

# CALPINE CORP

## FORM 10-K (Annual Report)

Filed 03/31/05 for the Period Ending 12/31/04

Address	717 TEXAS AVENUE SUITE 1000 HOUSTON, TX 77002
Telephone	7138302000
CIK	0000916457
Symbol	CPN
SIC Code	4911 - Electric Services
Industry	Electric Utilities
Sector	Utilities
Fiscal Year	12/31

## Table of Contents

---

---

UNITED STATES SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

---

**Form 10-K**

(Mark One)

**ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

**For the fiscal year ended December 31, 2004**

or

**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

**For the transition period from to**

**Commission file number: 1-12079**

---

**Calpine Corporation**

*(A Delaware Corporation)*

**I.R.S. Employer Identification No. 77-0212977**

**50 West San Fernando Street  
San Jose, California 95113  
Telephone: (408) 995-5115**

**Securities registered pursuant to Section 12(b) of the Act:  
Calpine Corporation Common Stock, \$.001 Par Value Registered on the New York Stock Exchange**

**Securities registered pursuant to Section 12(g) of the Act:  
None**

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Securities Exchange Act). Yes  No

State the aggregate market value of the common equity held by non-affiliates of the registrant as of June 30, 2004, the last business day of the registrant's most recently completed second fiscal quarter: approximately \$1.9 billion. Common stock outstanding as of March 30, 2005: 538,017,458 shares.

**DOCUMENTS INCORPORATED BY REFERENCE**

Portions of the documents listed below have been incorporated by reference into the indicated parts of this report, as specified in the responses to the item numbers involved.

(1) Designated portions of the Proxy Statement relating to the 2005 Annual Meeting of Shareholders

Part III (Items 10, 11, 12, 13 and 14)

---

---

## TABLE OF CONTENTS

	<u>Page</u>
<b>PART I</b>	
Item 1.	Business 3
Item 2.	Properties 46
Item 3.	Legal Proceedings 48
Item 4.	Submission of Matters to a Vote of Security Holders 48
<b>PART II</b>	
Item 5.	Market for Registrant’s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities 49
Item 6.	Selected Financial Data 50
Item 7.	Management’s Discussion and Analysis of Financial Condition and Results of Operations 54
Item 7A.	Quantitative and Qualitative Disclosures About Market Risk 109
Item 8.	Financial Statements and Supplementary Data 109
Item 9.	Changes in and Disagreements With Accountants on Accounting and Financial Disclosure 109
Item 9A.	Controls and Procedures 109
Item 9B.	Other Information 111
<b>PART III</b>	
Item 10.	Directors and Executive Officers of the Registrant 111
Item 11.	Executive Compensation 111
Item 12.	Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters 111
Item 13.	Certain Relationships and Related Transactions 112
Item 14.	Principal Accounting Fees and Services 112
<b>PART IV</b>	
Item 15.	Exhibits, Financial Statement Schedules 112
	Signatures and Power of Attorney 125
	Index to Consolidated Financial Statements and Other Information F-1
	EXHIBIT 10.1.9
	EXHIBIT 10.1.10
	EXHIBIT 10.1.11
	EXHIBIT 10.3.6.1
	EXHIBIT 10.3.13
	EXHIBIT 12.1
	EXHIBIT 21.1
	EXHIBIT 23.1
	EXHIBIT 23.2
	EXHIBIT 23.3
	EXHIBIT 23.4
	EXHIBIT 31.1
	EXHIBIT 31.2
	EXHIBIT 32.1
	EXHIBIT 99.1
	EXHIBIT 99.2

PART I

**Item 1. Business**

*In addition to historical information, this report contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. We use words such as “believe,” “intend,” “expect,” “anticipate,” “plan,” “may,” “will” and similar expressions to identify forward-looking statements. Such statements include, among others, those concerning our expected financial performance and strategic and operational plans, as well as all assumptions, expectations, predictions, intentions or beliefs about future events. You are cautioned that any such forward-looking statements are not guarantees of future performance and that a number of risks and uncertainties could cause actual results to differ materially from those anticipated in the forward-looking statements. Such risks and uncertainties include, but are not limited to, (i) the timing and extent of deregulation of energy markets and the rules and regulations adopted with respect thereto, (ii) the timing and extent of changes in commodity prices for energy, particularly natural gas and electricity, and the impact of related derivatives transactions, (iii) unscheduled outages of operating plants, (iv) unseasonable weather patterns that reduce demand for power, (v) economic slowdowns that can adversely affect consumption of power by businesses and consumers, (vi) various development and construction risks that may delay or prevent commercial operations of new plants, such as failure to obtain the necessary permits to operate, failure of third-party contractors to perform their contractual obligations or failure to obtain project financing on acceptable terms, (vii) uncertainties associated with cost estimates, that actual costs may be higher than estimated, (viii) development of lower-cost power plants or of a lower cost means of operating a fleet of power plants by our competitors, (ix) risks associated with marketing and selling power from power plants in the evolving energy market, (x) factors that impact exploitation of oil or gas resources, such as the geology of a resource, the total amount and costs to develop recoverable reserves, and legal title, regulatory, gas administration, marketing and operational factors relating to the extraction of natural gas, (xi) uncertainties associated with estimates of oil and gas reserves, (xii) the effects on our business resulting from reduced liquidity in the trading and power generation industry, (xiii) our ability to access the capital markets on attractive terms or at all, (xiv) uncertainties associated with estimates of sources and uses of cash, that actual sources may be lower and actual uses may be higher than estimated, (xv) the direct or indirect effects on our business of a lowering of our credit rating (or actions we may take in response to changing credit rating criteria), including increased collateral requirements, refusal by our current or potential counterparties to enter into transactions with us and our inability to obtain credit or capital in desired amounts or on favorable terms, (xvi) present and possible future claims, litigation and enforcement actions, (xvii) effects of the application of regulations, including changes in regulations or the interpretation thereof, and (xviii) other risks identified in this report. Current information set forth in this filing has been updated to March 30, 2005, and we undertake no duty to further update this information. All other information in this filing is presented as of the specific date noted and has not been updated since that time.*

We file annual, quarterly and periodic reports, proxy statements and other information with the SEC. You may obtain and copy any document we file with the SEC at the SEC’s public reference room at 450 Fifth Street, N.W., Washington, D.C. 20549. You may obtain information on the operation of the SEC’s public reference facilities by calling the SEC at 1-800-SEC-0330. You can request copies of these documents, upon payment of a duplicating fee, by writing to the SEC at its principal office at 450 Fifth Street, N.W., Washington, D.C. 20549-1004. The SEC maintains an Internet website at <http://www.sec.gov> that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC. Our SEC filings are accessible through the Internet at that website.

Our reports on Forms 10-K, 10-Q and 8-K, and amendments to those reports, are available for download, free of charge, as soon as reasonably practicable after these reports are filed with the SEC, at our website at [www.calpine.com](http://www.calpine.com). The content of our website is not a part of this report. You may request a copy of our SEC filings, at no cost to you, by writing or telephoning us at: Calpine Corporation, 50 West San Fernando Street, San Jose, California 95113, attention: Lisa M. Bodensteiner, Assistant Secretary, telephone: (408) 995-5115. We will not send exhibits to the documents, unless the exhibits are specifically requested and you pay our fee for duplication and delivery.

## OVERVIEW

We are an integrated power company with a comprehensive and growing power services business. Based in San Jose, California, we were established as a corporation in 1984 and operate through a variety of divisions, subsidiaries and affiliates. We own and operate power generation facilities and sell electricity, predominantly in the United States but also in Canada and the United Kingdom. We focus on two efficient and clean types of power generation technologies: natural gas-fired combustion turbine and geothermal. We lease and operate a significant fleet of geothermal power plants at The Geysers in California, and have a net operating portfolio of 92 clean burning natural gas power plants capable of producing 26,649 megawatts (“MW”) and an additional 11 plants in construction. We offer to third parties energy procurement, liquidation and risk management services through Calpine Energy Services, L.P. (“CES”) and offer combustion turbine component parts and repair and maintenance services world-wide through Calpine Turbine Services (“CTS”), which includes Power Systems Mfg., LLC (“PSM”) located in Jupiter, Florida, and Netherlands-based Thomassen Turbine Systems B.V. (“TTS”). We also offer engineering, procurement, construction management, commissioning and operations and maintenance (“O&M”) services through Calpine Power Services, Inc. (“CPSI”).

Our integrated operating capabilities have given us a proven track record in the development and construction of new power facilities. Our Calpine Construct organization consists of an experienced team of construction management professionals who ensure that our projects are built using our standard design specifications reflecting our exacting operational standards. We have established relationships with leading equipment manufacturers for gas turbine generators, steam turbine generators, heat recovery steam generators and other key equipment. While future projects will be developed only when we have attractive power contracts in place, we will continue to leverage these capabilities and relationships to ensure that our power plants are completed on time and are the best built and lowest cost energy facilities possible.

We have a sophisticated O&M organization based in Folsom, California which staffs and oversees the commissioning and operations of our power plants. With the objective of enhancing the performance of our modern portfolio of gas-fired power plants and lowering our replacement parts and maintenance costs, we capitalize on PSM’s capabilities to design and manufacture high performance combustion system and turbine blade parts. PSM manufactures new vanes, blades, combustors and other replacement parts for our plants and for those owned and operated by third parties as well. It offers a wide range of Low Emissions Combustion (“LEC”) systems and advanced airfoils designed to be compatible for retrofitting or replacing existing combustion systems or components operating in General Electric and Siemens Westinghouse turbines.

We also have in place an experienced gas production and management team which gives us a broad range of fuel sourcing options, and we own 389 billion cubic feet equivalent (“Bcfe”) of net proved natural gas reserves located primarily in the Sacramento Basin of California and Gulf Coast regions of the United States. We are currently (as of March 2005) capable of producing, net to Calpine’s interest, approximately 100 million cubic feet equivalent (“MMcfe”) of natural gas per day.

CES provides us with the trading and risk management services needed to schedule power sales and to ensure fuel is delivered to our power plants on time to meet delivery requirements and to manage and optimize the value of our physical power generation and gas production assets. CES currently manages approximately 3% of the U.S. gas and power demand. Our marketing and sales organization complements CES’s activities and is organized not only to serve our traditional load serving client base of local utilities, municipalities and cooperatives but also to meet the needs of our growing list of wholesale and large retail customers. As a general goal, we seek to have 65% of our available capacity sold under long-term contracts or hedged by our risk management group. Currently we have 54% of our available capacity sold or hedged for 2005.

Additionally, we continue to strengthen our system operations management and information technology capabilities to enhance the economic performance of our portfolio of assets in our major markets and to provide load-following and ancillary services to our customers. These operational optimization systems, combined with our sales, marketing and risk management capabilities, enable us to add value to traditional commodity products.

Through our development and construction program and past acquisitions, we have built and now operate a modern and efficient portfolio of gas-fired generation assets. Our low cost position, integrated operations and skill sets have allowed us to weather a multi-year downturn in the North American energy industry. We have demonstrated the flexibility to adapt to fundamental market changes. Specifically, we responded to the market downturn by reducing capital expenditures, selling or monetizing various gas, power and contractual assets, restructuring our equipment procurement obligations, and reorganizing to reflect our transition from a development focused company to a company focused on integrated operations and services.

### THE MARKET FOR ELECTRICITY

The electric power industry represents one of the largest industries in the United States and impacts nearly every aspect of our economy, with an estimated end-user market of nearly \$268 billion of electricity sales in 2004 based on information published by the Energy Information Administration of the Department of Energy (“EIA”). Historically, the power generation industry has been largely characterized by electric utility monopolies producing electricity from old, inefficient, polluting, high-cost generating facilities selling to a captive customer base. However, industry trends and regulatory initiatives have transformed some markets into more competitive grounds where load-serving entities and end-users may purchase electricity from a variety of suppliers, including independent power producers (“IPPs”), power marketers, regulated public utilities and others. For the past decade, the power industry has been deregulated at the wholesale level allowing generators to sell directly to the load serving entities such as public utilities, municipalities and electric cooperatives. Although industry trends and regulatory initiatives aimed at further deregulation have slowed, the power industry continues to transform into a more competitive market.

The North American Electric Reliability Council (“NERC”) estimates that in the United States, peak (summer) electric demand in 2004 totaled approximately 729,000 MW, while summer generating capacity in 2004 totaled approximately 872,000 MW, creating a peak summer reserve margin of 143,000 MW, or 19.6%, which compares to an estimated peak summer reserve margin of 144,000 MW, or 20.3% in 2003. Historically, utility reserve margins have been targeted to be at least 15% above peak demand to provide for load forecasting errors, scheduled and unscheduled plant outages and local area grid protection. The United States market consists of regional electric markets not all of which are effectively interconnected, so reserve margins vary from region to region.

Even though most new power plants are fueled by natural gas, the majority of power generated in the U.S. is still produced by coal and nuclear power plants. The EIA has estimated that approximately 50% of the electricity generated in the U.S. is fueled by coal, 20% by nuclear sources, 18% by natural gas, 7% by hydro, and 5% from fuel oil and other sources. As regulations continue to evolve, many of the current coal plants will likely be faced with having to install a significant amount of costly emission control devices. This activity could cause some of the oldest and dirtiest coal plants to be retired, thereby allowing a greater proportion of power to be produced by cleaner natural gas-fired generation.

Due primarily to the completion of gas-fired combustion turbine projects, we have seen power supplies increase and higher reserve margins in the last several years accompanied by a decrease in liquidity in the energy trading markets.

According to Edison Electric Institute (“EEI”) published data, the growth rate of overall consumption of electricity in 2004 compared to 2003 was estimated to be 1.9%. The estimated growth rates in our major markets were as follows: South Central (primarily Texas) 3.9%, Pacific Southwest (primarily California) 3.3%, and Southeast 2.5%. The growth rate in supply has been diminishing with many developers canceling or delaying completion of their projects as a result of current market conditions. The supply and demand balance in the natural gas industry continues to be strained with gas prices averaging \$6.13 per million British thermal unit (“Btu”) (“MMBtu”) in 2005 through February, compared to averages of approximately \$5.72 and \$6.20 per MMBtu in the same periods in 2004 and 2003, respectively. In addition, capital market participants are slowly making progress in restructuring their portfolios, thereby stabilizing financial pressures on the industry. Overall, we expect the market to continue these trends and work through the current oversupply of power in several regions within the next few years. As the supply-demand picture improves, we expect to see

## Table of Contents

spark spreads (the difference between the cost of fuel and electricity revenues) improve and capital markets regain their interest in helping to repower America with clean, highly efficient energy technologies.

### STRATEGY

Our vision is to become North America's most efficient, cost competitive and environmentally friendly power company with a comprehensive and profitable service business. We believe that with our efficient fleet of power generation facilities and economies of scale, we are positioned to operate profitably and with reasonable volatility as the supply and demand picture improves and we increase the proportion of contractual sales. In achieving our corporate strategic objectives, the number one priority for our company is maintaining the highest level of integrity in all of our endeavors. We have posted on our website ([www.calpine.com](http://www.calpine.com)) our Code of Conduct applicable to all employees, including our principal executive officer, principal financial officer and principal accounting officer. We intend to post on our website any amendment to or waiver from our Code of Conduct required to be disclosed under Item 5.05 of Form 8-K.

Our timeline to achieve our strategic objectives is partially a function of improvement in market fundamentals. When necessary, we will slow or delay our growth activities in order to ensure that our financial health is secure and our investment opportunities meet our long-term rate of return requirements.

#### Near-Term Objectives

Our ability to adapt as needed to market dynamics has led us to develop a set of near-term strategic objectives that will guide our activities as market fundamentals improve. These include:

- Continue to focus on our liquidity position as our second highest priority after integrity;
- Continue to improve our balance sheet through the extinguishment or repurchase of debt;
- Complete our current construction program and start construction of new projects in strategic locations only when power contracts and financing are available and attractive returns are expected;
- Put excess gas turbines to work in new projects, subject to the conditions stipulated above, or sell them;
- Continue to lower operating and overhead costs per megawatt hour ("MWh") produced and improve operating performance with an increasingly efficient power plant fleet;
- Utilize our marketing and sales capabilities to selectively increase our power contract portfolio; and
- Grow our services businesses to complement our integrated power operations.

#### Longer-Term Objectives

We plan, through our strategy to (1) achieve the lowest-cost position in the industry by applying our fully integrated areas of expertise to the cost-effective development, construction, financing, fueling and operation of the most modern and efficient power generation facilities and by achieving economies of scale in general, administrative and other support costs, and (2) enhance the value of the power we generate in the marketplace by (a) operating our plants as a system, (b) selling directly to load-serving entities and, to the extent allowable, to industrial customers, in each of the markets in which we participate, (c) offering load-following and other ancillary services to our customers, and (d) providing effective marketing, risk management and asset optimization activities through our CES and marketing and sales organizations.

Our "system approach" refers to our ability to cluster our standardized, highly efficient power generation assets within a given energy market and to sell the energy from that system of power plants, rather than using "unit specific" marketing contracts. The clustering of standardized power generation assets allows for significant economies of scale to be achieved. Specifically, construction costs, supply chain activities such as inventory and warehousing costs, labor, and fuel procurement costs can all be reduced with this approach. The choice to focus on highly efficient and clean technologies reduces our fuel consumption, a major expense when operating power plants. Furthermore, our lower-than-market heat rate (high efficiency advantage) provides us

## Table of Contents

a competitive advantage in times of rising fuel prices, and our systems approach to fuel purchases reduces imbalance charges when a plant is forced out of service. Finally, utilizing our system approach in a sales contract allows us to provide power to a customer from whichever plant in the system is most economical at a given period of time. In addition, the operation of plants can be coordinated when increasing or decreasing power output throughout the day to enhance overall system efficiency, thereby enhancing the heat rate advantage already enjoyed by the plants. In total, this approach lays a foundation for a sustainable competitive cost advantage in operating our plants.

The integration of gas production, hedging, optimization and marketing activities achieves additional cost reductions while simultaneously enhancing revenues. Our fleet of natural gas burning power plants requires a large amount of gas to operate. Our fuel strategy is to supplement purchases of gas with production from our own gas reserves. Owning gas reserves provides a natural hedge against gas price volatility, while providing a secure and reliable source of fuel and lowering our fuel costs over time. The ownership of gas provides our CES risk management organization with additional flexibility when structuring fixed price transactions with our customers.

Recent trends confirm that both buyers and sellers of power and gas benefit from signing long-term power contracts. By signing long-term power contracts with fixed or heat-rate based pricing (a component of which is the gas index), we are able to reduce our exposure to the severe volatility often seen with power and gas prices. The trend towards signing long-term contracts is creating opportunities for companies, such as ours, that own power plants and gas reserves to negotiate directly with buyers (end users and load serving entities) that need power.

Our marketing and sales organization is dedicated to serving wholesale and industrial customers with reliable, cost-effective electricity and a full range of services. The organization offers customers: (1) wholesale bulk energy; (2) firm supply energy; (3) fully dispatchable energy; (4) full service requirements energy; (5) renewable energy; (6) energy scheduling services; (7) engineering, construction, O&M services; and (8) turbine parts and long-term maintenance agreements. Our physical, financial and intellectual assets and our generating facilities, pooled into unique energy centers in key markets, enable us to create customizable energy solutions for our customers, delivering power when, where and in the capacity our customers need. Our power marketing experience gives us the know-how to structure innovative deals that meet our customers' particular requirements. For example, we work with our customers to tailor energy contracts to help them offset pricing risk and other variables. We have developed our "Virtual Power Plant" product which provides customers with an energy resource that is reliable and flexible. It gives customers all of the advantages of owning and operating their own plants without many of the risks, by gaining access to a portfolio of highly efficient generation assets and by implementing our IT solutions to allow power to be dispatched as needed. As of March 2, 2005, our marketing and sales team is pursuing 24,633 MW of active opportunities with 198 customers across the United States and Canada. This customer base includes municipalities, cooperatives, investor owned utilities, industrial customers and commercial customers.

The ultimate objective of our financing strategy is to achieve and maintain an investment grade credit and bond rating from the major rating agencies. In order to achieve this objective we have reduced capital expenditures and are continuing to seek ways to reduce our debt and improve our liquidity. We intend to employ various approaches for extending or refinancing existing credit facilities and for financing new plants, with a goal of retaining maximum system operating flexibility. The availability of capital at attractive terms consistent with achieving our liquidity goals will be a key requirement to enable us to develop and construct new plants. We have adjusted to recent market conditions by taking near-term actions focused on liquidity. We have been successful throughout the last few years at selling certain less strategically important assets, monetizing several contracts, buying back our debt, issuing convertible and non-convertible senior notes, and raising non-recourse project financing.

## COMPETITION

We are engaged in several different types of business activities each of which has a unique competitive environment. To better understand the competitive landscape we face, it is helpful to look at five different groupings of business activities.

*Development and Construction.* We face competition from IPPs, non-regulated subsidiaries of utilities, and increasingly from regulated utilities and large end-users of electricity. In addition, there are only a few primary suppliers of key gas turbine, steam turbine and heat recovery steam generator equipment used in state of the art gas turbine power plants. Periodically we face strong competition with respect to securing the best construction personnel and contractors. Regulatory and community pressures against locating a power plant at a specific site can often be substantial, causing months or years of delays.

*Power Plant Operations.* The power sales competitive landscape consists of a patchwork of highly competitive and highly regulated markets. This patchwork has been caused by inconsistent transitions to deregulated markets across North America. For example, in markets where there is open competition, our gas-fired or geothermal merchant capacity (that which has not been sold under a long-term contract) competes directly on a real time basis with all other sources of electricity such as nuclear, coal, oil, gas-fired, and renewable energy provided by others. However, there are other markets where the local utility still predominantly uses its own supply to satisfy its own demand before dispatching competitively provided power from others. Each of these markets offers a unique and challenging power sales environment.

*We also compete to be the low cost producer of power.* We strive to have better efficiency, start and stop using less fuel, operate with the fewest forced outages and maximum availability and to accomplish all of this while producing less pollutants than competing gas plants and those using other fuels.

*Asset Acquisition and Divestiture.* The recent downturn in the electricity industry has prompted many companies to sell assets to improve their financial positions. In addition, the postponement of plans for construction of new power plants is also creating a competitive market for the sale of excess equipment. In the past year, new entrants such as private equity funds, financial institutions and utilities have acquired power plants.

*Gas Production and Operations.* Gas production is also highly competitive and is populated by numerous participants including majors, large independents and smaller “wild cat” type exploration companies. Recently, the competition in this sector has increased due to a fundamental shift in the supply and demand balance for gas in North America. This shift has driven gas prices higher and has led to increased production activities and development of alternative supply options such as liquid natural gas or coal gasification. In the near-term, however, we expect that the market to find and produce natural gas will remain highly competitive.

*Power Marketing and Sales.* Power marketing and sales generally includes all those activities associated with identifying customers, negotiating, and selling energy and service contracts to load-serving entities and large scale industrial and retail end-users. In the past year, there has been a trend for financial institutions and hedge funds to enter the marketing and trading business. However, many of these players are focused on financial products and standard physical transactions. Power generators like Calpine continue to focus on selling nonstandard physical products directly to load serving entities.

## ENVIRONMENTAL STEWARDSHIP

Calpine’s goal is to produce low-cost electricity with minimal impact on the environment. To achieve this we’ve assembled the largest fleet of combined-cycle natural gas-fired power plants and the largest fleet of geothermal power facilities in North America.

Both fleets utilize state-of-the-art technology to achieve our goal of environmentally friendly power generation.

## Table of Contents

Our fleet of more than 25,800 MW of modern, combined-cycle natural gas-fired power plants is highly efficient. They consume significantly less fuel to generate a MWh of electricity than older boiler/steam turbine power plants. This means that less air pollutants enter the environment per unit of electricity produced, and far less pollutants are emitted compared to electricity generated by coal-fired power plants.

Calpine's 750-MW fleet of geothermal power plants utilizes natural heat sources from within the earth to generate electricity with negligible air emissions.

The table below summarizes approximate air pollutant emission rates from Calpine's combined-cycle natural gas-fired power plants and our geothermal power plants compared to average emission rates from US coal, oil and gas-fired power plants.

**Air Pollutant Emission Rates — Pounds of Pollutant Emitted per MWh of Electricity Generated**

Air Pollutants	Average US Coal, Oil & Gas-Fired Power Plant (1)				
	Calpine Power Plants		% Less Than Avg US Plant	Geothermal Power Plant (3)	% Less Than Avg US Plant
	Combined-Cycle Power Plant (2)				
<b>Nitrogen Oxides, NO<sub>x</sub></b>					
Acid rain, smog and fine particulate formation	3.53	0.24	93.2% Less	0.00074	99.9% Less
<b>Sulphur Dioxide, SO<sub>2</sub></b>					
Acid rain and fine particulate formation	8.51	0.005	99.9% Less	0.00015	99.9% Less
<b>Mercury, Hg</b>					
Neurotoxin	0.000037	0	100% Less	0.000008	78.4% Less
<b>Carbon Dioxide, CO<sub>2</sub></b>					
Principal greenhouse gas — contributor to climate change	1,930	890	53.9% Less	85.6	95.6% Less
<b>Particulate Matter, PM</b>					
Respiratory health effects	0.5	0.038	92.4% Less	0.014	97.2% Less

- (1) The US fossil fuel fleet's emission rates were obtained from the United States Department of Energy's Electric Power Annual Report for 2003. Emission rates are based on 2003 emissions and net generation.
- (2) Calpine's combined-cycle power plant emission rates are based on 2003 data.
- (3) Calpine's geothermal power plant emission rates are based on 2003 data and include expected results from the mercury abatement program currently in process.

Calpine's environmental record has been widely recognized.

- Calpine's Board of Directors unanimously adopted a resolution restricting investments in low carbon dioxide emitting power plants.
- PSM is developing gas turbine components to improve turbine efficiency and to reduce emissions.
- Calpine Power Company has instituted a program of proprietary operating procedures to reduce gas consumption and lower air pollutant emissions per MWh of electricity generated.
- Calpine and its Chairman, President and CEO, Peter Cartwright, received the designation of "Clean Air Champion" from the New York League of Conservation Voters in recognition of our efforts to improve the quality of New York's air.
- Peter Cartwright was recognized as the "Business Leader of the Year" by *Scientific American Magazine* for his commitment to low carbon technologies.

- The American Lung Association of the Bay Area selected Calpine and its Geysers geothermal operation for the 2004 Clean Air Award for Technology Development to recognize “Calpine’s commitment to clean renewable energy, which improves air quality and helps us all breathe easier.”
- Calpine and General Electric Co. teamed up for the North America launch of GE’s most advanced gas turbine technology, the *H System*™, which will utilize a more efficient gas turbine combined-cycle system. The 775-MW project located in Southern California is expected to enter commercial operation in 2008.
- Calpine joined the US Environmental Protection Agency’s Climate Leaders Program, which is intended to encourage climate change strategies, help establish future greenhouse gas (“GHG”) emission reduction goals, and increase energy efficiency among participants. As part of Climate Leaders, Calpine will submit data on 2003 carbon dioxide (CO<sub>2</sub>) emissions from all its natural gas-fired power plants, for The Geysers — Calpine’s geothermal power generating plants in Northern California, and for Calpine natural gas production facilities located throughout the United States.
- Calpine became the first independent power producer to earn the distinction of *Climate Action Leader*™ by certifying its 2003 CO<sub>2</sub> emissions inventory with the California Climate Action Registry. Calpine is now publicly and voluntarily reporting its CO<sub>2</sub> emissions from generation of electricity in California under this rigorous registry program.

### RECENT DEVELOPMENTS

On January 13, 2005, we announced that we are evaluating strategic financial alternatives for our Saltend Energy Centre, including the potential sale of the power plant. We have retained Credit Suisse First Boston to act as our advisor and assist us with this process. Net proceeds from any sale of the facility would be used to redeem our existing \$360.0 million Two-Year Redeemable Preferred Shares and \$260.0 million Redeemable Preferred Shares Due July 30, 2005. Any remaining proceeds will be used in accordance with the asset sale provisions of our existing bond indentures.

On January 28, 2005, our indirect subsidiary Metcalf Energy Center, LLC (“Metcalf”) obtained a \$100.0 million, non-recourse credit facility for the Metcalf Energy Center in San Jose, California. Loans extended to Metcalf under the facility will fund the balance of construction activities for the 602-MW, natural gas-fired power plant. The facility will mature in July 2008.

On January 31, 2005, we received funding on a \$260.0 million offering of Redeemable Preferred Shares Due July 30, 2005 issued by our subsidiary, Calpine European Financing (Jersey) Limited. The shares were offered in a private placement in the United States under Regulation D under the Securities Act of 1933 and outside of the United States pursuant to Regulation S under the Securities Act of 1933. The Redeemable Preferred Shares, priced at U.S. LIBOR plus 850 basis points, were offered at 99% of par. The proceeds from the offering of the shares were used in accordance with the provisions of our existing bond indentures.

On February 22, 2005, we announced that our Inland Empire Energy Center site was selected for the North American launch of General Electric’s most advanced gas turbine technology, the *H System*™. We will provide construction services to GE which will initially own and operate the facility. Additionally, we will purchase a portion of the power capacity. The Inland Empire Energy Center site is located in the unincorporated community of Romoland in Riverside County, California. The project is targeted to be online by the summer of 2008 and will be capable of meeting the energy needs of almost 600,000 households in one of the fastest growing regions in the state.

On March 1, 2005, our indirect subsidiary, Calpine Steamboat Holdings, LLC, closed on a \$503.0 million non-recourse project finance facility that will provide \$466.5 million to complete the construction of the Mankato Energy Center (“Mankato”) in Blue Earth County, Minnesota, and the Freeport Energy center in Freeport, Texas. The remaining \$36.5 million of the facility provides a letter of credit for Mankato that is required to serve as collateral available to Northern States Power Company if Mankato does not meet its obligations under the power purchase agreement. The project finance facility will initially be structured as a

## Table of Contents

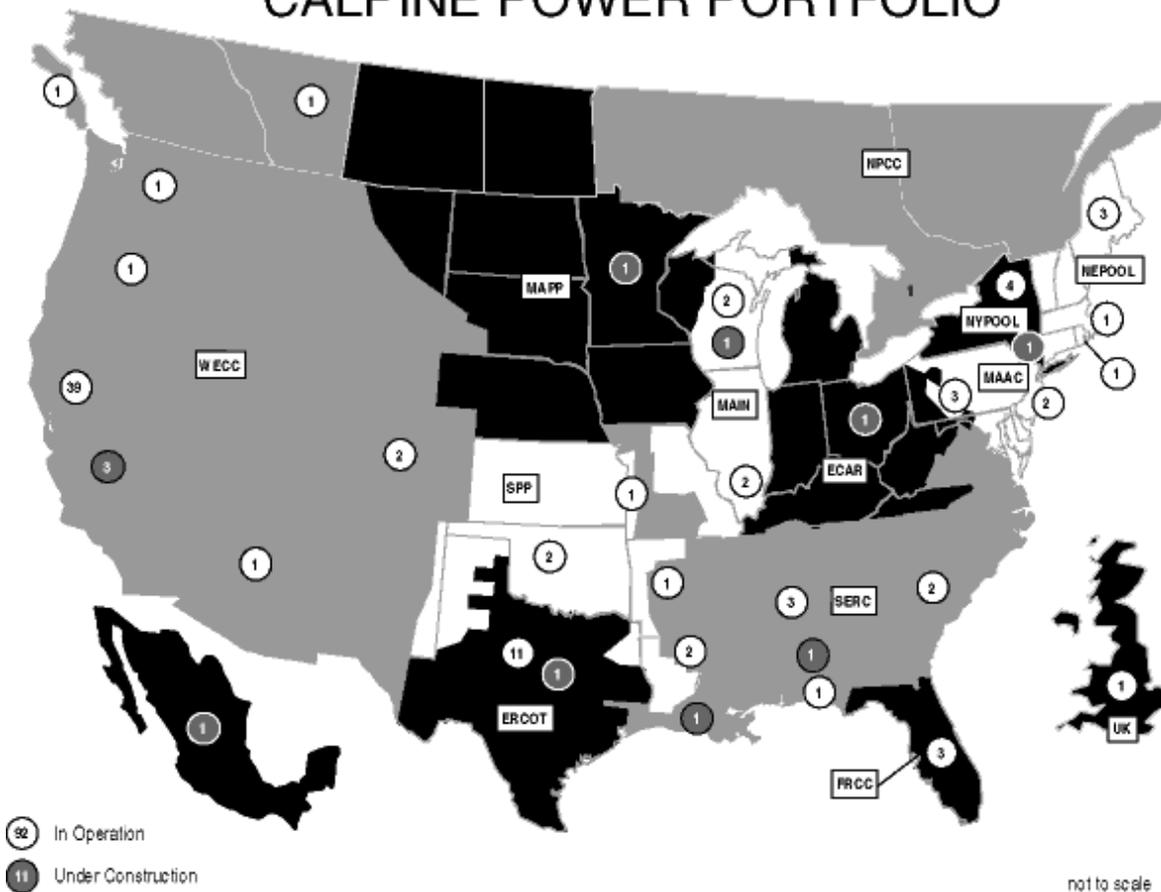
construction loan, converting to a term loan upon commercial operations of the plants, and will mature in December 2011. The facility will initially be priced at LIBOR plus 1.75%.

On March 31, 2005, our indirect subsidiary, Deer Park Energy Center, Limited Partnership (“Deer Park”), signed a 650 MW, six-year power sales agreement with Merrill Lynch Commodities, Inc. (“MLCI”). As part of this agreement, Deer Park received an upfront payment of approximately \$195 million, net of fees and expenses. Deer Park expects to receive approximately \$70 million in additional upfront payments over the next several months upon satisfying certain conditions under the power sales agreement, resulting in net payments to Deer Park totaling approximately \$265 million. Deer Park has also arranged to purchase natural gas from MLCI over the term of the power sales agreement, which will reduce the working capital required to secure a long-term fuel supply for the facility. See Note 28 of the Notes to Consolidated Financial Statements for further details regarding this transaction.

Subsequent to December 31, 2004, the Company repurchased \$31.8 million in principal amount of its outstanding 8 <sup>1</sup>/<sub>2</sub>% Senior Notes Due 2011 in exchange for \$23.0 million in cash plus accrued interest. The Company also repurchased \$48.7 million in principal amount of its outstanding 8 <sup>5</sup>/<sub>8</sub>% Senior Notes Due 2010 in exchange for \$35.0 million in cash plus accrued interest. The Company recorded a pre-tax gain on these transactions in the amount of \$22.5 million before write-offs of unamortized deferred financing costs and the unamortized premiums or discounts.

DESCRIPTION OF POWER GENERATION FACILITIES

CALPINE POWER PORTFOLIO



NERC Region/ Country	Projects	Megawatts	Market Share (NERC/UK)
WECC	49	8,382	5%
ERCOT	12	7,572	9%
SERC	11	6,365	4%
MAIN	5	2,292	3%
SPP	3	1,674	4%
NEPOOL	5	1,272	4%
FRCC	3	875	2%
MAAC	5	865	1%
ECAR	1	700	*
MAPP	1	375	1%
NYPOOL	5	334	1%
NPCC	1	7	*
<b>TOTAL NERC</b>	<b>101</b>	<b>30,713</b>	<b>3%</b>
UK	1	1,200	2%
Mexico	1	236	1%
<b>TOTAL</b>	<b>103</b>	<b>32,149</b>	<b>3%</b>

\* less than 1%.

## Table of Contents

At March 30, 2005, we had ownership or lease interests in 92 operating power generation facilities representing 26,649 MW of net capacity. Of these projects, 73 are gas-fired power plants with a net capacity of 25,899 MW, and 19 are geothermal power generation facilities with a net capacity of 750 MW. We also have 11 gas-fired projects currently under construction with a net capacity of 5,500 MW. In addition, and not included in the table above, we expect to complete construction of 10 advanced development projects with a net capacity of 6,095 MW. The timing of the completion of these projects will be based on market fundamentals and when our return on investment criteria are expected to be met, and when power sales contracts and financing are available on attractive terms. Each of the power generation facilities currently in operation produces electricity for sale to a utility, other third-party end user, or to an intermediary such as a marketing company. Thermal energy produced by the gas-fired cogeneration facilities is sold to industrial and governmental users.

Our gas-fired and geothermal power generation projects produce electricity and thermal energy that is sold pursuant to short-term and long-term power sales agreements (“PSAs”) or into the spot market. Revenue from a power sales agreement often consists of either or both of the following components: energy payments and capacity payments. Energy payments are based on a power plant’s net electrical output, and payment rates are typically either at fixed rates or indexed to fuel costs. Capacity payments are based on a power plant’s available capacity. Energy payments are earned for each kilowatt-hour of energy delivered, while capacity payments, under certain circumstances, are earned whether or not any electricity is scheduled by the customer and delivered.

Upon completion of our projects under construction, we will provide operating and maintenance services for 101 of the 103 power plants in which we have an interest. Such services include the operation of power plants, geothermal steam fields, wells and well pumps, gas fields, gathering systems and gas pipelines. We also supervise maintenance, materials purchasing and inventory control, manage cash flow, train staff and prepare operating and maintenance manuals for each power generation facility that we operate. As a facility develops an operating history, we analyze its operation and may modify or upgrade equipment or adjust operating procedures or maintenance measures to enhance the facility’s reliability or profitability. These services are sometimes performed for third parties under the terms of an operating and maintenance agreement pursuant to which we are generally reimbursed for certain costs, paid an annual operating fee and may also be paid an incentive fee based on the performance of the facility. The fees payable to us may be subordinated to any lease payments or debt service obligations of financing for the project.

In order to provide fuel for the gas-fired power generation facilities in which we have an interest, natural gas reserves are acquired or natural gas is purchased from third parties under supply agreements and gas hedging contracts. We manage a gas-fired power facility’s fuel supply so that we protect the plant’s spark spread.

We currently hold interests in geothermal leaseholds in Lake and Sonoma Counties in northern California (“The Geysers”) that produce steam that is supplied to our leased geothermal power generation facilities for use in producing electricity. In late 2003 we began to inject waste water from the City of Santa Rosa Recharge Project into our geothermal reservoirs. We expect this recharge project to extend the useful life and enhance the performance of The Geysers geothermal resources and power plants.

Certain power generation facilities in which we have an interest have been financed primarily with project financing that is structured to be serviced out of the cash flows derived from the sale of electricity and thermal energy produced by such facilities and provides that the obligations to pay interest and principal on the loans are secured almost solely by the capital stock or partnership interests, physical assets, contracts and/or cash flow attributable to the entities that own the facilities. The lenders under non-recourse project financing generally have no recourse for repayment against us or any of our assets or the assets of any other entity other than foreclosure on pledges of stock or partnership interests and the assets attributable to the entities that own the facilities.

Substantially all of the power generation facilities in which we have an interest are located on sites which we own or are leased on a long-term basis. See Item 2. “Properties.”

## Table of Contents

Set forth below is certain information regarding our operating power plants and plants under construction as of March 30, 2005.

	Megawatts				
	Number of Plants	Baseload Capacity	With Peaking Capacity	Calpine Net Interest Baseload	Calpine Net Interest with Peaking
In operation					
Geothermal power plants	19	750	750	750	750
Gas-fired power plants	73	21,930	27,189	20,753	25,899
Under construction					
New facilities	11	5,181	5,789	4,892	5,500
Total	<u>103</u>	<u>27,861</u>	<u>33,728</u>	<u>26,395</u>	<u>32,149</u>

## Operating Power Plants

Power Plant	Country, US State or Can. Province	Baseload Capacity (MW)	With Peaking Capacity (MW)	Calpine Interest Percentage	Calpine Net Interest Baseload (MW)	Calpine Net Interest with Peaking (MW)	Total 2004 Generation MWh(1)
<b>Geothermal Power Plants</b>							
Sonoma County (12 plants)	CA	456.0	456.0	100.0%	456.0	456.0	4,135,181
Lake County (2 plants)	CA	131.0	131.0	100.0%	131.0	131.0	1,114,292
Calistoga	CA	70.0	70.0	100.0%	70.0	70.0	620,520
Sonoma	CA	35.0	35.0	100.0%	35.0	35.0	375,733
West Ford Flat	CA	26.0	26.0	100.0%	26.0	26.0	227,453
Bear Canyon	CA	16.0	16.0	100.0%	16.0	16.0	142,204
Aidlin	CA	16.0	16.0	100.0%	16.0	16.0	139,256
Total Geothermal Power Plants (19)		<u>750.0</u>	<u>750.0</u>		<u>750.0</u>	<u>750.0</u>	<u>6,754,639</u>
<b>Gas-Fired Power Plants</b>							
Saltend Energy Centre	UK	1,200.0	1,200.0	100.0%	1,200.0	1,200.0	9,008,046
Freestone Energy Center	TX	1,022.0	1,022.0	100.0%	1,022.0	1,022.0	4,569,089
Deer Park Energy Center	TX	792.0	1,019.0	100.0%	792.0	1,019.0	4,798,265
Oneta Energy Center	OK	994.0	994.0	100.0%	994.0	994.0	827,661
Delta Energy Center	CA	799.0	882.0	100.0%	799.0	882.0	5,765,080
Morgan Energy Center	AL	722.0	852.0	100.0%	722.0	852.0	848,933
Decatur Energy Center	AL	793.0	852.0	100.0%	793.0	852.0	311,531
Baytown Energy Center	TX	742.0	830.0	100.0%	742.0	830.0	4,632,478
Broad River Energy Center	SC	—	847.0	100.0%	—	847.0	426,705
Pasadena Power Plant	TX	776.0	777.0	100.0%	776.0	777.0	3,932,210
Magic Valley Generating Station	TX	700.0	751.0	100.0%	700.0	751.0	2,802,004
Hermiston Power Project	OR	546.0	642.0	100.0%	546.0	642.0	4,073,944
Columbia Energy Center	SC	464.0	641.0	100.0%	464.0	641.0	542,376
Rocky Mountain Energy Center	CO	479.0	621.0	100.0%	479.0	621.0	2,080,538
Osprey Energy Center	FL	530.0	609.0	100.0%	530.0	609.0	1,492,792
Acadia Energy Center	LA	1,092.0	1,210.0	50.0%	546.0	605.0	2,521,934
Riverside Energy Center	WI	518.0	603.0	100.0%	518.0	603.0	689,659

## Table of Contents

Power Plant	Country, US State or Can. Province	Baseload Capacity (MW)	With Peaking Capacity (MW)	Calpine Interest Percentage	Calpine Net Interest Baseload (MW)	Calpine Net Interest with Peaking (MW)	Total 2004 Generation MWh(1)
Aries Power Project	MO	523.0	590.0	100.0%	523.0	590.0	839,176
Ontelaunee Energy Center	PA	561.0	584.0	100.0%	561.0	584.0	1,343,393
Channel Energy Center	TX	527.0	574.0	100.0%	527.0	574.0	3,467,759
Brazos Valley Power Plant	TX	450.0	570.0	100.0%	450.0	570.0	2,441,071
Los Medanos Energy Center	CA	497.0	566.0	100.0%	497.0	566.0	3,683,759
Sutter Energy Center	CA	535.0	543.0	100.0%	535.0	543.0	3,475,986
Corpus Christi Energy Center	TX	414.0	537.0	100.0%	414.0	537.0	2,297,928
Texas City Power Plant	TX	457.0	534.0	100.0%	457.0	534.0	2,389,041
Carville Energy Center	LA	455.0	531.0	100.0%	455.0	531.0	1,755,790
South Point Energy Center	AZ	520.0	530.0	100.0%	520.0	530.0	2,900,047
Westbrook Energy Center	ME	528.0	528.0	100.0%	528.0	528.0	3,451,414
Zion Energy Center	IL	—	513.0	100.0%	—	513.0	29,978
RockGen Energy Center	WI	—	460.0	100.0%	—	460.0	240,072
Clear Lake Power Plant	TX	344.0	400.0	100.0%	344.0	400.0	1,397,923
Hidalgo Energy Center	TX	392.0	392.0	78.5%	307.7	307.7	1,931,793
Blue Spruce Energy Center	CO	—	285.0	100.0%	—	285.0	149,316
Goldendale Energy Center	WA	237.0	271.0	100.0%	237.0	271.0	210,601
Tiverton Power Plant	RI	267.0	267.0	100.0%	267.0	267.0	1,860,478
Rumford Power Plant	ME	263.0	263.0	100.0%	263.0	263.0	1,664,835
Santa Rosa Energy Center	FL	250.0	250.0	100.0%	250.0	250.0	17,848
Hog Bayou Energy Center	AL	235.0	237.0	100.0%	235.0	237.0	120,000
Pine Bluff Energy Center	AR	184.0	215.0	100.0%	184.0	215.0	1,450,765
Los Esteros Critical Energy Center	CA	—	188.0	100.0%	—	188.0	278,873
Dighton Power Plant	MA	170.0	170.0	100.0%	170.0	170.0	639,784
Morris Power Plant	IL	137.0	156.0	100.0%	137.0	156.0	562,882
Auburndale Power Plant	FL	150.0	150.0	100.0%	150.0	150.0	901,206
Gilroy Peaking Energy Center	CA	—	135.0	100.0%	—	135.0	72,388
Gilroy Power Plant	CA	117.0	128.0	100.0%	117.0	128.0	274,311
King City Power Plant	CA	120.0	120.0	100.0%	120.0	120.0	952,050
Parlin Power Plant	NJ	98.0	118.0	100.0%	98.0	118.0	109,994
Auburndale Peaking Energy Center	FL	—	116.0	100.0%	—	116.0	9,495
Kennedy International Airport Power Plant (“KIAC”)	NY	99.0	105.0	100.0%	99.0	105.0	577,632
Pryor Power Plant	OK	38.0	90.0	100.0%	38.0	90.0	342,127
Grays Ferry Power Plant	PA	166.0	175.0	50.0%	83.0	87.5	618,319
Calgary Energy Centre	AB	252.0	286.0	30.0%	75.6	85.8	891,629
Island Cogeneration	BC	219.0	250.0	30.0%	65.7	75.0	1,663,518
Pittsburg Power Plant	CA	64.0	64.0	100.0%	64.0	64.0	211,005
Bethpage Power Plant	NY	55.0	56.0	100.0%	55.0	56.0	271,594
Newark Power Plant	NJ	50.0	56.0	100.0%	50.0	56.0	203,019
Greenleaf 1 Power Plant	CA	49.5	49.5	100.0%	49.5	49.5	341,427
Greenleaf 2 Power Plant	CA	49.5	49.5	100.0%	49.5	49.5	328,262

## Table of Contents

Power Plant	Country, US State or Can. Province	Baseload Capacity (MW)	With Peaking Capacity (MW)	Calpine Interest Percentage	Calpine Net Interest Baseload (MW)	Calpine Net Interest with Peaking (MW)	Total 2004 Generation MWh(1)
Wolfskill Energy Center	CA	—	48.0	100.0%	—	48.0	21,900
Yuba City Energy Center	CA	—	47.0	100.0%	—	47.0	18,558
Feather River Energy Center	CA	—	47.0	100.0%	—	47.0	17,034
Creed Energy Center	CA	—	47.0	100.0%	—	47.0	10,483
Lambie Energy Center	CA	—	47.0	100.0%	—	47.0	16,156
Goose Haven Energy Center	CA	—	47.0	100.0%	—	47.0	11,193
Riverview Energy Center	CA	—	47.0	100.0%	—	47.0	17,637
Stony Brook Power Plant	NY	45.0	47.0	100.0%	45.0	47.0	329,168
Bethpage Peaking Energy Center	NY	—	46.0	100.0%	—	46.0	112,033
King City Peaking Energy Center	CA	—	45.0	100.0%	—	45.0	21,545
Androscoggin Energy Center	ME	136.0	136.0	32.3%	44.0	44.0	680,898
Watsonville Power Plant	CA	29.0	30.0	100.0%	29.0	30.0	206,244
Agnews Power Plant	CA	28.0	28.0	100.0%	28.0	28.0	197,810
Philadelphia Water Project	PA	—	23.0	83.0%	—	19.1	—
Whitby Cogeneration	ON	50.0	50.0	15.0%	7.5	7.5	—
Total Gas-Fired Power Plants(73)		<u>21,930.0</u>	<u>27,189.0</u>		<u>20,753.0</u>	<u>25,899.0</u>	<u>97,371,392</u>
Total Operating Power Plants(92)		<u>22,680.0</u>	<u>27,939.0</u>		<u>21,503.0</u>	<u>26,649.0</u>	<u>104,126,031</u>
Consolidated Projects including plants with operating leases		21,236.0	26,368.0		20,822.0	25,905.0	
Equity (Unconsolidated) Projects		1,444.0	1,571.0		681.0	744.0	

(1) Generation MWh is shown here as 100% of each plant's gross generation in MWh.

### Projects Under Construction (All gas-fired)

Power Plant	US State	Baseload Capacity (MW)	With Peaking Capacity (MW)	Calpine Interest Percentage	Calpine Net Interest Baseload (MW)	Calpine Net Interest With Peaking (MW)
<b>Projects Under Construction</b>						
Hillabee Energy Center	AL	710.0	770.0	100.0%	710.0	770.0
Pastoria Energy Center	CA	759.0	769.0	100.0%	759.0	769.0
Fremont Energy Center	OH	550.0	700.0	100.0%	550.0	700.0
Metcalf Energy Center	CA	556.0	602.0	100.0%	556.0	602.0
Otay Mesa Energy Center	CA	510.0	593.0	100.0%	510.0	593.0
Washington Parish Energy Center	LA	509.0	565.0	100.0%	509.0	565.0
Fox Energy Center	WI	490.0	560.0	100.0%	490.0	560.0
Mankato Power Plant	MN	292.0	375.0	100.0%	292.0	375.0
Freeport Energy Center	TX	200.0	250.0	100.0%	200.0	250.0
Valladolid III Energy Center	Mexico	525.0	525.0	45.0%	236.3	236.3
Bethpage Energy Center 3	NY	79.9	79.9	100.0%	79.9	79.9
Total Projects Under Construction		<u>5,180.9</u>	<u>5,788.9</u>		<u>4,892.2</u>	<u>5,500.2</u>

## ACQUISITIONS OF POWER PROJECTS AND PROJECTS UNDER CONSTRUCTION

We have extensive experience in the development and acquisition of power generation projects. We have historically focused principally on the development and acquisition of interests in gas-fired and geothermal power projects, although we may also consider projects that utilize other power generation technologies. We have significant expertise in a variety of power generation technologies and have substantial capabilities in each aspect of the development and acquisition process, including design, engineering, procurement, construction management, fuel and resource acquisition and management, power marketing, financing and operations.

As indicated above under “Strategy,” our development and acquisition activities have been scaled back, for the indefinite future, to focus on liquidity and operational priorities.

### Acquisitions

We may consider acquisitions of interests in operating projects as well as projects under development where we would assume responsibility for completing the development of the project. In the acquisition of power generation facilities, we generally seek to acquire 100% ownership of facilities that offer us attractive opportunities for earnings growth, and that permit us to assume sole responsibility for the operation and maintenance of the facility. In evaluating and selecting a project for acquisition, we consider a variety of factors, including the type of power generation technology utilized, the location of the project, the terms of any existing power or thermal energy sales agreements, gas supply and transportation agreements and wheeling agreements, the quantity and quality of any geothermal or other natural resource involved, and the actual condition of the physical plant. In addition, we assess the past performance of an operating project and prepare financial projections to determine the profitability of the project. Acquisition activity is dependent on the availability of financing on attractive terms, the expectation of returns that meet our long-term requirements and consistency with our long-term liquidity objectives.

Although our preference is to own 100% of the power plants we acquire or develop, there are situations when we take less than 100% ownership. Examples of situations in which we took or may take less than a 100% interest in a power plant include: (a) our acquisitions of other IPPs such as Cogeneration Corporation of America in 1999 and SkyGen Energy LLC in 2000 in which minority interest projects were included in the portfolio of assets owned by the acquired entities (Grays Ferry Power Plant (50% now owned by Calpine) and Androscoggin Energy Center (32.3% now owned by Calpine), respectively); (b) opportunities to co-invest with non-regulated subsidiaries of regulated electric utilities, which under PURPA are restricted to 50% ownership of cogeneration qualifying facilities; and (c) opportunities to invest in merchant power projects with partners who bring marketing, funding, permitting or other resources that add value to a project, for example, Acadia Energy Center in Louisiana (50% owned by Calpine and 50% owned by Cleco Midstream Resources, an affiliate of Cleco Corporation). None of our equity investment or cost method projects have nominal carrying values as a result of material recurring losses except for Androscoggin Energy Center, which filed for bankruptcy protection in November 2004. See Note 6 of the Notes to Consolidated Financial Statements for further details. Further, there is no history of impairment in any of these investments except the Androscoggin project.

### Projects Under Construction

The development and construction of power generation projects involves numerous elements, including evaluating and selecting development opportunities, designing and engineering the project, obtaining PSAs in some cases, acquiring necessary land rights, permits and fuel resources, obtaining financing, procuring equipment and managing construction. We intend to focus on completing projects already in construction and starting new projects only when power contracts and financing are available and attractive returns are expected.

*Hillabee Energy Center.* On February 24, 2000, we announced plans to build, own and operate the Hillabee Energy Center, a 770 MW, natural gas-fired cogeneration facility in Tallapoosa County, Alabama.

## Table of Contents

The project is 75% complete, but we have suspended further construction activity until a power contract is available. We expect commercial operation of the facility will commence in 2007 or later.

*Pastoria Energy Center.* In April 2001 we acquired the rights to develop the 769 MW Pastoria Energy Center, a combined-cycle project planned for Kern County, California. Construction began in mid-2001, and commercial operation is scheduled to begin in May 2005 for phase one and in June 2005 for phase two.

*Fremont Energy Center.* On May 23, 2000, we announced plans to build, own and operate the Fremont Energy Center, a 700 MW natural gas-fired electricity generating facility to be located near Fremont, Ohio. The project is 68% complete, but we have suspended further construction activity until a power contract is available. Commercial operation is expected to commence in the summer of 2007 or later.

*Metcalf Energy Center.* On April 30, 1999, we submitted an Application for Certification with the California Energy Commission (“CEC”) to build, own and operate the Metcalf Energy Center, a 602 MW natural gas-fired electricity generating facility located in San Jose, California. Construction of the facility began in June 2002, and commercial operation is anticipated to commence in the summer of 2005.

*Otay Mesa Energy Center.* On July 10, 2001, we acquired Otay Mesa Generating Company, LLC and the associated development rights including a license from the CEC. The 593 MW facility is located in southern San Diego County, California. Construction began in 2001. In October 2003 we signed a term sheet setting forth the principal terms and conditions for a ten-year, 570 MW power sales agreement with San Diego Gas & Electric Co. (“SDG&E”). Under the final agreement, we will supply electricity to SDG&E from the Otay Mesa Energy Center. Power deliveries are scheduled to begin in 2007.

*Washington Parish Energy Center.* On January 26, 2001, we announced the acquisition of the development rights from Cogentrix Energy, Inc., an independent power company based in North Carolina, for the 565 MW Washington Parish Energy Center, located near Bogalusa, Louisiana. The project is 72% complete, but we have suspended further construction activity until a power contract is available. We expect commercial operation of the facility will commence in 2007 or later.

*Fox Energy Center.* In 2003 we acquired the fully permitted development rights to the 560 MW Fox Energy Center in Kaukauna, Wisconsin, which will be used to fulfill an existing contract with Wisconsin Public Service. Commercial operation is expected to begin in the fall of 2005, and in December 2005 for Phase Two. We entered into a financing transaction with respect to Fox Energy Center in November 2004.

*Freeport Energy Center.* In May 2004 we announced plans to build and own a 250 MW, natural gas-fired cogeneration energy center in Freeport, Texas. Under a 25-year agreement, up to 200 MW of electricity and one million pounds per hour of steam generated at the facility will be sold to the Dow Chemical Co. (“Dow”) Freeport, Texas, facility. Dow will operate this facility. Construction of the facility began in June 2004. Commercial operations will commence in multiple phases, with the first phases expected to occur in the fall of 2005 and the last phase in November 2006.

*Mankato Power Plant.* In March 2004 we announced plans to build, own and operate a 375 MW, natural gas-fired power plant in Mankato, Minnesota. Electric power generated at the facility will be sold to Northern States Power Co. under a 20-year purchased power agreement. Construction began in March 2004 and we expect commercial operation of the facility to commence in June 2006.

*Valladolid III Energy Center.* In October 2003 we announced, together with Mitsui & Co., Ltd. (“Mitsui”) of Tokyo, Japan, an intention to build, own and operate a 525 MW, natural gas-fired energy center for Comision Federal de Electricidad (“CFE”) at Valladolid in the Yucatan Peninsula. The facility will deliver electricity to CFE under a 25-year power sales agreement. We are supplying two combustion gas turbines to the project, giving us a 45-percent interest in the facility. Mitsui and Chubu Electric will own the remaining interest. Construction began in May 2004 and we expect commercial operation of the facility to commence in June 2006.

*Bethpage Energy Center 3.* In May 2004 we announced plans to build, own and operate a 79.9 MW, natural gas-fired energy center in Hicksville, New York, adjacent to our existing cogeneration facility, the Bethpage Power Plant. Electricity generated at the facility will be sold to the Long Island Power Authority

("LIPA") under a 20-year power contract, which includes capacity and related energy and ancillary services. Construction began in July 2004 and commercial operation is expected to commence in July 2005.

### OIL AND GAS PROPERTIES

In 1997, we began an equity gas strategy to diversify the gas sources for our natural gas-fired power plants by purchasing Montis Niger, Incorporated, a gas production and pipeline company operating primarily in the Sacramento Basin in northern California. We currently supply the majority of the fuel requirements for the Greenleaf 1 and 2 Power Plants from these reserves. In October 1999, we purchased Sheridan Energy, Inc. ("Sheridan"), a natural gas exploration and production company operating in northern California and the Gulf Coast region. The Sheridan acquisition provided the initial management team and operational infrastructure to evaluate and acquire oil and gas reserves to keep pace with our growth in gas-fired power plants. In December 1999, we added Vintage Petroleum, Inc.'s interest in the Rio Vista Gas Unit and related areas, representing primarily natural gas reserves located in the Sacramento Basin in northern California. Sheridan was merged into Calpine in April 2000 and Calpine Natural Gas L.P. ("CNGLP") was subsequently established to manage our oil and gas properties in the U.S. On April 19, 2001, we completed a merger with Encal Energy Ltd., a Calgary, Alberta-based natural gas and petroleum exploration and development company. Upon completion of the acquisition, we gained approximately 664 Bcfe of proved natural gas reserves, net of royalties. This transaction also provided access to firm gas transportation capacity from Western Canada to California and the eastern U.S. On October 22, 2001, we completed the acquisition of 100% of the voting stock of Michael Petroleum Corporation, a natural gas exploration and production company. The acquired assets consisted of approximately 531 wells, producing approximately 33.5 Mmcfe per day totaling approximately 82,590 net acres.

In 2002, 2003 and 2004, certain divestments were completed to further focus operations on gas production and to enhance liquidity. In October 2003 we established the Calpine Natural Gas Trust ("CNGT") by selling a portion of our Canadian reserves to the publicly traded trust. We retained a 25% interest in CNGT, which had proved reserves of approximately 72 Bcfe (18 Bcfe, net to Calpine's equity interest) at December 31, 2003. In September 2004 we sold our Rocky Mountain gas reserves in the New Mexico San Juan Basin and Colorado Piceance Basin for approximately \$218.7 million in net cash. Contemporaneously, we completed the sale of our Canadian natural gas reserves and petroleum assets, including the 25% interest in CNGT, for approximately Cdn\$841.7 million (US\$651.4 million) in net cash. These divestments are discussed in detail under Note 10 of the Notes to Consolidated Financial Statements.

Equity equivalent net production from U.S. continuing operations averaged approximately 112 MMcfe/day for the year ended December 31, 2004, enough to fuel approximately 1,340 MW of our power plant fleet, assuming an average capacity factor of 50%. We are currently (in March 2005) capable of producing, net to Calpine's interest, approximately 89 MMcfe of natural gas per day.

During the year ended December 31, 2004, we recorded impairment charges of \$202.1 million related to reduced proved reserve projections based on the year end independent engineer's report. See Note 4 of the Notes to Consolidated Financial Statements for more information on the impairment charge.

### MARKETING, HEDGING, OPTIMIZATION, AND TRADING ACTIVITIES

Most of the electric power generated by our plants is transferred to our marketing and risk management unit, CES, which sells it to load-serving entities such as utilities, industrial and large retail end users, and to other third parties including power trading and marketing companies. Because a sufficiently liquid market does not exist for electricity financial instruments (typically, exchange and over-the-counter traded contracts that net settle rather than entail physical delivery) at most of the locations where we sell power, CES also enters into physical purchase and sale transactions as part of its hedging, balancing and optimization activities.

The hedging, balancing and optimization activities that we engage in are directly related to exposures that arise from our ownership and operation of power plants and gas reserves and are designed to protect or enhance our "spark spread" (the difference between our fuel cost and the revenue we receive for our electric

generation). In many of these transactions CES purchases and resells power and gas in contracts with third parties.

We utilize derivatives, which are defined in Statement of Financial Accounting Standards (“SFAS”) No. 133, “Accounting for Derivative Instruments and Hedging Activities,” (“SFAS No. 133”) as amended by SFAS No. 138, “Accounting for Certain Derivative Investments,” (“SFAS No. 138”) and SFAS No. 149, “Amendment of Statement 133 on Derivative Investment Hedging Activities,” (“SFAS No. 149”) to include many physical commodity contracts and commodity financial instruments such as exchange-traded swaps and forward contracts, to optimize the returns that we are able to achieve from our power and gas assets. From time to time we have entered into contracts considered energy trading contracts under Emerging Issues Task Force (“EITF”) Issue No. 02-03, “Issues Related to Accounting for Contracts Involved in Energy Trading and Risk Management Activities” (“EITF Issue No. 02-03”). However, our risk managers have low capital at risk and value at risk limits for energy trading, and our risk management policy limits, at any given time, our net sales of power to our generation capacity and limits our net purchases of gas to our fuel consumption requirements on a total portfolio basis. This model is markedly different from that of companies that engage in significant commodity trading operations that are unrelated to underlying physical assets. Derivative commodity instruments are accounted for under the requirements of SFAS No. 133. The EITF reached a consensus under EITF Issue No. 02-03 that gains and losses on derivative instruments within the scope of SFAS No. 133 should be shown net in the income statement if the derivative instruments are held for trading purposes. In addition we present on a net basis certain types of hedging, balancing and optimization revenues and costs of revenue under EITF Issue No. 03-11, “Reporting Realized Gains and Losses on Derivative Instruments That Are Subject to FASB Statement No. 133 and Not ‘Held for Trading Purposes’ As Defined in EITF Issue No. 02-03: ‘Issues Involved in Accounting for Derivative Contracts Held for Trading Purposes and Contracts Involved in Energy Trading and Risk Management Activities’ ” (“EITF Issue No. 03-11”), which we adopted prospectively on October 1, 2003. See Item 7 — “Management’s Discussion and Analysis — Application of Critical Accounting Policies” and Note 2 to the Consolidated Financial Statements for a discussion of the effects of adopting this standard.

