Bankrupt" means with respect to any entity, such entity (i) 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, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

"Betterment Work" means improvements or additions undertaken by or on behalf of Seller with respect to the Facility or any Unit for the purpose of increasing or improving the electrical output or operating efficiency of the Facility or Unit, or extending the life thereof, but excluding any maintenance work performed in the ordinary course of operations.

"Book Depreciation" shall have the meaning set forth in the Book Depreciation formula on Schedule 7.01 hereto.

"Btu" means British thermal unit.

"Business Day" means any Day other than a Saturday, Sunday or a holiday in the United States observed by Federal Reserve member banks in California.

"Buyer Overhead Costs" means all costs incurred by Buyer not specifically related to services provided to Seller and allocated to Seller, including, but not limited to, corporate

Issued by: Ronald L. Litzinger, President
Issued on: March 31, 2005

Effective Date: March 18, 2004

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Issued February 25, 2004, 106 ¶ FERC 61,183.

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administrative and general expenses and general plant costs which are commonly characterized by Buyer as "corporate center" costs.

"CAISO" means the California Independent System Operator, or its successor.

"Capital Costs" mean the expenditures made by or on behalf of Seller to acquire and complete the construction of the Facility, including, but not limited to acquisition costs (including the purchase price paid to the previous owner), development and pre-operational costs, equipment and construction costs, property and sales tax, Environmental Costs, permit fees, costs associated with initial regulatory approvals, and costs with respect to initial spare parts, supplies and inventory. Capital Costs do not include expenditures made by or on behalf of Seller to acquire rights to advance payments or rebates paid to Seller with respect to transmission interconnection costs. Capital Costs shall be included in Plant-in-Service as set forth in Schedule 7.01.

"Capital Costs Limit" means the amount of \$595,300,000, as may be adjusted pursuant to Sections 8.01(b), 8.01(c) and 8.01(d).

"Capital Recovery Charge" shall have the meaning set forth in Section 7.01 hereof.

*

"Compliance Work" means improvements or additions undertaken by or on behalf of Seller with respect to the Facility or any Unit as a result of a change in Applicable Laws (whether or not such improvement or addition increases or improves the output or efficiency of the Facility or Unit).

"Contract Availability" means, with respect to both Units following Full Commercial Operation, (i) ninety-seven percent (97%) for any Summer Period, and (ii) ninety-two percent (92%) for any Winter Period; provided however, during any Winter Period in which a Hot Gas Path Inspection or a Major Inspection occurs, the value set forth in clause (ii) shall be as follows:

	<u>Winter Period Availability</u> - 3 months	
	Maintenance on One Unit	Maintenance on Two Units
Hot Gas Path Inspection	88%	85%
Major Inspection	85%	79%

~ 1235 hours
 v.
 1000 hours

"Contract Capacity" shall have the meaning set forth in Section 3.02 hereof.

"Contract Heat Rate" shall have the meaning set forth in Section 12.01 hereof.

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“Correction Curves” means the performance curves developed by equipment manufacturers and the Facility’s engineering and construction contractor to adjust the results of the Facility’s performance tests to Standard Site Conditions. Performance curves, including any manufacturer revisions or updates thereto, shall be provided to Buyer as soon as they are received, but in no case later than sixty (60) days after the Full Commercial Operation Date; Buyer shall grant its approval of such performance curves, unless good cause for rejection exists.

“CPUC” means the California Public Utilities Commission or its successor.

“CSA” means the Contractual Services Agreement between Seller and GE International, Inc., dated July 18, 2003, including any amendments or supplements thereto, or any subsequent similar services agreement with respect to the Facility.

“Day” means a period of twenty-four (24) consecutive hours (as shortened or lengthened for Daylight Savings Time), beginning with the hours ending 01:00 prevailing local time for the Facility.

“Decommissioning” means the final removal of the Facility from the Site at the end of its useful life, including but not limited to, demolition, dismantling and/or tear down of the Units and related equipment and the removal, transportation, storage and/or disposal of same, site restoration and hazardous waste remediation.

“Defaulting Party” has the meaning set forth in Section 13.03 hereof.

“Degradation Correction Curves” means the performance curves recommended by equipment manufacturers to adjust the results of the Facility’s expected heat rate and MW output performance over time, including any manufacturer revisions or updates thereto, which performance curves shall be provided to Buyer as soon as they are received, but in no case later than sixty (60) days after the Full Commercial Operation Date; Buyer shall grant its approval of such performance curves, unless good cause for rejection exists.

“Delivery Point” means the 230 kV bus at the San Bernardino Substation located in San Bernardino, California.

“Dispatch” means to request or a request for Net Electrical Output from the Facility or any Unit.

“Dispatch Notice” shall have the meaning set forth in Section 5.01 hereof.

“Early Termination Date” shall have the meaning set forth in Section 13.06 hereof.

“Effective Date” shall have the meaning set forth in Section 2.01 hereof.

“Energy” means electrical energy expressed in MWh of the character commonly known as three (3) phase, sixty (60) hertz electric energy delivered at an acceptable voltage consistent with Accepted Electrical Practices and the requirements of the CAISO.

"Environmental Costs" mean all costs associated with obtaining and/or maintaining environmental permits and complying with environmental laws and regulations with respect to the construction and operation of the Facility, including but not limited to, any permit fees or costs associated with air emissions, hazardous waste, water usage, wastewater discharge, variable emission fees and costs of emission trading credits (such as RECLAIM).

"Estimated Monthly Availability Schedule" shall have the meaning set forth in Section 4.01 hereof.

"Event of Default" shall have the meaning set forth in Section 13.03 hereof.

"Excused Hour" means an hour during which the Facility would otherwise be available for Dispatch of a substantial portion of the Contract Capacity, but is incapable of producing and/or delivering the Net Electrical Output due to any of the following circumstances: (i) electric transmission at or immediately downstream of the Delivery Point is physically unavailable and such unavailability is not due to any action or failure to take action of the Seller, (ii) gas pipeline facilities required to deliver gas to the Facility are physically unavailable and such unavailability is not due to any action or failure to take action of the Seller, or (iii) Seller is performing a water wash of the Units in preparation for a heat rate test or an additional capacity test scheduled pursuant to Section 12.02 and Section 3.04(e), respectively, except that no more than 28 hours may be Excused Hours in connection with each separate test.

"Facility" shall have the meaning set forth in the recitals hereof.

"Facility Refurbishment Work" means a major refurbishment or enhancement of all or a portion of the Facility during the last fifteen (15) years of this Agreement for the purpose of maintaining the performance (including availability and heat rate) of the Facility consistent with its original operating specifications.

"Federal Income Tax" shall have the meaning set forth in the Federal Income Tax formula on Schedule 7.01 hereto.

"FERC" means the Federal Energy Regulatory Commission or any successor Government Agency.

"Final Expiration Payment" means any remaining unpaid charges or amounts due and payable under this Agreement, including (i) any remaining Capital Costs and AFUDC (and any Capital Costs and AFUDC associated with Approved Capital Additions pursuant to Section 8.09), (ii) the effect of any remaining tax depreciation and deferred tax reserves; and (ii) costs associated with the transfer of the Facility pursuant to Section 13.07 hereof.

"Final Operating Month" means the calendar month in which the Facility ceases permanent operation.

"First Operating Month" means the first calendar month following Full Commercial Operation.

"Force Majeure" means an event or circumstance which prevents one party from performing its obligations in whole or in part under this Agreement, which event or circumstance was not anticipated as of the date the Agreement was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Affected Party, and which, by the exercise of due diligence, the Affected Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Buyer's customers or markets; (ii) Buyer's inability economically to use or resell the Net Electrical Output purchased hereunder; or (iii) Seller's ability to sell the Net Electrical Output at a price greater than the charges under this Agreement.

"Fuel" means natural gas that meets or exceeds the specifications set forth in the applicable transporter's tariff.

"Fuel Costs" means any and all costs, expenses and charges for the management, procurement, transportation, storage and delivery of Fuel used in the commissioning and testing of the Facility or in the production of Net Electrical Output, including, without limitation, fuel commodity, firm contract reservation fees (regardless of whether Fuel is purchased, transported and/or stored during any month that such fees apply), transportation, storage, balancing and resale costs, expenses, fees, penalties and charges, and all taxes relating to the same.

"Fuel Manager" means the Buyer or its designee.

"Full Commercial Operation" shall have the meaning set forth in Section 2.02 hereof.

"Full Commercial Operation Date" shall have the meaning set forth in Section 2.02 hereof.

"Full Load" means the operating state of the Facility during which all of the Units are operated at their "base load" Net Electrical Output under prevailing conditions, without duct firing, and in such a way as to be sustainable for long periods of time without adversely affecting the normal maintenance requirements of the Facility.

"Gas Rebate" shall have the meaning set forth in Section 8.01(d) hereof.

"Governmental Charges" means all taxes, charges or fees, other than property taxes and federal and state income taxes, imposed by any Government Agency on or with respect to the Contract Capacity, the Net Electrical Output, the Facility, the Site or this Agreement.

"Government Agency" means any federal, state, local, municipal, foreign or other government; any governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; or any court or governmental tribunal.

"Heat Rate Ratio" shall have the meaning set forth in Section 12.03(b) hereof.

"HHV" means the higher heating value energy content of the Fuel as determined by the fuel transporter delivering such Fuel to the Facility.

"Hot Gas Path Inspection" means the periodic scheduled maintenance performed on one of the combustion turbines at the Facility in which the combustion turbine is disassembled, inspected, cleaned and repaired, as necessary, as further described in the CSA.

"Initial Monthly Charge" shall have the meaning set forth in Section 7.01(a) hereof.

"Interest Rate" means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates" on such day (or, if not published on such day, on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by Applicable Laws.

"kWh" means kilowatt-hour.

"Major Equipment Repair or Replacement Work" shall have the meaning set forth in Section 8.09(b) hereof.

"Major Inspection" means the periodic scheduled major maintenance performed on one of the Units at the Facility, including a Hot Gas Path Inspection of the associated combustion turbines, and other major maintenance work performed on the combustion turbines and associated steam turbine and generator, as further described in the CSA.

"Maximum Load" means the operating state of the Facility during which all of the Units are operated at Full Load and the Facility's duct burners are turned on to maximize Net Electrical Output within the Permit Limits and prevailing conditions.

"Metering System" means all meters, instrument transformers, metering devices and related instruments used to measure and record the delivery and receipt of Net Electrical Output and Contract Capacity at the Delivery Point in accordance with CAISO requirements.

"Minimum Load" means the operating state of the Facility during which only one of the Units is operating at a minimum load consistent with Accepted Electrical Practices, Permit Limits and prevailing conditions. The estimated Minimum Load for the Facility is 180 MW.

"MMBtu" means one million Btu's.

"Monthly Capital Recovery Charge" shall have the meaning set forth in Section 7.01(b) hereof.

"MW" means megawatt.

"MWh" means megawatt-hour.

"Net Electrical Output" means the net Energy delivered by Seller from the Facility to Buyer at the Delivery Point pursuant to this Agreement, but prior to any generation meter multiplier reduction applied by the CAISO. For purposes of this Agreement, Net Electrical

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Output shall also include any associated ancillary services capable of being provided by the Facility.

"Nomination Deadline" means the daily deadline by which the Fuel Manager requires day-ahead gas delivery schedules to be submitted, currently 5:50 a.m. Pacific Prevailing Time each Day for gas flow beginning at 8:00 a.m. Pacific Prevailing Time the succeeding Day. The deadline for any Day which is not a Business Day shall be 5:50 a.m. Pacific Prevailing Time on the Business Day immediately preceding such Day.

"Non-Defaulting Party" has the meaning set forth in Section 13.04(a) hereof.

"O&M Charge" shall have the meaning set forth in Section 7.03(a) hereof.

"Operational Limits" has the meaning set forth in Section 5.02 hereof.

"Operating Month" means each calendar month, beginning with the month immediately following the first Unit Commercial Operation during the Term.

"Outage Schedule" shall have the meaning set forth in Section 4.03 hereof.

"Overhaul Cycle" means (i) the period beginning on the Full Commercial Operation Date and ending on the last day of the month in which all four combustion turbines at the Facility have completed a Hot Gas Path Inspection and have been released for dispatch; or (ii) the period beginning immediately after the conclusion of an Overhaul Cycle, and ending on the last day of the month in which all four combustion turbines at the Facility have completed a Hot Gas Path Inspection and been released for dispatch.

"Pacific Prevailing Time" means Pacific Daylight Savings Time when such time is applicable in California, and otherwise means Pacific Standard Time.

"Part Load" means the operating state of the Facility during which one or more Units are operated between Minimum Load and Full Load.

"Permit" means any license, permit, authorization, waiver, exemption, variance, franchise or similar order of or from any Government Agency.

"Permit Limits" means the limitations on the operation of the Facility set forth on Schedule 5.01 hereto.

"Person" means any individual, corporation, limited liability company, partnership, limited partnership, joint venture, trust, unincorporated organization, association, Government Agency, or other entity.

"Plant-In-Service" shall have the meaning set forth on Schedule 7.01 hereof.

"Pre-Authorized Charge" shall have the meaning set forth in Section 7.02 hereof.

Issued by: Ronald L. Litzinger, President

Effective Date: March 18, 2004

Issued on: March 31, 2006

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"Prior Claims" means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, arising with respect to the ownership and/or operation of the Facility prior to the ownership by Seller and for which Seller has incurred any 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 ownership of the Facility by Seller; provided, that such claims shall not include claims and actions by former SCE employees with regard to any period of their employment by SCE.

"Property Taxes" means all real and personal property taxes, net of any rebates or credits imposed by any Government Agency, on or with respect to the Facility or the Site.

"Quarterly Dispatch Schedule" shall have the meaning set forth in Section 6.03 hereof.