In some instances economic hedges may not be designated as hedges for accounting purposes. An example of an economic hedge that is not a hedge for accounting purposes would be a long-term fixed price electric sales contract that economically hedges us against the risk of falling electric prices, but which for accounting purposes can be exempted from derivative accounting under SFAS No. 133 as a normal purchase and sale. For a further discussion of our derivative accounting methodology, see Item 7 — “Management’s Discussion and Analysis of Financial Condition and Results of Operation — Application of Critical Accounting Policies.”

### GOVERNMENT REGULATION

We are subject to complex and stringent energy, environmental and other governmental laws and regulations at the federal, state and local levels in connection with the development, ownership and operation of our energy generation facilities. Federal laws and regulations govern transactions by electric and gas utility companies, the types of fuel which may be utilized by an electricity generating plant, the type of energy which may be produced by such a plant, the ownership of a plant, and access to and service on the transmission grid. In most instances, public utilities that serve retail customers are subject to rate regulation by the state’s related utility regulatory commission. A state utility regulatory commission is often primarily responsible for determining whether a public utility may recover the costs of wholesale electricity purchases or other supply procurement-related activities through the retail rates the utility charges its customers. The state utility regulatory commission may, from time to time, impose restrictions or limitations on the manner in which a public utility may transact with wholesale power sellers, such as independent power producers. Under certain circumstances where specific exemptions are otherwise unavailable, state utility regulatory commissions may have broad jurisdiction over non-utility electric power plants. Energy producing facilities also are subject to federal, state and local laws and administrative regulations which govern the emissions and other substances produced, discharged or disposed of by a plant and the geographical location, zoning, land use and operation of a plant. Applicable federal environmental laws typically have both state and local enforcement and

implementation provisions. These environmental laws and regulations generally require that a wide variety of permits and other approvals be obtained before the commencement of construction or operation of an energy producing facility and that the facility then operate in compliance with such permits and approvals.

In light of the circumstances in California, the Pacific Gas and Electric Company (“PG&E”) bankruptcy and the Enron Corp. (“Enron”) bankruptcy, among other events in recent years, there are a number of federal legislative and regulatory initiatives that could result in changes in how the energy markets are regulated. We do not know whether these legislative and regulatory initiatives will be adopted or, if adopted, what form they may take. We cannot provide assurance that any legislation or regulation ultimately adopted would not adversely affect our existing projects. See the risk factors set forth under “— Risk Factors — California Power Market” and “— Government Regulations.”

### **Federal Energy Regulation**

#### ***PURPA***

The Public Utility Regulatory Policies Act of 1978, as amended (“PURPA”), and the regulations adopted thereunder by the Federal Energy Regulatory Commission (“FERC”) provide certain incentives for cogeneration facilities and small power production facilities, which satisfy FERC’s criteria for qualifying facility status (“QFs”). First, FERC’s implementing regulations exempt most QFs from the Public Utility Holding Company Act of 1935, as amended (“PUHCA”), many provisions of the Federal Power Act (“FPA”), and state laws concerning rate, financial, and organizational regulation. These exemptions are important to us and our competitors. Second, FERC’s regulations require that electric utilities purchase electricity generated by QFs at a price based on the purchasing utility’s avoided cost, and that the utility sell back-up power to the QF on a non-discriminatory basis. FERC’s regulations define “avoided costs” as the incremental costs to an electric utility of electric energy or capacity, or both, which, but for the purchase from QFs, such utility would generate itself or purchase from another source.

To be a QF, a cogeneration facility must produce electricity and useful thermal energy for an industrial or commercial process or heating or cooling applications in certain proportions to the facility’s total energy output, and must meet certain efficiency standards. A geothermal small power production facility may qualify as a QF if, in most cases, its generating capability does not exceed 80 megawatts. Finally, no more than 50% of the equity of a QF can be owned by one or more electric utilities or their affiliates.

We believe that each of the facilities in which we own an interest and which operates as a QF meets or will meet the requirements for QF status. Certain factors necessary to maintain QF status are, however, subject to the risk of events outside our control. For example, some of our facilities have temporarily been rendered incapable of meeting such requirements due to the loss of a thermal energy customer and we have obtained limited waivers (for up to two years) of the applicable QF requirements from FERC. We cannot provide assurance that such waivers will in every case be granted. During any such waiver period, we would seek to replace the thermal energy customer or find another use for the thermal energy which meets PURPA’s requirements, but no assurance can be given that these remedial actions would be available.

If one of our facilities should lose its QF status, the facility would no longer be entitled to the exemptions from PUHCA and the FPA. Loss of QF status could also trigger certain rights of termination under the facility’s power sales agreement, could subject the facility to rate regulation as a public utility under the FPA and state law, and could result in us inadvertently becoming an electric utility holding company by owning more than 10% of the voting securities of, or controlling, a public utility company that would no longer be exempt from PUHCA. Loss of the PUHCA exemption could cause all of our remaining QFs to lose their respective QF status, because no more than 50% of a QF’s equity may be owned by such electric utility holding companies. Loss of QF status may also trigger defaults under covenants to maintain QF status in the projects’ power sales agreements, steam sales agreements and financing agreements and may result in termination, penalties or acceleration of indebtedness under such agreements.

Under Section 32 of PUHCA, the owner of a facility can become an Exempt Wholesale Generator (“EWG”) if the owner is engaged directly, or indirectly through one or more affiliates, and exclusively in the

## Table of Contents

business of owning and/or operating an eligible electric generating facility and all of the facility's output is sold at wholesale for resale rather than directly to end users. As an EWG, the owner of the eligible generating facility is exempt from PUHCA even if the generating facility does not qualify as a QF. Therefore, another possible response to the loss or potential loss of QF status would be to apply to have the facility's owner qualify as an EWG. However, assuming this changed status would be permissible under the terms of the applicable power sales agreement, rate approval from FERC would be required. In addition, the facility would be required to cease selling electricity to any retail electric customers (such as the thermal energy customer) to retain its EWG status.

### **Public Utility Holding Company Regulation**

Under PUHCA, any corporation, partnership or other defined entity which owns or controls 10% or more of the outstanding voting securities of a public utility company, or a company which is a holding company for a public utility company, is subject to registration with the Securities and Exchange Commission ("SEC") and regulation under PUHCA, unless eligible for an exemption or unless an appropriate application is filed with, and an order is granted by, the SEC declaring the applicant not to be a holding company. A holding company of a public utility company that is subject to registration is required by PUHCA to limit its utility operations to a single integrated utility system and to divest any other operations not functionally related to the operation of that utility system. Approval by the SEC is required for nearly all important financial and business transactions to be conducted by a registered holding company. Under PURPA, most QFs are exempt from regulation under PUHCA.

The Energy Policy Act of 1992, among other things, amends PUHCA to allow EWGs, under certain circumstances, to own and operate non-QF electric generating facilities without subjecting those producers to registration or regulation under PUHCA. The effect of such amendments has been to enhance the development of non-QFs which do not have to meet the fuel, production and ownership requirements of PURPA. We believe that these amendments benefit us by expanding our ability to own and operate facilities that do not qualify for QF status. However, the creation of an EWG class of generators has also resulted in increased competition by allowing utilities and their affiliates to develop such facilities which are not subject to the constraints of PUHCA.

### **Federal Natural Gas Transportation Regulation**

We have an ownership interest in 84 gas-fired power plants in operation or under construction. The cost of natural gas is ordinarily the largest expense of a gas-fired project and is critical to the project's economics. The risks associated with using natural gas can include the need to arrange gathering, processing, extraction, blending, and storage, as well as transportation of the gas from great distances, including obtaining removal, export and import authority if the gas is transported from Canada; the possibility of interruption of the gas supply or transportation (depending on the quality of the gas reserves purchased or dedicated to the project, the financial and operating strength of the gas supplier, whether firm or non-firm transportation is purchased and the operations of the gas pipeline); and obligations to take a minimum quantity of gas and pay for it (i.e., take-and-pay obligations).

Pursuant to the Natural Gas Act, FERC has jurisdiction over the transportation and storage of natural gas in interstate commerce. With respect to most transactions that do not involve the construction of pipeline facilities, regulatory authorization can be obtained on a self-implementing basis. However, interstate pipeline rates and terms and conditions for such services are subject to continuing FERC oversight.

### **Federal Power Act Regulation**

Under the Federal Power Act ("FPA"), FERC is authorized to regulate the transmission of electric energy and the sale of electric energy at wholesale in interstate commerce. Unless otherwise exempt, any person that owns or operates facilities used for such purposes is a public utility subject to FERC jurisdiction. FERC regulation under the FPA includes approval of the disposition of FERC-jurisdictional utility property, authorization of the issuance of securities by public utilities, regulation of the rates, terms and conditions for

## Table of Contents

the transmission or sale of electric energy at wholesale in interstate commerce, the regulation of interlocking directorates, and the imposition of a uniform system of accounts and reporting requirements for public utilities.

FERC regulations implementing PURPA provide that a QF is exempt from regulation under the foregoing provisions of the FPA. An EWG is not exempt from the FPA and therefore an EWG that makes sales of electric energy at wholesale in interstate commerce is subject to FERC regulation as a public utility. However, many of the regulations which customarily apply to traditional public utilities have been waived or relaxed for EWGs and other non-traditional public utilities that can demonstrate that they cannot exercise market power. Upon making the necessary showing, EWGs meeting FERC's requirements are granted authorization to charge market-based rates, blanket authority to issue securities, and waivers of certain FERC requirements pertaining to accounts, reports and interlocking directorates. The granting of such authorities and waivers is intended to implement FERC's policy to foster a more competitive wholesale power market.

Many of the generating projects in which we own an interest are or will be operated as QFs and therefore are or will be exempt from FERC regulation under the FPA. However, the majority of our generating projects are or will be EWGs, most of which are or will be subject to FERC jurisdiction under the FPA. Several of our affiliates have been granted authority to engage in sales at market-based rates and blanket authority to issue securities, and have also been granted certain waivers of FERC regulations available to non-traditional public utilities; however, we cannot assure that such authorities or waivers will not be revoked for these affiliates or will be granted in the future to other affiliates.

### **Federal Open Access Electric Transmission Regulation**

In 1996, FERC issued Order Nos. 888 and 889, introducing competitive reforms and increasing access to the electric power grid. Order No. 888 required the "functional unbundling" of transmission and generation assets by the transmission-owning utilities subject to its jurisdiction. Under Order No. 888, the jurisdictional transmission-owning utilities, and many non-jurisdictional transmission owners (through reciprocity requirements), were required to adopt FERC's pro forma open access transmission tariff establishing terms of non-discriminatory transmission service. Order No. 889 required transmission-owning utilities to provide the public with an electronic system for buying and selling transmission capacity in transactions with the utilities and abide by specific standards of conduct when using their transmission systems to make wholesale sales of power. In addition, these orders established the operational requirements of Independent System Operators ("ISO"), which are entities that have been given authority to operate the transmission assets of certain jurisdictional and non-jurisdictional utilities in a particular region. The interpretation and application of the requirements of Order Nos. 888 and 889 continues to be refined through subsequent FERC proceedings. These orders have been subject to review, and those parts of the orders that have been the subject of judicial appeals have been affirmed, in large part, by the courts.

In addition to its Open Access efforts under Order Nos. 888 and 889, our business can be affected by a variety of other FERC policies and proposals, including Order No. 2000, issued in December 1999, which was designed to encourage the voluntary formation of Regional Transmission Organizations; a proposed "Standard Market Design," issued in July 2002 under which the allocation of transmission capacity, the dispatch of generation in light of transmission constraints, the coordination of transmission upgrades and allocation of associated costs, and other issues would be addressed through a set of standard rules; and Order No. 2003, issued in July 2003, which established uniform procedures for generator interconnection to the transmission grid. All of these policies and proposals continue to evolve, and FERC may amend or revise them, or may introduce new policies or proposals, in the future. In addition, such policies and proposals, in their final form, would be subject to potential judicial review. The impact of such policies and proposals on our business is uncertain and cannot be predicted at this time.

### **Western Energy Markets**

There was significant price volatility in both wholesale electricity and gas markets in the Western United States for much of calendar year 2000 and extending through the second quarter of 2001. Due to a number of

factors, including drier than expected weather, which led to lower than normal hydro-electric capacity in California and the Northwestern United States, inadequate natural gas pipeline and electric generation capacity to meet higher than anticipated energy demand in the region, the inability of the California utilities to manage their exposure to such price volatility due to regulatory and financial constraints, and evolving market structures in California, prices for electricity and natural gas were much higher than anticipated. A number of federal and state investigations and proceedings were commenced to address the crisis.

There are currently a number of proceedings pending at FERC which were initiated as a direct result of the price levels and volatility in the energy markets in the Western United States during this period. Many of these proceedings were initiated by buyers of wholesale electricity seeking refunds for purchases made during this period or the reduction of price terms in contracts entered into at this time. We have been a party to some of these proceedings. See “— Risk Factors — California Power Market” and “Legal Proceedings” in Note 25 of the Notes to Consolidated Financial Statements. As part of certain proceedings, and as a result of its own investigations, FERC has ordered the implementation of certain measures for wholesale electricity markets in California and the Western United States, including, the implementation of price caps on the day ahead or real-time prices for electricity and a continuing obligation of electricity generators to offer uncommitted generation capacity to the California Independent System Operator. FERC is continuing to investigate the causes of the price volatility in the Western United States during this period. It is uncertain at this time when these proceedings and investigations at FERC will conclude or what will be the final resolution thereof. See “— Risk Factors — California Power Market” below.

Other federal and state governmental entities have and continue to conduct various investigations into the causes of the price volatility in the energy markets in the Western United States during 2000-2001. It is uncertain at this time when these investigations will conclude or what the results may be. The impact on our business of the results of the investigations cannot be predicted at this time.

### State Regulation

State public utility commissions (“PUCs”) have historically had broad authority to regulate both the rates charged by, and the financial activities of, electric utilities operating in their states and to promulgate regulation for implementation of PURPA. Since a power sales agreement becomes a part of a utility’s cost structure (generally reflected in its retail rates), power sales agreements with independent electricity producers, such as EWGs, are potentially under the regulatory purview of PUCs and in particular the process by which the utility has entered into the power sales agreements. If a PUC has approved the process by which a utility secures its power supply, a PUC is generally inclined to authorize the purchasing utility to pass through to the utility’s retail customers the expenses associated with a power purchase agreement with an independent power producer. However, a regulatory commission under certain circumstances may not allow the utility to recover through retail rates its full costs to purchase power from a QF or an EWG. In addition, retail sales of electricity or thermal energy by an independent power producer may be subject to PUC regulation depending on state law. Independent power producers which are not QFs under PURPA, or EWGs pursuant to the Energy Policy Act of 1992, are considered to be public utilities in many states and are subject to broad regulation by a PUC, ranging from requirement of certificate of public convenience and necessity to regulation of organizational, accounting, financial and other corporate matters. Because all of Calpine’s affiliates are either QFs or EWGs, none of its affiliates are currently subject to such regulation. However, states may also assert jurisdiction over the siting and construction of electricity generating facilities including QFs and EWGs and, with the exception of QFs, over the issuance of securities and the sale or other transfer of assets by these facilities. In California, for example, the PUC has been required by statute to adopt and enforce maintenance and operation standards for generating facilities “located in the state,” including EWGs but excluding QFs, for the purpose of ensuring their reliable operation. The adopted standards are now in effect.

State PUCs also have jurisdiction over the transportation of natural gas by local distribution companies (“LDCs”). Each state’s regulatory laws are somewhat different; however, all generally require the LDC to obtain approval from the PUC for the construction of facilities and transportation services if the LDCs generally applicable tariffs do not cover the proposed transaction. LDC rates are usually subject to continuing

## **Table of Contents**

PUC oversight. We own and operate numerous midstream assets in a number of states where we have plants and/or oil and gas production.

### **Environmental Regulations**

The exploration for and development of geothermal resources, oil, gas liquids and natural gas, and the construction and operation of wells, fields, pipelines, various other mid-stream facilities and equipment, and power projects, are subject to extensive federal, state and local laws and regulations adopted for the protection of the environment and to regulate land use. The laws and regulations applicable to us primarily involve the discharge of emissions into the water and air and the use of water, but can also include wetlands preservation, endangered species, hazardous materials handling and disposal, waste disposal and noise regulations. These laws and regulations in many cases require a lengthy and complex process of obtaining licenses, permits and approvals from federal, state and local agencies.

Noncompliance with environmental laws and regulations can result in the imposition of civil or criminal fines or penalties. In some instances, environmental laws also may impose clean-up or other remedial obligations in the event of a release of pollutants or contaminants into the environment. The following federal laws are among the more significant environmental laws as they apply to us. In most cases, analogous state laws also exist that may impose similar, and in some cases more stringent, requirements on us as those discussed below.

#### **Clean Air Act**

The Federal Clean Air Act of 1970 (“the Clean Air Act”) provides for the regulation, largely through state implementation of federal requirements, of emissions of air pollutants from certain facilities and operations. As originally enacted, the Clean Air Act sets guidelines for emissions standards for major pollutants (i.e., sulfur dioxide and nitrogen oxide) from newly built sources. In late 1990, Congress passed the Clean Air Act Amendments (“the 1990 Amendments”). The 1990 Amendments attempt to reduce emissions from existing sources, particularly previously exempted older power plants. We believe that all of our operating plants and relevant oil and gas related facilities are in compliance with federal performance standards mandated under the Clean Air Act and the 1990 Amendments.

#### **Clean Water Act**

The Federal Clean Water Act (the “Clean Water Act”) establishes rules regulating the discharge of pollutants into waters of the United States. We are required to obtain wastewater and storm water discharge permits for wastewater and runoff, respectively, from certain of our facilities. We believe that, with respect to our geothermal and oil and gas operations, we are exempt from newly promulgated federal storm water requirements. We are required to maintain a spill prevention control and countermeasure plan with respect to certain of our oil and gas facilities. We believe that we are in material compliance with applicable discharge requirements of the Clean Water Act.

#### **Oil Pollution Act of 1990**

The Oil Pollution Act of 1990 (“OPA”) applies to our offshore facilities in the U.S. Gulf of Mexico regulating oil pollution prevention measures and financial responsibility requirements. We believe that we are in material compliance with applicable OPA requirements.

#### **Safe Drinking Water Act**

Part C of the Safe Water Drinking Act (“SWDA”) mandates the underground injection control (“UIC”) program. The UIC regulates the disposal of wastes by means of deep well injection. Deep well injection is a common method of disposing of saltwater, produced water and other oil and gas wastes. We believe that we are in material compliance with applicable UIC requirements of the SWDA.

### **Resource Conservation and Recovery Act**

The Resource Conservation and Recovery Act (“RCRA”) regulates the generation, treatment, storage, handling, transportation and disposal of solid and hazardous waste. We believe that we are exempt from solid waste requirements under RCRA. However, particularly with respect to our solid waste disposal practices at the power generation facilities and steam fields located at The Geysers, we are subject to certain solid waste requirements under applicable California laws. Based on the exploration and production exception, many oil and gas wastes are exempt from hazardous wastes regulation under RCRA. For those wastes generated in association with the exploration and production of oil and gas which are classified as hazardous wastes, we undertake to comply with the RCRA requirements for identification and disposal. Various state environmental and safety laws also regulate the oil and gas industry. We believe that our operations are in material compliance with RCRA and all such laws.

### **Comprehensive Environmental Response, Compensation, and Liability Act**

The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (“CERCLA” or “Superfund”), requires cleanup of sites from which there has been a release or threatened release of hazardous substances and authorizes the United States Environmental Protection Agency to take any necessary response action at Superfund sites, including ordering potentially responsible parties (“PRPs”) liable for the release to take or pay for such actions. PRPs are broadly defined under CERCLA to include past and present owners and operators of, as well as generators of wastes sent to, a site. As of the present time, we are not subject to liability for any Superfund matters. However, we generate certain wastes, including hazardous wastes, and send certain of our wastes to third party waste disposal sites. As a result, there can be no assurance that we will not incur liability under CERCLA in the future.

### **Canadian Environmental, Health and Safety Regulations**

Our Canadian power projects are also subject to extensive federal, provincial and local laws and regulations adopted for the protection of the environment and to regulate land use. We believe that we are in material compliance with all applicable requirements under Canadian law related to same.

### **Regulation of Canadian Gas**

The Canadian natural gas industry is subject to extensive regulation by federal and provincial authorities. At the federal level, a party exporting gas from Canada must obtain an export license from the National Energy Board (“NEB”). The NEB also regulates Canadian pipeline transportation rates and the construction of pipeline facilities. Gas producers also must obtain a removal permit or license from each provincial authority before natural gas may be removed from the province, and provincial authorities regulate intra-provincial pipeline and gathering systems. In addition, a party importing natural gas into the United States or exporting natural gas from the United States first must obtain an import or export authorization from the U.S. Department of Energy.

### **Regulation of U.S. Gas**

The U.S. natural gas industry is subject to extensive regulation by federal, state and local authorities. Calpine holds onshore and offshore federal leases involving the U.S. Dept. of Interior (Bureau of Land Management, Bureau of Indian Affairs and the Minerals Management Service). At the federal level, various federal rules, regulations and procedures apply, including those issued by the U.S. Dept. of Interior as noted above, and the U.S. Dept. of Transportation (U.S. Coast Guard and Office of Pipeline Safety). At the state and local level, various agencies and commissions regulate drilling, production and midstream activities. We have state and private oil and gas leases covering developed and undeveloped properties located in Arkansas, California, Colorado, Kansas, Louisiana, Mississippi, Missouri, Montana, New Mexico, Oklahoma, Texas and Wyoming. These federal, state and local authorities have various permitting, licensing and bonding requirements. Varied remedies are available for enforcement of these federal, state and local rules, regulations and procedures, including fines, penalties, revocation of permits and licenses, actions affecting the value of

leases, wells or other assets, and suspension of production. As a result, there can be no assurance that we will not incur liability for fines and penalties or otherwise subject us to the various remedies as are available to these federal, state and local authorities. However, we believe that we are currently in material compliance with these federal, state and local rules, regulations and procedures.

## RISK FACTORS

### Capital Resources; Liquidity

*We must meet ongoing debt obligations.* We have substantial indebtedness that we incurred to finance the acquisition and development of power generation facilities that we may be unable to service and that restricts our activities. As of December 31, 2004, our total consolidated funded debt was \$18.0 billion, our total consolidated assets were \$27.2 billion and our stockholders' equity was \$4.5 billion. Whether we will be able to meet our debt service obligations and repay, extend, or refinance our outstanding indebtedness will be dependent primarily upon the operational performance of our power generation facilities and of our oil and gas properties, movements in electric and natural gas prices over time, and our marketing and risk management activities, as well as general economic, financial, competitive, legislative, regulatory and other factors that are beyond our control.

This high level of indebtedness has important consequences, including:

- limiting our ability to borrow additional amounts for working capital, capital expenditures, debt service requirements, execution of our growth strategy, or other purposes;
- limiting our ability to use operating cash flow in other areas of our business because we must dedicate a substantial portion of these funds to service the debt;
- increasing our vulnerability to general adverse economic and industry conditions;
- limiting our ability to capitalize on business opportunities and to react to competitive pressures and adverse changes in government regulation;
- limiting our ability or increasing the costs to refinance indebtedness; and
- limiting our ability to enter into marketing, hedging, optimization and trading transactions by reducing the number of counterparties with whom we can transact as well as the volume of those transactions.

*Our debt instruments impose significant operating and financial restrictions on us; any failure to comply with these restrictions could have a material adverse effect on our liquidity and our operations.* The indentures and other instruments governing our outstanding debt impose significant operating and financial restrictions on us. These restrictions could adversely affect us by limiting our ability to plan for or react to market conditions or to meet our capital needs. These restrictions limit or prohibit our ability to, among other things:

- incur additional indebtedness and issue preferred stock;
- make prepayments on or purchase indebtedness in whole or in part;
- pay dividends and other distributions with respect to our capital stock or repurchase our capital stock or make other restricted payments;
- make certain investments;
- enter into transactions with affiliates;
- create or incur liens to secure debt;
- consolidate or merge with another entity, or allow one of our subsidiaries to do so;
- lease, transfer or sell assets and use proceeds of permitted asset leases, transfers or sales;

## Table of Contents

- incur dividend or other payment restrictions affecting certain subsidiaries;
- make capital expenditures;
- engage in certain business activities; and
- acquire facilities or other businesses.

In particular, the covenants in certain of our existing debt agreements currently impose the following restrictions on our activities:

- Certain of our indentures place conditions on our ability to issue indebtedness if our interest coverage ratio (as defined in those indentures) is below 2:1. Currently, our interest coverage ratio (as so defined) is below 2:1 and, consequently, we generally would not be allowed to issue new debt, except for (i) certain types of new indebtedness that refinances or replaces existing indebtedness, and (ii) non-recourse debt and preferred equity interests issued by our subsidiaries for purposes of financing certain types of capital expenditures, including plant development, construction and acquisition expenses. In addition, if and so long as our interest coverage ratio is below 2:1, our ability to invest in unrestricted subsidiaries and non-subsidiary affiliates and make certain other types of restricted payments will be limited. Moreover, certain of our indentures will prohibit any further investments in non-subsidiary affiliates if and for so long as our interest coverage ratio (as defined therein) is below 1.75:1 and, as of December 31, 2004, such interest coverage ratio had fallen below 1.75:1.
- Certain of our indebtedness issued in the last half of 2004 was permitted under our indentures on the basis that the proceeds would be used to repurchase or redeem existing indebtedness. While we completed a portion of such repurchases during the fourth quarter of 2004 and the first quarter of 2005, we are still in the process of completing the required amount of repurchases. While the amount of indebtedness that must still be repurchased will ultimately depend on the market price of our outstanding indebtedness at the time the indebtedness is repurchased, based on current market conditions, we currently anticipate that we will spend up to approximately \$202.9 million on additional repurchases in order to fully satisfy this requirement. Our bond purchase requirement was estimated to be approximately \$270 million as of December 31, 2004, and this amount has been classified as a current liability on our consolidated balance sheet.
- When we or one of our subsidiaries sells a significant asset or issues preferred equity, our indentures generally require that the net proceeds of the transaction be used to make capital expenditures or to repurchase or repay certain types of subsidiary indebtedness, in each case within 365 days of the closing date of the transaction. In light of this requirement, and taking into account the amount of capital expenditures currently budgeted for 2005, we anticipate that we will need to use approximately \$250.0 million of the net proceeds of the \$360.0 million Two-Year Redeemable Preferred Shares issued on October 26, 2004 and approximately \$200.0 million of the net proceeds of the \$260.0 million Redeemable Preferred Shares issued on January 31, 2005, to repurchase or repay certain subsidiary indebtedness. The \$250.0 million has been classified as a current liability on our consolidated balance sheet as of December 31, 2004. The actual amount of the net proceeds that will be required to be used to repurchase or repay subsidiary debt will depend upon the actual amount of the net proceeds that is used to make capital expenditures, which may be more or less than the amount currently budgeted.

In addition: (a) if Calpine Corporation's ownership changes, the indentures and other instruments governing approximately \$9.8 billion of our senior notes and term loans may require us to make an offer to purchase those senior notes and term loans, (b) pursuant to the terms of the indentures under which our contingent convertible senior notes were issued, upon the occurrence of certain defined triggering events (which include our common stock reaching certain price levels), the holders of the notes have the right to require that the notes be converted into a combination of cash (in an amount equal to the par value of the notes so converted) and our common shares (with respect to any additional value required to be delivered to the holders) and (c) with respect to our Contingent Convertible Notes due 2014, we may not make such payments upon conversion unless we meet a specified ratio of consolidated cash flow to fixed charges; currently, we do not satisfy such ratio. We may not have the financial resources necessary or may otherwise be

## Table of Contents

restricted from purchasing those senior notes and term loans, or making such cash payments to holders of those contingent convertible notes in these events.

Our ability to comply with these covenants may be affected by events beyond our control, and any material deviations from our forecasts could require us to seek waivers or amendments of covenants or alternative sources of financing or to reduce expenditures. We cannot assure you that such waivers, amendments or alternative financing could be obtained, or if obtained, would be on terms acceptable to us.

If we are unable to comply with the terms of our indentures and other debt agreements, or if we fail to generate sufficient cash flow from operations, or to refinance our debt as described below, we may be required to refinance all or a portion of our senior notes and other debt or to obtain additional financing or sell additional assets. However, we may be unable to refinance or obtain additional financing because of our already high levels of debt and the debt incurrence restrictions under our existing indentures and other debt agreements. If our cash flow is insufficient and refinancing or additional financing is unavailable, we may be forced to default on our senior notes and other debt obligations. Such a default or other breach of the covenants or restrictions contained in any of our existing or future debt instruments could result in an event of default under those instruments and, due to cross-default and cross-acceleration provisions, under our other debt instruments. Upon an event of default under our debt instruments, the debt holders could elect to declare the entire debt outstanding thereunder to be due and payable and could terminate any commitments they had made to supply us with further funds. If any of these events occur, we cannot assure you that we will have sufficient funds available to repay in full the total amount of obligations that become due as a result of any such acceleration, or that we will be able to find additional or alternative financing to refinance any accelerated obligations.

*We must either repay or refinance our debt maturing in 2005 and 2006.* Since the latter half of 2001, there has been a significant contraction in the availability of capital for participants in the energy sector. This has been due to a range of factors, including uncertainty arising from the collapse of Enron and a perceived surplus of electric generating capacity. These factors have continued through 2003 and 2004, during which contracting credit markets and decreased spark spreads have adversely impacted our liquidity and earnings. While we have been able to access the capital and bank credit markets, it has been on significantly different terms than in the past. We recognize that terms of financing available to us in the future may not be attractive. To protect against this possibility and due to current market conditions, we scaled back our capital expenditure program to enable us to conserve our available capital resources.

In 2005, the following payments will be due on our outstanding debt: (i) \$186.1 million in aggregate principal amount of 8 <sup>1</sup>/<sub>4</sub> % Senior Notes Due 2005 (ii) \$148.1 million aggregate principal amount of notes issued by our subsidiary Power Contract Financing, L.L.C. ("PCF") in connection with the monetization of a power contract with California Department of Water Resources ("CDWR") and (iii) \$260.0 million in Redeemable Preferred Shares issued by our subsidiary Calpine European Financing (Jersey) Limited; in 2006, the following payments will be due on our outstanding debt: (i) \$111.6 million in aggregate principal amount of 7 <sup>5</sup>/<sub>8</sub> % Senior Notes Due 2006, (ii) \$152.7 million in aggregate principal amount of 10 <sup>1</sup>/<sub>2</sub> % Senior Notes Due 2006, (iii) \$360.0 million in Two-Year Redeemable Preferred Shares issued by our subsidiary Calpine (Jersey) Limited, and (iv) \$155.9 million in aggregate principal amount of the notes issued by PCF in connection with the CDWR power contract monetization. In addition, as of December 31, 2004, we have approximately \$181.2 million and \$163.8 million of miscellaneous debt and capital lease obligations that are maturing or for which scheduled principal payments will be made in 2005 and 2006, respectively. As discussed above, we are also required to repurchase or redeem approximately \$520 million of indebtedness (current estimate) in the aggregate pursuant to our indentures during 2005.

In addition, our \$517.5 million of outstanding HIGH TIDES III (of which \$115.0 million have been repurchased and are currently held by us) are scheduled to be remarketed no later than August 1, 2005. In the event of a failed remarketing, the HIGH TIDES III, unless earlier redeemed, will remain outstanding as convertible securities at a term rate equal to the treasury rate plus 6% per annum and with a term conversion price equal to 105% of the average closing price of our common stock for the five consecutive trading days after the applicable final failed remarketing termination date. We currently anticipate refinancing all or a

portion of the outstanding HIGH TIDES prior to the scheduled remarketing date, through the issuance of convertible debt or another form of equity-linked security, possibly combined with a share lending facility modeled after the Share Lending Agreement we entered into on September 30, 2004. We may also consider using our common stock to effect stock-for-debt exchanges with, or to raise cash to fund the purchase of HIGH TIDES from, some of the existing holders of the outstanding HIGH TIDES.

We cannot assure you that our business will generate sufficient cash flow from operations or that future borrowings will be available to us in an amount sufficient to enable us to pay our indebtedness when due, or to fund our other liquidity needs. We may need to refinance all or a portion of our indebtedness, on or before maturity. While we believe we will be successful in repaying or refinancing all of our debt on or before maturity, we cannot assure you that we will be able to do so.

*We may not have sufficient cash to service our indebtedness and other liquidity requirements.* Our ability to make payments on and to refinance our indebtedness, and to fund planned capital expenditures and research and development efforts, will depend on our ability to generate cash in the future. To date, we have obtained cash from our operations; borrowings under credit facilities; issuance of debt, equity, trust preferred securities and convertible debentures and contingent convertible notes; proceeds from sale/leaseback transactions; sale or partial sale of certain assets; contract monetizations and project financing. Taking into account our construction program and other planned capital expenditures and research and development, our debt service and repayment obligations and our bond repurchase obligations described above, we are currently projecting that unrestricted cash on hand together with cash from operations will not by itself be sufficient to meet our cash and liquidity needs for the year. We have therefore continued, and expanded, our liquidity-enhancing program, which program includes the possible sale or monetization of certain of our assets. The success of this liquidity program will depend on our being able to complete these anticipated asset sale and monetization transactions, which may in turn be impacted by a number of factors, including general economic and capital market conditions; conditions in energy markets; regulatory approvals and developments; limitations imposed by our existing agreements; and other factors, many of which are beyond our control. See also “— We may be unable to secure additional financing in the future.” Some of the anticipated liquidity transactions involve the monetization or prepayment of future revenues and could therefore negatively impact cash flow in future years. While we believe we will be successful in completing a sufficient number of these anticipated transactions, we cannot assure you that we will be able to do so. Accordingly, we may not be able to generate sufficient cash to meet all of our commitments.

*We may be unable to secure additional financing in the future.* Each power generation facility that we acquire or develop will require substantial capital investment. Our ability to arrange financing (including any extension or refinancing) and the cost of the financing are dependent upon numerous factors. Access to capital (including any extension or refinancing) for participants in the energy sector, including for us, has been significantly restricted since late 2001. Other factors include:

- general economic and capital market conditions;
- conditions in energy markets;
- regulatory developments;
- credit availability from banks or other lenders for us and our industry peers, as well as the economy in general;
- investor confidence in the industry and in us;
- the continued success of our current power generation facilities; and
- provisions of tax and securities laws that are conducive to raising capital.

We have financed our existing power generation facilities using a variety of leveraged financing structures, consisting of senior secured and unsecured indebtedness, including construction financing, project financing, revolving credit facilities, term loans and lease obligations. As of December 31, 2004, we had approximately \$18.0 billion of total consolidated funded debt, consisting of \$5.2 billion of secured construction/project

## Table of Contents

financing, \$0.3 billion of capital lease obligations, \$9.2 billion in senior notes and institutional term loans, \$1.3 billion in convertible senior notes, \$0.5 billion in preferred interests, \$0.5 billion of trust preferred securities and \$1.0 billion of secured and unsecured notes payable and borrowings under lines of credit. Additionally, we had operating leases with an aggregate present value of future minimum lease payments of \$1.3 billion. Each project financing and lease obligation is structured to be fully paid out of cash flow provided by the facility or facilities financed or leased. In the event of a default under a financing agreement which we do not cure, the lenders or lessors would generally have rights to the facility and any related assets. In the event of foreclosure after a default, we might not retain any interest in the facility. While we intend to utilize non-recourse or lease financing when appropriate, market conditions and other factors may prevent similar financing for future facilities. It is possible that we may be unable to obtain the financing required to develop our power generation facilities on terms satisfactory to us. In addition, if new debt is added to our current debt levels, the risks associate with our substantial leverage that we now face could intensify.

We have from time to time guaranteed certain obligations of our subsidiaries and other affiliates. Our lenders or lessors may also seek to have us guarantee the indebtedness for future facilities. Guarantees render our general corporate funds vulnerable in the event of a default by the facility or related subsidiary. Additionally, certain of our indentures may restrict our ability to guarantee future debt, which could adversely affect our ability to fund new facilities. Our indentures generally do not limit the ability of our subsidiaries to incur non-recourse or lease financing or to issue preferred stock for investment in new facilities.

*Our credit ratings have been downgraded and could be downgraded further.* On September 23, 2004, Standard & Poor's ("S&P") assigned our first priority senior secured debt a rating of B+ and reaffirmed their ratings on our second priority senior secured debt at B, our corporate rating at B (with outlook negative), our senior unsecured debt rating at CCC+, and our preferred stock rating at CCC.

On October 4, 2004, Fitch, Inc. assigned our first priority senior secured debt a rating of BB-. At that time, Fitch also downgraded our second priority senior secured debt from BB- to B+, downgraded our senior unsecured debt rating from B- to CCC+, and reconfirmed our preferred stock rating at CCC. Fitch's rating outlook for the Company is stable.

Moody's Investors Service currently has a senior implied rating on the Company of B2 (with a stable outlook), and rates our senior unsecured debt at Caa1 and our preferred stock at Caa3.

Many other issuers in the power generation sector have also been downgraded by one or more of the ratings agencies during this period. Such downgrades can have a negative impact on our liquidity by reducing attractive financing opportunities and increasing the amount of collateral required by trading counterparties. We cannot assure you that Moody's, Fitch and S&P will not further downgrade our credit ratings in the future. If our credit ratings are downgraded, we could be required to, among other things, pay additional interest under our credit agreements, or provide additional guarantees, collateral, letters of credit or cash for credit support obligations, and it could increase our cost of capital, make our efforts to raise capital more difficult and have an adverse impact on our subsidiaries' and our business, financial condition and results of operations.

In light of our current credit ratings, many of our customers and counterparties are requiring that our and our subsidiaries' obligations be secured by letters of credit or cash. Banks issuing letters of credit for our or our subsidiaries' accounts are similarly requiring that the reimbursement obligations be cash-collateralized. In a typical commodities transaction, the amount of security that must be posted can change depending on the mark-to-market value of the transaction. These letter of credit and cash collateral requirements increase our cost of doing business and could have an adverse impact on our overall liquidity, particularly if there were a call for a large amount of additional cash or letter of credit collateral due to an unexpectedly large movement in the market price of a commodity. We are exploring with counterparties and financial institutions various alternative approaches to credit support, including the utilization of liens on our generating facilities and other assets to secure our subsidiaries' obligations under certain power purchase agreements and other commercial arrangements, in lieu of cash collateral or letter of credit posting requirements. Such alternative arrangements could, however, also add to our cost of doing business.

## Table of Contents

*Our ability to repay our debt depends upon the performance of our subsidiaries.* Almost all of our operations are conducted through our subsidiaries and other affiliates. As a result, we depend almost entirely upon their earnings and cash flow to service our indebtedness, including our ability to pay the interest and principal of our senior notes. The financing agreements of certain of our subsidiaries and other affiliates generally restrict their ability to pay dividends, make distributions, or otherwise transfer funds to us prior to the payment of their other obligations, including their outstanding debt, operating expenses, lease payments and reserves. While certain of our indentures and other debt instruments limit our ability to enter into agreements that restrict our ability to receive dividends and other distributions from our subsidiaries, these limitations are subject to a number of significant exceptions (including exceptions permitting such restrictions arising out of subsidiary financings).

We may utilize project financing, preferred equity and other types of subsidiary financing transactions when appropriate in the future. Our indentures and other debt instruments place limitations on our ability and the ability of our subsidiaries to incur additional indebtedness. However, they permit our subsidiaries to incur additional construction/project financing indebtedness and to issue preferred stock to finance the acquisition and development of new power generation facilities and to engage in certain types of non-recourse financings and issuance of preferred stock. If new subsidiary debt and preferred stock is added to our current debt levels, the risks associated with our substantial leverage that we now face could intensify.

*Our senior notes and our other senior debt are effectively subordinated to all indebtedness and other liabilities of our subsidiaries and other affiliates and may be effectively subordinated to our secured debt to the extent of the assets securing such debt.* Our subsidiaries and other affiliates are separate and distinct legal entities and, except in limited circumstances, have no obligation to pay any amounts due with respect to our indebtedness or indebtedness of other subsidiaries or affiliates, and do not guarantee the payment of interest on or principal of such indebtedness. In the event of our bankruptcy, liquidation or reorganization (or the bankruptcy, liquidation or reorganization of a subsidiary or affiliate), such subsidiaries' or other affiliates' creditors, including trade creditors and holders of debt issued by such subsidiaries or affiliates, will generally be entitled to payment of their claims from the assets of those subsidiaries or affiliates before any assets are made available for distribution to us or the holders of our indebtedness. In addition, we are also permitted to reorganize our subsidiaries in a manner that allows creditors of one subsidiary to collect against assets currently held by another subsidiary. As a result, holders of our indebtedness will be effectively subordinated to all present and future debts and other liabilities (including trade payables) of our subsidiaries and affiliates, and holders of debt of one of our subsidiaries or affiliates will effectively be so subordinated with respect to all of our other subsidiaries and affiliates. As of December 31, 2004, our subsidiaries had \$5.2 billion of secured construction/project financing (including the Calpine Construction Finance Company, L.P. ("CCFC I") and Calpine Generating Company, LLC ("CalGen"), formerly Calpine Construction Finance Company II, LLC ("CCFC II"), financings described below). We may incur additional project financing indebtedness in the future, which will be effectively senior to our other secured and unsecured debt.

In addition, our unsecured notes and our other unsecured debt are effectively subordinated to all of our secured indebtedness to the extent of the value of the assets securing such indebtedness. Our secured indebtedness includes our \$785 million first-priority senior secured notes and our \$3.7 billion second-priority senior secured term loans and notes. These notes and term loans are secured by, respectively, first-priority and second-priority liens on, among other things, substantially all of the assets owned directly by Calpine Corporation, including its natural gas and power plant assets and the equity in all of the subsidiaries directly owned by Calpine Corporation. Our \$786.8 million of CCFC I secured institutional term loans and notes is secured by the assets and contracts associated with the seven natural gas-fired electric generating facilities owned by CCFC I and its subsidiaries (as adjusted for approved dispositions and acquisitions, such as the completed sale of Lost Pines Power Project and the acquisition of the Brazos Valley Power Plant) and the CCFC I lenders' and note holders' recourse is limited to such security. Our \$2.6 billion of CalGen secured institutional term loans, notes and revolving credit facility are secured, through a combination of direct and indirect stock pledges and asset liens, by CalGen's 14 power generating facilities and related assets located throughout the United States, and the CalGen lenders' and note holders' recourse is limited to such security. We have additional non-recourse project financings, secured in each case by the assets of the project being

financed. We may incur additional secured indebtedness in the future, which will be effectively senior, to the extent of the assets securing that debt, to our unsecured debt and to our other secured debt not secured by those assets.

### Operations

*Revenue may be reduced significantly upon expiration or termination of our PSAs.* Some of the electricity we generate from our existing portfolio is sold under long-term PSAs that expire at various times. We also sell power under short to intermediate term (one to five year) contracts. When the terms of each of these various PSAs expire, it is possible that the price paid to us for the generation of electricity under subsequent arrangements may be reduced significantly.

Our power sales contracts have an aggregate value in excess of current market prices (measured over the next five years) of approximately \$3.3 billion at December 31, 2004. We are at risk of loss in margins to the extent that these contracts expire or are terminated and we are unable to replace them on comparable terms. We have two customers with which we have multiple contracts that, when combined, constitute greater than 10% of this value: CDWR, \$1.4 billion, and PG&E, \$0.4 billion. The values by customer are comprised of these multiple individual contracts that expire beginning in 2009 and contain termination provisions standard to contracts in our industry such as negligence, performance default or prolonged events of force majeure.

*Use of commodity contracts, including standard power and gas contracts (many of which constitute derivatives), can create volatility in earnings and may require significant cash collateral.* During 2004 we recognized \$13.5 million in mark-to-market gains on electric power and natural gas derivatives after recognizing \$26.4 million in losses in 2003. Additionally, we recognized as a cumulative effect of a change in accounting principle, an after-tax gain of approximately \$181.9 million from the adoption of Derivatives Implementation Group (“DIG”) Issue No. C20, “Scope Exceptions: Interpretation of the Meaning of Not Clearly and Closely Related in Paragraph 10(b) regarding Contracts with a Price Adjustment Feature” (“DIG Issue No. C20”) on October 1, 2003. See Item 7. “Management’s Discussion and Analysis of Financial Condition and Results of Operation — Application of Critical Accounting Policies” for a detailed discussion of the accounting requirements relating to electric power and natural gas derivatives. In addition, U.S. generally accepted accounting principles (“GAAP”) treatment of derivatives in general, and particularly in our industry, continues to evolve. We may enter into other transactions in future periods that require us to mark various derivatives to market through earnings. The nature of the transactions that we enter into and the volatility of natural gas and electric power prices will determine the volatility of earnings that we may experience related to these transactions.

As a result, in part, of the fallout from Enron’s declaration of bankruptcy on December 2, 2001, companies using derivatives, many of which are commodity contracts, have become more sensitive to the inherent risks of such transactions. Consequently (and for us, as a result of our recent downgrades), many companies, including us, are required to post cash collateral for certain commodity transactions in excess of what was previously required. As of December 31, 2004, we had \$248.9 million in margin deposits with counterparties, net of deposits posted by counterparties with us, \$78.0 million in prepaid gas and power payments and had posted \$115.9 million of letters of credit, compared to \$188.0 million, \$60.6 million and \$14.5 million, respectively, at December 31, 2003. Future cash collateral requirements may increase based on the extent of our involvement in commodity transactions and movements in commodity prices and also based on our credit ratings and general perception of creditworthiness in this market.

*We may be unable to obtain an adequate supply of natural gas in the future.* To date, our fuel acquisition strategy has included various combinations of our own gas reserves, gas prepayment contracts, short-, medium- and long-term supply contracts and gas hedging transactions. In our gas supply arrangements, we attempt to match the fuel cost with the fuel component included in the facility’s PSAs in order to minimize a project’s exposure to fuel price risk. In addition, the focus of CES is to manage the spark spread for our portfolio of generating plants and we actively enter into hedging transactions to lock in gas costs and spark spreads. We believe that there will be adequate supplies of natural gas available at reasonable prices for each of our facilities when current gas supply agreements expire. However, gas supplies may not be available for the

## Table of Contents

full term of the facilities' PSAs, and gas prices may increase significantly. Additionally, our credit ratings may inhibit our ability to procure gas supplies from third parties. If gas is not available, or if gas prices increase above the level that can be recovered in electricity prices, there could be a negative impact on our results of operations or financial condition.

As of December 31, 2004, we obtained approximately 7% of our physical natural gas supply needs through owned natural gas reserves. We obtain the remainder of our physical natural gas supply from the market and utilize the natural gas financial markets to hedge our exposures to natural gas price risk. Our current less than investment grade credit rating increases the amount of collateral that certain of our suppliers require us to post for purchases of physical natural gas supply and hedging instruments. To the extent that we do not have cash or other means of posting credit, we may be unable to procure an adequate supply of natural gas or natural gas hedging instruments. In addition, the fact that our deliveries of natural gas depend upon the natural gas pipeline infrastructure in markets where we operate power plants exposes us to supply disruptions in the unusual event that the pipeline infrastructure is damaged or disabled.

*Our power project development and acquisition activities may not be successful.* The development of power generation facilities is subject to substantial risks. In connection with the development of a power generation facility, we must generally obtain:

- necessary power generation equipment;
- governmental permits and approvals;
- fuel supply and transportation agreements;
- sufficient equity capital and debt financing;
- electrical transmission agreements;
- water supply and wastewater discharge agreements; and
- site agreements and construction contracts.

We may be unsuccessful in accomplishing any of these matters or in doing so on a timely basis. In addition, project development is subject to various environmental, engineering and construction risks relating to cost-overruns, delays and performance. Although we may attempt to minimize the financial risks in the development of a project by securing a favorable power sales agreement, obtaining all required governmental permits and approvals, and arranging adequate financing prior to the commencement of construction, the development of a power project may require us to expend significant sums for preliminary engineering, permitting, legal and other expenses before we can determine whether a project is feasible, economically attractive or financeable. If we are unable to complete the development of a facility, we might not be able to recover our investment in the project. The process for obtaining initial environmental, siting and other governmental permits and approvals is complicated and lengthy, often taking more than one year, and is subject to significant uncertainties. We cannot assure you that we will be successful in the development of power generation facilities in the future or that we will be able to successfully complete construction of our facilities currently in development, nor can we assure you that any of these facilities will be profitable or have value equal to the investment in them even if they do achieve commercial operation.

*We have grown substantially in recent years partly as a result of acquisitions of interests in power generation facilities, geothermal steam fields and natural gas reserves and facilities.* The integration and consolidation of our acquisitions with our existing business requires substantial management, financial and other resources and, ultimately, our acquisitions may not be successfully integrated. In addition, as we transition from a development company to an operating company, we are not likely to continue to grow at historical rates due to reduced acquisition activities in the near future. We have also substantially curtailed our development efforts in response to our reduced liquidity. Although the domestic power industry is continuing to undergo consolidation and may offer acquisition opportunities at favorable prices, we believe that we are likely to confront significant competition for those opportunities and, due to the constriction in the availability of capital resources for acquisitions and other expansion, to the extent that any opportunities are identified, we

## Table of Contents

may be unable to effect any acquisitions. Similarly, to the extent we seek to divest assets, we may not be able to do so at attractive prices.

*Our projects under construction may not commence operation as scheduled.* The commencement of operation of a newly constructed power generation facility involves many risks, including:

- start-up problems;
- the breakdown or failure of equipment or processes; and
- performance below expected levels of output or efficiency.

New plants have no operating history and may employ recently developed and technologically complex equipment. Insurance (including a layer of insurance provided by a captive insurance subsidiary) is maintained to protect against certain risks, warranties are generally obtained for limited periods relating to the construction of each project and its equipment in varying degrees, and contractors and equipment suppliers are obligated to meet certain performance levels. The insurance, warranties or performance guarantees, however, may not be adequate to cover lost revenues or increased expenses. As a result, a project may be unable to fund principal and interest payments under its financing obligations and may operate at a loss. A default under such a financing obligation, unless cured, could result in our losing our interest in a power generation facility.

In certain situations, PSAs entered into with a utility early in the development phase of a project may enable the utility to terminate the PSA or to retain security posted as liquidated damages under the PSA. Currently, six of our 11 projects under construction are party to PSAs containing such provisions and could be materially affected if these provisions were triggered. The six projects are our Freeport, Valladolid, Mankato, Bethpage, Fox and Otay Mesa facilities. The situations that could allow a utility to terminate a PSA or retain posted security as liquidated damages include:

- the cessation or abandonment of the development, construction, maintenance or operation of the facility;
- failure of the facility to achieve construction milestones by agreed upon deadlines, subject to extensions due to force majeure events;
- failure of the facility to achieve commercial operation by agreed upon deadlines, subject to extensions due to force majeure events;
- failure of the facility to achieve certain output minimums;
- failure by the facility to make any of the payments owing to the utility under the PSA or to establish, maintain, restore, extend the term of, or increase the posted security if required by the PSA;
- a material breach of a representation or warranty or failure by the facility to observe, comply with or perform any other material obligation under the PSA;
- failure of the facility to obtain material permits and regulatory approvals by agreed upon deadlines; or
- the liquidation, dissolution, insolvency or bankruptcy of the project entity.

*Our power generation facilities may not operate as planned.* Upon completion of our projects currently under construction, we will operate 100 of the 103 power plants in which we will have an interest. The continued operation of power generation facilities, including, upon completion of construction, the facilities owned directly by us, involves many risks, including the breakdown or failure of power generation equipment, transmission lines, pipelines or other equipment or processes, and performance below expected levels of output or efficiency. From time to time our power generation facilities have experienced equipment breakdowns or failures, and in 2004 we recorded expenses totaling approximately \$54.3 million for these breakdowns or failures compared to \$11.0 million in 2003. Continued high failure rates of Siemens Westinghouse (“SW”) provided equipment represent the highest risk for such breakdowns, although we have programs in place that we believe will eventually substantially reduce these failures and provide plants with SW equipment availability factors competitive with plants using other manufacturers’ equipment.

## Table of Contents

Although our facilities contain various redundancies and back-up mechanisms, a breakdown or failure may prevent the affected facility from performing under any applicable PSAs. Although insurance is maintained to partially protect against operating risks, the proceeds of insurance may not be adequate to cover lost revenues or increased expenses. As a result, we could be unable to service principal and interest payments under our financing obligations which could result in losing our interest in one or more power generation facility.

*We cannot assure you that our estimates of oil and gas reserves are accurate.* Estimates of proved oil and gas reserves and the future net cash flows attributable to those reserves are prepared by independent petroleum and geological engineers. There are numerous uncertainties inherent in estimating quantities of proved oil and gas reserves and cash flows attributable to such reserves, including factors beyond our control and that of our engineers. Reserve engineering is a subjective process of estimating underground accumulations of oil and gas that cannot be measured in an exact manner. The accuracy of an estimate of quantities of reserves, or of cash flows attributable to such reserves, is a function of the available data, assumptions regarding future oil and gas prices and expenditures for future development and exploitation activities, and of engineering and geological interpretation and judgment. Additionally, reserves and future cash flows may be subject to material downward or upward revisions, based upon production history, development and exploration activities and prices of oil and gas. Actual future production, revenue, taxes, development expenditures, operating expenses, underlying information, quantities of recoverable reserves and the value of cash flows from such reserves may vary significantly from the assumptions and underlying information set forth herein. In addition, different reserve engineers may make different estimates of reserves and cash flows based on the same available data. We recorded impairment charges of \$202.1 million related to reduced proved reserve projections at year end 2004 based on the year-end independent engineer's report.

*Our geothermal energy reserves may be inadequate for our operations.* The development and operation of geothermal energy resources are subject to substantial risks and uncertainties similar to those experienced in the development of oil and gas resources. The successful exploitation of a geothermal energy resource ultimately depends upon:

- the heat content of the extractable steam or fluids;
- the geology of the reservoir;
- the total amount of recoverable reserves;
- operating expenses relating to the extraction of steam or fluids;
- price levels relating to the extraction of steam or fluids or power generated; and
- capital expenditure requirements relating primarily to the drilling of new wells.

In connection with each geothermal power plant, we estimate the productivity of the geothermal resource and the expected decline in productivity. The productivity of a geothermal resource may decline more than anticipated, resulting in insufficient reserves being available for sustained generation of the electrical power capacity desired. An incorrect estimate by us or an unexpected decline in productivity could, if material, adversely affect our results of operations or financial condition.

Geothermal reservoirs are highly complex. As a result, there exist numerous uncertainties in determining the extent of the reservoirs and the quantity and productivity of the steam reserves. Reservoir engineering is an inexact process of estimating underground accumulations of steam or fluids that cannot be measured in any precise way, and depends significantly on the quantity and accuracy of available data. As a result, the estimates of other reservoir specialists may differ materially from ours. Estimates of reserves are generally revised over time on the basis of the results of drilling, testing and production that occur after the original estimate was prepared. We cannot assure you that we will be able to successfully manage the development and operation of our geothermal reservoirs or that we will accurately estimate the quantity or productivity of our steam reserves.

### Market

*Competition could adversely affect our performance.* The power generation industry is characterized by intense competition, and we encounter competition from utilities, industrial companies, marketing and trading companies, and other IPPs. In recent years, there has been increasing competition among generators in an effort to obtain PSAs, and this competition has contributed to a reduction in electricity prices in certain markets. In addition, many states are implementing or considering regulatory initiatives designed to increase competition in the domestic power industry. For instance, the California Public Utilities Commission (“CPUC”) issued decisions that provided that all California electric users taking service from a regulated public utility could elect to receive direct access service commencing April 1998; however, the CPUC suspended the offering of direct access to any customer not receiving direct access service as of September 20, 2001, due to the problems experienced in the California energy markets during 2000 and 2001. As a result, uncertainty exists as to the future course for direct access in California in the aftermath of the energy crisis in that state. In Texas, legislation phased in a deregulated power market, which commenced on January 1, 2001. This competition has put pressure on electric utilities to lower their costs, including the cost of purchased electricity, and increasing competition in the supply of electricity in the future will increase this pressure.

*Our international investments may face uncertainties.* We have investments in operating power projects in Canada, an investment in an energy service business in the Netherlands, an investment in a power generation facility in construction in Mexico, and an investment in a power generation facility in the U.K. that is in operation and is being evaluated for possible sale (see “Recent Developments” above). We may pursue additional international investments in the future subject to the limitations on our expansion plans due to current capital market constraints. International investments are subject to unique risks and uncertainties relating to the political, social and economic structures of the countries in which we invest. Risks specifically related to investments in non-United States projects may include:

- fluctuations in currency valuation;
- currency inconvertibility;
- expropriation and confiscatory taxation;
- increased regulation; and
- approval requirements and governmental policies limiting returns to foreign investors.

### California Power Market

The volatility in the California power market from mid-2000 through mid-2001 has produced significant unanticipated results, and as described in the following risk factors, the unresolved issues arising in that market, where 42 of our 103 power plants are located, could adversely affect our performance.

*We may be required to make refund payments to the CalPX and CAISO as a result of the California Refund Proceeding.* On August 2, 2000, the California Refund Proceeding was initiated by a complaint made at FERC by SDG&E under Section 206 of the FPA alleging, among other things, that the markets operated by the CAISO and the California Power Exchange (“CalPX”) were dysfunctional. FERC established a refund effective period of October 2, 2000, to June 19, 2001 (the “Refund Period”), for sales made into those markets.

On December 12, 2002, an Administrative Law Judge issued a Certification of Proposed Finding on California Refund Liability (“December 12 Certification”) making an initial determination of refund liability. On March 26, 2003, FERC issued an order (the “March 26 Order”) adopting many of the findings set forth in the December 12 Certification. In addition, as a result of certain findings by the FERC staff concerning the unreliability or misreporting of certain reported indices for gas prices in California during the Refund Period, FERC ordered that the basis for calculating a party’s potential refund liability be modified by substituting a gas proxy price based upon gas prices in the producing areas plus the tariff transportation rate for the California gas price indices previously adopted in the California Refund Proceeding. We believe, based on the information that we have analyzed to date, that any refund liability that may be attributable to us could total

## Table of Contents

approximately \$9.9 million (plus interest, if applicable), after taking the appropriate set-offs for outstanding receivables owed by the CalPX and CAISO to Calpine. We believe we have appropriately reserved for the refund liability that by our current analysis would potentially be owed under the refund calculation clarification in the March 26 Order. The final determination of the refund liability and the allocation of payment obligations among the numerous buyers and sellers in the California markets is subject to further Commission proceedings. It is possible that there will be further proceedings to require refunds from certain sellers for periods prior to the originally designated Refund Period. In addition, the FERC orders concerning the Refund Period, the method for calculating refund liability and numerous other issues are pending on appeal before the U.S. Court of Appeals for the Ninth Circuit. At this time, we are unable to predict the timing of the completion of these proceedings or the final refund liability. Thus, the impact on our business is uncertain.

*We have been mentioned in a show cause order in connection with the FERC investigation into western markets regarding the CalPX and CAISO tariffs and may be found liable for payments thereunder.* On February 13, 2002, FERC initiated an investigation of potential manipulation of electric and natural gas prices in the western United States. This investigation was initiated as a result of allegations that Enron and others used their market position to distort electric and natural gas markets in the West. The scope of the investigation is to consider whether, as a result of any manipulation in the short-term markets for electric energy or natural gas or other undue influence on the wholesale markets by any party since January 1, 2000, the rates of the long-term contracts subsequently entered into in the West are potentially unjust and unreasonable. On August 13, 2002, the FERC staff issued the Initial Report on Company-Specific Separate Proceedings and Generic Reevaluations; Published Natural Gas Price Data; and Enron Trading Strategies (the "Initial Report"), summarizing its initial findings in this investigation. There were no findings or allegations of wrongdoing by Calpine set forth or described in the Initial Report. On March 26, 2003, the FERC staff issued a final report in this investigation (the "Final Report"). In the Final Report, the FERC staff recommended that FERC issue a show cause order to a number of companies, including Calpine, regarding certain power scheduling practices that may have been in violation of the CAISO's or CalPX's tariff. The Final Report also recommended that FERC modify the basis for determining potential liability in the California Refund Proceeding discussed above. Calpine believes that it did not violate these tariffs and that, to the extent that such a finding could be made, any potential liability would not be material.

Also, on June 25, 2003, FERC issued a number of orders associated with these investigations, including the issuance of two show cause orders to certain industry participants. FERC did not subject Calpine to either of the show cause orders. FERC also issued an order directing the FERC Office of Markets and Investigations to investigate further whether market participants who bid a price in excess of \$250 per MWh hour into markets operated by either the CAISO or the CalPX during the period of May 1, 2000, to October 2, 2000, may have violated CAISO and CalPX tariff prohibitions. No individual market participant was identified. We believe that we did not violate the CAISO and CalPX tariff prohibitions referred to by FERC in this order; however, we are unable to predict at this time the final outcome of this proceeding or its impact on Calpine.

*The energy payments made to us during a certain period under our QF contracts with PG&E may be retroactively adjusted downward as a result of a CPUC proceeding.* Our QF contracts with PG&E provide that the CPUC has the authority to determine the appropriate utility "avoided cost" to be used to set energy payments by determining the short run avoided cost ("SRAC") energy price formula. In mid-2000 our QF facilities elected the option set forth in Section 390 of the California Public Utilities Code, which provided QFs the right to elect to receive energy payments based on the CalPX market clearing price instead of the SRAC price administratively determined by the CPUC. Having elected such option, our QF facilities were paid based upon the CalPX zonal day-ahead clearing price ("CalPX Price") for various periods commencing in the summer of 2000 until January 19, 2001, when the CalPX ceased operating a day-ahead market. The CPUC has conducted proceedings (R.99-11-022) to determine whether the CalPX Price was the appropriate price for the energy component upon which to base payments to QFs which had elected the CalPX-based pricing option. One CPUC Commissioner at one point issued a proposed decision to the effect that the CalPX Price was the appropriate energy price to pay QFs who selected the pricing option then offered by Section 390. No final decision, however, has been issued to date. Therefore, it is possible that the CPUC could order a

payment adjustment based on a different energy price determination. On January 10, 2001, PG&E filed an emergency motion (the “Emergency Motion”) requesting that the CPUC issue an order that would retroactively change the energy payments received by QFs based on CalPX-based pricing for electric energy delivered during the period commencing during June 2000 and ending on January 18, 2001. On April 29, 2004, PG&E, the Utility Reform Network, a consumer advocacy group, and the Office of Ratepayer Advocates, an independent consumer advocacy department of the CPUC (collectively, the “PG&E Parties”), filed a Motion for Briefing Schedule Regarding True-Up of Payments to QF Switchers (the “April 2004 Motion”). The April 2004 Motion requests that the CPUC set a briefing schedule in R.99-11-022 to determine what is the appropriate price that should be paid to the QFs that had switched to the CalPX Price. The PG&E Parties allege that the appropriate price should be determined using the methodology that has been developed thus far in the California Refund Proceeding discussed above. Supplemental pleadings have been filed on the April 2004 Motion, but neither the CPUC nor the assigned administrative law judge has issued any rulings with respect to either the April 2004 Motion or the initial Emergency Motion. We believe that the CalPX Price was the appropriate price for energy payments for our QFs during this period, but there can be no assurance that this will be the outcome of the CPUC proceedings.

*The availability payments made to us under our Geysers’ Reliability Must Run contracts have been challenged by certain buyers as having been not just and reasonable.* CAISO, California Electricity Oversight Board, Public Utilities Commission of the State of California, PG&E, SDG&E, and Southern California Edison Company (collectively referred to as the “Buyers Coalition”) filed a complaint on November 2, 2001 at FERC requesting the commencement of a FPA Section 206 proceeding to challenge one component of a number of separate settlements previously reached on the terms and conditions of “reliability must run” contracts (“RMR Contracts”) with certain generation owners, including Geysers Power Company, LLC, which settlements were also previously approved by FERC. RMR Contracts require the owner of the specific generation unit to provide energy and ancillary services when called upon to do so by the ISO to meet local transmission reliability needs or to manage transmission constraints. The Buyers Coalition has asked FERC to find that the availability payments under these RMR Contracts are not just and reasonable. Geysers Power Company, LLC filed an answer to the complaint in November 2001. To date, FERC has not established a Section 206 proceeding. The outcome of this litigation and the impact on our business cannot be determined at the present time.

### **Government Regulation**

*We are subject to complex government regulation which could adversely affect our operations.* Our activities are subject to complex and stringent energy, environmental and other governmental laws and regulations. The construction and operation of power generation facilities and oil and gas exploration and production require numerous permits, approvals and certificates from appropriate foreign, federal, state and local governmental agencies, as well as compliance with environmental protection legislation and other regulations. While we believe that we have obtained the requisite approvals and permits for our existing operations and that our business is operated in accordance with applicable laws, we remain subject to a varied and complex body of laws and regulations that both public officials and private individuals may seek to enforce. Existing laws and regulations may be revised or reinterpreted, or new laws and regulations may become applicable to us that may have a negative effect on our business and results of operations. We may be unable to obtain all necessary licenses, permits, approvals and certificates for proposed projects, and completed facilities may not comply with all applicable permit conditions, statutes or regulations. In addition, regulatory compliance for the construction of new facilities is a costly and time-consuming process. Intricate and changing environmental and other regulatory requirements may necessitate substantial expenditures to obtain and maintain permits. If a project is unable to function as planned due to changing requirements or local opposition, it may create expensive delays, extended periods of non-operation or significant loss of value in a project.

Environmental regulations have had and will continue to have an impact on our cost of doing business and our investment decisions. For example, the existing market-based cap-and-trade emissions allowance system in Texas requires operators to either reduce NOx emissions or purchase additional NOx allowances in

the marketplace. Rather than purchase additional allowances, we have chosen to install additional NOx emission controls as part of a \$31 million steam capacity upgrade at our Texas City facility and to retrofit our Clear Lake, Texas facility with similar technology at a cost of approximately \$17 million. These new emission control systems will allow us to meet our thermal customers' needs while reducing the need to purchase allowances for our facilities in Texas.

Our operations are potentially subject to the provisions of various energy laws and regulations, including PURPA, PUHCA, the FPA, and state and local regulations. PUHCA provides for the extensive regulation of public utility holding companies and their subsidiaries. PURPA provides QFs (as defined under PURPA) and owners of QFs exemptions from certain federal and state regulations, including rate and financial regulations. The FPA regulates wholesale sales of power, as well as electric transmission in interstate commerce.

Under current federal law, we are not subject to regulation as a holding company under PUHCA, and will not be subject to such regulation as long as the plants in which we have an interest (1) qualify as QFs, (2) are subject to another exemption or waiver or (3) are owned or operated by an EWG under the Energy Policy Act of 1992. In order to be a QF, a facility must be not more than 50% owned by one or more electric utility companies, electric utility holding companies, or any combination thereof. Generally, any geothermal power facility which produces not more than 80 MW of electricity and meets PURPA ownership requirements qualifies for QF status. In addition, a QF that is a cogeneration facility, such as the plants in which we currently have interests, must produce electricity as well as thermal energy for use in an industrial or commercial process in specified minimum proportions. The QF also must meet certain minimum energy efficiency standards.

If any of the plants in which we have an interest lose their QF status or if amendments to PURPA are enacted that substantially reduce the benefits currently afforded QFs, we could become a public utility holding company, which could subject us to significant federal, state and local regulation, including rate regulation. If we become a holding company, which could be deemed to occur prospectively or retroactively to the date that any of our plants loses its QF status, all of our other QF power plants could lose QF status because, under FERC regulations, no more than 50% of a QF's equity can be owned by an electric utility, electric utility holding company, or any combination thereof. In addition, a loss of QF status could, depending on the particular power purchase agreement, allow the power purchaser to cease taking and paying for electricity or to seek refunds of past amounts paid and thus could cause the loss of some or all contract revenues or otherwise impair the value of a project. If a power purchaser were to cease taking and paying for electricity, there can be no assurance that the costs incurred in connection with the project could be recovered through sales to other purchasers. Such events could adversely affect our ability to service our indebtedness. See "Item 1 — Business — Government Regulation — Federal Energy Regulation — Federal Power Act Regulation." A cogeneration QF could lose its QF status if it does not continue to meet FERC's operating and efficiency requirements. Such possible loss of QF status could occur, for example, if the QF's steam host, typically an industrial facility, fails for operating, permit or economic reasons to use sufficient quantities of the QF's steam output. We cannot assure you that all of our steam hosts will continue to take and use sufficient quantities of their respective QF's steam output.

In light of the experiences in the California electricity and natural gas markets in 2000 and 2001, and the PG&E and Enron bankruptcy filings in 2001, among other events in recent years, there are a number of federal legislative and regulatory initiatives that could result in changes in how the energy markets are regulated. For example, Congress has considered proposed legislation that would repeal PUHCA, and would amend PURPA, among other ways, by, in certain circumstances, limiting its mandatory purchase obligation to existing contracts. We do not know whether these legislative or regulatory initiatives will be adopted or, if adopted, what form they may take. We cannot provide assurance that any legislation or regulation ultimately adopted would not adversely affect our existing projects.

In addition, many states are implementing or considering regulatory initiatives designed to increase competition in the domestic power generation industry and increase access to electric utilities' transmission and distribution systems for IPPs and electricity consumers. However, in light of the circumstances in the California electricity and natural gas markets and the bankruptcies of both PG&E and Enron, the pace and

direction of further deregulation at the state level in many jurisdictions is uncertain. See “California Power Market” risk factors.

### Other Risk Factors

*We depend on our management and employees.* Our success is largely dependent on the skills, experience and efforts of our people. While we believe that we have excellent depth throughout all levels of management and in all key skill levels of our employees, the loss of the services of one or more members of our senior management or of numerous employees with critical skills could have a negative effect on our business, financial conditions and results of operations and future growth. We have an employment agreement with our Chief Executive Officer.

*Seismic disturbances could damage our projects.* Areas where we operate and are developing many of our geothermal and gas-fired projects are subject to frequent low-level seismic disturbances. More significant seismic disturbances are possible. Our existing power generation facilities are built to withstand relatively significant levels of seismic disturbances, and we believe we maintain adequate insurance protection. However, earthquake, property damage or business interruption insurance may be inadequate to cover all potential losses sustained in the event of serious seismic disturbances. Additionally, insurance for these risks may not continue to be available to us on commercially reasonable terms.

*Our results are subject to quarterly and seasonal fluctuations.* Our quarterly operating results have fluctuated in the past and may continue to do so in the future as a result of a number of factors, including:

- seasonal variations in energy prices;
- variations in levels of production;
- the timing and size of acquisitions; and
- the completion of development and construction projects.

Additionally, because we receive the majority of capacity payments under some of our PSAs during the months of May through October, our revenues and results of operations are, to some extent, seasonal.

*The ultimate outcome of the legal proceedings relating to our activities cannot be predicted. Any adverse determination could have a material adverse effect on our financial condition and results of operations.* We are party to various litigation matters arising out of the normal course of business, the more significant of which are summarized in Note 25 of the Notes to Consolidated Financial Statements. These matters include securities class action lawsuits, such as Hawaii Structural Ironworkers Pension Fund v. Calpine et al., which relates to our April 2002 equity offering and also named the underwriters of that offering as defendants. The ultimate outcome of each of these matters cannot presently be determined, nor can the liability that may potentially result from a negative outcome be reasonably estimated presently for every case. The liability we may ultimately incur with respect to any one of these matters in the event of a negative outcome may be in excess of amounts currently accrued with respect to such matters and, as a result, these matters may potentially be material to our financial condition and results of operations.

*The price of our common stock is volatile.* The market price for our common stock has been volatile in the past, and several factors could cause the price to fluctuate substantially in the future. These factors include without limitation:

- general conditions in our industry, the power markets in which we participate, or the worldwide economy;
- announcements of developments related to our business or sector;
- fluctuations in our results of operations;
- our debt-to-equity ratios and other leverage ratios;
- effects of significant events relating to the energy sector in general;

## Table of Contents

- issuances, including through sales or lending facilities, of substantial amounts of our common stock or other securities into the marketplace;
- dilution or potential dilution caused by stock-for-debt exchanges or issuances of indebtedness convertible into our common stock, including any exchanges or convertible debt transactions relating to the outstanding HIGH TIDES III;
- an outbreak of war or hostilities;
- a shortfall in revenues or earnings compared to securities analysts' expectations;
- changes in analysts' recommendations or projections; and
- announcements of new acquisitions or development projects by us.

The market price of our common stock may fluctuate significantly in the future, and these fluctuations may be unrelated to our performance. General market price declines or market volatility in the future could adversely affect the price of our common stock, and the current market price may not be indicative of future market prices.

### **EMPLOYEES**

As of December 31, 2004, we employed 3,505 people, of whom 62 were represented by collective bargaining agreements. We have never experienced a work stoppage or strike, and we consider relations with our employees to be good. Although we are an asset-based company, we are successful because of the talents, intelligence, resourcefulness and energy level of our employees. As discussed throughout this business section, our employee knowledge base enables us to optimize the value and profitability of our electricity production and prudently manage the risks inherent in our business.

## SUMMARY OF KEY ACTIVITIES

*Summary of Key Activities**Finance — New Issuances and Amendments:*

<b>Date</b>	<b>Amount</b>	<b>Description</b>
1/9/04		An initial purchaser of the 4.75% Convertible Senior Notes due 2023 exercises in full its purchase option
2/20/04	\$ 250.0 million	Complete a non-recourse project financing for Rocky Mountain Energy Center at a rate of LIBOR plus 250 basis points, refinanced in June 2004
3/23/04		CalGen completes its offering of secured institutional term loans, notes and revolving credit facility
4/26/04	\$ 2.6 billion	Successfully complete consent solicitation to effect certain amendments to the Indentures governing the Senior Notes issued between 1996 and 1999
6/2/04	\$ 85.0 million	Power Contract Financing III, LLC issues zero coupon notes
6/29/04		Rocky Mountain Energy Center, LLC, and Riverside Energy Center, LLC, close an offering of First Priority Secured Floating Rate Term Loans Due 2011 and a letter of credit-linked deposit facility
8/5/04	\$ 661.5 million	Calpine Energy Management, L.P. enters into a letter of credit facility with Deutsche Bank that expires October 2005
9/30/04	\$ 250.0 million	Receive funding on offering of 9 <sup>5</sup> / <sub>8</sub> % First Priority Senior Secured Notes due 2014, offered at 99.212% of par
9/30/04	\$ 785.0 million	Receive funding on offering of Contingent Convertible Notes due 2014 offered at 83.9% of par
9/30/04	\$ 736.0 million	Enter into a ten-year Share Lending Agreement, loaning 89 million shares of newly issued Calpine common stock to Deutsche Bank AG London in connection with the issuance of the Contingent Convertible Notes due 2014
9/30/04	\$ 255.0 million	Establish a new Cash Collateralized Letter of Credit Facility with Bayerische Landesbank
10/26/04	\$ 360.0 million	Calpine (Jersey) Limited completes an offering of Two-Year Redeemable Preferred Shares priced at 3-month US LIBOR plus 700 basis points

*Finance — Repurchases and Extinguishments:*

<b>Date</b>	<b>Amount</b>	<b>Description</b>
5/04	\$ 78.8 million	Retirement of Newark and Parlin Power Plants project financing
5/04	\$ 82.0 million	Redemption of King City preferred interest due to lease restructuring
9/04		Repurchase \$266.2 million in principal amount of outstanding 4.75% Convertible Senior Notes due 2023 in exchange for \$177.0 million in cash
9/04	\$ 266.2 million	Repurchase \$115.0 million par value of HIGH TIDES III for \$111.6 million in cash
9/04	\$ 115.0 million	Mandatory paydown of 5 <sup>1</sup> / <sub>8</sub> % First Priority Senior Secured Term Loan B due 2007 pursuant to debt covenants governing asset sales of natural gas reserves
9/04	\$ 199.5 million	Mandatory paydown of 5 <sup>5</sup> / <sub>8</sub> % First Priority Letter of Credit Facility pursuant to covenants governing asset sales of natural gas reserves
10/04	\$ 100.0 million	Redeem outstanding 5 <sup>3</sup> / <sub>4</sub> % HIGH TIDES I preferred securities
10/04	\$ 276.0 million	Redeem outstanding 5 <sup>1</sup> / <sub>2</sub> % HIGH TIDES II preferred securities
4/04-7/04		Exchange 24.3 million Calpine common shares in privately negotiated transactions for approximately \$40.0 million par value of HIGH TIDES I and approximately \$75.0 million par value of HIGH TIDES II
1/04-12/04	\$ 95.0 million	Repurchase \$658.7 million in principal amount of outstanding 2006 Convertible Senior Notes for \$657.7 million in cash
1/04-12/04	\$ 658.7 million	Repurchase \$743.4 million in principal of amount various Senior Notes issuances for \$559.3 million in cash
	\$743.4 million	

## Table of Contents

### Asset Sales and Other:

<u>Date</u>	<u>Description</u>
1/04	Complete sale of 50% interest in Lost Pines 1 Power Project for a cash payment of \$148.6 million
2/04	Close on the sale of natural gas properties to CNGT for a net cash payment of Cdn\$33.8 million (US\$29.2 million)
2/04	Enter into a one-year agreement with Cleco Power LLC to supply up to 500 MW of electricity
2/04	Enter into five power sales contracts to supply approximately 350 MW of electricity to five New England- based electric distribution companies for delivery in 2004
3/04	Enter into a 20-year purchase power agreement to provide 365 MW of electricity to Northern States Power
3/04	Acquire the remaining 50% interest in the Aries Power Plant from Aquila, Inc.
3/04	Complete the acquisition of the remaining 20% interest in Calpine Cogeneration Company for approximately \$2.5 million
3/04	Enter into a three-year power sales agreement with Safeway Inc. to supply up to 200 MW of electricity to Safeway facilities throughout California
3/04	Close on the purchase of Brazos Valley Power Plant for approximately \$181.1 million in a tax deferred like-kind exchange under IRS Section 1031, largely with the proceeds of the Lost Pines I Power Project sale
5/04	Restructure King City lease
5/04	Sign a 25-year agreement to sell up to 200 MW of electricity and 1 million pounds per hour of steam to The Dow Chemical Company
5/04	Existing JCPL tolling arrangements with the Newark and Parlin Power Plants are terminated, resulting in a gain of \$100.6 million before transaction costs
5/04	Sell Utility Contract Funding II, a wholly-owned subsidiary of CES, which had entered into a long-term power purchase agreement related to Newark and Parlin Power Plants, for a pre-tax gain of \$85.4 million before transaction costs
6/04	Receive approval from the CPUC for a tolling agreement with San Diego Gas and Electric Company that provides for the delivery of up to 615 MW of capacity for ten years beginning in 2008
6/04	Partially terminate the gas contract between Citrus Trading Corp. and the Auburndale facility for a net gain of \$11.7 million
7/04	Enter into a five and a half year agreement with Snapping Shoals EMC for 200 MW of capacity and electricity
7/04	Announce the amendment of an eleven-year tolling agreement with Wisconsin Public Service for up to 500 MW of capacity, electricity and ancillary services, subject to approval by the Public Service Commission of Wisconsin
9/04	Complete sale of natural gas reserves in Colorado Piceance Basin and New Mexico San Juan Basin for net cash payments of approximately \$218.7 million
9/04	Complete sale of all Canadian natural gas reserves and petroleum assets and interest in CNGT for cash payments of approximately Cdn\$808.1 million (US\$626.4 million)
10/04	Announce energy service agreement with Newmarket Services Company, LLC
11/04	Sign a letter of intent with GE Energy for joint construction of the world's first power plant based on the 60-hertz version of GE's most advanced gas turbine technology, the <i>H System</i> ™
11/04	Announce CPSI awarded contract to operate and maintain two Hoosier Energy natural gas-fired power plants
12/04	Announce two-year power sales contract with National Aeronautics and Space Administration Johnson Space Center in Houston, Texas, for an estimated peak load of up to 23 MW a day of electricity

## Table of Contents

### *Power Plant Development and Construction:*

<b>Date</b>	<b>Project</b>	<b>Description</b>
1/04	Morgan Energy Center Expansion	Commercial operation
5/04	Osprey Energy Center	Commercial operation
5/04	Columbia Energy Center	Commercial operation
5/04	Rocky Mountain Energy Center	Commercial operation
5/04	Valladolid III IP	Construction began
6/04	Riverside Energy Center	Commercial operation
6/04	Deer Park Energy Center Expansion	Commercial operation
6/04	Freeport Energy Center	Construction began
9/04	Goldendale Energy Center	Commercial operation

See Item 1. “Business — Recent Developments” for 2005 developments.

### ***Annual Meeting of Stockholders on May 26, 2004***

#### *Stockholders’ Voting Results*

Election of Ann B. Curtis, Kenneth T. Derr and Gerald Greenwald as Class II Directors for a three-year term expiring 2007

- Proposal to amend the Company’s Amended and Restated Certificate of Incorporation to increase the number of authorized shares of Common Stock — approved
- Proposal to amend the Company’s 1996 Stock Incentive Plan to increase the number of shares of the Company’s Common Stock available for grants of options and other stock-based awards under such plan — approved
- Proposal to amend the Company’s 2000 Employee Stock Purchase Plan to increase the number of shares of the Company’s Common Stock available for grants of purchase rights under such plan — approved
- Proposal that the Company cease and desist geothermal development activities in the Medicine Lake Highlands and requesting the Company to adopt an indigenous peoples policy — rejected
- Proposal that the Company’s Compensation Committee of its Board of Directors utilize performance and time-based restricted share programs in lieu of stock options in developing future senior executive equity compensation plans — rejected
- Proposal requesting the Company’s Board of Directors to study and report on the feasibility of enabling stockholders to imitate the voting decisions of an institutional investor — rejected
- Ratification of the appointment of PricewaterhouseCoopers LLP as independent registered public accounting firm for the fiscal year ending December 31, 2004 — approved

The three-year terms of Class I and Class III Directors continued after the Annual Meeting and will expire in 2006 and 2005, respectively. The Class I Directors are Jeffrey E. Garten, George J. Stathakis and John O. Wilson. The Class III Directors are Peter Cartwright, Susan C. Schwab and Susan Wang.

### **NYSE CERTIFICATION**

The annual certification of our Chief Executive Officer, Peter Cartwright, required to be furnished to the New York Stock Exchange pursuant to Section 303A.12(a) of the NYSE Listed Company Manual was previously filed with the New York Stock Exchange in May 2004. The certification confirmed that he was unaware of any violation by the Company of NYSE’s corporate governance listing standards.

## Table of Contents

### Item 2. Properties

Our principal executive office located in San Jose, California is held under leases that expire through 2014, and we also lease offices, with leases expiring through 2014, in Dublin, Sacramento and Folsom, California; Houston and Pasadena, Texas; Boston, Massachusetts; Washington, D.C.; Calgary, Alberta; and Tampa and Jupiter, Florida. We hold additional leases for other satellite offices.

We either lease or own the land upon which our power-generating facilities are built. We believe that our properties are adequate for our current operations. A description of our power-generating facilities is included under Item 1. "Business."

We have leasehold interests in 105 leases comprising 25,944 acres of federal, state and private geothermal resource lands in The Geysers area in northern California. In the Glass Mountain and Medicine Lake areas in northern California, we hold leasehold interests in 41 leases comprising approximately 46,400 acres of federal geothermal resource lands.

In general, under these leases, we have the exclusive right to drill for, produce and sell geothermal resources from these properties and the right to use the surface for all related purposes. Each lease requires the payment of annual rent until commercial quantities of geothermal resources are established. After such time, the leases require the payment of minimum advance royalties or other payments until production commences, at which time production royalties are payable. Such royalties and other payments are payable to landowners, state and federal agencies and others, and vary widely as to the particular lease. The leases are generally for initial terms varying from 10 to 20 years or for so long as geothermal resources are produced and sold. Certain of the leases contain drilling or other exploratory work requirements. In certain cases, if a requirement is not fulfilled, the lease may be terminated and in other cases additional payments may be required. We believe that our leases are valid and that we have complied with all the requirements and conditions material to the continued effectiveness of the leases. A number of our leases for undeveloped properties may expire in any given year. Before leases expire, we perform geological evaluations in an effort to determine the resource potential of the underlying properties. We can make no assurance that we will decide to renew any expiring leases.

Based on independent petroleum engineering reports of Netherland, Sewell & Associates Inc., as of December 31, 2004, utilizing year end product prices and costs held constant, our proved oil, natural gas, and natural gas liquids ("NGLs") reserve volumes, in millions of barrels ("MMBbls") and billions of cubic feet ("Bcf") are as follows:

	As of December 31, 2004	
United States	Oil and NGLs (MMBbls)	Gas (Bcf)
Proved developed	1.4	255
Proved undeveloped	1.2	118
Total	<u>2.6(1)</u>	<u>373</u>

(1) 2.6 MMBbls of oil is equivalent to 15.6 Bcf of gas using a conversion factor of six thousand cubic feet of gas to one barrel of crude oil and natural gas liquids. On an equivalent basis, proved reserves at year-end totaled 389 Bcfe.

Proved oil and natural gas reserves are the estimated quantities of crude oil, natural gas and natural gas liquids which geological and engineering data demonstrate with reasonable certainty to be recoverable in future years from known reservoirs under existing economic and operating conditions. Estimated future development costs associated with proved producing and non-producing plus proved undeveloped reserves as of December 31, 2004, totaled approximately \$189.4 million. No estimates of total, proved net oil or gas reserves were filed with or included in reports to any other federal authority or agency (other than the SEC) since January 1, 2004.

## Table of Contents

The following table sets forth our interest in undeveloped acreage, developed acreage and productive wells in which we own a working interest as of December 31, 2004. Gross represents the total number of acres or wells in which we own a working interest. Net represents our proportionate working interest resulting from our ownership in the gross acres or wells. Productive wells are wells in which we have a working interest and are capable of producing oil or natural gas.

	Undeveloped Acres		Developed Acres		Productive Wells	
	Gross	Net	Gross	Net	Gross	Net
<b>United States</b>						
Arkansas	80	80	3,759	1,555	32	15
California	14,321	13,158	49,745	40,495	167	139
Colorado	22,193	19,665	640	640	1	1
Kansas(1)	94,746	93,809	—	—	—	—
Louisiana	2,998	647	9,023	1,947	27	5
Mississippi	4,645	874	12,842	2,416	13	3
Missouri(1)	23,848	21,892	—	—	—	—
Montana	37,260	35,377	960	240	2	1
Offshore	5,000	5,000	23,260	16,141	34	24
Oklahoma	185	52	9,321	2,625	43	12
Texas	40,620	21,130	99,606	51,813	601	299
Utah	315	315	—	—	—	—
Wyoming	50,430	50,430	600	2	—	—
<b>Total United States</b>	<b>296,641</b>	<b>262,429</b>	<b>209,756</b>	<b>117,874</b>	<b>920</b>	<b>499</b>

(1) Company has determined that it will not develop the acreage reflected and shall let such expire per lease terms. Acreage was fully impaired for accounting purposes.

The following table shows our interest in undeveloped acreage as of December 31, 2004 which is subject to expiration in 2005, 2006 and 2007.

	2005		2006		2007		Thereafter	
	Gross	Net	Gross	Net	Gross	Net	Gross	Net
United States	36,921	28,215	29,721	27,494	114,537	111,695	115,462	95,025

The following table sets forth the number of gross exploratory and gross development wells drilled in which we participated during the last three fiscal years. The number of wells drilled refers to the number of wells commenced at any time during the respective fiscal year. Productive wells are either producing wells or wells capable of commercial production. At December 31, 2004, we were in the process of drilling 4 wells (net 1.8).

	Exploratory			Development		
	Productive	Dry	Total	Productive	Dry	Total
<b>2004</b>						
United States	8	2	10	40	2	42
Canada	13	1	14	31	2	33
Total	21	3	24	71	4	75
<b>2003</b>						
United States	17	8	25	20	5	25
Canada	1	2	3	158	3	161
Total	18	10	28	178	8	186
<b>2002</b>						
United States	—	6	6	41	4	45
Canada	1	1	2	87	8	95
Total	1	7	8	128	12	140

## Table of Contents

The following table sets forth, for each of the last three fiscal years, the number of net exploratory and net development wells, drilled by us based on our proportionate working interest in such wells:

	Exploratory			Development		
	Productive	Dry	Total	Productive	Dry	Total
<b>2004</b>						
United States	4.3	1.0	5.3	21.1	2.0	23.1
Canada	8.7	0.5	9.2	14.7	1.5	16.2
Total	<u>13.0</u>	<u>1.5</u>	<u>14.5</u>	<u>35.8</u>	<u>3.5</u>	<u>39.3</u>
<b>2003</b>						
United States	14.0	4.5	18.5	18.5	3.4	21.9
Canada	0.3	0.7	1.0	42.5	1.0	43.5
Total	<u>14.3</u>	<u>5.2</u>	<u>19.5</u>	<u>61.0</u>	<u>4.4</u>	<u>65.4</u>
<b>2002</b>						
United States	—	3.9	3.9	36.4	2.8	39.2
Canada	0.5	0.5	1.0	38.9	4.2	43.1
Total	<u>0.5</u>	<u>4.4</u>	<u>4.9</u>	<u>75.3</u>	<u>7.0</u>	<u>82.3</u>

The following table shows our annual average wellhead sales prices and average production costs. The average sales prices with hedges include realized gains and losses for derivative contracts we enter into with non-affiliates to manage price risk related to our sales volumes. During 2004, all Canadian properties were divested and such operations were reclassified to discontinued operation. Thus, the majority of the following information primarily reflects United States activity.

	With Hedges			Without Hedges		
	2004	2003	2002	2004	2003	2002
<b>NORTH AMERICA</b>						
Sales price						
Natural gas (per Mcf)(1)	\$ 6.02	\$ 5.33	\$ 2.78	\$ 6.02	\$ 5.33	\$ 2.82
Oil and condensate (per barrel)	\$ 39.08	\$ 35.06	\$ 51.22	\$ 39.08	\$ 35.06	\$ 50.98
Lease operating cost (per Mcfe)(2)	\$ 1.03	\$ 0.78	\$ 0.73	\$ 1.03	\$ 0.78	\$ 0.73
Production taxes (per Mcfe)	\$ 0.11	\$ 0.06	\$ 0.05	\$ 0.11	\$ 0.06	\$ 0.05
Total production cost (per Mcfe)(3)	\$ 1.14	\$ 0.84	\$ 0.78	\$ 1.14	\$ 0.84	\$ 0.78

(1) Thousand cubic feet.

(2) Includes lifting costs, treating and transportation and workover costs.

(3) Thousand cubic feet equivalent.

### Item 3. Legal Proceedings

See Note 25 of the Notes to Consolidated Financial Statements for a description of our legal proceedings.

### Item 4. Submission of Matters to a Vote of Security Holders

None.

## PART II

**Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities**

Our common stock is traded on The New York Stock Exchange under the symbol "CPN." Public trading of our common stock commenced on September 20, 1996. Prior to that, there was no public market for our common stock. The following table sets forth, for the periods indicated, the high and low sale price per share of our common stock on The New York Stock Exchange:

	<u>High</u>	<u>Low</u>
<b>2004</b>		
First Quarter	\$ 6.42	\$ 4.35
Second Quarter	4.98	3.04
Third Quarter	4.46	2.87
Fourth Quarter	4.08	2.24
<b>2003</b>		
First Quarter	\$ 4.42	\$ 2.51
Second Quarter	7.25	3.33
Third Quarter	8.03	4.76
Fourth Quarter	5.25	3.28

As of March 30, 2005, there were approximately 2,380 holders of record of our common stock. On March 30, 2005, the last sale price reported on The New York Stock Exchange for our common stock was \$2.64 per share.

We have not declared any cash dividends on our common stock during the past two fiscal years. We do not anticipate paying any cash dividends on our common stock in the foreseeable future because we intend to retain our earnings to finance the expansion of our business, to repay debt, and for general corporate purposes. In addition, our ability to pay cash dividends is restricted under certain of our indentures and our other debt agreements. Future cash dividends, if any, will be at the discretion of our board of directors and will depend upon, among other things, our future operations and earnings, capital requirements, general financial condition, contractual restrictions and such other factors as the board of directors may deem relevant.

**Security Repurchases**

On October 20, 2004, Calpine Capital Trust ("Trust I") and Calpine Capital Trust II ("Trust II"), respectively, redeemed all of the \$636.0 million in aggregate principal amount outstanding of their HIGH TIDES I and HIGH TIDES II (which were exchangeable for Calpine common stock), and \$19.7 million of their mandatorily redeemable common securities, upon our redemption of all of the related underlying debentures (which were convertible into Calpine common stock), for a total of \$655.7 million plus accrued interest of \$8.1 million; such redemption payment was immediately applied to redeem the HIGH TIDES I, HIGH TIDES II and common securities. In addition, on December 27, 2004, we repurchased \$70.8 million in principle amount of our 2006 Convertible Senior Notes for \$70.8 million plus accrued interest of \$1.4 million.

The following table sets forth the total units of HIGH TIDES and 2006 Convertible Senior Notes we purchased in the fourth quarter of 2004.

<u>Period</u>	<u>Total Number of Units/Notes Purchased</u>	<u>Price Paid per Unit/Note</u>	<u>Total Number of Units/Notes Purchased as Part of Publicly Announced Plans or Programs</u>	<u>Maximum Number of Units/Notes that may yet be Purchased under the Plans or Programs</u>
10/1/04 – 10/31/04	13,112,660	\$ 50	—	—
11/1/04 – 11/30/04	—	—	—	—
12/1/04 – 12/31/04	70,800	\$ 1,000	—	—

## Table of Contents

Total number of units purchased in October were comprised of 5,690,228 units of HIGH TIDES I and 7,422,432 units of HIGH TIDES II, and units purchased in December are comprised of the 2006 Convertible Senior Notes. In addition to par or face value purchased, accrued interest paid was approximately \$.63 per share on HIGH TIDES I, \$.60 per share on HIGH TIDES II, and \$20 per note on the 2006 Convertible Senior Notes. 100% of the common securities issued by Trust I and Trust II and a portion of the HIGH TIDES I and II were owned by Calpine and, accordingly, the cash paid to redeem such common securities and HIGH TIDES was returned to Calpine.

### Item 6. Selected Financial Data

#### Selected Consolidated Financial Data

	Years Ended December 31,				
	2004	2003	2002	2001	2000
	(In thousands, except earnings per share)				
<b>Statement of Operations data:</b>					
Total revenue	\$ 9,229,888	\$ 8,871,033	\$ 7,349,753	\$ 6,565,893	\$ 2,264,495
Income before discontinued operations and cumulative effect of a change in accounting principle	\$ (440,826)	\$ 86,110	\$ 26,722	\$ 527,772	\$ 315,148
Discontinued operations, net of tax	198,365	14,969	91,896	94,684	53,936
Cumulative effect of a change in accounting principle	—	180,943	—	1,036	—
Net income	\$ (242,461)	\$ 282,022	\$ 118,618	\$ 623,492	\$ 369,084
Basic earnings per common share:					
Income before discontinued operations and cumulative effect of a change in accounting principle	\$ (1.02)	\$ 0.22	\$ 0.07	\$ 1.74	\$ 1.12
Discontinued operations, net of tax	0.46	0.04	0.26	0.31	0.19
Cumulative effect of a change in accounting principle, net of tax	—	0.46	—	—	—
Net income	\$ (0.56)	\$ 0.72	\$ 0.33	\$ 2.05	\$ 1.31
Diluted earnings per common share:					
Income before discontinued operations and cumulative effect of a change in accounting principle	\$ (1.02)	\$ 0.22	\$ 0.07	\$ 1.54	\$ 1.02
Discontinued operations, net of tax provision	0.46	0.04	0.26	0.26	0.16
Cumulative effect of a change in accounting principle, net of tax	—	0.45	—	—	—
Net income	\$ (0.56)	\$ 0.71	\$ 0.33	\$ 1.80	\$ 1.18
<b>Balance Sheet data:</b>					
Total assets	\$ 27,216,088	\$ 27,303,932	\$ 23,226,992	\$ 21,937,227	\$ 10,610,232
Short-term debt and capital lease obligations	1,033,956	349,128	1,651,448	903,307	64,525
Long-term debt and capital lease obligations	16,940,809	17,328,181	12,462,290	12,490,175	5,018,044
Company-obligated mandatorily redeemable convertible preferred securities of subsidiary trusts(1)	\$ —	\$ —	\$ 1,123,969	\$ 1,122,924	\$ 1,122,390

(1) Included in long-term debt as of December 31, 2003 and 2004. See Note 12 of the Notes to Consolidated Financial Statements for more information.

	Years Ended December 31,				
	2004	2003	2002 (In thousands)	2001	2000
<b>Reconciliation of GAAP cash provided from operating activities to EBITDA, as adjusted(1):</b>					
Cash provided by operating activities	\$ 9,895	\$ 290,559	\$ 1,068,466	\$ 423,569	\$ 875,751
Less: Changes in operating assets and liabilities, excluding the effects of acquisitions(2)	(137,614)	(609,840)	480,193	(359,640)	277,696
Less: Additional adjustments to reconcile net income to net cash provided by operating activities, net(2)	389,970	618,377	469,655	159,717	228,971
GAAP net income	\$ (242,461)	\$ 282,022	\$ 118,618	\$ 623,492	\$ 369,084
(Income) loss from unconsolidated investments in power projects and oil and gas properties	13,525	(75,804)	16,552	16,946	28,796
Distributions from unconsolidated investments in power projects and oil and gas properties	29,869	141,627	14,117	5,983	29,979
Adjusted net income	\$ (199,067)	\$ 347,845	\$ 116,183	\$ 612,529	\$ 370,267
Interest expense	1,140,802	706,307	402,677	190,971	78,373
<sup>1</sup> / <sub>3</sub> of operating lease expense	35,295	37,357	37,007	33,173	21,154
Distributions on trust preferred securities	—	46,610	62,632	62,412	45,076
Provision (benefit) for income taxes	(276,549)	8,495	10,835	273,137	211,670
Depreciation, depletion and amortization expense	840,916	568,204	423,102	275,396	169,278
Interest expense, provision for income taxes and depreciation from discontinued operations	112,487	84,489	128,900	165,217	127,914
<b>EBITDA, as adjusted(1)</b>	<u>\$ 1,653,885</u>	<u>\$ 1,799,307</u>	<u>\$ 1,181,336</u>	<u>\$ 1,612,835</u>	<u>\$ 1,023,732</u>

- (1) This non-GAAP measure is presented not as a measure of operating results, but rather as a measure of our ability to service debt and to raise additional funds. It should not be construed as an alternative to either (i) income from operations or (ii) cash flows from operating activities. It is defined as net income less income from unconsolidated investments, plus cash received from unconsolidated investments, plus provision for tax, plus interest expense (including distributions on trust preferred securities and one-third of operating lease expense, which is management's estimate of the component of operating lease expense that constitutes interest expense,) plus depreciation, depletion and amortization. The interest, tax and depreciation and amortization components of discontinued operations are added back in calculating EBITDA, as adjusted.

For the year ended December 31, 2004, EBITDA, as adjusted, includes a \$246.9 million gain from the repurchase of debt, offset by approximately \$223.4 million of certain charges, consisting primarily of foreign currency transaction losses, write-off of deferred financing costs not related to the bonds repurchased, equipment cancellation and impairment costs, certain mark-to-market activity, and minority interest expense, some of which required, or will require cash settlement.

For the year ended December 31, 2003, EBITDA, as adjusted, includes a \$180.9 million (net of tax) gain from the cumulative effect of a change in accounting principle and a \$278.6 million gain from the repurchase of debt, offset by approximately \$273.0 million of certain charges, consisting primarily of foreign currency transaction losses, equipment cancellation and impairment costs, certain mark-to-

## Table of Contents

market activity, and minority interest expense, some of which required, or will require cash settlement. EBITDA, as adjusted for the year ended December 31, 2002, includes a non-cash equipment cancellation charge of \$404.7 million, a \$118.0 million gain on the repurchase of debt, and approximately \$55.0 million of certain charges, some of which required, or will require cash settlement.

(2) See the Consolidated Statements of Cash Flows for further detail of these items.

### Selected Operating Information

	Years Ended December 31,				
	2004	2003	2002	2001	2000
	(Dollars in thousands, except production and pricing data)				
<b>Power Plants(1):</b>					
Electricity and steam ("E&S") revenues:					
Energy	\$ 4,224,463	\$ 3,361,095	\$ 2,273,524	\$ 1,701,533	\$ 1,220,684
Capacity	991,142	844,195	781,127	525,174	376,085
Thermal and other	467,458	475,107	182,859	158,617	99,297
Subtotal	\$ 5,683,063	\$ 4,680,397	\$ 3,237,510	\$ 2,385,324	\$ 1,696,066
Spread on sales of purchased power(2)	164,747	24,118	527,546	345,834	11,262
Adjusted E&S revenues	\$ 5,847,810	\$ 4,704,515	\$ 3,765,056	\$ 2,731,158	\$ 1,707,328
MWh produced	96,488,984	82,423,422	72,767,280	42,393,726	22,749,588
All-in electricity price per MWh generated	\$ 60.61	\$ 57.08	\$ 51.74	\$ 64.42	\$ 75.05

(1) From continuing operations only. Discontinued operations are excluded.

(2) From hedging, balancing and optimization activities related to our generating assets.

Set forth above is certain selected operating information for our power plants for which results are consolidated in our statements of operations. Electricity revenue is composed of fixed capacity payments, which are not related to production, and variable energy payments, which are related to production. Capacity revenues include, besides traditional capacity payments, other revenues such as Reliability Must Run and Ancillary Service revenues. The information set forth under thermal and other revenue consists of host steam sales and other thermal revenue.

## Table of Contents

Set forth below is a table summarizing the dollar amounts and percentages of our total revenue for the years ended December 31, 2004, 2003, and 2002, that represent purchased power and purchased gas sales for hedging and optimization and the costs we incurred to purchase the power and gas that we resold during these periods (in thousands, except percentage data):

	Year Ended December 31,		
	2004	2003	2002
Total revenue	\$ 9,229,888	\$ 8,871,033	\$ 7,349,753
Sales of purchased power for hedging and optimization(1)	1,651,767	2,714,187	3,145,991
As a percentage of total revenue	17.9%	30.6%	42.8%
Sale of purchased gas for hedging and optimization	1,728,301	1,320,902	870,466
As a percentage of total revenue	18.7%	14.9%	11.8%
Total cost of revenue ("COR")	8,874,795	8,106,796	6,388,269
Purchased power expense for hedging and optimization(1)	1,487,020	2,690,069	2,618,445
As a percentage of total COR	16.8%	33.2%	41.0%
Purchased gas expense for hedging and optimization	1,716,714	1,279,568	821,065
As a percentage of total COR	19.3%	15.8%	12.9%

(1) On October 1, 2003, we adopted on a prospective basis EITF Issue No. 03-11 and netted purchases of power against sales of purchased power. See Note 2 of the Notes to Consolidated Financial Statements for a discussion of our application of EITF Issue No. 03-11.

The primary reasons for the significant levels of these sales and costs of revenue items include: (a) significant levels of hedging, balancing and optimization activities by our CES risk management organization; (b) particularly volatile markets for electricity and natural gas, which prompted us to frequently adjust our hedge positions by buying power and gas and reselling it; (c) the accounting requirements under Staff Accounting Bulletin ("SAB") No. 101, "Revenue Recognition in Financial Statements," and EITF Issue No. 99-19, "Reporting Revenue Gross as a Principal versus Net as an Agent," under which we show most of our hedging contracts on a gross basis (as opposed to netting sales and cost of revenue); and (d) rules in effect associated with the NEPOOL market in New England, which require that all power generated in NEPOOL be sold directly to the ISO in that market; we then buy from the ISO to serve our customer contracts. GAAP required us to account for this activity, which applies to three of our merchant generating facilities, as the aggregate of two distinct sales and one purchase until our prospective adoption of EITF Issue No. 03-11 on October 1, 2003. This gross basis presentation increased revenues but not gross profit. The table below details the financial extent of our transactions with NEPOOL for financial periods prior to the adoption of EITF Issue No. 03-11. Our entrance into the NEPOOL market began with our acquisition of the Dighton, Tiverton and Rumford facilities on December 15, 2000.

	Nine Months Ended September 30, 2003	Year Ended December 31, 2002
	(In thousands)	
Sales to NEPOOL from power we generated	\$ 258,945	\$ 294,634
Sales to NEPOOL from hedging and other activity	117,345	106,861
Total sales to NEPOOL	\$ 376,290	\$ 401,495
Total purchases from NEPOOL	\$ 310,025	\$ 360,113

(The statement of operations data information and the balance sheet data information contained in the Selected Financial Data is derived from the audited Consolidated Financial Statements of Calpine Corporation and Subsidiaries. See the Notes to the Consolidated Financial Statements and Item 7. "Management's

Discussion and Analysis of Financial Condition and Results of Operations — Results of Operations” for additional information.)

### **Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations**

#### **Overview**

Our core business and primary source of revenue is the generation and delivery of electric power. We provide power to our U.S., Canadian and U.K. customers through the integrated development, construction or acquisition, and operation of efficient and environmentally friendly electric power plants fueled primarily by natural gas and, to a much lesser degree, by geothermal resources. We own and produce natural gas and to a lesser extent oil, which we use primarily to lower our costs of power production and provide a natural hedge of fuel costs for a portion of our electric power plants, but also to generate some revenue through sales to third parties. We protect and enhance the value of our electric and gas assets with a sophisticated risk management organization. We also protect our power generation assets and control certain of our costs by producing certain of the combustion turbine replacement parts that we use at our power plants, and we generate revenue by providing combustion turbine parts to third parties. Finally, we offer services to third parties to capture value in the skills we have honed in building, commissioning, repairing and operating power plants.

Our key opportunities and challenges include:

- preserving and enhancing our liquidity while spark spreads (the differential between power revenues and fuel costs) are depressed,
- selectively adding new load-serving entities and power users to our customer list as we increase our power contract portfolio,
- continuing to add value through prudent risk management and optimization activities, and
- lowering our costs of production through various efficiency programs.

Since the latter half of 2001, there has been a significant contraction in the availability of capital for participants in the energy sector. This has been due to a range of factors, including uncertainty arising from the collapse of Enron and a near-term surplus supply of electric generating capacity in certain market areas. These factors coupled with a three-year period of decreased spark spreads have adversely impacted our liquidity and earnings. While we have generally been able to continue to access the capital and bank credit markets on terms acceptable to us, we recognize that the terms of financing available to us in the future may not be attractive. To protect against this possibility and due to current market conditions, we scaled back our capital expenditure program to enable us to conserve our available capital resources. In 2004 we completed several strategic financings including the refinancing of our CalGen, formerly Calpine Construction Finance Company II, LLC (“CCFC II”), revolving construction facility indebtedness of approximately \$2.5 billion, and the issuance of \$785 million of 9<sup>5</sup>/<sub>8</sub>% First Priority Senior Secured Notes Due 2014 and \$736 million of Contingent Convertible Notes Due 2014 (“2014 Convertible Notes”), all of which are further discussed in Note 17 of the Notes to Consolidated Financial Statements. Debt maturities are relatively modest in 2005 and 2006 as shown in Note 11 of the Notes to Consolidated Financial Statements, but we face several challenges over the next two to three years as our cash requirements (including our refinancing obligations) are expected to exceed our unrestricted cash on hand and cash from operations. Accordingly, we have in place a liquidity-enhancing program which includes possible sales or monetizations of certain of our assets.

Set forth below are the Results of Operations for the years ending December 31, 2004, 2003, and 2002 (in millions, except for unit pricing information, percentages and MW volumes; in the comparative tables below, increases in revenue/income or decreases in expense (favorable variances) are shown without brackets. Decreases in revenue/income or increases in expense (unfavorable variances) are shown with brackets). Prior year amounts have been reclassified for discontinued operations.

**Results of Operations**

*Year Ended December 31, 2004, Compared to Year Ended December 31, 2003*

*Revenue*

	<u>2004</u>	<u>2003</u>	<u>\$ Change</u>	<u>% Change</u>
Total revenue	\$ 9,230.0	\$ 8,871.0	\$ 359.0	4.0%

The increase in total revenue is explained by category below.

	<u>2004</u>	<u>2003</u>	<u>\$ Change</u>	<u>% Change</u>
Electricity and steam revenue	\$ 5,683.1	\$ 4,680.4	\$ 1,002.7	21.4%
Transmission sales revenue	20.0	15.3	4.7	30.7%
Sales of purchased power for hedging and optimization	1,651.8	2,714.2	(1,062.4)	(39.1)%
Total electric generation and marketing revenue	<u>\$ 7,354.9</u>	<u>\$ 7,409.9</u>	<u>\$ (55.0)</u>	(1)%

Electricity and steam revenue increased as we completed construction and brought into operation five new baseload power plants and two project expansions in 2004. Average MW in operation of our consolidated plants increased by 23% to 24,690 MW while generation increased by 17%. The increase in generation lagged behind the increase in average MW in operation as our baseload capacity factor dropped to 50% in 2004 from 53% in 2003 primarily due to the increased occurrence of unattractive off-peak market spark spreads in certain areas due in part to mild weather, which caused us to cycle off certain of our merchants plants without contracts in off peak hours, and also due to oversupply conditions which are expected to gradually work off over the next several years. Average realized electricity prices, before the effects of hedging, balancing and optimization, increased to \$58.90/ MWh in 2004 from \$56.79/ MWh in 2003.

Transmission sales revenue increased in 2004 due to the increased emphasis in optimizing our portfolio through the resale of our underutilized transmission positions in the short- to mid-term markets.

Sales of purchased power for hedging and optimization decreased during 2004 due primarily to netting of approximately \$1,676.0 of sales of purchased power with purchased power expense in 2004 compared to \$256.6 in 2003 (netting in 2003 occurred only in the fourth quarter) in connection with the adoption of EITF Issue No. 03-11 on a prospective basis in the fourth quarter of 2003, partly offset by higher volumes and higher realized prices on hedging, balancing and optimization activities. Without this netting, sales of purchased power would have increased by \$357.0, or 12.0%.

	<u>2004</u>	<u>2003</u>	<u>\$ Change</u>	<u>% Change</u>
Oil and gas sales	\$ 63.2	\$ 59.2	\$ 4.0	6.8%
Sales of purchased gas for hedging and optimization	1,728.3	1,320.9	407.4	30.8%
Total oil and gas production and marketing revenue	<u>\$ 1,791.5</u>	<u>\$ 1,380.1</u>	<u>\$ 411.4</u>	29.8%

Oil and gas sales are net of internal consumption, which is eliminated in consolidation. Internal consumption decreased from \$285.0 in 2003 to \$208.2 in 2004 as a result of lower production following asset sales of our Canadian natural gas reserves and petroleum assets and our Rocky Mountain gas reserves. Before intercompany eliminations, oil and gas sales decreased by \$72.8 to \$271.4 in 2004 from \$344.2 in 2003 due primarily to a reduction in production volumes.

## Table of Contents

Sales of purchased gas for hedging and optimization increased during 2004 due primarily to higher volumes and higher prices of natural gas as compared to the same period in 2003.

	<u>2004</u>	<u>2003</u>	<u>\$ Change</u>	<u>% Change</u>
Realized gain on power and gas mark-to-market transactions, net	\$ 48.2	\$ 24.3	\$ 23.9	98.4%
Unrealized (loss) on power and gas mark-to-market transactions, net	(34.7)	(50.7)	16.0	31.6%
Mark-to-market activities, net	<u>\$ 13.5</u>	<u>\$ (26.4)</u>	<u>\$ 39.9</u>	151.1%

Mark-to-market activities, which are shown on a net basis, result from general market price movements against our open commodity derivative positions, including positions accounted for as trading under EITF Issue No. 02-03 and other mark-to-market activities. These commodity positions represent a small portion of our overall commodity contract position. Realized revenue represents the portion of contracts actually settled and is offset by a corresponding change in unrealized gains or losses as unrealized derivative values are converted from unrealized forward positions to cash at settlement. Unrealized gains and losses include the change in fair value of open contracts as well as the ineffective portion of our cash flow hedges.

During 2004, we recognized a net gain from mark-to-market activities compared to net losses in 2003. In 2004 our exposure to mark-to-market earnings volatility declined commensurate with a corresponding decline in the volume of open commodity positions underlying the exposure. As a result, the magnitude of earnings volatility attributable to changes in prices declined. We recorded a hedge ineffectiveness gain of approximately \$7.6 in 2004 versus a hedge ineffectiveness loss of \$1.8 for the corresponding period in 2003. Additionally, during 2004 we recorded gains of \$9.2 on a mark-to-market derivative contract that was terminated during 2004 versus a mark-to-market loss of \$15.5 on the same contract in 2003.

	<u>2004</u>	<u>2003</u>	<u>\$ Change</u>	<u>% Change</u>
Other revenue	\$70.1	\$ 107.5	\$ (37.4)	(34.8)%

Other revenue decreased during 2004 primarily due to a one-time pre-tax gain of \$67.3 realized during 2003, in connection with our settlement with Enron, principally related to the final negotiated settlement of claims and amounts owed under terminated commodity contracts. The decrease in 2004 was partially offset by increases of \$13.3 and \$12.0 from combustion turbine parts sales and repair and maintenance services performed by TTS and construction management and operating services performed by CPSI, respectively.

### *Cost of Revenue*

	<u>2004</u>	<u>2003</u>	<u>\$ Change</u>	<u>% Change</u>
Cost of revenue	\$ 8,874.8	\$ 8,106.8	\$ (768.0)	(9.5)%

The increase in total cost of revenue is explained by category below.

	<u>2004</u>	<u>2003</u>	<u>\$ Change</u>	<u>% Change</u>
Plant operating expense	\$ 796.0	\$ 663.0	\$ (133.0)	(20.1)%
Royalty expense	28.7	24.9	(3.8)	(15.3)%
Transmission purchase expense	85.5	46.5	(39.0)	(83.9)%
Purchased power expense for hedging and optimization	1,487.0	2,690.1	1,203.1	44.7%
Total electric generation and marketing expense	<u>\$ 2,397.2</u>	<u>\$ 3,424.5</u>	<u>\$ 1,027.3</u>	30.0%

Plant operating expense increased as five new baseload power plants and two expansion projects were completed during 2004, and due to higher major maintenance expense on existing plants as many of our newer power plants performed their initial major maintenance work. In North America, 25 of our gas-fired plants performed major maintenance work, an increase of 67% over the number of plants that did so in 2003. In addition, during 2004 we incurred \$54.3 for equipment failure costs compared to \$11.0 in 2003.

## Table of Contents

Transmission purchase expense increased primarily due to additional power plants achieving commercial operation in 2004.

Approximately 76% of the royalty expense for 2004 vs. 78% for 2003 is attributable to royalties paid to geothermal property owners at The Geysers, mostly as a percentage of geothermal electricity revenues. The increase in royalty expense in 2004 was due primarily to a \$2.5 increase in royalties at The Geysers, and the remainder was due to an increase in the accrual of contingent purchase price payments to the previous owners of the Texas City and Clear Lake Power Plants based on a percentage of gross revenues at these two plants.

Purchased power expense for hedging and optimization decreased during 2004 as compared to 2003 due primarily to netting of approximately \$1,676.0 of purchased power expense against sales of purchased power in 2004 compared to \$256.6 in 2003, in connection with the adoption of EITF Issue No. 03-11 in the fourth quarter of 2003, partly offset by higher volumes and higher realized prices on hedging, balancing and optimization activities. Without this netting, purchased power expense would have increased by \$216.4 or 7.3%.

	<u>2004</u>	<u>2003</u>	<u>\$ Change</u>	<u>% Change</u>
Oil and gas production expense	\$ 48.9	\$ 56.3	\$ 7.4	13.1%
Oil and gas exploration expense	7.9	19.2	11.3	58.9%
Oil and gas operating expense	\$ 56.8	\$ 75.5	\$ 18.7	24.8%
Purchased gas expense for hedging and optimization	1,716.7	1,279.6	(437.1)	(34.2)%
Total oil and gas operating and marketing expense	<u>\$ 1,773.5</u>	<u>\$ 1,355.1</u>	<u>\$ (418.4)</u>	<u>(30.9)%</u>

Oil and gas production expense decreased during 2004 as compared to the same period in 2003 primarily due to lower lease operating expense resulting from lower production volumes due to the sales of oil and gas properties completed in the fourth quarter of 2003 and third quarter of 2004.

Oil and gas exploration expense decreased primarily as a result of a decrease in dry hole costs resulting from declines in capital expenditures driven by a lower operating base due to sales of oil and gas properties completed in the fourth quarter of 2003 and third quarter of 2004.

Purchased gas expense for hedging and optimization increased during 2004 due to higher volumes and higher prices for gas in 2004.

	<u>2004</u>	<u>2003</u>	<u>\$ Change</u>	<u>% Change</u>
Fuel expense				
Cost of oil and gas burned by power plants	\$ 3,732.6	\$ 2,677.2	\$ (1,055.4)	(39.4)%
Recognized (gain) on gas hedges	(1.5)	(11.6)	(10.1)	(87.1)%
Total fuel expense	<u>\$ 3,731.1</u>	<u>\$ 2,665.6</u>	<u>\$ (1,065.5)</u>	<u>(40.0)%</u>

Cost of oil and gas burned by power plants increased during 2004 as compared to 2003 due to a 17.4% increase in gas consumption as we increased our MW production and higher prices for gas excluding the effects of hedging, balancing and optimization.

	<u>2004</u>	<u>2003</u>	<u>\$ Change</u>	<u>% Change</u>
Depreciation, depletion and amortization expense	\$ 574.2	\$ 504.4	\$ (69.8)	(13.8)%

Depreciation, depletion and amortization expense increased in 2004 primarily due to additional power plants achieving commercial operation subsequent to 2003.

	<u>2004</u>	<u>2003</u>	<u>\$ Change</u>	<u>% Change</u>
Oil and gas impairment	\$ 202.1	\$2.9	\$ (199.2)	(6,869.0)%

## Table of Contents

As a result of decreases in proved undeveloped reserves located in South Texas and proved developed non-producing reserves in Offshore Gulf of Mexico a non-cash impairment charge of approximately \$202.1 was recorded as of December 31, 2004.

	<u>2004</u>	<u>2003</u>	<u>\$ Change</u>	<u>% Change</u>
Operating lease expense	\$ 105.9	\$ 112.1	\$ 6.2	5.5%

Operating lease expense decreased during 2004 as compared to 2003 primarily because the King City lease terms were restructured and the lease began to be accounted for as a capital lease. As a result, we ceased incurring operating lease expense on that lease and instead began to incur depreciation and interest expense.

	<u>2004</u>	<u>2003</u>	<u>\$ Change</u>	<u>% Change</u>
Other cost of revenue	\$90.7	\$42.3	\$ (48.4)	(114.4)%

Other cost of revenue increased during 2004 as compared to 2003 primarily due to \$29.0 of amortization expense in 2004 versus \$10.6 in 2003 incurred from the adoption of DIG Issue No. C20. In the fourth quarter of 2003, we recorded a pre-tax mark-to-market gain of \$293.4 as a cumulative effect of a change in accounting principle. This gain is amortized as expense over the respective lives of the two power sales contracts from which the mark-to-market gains arose. We also incurred \$11.3 of additional expense from TTS in 2004, as the entity had a full year of activity (we acquired TTS in late February of 2003). Additionally, CPSI cost of revenue increased \$10.8 in 2004 compared to 2003 due to an increase in services contract activity.

### *(Income)/ Expense*

	<u>2004</u>	<u>2003</u>	<u>\$ Change</u>	<u>% Change</u>
(Income) loss from unconsolidated investments in power projects and oil and gas properties	\$13.5	\$ (75.8)	\$ (89.3)	(117.8)%

The reduction in income was primarily due to a non-recurring \$52.8 gain in 2003, representing our 50% share, on the termination of the tolling arrangement with Aquila Merchant Services, Inc. ("AMS") at the Acadia Energy Center and a loss of \$11.6 realized in 2004, representing our share of a jury award to International Paper Company ("IP") in a litigation relating to Androscoggin Energy LLC ("AELLC") together with a \$5 impairment charge recorded when Androscoggin filed for bankruptcy protection in the fourth quarter of 2004. Also, we did not have any income on our Gordonsville investment in 2004, compared to \$12.0 in 2003, as we sold our interest in this facility in November 2003. For further information, see Note 7 of the Notes to Consolidated Financial Statements.

	<u>2004</u>	<u>2003</u>	<u>\$ Change</u>	<u>% Change</u>
Equipment cancellation and impairment cost	\$42.4	\$ 64.4	\$ 22.0	34.2%

In 2004, the pre-tax equipment cancellation and impairment charge was primarily a result of charges of \$33.7 related to cancellation costs of six heat recovery steam generators ("HRSG") orders and HRSG component parts cancellations and impairments. In 2003 the pre-tax equipment cancellation and impairment charge was primarily a result of cancellation costs related to three turbines and three HRSGs and impairment charges related to four turbines.

	<u>2004</u>	<u>2003</u>	<u>\$ Change</u>	<u>% Change</u>
Long-term service agreement cancellation charge	\$ 11.3	\$ 16.4	\$ 5.1	31.1%

Long-term service agreement ("LTSA") cancellation charges decreased primarily due to \$14.1 in cancellation costs incurred in 2003 associated with LTSAs with General Electric related to our Rumford, Tiverton and Westbrook facilities. In 2004 the decrease was offset by a \$7.7 adjustment as a result of settlement negotiations related to the cancellation of LTSAs with Siemens-Westinghouse Power Corporation at our Hermiston, Ontelaunee, South Point and Sutter facilities and a \$3.8 adjustment as a result of LTSA

## Table of Contents

cancellation settlement negotiations with General Electric regarding cancellation charges at our Los Medanos facility.

	<u>2004</u>	<u>2003</u>	<u>\$ Change</u>	<u>% Change</u>
Project development expense	\$ 24.4	\$ 21.8	\$ (2.6)	(11.9)%

Project development expense increased during 2004 primarily due to higher costs associated with cancelled projects, and due to costs incurred in 2004 on oil and gas storage, pipeline and liquid natural gas projects.

	<u>2004</u>	<u>2003</u>	<u>\$ Change</u>	<u>% Change</u>
Research and development expense	\$ 18.4	\$ 10.6	\$ (7.8)	(73.6)%

Research and development expense increased in 2004 as compared to 2003 primarily due to increased personnel expense related to gas turbine component research and development programs at our PSM subsidiary.

	<u>2004</u>	<u>2003</u>	<u>\$ Change</u>	<u>% Change</u>
Sales, general and administrative expense	\$ 239.3	\$ 216.5	\$ (22.8)	(10.5)%

Sales, general and administrative expense increased in 2004 due primarily to an increase of \$20.4 of Sarbanes-Oxley 404 internal control project costs. Sales, general and administrative expense expressed per MWh of generation decreased to \$2.48/MWh in 2004 from \$2.63/MWh in 2003, due to a 17% increase in MWh generated as more plants entered commercial operation.