"Quarterly Environmental Forecast" shall have the meaning set forth in Section 6.03 hereof.

"Rate Formulas" mean the rate formulas set forth on Attachment 1 to Schedule 7.01 with respect to the calculation of the Capital Recovery Charge.

"Return on Investment" shall mean the portion of the Capital Recovery Charge payable to Seller as compensation for the cost of financing its unrecovered investment with respect to the Facility, including Working Cash, through long-term debt, preferred stock and/or equity capital, as further described on Schedule 7.01 hereto.

"Scheduled Outage" means a period during which one or more Units are not available for operation due to planned maintenance that has been scheduled in advance in accordance with Section 4.03 hereof.

"Scheduling Coordinator" means the Buyer, who shall be responsible for performing the responsibilities defined for such a party in the CAISO tariff, including but not limited to scheduling and settlements of Test Energy and the Net Electrical Output from the Facility with the CAISO.

"SCR" means each selective catalytic reactor located at the Facility.

"Site" means the real property on which the Facility is located.

"Standard Site Conditions" means the following conditions, as may be modified from time to time, as mutually agreed to by Seller and Buyer:

Ambient Temperature	59 degrees Fahrenheit
Relative Humidity	60 percent
Barometric Pressure	14.13 psia
Generator Power Factor	1.0

"Start-Up" means the action of bringing a Unit from non-operation to the output level required pursuant to the applicable Dispatch Notice from the Buyer.

"Start-Up Notification Lead Time" means the time period required by Seller to complete Start-Up of a Unit or Units, measured from the time of commencement of such Start-Up until the Facility is operating at the level of output required by the applicable Dispatch Notice, as specified in Section 5.02.

"State Income Tax" shall have the meaning set forth in the State Income Tax formula on Schedule 7.01 hereto.

"Summer Availability" shall have the meaning set forth in Section 8.07 hereof.

"Summer Availability Incentive" means the amount of \$360,000, subject to annual escalation pursuant to Section 8.03 hereof.

"Summer Availability Payment" shall mean the incentive bonus or penalty payable by Buyer or Seller with respect to Summer Availability for the immediately preceding Summer Period as calculated in accordance with Section 8.05 hereof.

"Summer Period" means, in any year during the Term, the period which includes all hours of June, July, August and September of any year during the Term (or if only a portion of such months falls within the Term, then the period which includes all the hours of such months which falls within the Term).

"Target Heat Rate" shall have the meaning set forth in Section 12.01 hereof.

"Term" shall have the meaning set forth in Section 2.01 hereof.

"Test Energy" means any Net Electrical Output that is produced by a Unit in connection with testing and commissioning of the Unit prior to the Unit Commercial Operation Date.

"Undispatched Energy" shall have the meaning set forth in Section 5.05 hereof.

"Unit" means two combustion turbines and the associated steam turbine and generator and appurtenant equipment.

"Unit Commercial Operation" shall have the meaning set forth in Section 2.02 hereof.

"Unit Commercial Operation Date" shall have the meaning set forth in Section 2.02 hereof.

"Unscheduled Outage" means a period during which one or more Units are not available for operation due to the need to maintain or repair a component of the Facility that has not been scheduled in advance.

"Weather Forecast" means the ambient temperature, humidity, and barometric pressure forecasted by Seller, at the time an Availability Notice is prepared, to prevail at the times covered by the relevant Availability Notice. The hourly humidity forecast applied in any Availability Notice will be based on historical seasonal averages, unless conditions are

forecasted to diverge significantly from such seasonal averages. The barometric pressure applied in any Availability Notice will be 14.13 psia.

"Winter Availability" shall have the meaning set forth in Section 8.07 hereof.

"Winter Availability Incentive" means the amount of \$60,000, subject to annual escalation pursuant to Section 8.03 hereof.

"Winter Availability Payment" shall mean the incentive bonus or penalty payable by Buyer or Seller with respect to Winter Availability for the immediately preceding Winter Period as calculated in accordance with Section 8.06 hereof

"Winter Period" means, in any year during the Term, the period which includes all hours of October, November, December, January, February, March, April and May of any year during the Term (or if only a portion of such months falls within the Term, then the period which includes all the hours of such months which falls within the Term).

"Working Cash" means the working cash reserve maintained by Seller to finance expenditures with respect to the Facility prior to receipt of payment by Buyer, as calculated in accordance with Schedule 7.01.

Section 1.02 Interpretation. Unless the context otherwise requires:

- (a) Words singular and plural in number shall be deemed to include the other and pronouns having masculine or feminine gender shall be deemed to include the other.
- (b) Any reference in this Agreement to any Person includes its successors and assigns and, in the case of any Government Agency, any Person succeeding to its functions and capacities.
- (c) Any reference in this Agreement to any Section or Schedule means and refers to the Section contained in, or Schedule attached to, this Agreement.
- (d) Other grammatical forms of defined words or phrases have corresponding meanings.
- (e) A reference to writing includes typewriting, printing, lithography, photography and any other mode of representing or reproducing words, figures or symbols in a lasting and visible form.
- (f) A reference to a specific time for the performance of an obligation is a reference to that time in the place where that obligation is to be performed.
- (g) A reference to a party to this Agreement includes that party's successors and permitted assigns.

(h) A reference to a document or agreement, including this Agreement, includes a reference to that document or agreement as novated, amended, supplemented or restated from time to time.

(i) If any payment, act, matter or event hereunder would occur on a Day that is not a Business Day, then such payment, act, matter or event shall, unless otherwise expressly provided for herein, occur on the last prior Business Day.

(j) Words not otherwise defined herein that have well-known and generally accepted technical or trade meanings are used herein in accordance with such recognized meanings.

(k) References to articles, sections, subsections and attachments shall be to such portions of this Agreement. The words "herein", "hereof", "hereto", "hereunder" and words of similar import shall refer to this Agreement.

ARTICLE II TERM; COMMERCIAL OPERATION OF THE FACILITY

Section 2.01 Term.

(a) Effective Date. This Agreement shall become effective on the later of (i) the date on which the Agreement is fully executed by the parties; (ii) the date on which the CPUC makes the findings set forth in Section 32(k) of the Public Utility Holding Company Act, as amended; or (iii) the date on which FERC permits the Agreement to become effective (the "Effective Date").

(b) Termination. Unless terminated earlier as provided herein, this Agreement shall terminate at 2400 hours on the date which is thirty (30) years from the Full Commercial Operation Date (the "Term"). Upon expiration of the Term, Seller shall transfer all of its right, title and interest in and to the Facility and the Site to Buyer as provided in Section 13.07.

Section 2.02 Full Commercial Operation. Commercial operation of a Unit ("Unit Commercial Operation") will occur on the date when a Unit has achieved commercial operation and been released to Buyer's dispatch control ("Unit Commercial Operation Date"). Full commercial operation of the Facility ("Full Commercial Operation") will occur on the date when both Units have achieved commercial operation and been released to Buyer's dispatch control ("Full Commercial Operation Date"). Seller shall use commercially reasonable efforts to achieve the Full Commercial Operation Date within twenty-four (24) months of the Effective Date.

Section 2.03 Progress Reports. Prior to the Full Commercial Operation Date, within thirty (30) Days following the end of each calendar quarter, Seller shall provide the Buyer with a brief report describing the status of Facility construction and any material changes in Capital Costs.

**ARTICLE III
PURCHASE AND SALE OF CONTRACT CAPACITY
AND NET ELECTRICAL OUTPUT**

Section 3.01 Purchase and Sale of Contract Capacity and Net Electrical Output. Seller shall sell and deliver to the Buyer at the Delivery Point, and the Buyer shall purchase and receive at the Delivery Point, the Contract Capacity and the Net Electrical Output. Other than CAISO charges or costs, Seller shall be responsible for any non-Fuel production costs or charges imposed on or associated with the Contract Capacity and associated Net Electrical Output up to the Delivery Point. The Buyer shall be responsible for any costs or charges imposed on or associated with the Contract Capacity and associated Net Electrical Output or its receipt at and from the Delivery Point, and any losses associated with the generation meter multiplier or other charges assessed by the CAISO on the Net Electrical Output. Seller shall operate and maintain the Facility in accordance with Accepted Electrical Practices.

Section 3.02 Contract Capacity. The Contract Capacity shall be equal to the Net Electrical Output averaged over four (4) consecutive hours selected by Seller, corrected to Standard Site Conditions using a curve of the Net Electrical Output versus ambient temperature ("Contract Capacity"), as determined by capacity testing at Maximum Load pursuant to Section 3.04 at the following times: (i) within thirty (30) Days following the Full Commercial Operation Date, and (ii) annually thereafter at a time chosen by Seller during the weekday on-peak periods of the months of April or May preceding each Summer Period.

Section 3.03 Transmission and Scheduling. Seller shall be responsible for delivery of the Contract Capacity and the Net Electrical Output to the Delivery Point, including all related interconnection costs. The Buyer shall be the Scheduling Coordinator for the Facility and shall be responsible for any costs or charges assessed by the CAISO in the Buyer's role as Scheduling Coordinator for the Facility and for any operations related charges applied by the CAISO under a participating generator agreement between Seller and the CAISO. In its role as the Scheduling Coordinator, the Buyer shall also be responsible for reconciling and settling the charges and/or credits associated with the Net Electrical Output with the CAISO. Seller shall use commercially reasonable efforts to provide the Buyer with such data as is necessary for the Buyer to carry out its responsibilities as Scheduling Coordinator.

Section 3.04 Capacity Testing.

(a) Seller shall provide the Buyer at least seven (7) Days' notice if Seller intends to conduct a capacity test. Any capacity test may be conducted during the course of regular operations or during a test conducted for the purpose. In the event that Seller elects to perform a capacity test during a period that the Buyer has not otherwise elected to Dispatch the Facility, the Buyer shall issue a Dispatch Notice for purposes of the capacity test that calls for at least six consecutive Full Load operating hours and shall schedule associated Net Electrical Output with the CAISO as required.

(b) Capacity tests may begin only after the Facility has been successfully started and has been in stable steady-state operation for at least one (1) hour prior to the test

period. During the capacity test, Seller shall operate the Facility in a manner that it is willing to operate on a sustained basis under prevailing conditions.

(c) Within ten (10) Days following any capacity test, Seller shall provide the Buyer with the results of such capacity test, including Metering System readings and copies of Facility log sheets verifying the operating conditions and Net Electrical Output of the Facility during the test, and a curve of the Net Electrical Output versus ambient temperature.

(d) In the event that the Contract Capacity determined by any capacity test is reasonably unsatisfactory to Seller (in that Seller believes that the test result does not accurately represent the actual capacity of the Unit), Seller may schedule up to two (2) additional capacity tests within any calendar year.

(e) In the event that the Contract Capacity determined by any capacity test is reasonably unsatisfactory to Buyer (in that Buyer believes that the test result does not accurately represent the actual capacity of the Unit), Buyer may schedule up to two (2) additional capacity tests within any calendar year.

In the event of any additional capacity test conducted pursuant to Section 3.04(d) or 3.04(e), Seller shall have the opportunity prior to any such test to perform a water wash of the Units.

ARTICLE IV AVAILABILITY; SCHEDULED OUTAGES

Section 4.01 Availability Schedule. Not later than ten (10) Business Days prior to the beginning of each month during the Term, Seller shall provide a non-binding hourly schedule of the estimated amounts of Net Electrical Output that the Facility will be available to produce for the upcoming month (each an "Estimated Monthly Availability Schedule"), along with a non-binding estimate of variable operation and maintenance costs associated with Dispatch for such month (at Minimum Load, Part Load, Full Load, and incrementally to Maximum Load), including costs per start-up and the estimated heat rate based on expected Standard Site Conditions. The estimated amounts of Net Electrical Output that the Facility will be available to produce contained in any Estimated Monthly Availability Schedules and Availability Notices shall be based upon typical ambient temperatures.

Section 4.02 Availability Notice. Not later than two (2) Days before each Day during the Term, Seller shall provide the Buyer a non-binding hourly schedule of the amounts of Net Electrical Output that the Facility is expected to be available to produce each hour of such Day (each an "Availability Notice") based upon the applicable Weather Forecast and mechanical conditions at the Facility. Availability Notices for Saturdays shall provided on preceding Wednesday. Availability Notices for Sundays and Mondays shall be provided on the preceding Thursday. Seller shall accommodate the Buyer's reasonable requests for changes in the time of delivery of Availability Notices.

Section 4.03 Scheduled Outages. Not later than forty-five (45) Days prior to the commencement of any calendar year during the Term, Seller shall submit to Buyer its proposed Scheduled Outages for the upcoming year ("Outage Schedule"). Within ten (10) Days after its receipt of the Outage Schedule, the Buyer shall notify Seller in writing of any reasonable request for changes to the Outage Schedule. If the Buyer fails to provide such notice within the prescribed period, the Buyer shall be deemed to have approved the Outage Schedule. If the Buyer requests changes to the Outage Schedule, Seller shall use commercially reasonable efforts to accommodate such requested changes within Accepted Electrical Practices. Seller shall arrange and be responsible for coordination of Outage Schedules with CAISO. No Scheduled Outages shall be scheduled during the Summer Period except as may be directed by CAISO. Seller shall notify Buyer of an Unscheduled Outage or a change in a Scheduled Outage and the estimated time of return of the Unit or Units as soon as practicable after the condition becomes known to Seller.