	<u>2004</u>	<u>2003</u>	<u>\$ Change</u>	<u>% Change</u>
Interest expense	\$ 1,140.8	\$ 706.3	\$ (434.5)	(61.5)%

Interest expense increased as a result of higher average debt balances, higher average interest rates and lower capitalization of interest expense. Interest capitalized decreased from \$444.5 in 2003 to \$376.1 in 2004 as a result of new plants that entered commercial operations (at which point capitalization of interest expense ceases). We expect that the amount of interest capitalized will continue to decrease in future periods as our plants in construction are completed. Additionally during 2004, (i) interest expense related to our senior notes and term loans increased \$125.8; (ii) interest expense related to our CalGen financing was responsible for an increase of \$113.7; (iii) interest expense related to our notes payable and borrowings under lines of credit increased \$40.0; (iv) interest expense related to our CCFC I financing increased \$26.1; and (v) interest expense related to our preferred interests increased \$28.7. The majority of the remaining increase relates to an increase in average indebtedness due primarily to the deconsolidation of our three Calpine Capital Trust subsidiaries (the "Trusts") which issued the HIGH TIDES I, II and III and recording of debt to the Trusts due to the adoption of Financial Accounting Standards Board ("FASB") Interpretation No. ("FIN") 46, "Consolidation of Variable Interest Entities, an interpretation of ARB 51" ("FIN 46") prospectively on October 1, 2003 (see Note 2 of the Notes to Consolidated Financial Statements for a discussion of our adoption of FIN 46). Interest expense related to the notes payable to the Trusts during 2004 was \$58.6. The distributions were excluded from the interest expense caption on our Consolidated Statements of Operations through the nine months ended September 30, 2003, while \$15.1 of interest expense related to the Trusts was recorded for the quarter ending December 31, 2003. The HIGH TIDES I and II and the related notes payable to the Trusts were redeemed in October 2004.

	<u>2004</u>	<u>2003</u>	<u>\$ Change</u>	<u>% Change</u>
Distributions on trust preferred securities	\$—	\$ 46.6	\$ 46.6	(100)%

As discussed above, as a result of the deconsolidation of the Trusts upon adoption of FIN 46 as of October 1, 2003, the distributions paid on the HIGH TIDES I, II and III during 2004 were no longer recorded on our books and were replaced prospectively by interest expense on our debt to the Trusts.

	<u>2004</u>	<u>2003</u>	<u>\$ Change</u>	<u>% Change</u>
Interest (income)	\$ (56.4)	\$ (39.7)	\$ 16.7	42.1%

## Table of Contents

The increase in interest (income) in 2004 is due to an increase in cash and cash equivalents and restricted cash balances during the year. Additionally, we generated interest income on the repurchases of our HIGH TIDES I, II and III. For further information, see Note 3 of the Notes to Consolidated Financial Statements.

	<u>2004</u>	<u>2003</u>	<u>\$ Change</u>	<u>% Change</u>
Minority interest expense	\$ 34.7	\$ 27.3	\$ (7.4)	(27.1)%

Minority interest expense increased during 2004 as compared to 2003 due to our reduced ownership percentage in the Calpine Power Limited Partnership (“CPLP”) following the sale of our interest in the Calpine Power Income Fund (“CPIF”) which owns 70% of CPLP. Our 30% interest is subordinate to CPIF’s interest.

	<u>2004</u>	<u>2003</u>	<u>\$ Change</u>	<u>% Change</u>
(Income) from the repurchase of various issuances of debt	\$ (246.9)	\$ (278.6)	\$ (31.7)	(11.4)%

Income from repurchases of various issuances of debt during 2004 decreased by \$31.7 from the corresponding period primarily as a result of lower face amounts of debt repurchased in open market and privately negotiated transactions.

	<u>2004</u>	<u>2003</u>	<u>\$ Change</u>	<u>% Change</u>
Other (income), net	\$ (149.1)	\$ (46.1)	\$ 103.0	223.4%

Other income increased in 2004 as compared to 2003 primarily due to (a) pre-tax income in 2004 in the amount of \$171.5 associated with the restructuring of power purchase agreements for our Newark and Parlin power plants and the sale of Utility Contract Funding II, LLC, net of transaction costs and the write-off of unamortized deferred financing costs, (b) \$16.4 pre-tax gain from the restructuring of a long-term gas supply contract net of transaction costs and (c) \$12.3 pre-tax gain from the King City restructuring transaction related to the sale of our debt securities that had served as collateral under the King City lease, net of transaction costs. In addition, during 2004, foreign currency transaction losses totaled \$25.1, compared to losses of \$33.3 in the corresponding period in 2003. See further discussion of our currency transaction losses under “Financial Market Risks”.

In 2003, we recorded a gain of \$62.2 on the sale of oil and gas properties and a gain of \$57.0 from a contract termination of the RockGen facility.

	<u>2004</u>	<u>2003</u>	<u>\$ Change</u>	<u>% Change</u>
Provision (benefit) for income taxes	\$ (276.5)	\$ 8.5	\$ 285.0	3,352.9%

For 2004, the effective rate was 38.6% as compared to 9.0% for 2003. The variance in the effective rate is primarily due to the sale of oil and gas assets in Canada, resulting in reclassifying certain permanent difference deduction items primarily related to cross border financings to discontinued operations.

	<u>2004</u>	<u>2003</u>	<u>\$ Change</u>	<u>% Change</u>
Discontinued operations, net of tax	\$ 198.4	\$ 15.0	\$ (183.4)	(1,222.7)%

The 2004 discontinued operations activity includes the effects of the sale of our 50% interest in the Lost Pines 1 Power Project, the sale of our oil and gas reserves in the Colorado Piceance Basin and New Mexico San Juan Basin and the sale of our Canadian natural gas reserves and petroleum assets, all of which resulted in a gain on sale, pre-tax, of \$239.6. The 2003 discontinued operations activity includes the operational reclasses to discontinued operations related to Lost Pines 1 Power Project, the sale of our Alvin South Field oil and gas assets, the sale of our oil and gas reserves in the United States and Canada, and the sale of our specialty data center engineering business. For more information about discontinued operations, see Note 10 of the Notes to Consolidated Financial Statements.

	<u>2004</u>	<u>2003</u>	<u>\$ Change</u>	<u>% Change</u>
Cumulative effect of a change in accounting principle, net of tax	\$—	\$ 180.9	\$ (180.9)	(100.0)%

## Table of Contents

The 2003 gain from the cumulative effect of a change in accounting principle included three items: (1) a gain of \$181.9, net of tax effect, from the adoption of DIG Issue No. C20; (2) a loss of \$1.5 associated with the adoption of FIN 46, as revised (“FIN 46-R”) and the deconsolidation of the Trusts which issued the HIGH TIDES. The loss of \$1.5 represents the reversal of a gain, net of tax effect, recognized prior to the adoption of FIN 46-R on our repurchase of \$37.5 of the value of HIGH TIDES by issuing shares of our common stock valued at \$35.0; and (3) a gain of \$0.5, net of tax effect, from the adoption of SFAS No. 143 “Accounting for Asset Retirement Obligations” (“SFAS No. 143”).

### Net Income (Loss)

	<u>2004</u>	<u>2003</u>	<u>\$ Change</u>	<u>% Change</u>
Net income (loss)	\$ (242.5)	\$ 282.0	\$ (524.5)	(186.0)%

Throughout 2004 we continued to focus on opportunities to add value by adding to and increasing the performance of our power plant portfolio. We added 3,655 MW to our fleet by completing construction on five power plants and two expansion projects at existing plants. Five of these seven facilities have much of their output under long-term contracts. In March 2004 we acquired the 570 MW Brazos Valley Power Plant. Currently our fleet includes 92 power plants in operation, totaling 26,649 MW.

We generated 96.5 million MWh in 2004, which equated to a baseload capacity factor of 49.8%, and realized an average spark spread of \$21.24/MWh. In 2003 we generated 82.4 million MWh, which equated to a capacity factor of 53.2%, and realized an average spark spread of \$23.90/MWh.

Gross profit decreased by \$409.1, or 54%, to \$355.1 in 2004, primarily due to: (i) \$202.1 of impairment charges for certain oil and gas reserves; (ii) non-recurring other revenue of \$67.3 recognized in 2003 from the settlement of contract disputes with, and claims against, Enron; (iii) the recording in 2004 of approximately \$54.3 for equipment failure costs within plant operating expense, compared to \$11.0 in 2003; (iv) the amortization of \$29.0 in 2004 of the DIG Issue No. C20 gain recorded in the fourth quarter of 2003 due to the cumulative effect of a change in accounting principle; and (v) soft market fundamentals, which caused total spark spread, despite an increase of \$79.2, or 4%, to not increase commensurate with additional plant operating expense, transmission purchase expense and depreciation costs associated with new power plants coming on-line.

During 2004, financial results were also affected by a \$387.9 increase in interest expense and distributions on our debt, as compared to the same period in 2003. This occurred as a result of higher debt balances, higher average interest rates and lower capitalization of interest as new plants entered commercial operation. Prior year results benefited from recording \$52.8 (in income from unconsolidated investments in power projects) due to the termination of a power purchase agreement by the Acadia joint venture.

Other income increased by \$103.0 to \$149.1 during 2004, as compared to 2003, primarily due to: (i) pre-tax income in the amount of \$171.5, net of transaction costs and the write-off of unamortized deferred financing costs, associated with the restructuring of power purchase agreements for our Newark and Parlin power plants and the sale of an entity holding a power purchase agreement; (ii) a \$16.4 pre-tax gain from the restructuring of a long-term supply contract net of transaction costs; and (iii) a \$12.3 pre-tax gain from the King City restructuring transaction related to the sale of our debt securities that had served as collateral under the King City lease, net of transaction costs. In 2003 we recorded a gain of \$62.2 on the sale of oil and gas properties and a gain of \$57.0 from a contract termination at our RockGen facility. See further discussion of our currency transaction losses under “Financial Market Risks.”

In 2004, we recorded a charge of \$42.4 for equipment cancellation costs, primarily related to cancellation of HRSG orders on two of our development projects. In 2003 there were \$64.4 in equipment cancellation charges. Also during 2004 foreign currency transaction losses were \$25.1 compared to losses of \$33.3 in the corresponding period in 2003. We recognized gains totaling \$246.9 on repurchases of debt in 2004 compared to \$278.6 in 2003 and loss before discontinued operations and cumulative effect of a change in accounting principle was \$416.3 in 2004.

## Table of Contents

Discontinued operations, net of tax increased by \$183.4 in 2004, compared to 2003, as a result of the sale of our Canadian, and certain of our U.S. oil and gas assets during the third quarter of 2004 and the sale of our interest in the Lost Pines facility in the first quarter of 2004.

### Year Ended December 31, 2003, Compared to Year Ended December 31, 2002

#### Revenue

	<u>2003</u>	<u>2002</u>	<u>\$ Change</u>	<u>% Change</u>
Total revenue	\$ 8,871.0	\$ 7,349.8	\$ 1,521.2	20.7%

The increase in total revenue is explained by category below.

	<u>2003</u>	<u>2002</u>	<u>\$ Change</u>	<u>% Change</u>
Electricity and steam revenue	\$ 4,680.4	\$ 3,237.5	\$ 1,442.9	44.6%
Transmission sale revenue	15.3	—	15.3	100.0%
Sales of purchased power for hedging and optimization	<u>2,714.2</u>	<u>3,146.0</u>	<u>(431.8)</u>	<u>(13.7)%</u>
Total electric generation and marketing revenue	<u>\$ 7,409.9</u>	<u>\$ 6,383.5</u>	<u>\$ 1,026.4</u>	<u>16.1%</u>

Electricity and steam revenue increased as we completed construction and brought into operation five new baseload power plants, seven new peaker facilities and three project expansions in 2003. Average MW in operation of our consolidated plants increased by 40% to 20,092 MW while generation increased by 13%. The increase in generation lagged behind the increase in average MW in operation as our baseload capacity factor dropped to 53% in 2003 from 65% in 2002 primarily due to the increased occurrence of unattractive off-peak market spark spreads in certain areas reflecting oversupply conditions which are expected to gradually work off over the next several years (this caused us to cycle off certain of our merchant plants without contracts in off-peak hours) and to a lesser extent due to unscheduled outages caused by equipment problems at certain of our plants in the first half of 2003. Average realized electricity prices, before the effects of hedging, balancing and optimization, increased to \$56.79/ MWh in 2003 from \$44.49/ MWh in 2002.

We generated transmission sales revenue in 2003 due to the resale of some of our underutilized positions in the short- to mid-term markets.

Sales of purchased power for hedging and optimization decreased during 2003, due primarily to adoption of EITF Issue No. 03-11 and lower realized prices on term power hedges.

	<u>2003</u>	<u>2002</u>	<u>\$ Change</u>	<u>% Change</u>
Oil and gas sales	\$ 59.2	\$ 63.5	\$ (4.3)	(6.8)%
Sales of purchased gas for hedging and optimization	<u>1,320.9</u>	<u>870.5</u>	<u>450.4</u>	<u>51.7%</u>
Total oil and gas production and marketing revenue	<u>\$ 1,380.1</u>	<u>\$ 934.0</u>	<u>\$ 446.1</u>	<u>47.8%</u>

Oil and gas sales are net of internal consumption, which is eliminated in consolidation. Internal consumption increased by \$143.7 to \$285.0 in 2003. Before intercompany eliminations, oil and gas sales increased by \$139.4 to \$344.2 in 2003 from \$204.8 in 2002 due primarily to 68% higher average realized natural gas pricing in 2003.

Sales of purchased gas for hedging and optimization increased during 2003 due to higher prices for natural gas.

	<u>2003</u>	<u>2002</u>	<u>\$ Change</u>	<u>% Change</u>
Realized gain on power and gas transactions, net	\$ 24.3	\$26.1	\$ (1.8)	(6.9)%
Unrealized loss on power and gas transactions, net	<u>(50.7)</u>	<u>(4.6)</u>	<u>(46.1)</u>	<u>(1,002.2)%</u>
Mark-to-market activities, net	<u>\$ (26.4)</u>	<u>\$21.5</u>	<u>\$ (47.9)</u>	<u>(222.8)%</u>

## Table of Contents

Realized revenue on power and gas mark-to-market activity represents the portion of mark-to-market contracts actually settled.

Mark-to-market activities, which are shown on a net basis, result from general market price movements against our open commodity derivative positions, including positions accounted for as trading under EITF Issue No. 02-03, and other mark-to-market activities. These commodity positions represent a small portion of our overall commodity contract position. Realized revenue represents the portion of contracts actually settled, while unrealized revenue represents changes in the fair value of open contracts, and the ineffective portion of cash flow hedges. The decrease in mark-to-market activities revenue in 2003 is due primarily to a \$27.3 reduction in value of option contracts associated with a spark spread protection arrangement for the CCFC I financing and a decline in the value of a long-term spark spread option contract accounted for on a mark-to-market basis under SFAS No. 133.

	<u>2003</u>	<u>2002</u>	<u>\$ Change</u>	<u>% Change</u>
Other revenue	\$ 107.5	\$ 10.8	\$ 96.7	895.4%

Other revenue increased during 2003 primarily due to \$67.3 recorded in connection with our settlement with Enron, primarily related to the termination of commodity contracts following the Enron bankruptcy. We also realized \$23.6 of revenue from TTS, which we acquired in late February 2003. PSM revenues increased \$6.2 in 2003 as compared to 2002.

### *Cost of Revenue*

	<u>2003</u>	<u>2002</u>	<u>\$ Change</u>	<u>% Change</u>
Total cost of revenue	\$ 8,106.8	\$ 6,388.3	\$ (1,718.5)	(26.9)%

The increase in total cost of revenue is explained by category below.

	<u>2003</u>	<u>2002</u>	<u>\$ Change</u>	<u>% Change</u>
Plant operating expense	\$ 663.0	\$ 522.9	\$ (140.1)	(26.8)%
Royalty expense	24.9	17.6	(7.3)	(41.5)%
Transmission purchase expense	46.5	25.5	(21.0)	(82.4)%
Purchased power expense for hedging and optimization	<u>2,690.1</u>	<u>2,618.4</u>	<u>(71.7)</u>	<u>(2.7)%</u>
Total electric generation and marketing expense	<u>\$ 3,424.5</u>	<u>\$ 3,184.4</u>	<u>\$ (240.1)</u>	<u>(7.5)%</u>

Plant operating expense increased due to five new baseload power plants, seven new peaker facilities and three expansion projects completed during 2003. Additionally, we experienced higher transmission expenses and higher maintenance expense as several newer plants underwent their first scheduled hot gas path overhauls which generally first occur after a plant has been in operation for three years.

Transmission purchase expense increased as additional plants were brought on line in 2003.

Royalty expense increased primarily due to the accrual of \$5.3 in 2003 vs. \$0 in 2002 for payments to the previous owner of the Texas City and Clear Lake Power Plants based on a percentage of gross revenues at these two natural gas-fired plants. Additionally, royalties increased by \$2.0 due to an increase in electric revenues at The Geysers geothermal plants, where we pay royalties to geothermal property owners, mostly as a percentage of geothermal electricity revenues. Approximately 78% of the royalty expense for 2003 is attributable to such geothermal royalties.

## Table of Contents

The increase in purchased power expense for hedging and optimization was due primarily to increased spot market costs to purchase power for hedging and optimization activities partially offset by netting in the fourth quarter of 2003 due to the adoption of EITF Issue No. 03-11.

	<u>2003</u>	<u>2002</u>	<u>\$ Change</u>	<u>% Change</u>
Oil and gas production expense	\$ 56.3	\$ 56.8	\$ 0.5	1.0%
Oil and gas exploration expense	19.2	13.0	(6.2)	(47.7)%
Oil and gas operating expense	\$ 75.5	\$ 69.8	\$ (5.7)	(8.2)%
Purchased gas expense for hedging and optimization	1,279.6	821.1	(458.5)	(55.8)%
Total oil and gas operating and marketing expense	<u>\$ 1,355.1</u>	<u>\$ 890.9</u>	<u>\$ (464.2)</u>	<u>(52.1)%</u>

Oil and gas production expense was flat compared to 2002; excluding the effects of discontinued operations (see Note 10 of the Notes to Consolidated Financial Statements for further information), oil and gas production expense would have increased primarily due to higher production taxes and higher gas treating and transportation costs, which were primarily the result of higher oil and gas prices plus an increase in operating cost and an increase in the average Canadian dollar foreign exchange rate in 2003.

Oil and gas exploration expense increased primarily as a result of \$9.5 in dry hole drilling expenses in 2003 compared to \$5.0 in 2002.

Purchased gas expense for hedging and optimization increased during 2003 due to higher prices for gas in 2003.

	<u>2003</u>	<u>2002</u>	<u>\$ Change</u>	<u>% Change</u>
Fuel expense				
Cost of oil and gas burned by power plants	\$ 2,677.2	\$ 1,659.3	\$ (1,017.9)	(61.3)%
Recognized (gain) loss on gas hedges	(11.6)	133.0	144.6	108.7%
Total fuel expense	<u>\$ 2,665.6</u>	<u>\$ 1,792.3</u>	<u>\$ (873.3)</u>	<u>(48.7)%</u>

Fuel expense increased in 2003, due to a 15% increase in gas-fired MWh generated and 33% higher prices excluding the effects of hedging, balancing and optimization. This was partially offset by an increased value of internally produced gas, which is eliminated in consolidation.

	<u>2003</u>	<u>2002</u>	<u>\$ Change</u>	<u>% Change</u>
Depreciation, depletion and amortization expense	\$ 504.4	\$ 398.9	\$ (105.5)	(26.4)%

Depreciation, depletion and amortization expense increased in 2003 primarily due to additional power plants achieving commercial operation subsequent to 2002.

	<u>2003</u>	<u>2002</u>	<u>\$ Change</u>	<u>% Change</u>
Oil and gas impairment	\$ 2.9	\$ 3.4	\$ 0.5	14.7%

In 2003, oil and gas impairment charges decreased slightly due primarily to the fact that in 2002 we incurred higher impairments on properties located throughout Texas and Oklahoma.

	<u>2003</u>	<u>2002</u>	<u>\$ Change</u>	<u>% Change</u>
Operating lease expense	\$ 112.1	\$ 111.0	\$ (1.1)	(1.0)%

Operating lease expense was flat as the number of operating leases did not change in 2003 as compared to 2002.

	<u>2003</u>	<u>2002</u>	<u>\$ Change</u>	<u>% Change</u>
Other cost of revenue	\$42.3	\$7.3	\$ (35.0)	(479.5)%

## Table of Contents

Approximately half of this increase is due to \$17.3 of TTS expense. TTS was acquired in late February 2003 so there is no comparable expense in the prior period. Additionally, PSM expense increased \$9.0 in 2003 as compared to 2002 due primarily to an increase in sales.

### *(Income)/ Expenses*

	<u>2003</u>	<u>2002</u>	<u>\$ Change</u>	<u>% Change</u>
(Income) from unconsolidated investments in power projects and oil and gas properties	\$ (75.8)	\$ (16.6)	\$ 59.2	356.6%

The increase in income is primarily due to a \$52.8 gain recognized on the termination of the tolling agreement with AMS on the Acadia Energy Center (see Note 7 of the Notes to Consolidated Financial Statements). Additionally, we realized a pre-tax gain of \$7.1 from the sale of our interest in the Gordonsville Energy Center to Dominion Virginia Power.

	<u>2003</u>	<u>2002</u>	<u>\$ Change</u>	<u>% Change</u>
Equipment cancellation and impairment cost	\$64.4	\$ 404.7	\$ 340.3	84.1%

In 2003, the pre-tax equipment cancellation and impairment charge was primarily a result of cancellation costs related to three turbines and three HRSGs and impairment charges related to four turbines. The pre-tax charge of \$404.7 in 2002 was the result of turbine and other equipment order cancellation charges and related write-offs as a result of our scale-back in construction and development activities. For further information, see Note 25 of the Notes to Consolidated Financial Statements.

	<u>2003</u>	<u>2002</u>	<u>\$ Change</u>	<u>% Change</u>
Long-term service agreement cancellation charges	\$ 16.4	\$—	\$ (16.4)	(100.0)%

Of the \$16.4 in charges incurred in 2003, \$14.1 occurred as a result of the cancellation of LTSAs with General Electric related to our Rumford, Tiverton and Westbrook facilities. The other \$2.3 occurred as a result of the cancellation of LTSAs with Siemens-Westinghouse Power Corporation related to our Sutter, South Point, Hermiston and Ontelaunee facilities.

	<u>2003</u>	<u>2002</u>	<u>\$ Change</u>	<u>% Change</u>
Project development expense	\$ 21.8	\$ 67.0	\$ 45.2	67.5%

Project development expense decreased as we placed certain existing development projects on hold and scaled back new development activity. Additionally, write-offs of terminated and suspended development projects decreased to \$3.7 in 2003 from \$34.8 in 2002.

	<u>2003</u>	<u>2002</u>	<u>\$ Change</u>	<u>% Change</u>
Research and development expense	\$ 10.6	\$ 10.0	\$ (0.6)	(6.0)%

The modest increase in research and development is attributed to increased personnel expenses related to research and development programs at our PSM subsidiary.

	<u>2003</u>	<u>2002</u>	<u>\$ Change</u>	<u>% Change</u>
Sales, general and administrative expense	\$ 216.5	\$ 186.1	\$ (30.4)	(16.3)%

Sales, general and administrative expense increased due to \$10.7 of stock-based compensation expense associated with our adoption of SFAS No. 123, "Accounting for Stock-Based Compensation," effective January 1, 2003, on a prospective basis while \$7.1 of the increase is attributable to the acquisition of TTS in late February 2003. Other increases include \$7.3 in insurance costs and a write-off of excess office space. Sales, general and administrative expense expressed per MWh of generation increased to \$2.63/ MWh in 2003 from \$2.56/ MWh in 2002, due to a lower average capacity factor in 2003.

	<u>2003</u>	<u>2002</u>	<u>\$ Change</u>	<u>% Change</u>
Interest expense	\$ 706.3	\$ 402.7	\$ (303.6)	(75.4)%

## Table of Contents

Interest expense increased primarily due to the new plants entering commercial operations (at which point capitalization of interest expense ceases). Interest capitalized decreased from \$575.5 for the year ended December 31, 2002, to \$444.5 for the year ended December 31, 2003. We expect that interest expense will continue to increase and the amount of interest capitalized will decrease in future periods as our plants in construction are completed, and, to a lesser extent, as a result of suspension of certain of our development projects and suspension of capitalization of interest thereon. The remaining increase relates to an increase in average indebtedness, an increase in the amortization of terminated interest rate swaps and the recording of interest expense on debt to the three Trusts due to the adoption of FIN 46-R prospectively on October 1, 2003. See Note 2 of the Notes to Consolidated Financial Statements for a discussion of our adoption of FIN 46-R.

	<u>2003</u>	<u>2002</u>	<u>\$ Change</u>	<u>% Change</u>
Distributions on trust preferred securities	\$46.6	\$62.6	\$ (16.0)	(25.6)%

As a result of the deconsolidation of the Trusts upon adoption of FIN 46-R as of October 1, 2003, the distributions paid on the HIGH TIDES during the fourth quarter of 2003 were no longer recorded on our books and were replaced by interest expense on our debt to the Trusts, thus explaining the decrease in distributions on the HIGH TIDES in 2003.

	<u>2003</u>	<u>2002</u>	<u>\$ Change</u>	<u>% Change</u>
Interest income	\$ (39.7)	\$ (43.1)	\$ (3.4)	(7.9)%

The decrease is primarily due to lower cash balances and lower interest rates in 2003.

	<u>2003</u>	<u>2002</u>	<u>\$ Change</u>	<u>% Change</u>
Minority interest expense	\$27.3	\$2.7	\$ (24.6)	(911.1)%

The increase is primarily due to an increase of \$24.4 of minority interest expense associated with CPIF, which had an initial public offering in August 2002 to fund its interest in CPLP. During 2003 as a result of a secondary offering of Calpine's interests in CPIF, we decreased our ownership interests in CPLP in February 2003 to 30%, thus increasing minority interest expense. Additionally, prior to fourth quarter of 2003, we presented minority interest expense related to CPIF net of taxes, but we reclassified \$13.4 of tax benefit from minority interest expense to tax expense in the fourth quarter of 2003, thus increasing minority interest expense by that amount.

	<u>2003</u>	<u>2002</u>	<u>\$ Change</u>	<u>% Change</u>
(Income) from repurchase of various issuances of debt	\$ (278.6)	\$ (118.0)	\$ 160.6	136.1%

The 2003 pre-tax gain of \$278.6 was recorded in connection with the repurchase of various issuances of debt at a discount. In 2002 the primary contribution was a gain of \$114.8 from the receipt of Senior Notes, which were trading at a discount to face value, as partial consideration for British Columbia oil and gas asset sales.

	<u>2003</u>	<u>2002</u>	<u>\$ Change</u>	<u>% Change</u>
Other (income), net	\$ (46.1)	\$ (34.2)	\$ 11.9	34.8%

Other income during 2003 is comprised primarily of gains of \$62.2 on the sale of oil and gas assets to the CNGT and \$57.0 from the termination of a power contract at our RockGen Energy Center. This income was offset primarily by \$33.3 of foreign exchange transaction losses and \$12.5 of letter of credit fees. The foreign exchange transaction losses recognized into income were mainly due to a strong Canadian dollar during 2003. In 2002 the primary contribution to other income was a \$41.5 gain on the termination of a power sales agreement. See "Financial Market Risks" for a further discussion of our currency transaction losses.

	<u>2003</u>	<u>2002</u>	<u>\$ Change</u>	<u>% Change</u>
Provision for income taxes	\$ 8.5	\$ 10.8	\$ 2.3	21.3%

During 2003, the effective tax rate decreased to 9.0% from 28.8% in 2002. This effective rate variance is due to the inclusion of significant permanent items in the calculation of the effective rate, which are fixed in

## Table of Contents

amount and have a significant effect on the effective tax rates as such items become more material to net income.

	<u>2003</u>	<u>2002</u>	<u>\$ Change</u>	<u>% Change</u>
Discontinued operations, net of tax	\$ 15.0	\$ 91.9	\$ 76.9	83.7%

The 2003 discontinued operations activity included the effects of our sales of the Lost Pines 1 Power Project (in which we held a 50% undivided interest), and the sales of our Rocky Mountain gas reserves, Canadian natural gas reserves and petroleum assets, Alvin South Field oil and gas assets and our specialty data center engineering business. The sale of our interest in the Lost Pines 1 Power Project closed in January of 2004, and both the Rocky Mountain gas reserves and the Canadian natural gas reserves and petroleum assets closed in September of 2004. The 2002 discontinued operations activity included, in addition to all of the 2003 discontinued operations, the sales of DePere Energy Center, Drakes Bay Field, British Columbia and Medicine River oil and gas assets, all of which were completed by December 31, 2002; therefore, their results are not included in the 2003 activity. For more information about discontinued operations, see Note 10 of the Notes to Consolidated Financial Statements.

	<u>2003</u>	<u>2002</u>	<u>\$ Change</u>	<u>% Change</u>
Cumulative effect of a change in accounting principle, net of tax	\$ 180.9	\$—	\$ 180.9	100.0%

The gain from the cumulative effect of a change in accounting principle includes three items: (1) a gain of \$181.9, net of tax effect, from the adoption of DIG Issue No. C20; (2) a loss of \$1.5 associated with the adoption of FIN 46-R and the deconsolidation of the three Trusts which issued the HIGH TIDES. The loss of \$1.5 represents the reversal of a gain, net of tax effect, recognized prior to the adoption of FIN 46-R on our repurchase of \$37.5 of the value of HIGH TIDES by issuing shares of our common stock valued at \$35.0; and (3) a gain of \$0.5, net of tax effect, from the adoption of SFAS No. 143.

### *Net Income*

	<u>2003</u>	<u>2002</u>	<u>\$ Change</u>	<u>% Change</u>
Net income	\$ 282.0	\$ 118.6	\$ 163.4	137.8%

Our growing portfolio of operating power generation facilities contributed to a 13% increase in electric generation production for the year ended December 31, 2003, compared to the same period in 2002. Electric generation and marketing revenue increased 16.1% for the year ended December 31, 2003, as electricity and steam revenue increased by \$1,442.9 or 44.6%, as a result of the higher production and higher electricity prices. This was partially offset by a decline in sales of purchased power for hedging and optimization. Operating results for the year ended December 31, 2003, reflect a decrease in average spark spreads per MWh compared with the same period in 2002. While we experienced an increase in realized electricity prices in 2003, this was more than offset by higher fuel expense. At the same time, higher realized oil and gas pricing resulted in an increase in oil and gas production margins compared to the prior period. In 2003 we recorded other revenue of \$67.3 in connection with our settlement with Enron, primarily related to the termination of commodity contracts following the Enron bankruptcy.

Plant operating expense, interest expense and depreciation were higher due to the additional plants in operation. In 2003 generation did not increase commensurately with new average capacity coming on line (lower baseload capacity factor). Because of that and due to lower spark spreads per MWh, our spark spread margins did not keep pace with the additional operating and depreciation costs associated with the new capacity, and gross profit for the year ended December 31, 2003, decreased approximately 20.5%, compared to the same period in 2002. During 2003 overall financial results significantly benefited from \$278.6 of net pre-tax gains recorded in connection with the repurchase of various issuances of debt and preferred securities at a discount, and a gain of \$52.8 from the termination of the AMS power contract at the Acadia Energy Center, a gain of \$57.0 from the termination of a power contract at the RockGen Energy Center, a gain of \$62.2 from the sale of oil and gas assets to the CNGT and an after-tax gain of \$180.9 due to the cumulative effect of changes in accounting principle.

### Liquidity and Capital Resources

Our business is capital intensive. Our ability to capitalize on growth opportunities and to service the debt we incurred in order to construct and operate our current fleet of power plants is dependent on the continued availability of capital on attractive terms. The availability of such capital in today's environment is uncertain. To date, we have obtained cash from our operations; borrowings under credit facilities; issuances of debt, equity, trust preferred securities and convertible debentures and contingent convertible notes; proceeds from sale/leaseback transactions; sale or partial sale of certain assets; contract monetizations and project financings. We have utilized this cash to fund our operations, service or prepay debt obligations, fund acquisitions, develop and construct power generation facilities, finance capital expenditures, support our hedging, balancing, optimization and trading activities, and meet our other cash and liquidity needs. We also reinvest our cash from operations into our business development and construction program or use it to reduce debt, rather than to pay cash dividends. As discussed below, we have a liquidity-enhancing program underway for funding the completion of, and in some cases extending the completion of, the projects remaining in our current construction portfolio, for refinancing and for general corporate purposes.

In March 2004, we refinanced our \$2.5 billion secured revolving construction financing facility through our CalGen subsidiary (formerly CCFC II) which was scheduled to mature in November 2004. CalGen completed a secured institutional term loans, notes and revolving credit facility financing, which replaced the old CCFC II facility. We realized total proceeds from the financing in the amount of \$2.6 billion, before transaction costs and fees. As of December 31, 2004, there was an aggregate principal amount outstanding of \$2.6 billion on the secured institutional term loans, notes and revolving credit facility.

In 2003 and 2004, we repurchased \$1.2 billion of the outstanding principal amount of 2006 Convertible Senior Notes, with proceeds of financings we consummated in July 2003, through equity swaps and with the proceeds of our offering of 4.75% Contingent Convertible Senior Notes due 2023 ("2023 Convertible Senior Notes") in November 2003 and January 2004. The repurchases were made in open market and privately negotiated transactions and, in February 2004, we initiated a cash tender offer for all of the outstanding 2006 Convertible Senior Notes for a price of par plus accrued interest. Approximately \$409.4 million aggregate principal amount of the 2006 Convertible Senior Notes were tendered pursuant to the tender offer, for which we paid a total of \$412.8 million (including accrued interest of \$3.4 million). On December 27, 2004, we repurchased \$70.8 million of the remaining outstanding 2006 Convertible Senior Notes for par plus accrued interest in connection with the holders' exercise of their right to require us to repurchase their notes. At December 31, 2004, only \$1.3 million in aggregate principal amount of 2006 Convertible Senior Notes remains outstanding.

In October 2004, all of our outstanding HIGH TIDES I and HIGH TIDES II were redeemed. At December 31, 2004, \$517.5 million of principal amount of HIGH TIDES III remained outstanding, including \$115.0 million held by Calpine. The HIGH TIDES III are scheduled to be remarketed no later than August 1, 2005. In the event of a failed remarketing, the relevant HIGH TIDES III will remain outstanding as convertible securities at a term rate equal to the treasury rate plus 6% per annum and with a term conversion price equal to 105% of the average closing price of our common stock for the five consecutive trading days after the applicable final failed remarketing termination date. While a failed remarketing of our HIGH TIDES III would not have a material effect on our liquidity position, it would impact our calculation of diluted earnings per share ("EPS") and increase our interest expense. Even with a successful remarketing, we would expect to have an increased dilutive impact on our EPS based on a revised conversion ratio. See Note 12 of the Notes to Consolidated Financial Statements for a summary of HIGH TIDES repurchased or redeemed by the Company through December 31, 2004.

See Note 12 of the Notes to Consolidated Condensed Financial Statement for more information related to other financings and repurchases of various issuances of debt in 2004.

We expect to have sufficient liquidity from cash flow from operations, borrowings available under lines of credit, access to sale/leaseback and project financing markets, sale or monetization of certain assets and cash balances to satisfy all obligations under our outstanding indebtedness, and to fund anticipated capital

## Table of Contents

expenditures and working capital requirements for the next twelve months, but, as described above, we face several challenges over the next two to three years as our cash requirements (including our refinancing obligations) are expected to exceed our unrestricted cash on hand and cash from operations. Accordingly, we have in place a liquidity-enhancing program which includes possible sales or monetizations of certain of our assets, and whether we will have sufficient liquidity will depend, to a certain extent, on the success of that program. On December 31, 2004, our liquidity totaled approximately \$1.6 billion. This includes cash and cash equivalents on hand of \$0.8 billion, current portion of restricted cash of approximately \$0.6 billion and approximately \$0.2 billion of borrowing capacity under our various credit facilities.

Factors that could affect our liquidity and capital resources are also discussed below in “Capital Spending” and above in Item 1. “Business — Risk Factors.”

*Cash Flow Activities* — The following table summarizes our cash flow activities for the periods indicated:

	Years Ended December 31,		
	2004	2003	2002
	(In thousands)		
Beginning cash and cash equivalents	\$ 991,806	\$ 579,486	\$ 1,594,144
Net cash provided by:			
Operating activities	\$ 9,895	\$ 290,559	\$ 1,068,466
Investing activities	(401,426)	(2,515,365)	(3,837,827)
Financing activities	167,052	2,623,986	1,757,396
Effect of exchange rates changes on cash and cash equivalents	16,101	13,140	(2,693)
Net increase (decrease) in cash and cash equivalents	\$ (208,378)	\$ 412,320	\$ (1,014,658)
Ending cash and cash equivalents	\$ 783,428	\$ 991,806	\$ 579,486

Operating activities for the year ended December 31, 2004, provided net cash of \$9.9 million, compared to \$290.6 million for the same period in 2003. Operating cash flows in 2004 benefited from the receipt of \$100.6 million from the termination of power purchase agreements for two of our New Jersey power plants and \$16.4 million from the restructuring of a long-term gas supply contract. During the year ended December 31, 2004, operating assets and liabilities used approximately \$137.6 million, as compared to having used \$609.8 million in the same period in 2003. Uses of funds included accounts receivable, which increased by \$99.4 million as our total revenues in 2004 (after the netting of approximately \$1.7 billion of purchase power expense with sales of purchased power pursuant to EITF Issue No. 03-11) increased by approximately \$358.9 million. Also, cash operating lease payments exceeded recognized expense by \$83.7 million and accrued liabilities were reduced, through payments, for sales and property taxes and net margin deposits posted to support CES trading activity increased by \$60.9 million. These uses of funds were partially offset by an increase of \$231.8 million in accounts payable and accrued expense (including an increase in interest expense payable of \$64.5 million). The increase in such deposits, which serve as collateral for certain of our commodity transactions that have a net exposure to a counterparty on a mark-to-market basis, is reflective of movements in commodity prices and a higher mix of margin deposits posted relative to letters of credit.

Investing activities for the year ended December 31, 2004, consumed net cash of \$401.4 million, as compared to \$2,515.4 million in the same period of 2003. Capital expenditures for the completion of our power facilities decreased in 2004, as there were fewer projects under construction. Investing activities in 2004 reflect the receipt of \$148.6 million from the sale of our 50% interest in the Lost Pines I Power Plant, \$626.6 million from the sale of our Canadian oil and gas reserves, \$218.7 million from the sale of our Rocky Mountain oil and gas reserves, plus \$85.4 million of proceeds from the sale of a subsidiary holding power purchase agreements for two of our New Jersey power plants. We also reported a \$181.0 million increase in cash used for acquisitions in 2004 compared to 2003, as we used the proceeds from the Lost Pines sale and cash to purchase the Los Brazos Power Plant, and we used cash on hand to purchase the remaining 50% interest in the Aries

## Table of Contents

Power Plant and the remaining 20% interest in Calpine Cogeneration Corporation. Also, we used \$110.6 million to purchase a portion of HIGH TIDES III outstanding and provided \$210.8 million by decreasing restricted cash during 2004.

Financing activities for the year ended December 31, 2004, provided net cash of \$167.1 million, compared to \$2,624.0 million in the prior year. We continued our refinancing program in 2004 by raising \$2.6 billion to refinance \$2.5 billion of CalGen project financing before payment for fees and expenses of the refinancing. In 2004 we also raised \$250 million from the issuance of the 2023 Convertible Senior Notes pursuant to an option exercise by one of the initial purchasers and \$617.5 million from the issuance of the 2014 Convertible Notes. We raised \$878.8 million from the issuance of Senior Notes, \$360.0 million from a preferred security offering and \$1,179.4 million from various project financings. Also, we repaid \$635.4 million in project financing debt, and we used \$657.7 million to repurchase the outstanding 2006 Convertible Senior Notes that could be put to us in December 2004. We used \$177.0 million to repurchase a portion of the 2023 Convertible Senior Notes, \$871.3 million to repay and repurchase various Senior Notes and \$483.5 million to redeem the remainder of HIGH TIDES I and II. In 2003, cash inflows primarily included \$3.9 billion from the issuance of senior secured notes and institutional term loans, \$802.2 million from the PCF financing transaction, \$785.5 million from the refinancing of our CCFC I credit facility, \$301.7 million from the issuance of secured notes by our wholly owned subsidiary Gilroy Energy Center, LLC (“GEC”), \$159.7 million from secondary trust unit offerings from our CPIF, \$82.8 million from the monetization of one of our PSAs, \$244.0 million from the sales of preferred interests in the cash flows from certain of our facilities and additional borrowings under our revolvers. This was partially offset by financing costs and \$5.0 billion in debt repayments and repurchases.

*Liquidity and Finance Program Update* — Enhancing liquidity, reducing corporate debt and addressing near-term debt maturities continued to drive our financing program in 2004. During the year, we successfully enhanced our financial position through a significant number of transactions:

- Refinanced CCFC II project debt through the issuance of \$2.6 billion of Calpine Generating Company secured institutional term loans, notes and revolving credit facility;
- Completed approximately \$2.1 billion of liquidity transactions including the sale of our Canadian and certain U.S. natural gas reserves for \$870.1 million;
- Redeemed in full \$598.5 million of HIGH TIDES I and II, and purchased a portion of HIGH TIDES III, totaling \$115.0 million; and
- Repurchased approximately \$1.8 billion of existing corporate debt, resulting in a net gain of \$246.9 million after the write-off of unamortized discounts and deferred financing costs.

Also, in early 2005, we:

- Obtained a \$100 million, non-recourse credit facility to complete construction of the Metcalf Energy Center in San Jose, California. This was the first single-asset, merchant project financing in California since the 2000-2001 energy crisis;
- Received funding on Calpine European Funding (Jersey) Limited’s \$260 million offering of Redeemable Preferred Shares due on July 30, 2005. The net proceeds from this offering will ultimately be used as permitted by our existing bond indentures;
- Completed a \$400 million, 25-year, non-recourse sale/leaseback transaction for the 560-MW Fox Energy Center under construction in Kaukauna, Wisconsin; and
- Completed a \$195 million, non-recourse project financing for construction of the 525-MW Valladolid III Energy Center in Valladolid, Mexico.

Our liquidity constraints have delayed the pace at which we have developed our oil and gas proved undeveloped (“PUD”) reserves from what we would otherwise have preferred; however, given the current demand for low risk PUD drilling opportunities, we expect the Company to be able to secure third-party funding of capital expenditures through farm-outs, joint ventures and similar arrangements in amounts sufficient to develop our PUD properties in a manner that preserves their projected value. As part of any such

farm-out, joint venture or similar arrangement, we would typically be required to convey a portion of our interest in the relevant properties to the third party in exchange for the third party's commitment to fund capital expenditures. These conveyances to third parties will reduce the amount of PUDs and other undeveloped assets owned by us.

So long as we are successful in obtaining such third-party funding at levels projected, we expect to have sufficient capital resources available to preserve, protect and enhance the value of our existing PUD reserves, subject to any reduction in our interests due to conveyances as part of the third-party funding arrangements described above. Taking into account the funding we expect to obtain through farm-outs, joint ventures and similar arrangements, we believe that capital expenditures will be consistent with the levels and development schedule we have disclosed.

*Counterparties and Customers* — Our customer and supplier base is concentrated within the energy industry. Additionally, we have exposure to trends within the energy industry, including declines in the creditworthiness of our marketing counterparties. Currently, multiple companies within the energy industry are in bankruptcy or have below investment grade credit ratings. However, we do not currently have any significant exposures to counterparties that are not paying on a current basis.

*Letter of Credit Facilities* — At December 31, 2004 and 2003, we had approximately \$586.5 million and \$410.8 million, respectively, in letters of credit outstanding under various credit facilities to support our risk management and other operational and construction activities. Of the total letters of credit outstanding, \$233.3 million and \$272.1 million, respectively, were in aggregate issued under the cash collateralized letter of credit facility and the corporate revolving credit facility at December 31, 2004 and 2003, respectively.

*Commodity Margin Deposits and Other Credit Support* — As of December 31, 2004 and 2003, to support commodity transactions we had deposited net amounts of \$248.9 million and \$188.0 million, respectively, in cash as margin deposits with third parties, and we made gas and power prepayments of \$78.0 million, and \$60.6 million, respectively, and had letters of credit outstanding of \$115.9 million and \$14.5 million, respectively. We use margin deposits, prepayments and letters of credit as credit support for commodity procurement and risk management activities. Future cash collateral requirements may increase based on the extent of our involvement in standard contracts and movements in commodity prices and also based on our credit ratings and general perception of creditworthiness in this market. While we believe that we have adequate liquidity to support our operations at this time, it is difficult to predict future developments and the amount of credit support that we may need to provide as part of our business operations.

*Revised Capital Expenditure Program* — Following a comprehensive review of our power plant development program, we announced in January 2002 the adoption of a revised capital expenditure program which contemplated the completion of 27 power projects (representing 15,200 MW) then under construction. As of December 31, 2004, 24 of these facilities have subsequently achieved full or partial commercial operation. Construction of advanced stage development projects is expected to proceed only when there is an established market need through power purchase agreements for additional generating resources at prices that will allow us to meet our investment criteria, and when capital is available to us on attractive terms. Our entire development and construction program is flexible and subject to continuing review and revision based upon such criteria. Since the adoption of the revised capital expenditure program, we have added several projects now in development and construction and, currently, work on three construction projects, Hillabee, Washington Parish and Fremont, has been largely postponed until market conditions improve in the Southeast and Midwest market areas. See "Capital Spending — Development and Construction" below for more information on our capital expenditure program.

*Asset Sales* — As a result of the significant contraction in the availability of capital for participants in the energy sector, we have adopted a strategy of conserving our core strategic assets and disposing of certain less strategically important assets, which serves primarily to strengthen our balance sheet through repayment of debt. Set forth below are the completed asset disposals:

On January 15, 2004, we completed the sale of our 50-percent undivided interest in the 545-megawatt Lost Pines 1 Power Project to GenTex Power Corporation, an affiliate of the Lower Colorado River Authority.

## Table of Contents

Under the terms of the agreement, we received a cash payment of \$148.6 million and recorded a pre-tax gain of \$35.3 million. We subsequently closed on the purchase of the Brazos Valley Power Plant for approximately \$181.1 million in a tax deferred like-kind exchange under IRS Section 1031, largely with the proceeds of the Lost Pines I Power Project sale.

On February 18, 2004, one of our wholly owned subsidiaries closed on the sale of natural gas properties to CNGT. We received net consideration of Cdn\$38.8 million (\$29.2 million) and recorded a pre-tax gain of approximately \$6.8 million.

On September 1, 2004, in combination with CNGLP, a Delaware limited partnership, we completed the sale of our Rocky Mountain gas reserves that were primarily concentrated in two geographic areas: the Colorado Piceance Basin and the New Mexico San Juan Basin. Together, these assets represent approximately 120 Bcfe of proved gas reserves, producing approximately 16.3 Mmcfe per day of gas. Under the terms of the agreement we received net cash payments of approximately \$218.7 million, and recorded a pre-tax gain of approximately \$103.7 million.

On September 2, 2004, we completed the sale of our Canadian natural gas reserves and petroleum assets. These Canadian assets represented approximately 221 Bcfe of proved reserves, producing approximately 61 Mmcfe per day. Included in this sale was our 25% interest in approximately 80 Bcfe of proved reserves (net of royalties) and 32 Mmcfe per day of production owned by CNGT. Under the terms of the agreement, we received cash payments of approximately Cdn\$802.9 million, or approximately \$622.2 million. We recorded a pre-tax gain of approximately \$100.6 million on the sale of our Canadian assets.

We are also evaluating the potential sale of our Saltend Energy Centre. We acquired the 1,200-MW power plant, located in Hull, England, in August 2001 for approximately \$800 million. Net proceeds from any sale of the facility would be used to redeem the existing \$360 million Two-Year Redeemable Preferred Shares and then to redeem the \$260 million Redeemable Preferred Shares Due July 30, 2005. Any remaining proceeds would be used in accordance with the asset sale provisions of our existing bond indentures.

We believe that our completion of the financing and liquidity transactions described above in the current difficult conditions affecting capital availability in the market, and our sector in particular, demonstrate our probable ability to raise capital on acceptable terms in the future, although availability of capital has tightened significantly throughout the power generation industry and, therefore, there can be no assurance that we will have access to capital in the future as and when we may desire.

*Credit Considerations* — On September 23, 2004, S&P assigned our first priority senior secured debt a rating of B+ and reaffirmed their ratings on our second priority senior secured debt at B, our corporate rating at B (with outlook negative), our senior unsecured debt rating at CCC+, and our preferred stock rating at CCC.

On October 4, 2004, Fitch, Inc. assigned our first priority senior secured debt a rating of BB-. At that time, Fitch also downgraded our second priority senior secured debt from BB- to B+, downgraded our senior unsecured debt rating from B- to CCC+, and reconfirmed our preferred stock rating at CCC. Fitch's rating outlook for the Company is stable.

Moody's Investors Service currently has a senior implied rating on the Company of B2 (with a stable outlook), and they rate our senior unsecured debt at Caa1, and our preferred stock at Caa3.

Many other issuers in the power generation sector have also been downgraded by one or more of the ratings agencies during this period. Such downgrades can have a negative impact on our liquidity by reducing attractive financing opportunities and increasing the amount of collateral required by trading counterparties.

*Performance Indicators* — We believe the following factors are important in assessing our ability to continue to fund our growth in the capital markets: (a) our debt-to-capital ratio; (b) various interest coverage ratios; (c) our credit and debt ratings by the rating agencies; (d) the trading prices of our senior notes in the capital markets; (e) the price of our common stock on The New York Stock Exchange; (f) our anticipated capital requirements over the coming quarters and years; (g) the profitability of our operations; (h) the non-GAAP financial measures and other performance metrics discussed in "Performance Metrics" below; (i) our

## Table of Contents

cash balances and remaining capacity under existing revolving credit construction and general purpose credit facilities; (j) compliance with covenants in existing debt facilities; (k) progress in raising new or replacement capital; and (l) the stability of future contractual cash flows.

*Off-Balance Sheet Commitments* — In accordance with SFAS No. 13 and SFAS No. 98, “Accounting for Leases” our operating leases, which include certain sale/leaseback transactions, are not reflected on our balance sheet. All counterparties in these transactions are third parties that are unrelated to us except as disclosed for Acadia in Note 7 of the Notes to Consolidated Financial Statements. The sale/leaseback transactions utilize special-purpose entities formed by the equity investors with the sole purpose of owning a power generation facility. Some of our operating leases contain customary restrictions on dividends, additional debt and further encumbrances similar to those typically found in project finance debt instruments. We guarantee \$ billion of the total future minimum lease payments of our consolidated subsidiaries related to our operating leases. We have no ownership or other interest in any of these special-purpose entities. See Note 22 of the Notes to Consolidated Financial Statements for the future minimum lease payments under our power plant operating leases.

In accordance with Accounting Principles Board (“APB”) Opinion No. 18, “The Equity Method of Accounting For Investments in Common Stock” and FIN 35, “Criteria for Applying the Equity Method of Accounting for Investments in Common Stock (An Interpretation of APB Opinion No. 18),” the debt on the books of our unconsolidated investments in power projects is not reflected on our balance sheet (see Note 7 of the Notes to Consolidated Financial Statements). At December 31, 2004, investee debt was approximately \$126.3 million. Of the \$126.3 million, \$60.3 million related to our investment in AELLC, for which we used the cost method of accounting as of December 31, 2004. Based on our pro rata ownership share of each of the investments, our share would be approximately \$43.3 million, which includes our share for AELLC of \$19.5 million. Please see Note 7 of the Notes to Consolidated Financial Statements for more information on the cost method of accounting used for AELLC. However, all such debt is non-recourse to us. For the Aries Power Plant construction debt, Aquila Inc. and Calpine provided support arrangements until construction was completed to cover any cost overruns. See Note 7 of the Notes to Consolidated Financial Statements for additional information on our equity method and cost method unconsolidated investments in power projects and oil and gas properties.

*Commercial Commitments* — Our primary commercial obligations as of December 31, 2004, are as follows (in thousands):

<b>Commercial Commitments</b>	<b>Amounts of Commitment Expiration per Period</b>						<b>Total Amounts Committed</b>
	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>Thereafter</b>	
Guarantee of subsidiary debt	\$ 18,333	\$ 16,284	\$ 18,798	\$ 1,930,657	\$ 19,848	\$ 1,133,896	\$ 3,137,817
Standby letters of credit	579,607	3,641	2,802	400	—	—	586,450
Surety bonds	—	—	—	—	—	12,531	12,531
Guarantee of subsidiary operating lease payments	83,169	81,772	82,487	115,604	113,977	1,163,783	1,640,792
<b>Total</b>	<b>\$ 681,109</b>	<b>\$ 101,697</b>	<b>\$ 104,087</b>	<b>\$ 2,046,661</b>	<b>\$ 133,825</b>	<b>\$ 2,310,210</b>	<b>\$ 5,377,589</b>

Our commercial commitments primarily include guarantees of subsidiary debt, standby letters of credit and surety bonds to third parties and guarantees of subsidiary operating lease payments. The debt guarantees consist of parent guarantees for the finance subsidiaries and project financing for the Broad River Energy Center and the Pasadena Power Plant. The debt guarantees and operating lease payments are also included in the contractual obligations table above. We also issue guarantees for normal course of business activities.

We have guaranteed the principal payment of \$2,139.7 million and \$2,448.6 million, respectively, of senior notes as of December 31, 2004 and 2003, for two wholly owned finance subsidiaries of Calpine, Calpine Canada Energy Finance ULC and Calpine Canada Energy Finance II ULC. As of December 31, 2004, we have guaranteed \$275.1 million and \$72.4 million, respectively, of project financing for the Broad River

## Table of Contents

Energy Center and Pasadena Power Plant and \$291.6 million and \$71.8 million, respectively, as of December 31, 2003, for these power plants. In 2004 and 2003 we have debenture obligations in the amount of \$517.5 million and \$1,153.5 million, respectively, the payment of which will fund the obligations of the Trusts (see Note 12 for more information). We agreed to indemnify Duke Capital Corporation \$101.4 million and \$101.7 million as of December 31, 2004 and 2003, respectively, in the event Duke Capital Corporation is required to make any payments under its guarantee of the lease of the Hidalgo Energy Center. As of December 31, 2004 and 2003, we have also guaranteed \$31.7 million and \$35.6 million, respectively, of other miscellaneous debt. All of the guaranteed debt is recorded on our Consolidated Balance Sheet.

*Contractual Obligations* — Our contractual obligations as of December 31, 2004, are as follows (in thousands):

	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>Thereafter</u>	<u>Total</u>
<b>Other Contractual Obligations</b>	\$ 60,418	\$ 7,995	\$ 2,089	\$ 2,096	\$ 2,500	\$ 85,408	\$ 160,506
<b>Total operating lease obligations(1)</b>	<u>\$ 266,399</u>	<u>\$ 252,511</u>	<u>\$ 252,849</u>	<u>\$ 250,238</u>	<u>\$ 244,601</u>	<u>\$ 2,321,106</u>	<u>\$ 3,588,199</u>
Debt:							
Unsecured Senior Notes(2)	\$ 705,949	\$ 264,258	\$ 360,878	\$ 1,968,660	\$ 221,539	\$ 1,273,333	\$ 4,794,617
Second Priority Senior Secured Notes(2)	12,500	12,500	1,209,375	—	—	2,443,150	3,677,525
First Priority Senior Secured Notes(2)	—	—	—	—	—	778,971	778,971
Total Senior Notes	\$ 718,449	\$ 276,758	\$ 1,570,253	\$ 1,968,660	\$ 221,539	\$ 4,495,454	\$ 9,251,113
CCFC 1(4)	3,208	3,208	3,208	3,208	365,349	408,569	786,750
CALGEN(4)	—	—	4,174	12,050	829,875	1,549,233	2,395,332
Convertible Senior Notes Due 2006, 2014 and 2023(2)	—	1,326	—	—	—	1,253,972	1,255,298
Notes payable and borrowings under lines of credit(4)(5)	197,016	188,756	143,962	104,555	106,221	108,277	848,787
Notes payable to Calpine Capital Trusts(2)	—	—	—	—	—	517,500	517,500
Preferred interests(4)	8,641	369,480	8,990	12,236	16,228	90,962	506,537
Capital lease obligation(4)	5,490	6,538	7,428	9,765	10,925	248,773	288,919
Construction/project financing(4)(6)	93,393	89,355	103,423	100,340	105,299	1,507,241	1,999,051
<b>Total debt(5)(9)(3)</b>	<u>\$ 1,026,197</u>	<u>\$ 935,421</u>	<u>\$ 1,841,438</u>	<u>\$ 2,210,814</u>	<u>\$ 1,655,436</u>	<u>\$ 10,179,981</u>	<u>\$ 17,849,287</u>
Interest payments on debt obligations	\$ 1,473,629	\$ 1,462,291	\$ 1,356,035	\$ 1,130,214	\$ 1,003,534	\$ 3,422,874	\$ 9,848,577
Interest rate swap agreement payments	20,964	13,945	11,770	10,051	9,036	14,102	79,868
Purchase obligations:							
Turbine commitments	27,463	4,862	977	—	—	—	33,302
Commodity purchase obligations(7)	1,659,425	1,071,778	965,222	805,946	680,345	1,003,102	6,185,818
Land leases	4,592	4,786	4,967	5,504	5,998	375,114	400,961
Long-term service agreements	73,541	93,675	120,385	74,448	70,544	710,137	1,142,730
Costs to complete construction projects	699,174	449,312	189,806	—	—	—	1,338,292
Other purchase obligations	55,202	26,853	25,481	25,172	24,985	470,524	628,217
<b>Total purchase obligations(8)</b>	<u>\$ 2,469,397</u>	<u>\$ 1,651,266</u>	<u>\$ 1,306,838</u>	<u>\$ 911,070</u>	<u>\$ 781,872</u>	<u>\$ 2,558,877</u>	<u>\$ 9,729,320</u>

- (1) Included in the total are future minimum payments for power plant operating leases, office and equipment leases and two tolling agreements with Acadia Energy Center accounted for as leases (See Note 7 of the Notes to Consolidated Financial Statements for more information).
- (2) An obligation of or with recourse to Calpine Corporation.

## Table of Contents

- (3) The table above does not reflect the repurchases of \$80.6 million convertible Senior Notes and Senior Notes subsequent to December 31, 2004.
- (4) Structured as an obligation(s) of certain subsidiaries of Calpine Corporation without recourse to Calpine Corporation. However, default on these instruments could potentially trigger cross-default provisions in certain other debt instruments.
- (5) A note payable totaling \$125.5 million associated with the sale of the PG&E note receivable to a third party is excluded from notes payable and borrowings under lines of credit for this purpose as it is a noncash liability. If the \$125.5 million is summed with the \$848.8 (total notes payable and borrowings under lines of credit) million from the table above, the total notes payable and borrowings under lines of credit would be \$974.3 million, which agrees to the Consolidated Balance Sheet sum of the current and long-term notes payable and borrowings under lines of credit balances on the Consolidated Balance Sheet. See Note 8 of the Notes to Consolidated Financial Statements for more information concerning this note. Total debt of \$17,849.3 million from the table above summed with the \$125.5 million totals \$17,974.8 million, which agrees to the total debt amount in Note 11 of the Notes to Consolidated Financial Statements.
- (6) Included in the total are guaranteed amounts of \$275.1 million and \$282.9 million, respectively, of project financing for the Broad River Energy Center and Pasadena Power Plant.
- (7) The amounts presented here include contracts for the purchase, transportation, or storage of commodities accounted for as executory contracts or normal purchase and sales and, therefore, not recognized as liabilities on our Consolidated Balance Sheet. See “Financial Market Risks” for a discussion of our commodity derivative contracts recorded at fair value on our Consolidated Balance Sheet.
- (8) The amounts included above for purchase obligations include the minimum requirements under contract. Also included in purchase obligations are employee agreements. Agreements that we can cancel without significant cancellation fees are excluded.
- (9) See Item 1. “Business — Risk Factors” for a discussion of the estimated amount of debt that must be repurchased pursuant to our indentures.
- (10) Interest payments on debt obligations have not been decreased for the requirement to repurchase or redeem approximately \$520 million of indebtedness, per current estimates, pursuant to our indentures, as the specific debt instruments are not known. However, the \$520 million of indebtedness is reflected in this table as due in 2005.

Debt securities repurchased by Calpine during 2004 and 2003 totaled \$1,668.3 million and \$1,853.4 million, respectively, in aggregate outstanding principal amount for a repurchase price of \$1,394.0 million and \$1,575.3 million, respectively, plus accrued interest. In 2004 we recorded a pre-tax gain on these transactions in the amount of \$274.4 million which was \$254.8 million, net of write-offs of \$19.1 million of unamortized deferred financing costs and \$0.5 million of unamortized premiums or discounts. In 2003 we recorded a pre-tax gain on these transactions in the amount of \$278.1 million, which was \$256.9 million, net of write-offs of \$18.9 million of unamortized deferred financing costs and \$2.3 million of unamortized premiums or discounts. HIGH TIDES III repurchased by Calpine during 2004 totaled \$115.0 million in aggregate outstanding principle amount at a repurchase price of \$111.6 million plus accrued interest. These exchanged HIGH TIDES III are reflected on the balance sheets as an asset, versus being netted against the balance outstanding,

## Table of Contents

due to the deconsolidation of the Calpine Capital Trusts, which issued the HIGH TIDES III, upon the adoption of FIN 46-R. The following table summarizes the total debt securities repurchased (in millions):

Debt Security and HIGH TIDES	2004		2003	
	Principal Amount	Amount Paid	Principal Amount	Amount Paid
2006 Convertible Senior Notes	\$ 658.7	\$ 657.7	\$ 474.9	\$ 458.8
2023 Convertible Senior Notes	266.2	177.0	—	—
8 <sup>1</sup> / <sub>4</sub> % Senior Notes Due 2005	38.9	34.9	25.0	24.5
10 <sup>1</sup> / <sub>2</sub> % Senior Notes Due 2006	13.9	12.4	5.2	5.1
7 <sup>5</sup> / <sub>8</sub> % Senior Notes Due 2006	103.1	96.5	35.3	32.5
8 <sup>3</sup> / <sub>4</sub> % Senior Notes Due 2007	30.8	24.4	48.9	45.0
7 <sup>7</sup> / <sub>8</sub> % Senior Notes Due 2008	78.4	56.5	74.8	58.3
8 <sup>1</sup> / <sub>2</sub> % Senior Notes Due 2008	344.3	249.4	48.3	42.3
8 <sup>3</sup> / <sub>8</sub> % Senior Notes Due 2008	6.1	4.0	59.2	46.6
7 <sup>3</sup> / <sub>4</sub> % Senior Notes Due 2009	11.0	8.1	97.2	75.9
8 <sup>5</sup> / <sub>8</sub> % Senior Notes Due 2010	—	—	210.4	170.7
8 <sup>1</sup> / <sub>2</sub> % Senior Notes Due 2011	116.9	73.1	648.4	521.3
8 <sup>7</sup> / <sub>8</sub> % Senior Notes Due 2011	—	—	125.8	94.3
HIGH TIDES III	115.0	111.6	—	—
	<u>\$ 1,783.3</u>	<u>\$ 1,505.6</u>	<u>\$ 1,853.4</u>	<u>\$ 1,575.3</u>

During 2004 we exchanged 24.3 million shares of Calpine common stock in privately negotiated transactions for approximately \$115.0 million par value of HIGH TIDES I and HIGH TIDES II. During 2003, debt securities, exchanged for 23.5 million shares of Calpine common stock in privately negotiated transactions, totaled \$145.0 million in aggregate outstanding principal amount plus accrued interest. We recorded a pre-tax gain on these transactions in the amount of \$20.2 million, net of write-offs of unamortized deferred financing costs and the unamortized premiums or discounts. Additionally, during 2003, we exchanged 6.5 million shares of Calpine common stock in privately negotiated transactions for approximately \$37.5 million par value of HIGH TIDES I. These repurchased HIGH TIDES I were reflected on the balance sheet as an asset, versus being netted against the balance outstanding, due to the deconsolidation of the Trusts, which issued the HIGH TIDES, upon the adoption of FIN 46-R.

On October 20, 2004, the Company repaid \$636 million of convertible subordinate debentures held by Calpine Capital Trusts which used those proceeds to redeem its outstanding HIGH TIDES I and HIGH TIDES II. The redemption of the HIGH TIDES I and HIGH TIDES II included securities previously purchased and held by the Company and resulted in a realized gain of approximately \$6.1 million.

The following table summarizes the total debt securities and HIGH TIDES exchanged for common stock (in millions):

Debt Securities and HIGH TIDES	2004		2003	
	Principal Amount	Common Stock Issued	Principal Amount	Common Stock Issued
2006 Convertible Senior Notes	\$ —	—	\$ 65.0	12.0
8 <sup>1</sup> / <sub>2</sub> % Senior Notes Due 2008	—	—	55.0	8.1
8 <sup>1</sup> / <sub>2</sub> % Senior Notes Due 2011	—	—	25.0	3.4
HIGH TIDES I	40.0	8.5	37.5	6.5
HIGH TIDES II	75.0	15.8	—	—
	<u>\$ 115.0</u>	<u>24.3</u>	<u>\$ 182.5</u>	<u>30.0</u>

## Debt Covenant and Indenture Compliance

Our senior notes indentures and our credit facilities contain financial and other restrictive covenants that limit or prohibit our ability to incur indebtedness, make prepayments on or purchase indebtedness in whole or in part, pay dividends, make investments, lease properties, engage in transactions with affiliates, create liens, consolidate or merge with another entity or allow one of our subsidiaries to do so, sell assets, and acquire facilities or other businesses. We are currently in compliance with all of such financial and other restrictive covenants, except as discussed below. Any failure to comply could give holders of debt under the relevant instrument the right to accelerate the maturity of all debt outstanding thereunder if the default was not cured or waived. In addition, holders of debt under other instruments typically would have cross-acceleration provisions, which would permit them also to elect to accelerate the maturity of their debt if another debt instrument was accelerated upon the occurrence of such an uncured event of default.

*Indenture Compliance* — Our various indentures place conditions on our ability to issue indebtedness, including further limitations on the issuance of additional debt if our interest coverage ratio (as defined in the various indentures) is below 2:1. Currently, our interest coverage ratio (as so defined) is below 2:1 and, consequently, our indentures generally would not allow us to issue new debt, except for (i) certain types of new indebtedness that refinances or replaces existing indebtedness, and (ii) non-recourse debt and preferred equity interests issued by our subsidiaries for purposes of financing certain types of capital expenditures, including plant development, construction and acquisition expenses. In addition, if and so long as our interest coverage ratio is below 2:1, our indentures will limit our ability to invest in unrestricted subsidiaries and non-subsubsidiary affiliates and make certain other types of restricted payments. Moreover, certain of our indentures will prohibit any further investments in non-subsubsidiary affiliates if and for so long as our interest coverage ratio (as defined therein) is below 1.75:1 and, as of December 31, 2004, such interest coverage ratio had fallen below 1.75:1.

In September 2004, we resolved a dispute with Credit Suisse First Boston (“CSFB”), by amending and restating a Letter of Credit and Reimbursement Agreement pursuant to which CSFB issues a letter of credit with a maximum face amount of \$78.3 million for our account. CSFB had previously advised us that it believed that we may have failed to comply with certain covenants under the Letter of Credit and Reimbursement Agreement related to our ability to incur indebtedness and grant liens.

Calpine has guaranteed the payment of a portion of the rents due under the lease of the Greenleaf generating facilities in California, which lease is between an owner trustee acting on behalf of Union Bank of California, as lessor, and a Calpine subsidiary, Calpine Greenleaf, Inc., as lessee. Calpine does not currently meet the requirements of a financial covenant contained in the guarantee agreement. The lessor has waived this non-compliance through April 30, 2005, and Calpine is currently in discussions with the lessor concerning the possibility of modifying the lease and/or Calpine’s guarantee thereof so as to eliminate or modify the covenant in question. In the event the lessor’s waiver were to expire prior to completion of this amendment, the lessor could at that time elect to accelerate the payment of certain amounts owing under the lease, totaling approximately \$15.9 million. In the event the lessor were to elect to require Calpine to make this payment, the lessor’s remedy under the guarantee and the lease would be limited to taking steps to collect damages from Calpine; the lessor would not be entitled to terminate or exercise other remedies under the Greenleaf lease.

In connection with several of our subsidiaries’ lease financing transactions (Greenleaf, Pasadena, Broad River, RockGen and South Point) the insurance policies we have in place do not comply in every respect with the insurance requirements set forth in the financing documents. We have requested from the relevant financing parties, and are expecting to receive, waivers of this noncompliance. While failure to have the required insurance in place is listed in the financing documents as an event of default, the financing parties may not unreasonably withhold their approval of our waiver request so long as the required insurance coverage is not reasonably available or commercially feasible and we deliver a report from our insurance consultant to that effect. We have delivered the required insurance consultant reports to the relevant financing parties and therefore anticipate that the necessary waivers will be executed shortly.

We own a 32.3% interest in AELLC. AELLC owns the 136 MW Androscoggin Energy Center located in Maine and is a joint venture between us, and affiliates of Wisvest Corporation and IP. AELLC had

## Table of Contents

construction debt of \$60.3 million outstanding as of December 31, 2004. The debt is non-recourse to Calpine Corporation (the “AELLC Non-Recourse Financing”). On November 3, 2004, a jury verdict was rendered against AELLC in a breach of contract dispute with IP. See Note 25 of the Notes to Consolidated Financial Statements for more information about this legal proceeding. We recorded our \$11.6 million share of the award amount in the third quarter of 2004. On November 26, 2004, AELLC filed a voluntary petition for relief under Chapter 11 of the U.S. Bankruptcy Code. As a result of the bankruptcy, we lost significant influence and control of the project and have adopted the cost method of accounting for our investment in Androscoggin. Also, in December 2004, we determined that our investment in Androscoggin was impaired and recorded a \$5.0 million impairment charge.

*Unrestricted Subsidiaries* — The information in this paragraph is required to be provided under the terms of the indentures and credit agreement governing the various tranches of our second-priority secured indebtedness (collectively, the “Second Priority Secured Debt Instruments”). We have designated certain of our subsidiaries as “unrestricted subsidiaries” under the Second Priority Secured Debt Instruments. A subsidiary with “unrestricted” status thereunder generally is not required to comply with the covenants contained therein that are applicable to “restricted subsidiaries.” The Company has designated Calpine Gilroy 1, Inc., Calpine Gilroy 2, Inc. and Calpine Gilroy Cogen, L.P. as “unrestricted subsidiaries” for purposes of the Second Priority Secured Debt Instruments. The following table sets forth selected balance sheet information of Calpine Corporation and restricted subsidiaries and of such unrestricted subsidiaries at December 31, 2004, and selected income statement information for the year ended December 31, 2004 (in thousands):

	<b>Calpine Corporation and Restricted Subsidiaries</b>	<b>Unrestricted Subsidiaries</b>	<b>Eliminations</b>	<b>Total</b>
Assets	\$ 27,020,662	\$ 438,955	\$ (224,385)	\$ 27,235,232
Liabilities	\$ 22,000,516	\$ 253,598	\$ —	\$ 22,254,114
Total revenue	\$ 9,225,922	\$ 19,213	\$ (15,247)	\$ 9,229,888
Total cost of revenue	(8,867,987)	(23,927)	17,119	(8,874,795)
Interest income	45,760	25,824	(15,172)	56,412
Interest expense	(1,127,009)	(13,793)	—	(1,140,802)
Other	490,224	(3,388)	—	486,836
Net income (loss)	\$ (233,090)	\$ 3,929	\$ (13,300)	\$ (242,461)

*Bankruptcy-Remote Subsidiaries* — Pursuant to applicable transaction agreements, we have established certain of our entities separate from Calpine and our other subsidiaries. At December 31, 2004, these entities included: Rocky Mountain Energy Center, LLC, Riverside Energy Center, LLC, Calpine Riverside Holdings, LLC, Calpine Energy Management, L.P., CES GP, LLC, Power Contract Financing, LLC, Power Contract Financing III, LLC, Calpine Northbrook Energy Marketing, LLC, Calpine Northbrook Energy Marketing Holdings, LLC, Gilroy Energy Center, LLC, Calpine Gilroy Cogen, L.P., Calpine Gilroy 1, Inc., Calpine King City Cogen, LLC, Calpine Securities Company, L.P. (a parent company of Calpine King City Cogen, LLC), Calpine King City, LLC (an indirect parent company of Calpine Securities Company, L.P.), Calpine Fox Holdings, LLC and Calpine Fox LLC. The following disclosures are required under certain applicable agreements and pertain to some of these entities.

On May 15, 2003, our wholly owned indirect subsidiary, Calpine Northbrook Energy Marketing, LLC (“CNEM”), completed an offering of \$82.8 million secured by an existing power sales agreement with the Bonneville Power Administration (“BPA”). CNEM borrowed \$82.8 million secured by the BPA contract, a spot market power purchase agreement, a fixed price swap agreement and the equity interest in CNEM. The \$82.8 million loan is recourse only to CNEM’s assets and the equity interest in CNEM and is not guaranteed by us. CNEM was determined to be a Variable Interest Entity (“VIE”) in which we were the primary beneficiary. Accordingly, the entity’s assets and liabilities are consolidated into our accounts.

## Table of Contents

Pursuant to the applicable transaction agreements, each of CNEM and its parent, CNEM Holdings, LLC, has been established as an entity with its existence separate from Calpine and our other subsidiaries. In accordance with FIN 46-R, we consolidate these entities. See Note 2 of the Notes to Consolidated Financial Statements for more information on FIN 46-R. The power sales agreement with BPA has been acquired by CNEM from CES and the spot market power purchase agreement with a third party and the swap agreement have been entered into by CNEM and, together with the \$82.8 million loan, are assets and liabilities of CNEM, separate from the assets and liabilities of Calpine and our other subsidiaries. The only significant asset of CNEM Holdings, LLC is its equity interest in CNEM. The proceeds of the \$82.8 million loan were primarily used by CNEM to purchase the power sales agreement with BPA.

The following table sets forth selected financial information of CNEM as of and for the year ended December 31, 2004 (in thousands):

	<u>2004</u>
Assets	\$ 72,367
Liabilities	\$ 56,222
Total revenue(1)	\$ 667
Total cost of revenue	\$ —
Interest expense	\$ 7,378
Net (loss)	\$ (56,167)

- (1) CNEM's contracts are derivatives and are recorded on a net mark-to-market basis on our financial statements under SFAS No. 133, notwithstanding that economically they are fully hedged.

See Note 12 of the Notes to Consolidated Financial Statements for further information.

On June 13, 2003, PCF, a wholly owned stand-alone subsidiary of CES, completed an offering of two tranches of Senior Secured Notes due 2006 and 2010 (collectively called the "PCF Notes"), totaling \$802.2 million. PCF's assets and liabilities consist of cash, certain transferred power purchase and sales agreements and the PCF Notes. PCF was determined to be a VIE in which we were the primary beneficiary. Accordingly, the entity's assets and liabilities were consolidated into our accounts.

Pursuant to the applicable transaction agreements, PCF has been established as an entity with its existence separate from Calpine and our other subsidiaries. In accordance with FIN 46-R, we consolidate this entity. See Note 2 of the Notes to Consolidated Financial Statements for more information on FIN 46-R. The above mentioned power purchase and sales agreements, which were acquired by PCF from CES, and the PCF Notes are assets and liabilities of PCF, separate from the assets and liabilities of Calpine and our other subsidiaries. The proceeds of the PCF Notes were primarily used by PCF to purchase the power purchase and sales agreements. The following table sets forth selected financial information of PCF as of and for the year ended December 31, 2004 (in thousands):

	<u>2004</u>
Assets	\$ 1,109,825
Liabilities	\$ 1,245,538
Total revenue	\$ 513,832
Total cost of revenue	\$ 469,632
Interest expense	\$ 66,116
Net (loss)	\$ (21,188)

See Note 12 of the Notes to Consolidated Financial Statements for further information.

On September 30, 2003, GEC, a wholly owned subsidiary of our indirect subsidiary GEC Holdings, LLC, completed an offering of \$301.7 million of 4% Senior Secured Notes Due 2011 (the "GEC Notes"). See Note 18 of the Notes to Consolidated Financial Statements for more information on this secured financing. In connection with the offering of the GEC Notes, we received funding on a third party preferred equity

## Table of Contents

investment in GEC Holdings, LLC totaling \$74.0 million. This preferred interest meets the criteria of a mandatorily redeemable financial instrument and has been classified as debt under the guidance of SFAS No. 150, "Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity," due to certain preferential distributions to the third party. The preferential distributions are due semi-annually beginning in March 2004 through September 2011 and total approximately \$113.3 million over the eight-year period. As of December 31, 2004 and 2003, there was \$67.4 and \$74.0 million, respectively, outstanding under the preferred interest.

Pursuant to the applicable transaction agreements, GEC has been established as an entity with its existence separate from Calpine and our other subsidiaries. We consolidate these entities. One of our long-term power sales agreements with CDWR has been acquired by GEC by means of a series of capital contributions by CES and certain of its affiliates and is an asset of GEC, and the GEC Notes and the preferred interest are liabilities of GEC, separate from the assets and liabilities of Calpine and our other subsidiaries. In addition to seven peaker power plants owned directly by GEC and the power sales agreement, GEC's assets include cash and a 100% equity interest in each of Creed Energy Center, LLC ("Creed") and Goose Haven Energy Center, LLC ("Goose Haven") each of which is a wholly owned subsidiary of GEC. Each of Creed and Goose Haven has been established as an entity with its existence separate from Calpine and our other subsidiaries of the Company. GEC consolidates these entities. Creed and Goose Haven each have assets consisting of various power plants and other assets. The following table sets forth selected financial information of GEC as of and for the year ended December 31, 2004 (in thousands):

	<u>2004</u>
Assets	\$ 624,132
Liabilities	\$ 285,604
Total revenue	\$ 110,532
Total cost of revenue	\$ 54,214
Interest expense	\$ 20,567
Net income	\$ 36,864

See Note 12 of the Notes to Consolidated Financial Statements for further information.

On April 29, 2003, we sold a preferred interest in a subsidiary that leases and operates the 120 MW King City Power Plant to GE Structured Finance for \$82.0 million. The preferred interest holder will receive approximately 60% of future cash flow distributions based on current projections. We will continue to provide O&M services. As of December 31, 2003, there was \$82.0 million outstanding under the preferred interest.

Pursuant to the applicable transaction agreements, each of Calpine King City Cogen, LLC, Calpine Securities Company, L.P. (a parent company of Calpine King City Cogen, LLC), and Calpine King City, LLC (an indirect parent company of Calpine Securities Company, L.P.), has been established as an entity with its existence separate from Calpine and our other subsidiaries. We consolidate these entities. The following table sets forth certain financial information relating to these three entities as of December 31, 2004 (in thousands):

	<u>2004</u>
Assets	\$ 481,482
Liabilities	\$ 102,742

See Note 12 of the Notes to Consolidated Financial Statements for further information.

On December 4, 2003, we announced that we had sold to a group of institutional investors our right to receive payments from PG&E under the Agreement between PG&E and Calpine Gilroy Cogen, L.P. ("Gilroy"), a California Limited Partnership (PG&E Log No. 08C002) For Termination and Buy-Out of Standard Offer 4 Power Purchase Agreement, executed by PG&E on July 1, 1999 (the "Gilroy Receivable") for \$133.4 million in cash. Because the transaction did not satisfy the criteria for sales treatment under SFAS No. 140, "Accounting for Transfers and Servicing of Financial Assets and Extinguishments of

## Table of Contents

Liabilities — a Replacement of FASB Statement No. 125,” it is reflected in the Consolidated Financial Statements as a secured financing, with a note payable of \$133.4 million. The receivable balance and note payable balance are both reduced as PG&E makes payments to the buyer of the Gilroy Receivable. The \$24.1 million difference between the \$157.5 million book value of the Gilroy Receivable at the transaction date and the cash received will be recognized as additional interest expense over the repayment term. We will continue to book interest income over the repayment term and interest expense will be accreted on the amortizing note payable balance.

Pursuant to the applicable transaction agreements, each of Gilroy and Calpine Gilroy 1, Inc. (the general partner of Gilroy), has been established as an entity with its existence separate from Calpine and our other subsidiaries. We consolidate these entities. The following table sets forth the assets and liabilities of Gilroy as of December 31, 2004 (in thousands):

	<u>2004</u>
Assets	\$ 438,955
Liabilities	\$ 253,598

See Note 8 of the Notes to Consolidated Financial Statements for further information.

On June 2, 2004, our wholly-owned indirect subsidiary, Power Contract Financing III, LLC (“PCF III”), issued \$85.0 million of zero coupon notes collateralized by PCF III’s ownership of PCF. PCF III owns all of the equity interests in PCF, which holds the CDWR contract monetized in June 2003 and maintains a debt reserve fund, which had a balance of approximately \$94.4 million at December 31, 2004. We received cash proceeds of approximately \$49.8 million from the issuance of the zero coupon notes.

Pursuant to the applicable transaction agreements, PCF III has been established as an entity with its existence separate from Calpine and our other subsidiaries. We consolidate this entity. The following table sets forth the assets and liabilities of PCF III as of December 31, 2004, which does not include the balances of PCF III’s subsidiary, PCF (in thousands):

	<u>2004</u>
Assets	\$ 2,701
Liabilities	\$ 52,388

On August 5, 2004, our wholly-owned indirect subsidiary, Calpine Energy Management, L.P. (“CEM”), entered into a \$250.0 million letter of credit facility with Deutsche Bank whereby Deutsche Bank will support CEM’s power and gas obligations by issuing letters of credit. The facility expires in October 2005.

Pursuant to the applicable transaction agreements, CEM has been established as an entity with its existence separate from Calpine and our other subsidiaries. We consolidate this entity. The following table sets forth the assets and liabilities of CEM as of December 31, 2004 (in thousands):

	<u>2004</u>
Assets	\$ 35,851
Liabilities	\$ 34,816

On June 29, 2004, Rocky Mountain Energy Center, LLC and Riverside Energy Center, LLC, wholly owned stand-alone subsidiaries of the Company’s Calpine Riverside Holdings, LLC subsidiary, received funding in the aggregate amount of \$661.5 million comprising \$633.4 million of First Priority Secured Floating Rate Term Loans Due 2011 and a \$28.1 million letter of credit-linked deposit facility.

Pursuant to the applicable transaction agreements, each of Rocky Mountain Energy Center, LLC, Riverside Energy Center, LLC, and Calpine Riverside Holdings, LLC has been established as an entity with

## Table of Contents

its existence separate from Calpine and our other subsidiaries. We consolidate these entities. The following tables set forth the assets and liabilities of these entities as of December 31, 2004 (in thousands):

	<b>Rocky Mountain 2004</b>
Assets	\$ 416,662
Liabilities	\$ 277,157

	<b>Riverside 2004</b>
Assets	\$ 909,687
Liabilities	\$ 431,700

	<b>Calpine Riverside Holdings, LLC 2004</b>
Assets	\$ 241,893
Liabilities	\$ —

On November 19, 2004, our wholly-owned indirect subsidiaries, Calpine Fox LLC and its immediate parent company, Calpine Fox Holdings, LLC, entered into a \$400 million, 25-year, non-recourse sale/ leaseback transaction with affiliates of GE Commercial Finance Energy Financial Services (“GECF”) for the 560-megawatt Fox Energy Center under construction in Wisconsin. Due to significant continuing involvement, as defined in SFAS No. 98, “Accounting for Leases,” the transaction does not currently qualify for sale/ leaseback accounting under that statement and has been accounted for as a financing. The proceeds received from GECF are recorded as debt in our consolidated balance sheet. The power plant assets will be depreciated over their estimated useful life and the lease payments will be applied to principal and interest expense using the effective interest method until such time as our continuing involvement is removed, expires or is otherwise eliminated. Once we no longer have significant continuing involvement in the power plant assets, the legal sale will be recognized for accounting purposes and the underlying lease will be evaluated and classified in accordance with SFAS No. 13, “Accounting for Leases.”

Pursuant to the applicable transaction agreements, each of Calpine Fox, LLC and Calpine Fox Holdings, LLC, has been established as an entity with its existence separate from Calpine and our other subsidiaries. We consolidate these entities. The following tables set forth the assets and liabilities of Calpine Fox, LLC and Calpine Fox Holdings, LLC, respectively, as of December 31, 2004 (in thousands):

	<b>Calpine Fox, LLC 2004</b>
Assets	\$ 480,685
Liabilities	\$ 274,724

	<b>Calpine Fox Holdings, LLC 2004</b>
Assets	\$ 102,980
Liabilities	\$ —

**Capital Spending — Development and Construction**

Construction and development costs in process consisted of the following at December 31, 2004 (dollars in thousands):

	<u># of Projects</u>	<u>CIP(1)</u>	<u>Equipment Included in CIP</u>	<u>Project Development Costs</u>	<u>Unassigned Equipment</u>
Projects in construction(2)	10	\$ 3,194,530	\$ 1,094,490	\$ —	\$ —
Projects in advanced development	10	670,806	520,036	102,829	—
Projects in suspended development	6	421,547	168,985	38,398	—
Projects in early development	2	—	—	8,952	—
Other capital projects	NA	35,094	—	—	—
Unassigned equipment	NA	—	—	—	66,073
Total construction and development costs		<u>\$ 4,321,977</u>	<u>\$ 1,783,511</u>	<u>\$ 150,179</u>	<u>\$ 66,073</u>

(1) Construction in Progress (“CIP”).

(2) We have a total of 11 projects in construction. This includes the 10 projects above that are recorded in CIP and 1 project that is recorded in investments in power projects. Work and the capitalization of interest on one of the construction projects has been suspended or delayed due to current market conditions. The CIP balance on this project was \$461.5 million as of December 31, 2004. Subsequent to December 31, 2004, work and the capitalization of interest on two additional construction projects was suspended or delayed. Total CIP on these two projects was \$683.0 million as of December 31, 2004.

*Projects in Construction* — The ten projects in construction are projected to come on line from March 2005 to November 2007 or later. These projects will bring on line approximately 4,656 MW of base load capacity (5,264 MW with peaking capacity). Interest and other costs related to the construction activities necessary to bring these projects to their intended use are being capitalized, unless work has been suspended, in which case capitalization of interest expense is suspended until active construction resumes. At December 31, 2004, the estimated funding requirements to complete these projects, net of expected project financing proceeds, is approximately \$84.6 million.

*Projects in Advanced Development* — There are an additional ten projects in advanced development. These projects will bring on line approximately 5,307 MW of base load capacity (6,095 MW with peaking capacity). Interest and other costs related to the development activities necessary to bring these projects to their intended use are being capitalized. However, the capitalization of interest has been suspended on 2 projects for which development activities are substantially complete but construction will not commence until a power purchase agreement and financing are obtained. The estimated cost to complete the 10 projects in advanced development is approximately \$3.0 billion. Our current plan is to project finance these costs as power purchase agreements are arranged.

*Suspended Development Projects* — Due to current electric market conditions, we have ceased capitalization of additional development costs and interest expense on certain development projects on which work has been suspended. Capitalization of costs may recommence as work on these projects resumes, if certain milestones and criteria are met indicating that it is again highly probable that the costs will be recovered through future operations. As is true for all projects, the suspended projects are reviewed for impairment whenever there is an indication of potential reduction in a project’s fair value. Further, if it is determined that it is no longer probable that the projects will be completed and all capitalized costs recovered through future operations, the carrying values of the projects would be written down to the recoverable value. These projects would bring on line approximately 2,956 MW of base load capacity (3,409 MW with peaking capacity). The estimated cost to complete these projects is approximately \$1.8 billion.

## Table of Contents

*Projects in Early Development* — Costs for projects that are in early stages of development are capitalized only when it is highly probable that such costs are ultimately recoverable and significant project milestones are achieved. Until then, all costs, including interest costs, are expensed. The projects in early development with capitalized costs relate to two projects and include geothermal drilling costs and equipment purchases.

*Other Capital Projects* — Other capital projects primarily consist of enhancements to operating power plants, oil and gas and geothermal resource and facilities development as well as software developed for internal use.

*Unassigned Equipment* — As of December 31, 2004, we had made progress payments on four turbines and other equipment with an aggregate carrying value of \$66.1 million. This unassigned equipment is classified on the balance sheet as other assets, because it is not assigned to specific development and construction projects. We are holding this equipment for potential use on future projects. It is possible that some of this unassigned equipment may eventually be sold, potentially in combination with our engineering and construction services. For equipment that is not assigned to advanced development or construction projects, interest is not capitalized.

*Impairment Evaluation* — All construction and development projects and unassigned turbines are reviewed for impairment whenever there is an indication of potential reduction in fair value. Equipment assigned to such projects is not evaluated for impairment separately, as it is integral to the assumed future operations of the project to which it is assigned. If it is determined that it is no longer probable that the projects will be completed and all capitalized costs recovered through future operations, the carrying values of the projects would be written down to the recoverable value in accordance with the provisions of SFAS No. 144 “Accounting for Impairment or Disposal of Long-Lived Assets” (“SFAS No. 144”). We review our unassigned equipment for potential impairment based on probability-weighted alternatives of utilizing it for future projects versus selling it. Utilizing this methodology, we do not believe that the equipment not committed to sale is impaired. However, during the year ended December 31, 2004, we recorded to the “Equipment cancellation and impairment cost” line of the Consolidated Statement of Operations \$3.2 million in net losses in connection with equipment sales. During the year ended December 31, 2003, we recorded to the same line \$29.4 million in losses in connection with the sale of four turbines, and we may incur further losses should we decide to sell more unassigned equipment in the future.

### Performance Metrics

In understanding our business, we believe that certain non-GAAP operating performance metrics are particularly important. These are described below:

- *Total deliveries of power.* We both generate power that we sell to third parties and purchase power for sale to third parties in hedging, balancing and optimization (“HBO”) transactions. The former sales are recorded as electricity and steam revenue and the latter sales are recorded as sales of purchased power for hedging and optimization. The volumes in MWh for each are key indicators of our respective levels of generation and HBO activity and the sum of the two, our total deliveries of power, is relevant because there are occasions where we can either generate or purchase power to fulfill contractual sales commitments. Prospectively beginning October 1, 2003, in accordance with EITF Issue No. 03-11, certain sales of purchased power for hedging and optimization are shown net of purchased power expense for hedging and optimization in our consolidated statement of operations. Accordingly, we have also netted HBO volumes on the same basis as of October 1, 2003, in the table below.
- *Average availability and average baseload capacity factor.* Availability represents the percent of total hours during the period that our plants were available to run after taking into account the downtime associated with both scheduled and unscheduled outages. The baseload capacity factor is calculated by dividing (a) total MWh generated by our power plants (excluding peakers) by the product of multiplying (b) the weighted average MW in operation during the period by (c) the total hours in the period. The average baseload capacity factor is thus a measure of total actual generation as a percent of total potential generation. If we elect not to generate during periods when electricity pricing is too low

or gas prices too high to operate profitably, the baseload capacity factor will reflect that decision as well as both scheduled and unscheduled outages due to maintenance and repair requirements.

- *Average heat rate for gas-fired fleet of power plants expressed in Btu's of fuel consumed per kilowatt hour ("KWh") generated.* We calculate the average heat rate for our gas-fired power plants (excluding peakers) by dividing (a) fuel consumed in Btu's by (b) KWh generated. The resultant heat rate is a measure of fuel efficiency, so the lower the heat rate, the better. We also calculate a "steam-adjusted" heat rate, in which we adjust the fuel consumption in Btu's down by the equivalent heat content in steam or other thermal energy exported to a third party, such as to steam hosts for our cogeneration facilities. Our goal is to have the lowest average heat rate in the industry.
- *Average all-in realized electric price expressed in dollars per MWh generated.* Our risk management and optimization activities are integral to our power generation business and directly impact our total realized revenues from generation. Accordingly, we calculate the all-in realized electric price per MWh generated by dividing (a) adjusted electricity and steam revenue, which includes capacity revenues, energy revenues, thermal revenues and the spread on sales of purchased electricity for hedging, balancing, and optimization activity, by (b) total generated MWh in the period.
- *Average cost of natural gas expressed in dollars per millions of Btu's of fuel consumed.* Our risk management and optimization activities related to fuel procurement directly impact our total fuel expense. The fuel costs for our gas-fired power plants are a function of the price we pay for fuel purchased and the results of the fuel hedging, balancing, and optimization activities by CES. Accordingly, we calculate the cost of natural gas per millions of Btu's of fuel consumed in our power plants by dividing (a) adjusted fuel expense which includes the cost of fuel consumed by our plants (adding back cost of inter-company "equity" gas from Calpine Natural Gas, which is eliminated in consolidation), and the spread on sales of purchased gas for hedging, balancing, and optimization activity by (b) the heat content in millions of Btu's of the fuel we consumed in our power plants for the period.
- *Average spark spread expressed in dollars per MWh generated.* Our risk management activities focus on managing the spark spread for our portfolio of power plants, the spread between the sales price for electricity generated and the cost of fuel. We calculate the spark spread per MWh generated by subtracting (a) adjusted fuel expense from (b) adjusted E&S revenue and dividing the difference by (c) total generated MWh in the period.
- *Average plant operating expense per normalized MWh.* To assess trends in electric power plant operating expense ("POX") per MWh, we normalize the results from period to period by assuming a constant 70% total company-wide capacity factor (including both baseload and peaker capacity) in deriving normalized MWh. By normalizing the cost per MWh with a constant capacity factor, we can better analyze trends and the results of our program to realize economies of scale, cost reductions and efficiencies at our electric generating plants. For comparison purposes we also include POX per actual MWh.

## Table of Contents

The table below shows the operating performance metrics discussed above.

	Years Ended December 31,		
	2004	2003 (In thousands)	2002
<b>Operating Performance Metrics;</b>			
<i>Total deliveries of power:</i>			
MWh generated	96,489	82,423	72,767
HBO and trading MWh sold	51,175	77,232	75,740
MWh delivered	<u>147,664</u>	<u>159,655</u>	<u>148,507</u>
<i>Average availability</i>	92.6%	91.2%	91.8%
<i>Average baseload capacity factor:</i>			
Average total MW in operation	24,690	20,092	14,346
Less: Average MW of pure peakers	2,951	2,672	1,708
Average baseload MW in operation	<u>21,739</u>	<u>17,420</u>	<u>12,638</u>
Hours in the period	8,784	8,760	8,760
Potential baseload generation (MWh)	190,955	152,599	110,709
Actual total generation (MWh)	96,489	82,423	72,767
Less: Actual pure peakers' generation (MWh)	1,453	1,290	979
Actual baseload generation (MWh)	<u>95,036</u>	<u>81,133</u>	<u>71,788</u>
Average baseload capacity factor	49.8%	53.2%	64.8%
<i>Average heat rate for gas-fired power plants (excluding peakers) (Btu's/ KWh):</i>			
Not steam adjusted	8,193	8,007	7,928
Steam adjusted	7,120	7,253	7,239
<i>Average all-in realized electric price:</i>			
Electricity and steam revenue	\$ 5,683,063	\$ 4,680,397	\$ 3,237,510
Spread on sales of purchased power for hedging and optimization	<u>164,747</u>	<u>24,118</u>	<u>527,546</u>
Adjusted electricity and steam revenue (in thousands)	\$ 5,847,810	\$ 4,704,515	\$ 3,765,056
MWh generated (in thousands)	96,489	82,423	72,767
Average all-in realized electric price per MWh	\$ 60.61	\$ 57.08	\$ 51.74
<i>Average cost of natural gas:</i>			
Fuel expense (in thousands)	\$ 3,731,108	\$ 2,665,620	\$ 1,792,323
Fuel cost elimination	208,170	284,951	141,263
Spread on sales of purchased gas for hedging and optimization	<u>(11,587)</u>	<u>(41,334)</u>	<u>(49,401)</u>
Adjusted fuel expense	\$ 3,927,691	\$ 2,909,237	\$ 1,884,185
Million Btu's ("MMBtu") of fuel consumed by generating plants (in thousands)	657,762	560,508	511,354
Average cost of natural gas per MMBtu	\$ 5.97	\$ 5.19	\$ 3.68
MWh generated (in thousands)	96,489	82,423	72,767
Average cost of adjusted fuel expense per MWh	\$ 40.71	\$ 35.30	\$ 25.89
<i>Average spark spread:</i>			
Adjusted electricity and steam revenue (in thousands)	\$ 5,847,810	\$ 4,704,515	\$ 3,765,056
Less: Adjusted fuel expense (in thousands)	<u>3,927,691</u>	<u>2,909,237</u>	<u>1,884,185</u>
Spark spread (in thousands)	\$ 1,920,119	\$ 1,795,278	\$ 1,880,871
MWh generated (in thousands)	96,489	82,423	72,767
Average spark spread per MWh	\$ 19.90	\$ 21.78	\$ 25.85
Add: Equity gas contribution(1)	\$ 129,255	\$ 174,922	\$ 42,769
Spark spread with equity gas benefits (in thousands)	\$ 2,049,374	\$ 1,970,200	\$ 1,923,640
Average spark spread with equity gas benefits per MWh	\$ 21.24	\$ 23.90	\$ 26.44
<i>Average plant operating expense ("POX") per normalized MWh (for comparison purposes we also include POX per actual MWh):</i>			
Average total consolidated MW in operations	24,690	20,092	14,346
Hours per year	8,784	8,760	8,760
Total potential MWh	216,877	176,006	125,671
Normalized MWh (at 70% capacity factor)	151,814	123,204	87,970
Plant operating expense (POX)	\$ 795,975	\$ 663,045	\$ 522,906
POX per normalized MWh	\$ 5.24	\$ 5.38	\$ 5.94
POX per actual MWh	\$ 8.25	\$ 8.04	\$ 7.19

(1) Equity gas contribution margin from continuing operations:

## Table of Contents

	Years Ended December 31,		
	2004	2003	2002
Oil and gas sales	\$ 63,153	\$ 59,156	\$ 63,514
Add: Fuel cost eliminated in consolidation	208,170	284,951	141,263
Subtotal	\$ 271,323	\$ 344,107	\$ 204,777
Less: Oil and gas operating expense	56,843	75,453	69,840
Less: Depletion, depreciation and amortization(a)	85,225	93,732	92,168
Equity gas contribution margin	\$ 129,255	\$ 174,922	\$ 42,769
MWh generated (in thousands)	96,489	82,423	72,767
Equity gas contribution margin per MWh	\$ 1.34	\$ 2.12	\$ 0.59

(a) Excludes oil and gas impairment of \$202.1 million, \$2.9 million and \$3.4 million, respectively.

The table below provides additional detail of total mark-to-market activity. For the years ended December 31, 2004, 2003 and 2002, mark-to-market activity, net consisted of (dollars in thousands):

	Years Ended December 31,		
	2004	2003	2002
		(In thousands)	
Realized:			
Power activity			
“Trading Activity” as defined in EITF Issue No. 02-03	\$ 52,390	\$ 52,559	\$ 12,175
Other mark-to-market activity(1)	(12,158)	(26,059)	—
Total realized power activity	\$ 40,232	\$ 26,500	\$ 12,175
Gas activity			
“Trading Activity” as defined in EITF Issue No. 02-03	\$ 8,025	\$ (2,166)	\$ 13,915
Other mark-to-market activity(1)	—	—	—
Total realized gas activity	\$ 8,025	\$ (2,166)	\$ 13,915
Total realized activity:			
“Trading Activity” as defined in EITF Issue No. 02-03	\$ 60,415	\$ 50,393	\$ 26,090
Other mark-to-market activity(1)	(12,158)	(26,059)	—
Total realized activity	\$ 48,257	\$ 24,334	\$ 26,090
Unrealized:			
Power activity			
“Trading Activity” as defined in EITF Issue No. 02-03	\$ (18,075)	\$ (55,450)	\$ 12,974
Ineffectiveness related to cash flow hedges	1,814	(5,001)	(4,934)
Other mark-to-market activity(1)	(13,591)	(1,243)	—
Total unrealized power activity	\$ (29,852)	\$ (61,694)	\$ 8,040
Gas activity			
“Trading Activity” as defined in EITF Issue No. 02-03	\$ (10,700)	\$ 7,768	\$ (14,792)
Ineffectiveness related to cash flow hedges	5,827	3,153	2,147
Other mark-to-market activity(1)	—	—	—
Total unrealized gas activity	\$ (4,873)	\$ 10,921	\$ (12,645)
Total unrealized activity:			
“Trading Activity” as defined in EITF Issue No. 02-03	\$ (28,775)	\$ (47,682)	\$ (1,818)
Ineffectiveness related to cash flow hedges	7,641	(1,848)	(2,787)
Other mark-to-market activity(1)	(13,591)	(1,243)	—
Total unrealized activity	\$ (34,725)	\$ (50,773)	\$ (4,605)

	Years Ended December 31,		
	2004	2003	2002
Total mark-to-market activity:		(In thousands)	
“Trading Activity” as defined in EITF Issue No. 02-03	\$ 31,640	\$ 2,711	\$ 24,272
Ineffectiveness related to cash flow hedges	7,641	(1,848)	(2,787)
Other mark-to-market activity(1)	(25,749)	(27,302)	—
Total mark-to-market activity	<u>\$ 13,532</u>	<u>\$ (26,439)</u>	<u>\$ 21,485</u>

(1) Activity related to our assets but does not qualify for hedge accounting.

### Strategy

For a discussion of our strategy and management’s outlook, see “Item 1 — Business — Strategy.”

### Financial Market Risks

As we are primarily focused on generation of electricity using gas-fired turbines, our natural physical commodity position is “short” fuel (i.e., natural gas consumer) and “long” power (i.e., electricity seller). To manage forward exposure to price fluctuation in these and (to a lesser extent) other commodities, we enter into derivative commodity instruments as discussed in Item 6. “Business — Marketing, Hedging, Optimization and Trading Activities.”

The change in fair value of outstanding commodity derivative instruments from January 1, 2004, through December 31, 2004, is summarized in the table below (in thousands):

Fair value of contracts outstanding at January 1, 2004	\$ 76,541
Cash losses recognized or otherwise settled during the period(1)	30,569
Non-cash losses recognized or otherwise settled during the period(2)	(34,394)
Changes in fair value attributable to new contracts	(28,896)
Changes in fair value attributable to price movements	(25,260)
Fair value of contracts outstanding at December 31, 2004(3)	<u>\$ 18,560</u>
Realized cash flow from fair value hedges(4)	\$ 171,096

- (1) Recognized (losses) from commodity cash flow hedges of \$(89.2) million (represents realized value of cash flow hedge activity of \$(70.2) million as disclosed in Note 23 of the Notes to Consolidated Financial Statements, net of non-cash other comprehensive income (“OCI”) items relating to terminated derivatives of \$8.1 million and equity method hedges of \$10.9 million) and realized gains of \$58.6 million on mark-to-market activity, (represents realized value of mark-to-market activity of \$48.3 million, as reported in the Consolidated Statements of Operations under mark-to-market activities, net of \$(10.3) million of non-cash realized mark-to-market activity).
- (2) This represents the non-cash amortization of deferred items embedded in our derivative assets and liabilities.
- (3) Net commodity derivative assets reported in Note 23 of the Notes to Consolidated Financial Statements.
- (4) Not included as part of the roll-forward of net derivative assets and liabilities because changes in the hedge instrument and hedged item move in equal and offsetting directions to the extent the fair value hedges are perfectly effective.

## Table of Contents

The fair value of outstanding derivative commodity instruments at December 31, 2004, based on price source and the period during which the instruments will mature, are summarized in the table below (in thousands):

<u>Fair Value Source</u>	<u>2005</u>	<u>2006-2007</u>	<u>2008-2009</u>	<u>After 2009</u>	<u>Total</u>
Prices actively quoted	\$ 34,636	\$ 57,175	\$ —	\$ —	\$ 91,811
Prices provided by other external sources	(55,308)	(18,845)	14,678	(30,666)	(90,141)
Prices based on models and other valuation methods	—	7,800	9,090	—	16,890
Total fair value	<u>\$ (20,672)</u>	<u>\$ 46,130</u>	<u>\$ 23,768</u>	<u>\$ (30,666)</u>	<u>\$ 18,560</u>

Our risk managers maintain fair value price information derived from various sources in our risk management systems. The propriety of that information is validated by our Risk Control group. Prices actively quoted include validation with prices sourced from commodities exchanges (e.g., New York Mercantile Exchange). Prices provided by other external sources include quotes from commodity brokers and electronic trading platforms. Prices based on models and other valuation methods are validated using quantitative methods. See “Critical Accounting Policies” for a discussion of valuation estimates used where external prices are unavailable.

The counterparty credit quality associated with the fair value of outstanding derivative commodity instruments at December 31, 2004, and the period during which the instruments will mature are summarized in the table below (in thousands):

<u>Credit Quality (Based on Standard &amp; Poor's Ratings as of December 31, 2004)</u>	<u>2005</u>	<u>2006-2007</u>	<u>2008-2009</u>	<u>After 2009</u>	<u>Total</u>
Investment grade	\$ (30,186)	\$ 46,357	\$ 23,768	\$ (30,666)	\$ 9,273
Non-investment grade	8,676	632	—	—	9,308
No external ratings	838	(859)	—	—	(21)
Total fair value	<u>\$ (20,672)</u>	<u>\$ 46,130</u>	<u>\$ 23,768</u>	<u>\$ (30,666)</u>	<u>\$ 18,560</u>

The fair value of outstanding derivative commodity instruments and the fair value that would be expected after a ten percent adverse price change are shown in the table below (in thousands):

	<u>Fair Value</u>	<u>Fair Value After 10% Adverse Price Change</u>
At December 31, 2004:		
Electricity	\$ (70,457)	\$ (227,624)
Natural gas	89,017	4,505
Total	<u>\$ 18,560</u>	<u>\$ (223,119)</u>

Derivative commodity instruments included in the table are those included in Note 23 of the Notes to Consolidated Financial Statements. The fair value of derivative commodity instruments included in the table is based on present value adjusted quoted market prices of comparable contracts. The fair value of electricity derivative commodity instruments after a 10% adverse price change includes the effect of increased power prices versus our derivative forward commitments. Conversely, the fair value of the natural gas derivatives after a 10% adverse price change reflects a general decline in gas prices versus our derivative forward commitments. Derivative commodity instruments offset the price risk exposure of our physical assets. None of the offsetting physical positions are included in the table above.

Price changes were calculated by assuming an across-the-board ten percent adverse price change regardless of term or historical relationship between the contract price of an instrument and the underlying commodity price. In the event of an actual ten percent change in prices, the fair value of our derivative

## Table of Contents

portfolio would typically change by more than ten percent for earlier forward months and less than ten percent for later forward months because of the higher volatilities in the near term and the effects of discounting expected future cash flows.

The primary factors affecting the fair value of our derivatives at any point in time are (1) the volume of open derivative positions (MMBtu and MWh), and (2) changing commodity market prices, principally for electricity and natural gas. The total volume of open gas derivative positions increased 185% from December 31, 2003, to December 31, 2004, and the total volume of open power derivative positions increased 147% for the same period. In that prices for electricity and natural gas are among the most volatile of all commodity prices, there may be material changes in the fair value of our derivatives over time, driven both by price volatility and the changes in volume of open derivative transactions. Under SFAS No. 133, the change since the last balance sheet date in the total value of the derivatives (both assets and liabilities) is reflected either in OCI, net of tax, or in the statement of operations as an item (gain or loss) of current earnings. As of December 31, 2004, a significant component of the balance in accumulated OCI represented the unrealized net loss associated with commodity cash flow hedging transactions. As noted above, there is a substantial amount of volatility inherent in accounting for the fair value of these derivatives, and our results during the year ended December 31, 2004, have reflected this. See Notes 21 and 23 of the Notes to Consolidated Financial Statements for additional information on derivative activity.

*Interest Rate Swaps* — From time to time, we use interest rate swap agreements to mitigate our exposure to interest rate fluctuations associated with certain of our debt instruments and to adjust the mix between fixed and floating rate debt in our capital structure to desired levels. We do not use interest rate swap agreements for speculative or trading purposes. The following tables summarize the fair market values of our existing interest rate swap agreements as of December 31, 2004 (dollars in thousands):

### *Variable to Fixed Swaps*

<u>Maturity Date</u>	<u>Notional Principal Amount</u>	<u>Weighted Average Interest Rate (Pay)</u>	<u>Weighted Average Interest Rate (Receive)</u>	<u>Fair Market Value</u>
2011	\$ 58,178	4.5%	3-month US\$ LIBOR	\$ (1,734)
2011	291,897	4.5%	3-month US\$ LIBOR	(8,753)
2011	209,833	4.4%	3-month US\$ LIBOR	(4,916)
2011	41,822	4.4%	3-month US\$ LIBOR	(980)
2011	38,479	6.9%	3-month US\$ LIBOR	(4,089)
2012	105,840	6.5%	3-month US\$ LIBOR	(11,680)
2016	21,120	7.3%	3-month US\$ LIBOR	(3,654)
2016	14,080	7.3%	3-month US\$ LIBOR	(2,436)
2016	42,240	7.3%	3-month US\$ LIBOR	(7,308)
2016	28,160	7.3%	3-month US\$ LIBOR	(4,872)
2016	35,200	7.3%	3-month US\$ LIBOR	(6,092)
Total	<u>\$ 886,849</u>	<u>7.3%</u>		<u>\$ (56,514)</u>

*Fixed to Variable Swaps*

<u>Maturity Date</u>	<u>Notional Principal Amount</u>	<u>Weighted Average Interest Rate (Pay)</u>	<u>Weighted Average Interest Rate (Receive)</u>	<u>Fair Market Value</u>
2011	\$ 100,000	6-month US\$ LIBOR	8.5%	\$ (5,406)
2011	100,000	6-month US\$ LIBOR	8.5%	(3,699)
2011	200,000	6-month US\$ LIBOR	8.5%	(7,740)
2011	100,000	6-month US\$ LIBOR	8.5%	(6,508)
Total	<u>\$ 500,000</u>		<u>8.5%</u>	<u>\$ (23,353)</u>

The fair value of outstanding interest rate swaps and the fair value that would be expected after a one percent (100 basis points) adverse interest rate change are shown in the table below (in thousands). Given our net variable to fixed portfolio position, a 100 basis point decrease would adversely impact our portfolio as follows:

<u>Net Fair Value as of December 31, 2004</u>	<u>Fair Value After a 1.0% (100 Basis Points) Adverse Interest Rate Change</u>
\$(79,867)	\$ (97,567)

*Currency Exposure* — We own subsidiary entities in several countries. These entities generally have functional currencies other than the U.S. dollar. In most cases, the functional currency is consistent with the local currency of the host country where the particular entity is located. In certain cases, we and our foreign subsidiary entities hold monetary assets and/or liabilities that are not denominated in the functional currencies referred to above. In such instances, we apply the provisions of SFAS No. 52, “Foreign Currency Translation,” (“SFAS No. 52”) to account for the monthly re-measurement gains and losses of these assets and liabilities into the functional currencies for each entity. In some cases we can reduce our potential exposures to net income by designating liabilities denominated in non-functional currencies as hedges of our net investment in a foreign subsidiary or by entering into derivative instruments and designating them in hedging relationships against a foreign exchange exposure. Based on our unhedged exposures at December 31, 2004, the impact to our pre-tax earnings that would be expected after a 10% adverse change in exchange rates is shown in the table below (in thousands):

<u>Currency Exposure</u>	<u>Impact to Pre-Tax Net Income After 10% Adverse Exchange Rate Change</u>
GBP-Euro	\$ (15,982)
GBP-\$US	(10,781)
\$Cdn-\$US	(72,294)
Other	(2,241)

Significant changes in exchange rates will also impact our Cumulative Translation Adjustment (“CTA”) balance when translating the financial statements of our foreign operations from their respective functional currencies into our reporting currency, the U.S. dollar. An example of the impact that significant exchange rate movements can have on our Balance Sheet position occurred in 2004. During 2004 our CTA increased by approximately \$62 million primarily due to a strengthening of the Canadian dollar and GBP against the U.S. dollar by approximately 7% each.

**Foreign Currency Transaction Gain (Loss)**

*Year Ended December 31, 2004, Compared to Year Ended December 31, 2003:*

The major components of our foreign currency transaction losses from continuing operations of \$25.1 million and \$33.3 million, respectively, in 2004 and 2003, respectively, are as follows (amounts in millions):

	<u>2004</u>	<u>2003</u>
Gain (Loss) from \$Cdn-\$US fluctuations:	\$ (42.8)	\$ (22.6)
Gain (Loss) from GBP-Euro fluctuations:	0.8	(12.2)
Gain (Loss) from GBP-\$US fluctuations:	16.7	—
Gain (Loss) from other currency fluctuations:	0.2	1.5

The \$Cdn-\$US loss for 2004 was driven by two primary factors. First, as a result of the sale of our Canadian gas assets, we recognized remeasurement losses due to the fact that the sales proceeds were converted into U.S. dollars through a series of forward foreign exchange contracts but during September, October and November, a portion of these converted proceeds were retained by the \$Cdn-denominated entity that sold the assets. During these months, the Canadian dollar strengthened considerably against the U.S. dollar, creating large remeasurement losses which did not cease until the balance of the proceeds were distributed back to the U.S. parent company. Second, also in conjunction with the sale of our Canadian gas assets, we recognized remeasurement losses during the third and fourth quarter of 2004 when the Canadian dollar strengthened after the sale and subsequent repatriation of the proceeds to the U.S. parent company. The sale and repatriation of funds substantially reduced the degree to which we could designate our \$Cdn-denominated liabilities as hedges against our investment in Canadian dollar denominated subsidiaries, triggering significant remeasurement losses as the Canadian dollar strengthened against the U.S. dollar. This loss was partially offset by remeasurement gains recognized on the translation of the interest receivable associated with our large intercompany loan that has been deemed a permanent investment.

The \$Cdn-\$US loss for 2003 was driven primarily by a significant strengthening of the Canadian dollar against the U.S. dollar during the first six months of 2003, at a time when the majority of our \$Cdn-\$US payable exposures were not designated as hedges of the net investment in our Canadian operations. The majority of these payable exposures were created by transactions that occurred during the fourth quarter of 2002 and the first quarter of 2003. The losses on these loans were partially offset by remeasurement gains recognized on the translation of the interest receivable associated with our large intercompany loan that has been deemed a permanent investment.

During 2004, the Euro weakened slightly against the GBP, triggering re-measurement gains associated with our Euro-denominated 8 <sup>3</sup>/<sub>8</sub> % Senior Notes Due 2008.

During 2003, the Euro strengthened considerably against the GBP, triggering re-measurement losses associated with these Senior Notes.

The GBP-\$US gain for 2004 relates to re-measurement gains associated with our US\$360 million Two-Year Redeemable Preferred Shares issued by our indirect, wholly owned subsidiary, Calpine (Jersey) Limited. The offering closed on October 26, 2004 and the remeasurement gains recognized were driven by a significant strengthening of the GBP against the U.S. dollar during November and December. There is no comparable amount for 2003 as no such exposure existed prior to the closing of this offering.

## Table of Contents

### *Year Ended December 31, 2003, Compared to Year Ended December 31, 2002:*

The major components of our foreign currency transaction losses of \$33.3 million and \$1.0 million, respectively, in 2003 and 2002, respectively, are as follows (amounts in millions):

	<u>2003</u>	<u>2002</u>
Gain (Loss) from \$Cdn-\$US fluctuations:	\$ (22.6)	\$ (1.3)
Gain (Loss) from GBP-Euro fluctuations:	(12.2)	0.3
Gain (Loss) from other currency fluctuations:	1.5	—

The \$Cdn-\$US loss for 2003 was driven primarily by a significant strengthening of the Canadian dollar against the U.S. dollar during the first six months of 2003, at a time when the majority of our \$Cdn-\$US payable exposures were not designated as hedges of the net investment in our Canadian operations. The majority of these payable exposures were created by transactions that occurred during the fourth quarter of 2002 and the first quarter of 2003. The losses on these loans were partially offset by remeasurement gains recognized on the translation of the interest receivable associated with our large intercompany loan that has been deemed a permanent investment.

The \$Cdn-\$US loss for 2002 was significantly smaller than the loss incurred during 2003, primarily due to a very limited number of \$Cdn-\$US payable exposures during the majority of the year. Prior to the fourth quarter of 2002, we had very few \$Cdn-\$US transactions subject to re-measurement gains and losses under the guidance of SFAS No. 52 and as a result of this low transaction volume, our foreign currency transaction activity was minimal. Additionally, the \$Cdn-\$US exchange rate was fairly static during the balance of 2002; the Canadian dollar strengthened very slightly against the U.S. dollar. The low volume of transactions combined with very mild exchange rate volatility resulted in a small financial impact to our Consolidated Statement of Operations.

During 2003, the Euro strengthened considerably against the GBP, triggering re-measurement losses associated with our Euro-denominated 8 <sup>3</sup>/<sub>8</sub> % Senior Notes Due 2008.

During 2002, the Euro likewise strengthened considerably against the GBP; however, we effectively mitigated our exposure to the majority of this exchange rate volatility through a Euro-GBP cross currency swap that was designated as an effective cash flow hedge against the anticipated Euro-denominated future cash flows of these Senior Notes in accordance with SFAS No. 133, as amended. The currency swap was entered into during 2001 in conjunction with the initial offering of these Senior Notes and was in place for the full balance of 2002. The swap was subsequently terminated in February, 2003.

*Debt Financing* — Because of the significant capital requirements within our industry, debt financing is often needed to fund our growth. Certain debt instruments may affect us adversely because of changes in market conditions. We have used two primary forms of debt which are subject to market risk: (1) Variable rate construction/project financing and (2) Other variable-rate instruments. Significant LIBOR increases could have a negative impact on our future interest expense. Our variable-rate construction/project financing is primarily through the CalGen floating rate notes, institutional term loans and revolving credit facility. New borrowings under our \$200 million CalGen revolving credit agreement are used exclusively to fund the construction costs of CalGen power plants (of which only the Pastoria Energy Center was still in active construction at December 31, 2004). Other variable-rate instruments consist primarily of our revolving credit and term loan facilities, which are used for general corporate purposes. Both our variable-rate construction/project financing and other variable-rate instruments are indexed to base rates, generally LIBOR, as shown below.

## Table of Contents

The following table summarizes our variable-rate debt, by repayment year, exposed to interest rate risk as of December 31, 2004. All outstanding balances and fair market values are shown net of applicable premium or discount, if any (dollars in thousands):

	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
3-month US \$LIBOR weighted average interest rate basis(4)				
MEP Pleasant Hill Term Loan, Tranche A	\$ 6,700	\$ 7,482	\$ 8,132	\$ 9,271
Saltend preferred interest	—	360,000	—	—
Total of 3-month US \$LIBOR rate debt	<u>6,700</u>	<u>367,482</u>	<u>8,132</u>	<u>9,271</u>
1-month EURLIBOR weighted average interest rate basis(4)				
Thomassen revolving line of credit	<u>3,332</u>	—	—	—
Total of 1-month EURLIBOR rate debt	<u>3,332</u>	—	—	—
1-month US \$LIBOR weighted average interest rate basis(4)				
First Priority Secured Floating Rate Notes Due 2009 (CalGen)	—	—	1,175	2,350
Total of 1-month US \$LIBOR rate debt	—	—	<u>1,175</u>	<u>2,350</u>
6-month US \$LIBOR weighted average interest rate basis(4)				
Third Priority Secured Floating Rate Notes Due 2011 (CalGen)	—	—	—	—
Total of 6-month US \$LIBOR rate debt	—	—	—	—
5-month US \$LIBOR weighted average interest rate basis(4)				
Riverside Energy Center project financing	3,685	3,685	3,685	3,685
Rocky Mountain Energy Center project financing	<u>2,642</u>	<u>2,649</u>	<u>2,649</u>	<u>2,649</u>
Total of 6-month US \$LIBOR rate debt	<u>6,327</u>	<u>6,334</u>	<u>6,334</u>	<u>6,334</u>
(1)(4)				
First Priority Secured Institutional Term Loan Due 2009 (CCFC I)	3,208	3,208	3,208	3,208
Second Priority Senior Secured Floating Rate Notes Due 2011 (CCFC I)	—	—	—	—
Total of variable rate debt as defined at(1) below	<u>3,208</u>	<u>3,208</u>	<u>3,208</u>	<u>3,208</u>
(2)(4)				
Second Priority Senior Secured Term Loan B Notes Due 2007	<u>7,500</u>	<u>7,500</u>	<u>725,625</u>	—
Total of variable rate debt as defined at(2) below	<u>7,500</u>	<u>7,500</u>	<u>725,625</u>	—
(3)(4)				
Second Priority Senior Secured Floating Due 2007	5,000	5,000	483,750	—
Blue Spruce Energy Center project financing	<u>1,875</u>	<u>3,750</u>	<u>3,750</u>	<u>3,750</u>
Total of variable rate debt as defined at(3) below	<u>6,875</u>	<u>8,750</u>	<u>487,500</u>	<u>3,750</u>
(5)(4)				
First Priority Secured Term Loans Due 2009 (CalGen)	—	—	3,000	6,000
Second Priority Secured Floating Rate Notes Due 2010 (CalGen)	—	—	—	3,200
Second Priority Secured Term Loans Due 2010 (CalGen)	—	—	—	500
Total of variable rate debt as defined at(5) below	—	—	<u>3,000</u>	<u>9,700</u>
(6)(4)				
Island Cogen	<u>9,954</u>	—	—	—
Total of variable rate debt as defined at(6) below	<u>9,954</u>	—	—	—
(6)(4)				
Contra Costa	<u>168</u>	<u>175</u>	<u>182</u>	<u>190</u>
Total of variable rate debt as defined at(6) below	<u>168</u>	<u>175</u>	<u>182</u>	<u>190</u>
Grand total variable-rate debt instruments	<u>\$ 44,064</u>	<u>\$ 393,449</u>	<u>\$ 1,235,156</u>	<u>\$ 34,803</u>

## Table of Contents

	<u>2009</u>	<u>Thereafter</u>	<u>Fair Value December 31, 2004(7)</u>
3-month US \$LIBOR weighted average interest rate basis(4)			
MEP Pleasant Hill Term Loan, Tranche A	\$ 9,433	\$ 85,802	\$ 126,820
Saltend preferred interest	—	—	360,000
Total of 3-month US \$LIBOR rate debt	<u>9,433</u>	<u>85,802</u>	<u>486,820</u>
1-month EURLIBOR weighted average interest rate basis(4)			
Thomassen revolving line of credit	—	—	3,332
Total of 1-month EURLIBOR rate debt	<u>—</u>	<u>—</u>	<u>3,332</u>
1-month US \$LIBOR weighted average interest rate basis(4)			
First Priority Secured Floating Rate Notes Due 2009 (CalGen)	<u>231,475</u>	—	<u>235,000</u>
Total of 1-month US \$LIBOR rate debt	<u>231,475</u>	<u>—</u>	<u>235,000</u>
6-month US \$LIBOR weighted average interest rate basis(4)			
Third Priority Secured Floating Rate Notes Due 2011 (CalGen)	—	<u>680,000</u>	<u>680,000</u>
Total of 6-month US \$LIBOR rate debt	<u>—</u>	<u>680,000</u>	<u>680,000</u>
5-month US \$LIBOR weighted average interest rate basis(4)			
Riverside Energy Center project financing	3,685	350,075	368,500
Rocky Mountain Energy Center project financing	<u>2,649</u>	<u>251,662</u>	<u>264,900</u>
Total of 6-month US \$LIBOR rate debt	<u>6,334</u>	<u>601,737</u>	<u>633,400</u>
(1)(4)			
First Priority Secured Institutional Term Loan Due 2009 (CCFC I)	365,350	—	378,182
Second Priority Senior Secured Floating Rate Notes Due 2011 (CCFC I)	—	<u>408,568</u>	<u>408,568</u>
Total of variable rate debt as defined at(1) below	<u>365,350</u>	<u>408,568</u>	<u>786,750</u>
(2)(4)			
Second Priority Senior Secured Term Loan B Notes Due 2007	—	—	<u>677,672</u>
Total of variable rate debt as defined at(2) below	<u>—</u>	<u>—</u>	<u>677,672</u>
(3)(4)			
Second Priority Senior Secured Floating Due 2007	—	—	449,313
Blue Spruce Energy Center project financing	<u>3,750</u>	<u>81,397</u>	<u>98,272</u>
Total of variable rate debt as defined at(3) below	<u>3,750</u>	<u>81,397</u>	<u>547,585</u>
(5)(4)			
First Priority Secured Term Loans Due 2009 (CalGen)	591,000	—	600,000
Second Priority Secured Floating Rate Notes Due 2010 (CalGen)	6,400	622,039	631,639
Second Priority Secured Term Loans Due 2010 (CalGen)	<u>1,000</u>	<u>97,194</u>	<u>98,694</u>
Total of variable rate debt as defined at(5) below	<u>598,400</u>	<u>719,233</u>	<u>1,330,333</u>
(6)(4)			
Island Cogen	—	—	9,954
Total of variable rate debt as defined at(6) below	<u>—</u>	<u>—</u>	<u>9,954</u>
(6)(4)			
Contra Costa	<u>197</u>	<u>1,364</u>	<u>2,276</u>
Total of variable rate debt as defined at(6) below	<u>197</u>	<u>1,364</u>	<u>2,276</u>
Grand total variable-rate debt instruments	<u>\$ 1,214,939</u>	<u>\$ 2,578,101</u>	<u>\$ 5,393,122</u>

(1) British Bankers Association LIBOR Rate for deposit in US dollars for a period of six months.