ARTICLE V DISPATCH; START-UPS

Section 5.01 Dispatch. The Buyer shall have the right to Dispatch the Facility at any level of output between Minimum Load and Maximum Load, by providing to Seller a dispatch notice ("Dispatch Notice") in the form of Exhibit A attached hereto, or as otherwise mutually agreed, setting forth the Buyer's desired hourly operating levels for the relevant Day, subject to the Dispatch requirements set forth in this Section 5.01:

- (a) each such Dispatch Notice shall be given to Seller prior to the relevant Day at the time mutually agreed to by Buyer and Seller;
- (b) any Dispatch shall be subject to the Permit Limits specified on Schedule 5.01 and the Operational Limits specified in Section 5.02; and
- (c) any Dispatch shall be within the limits of Net Electrical Output set forth in the applicable Availability Notice from Seller and subject to any lower limits that may result from mechanical or climatic conditions at the Facility arising subsequent to such Availability Notice.

In the event that the Buyer provides a Dispatch Notice that does not comply with the foregoing limitations, Seller shall notify the Buyer as soon as Seller becomes aware of such non-compliance. If the Buyer provides a compliant replacement Dispatch Notice one (1) day prior to the relevant Day, Seller shall operate the Facility in accordance with such replacement Dispatch Notice. If a compliant Dispatch Notice is not received one (1) day prior to the relevant Day, Seller shall operate the Facility in the state called for in the last hour of the last compliant Dispatch Notice until it receives a revision pursuant to Section 5.03. Seller shall, by facsimile or e-mail, confirm to the Buyer its receipt of each Dispatch Notice.

Section 5.02 Operational Limits. Any Dispatch by Buyer shall be subject to the following operational limits (the "Operational Limits"), as may be modified from time to time by Seller, with Buyer's consent, which consent shall not be unreasonably withheld or delayed:

(a) any Dispatch shall be for a run time of no less than three (3) consecutive hours per Unit and a down time of no less than three (3) consecutive hours per Unit;

(b) any Dispatch that requires a Start-Up of a Unit or Units shall be made with advance notice of not less than the Start-Up Notification Lead Time for such Unit or Units as provided below:

	<u>Classification Range</u>	<u>Start-Up Notification Lead Time</u>
Cold Start	Unit off more than 48 hours	6 hours
Warm Start	Unit off 8-48 hours	3 hours
Hot Start	Unit off less than 8 hours	2 hours

(c) the rate of change in scheduled levels of Net Electrical Output shall not exceed 4 MW per minute above the Minimum Load subject to Accepted Electrical Practices.

Section 5.03 Intra-Day Dispatch. In addition to the Buyer's rights to Dispatch the Facility pursuant to Sections 5.01 and 5.02, the Buyer may make revisions in the schedule contained in any Dispatch Notice during the relevant Day, subject to the other limitations set forth in Sections 5.01 and 5.02.

Section 5.04 Imbalance Costs. The Buyer recognizes that its purchases of Net Electrical Output are on a unit-contingent basis, and the actual amounts of Net Electrical Output delivered in any hour depend on mechanical and climatic conditions prevailing at the Facility at the time of production, among other factors (including, but not limited to, an inability to deliver Fuel to the Facility). Seller recognizes that CAISO may assess imbalance costs, penalties or sanctions when the Net Electrical Output deviates from the amounts of available Energy Dispatched by the Buyer and pre-scheduled with CAISO. Seller agrees, within Accepted Electrical Practices, to cooperate with Buyer to minimize such imbalance costs, penalties or sanctions. The Buyer shall bear any imbalance costs, penalties and sanctions assessed by the CAISO.

Section 5.05 Dispatch by CAISO. The Buyer recognizes that, pursuant to an order of the FERC (in Docket EL00-95-012 or otherwise), Seller may be required to offer for sale to CAISO in CAISO's real time market, or to any other entity having jurisdiction pursuant to an order of the FERC, any Energy from the Facility that is available and not already Dispatched on a day-ahead basis by the Buyer ("Undispatched Energy"). In the event that CAISO or such other entity exercises any right it may have to purchase Undispatched Energy, Buyer will use commercially reasonable efforts to supply Fuel to the Facility for any such Dispatches by CAISO or such other entity. Buyer shall be entitled to receive all revenues with respect to any such sale of Undispatched Energy from the Facility.

Section 5.06 No Third Party Sales. Seller shall not make any sales of Net Electrical Output from the Facility to any third party, or otherwise provide Net Electrical Output from the Facility to any third party, except pursuant to Section 5.05 hereof.

ARTICLE VI
FUEL; ENVIRONMENTAL COSTS AND PERMITS;
AUXILIARY POWER; DECOMMISSIONING

Section 6.01 Fuel Procurement Following Unit Commercial Operation. Following each Unit Commercial Operation Date, Buyer shall manage and cause the delivery of all quantities of Fuel required by the Unit to generate the Net Electrical Output. Seller and Buyer agree and acknowledge that, subject to Section 12.03, all Fuel Costs shall be borne solely by Buyer. Buyer shall be entitled to receive any refund or rebate associated with such Fuel. Buyer and Seller agree to coordinate all nominations of Fuel. In the event a party becomes aware of required changes to nominated and scheduled Fuel, such party will promptly notify the other party and the parties will use commercially reasonable efforts to make necessary changes. Each of the parties acknowledges that volumes and deliveries of Fuel not nominated and scheduled on at least a day-ahead basis are subject to limited marketplace availability and substantial price volatility, and to the nomination and scheduling procedures and deadlines set forth in the transporter's tariffs and other applicable requirements. Except to the extent specifically agreed upon, nominated and scheduled by the parties, Buyer makes no representation or warranty with respect to the availability of volumes or deliveries of Fuel. Seller's obligation to deliver Net Electrical Output is subject to, and dependent upon, the receipt of Fuel required to produce the Net Electrical Output.

Section 6.02 Fuel Procurement Prior to Commercial Operation. In accordance with Section 11.02, prior to each Unit Commercial Operation Date, Buyer shall manage and cause delivery of all quantities of Fuel required by the Unit for commissioning activities and testing. To the extent any Fuel is converted to Test Energy, Buyer shall purchase such Test Energy in accordance with Section 11.01 and pay all Fuel Costs associated therewith in accordance with the billing and payment procedures set forth in Article IX. To the extent Fuel is not converted to Test Energy, Seller shall purchase such Fuel from Buyer and pay all Fuel Costs associated therewith in accordance with the billing and payment procedures set forth in Article IX.

Section 6.03 Environmental Costs and Permits.

(a) **Compliance with Laws.** Seller shall be responsible for obtaining and maintaining all applicable permits with respect to the construction and operation of the Facility and shall construct and operate the Facility in accordance with Applicable Laws and Permit Limits. Seller shall be solely responsible for any fines, penalties or other charges which result from Seller's failure to obtain such permits and/or operate the Facility in accordance with Applicable Laws and Permit Limits. Any such fines, penalties or charges shall not be passed through to Buyer.

(b) **Environmental Costs.** Prior to each Unit Commercial Operation Date, Seller shall be responsible for all Environmental Costs with respect to such Unit. Following each Unit Commercial Operation Date, all Environmental Costs with respect to such Unit shall be paid by Buyer and included in the Pre-Authorized Charge pursuant to Section 7.02.

(c) Quarterly Environmental Forecast. Prior to the commencement of each calendar quarter, commencing with the quarter in which the first Unit Commercial Operation Date occurs, Buyer shall provide to Seller a non-binding schedule of its expected Dispatch of the Facility for such calendar quarter (the "Quarterly Dispatch Schedule"). Following receipt of the Quarterly Dispatch Schedule each calendar quarter, Seller shall prepare and provide to Buyer a non-binding written forecast (the "Quarterly Environmental Forecast") specifying all environmental requirements for such quarter based on the Quarterly Dispatch Schedule. The Quarterly Environmental Forecast shall include a detailed listing of all Environmental Costs. In accordance with the Quarterly Environmental Forecast approved by Buyer (as such Forecast may be updated and revised by Seller and approved by Buyer from time to time), Seller shall purchase any emissions trading credits and other items as necessary to comply with Applicable Laws and Permit Limits; provided, however, Buyer shall have the right to provide Seller any emission trading credits or permits which would satisfy all or a portion of Seller's environmental requirements as set forth in the Quarterly Environmental Forecast. Following the end of each quarterly period, Seller shall prepare and submit to Buyer a statement of the actual Environmental Costs incurred and included in the Pre-Authorized Charge pursuant to Section 7.02 for such period.

Section 6.04 Auxiliary Power. Buyer shall manage and cause the delivery of all Auxiliary Power required by the Facility. Prior to each Unit Commercial Operation Date, the costs of Auxiliary Power required for commissioning and testing of such Unit shall be paid by Seller in accordance with the billing and payment procedures set forth in Article IX. Following each Unit Commercial Operation Date, the costs of Auxiliary Power required during the production of the Net Electrical Output shall be included in the Pre-Authorized Charge pursuant to Section 7.02.

Section 6.05 Decommissioning.

(a) Decommissioning Following Term. Seller and Buyer acknowledge that the Facility will be transferred to Buyer following the expiration of this Agreement pursuant to Section 13.07. The parties agree that Buyer shall be responsible for the Decommissioning of the Facility and all costs associated therewith following such transfer of the Facility. Buyer shall also be responsible for Decommissioning and all costs associated therewith, if any, of the existing power plant located at the Site following such transfer.

(b) Decommissioning of Old Plant During Term. Seller and Buyer acknowledge that the existing power plant located at the Site may require Decommissioning during the Term. In the event Seller and Buyer agree that Decommissioning of the existing power plant is required during the Term, Buyer shall be responsible for Decommissioning and all costs associated therewith.

**ARTICLE VII
CHARGES**

During the Term of this Agreement, Seller shall be entitled to receive, and Buyer shall pay to Seller, the charges set forth in this Article VII in consideration for the Contract Capacity and Net Electrical Output delivered to Buyer hereunder.

Section 7.01 Capital Recovery Charge. During the Term of this Agreement, Buyer shall pay Seller a capital recovery charge (the "Capital Recovery Charge"). The parties acknowledge that the Capital Recovery Charge is intended to reimburse Seller for (i) recovery of Capital Costs and AFUDC with respect to the acquisition and construction of the Facility and any Approved Capital Addition pursuant to Section 8.09; (ii) Return on Investment; (iii) Federal Income Tax with respect to the Facility; and (iv) State Income Tax with respect to the Facility, each over the Term of this Agreement. The Capital Recovery Charge shall be billed by Seller and paid by Buyer pursuant to the billing and payment procedures set forth in Article IX. The Capital Recovery Charge shall consist of an Initial Monthly Charge and a Monthly Capital Recovery Charge as follows:

(a) Initial Monthly Charge. Beginning at the end of the month in which the first Unit Commercial Operation Date occurs and continuing each month thereafter until the end of the month in which the Full Commercial Operation Date occurs, Buyer shall pay Seller an Initial Monthly Charge equal to the Monthly Capital Recovery Charge (as defined below) calculated using the Rate Formulas set forth on Schedule 7.01. In the event a Unit is not in commercial operation for the entire month, the calculation of such charge shall be prorated based on the actual number of days of Unit Commercial Operation in such month.

(b) Monthly Capital Recovery Charge. Commencing at the end of the first full month following the Full Commercial Operation Date and continuing each month for a period of three hundred and sixty (360) months, Buyer shall pay Seller a Monthly Capital Recovery Charge equal to the sum of (i) Return on Investment, plus (ii) Book Depreciation, plus (iii) Federal Income Tax; plus (iv) State Income Tax, as set forth on Schedule 7.01 (the "Monthly Capital Recovery Charge").

Section 7.02 Pre-Authorized Charge. Following each Unit Commercial Operation Date, Buyer shall pay Seller a pre-authorized charge each month (the "Pre-Authorized Charge") with respect to such Unit. The Pre-Authorized Charge shall be calculated using the FERC Accounts set forth in Schedule 7.02. The parties acknowledge that the Pre-Authorized Charge is intended to compensate Seller for the following costs incurred with respect to the Facility: (i) all Property Taxes for such month; (ii) all Governmental Charges for such month; (iii) all costs payable pursuant to the CSA for such month (including any incentive payments but less any penalty payments due thereunder); (iv) all costs with respect to Auxiliary Power for such month; (v) all Buyer Overhead Costs for such month subject to Section 16.01(b); (vi) all property, liability and other insurance costs associated with the Facility, Seller's employees and Facility operations for such month, including payment of any deductibles; (vii) all Prior Claims with respect to the Facility for such month; (viii) all Environmental Costs specified in Section 6.03 for such month;

(ix) all costs associated with Betterment Work, Compliance Work, Facility Refurbishment Work or Major Equipment Repair or Replacement Work authorized pursuant to Section 8.09; (x) all "added facilities" costs associated with the Facility's transmission interconnection; (xi) an allowance of \$1,000,000 (in constant 2003 dollars, subject to escalation as provided on Schedule 8.03) in the month in which each SCR catalyst is replaced; and (xii) pre-authorized costs approved pursuant to Section 8.08. The Pre-Authorized Charge shall be billed by Seller and paid by Buyer each month pursuant to the billing and payment procedures set forth in Article IX.

Section 7.03 O&M Charge. Buyer shall pay Seller an operation and maintenance charge each month as provided below. The O&M Charge shall be calculated using the FERC Accounts set forth in Schedule 7.03. The O&M Charge shall be billed by Seller and paid by Buyer pursuant to the billing and payment procedures set forth in Article IX.

(a) O&M Charge: Beginning at the end of the month in which the first Unit Commercial Operation Date occurs, Buyer shall pay Seller an operation and maintenance charge each month (the "O&M Charge"). The O&M Charge is intended to compensate Seller for all operation and maintenance costs incurred with respect to the Facility, including: (i) all operation and maintenance costs not otherwise included in the Pre-Authorized Charge; (ii) administrative costs in connection with operation of the Facility, including but not limited to employee salary, pension and benefit costs; (iii) costs charged by Buyer for services rendered to Seller including, but not limited to, charges for cash management, accounts payable, financial accounting and workers compensation and vehicle claims; (iv) costs charged by third parties pursuant to service contracts with respect to the Facility; and (v) monthly water and wastewater costs, chemical costs, feed water pump costs, heat recovery boiler costs and similar operating costs.