(2) U.S. prime rate in combination with the Federal Funds Effective Rate.

(3) British Bankers Association LIBOR Rate for deposit in US dollars for a period of three months.

(4) Actual interest rates include a spread over the basis amount.

## Table of Contents

- (5) Choice of 1-month US \$LIBOR, 2-month US \$LIBOR, 3-month US \$LIBOR, 6-month US \$LIBOR, 12-month US \$LIBOR or a base rate.
- (6) Bankers Acceptance Rate.
- (7) Fair value equals carrying value, with the exception of the Second-Priority Senior Secured Term B Loans Due 2007 and Second-Priority Senior Secured Floating Rate Notes Due 2007 which are shown at quoted trading values as of December 31, 2004.

*Construction/ Project Financing Facilities* — See Note 16 of the Notes to Consolidated Financial Statements for information on our construction/project financing.

### Application of Critical Accounting Policies

Our financial statements reflect the selection and application of accounting policies which require management to make significant estimates and judgments. See Note 2 of the Notes to Consolidated Financial Statements, “Summary of Significant Accounting Policies.” We believe that the following reflect the more critical accounting policies that currently affect our financial condition and results of operations.

#### *Fair Value of Energy Marketing and Risk Management Contracts and Derivatives*

Accounting for derivatives at fair value requires us to make estimates about future prices during periods for which price quotes are not available from sources external to us. As a result, we are required to rely on internally developed price estimates when external quotes are unavailable. We derive our future price estimates, during periods, where external price quotes are unavailable, based on extrapolation of prices from prior periods where external price quotes are available. We perform this extrapolation using liquid and observable market prices and extending those prices to an internally generated long-term price forecast based on a generalized equilibrium model.

#### *Credit Reserves*

In estimating the fair value of our derivatives, we must take into account the credit risk that our counterparties will not have the financial wherewithal to honor their contract commitments.

In establishing credit risk reserves we take into account historical default rate data published by the rating agencies based on the credit rating of each counterparty where we have realization exposure, as well as other published data and information.

#### *Liquidity Reserves*

We value our forward positions at the mid-market price, or the price in the middle of the bid-ask spread. This creates a risk that the value reported by us as the fair value of our derivative positions will not represent the realizable value or probable loss exposure of our derivative positions if we are unable to liquidate those positions at the mid-market price. Adjusting for this liquidity risk states our derivative assets and liabilities at their most probable value. We use a two-step quantitative and qualitative analysis to determine our liquidity reserve.

In the first step we quantitatively derive an initial liquidity reserve assessment applying the following assumptions in calculating the initial liquidity reserve assessment: (1) where we have the capability to cover physical positions with our own assets, we assume no liquidity reserve is necessary because we will not have to cross the bid-ask spread in covering the position; (2) we record no reserve against our hedge positions because a high likelihood exists that we will hold our hedge positions to maturity or cover them with our own assets; and (3) where reserves are necessary, we base the reserves on the spreads observed using broker quotes as a starting point.

Using these assumptions, we calculate the net notional volume exposure at each location by commodity and multiply the result by one half of the bid-ask spread.

The second step involves a qualitative analysis where the initial assessment may be adjusted for qualitative factors such as liquidity spreads observed through recent trading activity, strategies for liquidating open positions, and imprecision in or unavailability of broker quotes due to market illiquidity. Using this quantitative and qualitative information, we estimate the amount of probable liquidity risk exposure to us and we record this estimate as a liquidity reserve.

### *Accounting for Commodity Contracts*

Commodity contracts are evaluated to determine whether the contract is (1) accounted for as a lease (2) accounted for as a derivative (3) or accounted for as an executory contract and additionally whether the financial statement presentation is gross or net.

**Accounting for Leases** — We account for commodity contracts as leases per SFAS No. 13, “Accounting for Leases,” (“SFAS No. 13”) and EITF Issue No. 01-08, “Determining Whether an Arrangement Contains a Lease,” (“EITF Issue No. 01-08”). EITF Issue No. 01-08 clarifies the requirements of identifying whether an arrangement should be accounted for as a lease at its inception. The guidance in the consensus is designed to broaden the scope of arrangements, such as power purchase agreements, accounted for as leases. EITF Issue No. 01-08 requires both parties to an arrangement to determine whether a service contract or similar arrangement is, or includes, a lease within the scope of SFAS No. 13. The consensus is being applied prospectively to arrangements agreed to, modified, or acquired in business combinations on or after July 1, 2003. Prior to adopting EITF Issue No. 01-08, we had accounted for certain contractual arrangements as leases under existing industry practices, and the adoption of EITF Issue No. 01-08 did not materially change our accounting for leases. Per SFAS No. 13, operating leases with minimum lease rentals which vary over time must be levelized over the term of the contract. We levelize these contracts on a straight-line basis. See Note 25 for additional information on our operating leases. For income statement presentation purposes, income from arrangements accounted for as leases is classified within electricity and steam revenue in our consolidated statements of operations.

**Accounting for Derivatives** — On January 1, 2001, we adopted SFAS No. 133, “Accounting for Derivative Instruments and Hedging Activities,” as amended by SFAS No. 137, “Accounting for Derivative Instruments and Hedging Activities — Deferral of the Effective Date of FASB Statement No. 133 — an Amendment of FASB Statement No. 133,” SFAS No. 138, “Accounting for Certain Derivative Instruments and Certain Hedging Activities — an Amendment of FASB Statement No. 133,” and SFAS No. 149, “Amendment of Statement 133 on Derivative Instruments and Hedging Activities.” We currently hold six classes of derivative instruments that are impacted by the new pronouncement — foreign currency swaps, interest rate swaps, forward interest rate agreements, commodity financial instruments, commodity contracts, and physical options.

Consistent with the requirements of SFAS No. 133, we evaluate all of our contracts to determine whether or not they qualify as derivatives under the accounting pronouncements. For a given contract, there are typically three steps we use to determine its proper accounting treatment. First, based on the terms and conditions of the contract, as well as the applicable guidelines established by SFAS No. 133, we identify the contract as being either a derivative or non-derivative contract. Second, if the contract is not a derivative, we account for it as an executory contract. Alternatively, if the contract does qualify as a derivative under the guidance of SFAS No. 133, we evaluate whether or not it qualifies for the “normal” purchases and sales exception (as described below). If the contract qualifies for the exception, we may elect to apply the normal exception and account for as an executory contract. Finally, if the contract is a derivative, we apply the accounting treatment required by SFAS No. 133, which is outlined below in further detail.

### *Normal Purchases and Sales*

When we elect normal purchases and sales treatment, as defined by paragraph 10b. of SFAS No. 133 and amended by SFAS No. 138 and SFAS No. 149, the normal contracts are exempt from SFAS No. 133 accounting treatment. As a result, these contracts are not required to be recorded on the balance sheet at their fair values and any fluctuations in these values are not required to be reported within earnings. Probability of

## Table of Contents

physical delivery from our generation plants, in the case of electricity sales, and to our generation plants, in the case of natural gas contracts, is required over the life of the contract within reasonable tolerances.

Two of our contracts that had been accounted for as normal contracts were subject to the special transition adjustment for their estimated future economic benefits upon adoption of DIG Issue No. C20, and we amortize the corresponding asset recorded upon adoption of DIG Issue No. C20 through a charge to earnings. Accordingly on October 1, 2003, the date we adopted DIG Issue No. C20, we recorded other current assets and other assets of approximately \$33.5 million and \$259.9 million, respectively, and a cumulative effect of a change in accounting principle of approximately \$181.9 million, net of \$111.5 million of tax. For periods subsequent to October 1, 2003, we again account for these two contracts as normal purchases and sales under the provisions of DIG Issue No. C20.

### *Fair Value Hedges*

As further defined in SFAS No. 133, fair value hedge transactions hedge the exposure to changes in the fair value of either all or a specific portion of a recognized asset or liability or of an unrecognized firm commitment. The accounting treatment for fair value hedges requires reporting both the changes in fair values of a *hedged* item (the underlying risk) and the *hedging* instrument (the derivative designated to offset the underlying risk) on both the balance sheet and the income statement. On that basis, when a firm commitment is associated with a hedge instrument that attains 100% effectiveness (under the effectiveness criteria outlined in SFAS No. 133), there is no net earnings impact because the earnings caused by the changes in fair value of the hedged item will move in an equal, but opposite, amount as the earnings caused by the changes in fair value of the hedging instrument. In other words, the earnings volatility caused by the underlying risk factor will be neutralized because of the hedge. For example, if we want to manage the price-induced fair value risk (i.e. the risk that market electric rates will rise, making a fixed price contract less valuable) associated with all or a portion of a fixed price power sale that has been identified as a “normal” transaction (as described above), we might create a fair value hedge by purchasing fixed price power. From that date and time forward until delivery, the change in fair value of the hedged item and hedge instrument will be reported in earnings with asset/liability offsets on the balance sheet. If there is 100% effectiveness, there is no net earnings impact. If there is less than 100% effectiveness, the fair value change of the hedged item (the underlying risk) and the hedging instrument (the derivative) will likely be different and the “ineffectiveness” will result in a net earnings impact.

### *Cash Flow Hedges*

As further defined in SFAS No. 133, cash flow hedge transactions hedge the exposure to variability in expected future cash flows (i.e., in our case, the price variability of forecasted purchases of gas and sales of power, as well as interest rate and foreign exchange rate exposure). In the case of cash flow hedges, the hedged item (the underlying risk) is generally unrecognized (i.e., not recorded on the balance sheet prior to delivery), and any changes in this fair value, therefore, will not be recorded within earnings. Conceptually, if a cash flow hedge is effective, this means that a variable, such as movement in power prices, has been effectively fixed, so that any fluctuations will have no net result on either cash flows or earnings. Therefore, if the changes in fair value of the hedged item are not recorded in earnings, then the changes in fair value of the hedging instrument (the derivative) must also be excluded from the income statement, or else a one-sided net impact on earnings will be reported, despite the fact that the establishment of the effective hedge results in no net economic impact. To prevent such a scenario from occurring, SFAS No. 133 requires that the fair value of a derivative instrument designated as a cash flow hedge be recorded as an asset or liability on the balance sheet, but with the offset reported as part of other comprehensive income, to the extent that the hedge is effective. Similar to fair value hedges, any ineffectiveness portion will be reflected in earnings.

### *Undesignated Derivatives*

The fair values and changes in fair values of undesignated derivatives are recorded in earnings, with the corresponding offsets recorded as derivative assets or liabilities on the balance sheet. We have the following types of undesignated transactions:

- transactions executed at a location where we do not have an associated natural long (generation capacity) or short (fuel consumption requirements) position of sufficient quantity for the entire term of the transaction (e.g., power sales where we do not own generating assets or intend to acquire transmission rights for delivery from other assets for any portion of the contract term), and
- transactions executed with the intent to profit from short-term price movements, and
- discontinuance (de-designation) of hedge treatment prospectively consistent with paragraphs 25 and 32 of SFAS No. 133. In circumstances where we believe the hedge relationship is no longer necessary, we will remove the hedge designation and close out the hedge positions by entering into an equal and offsetting derivative position. Prospectively, the two derivative positions should generally have no net earnings impact because the changes in their fair values are offsetting.
- any other transactions that do not qualify for hedge accounting

Our Mark-to-Market Activity includes realized settlements of and unrealized mark-to-market gains and losses on both power and gas derivative instruments not designated as cash flow hedges, including those held for trading purposes. Our gains and losses due to ineffectiveness on hedging instruments are also included in unrealized mark-to-market gains and losses. We present trading activity net in accordance with EITF Issue No. 02-03.

Accounting for Executory Contracts — Where commodity contracts do not qualify as leases or derivatives, the contracts are classified as executory contracts. These contracts apply traditional accrual accounting treatment unless the revenue must be levelized per EITF Issue No. 91-06, “Revenue Recognition of Long Term Power Sales Contracts.” We currently account for one commodity contract under EITF 91-06 which is levelized over the term of the agreement.

Accounting for Financial Statement Presentation — Where our derivative instruments are subject to a netting agreement and the criteria of FIN 39 “Offsetting of Amounts Related to Certain Contracts (An Interpretation of APB Opinion No. 10 and SFAS No. 105)” are met, we present the derivative assets and liabilities on a net basis in our balance sheet. We chose this method of presentation because it is consistent with the way related mark-to-market gains and losses on derivatives are recorded in Consolidated Statements of Operations and within Other Comprehensive Income.

We account for certain of our power sales and purchases on a net basis under EITF Issue No. 03-11 “Reporting Realized Gains and Losses on Derivative Instruments That Are Subject to SFAS No. 133 and Not ‘Held for Trading Purposes’ As Defined in EITF Issue No. 02-03: ‘Issues Involved in Accounting for Derivative Contracts Held for Trading Purposes and Contracts Involved in Energy Trading and Risk Management Activities’ (‘EITF Issue No. 03-11’), which we adopted on a prospective basis on October 1, 2003. Transactions with either of the following characteristics are presented net in our Consolidated Condensed Financial Statements: (1) transactions executed in a back-to-back buy and sale pair, primarily because of market protocols; and (2) physical power purchase and sale transactions where our power schedulers net the physical flow of the power purchase against the physical flow of the power sale (or “book out” the physical power flows) as a matter of scheduling convenience to eliminate the need for actual power delivery. These book out transactions may occur with the same counterparty or between different counterparties where we have equal but offsetting physical purchase and delivery commitments.

### *Accounting for Long-Lived Assets*

#### *Plant Useful Lives*

Property, plant and equipment is stated at cost. The cost of renewals and betterments that extend the useful life of property, plant and equipment are also capitalized. Depreciation is recorded utilizing the straight line method over the estimated original composite useful life, generally 35 years for baseload power plants and 40 years for peaking facilities, exclusive of the estimated salvage value, typically 10%.

#### *Impairment of Long-Lived Assets, Including Intangibles*

We evaluate long-lived assets, such as property, plant and equipment, equity method investments, patents, and specifically identifiable intangibles, when events or changes in circumstances indicate that the carrying value of such assets may not be recoverable. Discussion of the impairment of oil and gas assets is covered under “Oil and Gas Property Valuations” below. Factors which could trigger an impairment include determination that a suspended project is not completed, significant underperformance relative to historical or projected future operating results, significant changes in the manner of our use of the acquired assets or the strategy for our overall business and significant negative industry or economic trends. Certain of our generating assets are located in regions with depressed demand and market spark spreads. Our forecasts assume that spark spreads will increase in future years in these regions as the supply and demand relationships improve.

The determination of whether an impairment of a power plant has occurred is based on an estimate of undiscounted cash flows attributable to the assets, as compared to the carrying value of the assets. The significant assumptions that we use in our undiscounted future cash flow estimates include the probability of completion of assets in development or construction the future supply and demand relationships for electricity and natural gas, and the expected pricing for those commodities and the resultant spark spreads in the various regions where we generate. If an impairment has occurred, the amount of the impairment loss recognized would be determined by estimating the fair value of the assets and recording a loss if the fair value was less than the book value. For equity method investments and assets identified as held for sale, the book value is compared to the estimated fair value to determine if an impairment loss is required. For equity method investments, we would record a loss when the decline in value is other than temporary.

Our assessment regarding the existence of impairment factors is based on market conditions, operational performance and legal factors of our businesses. Our review of factors present and the resulting appropriate carrying value of our intangibles, and other long-lived assets are subject to judgments and estimates that management is required to make. Future events could cause us to conclude that impairment indicators exist and that our intangibles, and other long-lived assets might be impaired.

#### *Turbine Impairment Charges*

A significant portion of our overall cost of constructing a power plant is the cost of the gas turbine-generators, steam turbine-generators and related equipment (collectively the “turbines”). The turbines are ordered primarily from three large manufacturers under long-term, build to order contracts. Payments are generally made over a two to four year period for each turbine. The turbine prepayments are included as a component of construction-in-progress if the turbines are assigned to specific projects probable of being built, and interest is capitalized on such costs. Turbines assigned to specific projects are not evaluated for impairment separately from the project as a whole. Prepayments for turbines that are not assigned to specific projects that are probable of being built are carried in other assets, and interest is not capitalized on such costs. Additionally, our commitments relating to future turbine payments are discussed in Note 25 of the Notes to Consolidated Financial Statements.

To the extent that there are more turbines on order than are allocated to specific construction projects, we determine the probability that new projects will be initiated to utilize the turbines or that the turbines will be resold to third parties. The completion of in progress projects and the initiation of new projects are dependent on our overall liquidity and the availability of funds for capital expenditures.

## Table of Contents

In assessing the impairment of turbines, we must determine both the realizability of the progress payments to date that have been capitalized, as well as the probability that at future decision dates, we will cancel the turbines and apply the prepayments to the cancellation charge, or will proceed and pay the remaining progress payments in accordance with the original payment schedule.

We apply SFAS No. 5, "Accounting for Contingencies" to evaluate potential future cancellation obligations. We apply SFAS No. 144 to evaluate turbine progress payments made to date for, and the carrying value of, delivered turbines not assigned to projects. At the reporting date, if we believe that it is probable that we will elect the cancellation provisions on future decision dates, then the expected future termination payment is also expensed.

### *Oil and Gas Property Valuations*

*Successful Efforts Method of Accounting.* We follow the successful efforts method of accounting for oil and natural gas activities. Under the successful efforts method, lease acquisition costs and all development costs are capitalized. Exploratory drilling costs are capitalized until the results are determined. If proved reserves are not discovered, the exploratory drilling costs are expensed. Other exploratory costs are expensed as incurred. Interest costs related to financing major oil and gas projects in progress are capitalized until the projects are evaluated, or until the projects are substantially complete and ready for their intended use if the projects are evaluated as successful.

The successful efforts method of accounting relies on management's judgment in the designation of wells as either exploratory or developmental, which determines the proper accounting treatment of costs incurred. During 2004 we drilled 75 (net 39.3) development wells and 24 (net 14.5) exploratory wells, of which 71 (net 35.8) development and 21 (net 13.0) exploration were successful. Our operational results may be significantly impacted if we decide to drill in a new exploratory area, which will result in increased seismic costs and potentially increased dry hole costs if the wells are determined to be not successful.

*Successful Efforts Method of Accounting v. Full Cost Method of Accounting.* Under the successful efforts method, unsuccessful exploration well cost, geological and geophysical costs, delay rentals, and general and administrative expenses directly allocable to acquisition, exploration, and development activities are charged to exploration expense as incurred; whereas, under the full cost method these costs are capitalized and amortized over the life of the reserves.

A significant sale (usually multiple fields) would have to occur before a gain or loss would be recognized under the full cost method. However, under the successful efforts method, when only an entire cost center (generally a field) is sold, a gain or loss is recognized.

For impairment evaluation purposes, successful efforts requires that individual assets are grouped for impairment purposes at the lowest level for which there are identifiable cash flows, which is generally on a field-by-field basis. Under full cost impairment review, all properties in the depreciation, depletion and amortization pools based on geography are assessed against a ceiling based on discounted cash flows, with certain adjustments.

Though successful efforts and full cost methods are both acceptable under GAAP, successful efforts is used by most major companies due to such method being more reflective of current operating results due to the expensing of certain exploration activities.

*Oil and Gas Reserves.* The process of estimating quantities of proved developed and proved undeveloped crude oil and natural gas reserves is very complex, requiring significant subjective decisions in the evaluation of all available geological, engineering and economic data for each reservoir. Estimates of economically recoverable oil and gas reserves and future net cash flows depend upon a number of variable factors and assumptions, such as historical production from the area compared with production from other producing areas, the assumed effect of governmental regulations, operating and workover costs, severance taxes and development costs, all of which may vary considerably from actual results. Any significant variance in the assumptions could materially affect the estimated quantity and value of the reserves, which could affect the carrying value of our oil and gas properties and/or the rate of depletion of such properties.

## Table of Contents

We based our estimates of proved developed and proved undeveloped reserves as of December 31, 2004, 2003 and 2002, on estimates made by Netherland, Sewell & Associates, Inc. for reserves in the United States, and by Gilbert Laustsen Jung Associates Ltd. for 2003 and 2002 reserves in Canada, both independent petroleum engineering firms.

*Impairment of Oil and Gas Properties.* We review our oil and gas properties periodically (at least annually) to determine if impairment of such properties is necessary. Property impairments may occur if a field discovers lower than anticipated reserves, reservoirs produce below original estimates or if commodity prices fall below a level that significantly affects anticipated future cash flows on the property. Proved oil and gas property values are reviewed when circumstances suggest the need for such a review and, if required, the proved properties are written down to their estimated fair value based on proved reserves and other market factors. Unproved properties are reviewed quarterly to determine if there has been impairment of the carrying value, with any such impairment charged to expense in the current period. During the year ended December 31, 2004, we recorded \$202.1 million in impairment charges related to reduced proved reserve projections based on the year end independent engineers report. These impairments are discussed further in Note 4 of the Notes to Consolidated Financial Statements.

### ***Capitalized Interest***

*We capitalize interest using two methods:* (1) capitalized interest on funds borrowed for specific construction projects and (2) capitalized interest on general corporate funds. For capitalization of interest on specific funds, we capitalize the interest cost incurred related to debt entered into for specific projects under construction or in the advanced stage of development. The methodology for capitalizing interest on general funds, consistent with paragraphs 13 and 14 of SFAS No. 34, "Capitalization of Interest Cost," begins with a determination of the borrowings applicable to our qualifying assets. The basis of this approach is the assumption that the portion of the interest costs that are capitalized on expenditures during an asset's acquisition period could have been avoided if the expenditures had not been made. This methodology takes the view that if funds are not required for construction then they would have been used to pay off other debt. We use our best judgment in determining which borrowings represent the cost of financing the acquisition of the assets. The primary debt instruments included in the rate calculation of interest incurred on general corporate funds have been our Senior Notes, our term loan facilities and our secured working capital revolving credit facility with adjustments made as debt is retired or new debt is issued. The interest rate is derived by dividing the total interest cost by the average borrowings. This weighted average interest rate is applied to our average qualifying assets in excess of specific debt on which interest is capitalized. To qualify for interest capitalization, we must continue to make significant progress on the construction of the assets. See Note 4 of the Notes to Consolidated Financial Statements for additional information about the capitalization of interest expense.

### ***Accounting for Income and Other Taxes***

To arrive at our worldwide income tax provision and other tax balances, significant judgment is required. In the ordinary course of a global business, there are many transactions and calculations where the ultimate tax outcome is uncertain. Some of these uncertainties arise as a consequence of the treatment of capital assets, financing transactions, multistate taxation of operations and segregation of foreign and domestic income and expense to avoid double taxation. Although we believe that our estimates are reasonable, no assurance can be given that the final tax outcome of these matters will not be different than that which is reflected in our historical tax provisions and accruals. Such differences could have a material impact on our income tax provision, other tax accounts and net income in the period in which such determination is made.

We record a valuation allowance to reduce our deferred tax assets to the amount of future tax benefit that is more likely than not to be realized. While we have considered future taxable income and ongoing prudent and feasible tax planning strategies in assessing the need for the valuation allowance, there is no assurance that the valuation allowance would not need to be increased to cover additional deferred tax assets that may not be realizable. Any increase in the valuation allowance could have a material adverse impact on our income tax provision and net income in the period in which such determination is made.

## Table of Contents

We provide for United States income taxes on the earnings of foreign subsidiaries unless they are considered permanently invested outside the United States. At December 31, 2004, we had no cumulative undistributed earnings of foreign subsidiaries.

Our effective income tax rates for continuing operations were (38.6)%, 9.0% and 28.8% in fiscal 2004, 2003 and 2002, respectively. The effective tax rate in all periods is the result of profits Calpine Corporation and its subsidiaries earned in various tax jurisdictions, both foreign and domestic, that apply a broad range of income tax rates. The provision for income taxes differs from the tax computed at the federal statutory income tax rate due primarily to state taxes, tax credits, other permanent differences and earnings considered as permanently reinvested in foreign operations and the effect of the treatment by foreign jurisdictions of cross border financings. Future effective tax rates could be adversely affected if earnings are lower than anticipated in countries where we have lower statutory rates, if unfavorable changes in tax laws and regulations occur, or if we experience future adverse determinations by taxing authorities after any related litigation. Our foreign taxes at rates other than statutory include the benefit of cross border financings as well as withholding taxes and foreign valuation allowance.

Under SFAS No. 109, "Accounting for Income Taxes," deferred tax assets and liabilities are determined based on differences between the financial reporting and tax basis of assets and liabilities, and are measured using enacted tax rates and laws that will be in effect when the differences are expected to reverse. SFAS No. 109 provides for the recognition of deferred tax assets if realization of such assets is more likely than not. Based on the weight of available evidence, we have provided a valuation allowance against certain deferred tax assets. The valuation allowance was based on the historical earnings patterns within individual tax jurisdictions that make it uncertain that we will have sufficient income in the appropriate jurisdictions to realize the full value of the assets. We will continue to evaluate the realizability of the deferred tax assets on a quarterly basis.

At December 31, 2004, we had credit carryforwards of \$50.4 million. These credits relate to Energy Credits, Research and Development Credits, Alternative Minimum Tax Credits and other miscellaneous state credits. The net operating loss carryforward consists of federal and state carryforwards of approximately \$2.3 billion which expire between 2017 and 2019. The federal and state net operating loss carryforwards available are subject to limitations on their annual usage. We also have loss carryforwards in certain foreign subsidiaries, resulting in tax benefits of approximately \$152 million, the majority of which expire by 2008. We provided a valuation allowance on certain state and foreign tax jurisdiction deferred tax assets to reduce the gross amount of these assets to the extent necessary to result in an amount that is more likely than not of being realized. Realization of the deferred tax assets and net operating loss carryforwards is dependent, in part, on generating sufficient taxable income prior to expiration of the loss carryforwards. The amount of the deferred tax asset considered realizable, however, could be reduced in the near term if estimates of future taxable income during the carryforward period are reduced.

### ***Variable Interest Entities and Primary Beneficiary***

In determining whether an entity is a variable interest entity ("VIE") and whether or not we are the Primary Beneficiary, we use significant judgment regarding the adequacy of an entity's equity relative to maximum expected losses, amounts and timing of estimated cash flows, discount rates and the probability of achieving a specific expected future cash flow outcome for various cash flow scenarios. Due to the long-term nature of our investment in a VIE and its underlying assets, our estimates of the probability-weighted future expected cash flow outcomes are complex and subjective, and are based, in part, on our assessment of future commodity prices based on long-term supply and demand forecasts for electricity and natural gas, operational performance of the underlying assets, legal and regulatory factors affecting our industry, long-term interest rates and our current credit profile and cost of capital. As a result of applying the complex guidance outlined in FIN 46-R, we may be required to consolidate assets we do not legally own and liabilities that we are not legally obligated to satisfy. Also, future changes in a VIE's legal or capital structure may cause us to reassess whether or not we are the Primary Beneficiary and may result in our consolidation or deconsolidation of that entity.

## Table of Contents

We adopted FIN 46-R for our equity method joint ventures and operating lease arrangements containing fixed price purchase options, our wholly owned subsidiaries that are subject to long-term power purchase agreements and tolling arrangements and our wholly owned subsidiaries that have issued mandatorily redeemable non-controlling preferred interests as of March 31, 2004, and for our investments in SPEs as of December 31, 2003.

### *Joint Venture Investments and Operating Leases with Fixed Price Options*

On application of FIN 46-R, we evaluated our investments in joint venture investments and operating lease arrangements containing fixed price purchase options and concluded that, in some instances, these entities were VIEs. However, in these instances, we were not the Primary Beneficiary, as we would not absorb a majority of these entities' expected variability. An enterprise that holds a significant variable interest in a VIE is required to make certain disclosures regarding the nature and timing of its involvement with the VIE and the nature, purpose, size and activities of the VIE. The fixed price purchase options under our operating lease arrangements were not considered significant variable interests. However, the joint ventures in which we invested, and which did not qualify for the definition of a business scope exception outlined in paragraph 4(h) of FIN 46-R, were considered significant variable interests and the required disclosures have been made in Note 7 of the Notes to Consolidated Financial Statements for these joint venture investments.

### *Significant Long-Term Power Sales and Tolling Agreements*

An analysis was performed for our wholly owned subsidiaries with significant long-term power sales or tolling agreements. Certain of our 100% owned subsidiaries were deemed to be VIEs by virtue of the power sales and tolling agreements which meet the definition of a variable interest under FIN 46-R. However, in all cases, we absorbed a majority of the entity's variability and continue to consolidate our wholly owned subsidiaries. As part of our quantitative assessment, a fair value methodology was used to determine whether we or the power purchaser absorbed the majority of the subsidiary's variability. As part of our analysis, we qualitatively determined that power sales or tolling agreements with a term for less than one-third of the facility's remaining useful life or for less than 50% of the entity's capacity would not cause the power purchaser to be the Primary Beneficiary, due to the length of the economic life of the underlying assets. Also, power sales and tolling agreements meeting the definition of a lease under EITF Issue No. 01-08, "Determining Whether an Arrangement Contains a Lease," were not considered variable interests, since lease payments create rather than absorb variability, and therefore, do not meet the definition of a variable interest.

### *Preferred Interests issued from Wholly-Owned Subsidiaries*

A similar analysis was performed for our wholly owned subsidiaries that have issued mandatorily redeemable non-controlling preferred interests. These entities were determined to be VIEs in which we absorb the majority of the variability, primarily due to the debt characteristics of the preferred interest, which are classified as debt in accordance with SFAS No. 150, "Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity" in our Consolidated Condensed Balance Sheets. As a result, we continue to consolidate these wholly owned subsidiaries.

### *Investments in Special Purpose Entities*

Significant judgment was required in making an assessment of whether or not a VIE was an SPE for purposes of adopting and applying FIN 46, as originally issued at December 31, 2003. Since the current accounting literature does not provide a definition of an SPE, our assessment was primarily based on the degree to which the VIE aligned with the definition of a business outlined in FIN 46-R. Entities that meet the definition of a business outlined in FIN 46-R and that satisfy other formation and involvement criteria are not subject to the FIN 46-R consolidation guidelines. The definitional characteristics of a business include having: inputs such as long-lived assets; the ability to obtain access to necessary materials and employees; processes such as strategic management, operations and resource management; and the ability to obtain access to the customers that purchase the outputs of the entity. Based on this assessment, we determined that six VIE

## Table of Contents

investments were in SPEs requiring further evaluation and were subject to the application of FIN 46, as originally issued, as of October 1, 2003: CNEM, PCF, PCF III and the Trusts.

On May 15, 2003, our wholly owned subsidiary, CNEM, completed the \$82.8 million monetization of an existing power sales agreement with BPA. CNEM borrowed \$82.8 million secured by the spread between the BPA contract and certain fixed power purchase contracts. CNEM was established as a bankruptcy-remote entity and the \$82.8 million loan is recourse only to CNEM's assets and is not guaranteed by us. CNEM was determined to be a VIE in which we were the Primary Beneficiary. Accordingly, the entity's assets and liabilities were consolidated into our accounts as of June 30, 2003.

On June 13, 2003, PCF, a wholly-owned stand-alone subsidiary of CES, completed the offering of the PCF Notes, totaling \$802.2 million. To facilitate the transaction, we formed PCF as a wholly owned, bankruptcy remote entity with assets and liabilities consisting of certain transferred power purchase and sales contracts, which serve as collateral for the PCF Notes. The PCF Notes are non-recourse to our other consolidated subsidiaries. PCF was originally determined to be a VIE in which we were the Primary Beneficiary. Accordingly, the entity's assets and liabilities were consolidated into our accounts as of June 30, 2003.

As a result of the debt reserve monetization consummated on June 2, 2004, we were required to evaluate our new investment in PCF III and to reevaluate our investment in PCF under FIN 46-R (effective March 31, 2004). We determined that the entities were VIEs but we were not the Primary Beneficiary and, therefore, were required to deconsolidate the entities as of June 30, 2004.

Upon the application of FIN 46, as originally issued at December 31, 2003, for our investments in SPEs, we determined that our equity investment in the Trusts was not considered at-risk as defined in FIN 46 and that we did not have a significant variable interest in the Trusts. Consequently, we deconsolidated the Trusts as of December 31, 2003.

We created CNEM, PCF, PCF III and the Trusts to facilitate capital transactions. However, in cases such as these where we have a continuing involvement with the assets held by the deconsolidated SPE, we account for the capital transaction with the SPE as a financing rather than a sale under EITF Issue No. 88-18, "Sales of Future Revenue" ("EITF Issue No. 88-18") or Statement of Financial Accounting Standard No. 140, "Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities — a Replacement of FASB Statement No. 125" ("SFAS No. 140"), as appropriate. When EITF Issue No. 88-18 and SFAS No. 140 require us to account for a transaction as a financing, derecognition of the assets underlying the financing is prohibited, and the proceeds received from the transaction must be recorded as debt. Accordingly, in situations where we account for transactions as financings under EITF Issue No. 88-18 or SFAS No. 140, we continue to recognize the assets and the debt of the deconsolidated SPE on our balance sheet. See Note 2 of the Notes to Consolidated Financial Statements for a summary on how we account for our SPEs when we have continuing involvement under EITF Issue No. 88-18 or SFAS No. 140.

### ***Stock Based Compensation***

Prior to 2003, we accounted for qualified stock compensation under APB Opinion No. 25, "Accounting for Stock Issued to Employees" ("APB 25"). Under APB 25, we were required to recognize stock compensation as expense only to the extent that there is a difference in value between the market price of the stock being offered to employees and the price those employees must pay to acquire the stock. The expense measurement methodology provided by APB 25 is commonly referred to as the "intrinsic value based method." To date, our stock compensation program has been based primarily on stock options whose exercise prices are equal to the market price of Calpine stock on the date of the stock option grant; consequently, under APB 25 we had historically incurred minimal stock compensation expense. On January 1, 2003, we prospectively adopted the fair value method of accounting for stock-based employee compensation pursuant to SFAS No. 123, "Accounting for Stock-Based Compensation" ("SFAS No. 123") as amended by SFAS No. 148, "Accounting for Stock-Based Compensation — Transition and Disclosure" ("SFAS No. 148"). SFAS No. 148 amends SFAS No. 123 to provide alternative methods of transition for companies that voluntarily change their accounting for stock-based compensation from the less preferred

intrinsic value based method to the more preferred fair value based method. Prior to its amendment, SFAS No. 123 required that companies enacting a voluntary change in accounting principle from the intrinsic value methodology provided by APB 25 could only do so on a prospective basis; no adoption or transition provisions were established to allow for a restatement of prior period financial statements. SFAS No. 148 provides two additional transition options to report the change in accounting principle — the modified prospective method and the retroactive restatement method. Additionally, SFAS No. 148 amends the disclosure requirements of SFAS No. 123 to require prominent disclosures in both annual and interim financial statements about the method of accounting for stock-based employee compensation and the effect of the method used on reported results. We elected to adopt the provisions of SFAS No. 123 on a prospective basis; consequently, we are required to provide a pro-forma disclosure of net income and earnings per share as if SFAS No. 123 accounting had been applied to all prior periods presented within our financial statements. In December 2004 the FASB issued Statement of Financial Accounting Standards No. 123 (revised 2004) (“SFAS No. 123-R”), *Share Based Payments*. This Statement revises SFAS No. 123, *Accounting for Stock-Based Compensation* and supersedes APB 25, *Accounting for Stock Issued to Employees*, and its related implementation guidance. This statement requires a public entity to measure the cost of employee services received in exchange for an award of equity instruments based on the grant-date fair value of the award (with limited exceptions), which must be recognized over the period during which an employee is required to provide service in exchange for the award — the requisite service period (usually the vesting period). Adoption of SFAS No. 123-R is not expected to materially impact our operating results, cash flows or financial position, due to the aforementioned discussion surrounding our prior adoption of SFAS No. 123 as amended by SFAS No. 148.

Under SFAS No. 123, the fair value of a stock option or its equivalent is estimated on the date of grant by using an option-pricing model, such as the Black-Scholes model or a binomial model. The option-pricing model selected should take into account, as of the stock option’s grant date, the exercise price and expected life of the stock option, the current price of the underlying stock and its expected volatility, expected dividends on the stock, and the risk-free interest rate for the expected term of the stock option.

The fair value calculated by this model is then recognized as compensation expense over the period in which the related employee services are rendered. Unless specifically defined within the provisions of the stock option granted, the service period is presumed to begin on the grant date and end when the stock option is fully vested. Depending on the vesting structure of the stock option and other variables that are built into the option-pricing model, the fair value of the stock option is recognized over the service period using either a straight-line method (the single option approach) or a more conservative, accelerated method (the multiple option approach). For consistency, we have chosen the multiple option approach, which we have used historically for pro-forma disclosure purposes. The multiple option approach views one four-year option grant as four separate sub-grants, each representing 25% of the total number of stock options granted. The first sub-grant vests over one year, the second sub-grant vests over two years, the third sub-grant vests over three years, and the fourth sub-grant vests over four years. Under this scenario, over 50% of the total fair value of the stock option grant is recognized during the first year of the vesting period, and nearly 80% of the total fair value of the stock option grant is recognized by the end of the second year of the vesting period. By contrast, if we were to apply the single option approach, only 25% and 50% of the total fair value of the stock option grant would be recognized as compensation expense by the end of the first and second years of the vesting period, respectively.

We have selected the Black-Scholes model, primarily because it has been the most commonly recognized options-pricing model among U.S.-based corporations. Nonetheless, we believe this model tends to overstate the true fair value of our employee stock options in that our options cannot be freely traded, have vesting requirements, and are subject to blackout periods during which, even if vested, they cannot be traded. We will monitor valuation trends and techniques as more companies adopt SFAS No. 123-R and as additional guidance is provided by FASB and the SEC and review our choices as appropriate in the future. The key assumption in our Black-Scholes model is the expected life of the stock option, because it is this figure that drives our expected volatility calculation, as well as our risk-free interest rate. The expected life of the option relies on two factors — the option’s vesting period and the expected term that an employee holds the option once it has vested. There is no single method described by SFAS No. 123 for predicting future events such as

how long an employee holds on to an option or what the expected volatility of a company's stock price will be; the facts and circumstances are unique to different companies and depend on factors such as historical employee stock option exercise patterns, significant changes in the market place that could create a material impact on a company's stock price in the future, and changes in a company's stock-based compensation structure.

We base our expected option terms on historical employee exercise patterns. We have segregated our employees into four different categories based on the fact that different groups of employees within our company have exhibited different stock exercise patterns in the past, usually based on employee rank and income levels. Therefore, we have concluded that we will perform separate Black-Scholes calculations for four employee groups — executive officers, senior vice presidents, vice presidents, and all other employees.

We compute our expected stock price volatility based on our stock's historical movements. For each employee group, we measure the volatility of our stock over a period that equals the expected term of the option. In the case of our executive officers, this means we measure our stock price volatility dating back to our public inception in 1996, because these employees are expected to hold their options for over 7 years after the options have fully vested. In the case of other employees, volatility is only measured dating back 4 years. In the short run, this causes other employees to generate a higher volatility figure than the other company employee groups because our stock price has fluctuated significantly in the past four years. As of December 31, 2004, the volatility for our employee groups ranged from 69%-98%.

See Note 21 of the Notes to Consolidated Financial Statements for additional information related to the January 1, 2003, adoption of SFAS Nos. 123 and 148 and the pro-forma impact that they would have had on our net income for the years ended December 31, 2004, 2003 and 2002.

### **Initial Adoption of New Accounting Standards in 2004**

See "Application of Critical Accounting Policies" above for our adoption of FIN 46-R relating to variable interest entities and primary beneficiary.

*EITF Issue No. 04-08* — On September 30, 2004, the EITF reached a final consensus on EITF Issue No. 04-08: "The Effect of Contingently Convertible Debt on Diluted Earnings per Share" ("EITF Issue No. 04-08"). The guidance in EITF Issue No. 04-08 is effective for periods ending after December 15, 2004, and must be applied by retroactively restating previously reported earnings per share results. The consensus requires companies that have issued contingently convertible instruments with a market price trigger to include the effects of the conversion in diluted earnings per share (if dilutive), regardless of whether the price trigger had been met. Prior to this consensus, contingently convertible instruments were not included in diluted earnings per share if the price trigger had not been met. Typically, the affected instruments are convertible into common stock of the issuer after the issuer's common stock price has exceeded a predetermined threshold for a specified time period. Calpine's \$634 million of 2023 Convertible Senior Notes and \$736 million aggregate principal amount at maturity of 2014 Convertible Notes outstanding at December 31, 2004, are affected by the new guidance. Depending on the closing price of the Company's common stock at the end of each reporting period, the conversion provisions in these Contingent Convertible Notes may significantly impact the reported diluted earnings per share amounts in future periods.

## Table of Contents

For the twelve months ended December 31, 2004, approximately 8.6 million weighted common shares potentially issuable under the Company's outstanding 2014 Convertible Notes were excluded from the diluted earnings per share calculations as the inclusion of such shares would have been antidilutive because of the Company's net loss. The 2023 Convertible Senior Notes would not have impacted the diluted EPS calculation for any reporting period since issuance in November 2003, because the Company's closing stock price at each period end was below the conversion price.

*Summary of Dilution Potential of Our Contingent Convertible Notes: 2023 Convertible Senior Notes and 2014 Convertible Notes* — The table below assumes normal conversion for the 2014 Convertible Notes and the 2023 Convertible Senior Notes in which the principal amount is paid in cash, and the excess up to the conversion value is paid in shares of Calpine common stock. The table shows only the potential impact of our two contingent convertible notes issuances and does not include the potential dilutive effect of HIGH TIDES III, the remaining 2006 Convertible Senior Notes or employee stock options. Additionally, we are still assessing the potential impact of the SFAS No. 128-R exposure draft on our convertible issues. See Note 2 of the Notes to Consolidated Condensed Financial Statements for more information.

	2014 Convertible Notes	2023 Convertible Senior Notes
Size of issuance	\$ 736,000,000	\$ 633,775,000
Conversion price per share	\$ 3.85	\$ 6.50
Conversion rate	259.7403	153.8462
Trigger price (20% over conversion price)	\$ 4.62	\$ 7.80

### Additional Shares

<u>Future Calpine Common Stock Price</u>	2014 Convertible Notes*	2023 Convertible Senior Notes	Share Subtotal	Share Increase	Dilution in EPS
\$5.00	43,968,831	0	43,968,831	9.8%	8.9%
\$7.50	93,035,498	13,000,542	106,036,040	23.7%	19.2%
\$10.00	117,568,831	34,126,375	151,695,207	33.9%	25.3%
\$20.00	154,368,831	65,815,125	220,183,957	49.2%	33.0%
\$40.00	172,768,831	81,659,500	254,428,332	56.9%	36.2%
\$100.00	183,808,831	91,166,125	274,974,957	61.4%	38.1%
Basic earnings per share base at December 31, 2004	447,509,231				

\* In the case of the 2014 Convertible Notes, since the conversion value is set for any given common stock price, more shares would be issued when the accreted value is less than \$1,000 than in the table above since the accreted value (initially \$839 per bond) is paid in cash, and the balance of the conversion value is paid in shares. The incremental shares assuming conversion when the accreted value is only \$839 per bond are shown in the table below:

<u>Future Calpine Common Stock Price</u>	Incremental Shares
\$5.00	23,699,200
\$7.50	15,799,467
\$10.00	11,849,600
\$20.00	5,924,800
\$40.00	2,962,400
\$100.00	1,184,960

**Item 7A. *Quantitative and Qualitative Disclosures About Market Risk***

The information required hereunder is set forth under “Management’s Discussion and Analysis of Financial Condition and Results of Operations — Financial Market Risks.”

**Item 8. *Financial Statements and Supplementary Data***

The information required hereunder is set forth under “Reports of Independent Registered Public Accounting Firms,” “Consolidated Balance Sheets,” “Consolidated Statements of Operations,” “Consolidated Statements of Stockholders’ Equity,” “Consolidated Statements of Cash Flows,” and “Notes to Consolidated Financial Statements” included in the Consolidated Financial Statements that are a part of this report. Other financial information and schedules are included in the Consolidated Financial Statements that are a part of this report.

**Item 9. *Changes in and Disagreements With Accountants on Accounting and Financial Disclosure***

None.

**Item 9A. *Controls and Procedures***

**Disclosure Controls and Procedures**

Calpine Corporation (the “Company”) maintains disclosure controls and procedures that are designed to ensure that information required to be disclosed in the Company’s Securities Exchange Act reports is recorded, processed, summarized, and reported within the time periods specified in the SEC’s rules and forms, and that such information is accumulated and communicated to the Company’s management, including its Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required financial disclosure.

As of the end of the period covered by this report, the Company carried out an evaluation, under the supervision and with the participation of the Company’s Disclosure Committee and management, including the Chief Executive Officer and the Chief Financial Officer, of the effectiveness of the design and operation of its disclosure controls and procedures pursuant to Exchange Act Rule 13a-15. Based upon, and as of the date of, this evaluation, the Chief Executive Officer and the Chief Financial Officer concluded that the Company’s disclosure controls and procedures were not effective, because of the material weakness discussed below. In light of this material weakness, the Company performed additional analysis and post-closing procedures to ensure its consolidated financial statements are prepared in accordance with generally accepted accounting principles (“GAAP”). Accordingly, management believes that the financial statements included in this report fairly present in all material respects the Company’s financial condition, results of operations and cash flows for the periods presented.

**Management’s Report on Internal Control over Financial Reporting**

The management of Calpine Corporation is responsible for establishing and maintaining adequate internal control over financial reporting. The Company’s internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP.

Management has assessed the effectiveness of the Company’s internal control over financial reporting as of December 31, 2004. In making its assessment of internal control over financial reporting, management used the criteria described in *Internal Control — Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission.

A material weakness is a control deficiency, or combination of control deficiencies, that results in more than a remote likelihood that a material misstatement of the annual or interim financial statements will not be prevented or detected. As of December 31, 2004, the Company did not maintain effective controls over the accounting for income taxes and the determination of current income taxes payable, deferred income tax

## Table of Contents

assets and liabilities and the related income tax provision (benefit) for continuing and discontinued operations. Specifically, the Company did not have effective controls in place to (i) identify and evaluate in a timely manner the tax implications of the repatriation of funds from Canada (ii) appropriately determine the allocation of the tax provision between continuing and discontinued operations (iii) ensure there was adequate communication from the tax department to the accounting departments relating to the preparation of the tax provision (iv) ensure all elements of the income tax provision were mathematically correct and (v) ensure the rationale for certain tax positions was adequately documented. This control deficiency resulted in the restatement of the Company's consolidated financial statements for the three and nine months ended September 30, 2004, as well as income tax related audit adjustments to the fourth quarter 2004 consolidated financial statements. Additionally, this control deficiency could result in a misstatement of current income taxes payable, deferred income tax assets and liabilities and the related income tax provision (benefit) for continuing and discontinued operations that would result in a material misstatement to annual or interim financial statements that would not be prevented or detected. Accordingly, management determined that this control deficiency constitutes a material weakness. Because of this material weakness, we have concluded that the Company did not maintain effective internal control over financial reporting as of December 31, 2004, based on criteria in *Internal Control — Integrated Framework*.

Management's assessment of the effectiveness of the Company's internal control over financial reporting as of December 31, 2004 has been audited by PricewaterhouseCoopers LLP, an independent registered public accounting firm, as stated in their report which appears herein.

### Remediation of Material Weakness

As discussed in Management's Report on Internal Control over Financial Reporting, as of December 31, 2004, there was a material weakness in the Company's internal control over financial reporting.

Prior to the fourth quarter of 2004, we identified certain deficiencies in our tax accounting processes, procedures and controls. Although we had processes and systems in place relating to the preparation and review of the interim and annual income tax provisions, we subsequently determined that these controls were not adequate.

In 2005, the Company is taking the following steps to improve its internal controls relating to the preparation and review of interim and annual income tax provisions, including the accounting for current income taxes payable, deferred income tax assets and liabilities and the related income tax provision:

- Complete the implementation of the CorpTax computer application to automate more of the tax analysis and provision processes and improve clarity of supporting documentation and reports;
- Will add resources in the tax and accounting departments as well as additional tax accounting training for key personnel and will continue to monitor staffing levels in the future; and
- Engage third party tax experts to review the details of the income tax calculations.

The Company believes it is taking steps necessary to remediate this material weakness and will continue to monitor the effectiveness of these procedures and will continue to make any changes that management deems appropriate.

### Changes in Internal Control Over Financial Reporting

Calpine continuously seeks to improve the efficiency and effectiveness of our internal controls. This results in refinements to processes throughout the Company. However, there was no change in our internal control over financial reporting that occurred during the last fiscal quarter of 2004 that has materially affected, or is reasonably likely to materially affect, Calpine's internal control over financial reporting.

**Item 9B. *Other Information***

**Consulting Agreement with George J. Stathakis**

Effective January 1, 2005, we entered into a consulting agreement with George J. Stathakis, a member of our Board of Directors, pursuant to which Mr. Stathakis will provide advice and guidance on various management issues to our President and members of the President's senior staff. The consulting agreement is filed as Exhibit 10.3.6.1 to this Report.

The term of the consulting agreement is one year (until December 31, 2005) and may be extended upon the mutual agreement of the parties. We or Mr. Stathakis may terminate the consulting agreement at any time by giving thirty days' written notice to the other.

Mr. Stathakis will receive a monthly retainer fee of \$5,000. Mr. Stathakis was also granted an option to purchase 10,000 shares of common stock pursuant to the Discretionary Option Grant Program of our 1996 Stock Incentive Plan, as amended. The exercise price of the option is \$3.80 per share (representing the closing price of Calpine common stock on January 3, 2005). The option has a ten-year term and will vest in twelve monthly installments.

**Management Incentive Plan**

On December 14, 2004, the Executive Committee of the Board of Directors of Calpine Corporation approved corporate and executive corporate performance goals under its Management Incentive Plan ("MIP") for the year ending December 31, 2005. The MIP provides employees a cash bonus based on the achievement of annual corporate goals and objectives and individual performance. The purpose of the MIP is to assist us in attracting and retaining desired talent, building team effort, recognizing achievement of predetermined business objectives, and providing increased performance motivation. Calpine North American employees, other than the operations and maintenance hourly employees, are eligible to participate in the MIP in 2005.

Among the goals adopted under the MIP were numerous financial goals relating to liquidity, operating and other expense reduction and earnings. Non-financial goals relating to safety and workforce diversity, among other areas, were adopted. In 2006, the Compensation Committee of our Board of Directors will evaluate our progress in achieving the adopted goals, both financial and other, in determining the level of funding for bonuses under the MIP. The MIP is filed as Exhibit 10.3.13 to this Report.

**PART III**

**Item 10. *Directors and Executive Officers of the Registrant***

Incorporated by reference to Proxy Statement relating to the 2005 Annual Meeting of Stockholders to be filed.

**Item 11. *Executive Compensation***

Incorporated by reference to Proxy Statement relating to the 2005 Annual Meeting of Stockholders to be filed.

**Item 12. *Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters***

Incorporated by reference to Proxy Statement relating to the 2005 Annual Meeting of Stockholders to be filed.

**Equity Compensation Plan Information**

The following table provides certain information, as of December 31, 2004, concerning certain compensation plans under which our equity securities are authorized for issuance.

<u>Plan Category</u>	<u>Number of Securities to be Issued Upon Exercise of Outstanding Options, Warrants, and Rights</u>	<u>Weighted Average Exercise Price of Outstanding Options, Warrants and Rights</u>	<u>Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans (Excluding Securities Reflected in Column(a))</u>
<b>Equity compensation plans approved by security holders</b>			
Calpine Corporation 1992 Stock Incentive Plan(1)	1,752,590	\$ 1.070	—
Encal Energy Ltd. Stock Option Plan(2)	87,274	\$ 35.692	—
Calpine Corporation 1996 Stock Incentive Plan	32,937,993	\$ 8.734	22,205,905
Calpine Corporation 2000 Employee Stock Purchase Plan	—	\$ —	15,859,702
Equity compensation plans not approved by security holders	—	—	—
<b>Total</b>	<b>34,777,857</b>	<b>\$ 8.42</b>	<b>38,065,607</b>

- (1) The Calpine Corporation 1992 Stock Incentive Plan was approved in 1992 by the Company's sole security holder at the time, Electrowatt Ltd.
- (2) In connection with the merger with Encal Energy Ltd., which closed in 2001, we assumed the Encal Energy Fifth Amended and Restated Stock Option Plan. 87,274 shares of our common stock are subject to issuance upon exercise of options granted pursuant to this plan at a weighted average exercise price of \$35.692. Other than the shares reserved for future issuance upon the exercise of these options, there are no securities available for future issuance under this Plan.

**Item 13. Certain Relationships and Related Transactions**

Incorporated by reference to Proxy Statement relating to the 2005 Annual Meeting of Stockholders to be filed.

**Item 14. Principal Accounting Fees and Services**

Incorporated by reference to Proxy Statement relating to the 2005 Annual Meeting of Stockholders to be filed.

**PART IV**

**Item 15. Exhibits, Financial Statement Schedules**

(a)-1. *Financial Statements and Other Information*

The following items appear in Appendix F of this report:

Reports of Independent Registered Public Accounting Firms

Consolidated Balance Sheets December 31, 2004 and 2003

Consolidated Statements of Operations for the Years Ended December 31, 2004, 2003, and 2002

## Table of Contents

Consolidated Statements of Stockholders' Equity for the Years Ended December 31, 2004, 2003, and 2002

Consolidated Statements of Cash Flows for the Years Ended December 31, 2004, 2003, and 2002

Notes to Consolidated Financial Statements for the Years Ended December 31, 2004, 2003, and 2002

Supplemental Oil and Gas Disclosures

### (a)-2. Financial Statement Schedules

Schedule II — Valuation and Qualifying Accounts

### (b) Exhibits

The following exhibits are filed herewith unless otherwise indicated:

Exhibit Number	Description
2.1	Purchase and Sale Agreement, dated July 1, 2004, among Calpine Corporation (the "Company"), Calpine Natural Gas L.P. and Pogo Producing Company.(a)
2.2	Purchase and Sale Agreement, dated July 1, 2004, among the Company, Calpine Natural Gas L.P. and Bill Barrett Corporation.(a)
2.3	Asset and Trust Unit Purchase and Sale Agreement, dated July 1, 2004, among the Company, Calpine Canada Natural Gas Partnership, Calpine Energy Holdings Limited, PrimeWest Gas Corp. and PrimeWest Energy Trust.(a)
3.1	Amended and Restated Certificate of Incorporation of the Company, as amended through June 2, 2004.(b)
3.2	Amended and Restated By-laws of the Company.(c)
4.1.1	Indenture dated as of May 16, 1996, between the Company and U.S. Bank (as successor trustee to Fleet National Bank), as Trustee, including form of Notes.(d)
4.1.2	First Supplemental Indenture dated as of August 1, 2000, between the Company and U.S. Bank (as successor trustee to Fleet National Bank), as Trustee.(e)
4.1.3	Second Supplemental Indenture dated as of April 26, 2004, between the Company and U.S. Bank (as successor trustee to Fleet National Bank), as Trustee.(f)
4.2.1	Indenture dated as of July 8, 1997, between the Company and The Bank of New York, as Trustee, including form of Notes.(g)
4.2.2	Supplemental Indenture dated as of September 10, 1997, between the Company and The Bank of New York, as Trustee.(h)
4.2.3	Second Supplemental Indenture dated as of July 31, 2000, between the Company and The Bank of New York, as Trustee.(e)
4.2.4	Third Supplemental Indenture dated as of April 26, 2004, between the Company and The Bank of New York, as Trustee.(f)
4.3.1	Indenture dated as of March 31, 1998, between the Company and The Bank of New York, as Trustee, including form of Notes.(i)
4.3.2	Supplemental Indenture dated as of July 24, 1998, between the Company and The Bank of New York, as Trustee.(i)
4.3.3	Second Supplemental Indenture dated as of July 31, 2000, between the Company and The Bank of New York, as Trustee.(e)
4.3.4	Third Supplemental Indenture dated as of April 26, 2004, between the Company and The Bank of New York, as Trustee.(f)
4.4.1	Indenture dated as of March 29, 1999, between the Company and The Bank of New York, as Trustee, including form of Notes.(j)

## Table of Contents

<u>Exhibit Number</u>	<u>Description</u>
4.4.2	First Supplemental Indenture dated as of July 31, 2000, between the Company and The Bank of New York, as Trustee.(e)
4.4.3	Second Supplemental Indenture dated as of April 26, 2004, between the Company and The Bank of New York, as Trustee.(f)
4.5.1	Indenture dated as of March 29, 1999, between the Company and The Bank of New York, as Trustee, including form of Notes.(j)
4.5.2	First Supplemental Indenture dated as of July 31, 2000, between the Company and The Bank of New York, as Trustee.(e)
4.5.3	Second Supplemental Indenture dated as of April 26, 2004, between the Company and The Bank of New York, as Trustee.(f)
4.6.1	Indenture dated as of August 10, 2000, between the Company and Wilmington Trust Company, as Trustee.(k)
4.6.2	First Supplemental Indenture dated as of September 28, 2000, between the Company and Wilmington Trust Company, as Trustee.(e)
4.6.3	Second Supplemental Indenture dated as of September 30, 2004, between the Company and Wilmington Trust Company, as Trustee.(l)
4.7.1	Amended and Restated Indenture dated as of October 16, 2001, between Calpine Canada Energy Finance ULC and Wilmington Trust Company, as Trustee.(m)
4.7.2	Guarantee Agreement dated as of April 25, 2001, between the Company and Wilmington Trust Company, as Trustee.(n)
4.7.3	First Amendment, dated as of October 16, 2001, to Guarantee Agreement dated as of April 25, 2001, between the Company and Wilmington Trust Company, as Trustee.(m)
4.8.1	Indenture dated as of October 18, 2001, between Calpine Canada Energy Finance II ULC and Wilmington Trust Company, as Trustee.(m)
4.8.2	First Supplemental Indenture, dated as of October 18, 2001, between Calpine Canada Energy Finance II ULC and Wilmington Trust Company, as Trustee.(m)
4.8.3	Guarantee Agreement dated as of October 18, 2001, between the Company and Wilmington Trust Company, as Trustee.(m)
4.8.4	First Amendment, dated as of October 18, 2001, to Guarantee Agreement dated as of October 18, 2001, between the Company and Wilmington Trust Company, as Trustee.(m)
4.9	Indenture, dated as of June 13, 2003, between Power Contract Financing, L.L.C. and Wilmington Trust Company, as Trustee, Accounts Agent, Paying Agent and Registrar, including form of Notes.(o)
4.10	Indenture, dated as of July 16, 2003, between the Company and Wilmington Trust Company, as Trustee, including form of Notes.(o)
4.11	Indenture, dated as of July 16, 2003, between the Company and Wilmington Trust Company, as Trustee, including form of Notes.(o)
4.12	Indenture, dated as of July 16, 2003, between the Company and Wilmington Trust Company, as Trustee, including form of Notes.(o)
4.13.1	Indenture, dated as of August 14, 2003, among Calpine Construction Finance Company, L.P., CCFC Finance Corp., each of Calpine Hermiston, LLC, CPN Hermiston, LLC and Hermiston Power Partnership, as Guarantors, and Wilmington Trust Company, as Trustee, including form of Notes.(p)
4.13.2	Supplemental Indenture, dated as of September 18, 2003, among Calpine Construction Finance Company, L.P., CCFC Finance Corp., each of Calpine Hermiston, LLC, CPN Hermiston, LLC and Hermiston Power Partnership, as Guarantors, and Wilmington Trust Company, as Trustee.(p)

4.13.3 Second Supplemental Indenture, dated as of January 14, 2004, among Calpine Construction Finance Company, L.P., CCFC Finance Corp., each of Calpine Hermiston, LLC, CPN Hermiston, LLC and Hermiston Power Partnership, as Guarantors, and Wilmington Trust Company, as Trustee.(q)

## Table of Contents

Exhibit Number	Description
4.13.4	Third Supplemental Indenture, dated as of March 5, 2004, among Calpine Construction Finance Company, L.P., CCFC Finance Corp., each of Calpine Hermiston, LLC, CPN Hermiston, LLC and Hermiston Power Partnership, as Guarantors, and Wilmington Trust Company, as Trustee.(q)
4.14	Indenture, dated as of September 30, 2003, among Gilroy Energy Center, LLC, each of Creed Energy Center, LLC and Goose Haven Energy Center, as Guarantors, and Wilmington Trust Company, as Trustee and Collateral Agent, including form of Notes.(p)
4.15	Indenture, dated as of November 18, 2003, between the Company and Wilmington Trust Company, as Trustee, including form of Notes.(q)
4.16.1	Amended and Restated Indenture, dated as of March 12, 2004, between the Company and Wilmington Trust Company, including form of Notes.(q)
4.16.2	Registration Rights Agreement, dated as of November 14, 2003, between the Company and Deutsche Bank Securities, Inc., as Representative of the Initial Purchasers.(q)
4.17.1	First Priority Indenture, dated as of March 23, 2004, among Calpine Generating Company, LLC, CalGen Finance Corp. and Wilmington Trust FSB, as Trustee, including form of Notes.(q)
4.17.2	Second Priority Indenture, dated as of March 23, 2004, among Calpine Generating Company, LLC, CalGen Finance Corp. and Wilmington Trust FSB, as Trustee, including form of Notes.(q)
4.17.3	Third Priority Indenture, dated as of March 23, 2004, among Calpine Generating Company, LLC, CalGen Finance Corp. and Wilmington Trust FSB, as Trustee, including form of Notes.(q)
4.18	Indenture, dated as of June 2, 2004, between Power Contract Financing III, LLC and Wilmington Trust Company, as Trustee, Accounts Agent, Paying Agent and Registrar, including form of Notes.(b)
4.19	Indenture, dated as of September 30, 2004, between the Company and Wilmington Trust Company, as Trustee, including form of Notes.(r)
4.20.1	Amended and Restated Rights Agreement, dated as of September 19, 2001, between Calpine Corporation and Equiserve Trust Company, N.A., as Rights Agent.(s)
4.20.2	Amendment No. 1 to Rights Agreement, dated as of September 28, 2004, between Calpine Corporation and Equiserve Trust Company, N.A., as Rights Agent.(l)
4.20.3	Amendment No. 2 to Rights Agreement, dated as of March 18, 2005, between Calpine Corporation and Equiserve Trust Company, N.A., as Rights Agent.(bb)
4.21	Memorandum and Articles of Association of Calpine (Jersey) Limited.(t)
4.22	Memorandum and Articles of Association of Calpine European Funding (Jersey) Limited.(t)
4.23	High Tides III
4.23.1	Amended and Restated Certificate of Trust of Calpine Capital Trust III, a Delaware statutory trust, filed July 19, 2000.(u)
4.23.2	Declaration of Trust of Calpine Capital Trust III dated June 28, 2000, among the Company, as Depositor and Debenture Issuer, The Bank of New York (Delaware), as Delaware Trustee, The Bank of New York, as Property Trustee and the Administrative Trustees named therein.(u)
4.23.3	Amendment No. 1 to the Declaration of Trust of Calpine Capital Trust III dated July 19, 2000, among the Company, as Depositor and Debenture Issuer, Wilmington Trust Company, as Delaware Trustee, Wilmington Trust Company, as Property Trustee, and the Administrative Trustees named therein.(u)
4.23.4	Indenture dated as of August 9, 2000, between the Company and Wilmington Trust Company, as Trustee.(u)
4.23.5	Remarketing Agreement dated as of August 9, 2000, among the Company, Calpine Capital Trust III, Wilmington Trust Company, as Tender Agent, and Credit Suisse First Boston Corporation, as Remarketing Agent.(u)



## Table of Contents

Exhibit Number	Description
4.23.7	Amended and Restated Declaration of Trust of Calpine Capital Trust III dated as of August 9, 2000, the Company, as Depositor and Debenture Issuer, Wilmington Trust Company, as Delaware Trustee, Wilmington Trust Company, as Property Trustee, and the Administrative Trustees named therein, including the form of Preferred Security and form of Common Security.(u)
4.23.8	Preferred Securities Guarantee Agreement dated as of August 9, 2000, between the Company, as Guarantor, and Wilmington Trust Company, as Guarantee Trustee.(u)
4.24	Pass Through Certificates (Tiverton and Rumford)
4.24.1	Pass Through Trust Agreement dated as of December 19, 2000, among Tiverton Power Associates Limited Partnership, Rumford Power Associates Limited Partnership and State Street Bank and Trust Company of Connecticut, National Association, as Pass Through Trustee, including the form of Certificate.(e)
4.24.2	Participation Agreement dated as of December 19, 2000, among the Company, Tiverton Power Associates Limited Partnership, Rumford Power Associates Limited Partnership, PMCC Calpine New England Investment LLC, PMCC Calpine NEIM LLC, State Street Bank and Trust Company of Connecticut, National Association, as Indenture Trustee, and State Street Bank and Trust Company of Connecticut, National Association, as Pass Through Trustee.(e)
4.24.3	Appendix A — Definitions and Rules of Interpretation.(e)
4.24.4	Indenture of Trust, Mortgage and Security Agreement, dated as of December 19, 2000, between PMCC Calpine New England Investment LLC and State Street Bank and Trust Company of Connecticut, National Association, as Indenture Trustee, including the forms of Lessor Notes.(e)
4.24.5	Calpine Guaranty and Payment Agreement (Tiverton) dated as of December 19, 2000, by the Company, as Guarantor, to PMCC Calpine New England Investment LLC, PMCC Calpine NEIM LLC, State Street Bank and Trust Company of Connecticut, as Indenture Trustee, and State Street Bank and Trust Company of Connecticut, as Pass Through Trustee.(e)
4.24.6	Calpine Guaranty and Payment Agreement (Rumford) dated as of December 19, 2000, by the Company, as Guarantor, to PMCC Calpine New England Investment LLC, PMCC Calpine NEIM LLC, State Street Bank and Trust Company of Connecticut, as Indenture Trustee, and State Street Bank and Trust Company of Connecticut, as Pass Through Trustee.(e)
4.25	Pass Through Certificates (South Point, Broad River and RockGen)
4.25.1	Pass Through Trust Agreement A dated as of October 18, 2001, among South Point Energy Center, LLC, Broad River Energy LLC, RockGen Energy LLC and State Street Bank and Trust Company of Connecticut, National Association, as Pass Through Trustee, including the form of 8.400% Pass Through Certificate, Series A.(c)
4.25.2	Pass Through Trust Agreement B dated as of October 18, 2001, among South Point Energy Center, LLC, Broad River Energy LLC, RockGen Energy LLC and State Street Bank and Trust Company of Connecticut, National Association, as Pass Through Trustee, including the form of 9.825% Pass Through Certificate, Series B.(c)
4.25.3	Participation Agreement (SP-1) dated as of October 18, 2001, among the Company, South Point Energy Center, LLC, South Point OL-1, LLC, Wells Fargo Bank Northwest, National Association, as Lessor Manager, SBR OP-1, LLC, State Street Bank and Trust Company of Connecticut, National Association, as Indenture Trustee, and State Street Bank and Trust Company of Connecticut, National Association, as Pass Through Trustee, including Appendix A — Definitions and Rules of Interpretation.(c)
4.25.4	Participation Agreement (SP-2) dated as of October 18, 2001, among the Company, South Point Energy Center, LLC, South Point OL-2, LLC, Wells Fargo Bank Northwest, National Association, as Lessor Manager, SBR OP-2, LLC, State Street Bank and Trust Company of Connecticut, National Association, as Indenture Trustee, and State Street Bank and Trust Company of Connecticut, National Association, as Pass Through Trustee, including Appendix A — Definitions and Rules of Interpretation.(c)

## Table of Contents

Exhibit Number	Description
4.25.5	Participation Agreement (SP-3) dated as of October 18, 2001, among the Company, South Point Energy Center, LLC, South Point OL-3, LLC, Wells Fargo Bank Northwest, National Association, as Lessor Manager, SBR OP-3, LLC, State Street Bank and Trust Company of Connecticut, National Association, as Indenture Trustee, and State Street Bank and Trust Company of Connecticut, National Association, as Pass Through Trustee, including Appendix A — Definitions and Rules of Interpretation.(c)
4.25.6	Participation Agreement (SP-4) dated as of October 18, 2001, among the Company, South Point Energy Center, LLC, South Point OL-4, LLC, Wells Fargo Bank Northwest, National Association, as Lessor Manager, SBR OP-4, LLC, State Street Bank and Trust Company of Connecticut, National Association, as Indenture Trustee, and State Street Bank and Trust Company of Connecticut, National Association, as Pass Through Trustee, including Appendix A — Definitions and Rules of Interpretation.(c)
4.25.7	Participation Agreement (BR-1) dated as of October 18, 2001, among the Company, Broad River Energy LLC, Broad River OL-1, LLC, Wells Fargo Bank Northwest, National Association, as Lessor Manager, SBR OP-1, LLC, State Street Bank and Trust Company of Connecticut, National Association, as Indenture Trustee, and State Street Bank and Trust Company of Connecticut, National Association, as Pass Through Trustee, including Appendix A — Definitions and Rules of Interpretation.(c)
4.25.8	Participation Agreement (BR-2) dated as of October 18, 2001, among the Company, Broad River Energy LLC, Broad River OL-2, LLC, Wells Fargo Bank Northwest, National Association, as Lessor Manager, SBR OP-2, LLC, State Street Bank and Trust Company of Connecticut, National Association, as Indenture Trustee, and State Street Bank and Trust Company of Connecticut, National Association, as Pass Through Trustee, including Appendix A — Definitions and Rules of Interpretation.(c)
4.25.9	Participation Agreement (BR-3) dated as of October 18, 2001, among the Company, Broad River Energy LLC, Broad River OL-3, LLC, Wells Fargo Bank Northwest, National Association, as Lessor Manager, SBR OP-3, LLC, State Street Bank and Trust Company of Connecticut, National Association, as Indenture Trustee, and State Street Bank and Trust Company of Connecticut, National Association, as Pass Through Trustee, including Appendix A — Definitions and Rules of Interpretation.(c)
4.25.10	Participation Agreement (BR-4) dated as of October 18, 2001, among the Company, Broad River Energy LLC, Broad River OL-4, LLC, Wells Fargo Bank Northwest, National Association, as Lessor Manager, SBR OP-4, LLC, State Street Bank and Trust Company of Connecticut, National Association, as Indenture Trustee, and State Street Bank and Trust Company of Connecticut, National Association, as Pass Through Trustee, including Appendix A — Definitions and Rules of Interpretation.(c)
4.25.11	Participation Agreement (RG-1) dated as of October 18, 2001, among the Company, RockGen Energy LLC, RockGen OL-1, LLC, Wells Fargo Bank Northwest, National Association, as Lessor Manager, SBR OP-1, LLC, State Street Bank and Trust Company of Connecticut, National Association, as Indenture Trustee, and State Street Bank and Trust Company of Connecticut, National Association, as Pass Through Trustee, including Appendix A — Definitions and Rules of Interpretation.(c)
4.25.12	Participation Agreement (RG-2) dated as of October 18, 2001, among the Company, RockGen Energy LLC, RockGen OL-2, LLC, Wells Fargo Bank Northwest, National Association, as Lessor Manager, SBR OP-2, LLC, State Street Bank and Trust Company of Connecticut, National Association, as Indenture Trustee, and State Street Bank and Trust Company of Connecticut, National Association, as Pass Through Trustee, including Appendix A — Definitions and Rules of Interpretation.(c)

## Table of Contents

Exhibit Number	Description
4.25.13	Participation Agreement (RG-3) dated as of October 18, 2001, among the Company, RockGen Energy LLC, RockGen OL-3, LLC, Wells Fargo Bank Northwest, National Association, as Lessor Manager, SBR OP-3, LLC, State Street Bank and Trust Company of Connecticut, National Association, as Indenture Trustee, and State Street Bank and Trust Company of Connecticut, National Association, as Pass Through Trustee, including Appendix A — Definitions and Rules of Interpretation.(c)
4.25.14	Participation Agreement (RG-4) dated as of October 18, 2001, among the Company, RockGen Energy LLC, RockGen OL-4, LLC, Wells Fargo Bank Northwest, National Association, as Lessor Manager, SBR OP-4, LLC, State Street Bank and Trust Company of Connecticut, National Association, as Indenture Trustee, and State Street Bank and Trust Company of Connecticut, National Association, as Pass Through Trustee, including Appendix A — Definitions and Rules of Interpretation.(c)
4.25.15	Indenture of Trust, Deed of Trust, Assignment of Rents and Leases, Security Agreement and Financing Statement, dated as of October 18, 2001, between South Point OL-1, LLC and State Street Bank and Trust Company of Connecticut, National Association, as Indenture Trustee and Account Bank, including the form of South Point Lessor Notes.(c)
4.25.16	Indenture of Trust, Deed of Trust, Assignment of Rents and Leases, Security Agreement and Financing Statement, dated as of October 18, 2001, between South Point OL-2, LLC and State Street Bank and Trust Company of Connecticut, National Association, as Indenture Trustee and Account Bank, including the form of South Point Lessor Notes.(c)
4.25.17	Indenture of Trust, Deed of Trust, Assignment of Rents and Leases, Security Agreement and Financing Statement, dated as of October 18, 2001, between South Point OL-3, LLC and State Street Bank and Trust Company of Connecticut, National Association, as Indenture Trustee and Account Bank, including the form of South Point Lessor Notes.(c)
4.25.18	Indenture of Trust, Deed of Trust, Assignment of Rents and Leases, Security Agreement and Financing Statement, dated as of October 18, 2001, between South Point OL-4, LLC and State Street Bank and Trust Company of Connecticut, National Association, as Indenture Trustee and Account Bank, including the form of South Point Lessor Notes.(c)
4.25.19	Indenture of Trust, Mortgage, Security Agreement and Fixture Filing, dated as of October 18, 2001, between Broad River OL-1, LLC and State Street Bank and Trust Company of Connecticut, National Association, as Indenture Trustee, Mortgagee and Account Bank, including the form of Broad River Lessor Notes.(c)
4.25.20	Indenture of Trust, Mortgage, Security Agreement and Fixture Filing, dated as of October 18, 2001, between Broad River OL-2, LLC and State Street Bank and Trust Company of Connecticut, National Association, as Indenture Trustee, Mortgagee and Account Bank, including the form of Broad River Lessor Notes.(c)
4.25.21	Indenture of Trust, Mortgage, Security Agreement and Fixture Filing, dated as of October 18, 2001, between Broad River OL-3, LLC and State Street Bank and Trust Company of Connecticut, National Association, as Indenture Trustee, Mortgagee and Account Bank, including the form of Broad River Lessor Notes.(c)
4.25.22	Indenture of Trust, Mortgage, Security Agreement and Fixture Filing, dated as of October 18, 2001, between Broad River OL-4, LLC and State Street Bank and Trust Company of Connecticut, National Association, as Indenture Trustee, Mortgagee and Account Bank, including the form of Broad River Lessor Notes.(c)
4.25.23	Indenture of Trust, Mortgage and Security Agreement, dated as of October 18, 2001, between RockGen OL-1, LLC and State Street Bank and Trust Company of Connecticut, National Association, as Indenture Trustee and Account Bank, including the form of RockGen Lessor Notes.(c)
4.25.24	Indenture of Trust, Mortgage and Security Agreement, dated as of October 18, 2001, between RockGen OL-2, LLC and State Street Bank and Trust Company of Connecticut, National Association, as Indenture Trustee and Account Bank, including the form of RockGen Lessor Notes.(c)

## Table of Contents

Exhibit Number	Description
4.25.25	Indenture of Trust, Mortgage and Security Agreement, dated as of October 18, 2001, between RockGen OL-3, LLC and State Street Bank and Trust Company of Connecticut, National Association, as Indenture Trustee and Account Bank, including the form of RockGen Lessor Notes.(c)
4.25.26	Indenture of Trust, Mortgage and Security Agreement, dated as of October 18, 2001, between RockGen OL-4, LLC and State Street Bank and Trust Company of Connecticut, National Association, as Indenture Trustee and Account Bank, including the form of RockGen Lessor Notes.(c)
4.25.27	Calpine Guaranty and Payment Agreement (South Point SP-1) dated as of October 18, 2001, by Calpine, as Guarantor, to South Point OL-1, LLC, SBR OP-1, LLC, State Street Bank and Trust Company of Connecticut, as Indenture Trustee, and State Street Bank and Trust Company of Connecticut, as Pass Through Trustee.(c)
4.25.28	Calpine Guaranty and Payment Agreement (South Point SP-2) dated as of October 18, 2001, by Calpine, as Guarantor, to South Point OL-2, LLC, SBR OP-2, LLC, State Street Bank and Trust Company of Connecticut, as Indenture Trustee, and State Street Bank and Trust Company of Connecticut, as Pass Through Trustee.(c)
4.25.29	Calpine Guaranty and Payment Agreement (South Point SP-3) dated as of October 18, 2001, by Calpine, as Guarantor, to South Point OL-3, LLC, SBR OP-3, LLC, State Street Bank and Trust Company of Connecticut, as Indenture Trustee, and State Street Bank and Trust Company of Connecticut, as Pass Through Trustee.(c)
4.25.30	Calpine Guaranty and Payment Agreement (South Point SP-4) dated as of October 18, 2001, by Calpine, as Guarantor, to South Point OL-4, LLC, SBR OP-4, LLC, State Street Bank and Trust Company of Connecticut, as Indenture Trustee, and State Street Bank and Trust Company of Connecticut, as Pass Through Trustee.(c)
4.25.31	Calpine Guaranty and Payment Agreement (Broad River BR-1) dated as of October 18, 2001, by Calpine, as Guarantor, to Broad River OL-1, LLC, SBR OP-1, LLC, State Street Bank and Trust Company of Connecticut, as Indenture Trustee, and State Street Bank and Trust Company of Connecticut, as Pass Through Trustee.(c)
4.25.32	Calpine Guaranty and Payment Agreement (Broad River BR-2) dated as of October 18, 2001, by Calpine, as Guarantor, to Broad River OL-2, LLC, SBR OP-2, LLC, State Street Bank and Trust Company of Connecticut, as Indenture Trustee, and State Street Bank and Trust Company of Connecticut, as Pass Through Trustee.(c)
4.25.33	Calpine Guaranty and Payment Agreement (Broad River BR-3) dated as of October 18, 2001, by Calpine, as Guarantor, to Broad River OL-3, LLC, SBR OP-3, LLC, State Street Bank and Trust Company of Connecticut, as Indenture Trustee, and State Street Bank and Trust Company of Connecticut, as Pass Through Trustee.(c)
4.25.34	Calpine Guaranty and Payment Agreement (Broad River BR-4) dated as of October 18, 2001, by Calpine, as Guarantor, to Broad River OL-4, LLC, SBR OP-4, LLC, State Street Bank and Trust Company of Connecticut, as Indenture Trustee, and State Street Bank and Trust Company of Connecticut, as Pass Through Trustee.(c)
4.25.35	Calpine Guaranty and Payment Agreement (RockGen RG-1) dated as of October 18, 2001, by Calpine, as Guarantor, to RockGen OL-1, LLC, SBR OP-1, LLC, State Street Bank and Trust Company of Connecticut, as Indenture Trustee, and State Street Bank and Trust Company of Connecticut, as Pass Through Trustee.(c)
4.25.36	Calpine Guaranty and Payment Agreement (RockGen RG-2) dated as of October 18, 2001, by Calpine, as Guarantor, to RockGen OL-2, LLC, SBR OP-2, LLC, State Street Bank and Trust Company of Connecticut, as Indenture Trustee, and State Street Bank and Trust Company of Connecticut, as Pass Through Trustee.(c)
4.25.37	Calpine Guaranty and Payment Agreement (RockGen RG-3) dated as of October 18, 2001, by Calpine, as Guarantor, to RockGen OL-3, LLC, SBR OP-3, LLC, State Street Bank and Trust Company of Connecticut, as Indenture Trustee, and State Street Bank and Trust Company of Connecticut, as Pass Through Trustee.(c)

## Table of Contents

Exhibit Number	Description
4.25.38	Calpine Guaranty and Payment Agreement (RockGen RG-4) dated as of October 18, 2001, by Calpine, as Guarantor, to RockGen OL-4, LLC, SBR OP-4, LLC, State Street Bank and Trust Company of Connecticut, as Indenture Trustee, and State Street Bank and Trust Company of Connecticut, as Pass Through Trustee.(c)
10.1	Financing and Term Loan Agreements
10.1.1	Share Lending Agreement, dated as of September 28, 2004, among the Company, as Lender, Deutsche Bank AG London, as Borrower, through Deutsche Bank Securities Inc., as agent for the Borrower, and Deutsche Bank Securities Inc., in its capacity as Collateral Agent and Securities Intermediary.(l)
10.1.2	Amended and Restated Credit Agreement, dated as of March 23, 2004, among Calpine Generating Company, LLC, the Guarantors named therein, the Lenders named therein, The Bank of Nova Scotia, as Administrative Agent, LC Bank, Lead Arranger and Sole Bookrunner, Bayerische Landesbank Cayman Islands Branch, as Arranger and Co-Syndication Agent, Credit Lyonnais New York Branch, as Arranger and Co-Syndication Agent, ING Capital LLC, as Arranger and Co-Syndication Agent, Toronto-Dominion (Texas) Inc., as Arranger and Co-Syndication Agent, and Union Bank of California, N.A., as Arranger and Co-Syndication Agent.(q)
10.1.3.1	Letter of Credit Agreement, dated as of July 16, 2003, among the Company, the Lenders named therein, and The Bank of Nova Scotia, as Administrative Agent.(o)
10.1.3.2	Amendment to Letter of Credit Agreement, dated as of September 30, 2004, between the Company and The Bank of Nova Scotia, as Administrative Agent.(v)
10.1.4	Letter of Credit Agreement, dated as of September 30, 2004, between the Company and Bayerische Landesbank, acting through its Cayman Islands Branch, as the Issuer.(v)
10.1.5	Credit Agreement, dated as of July 16, 2003, among the Company, the Lenders named therein, Goldman Sachs Credit Partners L.P., as Sole Lead Arranger, Sole Bookrunner and Administrative Agent, The Bank of Nova Scotia, as Arranger and Syndication Agent, TD Securities (USA) Inc., ING (U.S.) Capital LLC and Landesbank Hessen-Thuringen, as Co-Arrangers, and Credit Lyonnais New York Branch and Union Bank of California, N.A., as Managing Agents.(o)
10.1.6.1	Credit and Guarantee Agreement, dated as of August 14, 2003, among Calpine Construction Finance Company, L.P., each of Calpine Hermiston, LLC, CPN Hermiston, LLC and Hermiston Power Partnership, as Guarantors, the Lenders named therein, and Goldman Sachs Credit Partners L.P., as Administrative Agent and Sole Lead Arranger.(p)
10.1.6.2	Amendment No. 1 to the Credit and Guarantee Agreement, dated as of September 12, 2003, among Calpine Construction Finance Company, L.P., each of Calpine Hermiston, LLC, CPN Hermiston, LLC and Hermiston Power Partnership, as Guarantors, the Lenders named therein, and Goldman Sachs Credit Partners L.P., as Administrative Agent and Sole Lead Arranger.(p)
10.1.6.3	Amendment No. 2 to the Credit and Guarantee Agreement, dated as of January 13, 2004, among Calpine Construction Finance Company, L.P., each of Calpine Hermiston, LLC, CPN Hermiston, LLC and Hermiston Power Partnership, as Guarantors, the Lenders named therein, and Goldman Sachs Credit Partners L.P., as Administrative Agent and Sole Lead Arranger.(q)
10.1.6.4	Amendment No. 3 to the Credit and Guarantee Agreement, dated as of March 5, 2004, among Calpine Construction Finance Company, L.P., each of Calpine Hermiston, LLC, CPN Hermiston, LLC and Hermiston Power Partnership, as Guarantors, the Lenders named therein, and Goldman Sachs Credit Partners L.P., as Administrative Agent and Sole Lead Arranger.(q)
10.1.7	Credit and Guarantee Agreement, dated as of March 23, 2004, among Calpine Generating Company, LLC, the Guarantors named therein, the Lenders named therein, Morgan Stanley Senior Funding, Inc., as Administrative Agent, and Morgan Stanley Senior Funding, Inc., as Sole Lead Arranger and Sole Bookrunner.(q)
10.1.8	Credit and Guarantee Agreement, dated as of March 23, 2004, among Calpine Generating Company, LLC, the Guarantors named therein, the Lenders named therein, Morgan Stanley Senior Funding, Inc., as Administrative Agent, and Morgan Stanley Senior Funding, Inc., as Sole Lead Arranger and Sole Bookrunner.(q)

## Table of Contents

Exhibit Number	Description
10.1.9	Credit Agreement, dated as of June 24, 2004, among Riverside Energy Center, LLC, the Lenders named therein, Union Bank of California, N.A., as the Issuing Bank, Credit Suisse First Boston, acting through its Cayman Islands Branch, as Lead Arranger, Book Runner, Administrative Agent and Collateral Agent, and CoBank, ACB, as Syndication Agent.(*)
10.1.10	Credit Agreement, dated as of June 24, 2004, among Rocky Mountain Energy Center, LLC, the Lenders named therein, Union Bank of California, N.A., as the Issuing Bank, Credit Suisse First Boston, acting through its Cayman Islands Branch, as Lead Arranger, Book Runner, Administrative Agent and Collateral Agent, and CoBank, ACB, as Syndication Agent.(*)
10.1.11	Credit Agreement, dated as of February 25, 2005, among Calpine Steamboat Holdings, LLC, the Lenders named therein, Calyon New York Branch, as a Lead Arranger, Underwriter, Co-Book Runner, Administrative Agent, Collateral Agent and LC Issuer, CoBank, ACB, as a Lead Arranger, Underwriter, Co-Syndication Agent and Co-Book Runner, HSH Nordbank AG, as a Lead Arranger, Underwriter and Co-documentation Agent, UFJ Bank Limited, as a Lead Arranger, Underwriter and Co-Documentation Agent, and Bayerische Hypo-Und Vereinsbank AG, New York Branch, as a Lead Arranger, Underwriter and Co-Syndication Agent.(*)
10.2	Security Agreements
10.2.1	Guarantee and Collateral Agreement, dated as of July 16, 2003, made by the Company, JOQ Canada, Inc., Quintana Minerals (USA) Inc., and Quintana Canada Holdings LLC, in favor of The Bank of New York, as Collateral Trustee.(o)
10.2.2	First Amendment Pledge Agreement, dated as of July 16, 2003, made by JOQ Canada, Inc., Quintana Minerals (USA) Inc., and Quintana Canada Holdings LLC in favor of The Bank of New York, as Collateral Trustee.(o)
10.2.3	First Amendment Assignment and Security Agreement, dated as of July 16, 2003, made by the Company in favor of The Bank of New York, as Collateral Trustee.(o)
10.2.4.1	Second Amendment Pledge Agreement (Stock Interests), dated as of July 16, 2003, made by the Company in favor of The Bank of New York, as Collateral Trustee.(o)
10.2.4.2	Amendment No. 1 to the Second Amendment Pledge Agreement (Stock Interests), dated as of November 18, 2003, made by the Company in favor of The Bank of New York, as Collateral Trustee.(q)
10.2.5.1	Second Amendment Pledge Agreement (Membership Interests), dated as of July 16, 2003, made by the Company in favor of The Bank of New York, as Collateral Trustee.(o)
10.2.5.2	Amendment No. 1 to the Second Amendment Pledge Agreement (Membership Interests), dated as of November 18, 2003, made by the Company in favor of The Bank of New York, as Collateral Trustee.(q)
10.2.6	First Amendment Note Pledge Agreement, dated as of July 16, 2003, made by the Company in favor of The Bank of New York, as Collateral Trustee.(o)
10.2.7.1	Collateral Trust Agreement, dated as of July 16, 2003, among the Company, JOQ Canada, Inc., Quintana Minerals (USA) Inc., Quintana Canada Holdings LLC, Wilmington Trust Company, as Trustee, The Bank of Nova Scotia, as Agent, Goldman Sachs Credit Partners L.P., as Administrative Agent, and The Bank of New York, as Collateral Trustee.(o)
10.2.7.2	First Amendment to the Collateral Trust Agreement, dated as of November 18, 2003, among the Company, JOQ Canada, Inc., Quintana Minerals (USA) Inc., Quintana Canada Holdings LLC, Wilmington Trust Company, as Trustee, The Bank of Nova Scotia, as Agent, Goldman Sachs Credit Partners L.P., as Administrative Agent, and The Bank of New York, as Collateral Trustee.(q)
10.2.8	Form of Amended and Restated Mortgage, Deed of Trust, Assignment, Security Agreement, Financing Statement and Fixture Filing (Multistate), dated as of July 16, 2003, from the Company to Messrs. Denis O'Meara and James Trimble, as Trustees, and The Bank of New York, as Collateral Trustee.(o)

## Table of Contents

<b>Exhibit Number</b>	<b>Description</b>
10.2.9	Form of Amended and Restated Mortgage, Deed of Trust, Assignment, Security Agreement, Financing Statement and Fixture Filing (Multistate), dated as of July 16, 2003, from the Company to Messrs. Kemp Leonard and John Quick, as Trustees, and The Bank of New York, as Collateral Trustee.(o)
10.2.10	Form of Amended and Restated Mortgage, Deed of Trust, Assignment, Security Agreement, Financing Statement and Fixture Filing (Colorado), dated as of July 16, 2003, from the Company to Messrs. Kemp Leonard and John Quick, as Trustees, and The Bank of New York, as Collateral Trustee.(o)
10.2.11	Form of Amended and Restated Mortgage, Deed of Trust, Assignment, Security Agreement, Financing Statement and Fixture Filing (New Mexico), dated as of July 16, 2003, from the Company to Messrs. Kemp Leonard and John Quick, as Trustees, and The Bank of New York, as Collateral Trustee.(o)
10.2.12	Form of Amended and Restated Mortgage, Assignment, Security Agreement and Financing Statement (Louisiana), dated as of July 16, 2003, from the Company to The Bank of New York, as Collateral Trustee.(o)
10.2.13	Form of Amended and Restated Deed of Trust with Power of Sale, Assignment of Production, Security Agreement, Financing Statement and Fixture Filings (California), dated as of July 16, 2003, from the Company to Chicago Title Insurance Company, as Trustee, and The Bank of New York, as Collateral Trustee.(o)
10.2.14	Form of Deed to Secure Debt, Assignment of Rents and Security Agreement (Georgia), dated as of July 16, 2003, from the Company to The Bank of New York, as Collateral Trustee.(o)
10.2.15	Form of Mortgage, Assignment of Rents and Security Agreement (Florida), dated as of July 16, 2003, from the Company to The Bank of New York, as Collateral Trustee.(o)
10.2.16	Form of Deed of Trust, Assignment of Rents and Security Agreement and Fixture Filing (Texas), dated as of July 16, 2003, from the Company to Malcolm S. Morris, as Trustee, in favor of The Bank of New York, as Collateral Trustee.(o)
10.2.17	Form of Deed of Trust, Assignment of Rents and Security Agreement (Washington), dated as of July 16, 2003, from the Company to Chicago Title Insurance Company, in favor of The Bank of New York, as Collateral Trustee. (o)
10.2.18	Form of Deed of Trust, Assignment of Rents, and Security Agreement (California), dated as of July 16, 2003, from the Company to Chicago Title Insurance Company, in favor of The Bank of New York, as Collateral Trustee.(o)
10.2.19	Form of Mortgage, Collateral Assignment of Leases and Rents, Security Agreement and Financing Statement (Louisiana), dated as of July 16, 2003, from the Company to The Bank of New York, as Collateral Trustee.(o)
10.2.20	Amended and Restated Hazardous Materials Undertaking and Indemnity (Multistate), dated as of July 16, 2003, by the Company in favor of The Bank of New York, as Collateral Trustee.(o)
10.2.21	Amended and Restated Hazardous Materials Undertaking and Indemnity (California), dated as of July 16, 2003, by the Company in favor of The Bank of New York, as Collateral Trustee.(o)
10.2.22	Designated Asset Sale Proceeds Account Control Agreement, dated as of July 16, 2003, among the Company, Union Bank of California, N.A., and The Bank of New York, as Collateral Agent.(q)
10.3	Management Contracts or Compensatory Plans or Arrangements.
10.3.1.1	Employment Agreement, dated as of January 1, 2005, between the Company and Mr. Peter Cartwright.(w)(x)
10.3.1.2	Employment Agreement, dated as of January 1, 2000, between the Company and Mr. Peter Cartwright.(y)(x)
10.3.2	Employment Agreement, dated as of January 1, 2000, between the Company and Ms. Ann B. Curtis.(c)(x)
10.3.3	Employment Agreement, dated as of January 1, 2000, between the Company and Mr. Ron A. Walter.(c)(x)

## Table of Contents

Exhibit Number	Description
10.3.4	Employment Agreement, dated as of January 1, 2000, between the Company and Mr. Robert D. Kelly.(c)(x)
10.3.5	Employment Agreement, dated as of January 1, 2000, between the Company and Mr. Thomas R. Mason.(c)(x)
10.3.6.1	Consulting Contract, dated as of January 1, 2005, between the Company and Mr. George J. Stathakis.(*)(x)
10.3.6.2	Consulting Contract, dated as of January 1, 2004, between the Company and Mr. George J. Stathakis.(q)(x)
10.3.7	Form of Indemnification Agreement for directors and officers.(z)(x)
10.3.8	Form of Indemnification Agreement for directors and officers.(c)(x)
10.3.9	Calpine Corporation 1996 Stock Incentive Plan and forms of agreements there under.(q)(x)
10.3.10	Base Salary, Bonus, Stock Option Grant and Restricted Stock Summary Sheet.(w)(x)
10.3.11	Form of Stock Option Agreement.(w)(x)
10.3.12	Form of Restricted Stock Agreement.(w)(x)
10.3.13	Calpine Corporation 2003 Management Incentive Plan.(*)(x)
10.3.14	2000 Employee Stock Purchase Plan.(aa)(x)
12.1	Statement on Computation of Ratio of Earnings to Fixed Charges.(*)
21.1	Subsidiaries of the Company.(*)
23.1	Consent of Deloitte & Touche LLP, Independent Registered Public Accounting Firm.(*)
23.2	Consent of PricewaterhouseCoopers LLP, Independent Registered Public Accounting Firm.(*)
23.3	Consent of Netherland, Sewell & Associates, Inc., independent engineer.(*)
23.4	Consent of Gilbert Laustsen Jung Associates Ltd., independent engineer.(*)
24.1	Power of Attorney of Officers and Directors of Calpine Corporation (set forth on the signature pages of this report).(*)
31.1	Certification of the Chairman, President and Chief Executive Officer Pursuant to Rule 13a-14(a) or Rule 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.(*)
31.2	Certification of the Executive Vice President and Chief Financial Officer Pursuant to Rule 13a-14(a) or Rule 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.(*)
32.1	Certification of Chief Executive Officer and Chief Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.(*)
99.1	Acadia Power Partners, LLC and Subsidiary, Consolidated Financial Statements, December 31, 2003, 2002 and 2001.(*)
99.2	Consent of PricewaterhouseCoopers LLP, Independent Registered Public Accounting Firm.(*)

(\*) Filed herewith.

(a) Incorporated by reference to Calpine Corporation's Current Report on Form 8-K/ A filed with the SEC on September 14, 2004.

(b) Incorporated by reference to Calpine Corporation's Quarterly Report on Form 10-Q dated June 30, 2004, filed with the SEC on August 9, 2004.

(c) Incorporated by reference to Calpine Corporation's Annual Report on Form 10-K dated December 31, 2001, filed with the SEC on March 29, 2002.

(d) Incorporated by reference to Calpine Corporation's Registration Statement on Form S-4 (Registration Statement No. 333-06259) filed with

the SEC on June 19, 1996.

- (e) Incorporated by reference to Calpine Corporation's Annual Report on Form 10-K for the year ended December 31, 2000, filed with the SEC on March 15, 2001.

## Table of Contents

- (f) Incorporated by reference to Calpine Corporation's Quarterly Report on Form 10-Q dated March 31, 2004, filed with the SEC on May 10, 2004.
- (g) Incorporated by reference to Calpine Corporation's Quarterly Report on Form 10-Q dated June 30, 1997, filed with the SEC on August 14, 1997.
- (h) Incorporated by reference to Calpine Corporation's Registration Statement on Form S-4 (Registration Statement No. 333-41261) filed with the SEC on November 28, 1997.
- (i) Incorporated by reference to Calpine Corporation's Registration Statement on Form S-4 (Registration Statement No. 333-61047) filed with the SEC on August 10, 1998.
- (j) Incorporated by reference to Calpine Corporation's Registration Statement on Form S-3/ A (Registration Statement No. 333-72583) filed with the SEC on March 8, 1999.
- (k) Incorporated by reference to Calpine Corporation's Registration Statement on Form S-3 (Registration No. 333-76880) filed with the SEC on January 17, 2002.
- (l) Incorporated by reference to Calpine Corporation's Current Report on Form 8-K filed with the SEC on September 30, 2004.
- (m) Incorporated by reference to Calpine Corporation's Current Report on Form 8-K dated October 16, 2001, filed with the SEC on November 13, 2001.
- (n) Incorporated by reference to Calpine Corporation's Registration Statement on Form S-3/ A (Registration No. 333-57338) filed with the SEC on April 19, 2001.
- (o) Incorporated by reference to Calpine Corporation's Quarterly Report on Form 10-Q dated June 30, 2003, filed with the SEC on August 14, 2003.
- (p) Incorporated by reference to Calpine Corporation's Quarterly Report on Form 10-Q dated September 30, 2003, filed with the SEC on November 13, 2003.
- (q) Incorporated by reference to Calpine Corporation's Annual Report on Form 10-K for the year ended December 31, 2003, filed with the SEC on March 25, 2004.
- (r) Incorporated by reference to Calpine Corporation's Current Report on Form 8-K filed with the SEC on October 6, 2004.
- (s) Incorporated by reference to Calpine Corporation's Registration Statement on Form 8-A/ A (Registration No. 001-12079) filed with the SEC on September 28, 2001.
- (t) This document has been omitted in reliance on Item 601(b)(4)(iii) of Regulation S-K. Calpine Corporation agrees to furnish a copy of such document to the SEC upon request.
- (u) Incorporated by reference to Calpine Corporation's Registration Statement on Form S-3 (Registration Statement No. 333-47068) filed with the SEC on September 29, 2000.
- (v) Incorporated by reference to Calpine Corporation's Quarterly Report on Form 10-Q dated September 30, 2004, filed with the SEC on November 9, 2004.
- (w) Incorporated by reference to Calpine Corporation's Current Report on Form 8-K filed with the SEC on March 17, 2005.
- (x) Management contract or compensatory plan or arrangement.
- (y) Incorporated by reference to Calpine Corporation's Annual Report on Form 10-K for the year ended December 31, 1999, filed with the SEC on February 29, 2000.
- (z) Incorporated by reference to Calpine Corporation's Registration Statement on Form S-1/ A (Registration Statement No. 333-07497) filed with the SEC on August 22, 1996.
- (aa) Incorporated by reference to Calpine Corporation's Definitive Proxy Statement on Schedule 14A dated April 13, 2000, filed with the SEC on April 13, 2000.
- (bb) Incorporated by reference to Calpine Corporation's Current Report on Form 8-K filed with the SEC on March 23, 2005.



**Table of Contents**

<b>Signature</b>	<b>Title</b>	<b>Date</b>
<hr/> Kenneth T. Derr	Director	
<hr/> Jeffrey E. Garten	Director	
<hr/> /s/ GERALD GREENWALD Gerald Greenwald	Director	March 31, 2005
<hr/> /s/ SUSAN C. SCHWAB Susan C. Schwab	Director	March 31, 2005
<hr/> /s/ GEORGE J. STATHAKIS George J. Stathakis	Director	March 31, 2005
<hr/> /s/ SUSAN WANG Susan Wang	Director	March 31, 2005
<hr/> /s/ JOHN O. WILSON John O. Wilson	Director	March 31, 2005

**CALPINE CORPORATION AND SUBSIDIARIES**  
**INDEX TO CONSOLIDATED FINANCIAL STATEMENTS**  
**December 31, 2004**

	<u>Page</u>
Reports of Independent Registered Public Accounting Firms	F-2
Consolidated Balance Sheets December 31, 2004 and 2003	F-5
Consolidated Statements of Operations for the Years Ended December 31, 2004, 2003, and 2002	F-6
Consolidated Statements of Stockholders' Equity for the Years Ended December 31, 2004, 2003, and 2002	F-7
Consolidated Statements of Cash Flows for the Years Ended December 31, 2004, 2003, and 2002	F-8
Notes to Consolidated Financial Statements for the Years Ended December 31, 2004, 2003, and 2002	F-9

**Report of Independent Registered Public Accounting Firm**

To the Board of Directors  
And Stockholders of Calpine Corporation

We have audited the consolidated statements of operations, stockholders' equity, and cash flows for the year ended December 31, 2002 of Calpine Corporation and subsidiaries (the "Company"). Our audit also included the 2002 consolidated financial statement schedules listed in the Index at Item 15. These financial statements and financial statement schedules are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and financial statement schedules based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, based on our audit, such consolidated financial statements present fairly, in all material respects, the consolidated results of operations and of cash flows for the year ended 2002 of Calpine Corporation and subsidiaries, in conformity with accounting principles generally accepted in the United States of America. Also, in our opinion, such 2002 consolidated financial statement schedules, when considered in relation to the basic consolidated financial statements taken as a whole, present fairly in all material respects the information set forth therein.

As discussed in Note 2 of the Notes to the Consolidated Financial Statements, effective January 1, 2002, the Company adopted a new accounting standard to account for the impairment of long-lived assets and discontinued operations.

As discussed in Note 10 of the Notes to the Consolidated Financial Statements, in June 2003, the Company approved the divestiture of its specialty data center engineering business; in November 2003, the Company completed the divestiture of certain oil and gas assets; in December 2003, the Company committed to the divestiture of its fifty percent ownership interest in a power project; in September 2004, the Company completed the divestiture of certain oil and gas assets.

/s/ DELOITTE & TOUCHE LLP

San Jose, California  
March 10, 2003  
(October 21, 2003 as to paragraph two of Note 10,  
March 22, 2004 as to paragraphs six and thirteen of Note 10, and  
March 31, 2005 as to paragraphs seven and eight of Note 10)

## Report Of Independent Registered Public Accounting Firm

To the Board of Directors  
and Stockholders of Calpine Corporation:

We have completed an integrated audit of Calpine Corporation's 2004 consolidated financial statements and of its internal control over financial reporting as of December 31, 2004 and an audit of its 2003 consolidated financial statements in accordance with the standards of the Public Company Accounting Oversight Board (United States). Our opinions, based on our audits, are presented below.

### Consolidated financial statements and financial statement schedule

In our opinion, the consolidated financial statements listed in the index appearing under Item 15(a) (1) present fairly, in all material respects, the financial position of Calpine Corporation and its subsidiaries at December 31, 2004 and 2003, and the results of their operations and their cash flows for each of the two years in the period ended December 31, 2004 in conformity with accounting principles generally accepted in the United States of America. In addition, in our opinion, the financial statement schedule listed in the index appearing under Item 15 (a) (2) presents fairly, in all material respects, the information set forth therein when read in conjunction with the related consolidated financial statements. These financial statements and financial statement schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and financial statement schedule based on our audits. We conducted our audits of these statements in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit of financial statements includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

As discussed in Note 2 to the consolidated financial statements, the Company changed the manner in which they calculate diluted earnings per share in 2004, changed the manner in which they account for asset retirement costs and stock based compensation as of January 1, 2003, changed the manner in which they account for certain financial instruments with characteristics of both liabilities and equity effective July 1, 2003, changed the manner in which they report gains and losses on certain derivative instruments not held for trading purposes and account for certain derivative contracts with a price adjustment feature effective October 1, 2003, adopted provisions of Financial Accounting Standards Board Interpretation No. 46-R ("FIN-46R"), "Consolidation of Variable Interest Entities — an interpretation of ARB 51 (revised December 2003)," for Special-Purpose-Entities as of December 31, 2003, and adopted FIN-46R for all non-Special-Purpose-Entities on March 31, 2004.

### Internal control over financial reporting

Also, we have audited management's assessment, included in Management's Report on Internal Control over Financial Reporting appearing under Item 9A, that Calpine Corporation did not maintain effective internal control over financial reporting as of December 31, 2004, because the Company did not maintain effective controls over the accounting for income taxes and the determination of current income taxes payable, deferred income tax assets and liabilities and the related income tax provision (benefit) for continuing and discontinued operations, based on criteria established in *Internal Control — Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting. Our responsibility is to express opinions on management's assessment and on the effectiveness of the Company's internal control over financial reporting based on our audit.

We conducted our audit of internal control over financial reporting in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial

## Table of Contents

reporting was maintained in all material respects. An audit of internal control over financial reporting includes obtaining an understanding of internal control over financial reporting, evaluating management's assessment, testing and evaluating the design and operating effectiveness of internal control, and performing such other procedures as we consider necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinions.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate. A material weakness is a control deficiency, or combination of control deficiencies, that results in more than a remote likelihood that a material misstatement of the annual or interim financial statements will not be prevented or detected. The following material weakness has been identified and included in management's assessment. As of December 31, 2004, the Company did not maintain effective controls over the accounting for income taxes and the determination of current income taxes payable, deferred income tax assets and liabilities and the related income tax provision (benefit) for continuing and discontinued operations. Specifically, the Company did not have effective controls in place to (i) identify and evaluate in a timely manner the tax implications of the repatriation of funds from Canada (ii) appropriately determine the allocation of the tax provision between continuing and discontinued operations (iii) ensure there was adequate communication from the tax department to the accounting department relating to the preparation of the tax provision (iv) ensure all elements of the income tax provision were mathematically correct and (v) ensure the rationale for certain tax positions was adequately documented. This control deficiency resulted in the restatement of the Company's consolidated financial statements for the three and nine months ended September 30, 2004 as well as income tax related audit adjustments to the fourth quarter 2004 consolidated financial statements. Additionally, this control deficiency could result in a misstatement of current income taxes payable, deferred income tax assets and liabilities and the related income tax provision (benefit) for continuing and discontinued operations that would result in a material misstatement to annual or interim financial statements that would not be prevented or detected. Accordingly, management determined that this control deficiency constitutes a material weakness. This material weakness was considered in determining the nature, timing, and extent of audit tests applied in our audit of the 2004 consolidated financial statements, and our opinion regarding the effectiveness of the Company's internal control over financial reporting does not affect our opinion on those consolidated financial statements.

In our opinion, management's assessment that Calpine Corporation did not maintain effective internal control over financial reporting as of December 31, 2004, is fairly stated, in all material respects, based on criteria established in *Internal Control — Integrated Framework* issued by the COSO. Also, in our opinion, because of the effect of the material weakness described above on the achievement of the objectives of the control criteria, Calpine Corporation has not maintained effective internal control over financial reporting as of December 31, 2004, based on criteria established in *Internal Control — Integrated Framework* issued by the COSO.

/s/ PricewaterhouseCoopers LLP

Los Angeles, CA  
March 31, 2005

**CALPINE CORPORATION AND SUBSIDIARIES**  
**CONSOLIDATED BALANCE SHEETS**  
**December 31, 2004 and 2003**

	2004	2003
	(In thousands, except share and per share amounts)	
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 783,428	\$ 991,806
Accounts receivable, net of allowance of \$8,679 and \$7,614	1,097,157	988,947
Margin deposits and other prepaid expense	452,432	385,348
Inventories	179,395	137,740
Restricted cash	593,304	383,788
Current derivative assets	324,206	496,967
Current assets held for sale	—	2,565
Other current assets	133,643	89,593
Total current assets	3,563,565	3,476,754
Restricted cash, net of current portion	157,868	575,027
Notes receivable, net of current portion	203,680	213,629
Project development costs	150,179	139,953
Investments in power projects and oil and gas properties	374,032	444,150
Deferred financing costs	422,606	400,732
Prepaid lease, net of current portion	424,586	414,058
Property, plant and equipment, net	20,636,394	19,478,650
Goodwill	45,160	45,160
Other intangible assets, net	73,190	89,924
Long-term derivative assets	506,050	673,979
Long-term assets held for sale	—	743,149
Other assets	658,778	608,767
Total assets	\$ 27,216,088	\$ 27,303,932
<b>LIABILITIES &amp; STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Accounts payable	\$ 1,014,350	\$ 938,644
Accrued payroll and related expense	88,719	96,693
Accrued interest payable	385,794	321,176
Income taxes payable	82,958	18,026
Notes payable and borrowings under lines of credit, current portion	204,775	254,292
Preferred interests, current portion	8,641	11,220
CCFC I financing, current portion	3,208	3,208
Capital lease obligation, current portion	5,490	4,008
Construction/project financing, current portion	93,393	61,900
Senior notes and term loans, current portion	718,449	14,500
Current derivative liabilities	364,965	456,688
Current liabilities held for sale	—	221
Other current liabilities	314,650	334,827
Total current liabilities	3,285,392	2,515,403
Notes payable and borrowings under lines of credit, net of current portion	769,490	873,571
Notes payable to Calpine Capital Trusts	517,500	1,153,500
Preferred interests, net of current portion	497,896	232,412
Capital lease obligation, net of current portion	283,429	193,741
CCFC I financing, net of current portion	783,542	785,781
CalGen/ CCFC II financing	2,395,332	2,200,358
Construction/project financing, net of current portion	1,905,658	1,209,506
Convertible Senior Notes Due 2006	1,326	660,059
Convertible Senior Notes Due 2014	620,197	—
Convertible Senior Notes Due 2023	633,775	650,000
Senior notes, net of current portion	8,532,664	9,369,253
Deferred income taxes, net of current portion	1,021,739	1,310,335
Deferred lease incentive	—	50,228
Deferred revenue	114,202	116,001
Long-term derivative liabilities	526,598	692,088
Long-term liabilities held for sale	—	17,828
Other liabilities	346,230	241,723
Total liabilities	22,234,970	22,271,787
Commitments and contingencies (see Note 25)		
Minority interests	393,445	410,892
Stockholders' equity:		
Preferred stock, \$.001 par value per share; authorized 10,000,000 shares; none issued and outstanding in 2004 and 2003	—	—
Common stock, \$.001 par value per share; authorized 2,000,000,000 shares in 2003; issued and outstanding 536,509,231 shares in 2004 and 415,010,125 shares in 2003	537	415
Additional paid-in capital	3,151,577	2,995,735
Additional paid-in capital, loaned shares	258,100	—
Additional paid-in capital, returnable shares	(258,100)	—
Retained earnings	1,326,048	1,568,509
Accumulated other comprehensive income	109,511	56,594
Total stockholders' equity	4,587,673	4,621,253
Total liabilities and stockholders' equity	\$ 27,216,088	\$ 27,303,932

The accompanying notes are an integral part of these consolidated financial statements.

**CALPINE CORPORATION AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**

	<b>For the Years Ended</b>		
	<b>December 31,</b>		
	<b>2004</b>	<b>2003</b>	<b>2002</b>
	<b>(In thousands, except per share amounts)</b>		
Revenue:			
Electric generation and marketing revenue			
Electricity and steam revenue	\$ 5,683,063	\$ 4,680,397	\$ 3,237,510
Transmission sales revenue	20,003	15,347	—
Sales of purchased power for hedging and optimization	1,651,767	2,714,187	3,145,991
Total electric generation and marketing revenue	7,354,833	7,409,931	6,383,501
Oil and gas production and marketing revenue			
Oil and gas sales	63,153	59,156	63,514
Sales of purchased gas for hedging and optimization	1,728,301	1,320,902	870,466
Total oil and gas production and marketing revenue	1,791,454	1,380,058	933,980
Mark-to-market activities, net	13,532	(26,439)	21,485
Other revenue	70,069	107,483	10,787
Total revenue	9,229,888	8,871,033	7,349,753
Cost of revenue:			
Electric generation and marketing expense			
Plant operating expense	795,975	663,045	522,906
Royalty expense	28,673	24,932	17,615
Transmission purchase expense	85,514	46,455	25,486
Purchased power expense for hedging and optimization	1,487,020	2,690,069	2,618,445
Total electric generation and marketing expense	2,397,182	3,424,501	3,184,452
Oil and gas operating and marketing expense			
Oil and gas operating expense	56,843	75,453	69,840
Purchased gas expense for hedging and optimization	1,716,714	1,279,568	821,065
Total oil and gas operating and marketing expense	1,773,557	1,355,021	890,905
Fuel expense	3,731,108	2,665,620	1,792,323
Depreciation, depletion and amortization expense	574,200	504,383	398,889
Oil and gas impairment	202,120	2,931	3,399
Operating lease expense	105,886	112,070	111,022
Other cost of revenue	90,742	42,270	7,279
Total cost of revenue	8,874,795	8,106,796	6,388,269
Gross profit	355,093	764,237	961,484
(Income) loss from unconsolidated investments in power projects and oil and gas properties	13,525	(75,804)	(16,552)
Equipment cancellation and impairment cost	42,374	64,384	404,737
Long-term service agreement cancellation charge	11,334	16,355	—
Project development expense	24,409	21,803	66,981
Research and development expense	18,396	10,630	9,986
Sales, general and administrative expense	239,347	216,471	186,056
Income from operations	5,708	510,398	310,276
Interest expense	1,140,802	706,307	402,677
Distributions on trust preferred securities	—	46,610	62,632
Interest (income)	(56,412)	(39,716)	(43,086)
Minority interest expense	34,735	27,330	2,716
(Income) from repurchase of various issuances of debt	(246,949)	(278,612)	(118,020)
Other (income), net	(149,093)	(46,126)	(34,200)
Income (loss) before provision (benefit) for income taxes	(717,375)	94,605	37,557
Provision (benefit) for income taxes	(276,549)	8,495	10,835
Income (loss) before discontinued operations and cumulative effect of a change in accounting principle	(440,826)	86,110	26,722
Discontinued operations, net of tax provision (benefit) of \$50,095, \$(14,416) and \$17,104	198,365	14,969	91,896
Cumulative effect of a change in accounting principle, net of tax provision of \$ —, \$110,913, and \$ —	—	180,943	—
Net income (loss)	\$ (242,461)	\$ 282,022	\$ 118,618
Basic earnings per common share:			
Weighted average shares of common stock outstanding	430,775	390,772	354,822
Income (loss) before discontinued operations and cumulative effect of a change in accounting principle	\$ (1.02)	\$ 0.22	\$ 0.07
Discontinued operations, net of tax	\$ 0.46	\$ 0.04	\$ 0.26
Cumulative effect of a change in accounting principle, net of tax	\$ —	\$ 0.46	\$ —
Net income (loss)	\$ (0.56)	\$ 0.72	\$ 0.33
Diluted earnings per common share:			
Weighted average shares of common stock outstanding before dilutive effect of certain convertible securities	430,775	396,219	362,533
Income (loss) before dilutive effect of certain convertible securities, discontinued operations and cumulative effect of a change in accounting principle	\$ (1.02)	\$ 0.22	\$ 0.07
Dilutive effect of certain convertible securities(1)	\$ —	\$ —	\$ —
Income (loss) before discontinued operations and cumulative effect of a change in accounting principle	\$ (1.02)	\$ 0.22	\$ 0.07
Discontinued operations, net of tax	\$ 0.46	\$ 0.04	\$ 0.26
Cumulative effect of a change in accounting principle, net of tax	\$ —	\$ 0.45	\$ —
Net income(loss)	\$ (0.56)	\$ 0.71	\$ 0.33

(1) See Note 24 of the Notes to Consolidated Financial Statements for further information.

The accompanying notes are an integral part of these consolidated financial statements.

**CALPINE CORPORATION AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY**  
**For the Years Ended December 31, 2004, 2003, and 2002**

	Common Stock	Additional Paid-In Capital	Retained Earnings	Accumulated Other Comprehensive Income (Loss)	Total Stockholders' Equity	Comprehensive Income (Loss)
	(In thousands, except share amounts)					
Balance, January 1, 2002	\$ 307	\$ 2,040,833	\$ 1,167,869	\$ (240,880)	\$ 2,968,129	
Issuance of 73,757,381 shares of common stock, net of issuance costs	74	751,721		—	751,795	
Tax benefit from stock options exercised and other	—	9,949			9,949	
Comprehensive income:						
Net income	—	—	118,618	—	118,618	\$ 118,618
Other comprehensive income				3,423	3,423	3,423
Total comprehensive income	—	—	—			\$ 122,041
Balance, December 31, 2002	<u>381</u>	<u>2,802,503</u>	<u>1,286,487</u>	<u>(237,457)</u>	<u>3,851,914</u>	
Issuance of 34,194,063 shares of common stock, net of issuance costs	34	175,063	—	—	175,097	
Tax benefit from stock options exercised and other	—	2,097	—	—	2,097	
Stock compensation expense	—	16,072	—	—	16,072	
Comprehensive income:						
Net income	—	—	282,022	—	282,022	\$ 282,022
Other comprehensive income				294,051	294,051	294,051
Total comprehensive income	—	—	—	—	—	\$ 576,073
Balance, December 31, 2003	<u>\$ 415</u>	<u>\$ 2,995,735</u>	<u>\$ 1,568,509</u>	<u>\$ 56,594</u>	<u>\$ 4,621,253</u>	
Issuance of 32,499,106 shares of common stock, net of issuance costs	33	130,141	—	—	130,174	
Issuance of 89,000,000 shares of loaned common stock	89	258,100	—	—	258,189	
Returnable shares		(258,100)	—	—	(258,100)	
Tax benefit from stock options exercised and other	—	4,773	—	—	4,773	
Stock compensation expense		20,928			20,928	
Comprehensive loss:						
Net loss	—	—	(242,461)	—	(242,461)	\$ (242,461)
Other comprehensive income				52,917	52,917	52,917
Total comprehensive loss	—	—	—	—	—	\$ (189,544)
Balance, December 31, 2004	<u>\$ 537</u>	<u>\$ 3,151,577</u>	<u>\$ 1,326,048</u>	<u>\$ 109,511</u>	<u>\$ 4,587,673</u>	

The accompanying notes are an integral part of these consolidated financial statements.

**CALPINE CORPORATION AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
**For the Years Ended December 31, 2004, 2003, and 2002**

	<u>2004</u>	<u>2003</u>	<u>2002</u>
		(In thousands)	
Cash flows from operating activities:			
Net income (loss)	\$ (242,461)	\$ 282,022	\$ 118,618
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation, depletion and amortization(1)	833,375	732,410	538,777
Oil and gas impairment	202,120	2,931	3,399
Equipment cancellation and asset impairment cost	42,374	53,058	404,737
Development cost write off	—	3,400	56,427
Deferred income taxes, net	(226,454)	150,323	23,206
Gain on sale of assets	(349,611)	(65,351)	(97,377)
Foreign currency transaction loss (gain)	25,122	33,346	(986)
Cumulative change in accounting principle	—	(180,943)	—
Income from repurchase of various issuances of debt	(246,949)	(278,612)	(118,020)
Minority interests	34,735	27,330	2,716
Change in net derivative liability	14,743	59,490	(340,851)
(Income) loss from unconsolidated investments in power projects and oil and gas properties	9,717	(76,704)	(16,490)
Distributions from unconsolidated investments in power projects and oil and gas properties	29,869	141,627	14,117
Stock compensation expense	20,929	16,072	—
Change in operating assets and liabilities, net of effects of acquisitions:			
Accounts receivable	(99,447)	(221,243)	229,187
Other current assets	(118,790)	(160,672)	405,515
Other assets	(95,699)	(143,654)	(305,908)
Accounts payable and accrued expense	231,827	(111,901)	(48,804)
Other liabilities	(55,505)	27,630	200,203
Net cash provided by operating activities	<u>9,895</u>	<u>290,559</u>	<u>1,068,466</u>
Cash flows from investing activities:			
Purchases of property, plant and equipment	(1,545,480)	(1,886,013)	(4,036,254)
Disposals of property, plant and equipment	1,066,481	206,804	400,349
Disposal of subsidiary	85,412	—	—
Acquisitions, net of cash acquired	(187,786)	(6,818)	—
Advances to joint ventures	(8,788)	(54,024)	(68,088)
Sale of collateral securities	93,963	—	—
Project development costs	(29,308)	(35,778)	(105,182)
Redemption of HIGH TIDES	(110,592)	—	—
Cash flows from derivatives not designated as hedges	16,499	42,342	26,091
(Increase) decrease in restricted cash	210,762	(766,841)	(73,848)
(Increase) decrease in notes receivable	10,235	(21,135)	8,926
Other	(2,824)	6,098	10,179
Net cash used in investing activities	<u>(401,426)</u>	<u>(2,515,365)</u>	<u>(3,837,827)</u>
Cash flows from financing activities:			
Repurchase of Zero-Coupon Convertible Debentures Due 2021	—	—	(869,736)
Borrowings from notes payable and lines of credit	101,781	1,672,871	1,348,798
Repayments of notes payable and lines of credit	(353,236)	(1,769,072)	(126,404)
Borrowings from project financing	3,743,930	1,548,601	725,111
Repayments of project financing	(3,006,374)	(1,638,519)	(286,293)
Proceeds from issuance of Convertible Senior Notes	867,504	650,000	100,000
Repurchases of Convertible Senior Notes Due 2006	(834,765)	(455,447)	—
Repurchases of senior notes	(871,309)	(1,139,812)	—
Proceeds from issuance of senior notes	878,814	3,892,040	—
Proceeds from preferred interests	360,000	—	—
Repayment of HIGH TIDES	(483,500)	—	—
Proceeds from issuance of common stock	98	15,951	751,795
Proceeds from income trust offerings	—	159,727	169,677
Financing costs	(204,139)	(323,167)	(42,783)
Other	(31,752)	10,813	(12,769)
Net cash provided by financing activities	<u>167,052</u>	<u>2,623,986</u>	<u>1,757,396</u>
Effect of exchange rate changes on cash and cash equivalents	16,101	13,140	(2,693)
Net increase (decrease) in cash and cash equivalents	(208,378)	412,320	(1,014,658)
Cash and cash equivalents, beginning of period	991,806	579,486	1,594,144
Cash and cash equivalents, end of period	<u>\$ 783,428</u>	<u>\$ 991,806</u>	<u>\$ 579,486</u>
Cash paid during the period for:			
Interest, net of amounts capitalized	\$ 939,243	\$ 462,714	\$ 325,334
Income taxes	\$ 22,877	\$ 18,415	\$ 15,451

(1) Includes depreciation and amortization that is also recorded in sales, general and administrative expense and interest expense.

Schedule of non cash investing and financing activities:

- 2004 issuance of 24.3 million shares of common stock in exchange for \$40.0 million par value of HIGH TIDES I and \$75.0 million par value of HIGH TIDES II
- 2004 capital lease entered into for the King City facility for an initial asset balance of \$114.9 million
- 2004 issuance of 89 million shares of Calpine common stock pursuant to a Share Lending Agreement. See Note 17 for more information regarding the 89 million shares issued
- 2004 acquired the remaining 50% interest in the Aries Power Plant for \$3.7 million cash and \$220.0 million of assumed liabilities, including debt of \$173.2 million
- 2003 issuance of 30 million shares of common stock in exchange for \$182.5 million of debt, convertible debt and preferred securities
- 2002 non-cash consideration of \$88.4 million in tendered Company debt received upon the sale of its British Columbia oil and gas properties

The accompanying notes are an integral part of these consolidated financial statements.