ARTICLE VIII ADJUSTMENTS TO CHARGES

Section 8.01 Adjustments of Capital Costs.

(a) Determination of Capital Costs. Seller shall prepare and deliver to Buyer an initial written estimate of Capital Costs with respect to the Facility within thirty (30) days of the Full Commercial Operation Date. Seller and Buyer acknowledge that Capital Costs may change from the initial written estimate as a result of construction close-out activities, including but not limited to, late supplier and contractor invoices and credits for unused construction materials. As soon as practicable, but in no event later than twelve (12) months following the month in which the Full Commercial Operation Date occurs, Seller shall prepare and deliver to Buyer a final written determination of Capital Costs with respect to the Facility. The parties agree that the Initial Monthly Charge and the Monthly Capital Recovery Charge may be adjusted and rebilled by Seller as necessary to reflect such final determination of Capital Costs.

(b) Limitation on Capital Costs. In the event Capital Costs described in Section 8.01(a) exceed the Capital Costs Limit, then any such excess costs shall not be included in Capital Costs for purposes of calculating the Initial Monthly Charge and the Monthly Capital Recovery Charge pursuant to Section 7.01. The parties acknowledge that Buyer may agree to an increase in the Capital Cost Limit in order to enable Seller to recover cost overruns which are beyond the reasonable control of Seller. Seller acknowledges that Buyer shall seek from the CPUC regulatory review prior to agreeing to an increase in the Capital Cost Limit. Seller shall cooperate with Buyer and provide such materials and information as may be necessary in connection with such regulatory review. Any payments from equipment suppliers and contractors that are received by Seller as liquidated damages including, but not limited to, payments for failure of the Facility to achieve the Contract Heat Rate equal to the guarantee (after allowance for applicable test tolerances), but excluding any payments for construction delays, shall be treated as a reduction of Capital Costs. Any incentive payments or bonuses made by Seller to equipment suppliers and contractors for early completion of the Facility or improved capacity or heat rate shall be (i) included in Capital Costs for purposes of calculating the Initial Monthly Charge and the Monthly Capital Recovery Charge pursuant to Section 7.01; and (ii) added to the Capital Costs Limit.

(c) Delay in Regulatory Approval. In the event the Effective Date is after November 30, 2003, the parties acknowledge that Seller shall incur increased acquisition and construction costs with respect to the Facility including, but not limited to, (i) ongoing suspension costs and equipment storage costs; (ii) funding of equipment costs previously incurred; and (iii) costs increases arising from equipment and labor cost escalation. The parties agree that any such cost increases shall be included in Capital Costs for purposes of calculating the Initial Monthly Charge and the Monthly Capital Recovery Charge pursuant to Sections 7.01 and 7.02. In addition, the Capital Costs Limit shall be increased by \$6.0 million per month (or such portion thereof) for each month between November 30, 2003 and the Effective Date.

(d) Gas Rebate For Pipeline Construction. The parties acknowledge that Seller expects to receive a rebate in the amount of \$12.138 million from the Southern California Gas Company for costs associated with the construction of the Facility's gas pipeline (the "Gas Rebate"). Upon receipt by the Seller, the parties agree that the Gas Rebate shall be treated as reduction in Capital Costs for purposes of calculating the Initial Monthly Charge and the Monthly Capital Recovery Charge pursuant to Section 7.01. Any Gas Rebate received prior to the final determination of Capital Costs pursuant to Section 8.01(a) which exceeds \$12.138 million, shall result in a reduction in the Capital Costs Limit in the amount of such excess. Any Gas Rebate received prior to the final determination of Capital Costs pursuant to Section 8.01(a) which is less than \$12.138 million, shall result in an increase in the Capital Costs Limit by the difference between \$12.138 million and the actual amount received. In the event no Gas Rebate is received prior to the final determination of Capital Costs pursuant to Section 8.01(a), the Capital Costs Limit shall be increased by the full amount of the Gas Rebate (*i.e.*, \$12.138 million).

Section 8.02 Adjustments of AFUDC.

(a) **Determination of AFUDC.** Seller shall prepare and deliver to Buyer an initial written estimate of AFUDC with respect to the Facility within thirty (30) days of the Full Commercial Operation Date, computed as shown on Attachment I to Schedule 7.01. Seller and Buyer acknowledge that AFUDC may change from the initial written estimate as a result of any payments from equipment suppliers and contractors that are received by Seller as liquidated damages for failure to achieve Full Commercial Operation on the scheduled date. As soon as practicable, but in no event later than twelve (12) months following the month in which the Full Commercial Operation Date occurs, Seller shall prepare and deliver to Buyer a final written determination of AFUDC with respect to the Facility. The parties agree that the Initial Monthly Charge and the Monthly Capital Recovery Charge may be adjusted and rebilled by Seller as necessary to reflect such final determination of AFUDC.

(b) **Limitation on AFUDC.** In the event the Full Commercial Operation Date occurs after the thirty-six (36) month following the Effective Date, then only fifty percent (50%) of the otherwise applicable AFUDC from month thirty-six (36) until the Full Commercial Operation Date shall be included in the final determination of AFUDC for purposes of calculating the Initial Monthly Charge and the Monthly Capital Recovery Charge pursuant to Section 7.01. Any payments from equipment suppliers and contractors that are received by Seller as liquidated damages for failure to achieve Full Commercial Operation on the scheduled date shall be treated as a reduction in AFUDC.

Section 8.03 Annual Escalation. Each calendar year, commencing on January 1, 2004; (i) the allowance for SCR catalyst replacement as set forth in Section 7.02; (ii) the Summer Availability Incentive and the Winter Availability Incentive set forth in Section 8.05 and Section 8.06, respectively; and (iii) and the minimum cost requirement for Major Equipment Repair or Replacement Work set forth in Section 8.09 (b), shall each be subject to escalation as provided on Schedule 8.03 attached hereto.

Section 8.04 Section Reserved.

Section 8.05 Adjustments Based on Actual Summer Availability. Within fifteen (15) Days following the end of each Summer Period during the Term, Seller shall provide the Buyer with a statement setting forth the Summer Availability achieved by the Facility during the immediately preceding Summer Period, calculated according to the formula set forth in Section 8.07. The statement shall also provide a calculation of the Summer Availability Payment payable by Buyer or Seller, as the case may be, based on the Summer Availability achieved by the Facility during the immediately preceding Summer Period. The Summer Availability Payment shall be calculated according to the following formula:

Summer Availability Payment =

$$\text{Summer Availability Incentive} * (\text{Achieved Summer AF} - \text{Contract Summer AF}) \times 100$$

Where:

Achieved Summer AF = The Summer Availability as calculated in Section 8.07.
For purposes of calculating the Summer Availability Incentive, the
Achieved Summer AF shall not be less than 94 percent.

Contract Summer AF = Contract Availability as defined in Article I.

Section 8.06 Adjustments Based on Actual Winter Availability. Within fifteen (15) days following the end of each calendar year during the Term, Seller shall provide the Buyer with a statement setting forth the Winter Availability achieved by the Facility during the immediately preceding Winter Period, calculated according to the formula set forth below and in Section 8.07. The statement shall also provide a calculation of the Winter Availability Payment payable by Buyer or Seller, as the case may be, based on the Winter Availability achieved by the Facility during the immediately preceding Winter Period. The Winter Availability Payment shall be calculated according to the following formula:

Winter Availability Payment =

$$\text{Winter Availability Incentive} * (\text{Achieved Winter AF} - \text{Contract Winter AF}) \times 100$$

Where:

Achieved Winter AF = The Winter Availability as calculated in Section 8.07.
For purposes of calculating the Winter Availability Incentive, the
Achieved Winter AF shall not be less than the applicable Contract
Availability for the Winter Period less eight percentage points.

Contract Winter AF = Contract Availability as defined in Article I.

Section 8.07 Calculation of Availability During Summer Period and Winter Period. Availability during a given Summer Period ("Summer Availability") or during a given Winter Period ("Winter Availability") shall be calculated according to the following formula (but in no event shall Availability during any period exceed 100%, notwithstanding anything to the contrary herein):

$$\text{Availability during relevant period (i.e., Summer Period or Winter Period)} = \text{SHA} / \text{BPH}$$

Where

BPH = the number of hours in the relevant Summer Period or Winter Period, minus the number of Excused Hours during such Summer Period or Winter Period.

And SHA = the sum of the Hourly Availabilities determined for each hour in the relevant Summer Period or Winter Period, where each Hourly Availability is determined in accordance with the following formula:

$$\text{Hourly Availability} = [HN - (HS - HD)] / HC$$

Where

HN = the hourly amount of Net Electrical Output that Seller informs Buyer will be available pursuant to its Availability Notice.

And HS = the hourly amount of Net Electrical Output scheduled by the Buyer to be delivered pursuant to its Dispatch Notice.

And HD = the total Net Electrical Output actually delivered in the hour, adjusted to the ambient conditions set forth in the Weather Forecast for such hour.

And HC = the hourly amount of Net Electrical Output that would have been available if the Facility was run at Contract Capacity, adjusted to the ambient conditions set forth in the Weather Forecast for such hour.

The parties hereto acknowledge that the difference between HS and HD shall equal zero, for purposes of the formula set forth above, for any hour that the amount of hourly Net Electrical Output delivered by Seller is greater than the amount of Net Electrical Output scheduled by Buyer to be delivered in that hour.

Section 8.08 Reclassification of Certain O&M Charges.

(a) Periodically, Buyer and Seller may agree to reclassify a certain category of costs which have previously been included as an O&M Charge to a Pre-Authorized Charge or, alternatively, from a Pre-Authorized Charge to an O&M Charge. Seller acknowledges that Buyer may seek regulatory review of any reclassification from the CPUC prior to agreeing to any such reclassification. Seller will make a filing with the FERC under Federal Power Act Section 205 in order to reclassify costs in accordance with this section.

(b) In the event the parties agree to a reclassification as described in Section 8.08(a) above, Schedules 7.02 and 7.03 shall be revised by removing the item from one Schedule and adding it to the other Schedule to reflect the new reclassification agreed to by the parties. The recalculated Pre-Authorized Charge and O&M Charge will take effect at the beginning of the month immediately following the month in which the reclassification occurs, subject to acceptance by the FERC.

(c) In the event the CSA expires and is replaced by a new CSA covering substantially the same scope of services, then Buyer shall have the right to approve of the inclusion of costs associated with the replacement CSA in the Pre-Authorized Charge. In the event Buyer does not approve of the inclusion of such replacement CSA costs in the Pre-Authorized Charge or Seller does not enter into a replacement CSA with substantially the same scope of services, then the O&M Charge will be adjusted to include such costs in accordance with the reclassification procedures set forth in Section 8.08(b) above.

Section 8.09 Adjustments for Certain Work to Facility. The parties acknowledge that during the Term, Seller may desire to undertake improvements, additions, enhancements, replacements, repairs, modifications or similar work with respect to the Facility in order to address changes in technology or other industry advances in operations, or that are required for the continued operation of the Facility. Seller shall seek Buyer's preapproval to undertake any such work where the proposed capital expenditure is estimated to be \$10 million or more, unless emergency conditions require immediate action. Seller further acknowledges that Buyer will seek from the CPUC regulatory review of Buyer's decision to grant Seller's request prior to acting upon any such preapproval request from Seller. In addition, Seller may seek Buyer's approval to undertake such work where the proposed capital expenditure is estimated to be less than \$10 million, in order to address changes in technology or other industry advances in operations, or which are required for the continued operation of the Facility. In the event Seller obtains the approval of Buyer prior to, or in limited circumstances, promptly following such expenditures as described in Section 8.09(a) or (b) below, then Seller may include the costs associated with such work in (i) Capital Costs and AFUDC for purposes of calculating the Monthly Capital Recovery Charge pursuant to Section 7.01 (an "Approved Capital Addition"); or (ii) the Pre-Authorized Charge, as further described in Section 8.09(a) and Section 8.09(b) below.

(a) Betterment Work; Compliance Work; Facility Refurbishment Work.

Seller may obtain the preapproval of Buyer prior to undertaking any Betterment Work, any Compliance Work or any Facility Refurbishment Work where the proposed capital expenditure is estimated to be less than \$10 million; and Seller must obtain the preapproval of Buyer for any Betterment Work, any Compliance Work, or any Facility Refurbishment Work where the proposed capital expenditure is estimated to be \$10 million or more, unless, in either case, emergency circumstances require immediate action. In the event (i) emergency conditions necessitate that the Seller undertake such work immediately, and (ii) such work requires a capital expenditure of \$10 million or more, then Seller shall seek the approval of Buyer promptly following such expenditure. To obtain Buyer's preapproval, Seller shall submit a written proposal to Buyer which shall include (i) a description of the scope of the proposed Betterment Work, Compliance Work, or Facility Refurbishment Work, as applicable, (ii) a description of the expected schedule for completion, including any impact on availability of the Units, and (iii) an analysis of the expected benefits and costs associated with such work. To obtain Buyer's approval promptly following emergency circumstances, Seller shall submit a written proposal to Buyer which shall include (i) a description of the Betterment Work, Compliance Work, or Facility Refurbishment Work completed; (ii) a description of the emergency circumstances requiring such work, including any impact of availability of units; and (iii) a description of all costs incurred in connection with such work. Seller acknowledges that Buyer will seek from the CPUC regulatory review of Buyer's decision to grant Seller's request for preapproval of capital expenditures estimated to be \$10 million or more, prior to acting on Seller's request for same, unless emergency circumstances require immediate action. Seller further acknowledges the Buyer may seek from the CPUC regulatory review of Buyer's decision to grant Seller's request for preapproval of capital expenditures estimated to be less than \$10 million, prior to acting on Seller's request for same. Upon completion of any Betterment Work, Compliance Work or Refurbishment Work approved by Buyer, Seller may include the costs associated with such work, subject to any expenditure limit imposed by Buyer as a condition of approval, in either the

monthly Pre-Authorized Charge pursuant to Section 7.02 or as an Approved Capital Addition in accordance with the FERC's Uniform System of Accounts. In the event Seller determines to undertake such work without the approval of Buyer, the costs associated with such work shall be included in the O&M Charge.

(b) Major Equipment Repair or Replacement Work. During the Term, Seller shall promptly notify Buyer of any necessary major equipment repair or replacement work ("Major Equipment Repair or Replacement Work") the cost of which is expected to exceed \$15 million (in constant 2003 dollars, subject to escalation as provided on Schedule 8.03). Seller shall provide Buyer with a reasonable opportunity to review and approve Seller's plans for such work, including all associated costs. The parties acknowledge that there may be circumstances under which Major Equipment Repair or Replacement Work may not be cost effective. Accordingly, within ten (10) Business Days of receipt of Seller's notice, Buyer shall have the right to direct Seller to suspend such work, either temporarily or permanently. In the event of a temporary suspension, Seller may include any suspension costs associated with such work in the monthly Pre-Authorized Charge. In the event of a permanent suspension, Seller may include any suspension costs associated with such work in the Final Expiration Payment pursuant to Section 13.07. Upon completion of any Major Equipment Repair or Replacement Work approved by Buyer, Seller may include the costs associated with such work, subject to any expenditure limit imposed by Buyer as a condition of approval, in either the monthly Pre-Authorized Charge pursuant to Section 7.02 or as an Approved Capital Addition in accordance with the FERC's Uniform System of Accounts.

ARTICLE IX BILLING AND PAYMENT

Section 9.01 Billing Period. Unless otherwise specifically agreed upon by the parties, the calendar month shall be the standard period for all payments under this Agreement. As soon as practicable after the end of each month, Seller will render to Buyer an invoice for the payment obligations incurred hereunder during the preceding month.

Section 9.02 Timeliness of Payments. Buyer shall ensure that payments for amounts billed hereunder shall be paid so that such payments are received by Seller by the later of the fifteenth (15th) day of each month or the tenth (10th) day after receipt of the applicable invoice, whichever is later. Payment shall be made at the location designated by Seller to which payment is due. Payment shall be considered received when Seller receives such payment from Buyer. If the due date falls on a non-Business Day, then the payment shall be due on the Business Day immediately preceding such due date. Amounts not paid on or before the due date shall be payable with interest accrued at the Interest Rate.

Section 9.03 Disputes and Adjustments of Invoices. A party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the

undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other party is notified in accordance with this Section 9.03 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made.

Section 9.04 Records Retention and Access.

(a) Buyer and Seller, or any third party representative thereof, shall keep complete and accurate records, and shall maintain such records and other data as may be necessary for the purpose of ascertaining the accuracy of all relevant bills, data, estimates, or statements of charges submitted hereunder. Such records shall be maintained for a period of at least seven (7) years after each payment under this Agreement. In addition, at Buyer's request, Seller shall maintain or deliver to Buyer copies of records and supporting documentation with respect to the Facility in order to comply with all applicable tax, regulatory and other requirements imposed by any Government Agency (including any requirements relating to the transfer of the Facility upon expiration or termination of this Agreement).

(b) Each of the parties and their designated representatives shall maintain records and supporting documentation pertaining to the performance of this Agreement. Each of the parties agrees to maintain such records for a minimum of seven (7) years after final payment.

(c) The CPUC shall have the right to review any records and supporting documentation of either Seller or Buyer pertaining to this Agreement during normal business hours and upon prior written notice.

ARTICLE X METERING

Section 10.01 Metering. The terms of that certain Meter Service Agreement, by and between Seller and Buyer, are hereby incorporated by reference.

Section 10.02 Real Time Telemetry Data. Seller shall provide, at the Buyer's option and expense, access to real-time telemetry data via appropriate telecommunications equipment.

ARTICLE XI TEST ENERGY AND FUEL

Section 11.01 Test Energy. Seller shall conduct all commissioning activities and testing with respect to the Facility in accordance with Accepted Electrical Practices. Seller shall use commercially reasonable efforts to undertake such activities in a timely manner in order to achieve Full Commercial Operation within twenty-four (24) months of this Agreement. Buyer shall cooperate with Seller to facilitate Seller's commissioning activities and testing with respect to the Facility. Buyer shall purchase all Test Energy delivered to Buyer at a price equal to \$3 per MWh. Buyer shall pay all Fuel Costs associated with Test Energy in accordance with Section 6.02. Buyer shall arrange and be responsible for scheduling and settlement of all Test Energy with CAISO.

Section 11.02 Test Fuel. Prior to each Unit Commercial Operation Date, Buyer shall be responsible for procuring and providing to Seller all Fuel necessary for commissioning activities and testing with respect to each Unit. Seller shall provide Buyer with a detailed daily schedule of the planned quantities of Fuel required for testing of the Unit at least two (2) weeks prior to commencement of such activities. Seller shall promptly notify Buyer of any changes to the daily schedule. Buyer and Seller will use commercially reasonable efforts to ensure that such daily quantities of Fuel are scheduled no later than the Nomination Deadline.

Section 11.03 Testing Following Commercial Operation. Following each Unit Commercial Operation Date, Buyer shall be responsible for procuring and providing to Seller all Fuel necessary for any testing of part or all of the Unit, including but not limited to, capacity testing, heat rate testing, and maintenance testing, regardless of whether such testing is requested by Buyer or Seller. Seller shall notify Buyer of Seller's good faith nomination of the quantity of Fuel required in connection with such testing at least two (2) weeks prior to the date of testing (if such testing is planned in advance), but in no event later the Nomination Deadline. Buyer shall arrange and be responsible for scheduling and settlement of all Net Electrical Output associated with such testing with CAISO.

ARTICLE XII HEAT RATE AND HEAT RATE TESTING

Section 12.01 Heat Rate. The heat rate for the Facility at Standard Site Conditions, Full Load, and "new & clean" condition expressed in Btu/kWh HHV (the "Contract Heat Rate") shall be the result of the heat rate test of the Facility conducted in connection with Seller's acceptance of the Facility from the primary contractor constructing the Facility. Such test shall be conducted with the Facility at Full Load, according to procedures no less restrictive than those of Section 12.02(a). The Target Full Load Heat Rate for the Facility is 7,000 Btu/kWh HHV at a "new & clean" condition. In the event that the Contract Heat Rate (as corrected for Standard Site Conditions and degradation back to "new & clean" conditions using Correction Curves and Degradation Correction Curves) is in excess of 7,210 Btu/kWh HHV, Seller shall enforce the agreements under which the Facility and its components were procured and constructed to cause such heat rate to be achieved. The Contract Heat Rate may be adjusted to take into account any

Betterment Work completed pursuant to Section 8.09(a) which increases or improves the electrical output or operating efficiency of the Facility.

The parties acknowledge that the heat rate for the Facility will be higher than the Contract Heat Rate at Minimum Load, Part Load and Maximum Load due to the corresponding off-design operating conditions.

Section 12.02 Heat Rate Testing.

(a) The Actual Heat Rate for the Facility shall be determined at the times specified in Section 12.03(a) by heat rate testing at Full Load (as corrected for Standard Site Conditions and for degradation back to "new and clean" conditions using Correction Curves and Degradation Correction Curves). Testing shall be performed in accordance with test procedures to be prepared by Seller consistent with American Society of Mechanical Engineers (ASME) Performance Test Code 46 and submitted to the Buyer for review and approval, such approval not to be unreasonably withheld or delayed. During the heat rate test, Seller shall operate the Facility in a manner that it is willing to operate on a sustained basis under prevailing conditions. The heat rate test corrections shall include, without limitation, ambient temperature, relative humidity, barometric pressure, natural gas fuel conditions, generator power factor and equipment degradation.

(b) Seller shall be responsible for the full scope of heat rate testing, including but not limited to, furnishing the test instrumentation, set-up, data gathering, fuel analysis, data analysis and the issuance of a final report.

(c) Seller shall provide all raw test data, calculations, fuel analyses and final reports in written and, to the extent reasonably possible, electronic format, to Buyer for review.

(d) Seller shall provide to Buyer all equipment specifications, Correction Curves, Degradation Correction Curves, equations and other information necessary for review of the heat rate test results.

(e) At Seller's discretion, the initial heat rate test may be the acceptance test of the original equipment manufacturer, provided such test is performed under the guidelines set forth in Section 12.02(a).

Section 12.03 Heat Rate Adjustments to Payments.

(a) Not later than thirty (30) days following the end of each April and October during the Term, Seller shall prepare a statement setting forth the results of a heat rate test conducted pursuant to Section 12.02 above. Within forty (40) days following the end of each April and October during the Term, Seller shall provide the Buyer with a statement setting forth the calculations prescribed in Sections 12.03(b) and 12.03(c) below, and any payment due to the Buyer or Seller pursuant to this Section 12.03 shall be paid within thirty (30) days following the Buyer's receipt of such statement.

(b) In the event that the Actual Heat Rate determined in the heat rate test conducted during any April or October pursuant to Section 12.02 above divided by the applicable Contract Heat Rate (expressed as a percentage, the "Heat Rate Ratio") exceeds one hundred three percent (103%), Seller shall pay the Buyer an amount equal to the product of (i) fifty percent (50%) of the sum of the actual Fuel Costs for the six calendar months ended as of the end of the applicable April or October, and (ii) the applicable Heat Rate Ratio less one hundred three percent (103%).

(c) In the event that the Heat Rate Ratio determined during any April or October is less than ninety-seven percent (97%) of the applicable Contract Heat Rate, the Buyer shall pay Seller an amount equal to the product of (i) fifty percent (50%) of the sum of the actual Fuel Costs for the six calendar months ended as of the end of the applicable April or October, and (ii) ninety-seven percent (97%) less the applicable Heat Rate Ratio.

ARTICLE XIII EVENTS OF DEFAULT; REMEDIES; TERMINATION

Section 13.01 Seller Failure to Deliver. If Seller fails to deliver all or part of the Net Electrical Output requested by Buyer in a Dispatch Notice pursuant to this Agreement, and such failure is not excused by the terms of this Agreement, by Force Majeure, by Buyer's failure to perform or by any Scheduled Outage or Unscheduled Outage of the Facility, Buyer shall notify Seller of Seller's failure and Seller shall promptly take appropriate steps to remedy such failure. To the extent Seller fails to deliver all or part of the Net Electrical Output requested by Buyer in a Dispatch Notice, Seller shall adjust the calculation of Summer Availability or Winter Availability, as applicable, as provided in Section 8.05 and Section 8.06 hereof respectively, to reflect Net Electrical Output actually delivered.

Section 13.02 Buyer Failure to Schedule/Receive. If Buyer fails to schedule and/or receive all or part of the Net Electrical Output pursuant to this Agreement, and such failure is not excused by the terms of this Agreement, by Force Majeure or by Seller's failure to perform, Buyer shall remain obligated to pay the Capital Recovery Charge, the Pre-Authorized Charge and the O&M Charge to Seller for such month on the date such payment would otherwise be due.

Section 13.03 Events of Default. An "Event of Default" shall mean an event described in Section 13.01 hereof or, with respect to a party (a "Defaulting Party"), the occurrence of any of the following:

(a) such party fails to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice;

(b) such party fails to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default under Section 13.01 hereof, and except for Buyer's failure to schedule and/or receive all or part of the Net Electrical Output (the exclusive remedy for which is provided in Section 13.02 hereof)) if such failure is not remedied within three (3) Business Days after written notice;

(c) such party becomes Bankrupt; or

(d) 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 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.

Section 13.04 Remedies upon an Event of Default.

(a) If an Event of Default occurs and shall be continuing, the party that is not the Defaulting Party (the "Non-Defaulting Party") shall have the right (i) to suspend performance under this Agreement upon written notice (by facsimile or other reasonable means) to the Defaulting Party, such notice of suspension to be effective immediately upon receipt, and (ii) to withhold any payments due to the Defaulting Party under this Agreement.

(b) At any time prior to or after the receipt of such notice of suspension by the Defaulting Party, the Non-Defaulting Party may exercise any remedies available to it at law or in equity, including, but not limited to, the right to seek injunctive relief to prevent irreparable injury to the Non-Defaulting Party.

(c) This Agreement may be terminated only under the circumstances provided in Section 13.05 hereof.

Section 13.05 Termination. This Agreement shall continue for the Term unless terminated earlier as follows:

(a) By the mutual agreement of the parties hereto; or

(b) By either party in the event of a continuing Force Majeure for a period of twenty-four (24) months.

Section 13.06 Early Termination. In the event of an early termination of this Agreement as provided in Section 13.05, the party seeking termination shall provide written notice to the other party indicating a date on which the Agreement shall terminate (which date shall not be earlier than thirty (30) days prior to the effective date of such notice (the "Early Termination Date"). On the Early Termination Date, this Agreement shall terminate subject to any terms and conditions as may be agreed to by the parties.

Section 13.07 Transfer of Facility Upon Expiration of Agreement. Upon expiration of the Term of this Agreement, Seller shall transfer all of its right, title and interest in and to the Facility and the Site to Buyer. Seller shall execute and deliver to Buyer all documents and instruments necessary to effectuate the transfer of ownership of the Facility and the Site. Upon such transfer, Seller shall deliver to Buyer all books, records and other materials, equipment, inventory and supplies pertaining to the Facility and Site in accordance with Buyer's written instructions. No later than ten (10) days prior to the expiration of the Term, Seller shall calculate

and notify Buyer of the Final Expiration Payment. Buyer shall pay Seller the Final Expiration Payment no later than sixty (60) days following the expiration of the Term.

ARTICLE XIV CHANGE IN LAW

Section 14.01 Change in Law. Buyer and Seller acknowledge that market prices for Energy and capacity are subject to significant fluctuations over time, that the payments to Seller provided for in this Agreement may be lower or higher relative to prevailing market prices at any given time or in total, and that neither condition shall affect the binding nature of this Agreement. However, in the event that a change in Applicable Laws subsequent to the Effective Date has the effect of imposing additional costs on Seller beyond those that would have been imposed prior to such change in Applicable Laws, the Buyer and Seller shall in good faith negotiate appropriate amendments to this Agreement and/or the charges contemplated hereunder that will have the effect of leaving Seller no worse off than if the change in Applicable Laws had not occurred. Seller shall cooperate with Buyer and provide such materials and information as necessary in the event Buyer determines to seek the approval of the CPUC and/or FERC to any such amendments. In the event Buyer and Seller agree to any amendment in the charges hereunder and/or to undertake any work with respect to the Facility as described in Section 8.09 as a result of a change in Applicable Laws, the recalculation of any charge or the performance of any such work shall be made in accordance with the provisions of Section 8.09. In the event the parties in good faith are unable to agree on appropriate amendments to this Agreement, Seller may carry out such work as required to comply with Applicable Laws and any costs associated therewith shall be included in the O&M Charge beginning with the next succeeding Overhaul Cycle following completion of such work.

ARTICLE XV FORCE MAJEURE

Section 15.01. Force Majeure. To the extent a party is rendered unable, in whole or in part, by Force Majeure to carry out part or all of its obligations under this Agreement (other than obligations to make payments) despite all reasonable efforts of such party to prevent or mitigate its effects (the "Affected Party"), then, during the continuance of the Force Majeure, the obligation of the Affected Party to perform the obligations so affected shall be excused. The Affected Party shall give written notice of the Force Majeure to the other party as soon as practicable after such event occurs, which notice shall include information with respect to the nature, cause and date of commencement of the occurrence(s), and the anticipated scope and duration of the delay. Upon the conclusion of the Force Majeure, the Affected Party shall, with all reasonable dispatch, take all steps necessary to resume the obligation(s) previously excused. Notwithstanding the foregoing, a party shall not be excused under this Article XV for (i) any non-performance of its obligations under this Agreement having a greater scope or longer period than is justified by the Force Majeure, or (ii) the performance of obligations that arose prior to the Force Majeure.

**ARTICLE XVI
REGULATORY REVIEW**

Section 16.01 Regulatory Review. This Agreement shall be subject to the regulatory jurisdiction of FERC. Buyer acknowledges that Seller intends to file this Agreement with FERC pursuant to Section 205 of the Federal Power Act and Buyer agrees to support Seller's application with respect to this Agreement in its entirety.

(a) Seller will make a Federal Power Act Section 205 filing to support the initial CPUC authorized return on rate base as described in Schedule 7.01, Line 19 and any subsequent changes to the CPUC authorized return on rate base that apply to the calculation of the Capital Recovery Charge as described in Schedule 7.01.

(b) Buyer and Seller acknowledge that there are no Buyer Overhead Costs anticipated to be allocated to Seller during the Term. In the event Buyer Overhead Costs are allocated to Seller, and Seller seeks to include such costs in the Pre-Authorized Charge, Seller will make a filing in accordance with Federal Power Section 205 to include such costs in the Pre-Authorized Charge. Such filing shall describe the methodology used to allocate the Buyer Overhead Costs to Seller.

**ARTICLE XVII
MISCELLANEOUS**

Section 17.01 Notices. Unless otherwise provided in this Agreement, any notice, request, statement or payment shall be in writing to the address(s) provided below 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. Notice by overnight courier service or United States mail shall be effective on the next Business Day after it was sent. A party may change its address(s) by providing notice of same in accordance with this Section 17.01.

If to Buyer, to:

For Invoices and Payments:

Southern California Edison
2244 Walnut Grove Avenue
Rosemead, California 91770
Attention: [_____]

Mountainview Power Company, LLC
1st Revised Rate Schedule FERC No. 1

Original Sheet No. 38

For Scheduling:

Southern California Edison
2244 Walnut Grove Avenue
Rosemead, California 91770
Attention: [_____]

For Legal and Other:

Southern California Edison
2244 Walnut Grove Avenue
Rosemead, California 91770
Attention: [_____]

If to Seller, to:

Mountainview Power Company, LLC
[c/o Southern California Edison
2244 Walnut Grove Avenue
Rosemead, California 91770]
Attention: [_____]

Section 17.02 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 CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESEPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

Section 17.03 Forward Contract. The parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code.

Section 17.04 No Retail Services; No Agency. Nothing contained in this Agreement shall grant any rights to or obligate Seller to provide any services hereunder directly to or for retail customers of any Person. In performing their respective obligations hereunder, neither party is acting, or is authorized to act, as agent of the other party.

Section 17.05 Amendments and Modifications; Non-Waiver. This Agreement may not be modified or amended except by an instrument or instruments in writing signed by the party against whom enforcement of any such modification or amendment is sought. Any party may, only by an instrument in writing, waive compliance by the other party with any term or provision of this Agreement on the part of such other party to be performed or complied with. The waiver

Issued by: Ronald L. Litzinger, President
Issued on: March 31, 2005

Effective Date: March 16, 2004

Filed to comply with order of the Federal Energy Regulatory Commission, Docket No. ER04-316-000,
issued February 25, 2004, 106 ¶ FERC 61,183.

by a party of a breach of any term or provision of this Agreement shall not be construed as a waiver of any subsequent breach.

Section 17.06 Entire Agreement. This Agreement, when executed, constitutes the entire agreement by and between the parties and supersedes any prior understandings, agreements or representation by or between the parties, written or oral, to the extent they have related in any way to the subject matter hereof and thereof.

Section 17.07 Severability. In the event that any of the terms, covenants or conditions of this, or the application of any such term, covenant or condition, shall be held invalid as to any Person or circumstance by any court, regulatory agency, or other regulatory body having jurisdiction, all other terms, covenants or conditions of this Agreement and their application shall not be affected thereby, but shall remain in force and effect unless a court, regulatory agency, or other regulatory body holds that the provisions are not separable from all other provisions of this Agreement.

Section 17.08 Survival; Successors and Assigns. All records retention and invoice dispute and adjustment provisions shall survive the termination of this Agreement for a period of seven (7) years. This Agreement shall be binding on each party's successors and permitted assign.

Section 17.09 Counterparts. This Agreement may be executed in any number of counterparts, and upon execution by the parties, each executed counterpart shall have the same force and effect as an original instrument and as if the parties had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more signature pages.

Section 17.10 Title and Risk of Loss. Title to and risk of loss related to the Net Electrical Output shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Net Electrical Output free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point.

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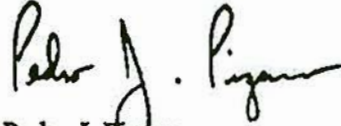
Mountainview Power Company, LLC
1st Revised Rate Schedule FERC No. 1

Original Sheet No. 40

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representative as of the date first written above.

SOUTHERN CALIFORNIA EDISON, as Buyer

By:

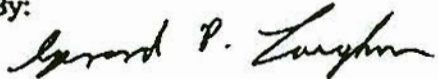


Name: Pedro J. Pizarro

Title: Vice President, Power Procurement

**MOUNTAINVIEW POWER COMPANY, LLC,
as Seller**

By:



Name: Gerard P. Loughman

Title: President

Issued by: Ronald L. Litzinger, President
Issued on: March 31, 2005

Effective Date: March 16, 2004

Filed to comply with order of the Federal Energy Regulatory Commission, Docket No. ER04-316-000,
issued February 25, 2004, 106 ¶ FERC 61,183.

Schedule 5.01

Permit Limits

Seller shall at all times operate the Facility in accordance with the Permit Limits described below, subject to any modifications or approved changes by the SCAQMD, the CEC or other applicable Government Agency. Buyer shall be entitled to schedule operation of the Facility in excess of the Permit Limits specified below if, and only to the extent, Seller reasonably determines that such operation complies with applicable Facility permits and conditions.

1. Fuel usage for all four combustion turbines ("CT's") and all four duct burners shall not be more than 35,000 MMBtu (36.9 X 10⁶ MMBtu-HHV) in the first 12-months of operation, commencing with first fire of the four CT's. This limitation shall not apply if the total NOx emissions from the four CT's and associated duct burners do not exceed 250,302 lbs during this 12-month period. Any request for an increase in the emissions limit may be submitted to the South Coast Air Quality Management District ("SCAQMD") and the California Energy Commission ("CEC") along with appropriate documentation evidencing (i) sufficient RECLAIM Trading Credits ("RTCs"); and (ii) calculations of NOx emissions during the commissioning period prepared in accordance with SCAQMD Conditions 99-4 and 99-6.
2. CT's may not begin startup until the selective catalytic reactor ("SCR") is preheated to 500°F. Note that on June 11, 2003 the former owner of the Facility submitted a proposed permit change to SCAQMD which, if approved, would eliminate this requirement. The CEC must also approve the proposed permit change as an amendment to the CEC Conditions of Certification AQ-13. The current form of the operating permit requires that NOx emission limits during startup of any CT shall not exceed 77.8 lb/hour for all CT's and is not achievable without preheating of the SCR. The request for the proposed permit change seeks to increase the limit to 80 lb/hour for each CT, which will enable the Facility to meet the startup emission limit without preheating of the SCR.
3. The total start-up time shall not exceed 3 hours per day. The proposed permit change in Item 2 above also requests an increase in the allowable total start-up time to 6 hours per day.
4. The commissioning period may not exceed 33 days. The proposed permit change in Item 2 above also requests a change in the commissioning period to 792 hours (rather than 33 days) to provide additional flexibility during the commissioning period.
5. No more than two CT's may be in start-up mode at any time.

Schedule 5.01

Issued by: Ronald L. Litzinger, President
Issued on: March 31, 2005

Effective Date: March 16, 2004

Filed to comply with order of the Federal Energy Regulatory Commission, Docket No. ER04-316-000,
issued February 25, 2004, 108 ¶ FERC 61,183.

-
6. No individual CT may be operated at a load below 50% during any calendar year, except during start-up or shut down.

 7. Each CT shall not be subject to more than one start-up per day.

 8. For purposes of determining the annual permit limits on NO_x emissions as specified in CEC Condition of Certification AQ-13, the maximum allowable number of operating hours for such Unit during such calendar year (*i.e.*, 8,760 or 8,784, as applicable) shall be reduced by 77 hours for a "Cold Start", 52 hours for a "Warm Start", and 52 hours for a "Hot Start". For purposes of determining the monthly permit limits on CO emissions as specified in CEC Condition of Certification AQ-12, in the event a Unit has more than 5 start-ups during any calendar month, the maximum allowable number of operating hours of such Unit during such month (*i.e.*, the total number of days in such month multiplied by 24) shall be reduced by 72 hours for a "Cold Start", 52 hours for a "Warm Start", and 52 hours for a "Hot Start". Cold Start, Warm Start and Hot Start shall have the meanings set forth in Section 5.02(b) of the Agreement.

Schedule 5.01

Issued by: Ronald L. Litzinger, President
Issued on: March 31, 2005

Effective Date: March 16, 2004

Filed to comply with order of the Federal Energy Regulatory Commission, Docket No. ER04-316-000,
issued February 25, 2004, 106 ¶ FERC 61,183.

Schedule 7.01**Calculation of Capital Recovery Charge**

This schedule describes the formulas and procedures used to determine the Capital Recovery Charge to be billed to Buyer pursuant to Section 7.01 of the Power Purchase Agreement (the "Agreement"). The Capital Recovery Charge is intended to reimburse Seller for recovery of Capital Costs and AFUDC with respect to the acquisition and construction of the Facility and any Approved Capital Addition pursuant to Section 8.09 of the Agreement. In addition to the monthly Capital Recovery Charge, Buyer shall pay the O&M Charge and certain other charges as set forth in the Agreement. Terms not otherwise defined in this schedule shall have the meanings set forth in the Agreement.

The Capital Recovery Charge consists of an Initial Monthly Charge and a Monthly Capital Recovery Charge.

Initial Monthly Charge

SCE will not incur the Monthly Capital Recovery Charge prior to Full Commercial Operation. At the end of the month in which the first unit becomes operational, and continuing each month until Full Commercial Operation occurs, SCE will incur an Initial Monthly Charge calculated as follows:

Initial Monthly Charge: The Monthly Capital Recovery Charge value calculated using the Rate Formulas described in Attachment 1, however, the book depreciation amount will be equal to one-three hundred and sixtieths (1/360) or 0.278% (monthly depreciation rate) times the Plant-In-Service balance. For purposes of calculating the Initial Monthly Charge, Plant-In-Service will be equal to the Initial Facility Investment associated with the Unit that becomes operational. If necessary, the Initial Monthly Charge will be prorated based on the number of days in which the unit operates in the initial month of operation.

Monthly Capital Recovery Charge

SCE will incur a Monthly Capital Recovery Charge designed to fully recover the investments made by the Seller, including return on investment computed using SCE's CPUC-authorized cost of capital, return of investment, and income taxes, over the term of the Agreement. Federal income taxes will be computed on a normalized basis reflecting MACRS depreciation schedules and state income taxes will be computed on a flow through basis. As discussed in Note 1, below, the Seller will calculate one true-up during the first twelve months following Full Commercial Operation in order to true-up the actual (final) Initial Facility Investment.

The Monthly Capital Recovery Charge will be calculated using the Rate Formulas listed in Attachment 1. A description of the source of parameter values used in these formulas, and clarification of the application of these formulas is as follows:

Schedule 7.01

Issued by: Ronald L. Litzinger, President

Effective Date: March 16, 2004

Issued on: March 31, 2005

Filed to comply with order of the Federal Energy Regulatory Commission, Docket No. ER04-316-000,
issued February 25, 2004, 106 ¶ FERC 61,183.

Line 1 – Initial Facility Investment: The Initial Facility Investment will equal the Capital Costs, subject to the Capital Costs Limit, plus Allowance for Funds Used During Construction (AFUDC), computed monthly. As defined in Article I, Capital Costs are the sum of recorded expenditures of the Facility (recorded as plant in service in FERC Account 101 upon completion of the Facility) and costs recorded by Buyer on behalf of Seller to acquire the Facility (Buyer's FERC Account 928 and 930). AFUDC is calculated by applying the AFUDC Rate to the sum of costs incurred during construction work in progress (FERC Account 107), costs recorded by Buyer on behalf of Seller to acquire the Facility (Buyer's FERC account 928 and 930), and prior months' accumulated AFUDC. AFUDC Rate is calculated on a monthly basis in accordance with FERC Uniform System of Account Electric Plant Instruction 3(A)(17) by applying Buyer's AFUDC rate applicable to utility property. If the Facility has not reached Full Commercial Operation within 36 months following the Effective Date, then in subsequent months only one-half of the otherwise applicable total AFUDC, or that AFUDC accruing after 36 months, will be included in the Initial Facility Investment.

Note 1: A preliminary estimate of the Initial Facility Investment will be determined by the Seller for purposes of determining the Initial Monthly Charge and Monthly Capital Recovery Charge. As soon as practical, but in any event no later than twelve months following the date the Full Commercial Operation Date occurs, Seller will advise SCE as to the final amount of the Initial Facility Investment. In the month following the month in which the final Initial Facility Investment is known, the Seller will calculate a Monthly Capital Recovery Charge true-up. Therefore, in the month following the month in which the final Initial Facility Investment is known, the Monthly Capital Recovery Charge will include: 1) the regular Monthly Capital Recovery Charge calculated pursuant to this schedule; and 2) a true-up of previously billed Initial Monthly Charge and Monthly Capital Recovery Charge to reflect the final Initial Facility Investment.

Line 2 – Approved Capital Additions Formula: During the term of this Agreement, Seller may request Buyer's approval to undertake capital additions. An Approved Capital Addition will consist of Capital Expenditures recorded by the Seller in plant in service (FERC Account 101), plus AFUDC calculated in the same manner as described in Line 1, and will be included as an Approved Capital Addition for the month immediately following when the associated asset becomes operational.

Line 3 – Plant In Service Formula: Plant In Service is the Initial Facility Investment plus the cumulative amount of Approved Capital Additions, less associated retirements recorded [in FERC Account 101], from the first Operating Month through the end of the current month. Prior to the First Operating Month, Plant-in-Service is the Initial Facility Investment associated with the portion of the Facility then in operation.

Line 4 – Book Depreciation Formula: Book Depreciation for each month is Plant In Service, less recorded land cost (FERC Account 340), less Depreciation Reserve (including the amount calculated in the Initial Monthly Charge) divided by the Remaining Life beginning in the First Operating Month.

Schedule 7.01

Line 5 – Depreciation Reserve Formula: Depreciation Reserve is the sum of Book Depreciation from the month in which the Initial Monthly Charge is applicable through the end of the current month, less retirements.

Line 6 – Remaining Life Formula: Remaining Life in the First Operating Month is 360 months (30 years), and declines by one month in each subsequent month.

Note 2: Since Plant In Service is depreciated for federal tax purposes based on a depreciation schedule that is based on when the property is placed in service, Lines 7 through 11 are repeated, and summed together, in the Rate Formulas for the Initial Facility Investment and any Approved Capital Addition. Therefore, Lines 7 through 11 will be calculated once for the Initial Facility Investment, and then again for each Approved Capital Addition.

Line 7 – Federal Tax Basis Formula: The Federal Tax Basis will equal the Capital Costs as defined in Article I, subject to the Capital Costs Limit, computed monthly, plus interest expense during construction capitalized pursuant to Internal Revenue Service Code 263A. The same Capital Cost limitation that applies to the Initial Facility Investment applies to the Federal Tax Basis. If recovery of AFUDC is limited due to a delay in the Full Commercial Operating Date, interest expense during construction will be similarly limited. Interest expense during construction is calculated by applying Buyer's applicable federal rate for utility property to the sum of costs incurred during construction work in progress (FERC Account 107), costs recorded by Buyer on behalf of Seller to acquire the Facility (Buyer's FERC Account 928 and 930), and prior months' interest expense.

Line 8 – Federal Book-Tax Depreciation Formula: Federal Book-Tax Depreciation is Federal Tax Basis, less recorded land cost (FERC Account 340), less Federal Book-Tax Depreciation Reserve (including the amount calculated in the Initial Monthly Charge), divided by the straight line remaining life beginning in the First Operating Month.

Line 9 – Federal Book-Tax Depreciation Reserve Formula: Federal Book-Tax Depreciation Reserve is the sum of Federal Book-Tax Depreciation from month in which the Initial Monthly Charge is applicable through the end of the current month.

Line 10 – Federal MACRS Tax Depreciation Schedule: The Facility is expected to qualify for 20 year Modified Accelerated Cost Recovery Schedule (MACRS) federal tax depreciation. The applicable schedule, incorporating the one-half year convention in the starting and ending year is as follows:

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Issued by: Ronald L. Litzinger, President
Issued on: March 31, 2005

Effective Date: March 16, 2004

Filed to comply with order of the Federal Energy Regulatory Commission, Docket No. ER04-316-000,
issued February 25, 2004, 106 ¶ FERC 61,183.

Year	MACRS	Year	MACRS	Year	MACRS
1	3.750%	8	4.522%	15	4.462%
2	7.219%	9	4.462%	16	4.461%
3	6.677%	10	4.461%	17	4.462%
4	6.177%	11	4.462%	18	4.461%
5	5.713%	12	4.461%	19	4.462%
6	5.285%	13	4.462%	20	4.461%
7	4.888%	14	4.461%	21	2.231%

If the Facility qualifies for bonus depreciation as provided for in H.R. 3090 or H.R. 2, then the Federal Tax Basis will be depreciated consistent with the appropriate first-year bonus depreciation when the investment becomes operational, and the MACRS depreciation rates shown in the table will apply to the remaining percentages of the Federal Tax Basis.

Annual Federal MACRS Tax Depreciation will be allocated uniformly to each Operating Month in the current year.

Line 11 – Federal Tax Depreciation Formula: Federal Tax Depreciation is the Federal MACRS Depreciation Rate (expressed as a monthly value) times the Federal Tax Basis, less recorded land cost (FERC Account 340).

Line 12 – Federal Deferred Tax Formula: Federal Deferred Tax is equal to the Federal Tax Rate times the difference between Federal MACRS Tax Depreciation and Federal Book-Tax Depreciation. The total Federal MACRS Tax Depreciation each month will be the summation of Line 11 calculated for the Initial Facility Investment plus Line 11 calculated for each Approved Capital Addition. Likewise, Federal Book-Tax Depreciation each month will be the summation of Line 8 calculated for the Initial Facility Investment plus Line 8 calculated for each Approved Capital Addition.

Line 13 – Federal Tax Rate: The highest federal marginal tax rate applicable to corporate taxpayers. The current rate is 35%.

Line 14 – Federal Deferred Tax Reserve Formula: Federal Deferred Tax Reserve is the sum of Federal Deferred Tax from the month in which the Initial Monthly Charge is applicable through the end of the current month.

Note 3: Since Plant In Service is depreciated for state tax purposes based on a depreciation schedule based on when the property is placed in service, Lines 15 and 16 are repeated, and summed together, in the Rate Formulas for the Initial Project Investment and any Approved Capital Addition. Therefore, Lines 15 and 16 will be calculated once for the Initial Facility Investment, and then again for each Approved Capital Addition.

Schedule 7.01

Issued by: Ronald L. Litzinger, President
Issued on: March 31, 2005

Effective Date: March 16, 2004

Filed to comply with order of the Federal Energy Regulatory Commission, Docket No. ER04-316-000, issued February 25, 2004, 106 ¶ FERC 61,183.

Mountainview Power Company, LLC
1st Revised Rate Schedule FERC No. 1

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Line 15 – State Tax Depreciation Rate Formula: State Tax Depreciation Rate is calculated on a double declining balance (DDB) method, with a switch-over to straight line remaining life (SLRL) method when the latter method results in a higher depreciation rate. The Facility is expected to qualify for 28 year depreciation. The applicable schedule, which incorporates the half-year convention in the first and last year, is as follows:

Year	Rate	Year	Rate	Year	Rate
1	3.572%	11	3.535%	21	2.531%
2	6.888%	12	3.283%	22	2.531%
3	6.396%	13	3.048%	23	2.531%
4	5.939%	14	2.830%	24	2.531%
5	5.515%	15	2.628%	25	2.531%
6	5.121%	16	2.531%	26	2.531%
7	4.755%	17	2.531%	27	2.531%
8	4.416%	18	2.531%	28	2.531%
9	4.100%	19	2.531%	29	1.264%
10	3.807%	20	2.531%		

Line 16 – State Tax Depreciation Formula: State Tax Depreciation is the applicable State Tax Depreciation Rate (expressed as a monthly value) times the State Tax Basis less recorded land cost (FERC Account 340) for the Initial Facility Investment and all Approved Capital Additions. The State Tax Basis will be the same as the Federal Tax Basis for the Initial Facility Investments. Any subsequent retirements will result in a basis difference that reflects the tax law differences with respect to retirements.

Line 17 – Average Rate Base Formula: Average Rate Base is equal to the beginning of month Rate Base amount plus the end of month Rate Base amount, divided by two. The Rate Base amount is equal to Plant In Service plus an allowance for Facility Working Cash requirements, less Depreciation Reserve and Federal Deferred Tax Reserve, and shall generally be used as applied to regulated utility assets.

Line 18 – Working Cash Formula: Each month, Working Cash, shall be calculated as follows:

Sum of all recorded O&M included in monthly charges billed by the Seller to SCE * 1/8
Recorded O&M is the sum of FERC Accounts 546-557, 570, and 920-935.

Line 19 – Return on Investment Formula: Return on Investment is calculated by multiplying the CPUC adopted monthly Cost of Capital applicable to SCE's utility assets and in effect on January 1st of the current year by Average Rate Base. The current value of 9.75% which was adopted in CPUC Decision 02-11-027, is composed of the following cost elements:

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Issued by: Ronald L. Litzinger, President
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issued February 25, 2004, 106 ¶ FERC 61,183.

	<u>%</u>	<u>Cost</u>	<u>Annual Cost Factor</u>	<u>Monthly Cost Factor</u>
Common Equity	48	11.60%	5.57%	0.464%
Preferred Stock	5	6.51%	0.33%	0.028%
Long-Term Debt	47	8.19%	3.85%	0.321%
Cost of Capital			9.75%	0.813%

Line 20 – Interest Expense Formula: Interest Expense is calculated by multiplying the CPUC adopted monthly Long-Term Debt Cost Factor applicable to SCE’s utility assets and in effect on January 1st of the current year by Average Rate Base. The current value of 3.85% which was adopted in CPUC Decision 02-11-027, is shown in the table above (description for Line 19).

Line 21 – Federal Income Tax Formula: Federal Income Tax is calculated by multiplying the federal tax multiplier (i.e., $f / (1 - f)$, where f is the Federal Tax Rate) times the sum of Return on Investment plus Book Depreciation less Federal Tax Book Depreciation less Interest Expense.

Line 22 – State Income Tax Formula: State Income Tax is calculated by multiplying the state tax multiplier (i.e., $s / (1 - s)$, where s is the State Tax Rate) times the sum of Return on Investment plus Book Depreciation plus Federal Income Tax less State Tax Depreciation less Interest Expense.

Line 23 – State Tax Rate: SCE’s State Tax Rate (s) is the CPUC adopted State Tax Rate as adopted in SCE’s most recent CPUC General Rate Case or similar proceeding, and in effect on January 1st of the current year. The State Tax Rate is a composite value, reflecting a weighting of the different state jurisdictions in which SCE transacts business. The current value of 8.5398% was adopted in CPUC Decision 97-11-074, (Attachment 5, page 22, of D.97-11-074).

Line 24 – Monthly Capital Recovery Charge Formula: The Monthly Capital Recovery Charge is the sum of Return on Investment, Book Depreciation, Federal Income Tax, and State Income Tax.

Note 4: In the event of a termination of the Agreement, the party seeking termination shall provide written notice to the other party indicating the date on which the Agreement shall terminate. The Seller shall calculate and notify Buyer of the Capital Recovery Charges which would have been due over the remaining Term of the Agreement and any other charges or amounts payable under this Agreement.

Schedule 7.01

Issued by: Ronald L. Litzinger, President
Issued on: March 31, 2005

Effective Date: March 16, 2004

Filed to comply with order of the Federal Energy Regulatory Commission, Docket No. ER04-316-000,
issued February 25, 2004, 106 ¶ FERC 61,183.

Attachment 1 to Schedule 7.01
Monthly Capital Recovery Charge Rate Formulas

Plant In Service Calculations

1. Initial Facility Investment = Capital Costs as defined in Article I, subject to the Capital Costs Limit, plus AFUDC calculated monthly in accordance with Electric Plant Instruction 3(A)(17) of the FERC's Uniform System of Accounts.
 Capital Costs = recorded plant in service (FERC Account 101) +
 Acquisition Costs (Buyer's FERC Account 928 & 930).
 Monthly AFUDC = (Buyer's AFUDC rate/12) * [construction work in progress (FERC Account 107) + Acquisition Costs (Buyer's FERC Account 928 & 930) + prior months' accumulated AFUDC]
2. Approved Capital Additions = Capital Expenditure amounts approved by Buyer, plus recorded in plant in service (FERC Account 101) plus AFUDC calculated in the same manner as described in Line 1.
3. Plant In Service = Sum of the Initial Facility Investment plus the cumulative amount of Approved Capital Additions, less associated retirements recorded [in FERC Account 101] from the First Operating Month through the end of the current month.

Book Depreciation Calculations

4. Book Depreciation = (Plant In Service - land cost (FERC Account 340) - Depreciation Reserve) / Remaining Life
5. Depreciation Reserve = Sum of Book Depreciation from the month that the Initial Monthly Charge is applicable through the end of the current month.
6. Remaining Life = 360 months in the first month, decreasing by one in each subsequent month.

Federal Tax Depreciation and MACRS Deferred Tax Calculations

7. Federal Tax Basis = Capital Costs from Line 1, subject to the Capital Costs Limit, plus interest expense during construction capitalized pursuant to Internal Revenue Code 263A.
 Interest expense = Buyer's applicable federal 263A rate * [construction work in progress (FERC Account 107) + Acquisition Costs (Buyer's FERC Account 928 & 930) + prior months' interest expense]
8. Federal Tax-Book Depreciation = (Federal Tax Basis - land cost (FERC Account 340) - Federal Book-Tax Depreciation Reserve) / Remaining Life
9. Federal Book-Tax Depreciation Reserve = Sum of Federal Book-Tax Depreciation from the month that the Initial Monthly Charge is applicable through the end of the current month.
10. MACRS Tax Depreciation Rate = Applicable annual value (see the table in the description of Line 10) divided by the number of Operating Months in the current calendar year.
11. Federal Tax Depreciation = MACRS Tax Depreciation Rate * (Federal Tax Basis - recorded land cost (FERC Account 340))
12. Federal Deferred Tax = Federal Tax Rate * (Federal Tax Depreciation - Federal Tax Book Depreciation), where Federal Tax Depreciation is the sum of each Line 11 calculation (once for the Initial Facility Investment and once for each Approved Capital Addition), and Federal Book-Tax Depreciation is the sum of each Line 8 calculation (once for the Initial Facility Investment and once for each Approved Capital Addition).
13. Federal Tax Rate = The current highest federal marginal tax rate applicable to corporate taxpayers, currently 35%.

Schedule 7.01

14. Federal Deferred Tax Reserve = Sum of Federal Deferred Tax from the month that the Initial Monthly Charge is applicable through the end of the current month.

State Tax Depreciation Calculations

15. State Tax Depreciation Rate = State Tax Depreciation Rate is computed monthly based the double declining balance method, with switch-over to straight line remaining life. Applicable annual value (see the table in the description of Line 15) divided by the number of Operating Months in the current calendar year
16. State Tax Depreciation = State Tax Depreciation Rate*(State Tax Basis land cost (FERC Account 340))

Rate Base Calculations

17. Average Rate Base = ((Plant In Service + Working Cash - Depreciation Reserve - Federal Deferred Tax Reserve) at the beginning of the month) + ((Plant In Service + Working Cash - Depreciation Reserve - Federal Deferred Tax Reserve) at the end of the month) / 2
18. Working Cash = Total amount of recorded O&M for the month * 1/8
Recorded O&M is the sum of FERC accounts 546-557, 570, and 920-935.

Return on Investment Calculations

19. Return on Investment = The CPUC approved annual return on rate base (divided by 12 months) times Average Rate Base.
20. Interest Expense = The CPUC approved annual cost factor for long-term debt (divided by 12 months) time Average Rate Base. The cost factor is the CPUC approved long-term debt percentage times the CPUC approved cost of long-term debt.

Federal and State Tax Calculations

21. Federal Income Tax = Federal Tax Rate * (Return on Investment + Book Depreciation - Federal Book-Tax Depreciation - Interest Expense) / (1 - Federal Tax Rate), where Federal Book-Tax Depreciation is the sum of the result of Line 8 calculated for the Initial Facility Investment and each Approved Capital Addition.
22. State Income Tax = State Tax Rate * (Return on Investment + Federal Income Tax + Book Depreciation - State Tax Depreciation - Interest Expense) / (1 - State Tax Rate), where State Tax Depreciation is the sum of the result of Line 16 calculated for the Initial Facility Investment and each Approved Capital Addition.
23. State Tax Rate = The State Tax Rate adopted in SCE's most recent CPUC General Rate Case or similar proceeding

Monthly Capital Recovery Charge

24. Monthly Capital Recovery Charge = Return on Investment + Book Depreciation + Federal Income Tax + State Income Tax

Schedule 7.01

Mountainview Power Company, LLC
1st Revised Rate Schedule FERC No. 1

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Schedule 7.02

FERC Accounts Used in Calculating Pre-Authorized Charge

Seller will maintain its accounting records in accordance with the FERC Uniform System of Accounts, and such records shall provide the basis for the Pre-Authorized Charge. The components of the Pre-Authorized Charges shall be calculated based on the following accounts, and in accordance with the referenced PPA Sections.

PPA Section 7.02: Preauthorized Charge	FERC Account	Reference
i Property Tax	408.1	Section 1.01
ii Governmental Charges	549.002	Section 1.01
iii Costs pursuant to the CSA	553.003	Section 1.01
iv Auxiliary Power	549.004	Section 1.01
v Buyer Overhead Costs*	920	Section 1.01 Section 16.01
vi Property, liability and Insurance	549.008	
vii Prior Claims	548.007	Section 1.01
viii Environmental Costs	548.008, 549.008	Section 1.01
ix Major Refurbishment, Compliance, Betterments, Major Repair**	546.009, 547.009, 548.009, 549.009, 551.009, 552.009, 553.009, 554.009, 570.009	Section 1.01 and Section 8.09
x Added Facilities Associated with Transmission Interconnection	570.010	
xi SCR Catalyst Replacement Allowance	548.011	
xii Pre-Authorized Costs approved pursuant to Section 7.02*		Section 8.08
*Requires Federal Power Act Section 205 filing.		
**These costs will be classified as Pre-Authorized O&M or Capital Costs and placed into the appropriate account according to FERC Uniform System of Accounts.		

Schedule 7.02

Issued by: Ronald L. Litzinger, President
Issued on: March 31, 2005

Effective Date: March 16, 2004

Filed to comply with order of the Federal Energy Regulatory Commission, Docket No. ER04-316-000,
issued February 25, 2004, 106 ¶ FERC 61,183.

Schedule 7.03

FERC Accounts Used in Calculating the O&M Charge

Seller will maintain its accounting records in accordance with the FERC Uniform System of Accounts. The O&M Charge shall be calculated based on the following Accounts, and in accordance with the referenced PPA Sections:

PPA Section 7.03: O&M Charges	FERC Account*	Reference
O&M Charge	The sum of all costs recorded into: 408.1, 546, 547, 548, 549, 550, 551, 552, 553, 554, and 920-935 less the amounts in the Pre-Authorized Charge, and less the costs of claims and actions by former SCE employees against Seller arising with respect to the ownership and/or operation of the Facility prior to the ownership by the Seller and with regard to any period of their employment by SCE.	Section 7.03, Section 8.09a
*The referenced accounts without sub account identifiers include all sub accounts within the accounts; e.g., Account 549 includes all sub accounts, i.e. Account 549.xxx.		

Schedule 7.03

Issued by: Ronald L. Litzinger, President
Issued on: March 31, 2005

Effective Date: March 16, 2004

Filed to comply with order of the Federal Energy Regulatory Commission, Docket No. ER04-316-000,
Issued February 25, 2004, 106 ¶ FERC 61,183.

Schedule 8.03**Annual Escalation Procedures**

This schedule sets forth the procedures for calculating annual escalation adjustments for the following charges: (1) the allowance for catalyst replacement of each SCR shown in Section 7.02; (2) the Summer Availability Incentive and the Winter Availability Incentive, as shown in the definition of these terms, respectively; and (3) the cost threshold for Major Equipment Repair or Replacement Work shown in Section 8.09(b). The value of each of these items (which are shown in 2003 dollars) are multiplied by the applicable current year escalation factor as calculated in this schedule to determine the value in current year dollars. Terms not otherwise defined in this schedule shall have the meanings set forth in the Agreement.

Wage and Cost Indices

The following wage and price indices shall be used in the calculation of the annual escalation adjustments as further described below. The following indices are available from the Bureau of Labor Statistics (BLS), U.S. Department of Labor, or Bureau of Economic Analysis, U.S. Department of Commerce. Forecast indices are available from Global Insight Utility Cost Information Service.

JEOMMS is the combined materials and services cost index for other power production as calculated (recorded and forecast) in the most recent Global Insight UCIS projection, which is available to subscribers electronically.

GDPCWPI is the Gross Domestic Product Chain-Weighted Price Index as published by the Bureau of Economic Analysis, U.S. Department of Commerce, and available electronically. Forecast values of this index shall be obtained from the most recent Global Insight UCIS U.S. macroeconomic projection, which is available to subscribers electronically.

Calculation of Annual Escalation RatesGeneral Provisions

For each value subject to escalation, the annual escalation rate (AER) is computed as the percentage change between published index value(s) between the subject year (SY) and the immediately preceding year (PY). Either a single index or a weighted average of multiple indices is applied as further described below. Where published index values are provided quarterly, the yearly value is the average of the second and third quarter; where published index values are provided monthly, the yearly value is the average of June and July.

Schedule 8.03

Issued by: Ronald L. Litzinger, President
Issued on: March 31, 2005

Effective Date: March 16, 2004

Filed to comply with order of the Federal Energy Regulatory Commission, Docket No. ER04-316-000,
Issued February 25, 2004, 106 ¶ FERC 61,183.

Replacement Annual Escalation Rate

The Replacement AER is calculated based a single non-labor index as shown in the formula below. The Replacement AER applies to (i) the SCR catalyst replacement allowance, and (ii) the cost threshold for Major Equipment Maintenance, Repair and Replacement Work.

$$\text{Replacement AER (SY)} = \text{JEOOMMS (SY)}/\text{JEOOMMS (PY)} - 1$$

Availability Incentive Annual Escalation Rate

The AER for the Summer Availability Incentive and the Winter Availability Incentive is calculated based on a single index as shown in the formula below:

$$\text{Availability Incentive AER (SY)} = \text{GDPCWPI (SY)}/\text{GDPCWPI (PY)} - 1$$

Annual Calculation of Escalation Factors

General Provisions

Escalation factors will be calculated each year for Replacement and Availability Incentives. The initial escalation factor for 2003 is 1.0000. In subsequent years, the factor is computed by multiplying the prior year's factor by the current year's annual escalation rate expressed as a decimal fraction plus one (1), using the calculation described above. For example, if the Replacement AER is 3.42% in 2004 and 3.64% in 2005, then the 2004 Replacement escalation factor is 1.0342 and the 2005 Replacement escalation factor is 1.0718.

Calculation Steps

Each year, the following steps shall be used to calculate a new escalation factor

Step 1: The prior years' recorded annual escalation rates and escalation factors will be reviewed, and updated for any published revisions to the component price and wages indices used in their calculation.

Step 2: The immediately prior year's forecast annual escalation rate and escalation factors will be replaced with the corresponding recorded values.

Step 3: The current year's forecast annual escalation rate and escalation factor will be calculated from the forecast price and wage indices.

Should any of the component indices described above cease to exist (as to either recorded or forecast values), Buyer and Seller shall mutually agree on a replacement index. Should Global Insight cease to provide forecasts, Buyer and Seller shall mutually agree on an alternate forecasting service.

Schedule 8.03

Mountainview Power Company, LLC
1st Revised Rate Schedule FERC No. 1

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Exhibit A

FORM OF DISPATCH NOTICE

**MOUNTAINVIEW POWER COMPANY LLC
AVAILABILITY & DISPATCH NOTICE**

For: [Date]

Received: [Date and Time]

Hour Ending	Temp	0 <--Revision #		Non-Standard Operational Events (see Comments)	0 <--Revision #		Estimated Natural Gas Required
		Available Net Electrical Output at Delivery Point			Dispatched Net Electrical Output at Delivery Point	Scheduled with CAISO	
		Units	Megawatts		Megawatts	Megawatts	MMBtu
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							
14							
15							
16							
17							
18							
19							
20							
21							
22							
23							
24							
		Total:			Total:	Total:	

Issued by: Ronald L. Litzinger, President

Effective Date: March 16, 2004

Issued on: March 31, 2005

Filed to comply with order of the Federal Energy Regulatory Commission, Docket No. ER04-316-000, issued February 25, 2004, 106 ¶ FERC 61,183.

Mountainview Power Company, LLC
 1st Revised Rate Schedule FERC No. 1

Original Sheet No. 58

Comments:		<i>Fuel Supply for Dispatch</i>	
		HE 1 - 7 =	<input type="text"/>
		Machine Starts =	<input type="text"/>
		Startup Fuel =	<input type="text"/>
		Total HE 1 - 7 =	<input type="text"/>
<u>Expected Daily Temperatures, F</u>	<u>Contact Information:</u>		HE 8 - 24 = <input type="text"/>
	Scheduling Coordinator	[Name]	Machine Starts = <input type="text"/>
		[Tel. No.]	Startup Fuel = <input type="text"/>
	Plant Supervisor	[Name]	Total HE 8 - 24 = <input type="text"/>
		[Tel. No.]	

Issued by: Ronald L. Litzinger, President
 issued on: March 31, 2005

Effective Date: March 16, 2004

Filed to comply with order of the Federal Energy Regulatory Commission, Docket No. ER04-316-000,
 issued February 25, 2004, 106 ¶ FERC 61,183.