**CALPINE CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**For the Years Ended December 31, 2004, 2003, and 2002**

**1. Organization and Operations of the Company**

Calpine Corporation, a Delaware corporation, and subsidiaries (collectively, “Calpine” or the “Company”) are engaged in the generation of electricity in the United States of America, Canada, and the United Kingdom. The Company is involved in the development, construction, ownership and operation of power generation facilities and the sale of electricity and its by-product, thermal energy, primarily in the form of steam. The Company has ownership interests in, and operates, gas-fired power generation and cogeneration facilities, gas fields, gathering systems and gas pipelines, geothermal steam fields and geothermal power generation facilities in the United States of America. In Canada, the Company has ownership interests in, and operates, gas-fired power generation facilities. In Mexico, Calpine is a joint venture participant in a gas-fired power generation facility under construction. In the United Kingdom, the Company owns and operates a gas-fired power cogeneration facility. The Company markets electricity produced by its generating facilities to utilities and other third party purchasers. Thermal energy produced by the gas-fired power cogeneration facilities is primarily sold to industrial users. Gas produced, and not physically delivered to the Company’s generating plants, is sold to third parties. The Company offers to third parties energy procurement, liquidation and risk management services, combustion turbine component parts and repair and maintenance services world-wide. The Company also provides engineering, procurement, construction management, commissioning and operations and maintenance (“O&M”) services.

**2. Summary of Significant Accounting Policies**

*Principles of Consolidation* — The accompanying consolidated financial statements include accounts of the Company and its wholly owned and majority-owned subsidiaries. The Company adopted Financial Accounting Standards Board (“FASB”) Interpretation No. (“FIN”) 46, “Consolidation of Variable Interest Entities, an interpretation of ARB 51” (“FIN 46”) for its investments in special purpose entities as of December 31, 2003. These consolidated financial statements as of December 31, 2004 and 2003, and for the twelve months ended December 31, 2004, also include the accounts of those special purpose Variable Interest Entities (“VIE”) for which the Company is the Primary Beneficiary. The Company adopted FIN 46, as revised (“FIN 46-R”) for its investments in non-special purpose VIEs on March 31, 2004. These consolidated financial statements as of December 31, 2004 and for the nine months ended December 31, 2004 include the accounts of non-special purpose VIEs for which the Company is the Primary Beneficiary. Certain less-than-majority-owned subsidiaries are accounted for using the equity method or cost method. For equity method investments, the Company’s share of income is calculated according to the Company’s equity ownership or according to the terms of the appropriate partnership agreement (see Note 7). For cost method investments, income is recognized when equity distributions are received. All intercompany accounts and transactions are eliminated in consolidation.

*Unrestricted Subsidiaries* — The information in this paragraph is required to be provided under the terms of the indentures and credit agreement governing the various tranches of the Company’s second-priority secured indebtedness (collectively, the “Second Priority Secured Debt Instruments”). The Company has designated certain of its subsidiaries as “unrestricted subsidiaries” under the Second Priority Secured Debt Instruments. A subsidiary with “unrestricted” status thereunder generally is not required to comply with the covenants contained therein that are applicable to “restricted subsidiaries.” The Company has designated Calpine Gilroy 1, Inc., Calpine Gilroy 2, Inc. and Calpine Gilroy Cogen, L.P. as “unrestricted subsidiaries” for purposes of the Second Priority Secured Debt Instruments.

*Reclassifications* — Certain prior years’ amounts in the consolidated financial statements have been reclassified to conform to the 2004 presentation. These include a reclassification between sales, general and administrative expense (“SG&A”) and plant operating expense for information technology and stock compensation costs and reclassifications to begin separately disclosing: (1) research and development expense

CALPINE CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

(formerly in SG&A), (2) transmission sales revenue (formerly in electricity and steam revenue), (3) oil and gas impairment (formerly in depreciation, depletion and amortization expense) and (4) transmission purchase expense (formerly in plant operating expense).

As a result of current year dispositions, certain prior year amounts have been reclassified to conform with discontinued operations presentation. See Note 10.

*Use of Estimates in Preparation of Financial Statements* — The preparation of financial statements in conformity with generally accepted accounting principles in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expense during the reporting period. Actual results could differ from those estimates. The most significant estimates with regard to these financial statements relate to useful lives and carrying values of assets (including the carrying value of projects in development, construction, and operation), provision for income taxes, fair value calculations of derivative instruments and associated reserves, capitalization of interest, primary beneficiary determination for the Company's investments in VIEs, the outcome of pending litigation and estimates of oil and gas reserve quantities used to calculate depletion, depreciation and impairment of oil and gas property and equipment.

*Foreign Currency Translation* — Through its international operations, the Company owns subsidiary entities in several countries. These entities generally have functional currencies other than the U.S. dollar; in most cases, the functional currency is consistent with the local currency of the host country where the particular entity is located. In accordance with FASB Statement of Financial Accounting Standards ("SFAS") No. 52, "Foreign Currency Translation," ("SFAS No. 52") the Company translates the financial statements of its foreign subsidiaries from their respective functional currencies into the U.S. dollar, which represents the Company's reporting currency.

Assets and liabilities held by the foreign subsidiaries are translated into U.S. dollars using exchange rates in effect at the balance sheet date. Certain long-term assets (such as the investment in a subsidiary company) as well as equity accounts are translated into U.S. dollars using historical exchange rates at the date the specific transaction occurred which created the asset or equity balance (such as the date of the initial investment in the subsidiary). Income and expense accounts are translated into U.S. dollars using average exchange rates during the reporting period. All translation gains and losses that result from translating the financial statements of the Company's foreign subsidiaries from their respective functional currencies into the U.S. dollar reporting currency are recognized within the Cumulative Translation Adjustment ("CTA") account, which is a component of Other Comprehensive Income ("OCI") within Stockholders' Equity.

In certain cases, the Company and its foreign subsidiary entities hold monetary assets and/or liabilities that are not denominated in the functional currencies referred to above. In such instances, the Company applies the provisions of SFAS No. 52 to account for the monthly re-measurement gains and losses of these assets and liabilities into the functional currencies for each entity.

For foreign currency transactions designated as economic hedges of a net investment in a foreign entity and for intercompany foreign currency transactions which are of a long-term investment nature, the Company records the re-measurement gains and losses through the CTA account, in accordance with Paragraph 20 of SFAS No. 52.

All other foreign currency transactions that do not qualify for the Paragraph 20 exclusion are re-measured at the end of each month into the proper functional currency, and the gains and losses resulting from such re-measurement are recorded within net income, in accordance with Paragraph 15 of SFAS No. 52.

For the years ended December 31, 2004, 2003 and 2002, the Company recognized foreign currency transaction losses from continuing operations of \$25.1 million, \$33.3 million and \$1.0 million, respectively,

## CALPINE CORPORATION AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

which were recorded within Other Income on the Company's Consolidated Statements of Operations. Additionally, the Company settled a series of forward foreign exchange contracts associated with the sale of its Canadian oil and gas assets in 2004. See Note 10 for further discussion or the settlement of these contracts within discontinued operations. Subsequent to December 31, 2004, the Company was exposed to significant exchange rate movements between the Canadian dollar and the U.S. dollar due to several large intercompany transactions between Calpine's U.S. and Canadian subsidiaries. Subsequent to December 31, 2004, the U.S. dollar strengthened considerably against the Canadian dollar and the Company recognized re-measurement gains on these transactions of approximately \$24.0 million; however, these gains could reverse based on future exchange rate movements.

*Fair Value of Financial Instruments* — The carrying value of accounts receivable, marketable securities, accounts payable and other payables approximate their respective fair values due to their short maturities. See Note 18 for disclosures regarding the fair value of the senior notes.

*Cash and Cash Equivalents* — The Company considers all highly liquid investments with an original maturity of three months or less to be cash equivalents. The carrying amount of these instruments approximates fair value because of their short maturity.

The Company has certain project debt and lease agreements that establish working capital accounts which limit the use of certain cash balances to the operations of the respective plants. At December 31, 2004 and 2003, \$284.4 million and \$392.3 million, respectively, of the cash and cash equivalents balance was subject to such project debt and lease agreements.

*Accounts Receivable and Accounts Payable* — Accounts receivable and payable represent amounts due from customers and owed to vendors. Accounts receivable are recorded at invoiced amounts, net of reserves and allowances and do not bear interest. Reserve and allowance accounts represent the Company's best estimate of the amount of probable credit losses in the Company's existing accounts receivable. The Company reviews the financial condition of customers prior to granting credit. The Company determines the allowance based on a variety of factors, including the length of time receivables are past due, economic trends and conditions affecting its customer base, significant one-time events and historical write off experience. Also, specific provisions are recorded for individual receivables when the Company becomes aware of a customer's inability to meet its financial obligations, such as in the case of bankruptcy filings or deterioration in the customer's operating results or financial position. The Company reviews the adequacy of its reserves and allowances quarterly. Generally, past due balances over 90 days and over a specified amount are individually reviewed for collectibility. Account balances are charged off against the allowance after all means of collection have been exhausted and the potential for recovery is considered remote.

The accounts receivable and payable balances also include settled but unpaid amounts relating to hedging, balancing, optimization and trading activities of Calpine Energy Services, L.P. ("CES"). Some of these receivables and payables with individual counterparties are subject to master netting agreements whereby the Company legally has a right of offset and the Company settles the balances net. However, for balance sheet presentation purposes and to be consistent with the way the Company presents the majority of amounts related to hedging, balancing and optimization activities in its consolidated statements of operations under Staff Accounting Bulletin ("SAB") No. 101 "Revenue Recognition in Financial Statements," as amended by SAB No. 104 "Revenue Recognition" (collectively "SAB No. 101"), and Emerging Issues Task Force ("EITF") Issue No. 99-19 "Reporting Revenue Gross as a Principal Versus Net as an Agent," ("EITF Issue No. 99-19") the Company presents its receivables and payables on a gross basis. CES receivable balances (which comprise the majority of the accounts receivable balance at December 31, 2004) greater than 30 days past due are individually reviewed for collectibility, and if deemed uncollectible, are charged off against the allowance accounts or reversed out of revenue after all means of collection have been exhausted and the potential for recovery is considered remote. The Company does not have any off-balance-sheet credit exposure related to its customers.

**CALPINE CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

*Inventories* — The Company's inventories primarily include spare parts, stored gas and oil as well as work-in-process. Inventories are valued at the lower of cost or market. The cost for spare parts as well as stored gas and oil is generally determined using the weighted average cost method. Work-in-process is generally determined using the specific identification method and represents the value of manufactured goods during the manufacturing process. The inventory balance at December 31, 2004, was \$179.4 million. This balance is comprised of \$117.1 million of spare parts, \$53.2 million of stored gas and oil as well as \$9.1 million of work-in-process. The inventory balance at December 31, 2003, was \$137.7 million. This balance is comprised of \$88.3 million of spare parts, \$43.5 million of stored gas and oil as well as \$5.9 million of work-in-process.

*Margin Deposits* — As of December 31, 2004 and 2003, as credit support for the gas and power procurement and risk management activities conducted on the Company's behalf, CES had deposited net amounts of \$248.9 million and \$188.0 million, respectively, in cash as margin deposits.

*Available-for-Sale Debt Securities* — See Note 3 for a discussion of the Company's accounting policy for its available-for-sale debt securities.

*Property, Plant and Equipment, Net* — See Note 4 for a discussion of the Company's accounting policies for its property, plant and equipment.

*Project Development Costs* — The Company capitalizes project development costs once it is determined that it is highly probable that such costs will be realized through the ultimate construction of a power plant. These costs include professional services, salaries, permits, capitalized interest, and other costs directly related to the development of a new project. Upon commencement of construction, these costs are transferred to construction in progress ("CIP"), a component of property, plant and equipment. Upon the start-up of plant operations, these construction costs are reclassified as buildings, machinery and equipment, also a component of property, plant and equipment, and are depreciated as a component of the total cost of the plant over its estimated useful life. Capitalized project costs are charged to expense if the Company determines that the project is no longer probable or to the extent it is impaired. Outside services and other third party costs are capitalized for acquisition projects.

*Investments in Power Projects and Oil and Gas Properties* — See Note 7 for a discussion of the Company's accounting policies for its investments in power projects and oil and gas properties. In November 2004 one of the Company's equity method investees filed for protection under Chapter 11 of the U.S. Bankruptcy code. As a result of this legal proceeding, the Company has lost significant influence and control of the project. Consequently, as of December 31, 2004, the Company no longer accounts for this investment using the equity method but instead uses the cost method. See Note 7 for a discussion of this event.

*Restricted Cash* — The Company is required to maintain cash balances that are restricted by provisions of its debt agreements, lease agreements and regulatory agencies. These amounts are held by depository banks in order to comply with the contractual provisions requiring reserves for payments such as for debt service, rent service, major maintenance and debt repurchases. Funds that can be used to satisfy obligations due during the next twelve months are classified as current restricted cash, with the remainder classified as non-current restricted cash. Restricted cash is generally invested in accounts earning market rates; therefore the carrying value approximates fair value. Such cash is excluded from cash and cash equivalents in the consolidated statements of cash flows.

As part of a prior business acquisition which included certain facilities subject to a pre-existing operating lease, the Company acquired certain restricted cash balances comprised of a portfolio of debt securities. This portfolio is classified as held-to-maturity because the Company has the intent and ability to hold the securities to maturity. The securities are held in escrow accounts to support operating activities of the leased facilities and consist of a \$17.0 million debt security maturing in 2015 and a \$7.4 million debt security maturing in

**CALPINE CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

2023. This portfolio is stated at amortized cost, adjusted for amortization of premiums and accretion discounts to maturity.

Of the Company's restricted cash at December 31, 2004, \$276.0 million relates to the assets of the following entities, each an entity with its existence separate from the Company and other subsidiaries of the Company.

<b>Bankruptcy-Remote Subsidiary</b>	<b>2004</b>
Power Contracting Finance, LLC	\$ 175.6
Gilroy Energy Center, LLC	53.5
Rocky Mountain Energy Center, LLC	18.1
Riverside Energy Center, LLC	7.1
Calpine Energy Management, L.P.	6.9
Calpine King City Cogen, LLC	6.7
Calpine Northbrook Energy Marketing, LLC	6.0
Power Contracting Finance III, LLC	1.5
Creed Energy Center, LLC	0.3
Goose Haven Energy Center, LLC	0.3

*Notes Receivable* — See Note 8 for a discussion of the Company's accounting policies for its notes receivable.

*Preferred Interests* — As outlined in SFAS No. 150, "Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity," ("SFAS No. 150") the Company classifies preferred interests that embody obligations to transfer cash to the preferred interest holder, in short-term and long-term debt. These instruments require the Company to make priority distributions of available cash, as defined in each preferred interest agreement, representing a return of the preferred interest holder's investment over a fixed period of time and at a specified rate of return in priority to certain other distributions to equity holders. The return on investment is recorded as interest expense under the interest method over the term of the priority period. See Note 12 for a further discussion of the Company's accounting policies for its preferred interests.

*Deferred Financing Costs* — See Note 11 for a discussion of the Company's accounting policies for deferred financing costs.

*Goodwill and Other Intangible Assets* — See Note 5 for a discussion of the Company's accounting for goodwill and other intangible assets.

*Long-Lived Assets* — In accordance with SFAS No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets," ("SFAS No. 144") the Company evaluates the impairment of long-lived assets, including construction and development projects, based on the projection of undiscounted pre-interest expense and pre-tax expense cash flows whenever events or changes in circumstances indicate that the carrying amounts of such assets may not be recoverable. The significant assumptions that the Company uses in its undiscounted future cash flow estimates include the future supply and demand relationships for electricity and natural gas, the expected pricing for those commodities and the resultant spark spreads in the various regions where the Company generates, and external oil and gas year-end reserve reports prepared by licensed independent petroleum engineering firms. In the event such cash flows are not expected to be sufficient to recover the recorded value of the assets, the assets are written down to their estimated fair values. See Note 4 for more information on the impairment charges recorded for oil and gas properties. Certain of the Company's generating assets are located in regions with depressed demands and market spark spreads. The Company's forecasts assume that spark spreads will increase in future years in these regions as the supply and demand relationships improve.

**CALPINE CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

*Concentrations of Credit Risk* — Financial instruments which potentially subject the Company to concentrations of credit risk consist primarily of cash, accounts receivable, notes receivable, and commodity contracts. The Company's cash accounts are generally held in FDIC insured banks. The Company's accounts and notes receivable are concentrated within entities engaged in the energy industry, mainly within the United States (see Notes 8 and 22). The Company generally does not require collateral for accounts receivable from end-user customers, but evaluates the net accounts receivable, accounts payable, and fair value of commodity contracts with trading companies and may require security deposits or letters of credit to be posted if exposure reaches a certain level.

*Deferred Revenue* — The Company's deferred revenue consists primarily of deferred gains related to certain sale/leaseback transactions as well as deferred revenue for long-term power supply contracts including contracts accounted for as operating leases.

*Trust Preferred Securities* — Prior to the adoption of FIN 46, as originally issued, for special purpose VIEs on October 1, 2003, the Company's trust preferred securities were accounted for as a minority interest in the balance sheet and reflected as "Company-obligated mandatorily redeemable convertible preferred securities of subsidiary trusts." The distributions were reflected in the Consolidated Statements of Operations as "distributions on trust preferred securities" through September 30, 2003. Financing costs related to these issuances are netted with the principal amounts and were accreted as minority interest expense over the securities' 30-year maturity using the straight-line method which approximated the effective interest rate method. Upon the adoption of FIN 46, the Company deconsolidated the Calpine Capital Trusts. Consequently, the Trust Preferred Securities are no longer on the Company's Consolidated Balance Sheet and were replaced with the debentures issued by the Company to the Calpine Capital Trusts. Due to the relationship with the Calpine Capital Trusts, the Company considers Calpine Capital Trust ("Trust I"), Calpine Capital Trust II ("Trust II") and Calpine Capital Trust III ("Trust III") to be related parties. The interest payments on the debentures are now reflected in the Consolidated Statements of Operations as "interest expense." See Note 12 for further information.

*Revenue Recognition* — The Company is primarily an electric generation company with consolidated revenues being earned from operating a portfolio of mostly wholly owned plants. Equity investment income is also earned from plants in which our ownership interest is 50% or less or the Company is not the Primary Beneficiary under FIN 46-R, and which are accounted for under the equity method. In conjunction with its electric generation business, the Company also produces, as a by-product, thermal energy for sale to customers, principally steam hosts at the Company's cogeneration sites. In addition, the Company acquires and produces natural gas for its own consumption and sells the balance and oil produced to third parties. Where applicable, revenues are recognized under EITF Issue No. 91-06, "Revenue Recognition of Long Term Power Sales Contracts," ("EITF Issue No. 91-06") ratably over the terms of the related contracts. To protect and enhance the profit potential of its electric generation plants, the Company, through its subsidiary, CES, enters into electric and gas hedging, balancing, and optimization transactions, subject to market conditions, and CES has also, from time to time, entered into contracts considered energy trading contracts under EITF Issue No. 02-03, "Issues Related to Accounting for Contracts Involved in Energy Trading and Risk Management" ("EITF Issue No. 02-03"). CES executes these transactions primarily through the use of physical forward commodity purchases and sales and financial commodity swaps and options. With respect to its physical forward contracts, CES generally acts as a principal, takes title to the commodities, and assumes the risks and rewards of ownership. Therefore, when CES does not hold these contracts for trading purposes and, in accordance with SAB No. 101, and EITF Issue No. 99-19, the Company records settlement of the majority of its non-trading physical forward contracts on a gross basis.

The Company, through its wholly owned subsidiary, Power Systems MFG., LLC ("PSM"), designs and manufactures certain spare parts for gas turbines. The Company in the past has also generated revenue by occasionally loaning funds to power projects, and currently provides O&M services to third parties and to

CALPINE CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

certain unconsolidated power projects. The Company also sells engineering and construction services to third parties for power projects. Further details of the Company's revenue recognition policy for each type of revenue transaction are provided below:

*Accounting for Commodity Contracts*

Commodity contracts are evaluated to determine whether the contract is (1) accounted for as a lease (2) accounted for as a derivative (3) or accounted for as an executory contract and additionally whether the financial statement presentation is gross or net.

*Leases* — Commodity contracts are evaluated for lease accounting in accordance with SFAS No. 13, "Accounting for Leases," ("SFAS No. 13") and EITF Issue No. 01-08, "Determining Whether an Arrangement Contains a Lease," (EITF Issue No. 01-08). EITF Issue No. 01-08 clarifies the requirements of identifying whether an arrangement should be accounted for as a lease at its inception. The guidance in the consensus is designed to broaden the scope of arrangements, such as power purchase agreements ("PPA"), accounted for as leases. EITF Issue No. 01-08 requires both parties to an arrangement to determine whether a service contract or similar arrangement is, or includes, a lease within the scope of SFAS No. 13. The consensus is being applied prospectively to arrangements agreed to, modified, or acquired in business combinations on or after July 1, 2003. Prior to adopting EITF Issue No. 01-08, the Company had accounted for certain contractual arrangements as leases under existing industry practices, and the adoption of EITF Issue No. 01-08 did not materially change the Company's accounting for leases. Under the guidance of SFAS No. 13, operating leases with minimum lease rentals which vary over time must be levelized over the term of the contract. The Company currently levelizes these contracts on a straight-line basis. See Note 22 for additional information on our operating leases. For income statement presentation purposes, income from PPAs accounted for as leases is classified within electricity and steam revenue in the Company's consolidated statements of operations.

*Derivative Instruments* — SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities" ("SFAS No. 133") as amended and interpreted by other related accounting literature, establishes accounting and reporting standards for derivative instruments (including certain derivative instruments embedded in other contracts). SFAS No. 133 requires companies to record derivatives on their balance sheets as either assets or liabilities measured at their fair value unless exempted from derivative treatment as a normal purchase and sale. All changes in the fair value of derivatives are recognized currently in earnings unless specific hedge criteria are met, which requires that a company must formally document, designate, and assess the effectiveness of transactions that receive hedge accounting.

Accounting for derivatives at fair value requires the Company to make estimates about future prices during periods for which price quotes are not available from sources external to the Company. As a result, the Company is required to rely on internally developed price estimates when external price quotes are unavailable. The Company derives its future price estimates, during periods where external price quotes are unavailable, based on an extrapolation of prices from periods where external price quotes are available. The Company performs this extrapolation using liquid and observable market prices and extending those prices to an internally generated long-term price forecast based on a generalized equilibrium model.

SFAS No. 133 sets forth the accounting requirements for cash flow and fair value hedges. SFAS No. 133 provides that the effective portion of the gain or loss on a derivative instrument designated and qualifying as a cash flow hedging instrument be reported as a component of OCI and be reclassified into earnings in the same period during which the hedged forecasted transaction affects earnings. The remaining gain or loss on the derivative instrument, if any, must be recognized currently in earnings. SFAS No. 133 provides that the changes in fair value of derivatives designated as fair value hedges and the corresponding changes in the fair value of the hedged risk attributable to a recognized asset, liability, or unrecognized firm commitment be recorded in earnings. If the fair value hedge is effective, the amounts recorded will offset in earnings.

**CALPINE CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

With respect to cash flow hedges, if the forecasted transaction is no longer probable of occurring, the associated gain or loss recorded in OCI is recognized currently. In the case of fair value hedges, if the underlying asset, liability or firm commitment being hedged is disposed of or otherwise terminated, the gain or loss associated with the underlying hedged item is recognized currently. If the hedging instrument is terminated prior to the occurrence of the hedged forecasted transaction for cash flow hedges, or prior to the settlement of the hedged asset, liability or firm commitment for fair value hedges, the gain or loss associated with the hedge instrument remains deferred.

Where the Company's derivative instruments are subject to the special transition adjustment for the estimated future economic benefits of these contracts upon adoption of Derivatives Implementation Group ("DIG") Issue No. C20, "Scope Exceptions: Interpretation of the Meaning of Not Clearly and Closely Related in Paragraph 10(b) regarding Contracts with a Price Adjustment Feature," ("DIG Issue No. C20") the Company will amortize the corresponding asset recorded upon adoption of DIG Issue No. C20 through a charge to earnings in future periods. Accordingly on October 1, 2003, the date the Company adopted DIG Issue No. C20, the Company recorded other current assets and other assets of approximately \$33.5 million and \$259.9 million, respectively, and a cumulative effect of a change in accounting principle of approximately \$181.9 million, net of \$111.5 million of tax. For all periods subsequent to October 1, 2003, the Company will account for the contracts as normal purchases and sales under the provisions of DIG Issue No. C20.

Mark-to-Market, net activity includes realized settlements of and unrealized mark-to-market gains and losses on both power and gas derivative instruments not designated as cash flow hedges, including those held for trading purposes. Gains and losses due to ineffectiveness on hedging instruments are also included in unrealized mark-to-market gains and losses. Trading activity is presented net in accordance with EITF Issue No. 02-03.

*Executory Contracts* — Where commodity contracts do not qualify as leases or derivatives, the contracts are classified as executory contracts. These contracts apply traditional accrual accounting unless the revenue must be levelized per EITF Issue No. 91-06. The Company currently accounts for one commodity contract under EITF Issue No. 91-06 which is levelized over the term of the agreement.

*Financial Statement Presentation* — Where the Company's derivative instruments are subject to a netting agreement and the criteria of FIN 39 "Offsetting of Amounts Related to Certain Contracts (An Interpretation of APB Opinion No. 10 and SFAS No. 105)" ("FIN 39") are met, the Company presents its derivative assets and liabilities on a net basis in its balance sheet. The Company has chosen this method of presentation because it is consistent with the way related mark-to-market gains and losses on derivatives are recorded in its Consolidated Statements of Operations and within OCI.

Presentation of revenue under EITF Issue No. 03-11 "Reporting Realized Gains and Losses on Derivative Instruments That Are Subject to SFAS No. 133 and Not 'Held for Trading Purposes' As Defined in EITF Issue No. 02-03: "Issues Involved in Accounting for Derivative Contracts Held for Trading Purposes and Contracts Involved in Energy Trading and Risk Management Activities" ("EITF Issue No. 03-11") — The Company accounts for certain of its power sales and purchases on a net basis under EITF Issue No. 03-11, which the Company adopted on a prospective basis on October 1, 2003. Transactions with either of the following characteristics are presented net in the Company's Consolidated Financial Statements: (1) transactions executed in a back-to-back buy and sale pair, primarily because of market protocols; and (2) physical power purchase and sale transactions where the Company's power schedulers net the physical flow of the power purchase against the physical flow of the power sale (or "book out" the physical power flows) as a matter of scheduling convenience to eliminate the need to schedule actual power delivery. These book out transactions may occur with the same counterparty or between different counterparties where the

## CALPINE CORPORATION AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

Company has equal but offsetting physical purchase and delivery commitments. In accordance with EITF Issue No. 03-11, the Company netted the following amounts (in thousands):

	Year Ended December 31,	
	2004	2003
Sales of purchased power for hedging and optimization	\$ 1,676,003	\$ 256,573
Purchased power expense for hedging and optimization	\$ 1,676,003	\$ 265,573

*Electric Generation and Marketing Revenue* — This includes electricity and steam sales, transmission sales revenue and sales of purchased power for hedging, balancing and optimization. Subject to market and other conditions, the Company manages the revenue stream for its portfolio of electric generating facilities. The Company markets on a system basis both power generated by its plants in excess of amounts under direct contract between the plant and a third party, and power purchased from third parties, through hedging, balancing and optimization transactions. The Company also, from time-to-time, sells excess transmission capacity. CES performs a market-based allocation of electric generation and marketing revenue to electricity and steam sales (based on electricity delivered by the Company's electric generating facilities) and to sales of purchased power.

*Oil and Gas Production and Marketing Revenue* — This includes sales to third parties of oil, gas and related products that are produced by the Company's Calpine Natural Gas and Calpine Canada Natural Gas subsidiaries and, subject to market and other conditions, sales of purchased gas arising from hedging, balancing and optimization transactions. Oil and gas sales for produced products are recognized pursuant to the sales method, net of royalties. If the Company has recorded gas sales on a particular well or field in excess of its share of remaining estimated reserves, then the excessive gas sale imbalance is recognized as a liability. If the Company is under-produced on a particular well or field, and it is determined that an over-produced partner's share of remaining reserves is insufficient to settle the gas imbalance, the Company will recognize a receivable, to the extent collectible, from the over-produced partner.

*Other Revenue* — This includes O&M contract revenue, PSM and Thomassen Turbine Systems B.V. ("TTS") revenue from sales to third parties, engineering and construction revenue and miscellaneous revenue.

*Plant Operating Expense* — This primarily includes employee expenses, repairs and maintenance, insurance, and property taxes.

*Purchased Power and Purchased Gas Expense* — The cost of power purchased from third parties for hedging, balancing and optimization activities is recorded as purchased power expense, a component of electric generation and marketing expense. The Company records the cost of gas purchased from third parties for the purposes of consumption in its power plants as fuel expense, while gas purchased from third parties for hedging, balancing, and optimization activities is recorded as purchased gas expense for hedging and optimization, a component of oil and gas production and marketing expense. Certain hedging, balancing and optimization activity is presented net in accordance with EITF Issue No. 03-11. See discussion above.

*Research and Development Expense* — The Company engages in research and development ("R&D") activities through PSM. R&D activities related to the design and manufacturing of high performance combustion system and turbine blade parts are accounted for in accordance with SFAS No. 2, "Accounting for Research and Development Costs." The Company's R&D expense includes costs incurred for conceptual formulation and design of new vanes, blades, combustors and other replacement parts for the industrial gas turbine industry.

*Provision (Benefit) for Income Taxes* — Deferred income taxes are based on the differences between the financial reporting and tax bases of assets and liabilities. The deferred income tax provision represents the

CALPINE CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

changes during the reporting period in the deferred tax assets and deferred tax liabilities, net of the effect of acquisitions and dispositions. Deferred tax assets include tax losses and tax credit carryforwards and are reduced by a valuation allowance if, based on available evidence, it is more likely than not that some portion or all of the deferred tax assets will not be realized. Additionally, with respect to income taxes, the Company assumes the deductibility of certain costs in its income tax filings and estimates the future recovery of deferred tax assets. For the twelve months ended December 31, 2004, 2003 and 2002, the Company's effective tax (benefit) rate from continuing operations was 39%, 9% and 29%, respectively. Also, see Note 19 concerning the impact of tax legislation passed October 22, 2004.

*Insurance Program* — CPN Insurance Corporation, a wholly owned captive insurance subsidiary, charges the Company premium rates to insure casualty lines (worker's compensation, automobile liability, and general liability) as well as all risk property insurance including business interruption. Accruals for casualty claims under the captive insurance program are recorded on a monthly basis, and are based upon the estimate of the total cost of the claims incurred during the policy period. Accruals for claims under the captive insurance program pertaining to property, including business interruption claims, are recorded on a claims-incurred basis. In consolidation, claims are accrued on a gross basis before deductibles. The captive provides insurance coverage with limits up to \$25 million per occurrence for property claims, including business interruption, and up to \$500,000 per occurrence for casualty claims. Intercompany transactions between the captive insurance program and Calpine affiliates are eliminated in consolidation.

*Stock-Based Compensation* — See Note 21 for a discussion of the Company's accounting policies for stock-based compensation.

*Operational Data* — Operational data (including, but not limited to, megawatts ("MW"), megawatt hours ("MWh"), billions cubic feet equivalent ("Bcfe") and thousand barrels ("MBbl")), throughout this Form 10-K is unaudited.

***New Accounting Pronouncements***

*SFAS No. 144*

Effective January 1, 2002, the Company adopted SFAS No. 144 "Accounting for the Impairment or Disposal of Long-Lived Assets" ("SFAS No. 144"), which changed the criteria for determining when the disposal or sale of certain assets meets the definition of "discontinued operations." Some of the Company's asset sales in 2002, 2003 and 2004 met the requirements of the new definition and accordingly, the Company made reclassifications to current and prior period financial statements to reflect the sale or designation as "held for sale" of certain oil and gas and power plant assets and liabilities and to separately classify the operating results of the assets sold and gain on sale of those assets from the operating results of continuing operations. See Note 10 for further information.

*FIN 46 and FIN 46-R*

In January 2003, FASB issued FIN 46. FIN 46, as originally issued, was effective immediately for VIEs created or acquired after January 31, 2003. FIN 46 requires the consolidation of an entity by an enterprise that absorbs a majority of the entity's expected losses, receives a majority of the entity's expected residual returns, or both, as a result of ownership, contractual or other financial interest in the entity. Historically, entities have generally been consolidated by an enterprise when it has a controlling financial interest through ownership of a majority voting interest in the entity. The objectives of FIN 46 are to provide guidance on the identification of VIEs for which control is achieved through means other than ownership of a majority of the voting interest of the entity, and how to determine which business enterprise (if any), as the Primary Beneficiary, should consolidate the VIE. This model for consolidation applies to an entity in which either (1) the at-risk equity is insufficient to absorb expected losses without additional subordinated financial support or (2) its at-risk equity

**CALPINE CORPORATION AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

holders as a group are not able to make decisions that have a significant impact on the success or failure of the entity's ongoing activities. A variable interest in a VIE, by definition, is an asset, liability, equity, contractual arrangement or other economic interest that absorbs the entity's variability.

In December 2003, FASB modified FIN 46 with FIN 46-R to make certain technical corrections and to address certain implementation issues. FIN 46-R delayed the effective date of the interpretation to March 31, 2004, (for calendar-year enterprises), for all non-Special Purpose Entity ("SPE") VIEs. FIN 46, as originally issued was effective as of December 31, 2003, for all investments in SPEs. The Company has adopted FIN 46-R for its equity method joint ventures and operating lease arrangements containing fixed price purchase options, its wholly owned subsidiaries that are subject to long-term PPAs and tolling arrangements and its wholly owned subsidiaries that have issued mandatorily redeemable non-controlling preferred interests as of March 31, 2004, and for its investments in SPEs as of December 31, 2003.

*Joint Venture Investments and Operating Leases with Fixed Price Options*

On application of FIN 46-R, the Company evaluated its economic interests in joint venture investments and operating lease arrangements containing fixed price purchase options and concluded that, in some instances, these entities were VIEs. However, in these instances, the Company was not the Primary Beneficiary, as the Company would not absorb a majority of these entities' expected variability. An enterprise that holds a significant variable interest in a VIE is required to make certain disclosures regarding the nature and timing of its involvement with the VIE and the nature, purpose, size and activities of the VIE. The fixed price purchase options under the Company's operating lease arrangements were not considered significant variable interests. However, the joint ventures in which the Company has invested, and which did not qualify for the definition of a business scope exception outlined in paragraph 4(h) of FIN 46-R, were considered significant variable interests and the required disclosures have been made in Note 7 for these joint venture investments.

*Significant Long-Term Power Sales and Tolling Agreements*

An analysis was performed for the Company's wholly owned subsidiaries with significant long-term power sales or tolling agreements. Certain of these 100% Company-owned subsidiaries were deemed to be VIEs by virtue of the power sales and tolling agreements which met the definition of a variable interest under FIN 46-R. However, in all cases, the Company absorbed a majority of the entity's variability and continues to consolidate these wholly owned subsidiaries. As part of the Company's quantitative assessment, a fair value methodology was used to determine whether the Company or the power purchaser absorbed the majority of the subsidiary's variability. As part of the analysis, the Company qualitatively determined that power sales or tolling agreements with a term for less than one-third of the facility's remaining useful life or for less than 50% of the entity's capacity would not cause the power purchaser to be the Primary Beneficiary, due to the length of the economic life of the underlying assets. Also, power sales and tolling agreements meeting the definition of a lease under EITF Issue No. 01-08, "Determining Whether an Arrangement Contains a Lease," were not considered variable interests, since lease payments create rather than absorb variability, and therefore, do not meet the definition of a variable interest.

*Preferred Interests issued from Wholly-Owned Subsidiaries*

A similar analysis was performed for the Company's wholly owned subsidiaries that have issued mandatorily redeemable non-controlling preferred interests. These entities were determined to be VIEs in which the Company absorbs the majority of the variability, primarily due to the debt characteristics of the preferred interest, which are classified as debt in accordance with SFAS No. 150, in the Company's Consolidated Balance Sheets. As a result, the Company continues to consolidate these wholly owned subsidiaries.

**CALPINE CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

*Investments in Special Purpose Entities*

Significant judgment was required in making an assessment of whether or not a VIE was an SPE for purposes of adopting and applying FIN 46, as originally issued at December 31, 2003. Since the current accounting literature does not provide a definition of an SPE, the Company's assessment was primarily based on the degree to which the VIE aligned with the definition of a business outlined in FIN 46-R. Entities that meet the definition of a business outlined in FIN 46-R and that satisfy other formation and involvement criteria are not subject to the FIN 46-R consolidation guidelines. The definitional characteristics of a business include having: inputs such as long-lived assets; the ability to obtain access to necessary materials and employees; processes such as strategic management, operations and resource management; and the ability to obtain access to the customers that purchase the outputs of the entity. Based on this assessment, the Company determined that six VIE investments were in SPEs requiring further evaluation and were subject to the application of FIN 46, as originally issued, as of December 31, 2003: Calpine Northbrook Energy Marketing, LLC ("CNEM"), Power Contract Financing, L.L.C. ("PCF"), Power Contract Financing III, LLC ("PCF III") and Trust I, Trust II and Trust III (collectively, the "Trusts").

On May 15, 2003, the Company's wholly owned subsidiary, CNEM, completed the \$82.8 million monetization of an existing power sales agreement with the Bonneville Power Administration ("BPA"). CNEM borrowed \$82.8 million secured by the spread between the BPA contract and certain fixed power purchase contracts. CNEM was established as a bankruptcy-remote entity and the \$82.8 million loan is recourse only to CNEM's assets and is not guaranteed by the Company. CNEM was determined to be a VIE in which the Company was the Primary Beneficiary. Accordingly, the entity's assets and liabilities were consolidated into the Company's accounts as of June 30, 2003.

On June 13, 2003, PCF, a wholly owned stand-alone subsidiary of CES, completed an offering of two tranches of Senior Secured Notes Due 2006 and 2010 (collectively called the "PCF Notes"), totaling \$802.2 million. To facilitate the transaction, the Company formed PCF as a wholly owned, bankruptcy remote entity with assets and liabilities consisting of certain transferred power purchase and sales contracts, which serve as collateral for the PCF Notes. The PCF Notes are non-recourse to the Company's other consolidated subsidiaries. PCF was determined to be a VIE in which the Company was the Primary Beneficiary. Accordingly, the entity's assets and liabilities were consolidated into the Company's accounts as of June 30, 2003.

Upon the application of FIN 46, as originally issued at December 31, 2003, for the Company's investments in SPEs, the Company determined that its equity investment in the Trusts was not considered at-risk as defined in FIN 46 and that the Company did not have a significant variable interest in the Trusts. Consequently, the Company deconsolidated the Trusts as of December 31, 2003.

In addition, as a result of the debt reserve monetization consummated on June 2, 2004, the Company was required to evaluate its new investments in the PCF and PCF III entities under FIN 46-R (effective March 31, 2004). The Company determined that the entities were VIEs but the Company was not the Primary Beneficiary and was, therefore, required to deconsolidate the entities as of June 30, 2004.

The Company created CNEM, PCF, PCF III and the Trusts to facilitate capital transactions. However, in cases such as this where the Company has continuing involvement with the assets held by the deconsolidated SPE, the Company accounts for the capital transaction with the SPE as a financing rather than a sale under EITF Issue No. 88-18, "Sales of Future Revenue" ("EITF Issue No. 88-18") or SFAS No. 140, "Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities — a Replacement of FASB Statement No. 125" ("SFAS No. 140"), as appropriate. When EITF Issue No. 88-18 and SFAS No. 140 require the Company to account for a transaction as a financing, derecognition of the assets underlying the financing is prohibited, and the proceeds received from the transaction must be recorded as debt. Accordingly, in situations where the Company accounts for transactions as financings under EITF

## CALPINE CORPORATION AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

Issue No. 88-18 or SFAS No. 140, the Company continues to recognize the assets and the debt of the deconsolidated SPE on its balance sheet. The table below summarizes how the Company has accounted for its SPEs when it has continuing involvement under EITF Issue No. 88-18 or SFAS No. 140:

	<u>FIN 46-R Treatment</u>	<u>Sale or Financing</u>
CNEM	Consolidate	N/A
PCF	Deconsolidate	Financing
PCF III	Deconsolidate	Financing
Trust I, Trust II and Trust III	Deconsolidate	Financing

*EITF Issue No. 04-07*

An integral part of applying FIN 46-R is determining which economic interests are variable interests. In order for an economic interest to be considered a variable interest, it must “absorb variability” of changes in the fair value of the VIE’s underlying net assets. Questions have arisen regarding (a) how to determine whether an interest absorbs variability, and (b) whether the nature of how a long position is created, either synthetically through derivative transactions or through cash transactions, should affect the assessment of whether an interest is a variable interest. EITF Issue No. 04-07, “Determining Whether an Interest Is a Variable Interest in a Potential Variable Interest Entity” (“EITF Issue No. 04-07”) is still in the discussion phase, but will eventually provide a model to assist in determining whether an economic interest in a VIE is a variable interest. The Task Force’s discussions on this Issue have centered on if the variability should be based on whether (a) the interest absorbs fair value variability, (b) the interest absorbs cash flow variability, or (c) the interest absorbs both fair value and cash flow variability. While a consensus has not been reached, a majority of the Task Force members generally support an approach that would determine predominant variability based on the nature of the operations of the VIE. Under this view, for *financial* VIEs a presumption would exist that only interests that absorb *fair value* variability would be considered variable interests. Conversely, for *non-financial* (or operating) VIEs, a presumption would exist that only interests that absorb *cash flow* variability would be considered variable interests. The final conclusions reached on this issue may impact the Company’s methodology used in making quantitative and/or qualitative assessments of the variability absorbed by the different economic interests holders in the VIE’s in which the Company holds a variable interest. However, until the EITF reaches a final consensus, the effects of this issue on the Company’s financial statements is indeterminable.

*EITF Issue No. 04-08*

On September 30, 2004, the EITF reached a final consensus on EITF Issue No. 04-08, “The Effect of Contingently Convertible Debt on Diluted Earnings per Share” (“EITF Issue No. 04-08”). The guidance in EITF Issue No. 04-08 is effective for periods ending after December 15, 2004, and must be applied by retroactively restating previously reported earnings per share (“EPS”) results. The consensus requires companies that have issued contingently convertible instruments with a market price trigger to include the effects of the conversion in diluted EPS (if dilutive), regardless of whether the price trigger had been met. Prior to this consensus, contingently convertible instruments were not included in diluted EPS if the price trigger had not been met. Typically, the affected instruments are convertible into common stock of the issuer after the issuer’s common stock price has exceeded a predetermined threshold for a specified time period. Calpine’s \$634 million of 4.75% Contingent Convertible Senior Notes Due 2023 (“2023 Convertible Senior Notes”) and \$736 million aggregate principal amount at maturity of Contingent Convertible Notes Due 2014 (“2014 Convertible Notes”) outstanding at December 31, 2004, are affected by the new guidance. Depending on the closing price of the Company’s common stock at the end of each reporting period, the conversion provisions in these Contingent Convertible Notes may significantly impact the reported diluted EPS amounts

**CALPINE CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

in future periods.

For the twelve months ended December 31, 2004, approximately 8.6 million weighted common shares potentially issuable under the Company's outstanding 2014 Contingent Convertible Notes were excluded from the diluted earnings per share calculations as the inclusion of such shares would have been antidilutive because of the Company's net loss. The 2023 Convertible Senior Notes would not have impacted the diluted EPS calculation for any reporting period since issuance in November 2003, because the Company's closing stock price at each period end was below the conversion price.

*SFAS No. 128-R*

FASB is expected to revise SFAS No. 128, "Earnings Per Share" ("SFAS No. 128") to make it consistent with International Accounting Standard No. 33, "Earnings Per Share," so that EPS computations will be comparable on a global basis. This new guidance is expected to be issued by the end of 2005 and will require restatement of prior periods diluted EPS data. The proposed changes will affect the application of the treasury stock method and contingently issuable (based on conditions other than market price) share guidance for computing year-to-date diluted EPS. In addition to modifying the year-to-date calculation mechanics, the proposed revision to SFAS No. 128 would eliminate a company's ability to overcome the presumption of share settlement for those instruments or contracts that can be settled, at the issuer or holder's option, in cash or shares. Under the revised guidance, FASB has indicated that any possibility of share settlement other than in an event of bankruptcy will require a presumption of share settlement when calculating diluted EPS. The Company's 2023 Convertible Senior Notes and 2014 Convertible Notes contain provisions that would require share settlement in the event of conversion under certain limited events of default, including bankruptcy. Additionally, the 2023 Convertible Senior Notes include a provision allowing the Company to meet a put with either cash or shares of stock. The revised guidance, if not amended before final issuance, would increase the potential dilution to the Company's EPS, particularly when the price of the Company's common stock is low, since the more dilutive of calculations would be used considering both:

- (i) normal conversion assuming a combination of cash and a variable number of shares; and
- (ii) conversion during certain limited events of default assuming 100% shares at the fixed conversion rate, or, in the case of the 2023 Convertible Senior Notes, meeting a put entirely with shares of stock.

*EITF Issue No. 03-13*

At the November 2004 EITF meeting, the final consensus was reached on EITF Issue No. 03-13, "Applying the Conditions in Paragraph 42 of FASB Statement No. 144 in Determining Whether to Report Discontinued Operations" ("EITF Issue No. 03-13"). This Issue is effective prospectively for disposal transactions entered into after January 1, 2005, and provides a model to assist in evaluating (a) which cash flows should be considered in the determination of whether cash flows of the disposal component have been or will be eliminated from the ongoing operations of the entity and (b) the types of continuing involvement that constitute significant continuing involvement in the operations of the disposal component. The Company considered the model outlined in EITF Issue No. 03-13 in its evaluation of the September 2004 sale of the Canadian and Rockies oil and gas reserves (see Note 10 for more information). The final consensus did not change the Company's original conclusions reached under the existing discontinued operations guidance in SFAS No. 144.

*EITF Issue No. 03-06*

In March 2004, the EITF reached a final consensus on EITF Issue No. 03-06, "Participating Securities and the Two — Class Method under FASB Statement No. 128, Earnings per Share," ("EITF Issue No. 03-06") effective for reporting period beginning after March 31, 2004. EITF Issue No. 03-06 clarifies the

**CALPINE CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

definition of a participating security under SFAS No. 128 and how to apply the two-class method of computing EPS once it is determined that a security is participating, including how to allocate undistributed earnings to such a security. Prior to the issuance of EITF Issue No. 03-06, the Company had issued certain convertible debt instruments with features that may have been considered participating under SFAS No. 128. However, under the clarifying guidance of EITF Issue No. 03-06, none of these features created a “participating security.” Adoption of this pronouncement did not impact the Company’s current or historical reported EPS amounts.

*EITF Issue No. 04-10*

In October 2004, FASB ratified EITF Issue No. 04-10, “Determining Whether to Aggregate Operating Segments That Do Not Meet the Quantitative Thresholds” (“EITF Issue No. 04-10”). This issue addresses how an entity should evaluate the aggregation criteria in paragraph 17 of SFAS No. 131 “Disclosures about Segments of an Enterprise and Related Information” (“SFAS No. 131”) when determining whether operating segments that do not meet the quantitative thresholds may be aggregated in accordance with paragraph 19 of SFAS No. 131. The Task Force reached a consensus that operating segments must always have similar economic characteristics and meet a majority of the remaining five aggregation criteria, items (a)-(e), listed in paragraph 17, in order to be aggregated under paragraph 19. The consensus was originally effective for reporting periods ending December 31, 2004, with the corresponding information for earlier periods, including interim periods, restated unless it is impractical to do so. At the November 2004 EITF meeting, the Task Force delayed the effective date of this Issue to coincide with the effective date of the anticipated FASB Staff Position on the meaning of “similar economic characteristics.” EITF Issue No. 04-10 is not expected to impact the Company’s current approach to segment reporting or its historically reported segment results.

*SFAS No. 123-R*

In December 2004, FASB issued SFAS No. 123 (revised 2004) (“SFAS No. 123-R”), “Share Based Payments.” This Statement revises SFAS No. 123, “Accounting for Stock-Based Compensation” (“SFAS No. 123”) and supersedes Accounting Principles Board (“APB”) Opinion No. 25, “Accounting for Stock Issued to Employees” (“APB Opinion No. 25”), and its related implementation guidance. This statement requires a public entity to measure the cost of employee services received in exchange for an award of equity instruments based on the grant-date fair value of the award (with limited exceptions), which must be recognized over the period during which an employee is required to provide service in exchange for the award — the requisite service period (usually the vesting period). The statement applies to all share-based payment transactions in which an entity acquires goods or services by issuing (or offering to issue) its shares, share options, or other equity instruments or by incurring liabilities to an employee or other supplier (a) in amounts based, at least in part, on the price of the entity’s shares or other equity instruments or (b) that require or may require settlement by issuing the entity’s equity shares or other equity instruments.

The statement requires the accounting for any excess tax benefits to be consistent with the existing guidance under SFAS No. 123, which provides a two-transaction model summarized as follows:

- If settlement of an award creates a tax deduction that exceeds compensation cost, the additional tax benefit would be recorded as a contribution to paid-in-capital.
- If the compensation cost exceeds the actual tax deduction, the write-off of the unrealized excess tax benefits would first reduce any available paid-in capital arising from prior excess tax benefits, and any remaining amount would be charged against the tax provision in the income statement.

CALPINE CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

The Company is still evaluating the impact of adopting and subsequently accounting for excess tax benefits under the two-transaction model described in SFAS No. 123, but does not expect its consolidated net income or financial position to be materially affected upon adoption of SFAS No. 123-R.

The statement also amends SFAS No. 95, "Statement of Cash Flows," to require that excess tax benefits be reported as a financing cash inflow rather than as an operating cash inflow. However, the statement does not change the accounting guidance for share-based payment transactions with parties other than employees provided in SFAS No. 123 as originally issued and EITF Issue No. 96-18, "Accounting for Equity Instruments That Are Issued to Other Than Employees for Acquiring, or in Conjunction with Selling, Goods or Services." Further, this statement does not address the accounting for employee share ownership plans, which are subject to AICPA Statement of Position 93-6, "Employers' Accounting for Employee Stock Ownership Plans."

The statement applies to all awards granted, modified, repurchased, or cancelled after July 1, 2005, and to the unvested portion of all awards granted prior to that date. Public entities that used the fair-value-based method for either recognition or disclosure under SFAS No. 123 may adopt this Statement using a modified version of prospective application (*modified prospective application*). Under modified prospective application, compensation cost for the portion of awards for which the employee's requisite service has not been rendered that are outstanding as of July 1, 2005 must be recognized as the requisite service is rendered on or after that date. The compensation cost for that portion of awards shall be based on the original grant-date fair value of those awards as calculated for recognition under SFAS No. 123. The compensation cost for those earlier awards shall be attributed to periods beginning on or after July 1, 2005 using the attribution method that was used under SFAS No. 123. Furthermore, the method of recognizing forfeitures must now be based on an estimated forfeiture rate and can no longer be based on forfeitures as they occur.

Adoption of SFAS No. 123-R is not expected to materially impact the Company's consolidated results of operations, cash flows or financial position, due to the Company's prior adoption of SFAS No. 123 as amended by SFAS No. 148, "Accounting for Stock-Based Compensation — Transition and Disclosure," ("SFAS No. 148") on January 1, 2003. SFAS No. 148 allowed companies to adopt the fair-value-based method for recognition of compensation expense under SFAS No. 123 using prospective application. Under that transition method, compensation expense was recognized in the Company's Consolidated Statement of Operations only for stock-based compensation granted after the adoption date of January 1, 2003. Furthermore, as we have chosen the multiple option approach in recognizing compensation expense associated with the fair value of each option granted, nearly 80% of the total fair value of the stock option is recognized by the end of the second year of the vesting period, and therefore remaining compensation expense associated with options granted before January 1, 2003, is expected to be immaterial.

*SFAS No. 151*

In November 2004, FASB issued SFAS No. 151, "Inventory Costs, an amendment of ARB No. 43, Chapter 4" ("SFAS No. 151"). This Statement amends the guidance in ARB No. 43, Chapter 4, "Inventory Pricing," to clarify the accounting for abnormal amounts of idle facility expense, freight, handling costs, and wasted material (spoilage). Paragraph 5 of ARB 43, Chapter 4, previously stated that ". . . under some circumstances, items such as idle facility expense, excessive spoilage, double freight, and rehandling costs may be so abnormal as to require treatment as current period charges. . . ." This Statement requires those items to be recognized as a current-period charge regardless of whether they meet the criterion of "so abnormal." In addition, this Statement requires that allocation of fixed production overheads to the costs of conversion be based on the normal capacity of the production facilities. The provisions of SFAS No. 151 are applicable to inventory costs incurred during fiscal years beginning after June 15, 2005. Adoption of this statement is not expected to materially impact the Company's consolidated results of operations, cash flows or financial position.

**CALPINE CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

*SFAS No. 153*

In December 2004, FASB issued SFAS No. 153 (“SFAS No. 153”), “Exchanges of Nonmonetary Assets.” This standard eliminates the exception in APB Opinion No. 29, “Accounting for Nonmonetary Transactions” (“APB Opinion No. 29”) for nonmonetary exchanges of similar productive assets and replaces it with a general exception for exchanges of nonmonetary assets that do not have commercial substance. It requires exchanges of productive assets to be accounted for at fair value, rather than at carryover basis, unless (1) neither the asset received nor the asset surrendered has a fair value that is determinable within reasonable limits or (2) the transaction lacks commercial substance (as defined). A nonmonetary exchange has commercial substance if the future cash flows of the entity are expected to change significantly as a result of the exchange.

The new standard will not apply to the transfers of interests in assets in exchange for an interest in a joint venture and amends SFAS No. 66, “Accounting for Sales of Real Estate” (“SFAS No. 66”), to clarify that exchanges of real estate for real estate should be accounted for under APB Opinion No. 29. It also amends SFAS No. 140, to remove the existing scope exception relating to exchanges of equity method investments for similar productive assets to clarify that such exchanges are within the scope of SFAS No. 140 and not APB Opinion No. 29. SFAS No. 153 is effective for nonmonetary asset exchanges occurring in fiscal periods beginning after June 15, 2005. Adoption of this statement is not expected to materially impact the Company’s consolidated results of operations, cash flows or financial position.

**3. Available-for-Sale Debt Securities**

*Collateral Debt Securities*

At December 31, 2003, the Company owned held-to-maturity debt securities that were pledged as collateral to support the King City operating lease and that matured serially in amounts equal to a portion of the semi-annual lease payments. At December 31, 2003, the amortized cost of these securities was \$82.6 million, which represented the book value of the instruments when the Company accounted for the securities as held-to-maturity. In the first quarter of 2004, the Company reclassified the securities that served as collateral under the original lease from held-to-maturity to available-for-sale in accordance with SFAS No. 115, “Accounting for Certain Investments in Debt and Equity Securities” (“SFAS No. 115”). As a result of the reclassification from held-to-maturity to available-for-sale, the Company accounted for these securities at fair value for the duration of 2004 until the instruments were liquidated. On May 19, 2004, the Company restructured the King City operating lease. See Note 13 for more information regarding the King City restructuring. At the close of the restructuring transaction, the Company sold the securities for total proceeds of \$95.4 million and recorded a pre-tax gain of \$12.3 million in the Other Income. Also, in contemplation of the sale, the Company entered into an interest rate swap with a financial institution with the intent to hedge against a decline in value of the collateral debt securities. The swap did not meet the required criteria for hedge effectiveness under SFAS No. 133 and, as a result, the Company recorded all changes in the swap’s fair value between the dates of inception and settlement in the Other Income. Upon settlement of the swap, the Company had recognized a cumulative gain of \$5.2 million, which was also recorded in the Other Income.

*HIGH TIDES Securities Held*

Between September 2003 and July 2004, the Company exchanged approximately 15.0 million shares of Calpine common stock in privately negotiated transactions for approximately \$77.5 million par value of HIGH TIDES I and 15.8 million shares of Calpine common stock in privately negotiated transactions for approximately \$75.0 million par value of HIGH TIDES II. On October 20, 2004, the Company repaid the convertible subordinate debentures held by Trust I and Trust II, which used those proceeds to redeem the outstanding 5 <sup>3</sup>/<sub>4</sub> % convertible preferred securities (“HIGH TIDES I”) issued by Trust I, and 5 <sup>1</sup>/<sub>2</sub> % convertible

## CALPINE CORPORATION AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

preferred securities (“HIGH TIDES II”) issued by Trust II. The redemption price paid per each \$50 principal amount of such convertible preferred securities was \$50 plus accrued and unpaid distributions to the redemption date in the amount of \$0.6309 per unit with respect to the convertible preferred securities issued by Trust I and \$0.6035 per unit with respect to the convertible preferred securities issued by Trust II. See Note 12 for further information on the convertible subordinate debentures. The redemption of the HIGH TIDES I and HIGH TIDES II available-for-sale securities previously purchased and held by the Company resulted in a realized gain of approximately \$6.1 million. Calpine intends to cause both Trusts, which are related parties, to be terminated.

On September 30, 2004, the Company repurchased par value of \$115.0 million HIGH TIDES III for cash of \$111.6 million. Due to the deconsolidation of the Trusts upon the adoption of FIN 46 as of December 31, 2003, and the terms of the underlying debentures, the repurchased HIGH TIDES III preferred securities could not be offset against the convertible subordinated debentures and are accounted for as available for sale securities and recorded in Other Assets at fair market value at December 31, 2004, with the difference from their repurchase price recorded in OCI (in thousands):

	December 31, 2004				
	Repurchase Price(1)	Gross Unrealized Gains in Other Comprehensive Income/ (Loss)	Realized Gains on Redemption	Redemptions	Fair Value
HIGH TIDES I	\$ 75,020	\$ —	\$ 2,480	\$ (77,500)	\$ —
HIGH TIDES II	71,341	—	3,659	(75,000)	—
HIGH TIDES III	110,592	958	—	—	\$ 111,550
		<u>\$ 958</u>	<u>\$ 6,139</u>	<u>\$ (152,500)</u>	<u>\$ 111,550</u>

- (1) The repurchase price is shown net of accrued interest. The repurchased amount for HIGH TIDES I was \$75.4 million less \$0.4 million of accrued interest. The repurchased amount for HIGH TIDES II was \$72.0 million less \$0.7 million of accrued interest. The repurchased amount for HIGH TIDES III was \$111.6 million less \$1 million of accrued interest.

#### 4. Property, Plant and Equipment, Net, and Capitalized Interest

As of December 31, 2004 and 2003, the components of property, plant and equipment, are stated at cost less accumulated depreciation and depletion as follows (in thousands):

	2004	2003
Buildings, machinery, and equipment	\$ 16,449,029	\$ 13,137,550
Oil and gas properties, including pipelines	1,189,626	1,176,796
Geothermal properties	474,869	460,602
Other	218,177	234,758
	<u>18,331,701</u>	<u>15,009,706</u>
Less: Accumulated depreciation and depletion	<u>(2,122,371)</u>	<u>(1,388,225)</u>
	16,209,330	13,621,481
Land	105,087	95,037
Construction in progress	4,321,977	5,762,132
Property, plant and equipment, net	<u>\$ 20,636,394</u>	<u>\$ 19,478,650</u>

Total depreciation and depletion expense for the years ended December 31, 2004, 2003 and 2002 was \$593.1 million, \$522.8 million and \$402.4 million, respectively.

**CALPINE CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

The Company has various debt instruments that are secured by certain of its property, plant and equipment. See Notes 11-18 for a detailed discussion of such instruments.

***Buildings, Machinery, and Equipment***

This component primarily includes electric power plants and related equipment. Depreciation is recorded utilizing the straight-line method over the estimated original composite useful life, generally 35 years for baseload power plants, exclusive of the estimated salvage value, typically 10%. Peaking facilities are generally depreciated over 40 years, less the estimated salvage value of 10%. The Company capitalizes costs for major turbine generator refurbishments for the “hot gas path section” and compressor components, which include such significant items as combustor parts (e.g. fuel nozzles, transition pieces, and “baskets”) compressor blades, vanes and diaphragms. These refurbishments are done either under long term service agreements by the original equipment manufacturer or by Calpine’s Turbine Maintenance Group. The capitalized costs are depreciated over their estimated useful lives ranging from 2 to 14 years. At December 31, 2004, the weighted average life was approximately 6 years. The Company expenses annual planned maintenance. Included in buildings, machinery and equipment are assets under capital leases. See Note 13 for more information regarding these assets under capital leases. Certain capital improvements associated with leased facilities may be deemed to be leasehold improvements and are amortized over the shorter of the term of the lease or the economic life of the capital improvement.

***Oil and Gas Properties***

The Company follows the successful efforts method of accounting for oil and natural gas activities. Under the successful efforts method, lease acquisition costs and all development costs are capitalized. Exploratory drilling costs are capitalized until the results are determined. If proved reserves are not discovered, the exploratory drilling costs are expensed. Other exploratory costs are expensed as incurred. Interest costs related to financing major oil and gas projects in progress are capitalized until the projects are evaluated or until the projects are substantially complete and ready for their intended use if the projects are evaluated as successful. The provision for depreciation, depletion, and amortization is based on the capitalized costs as determined above, plus future abandonment costs net of salvage value, using the units of production method with lease acquisition costs amortized over total proved reserves and other costs amortized over proved developed reserves.

The Company assesses the impairment for oil and gas properties periodically (at least annually) to determine if impairment of such properties is necessary. Management utilizes its year-end reserve report prepared by a licensed independent petroleum engineering firm and related market factors to estimate the future cash flows for all proved developed (producing and non-producing) and proved undeveloped reserves. Property impairments may occur if a field discovers lower than anticipated reserves, reservoirs produce below original estimates or if commodity prices fall below a level that significantly affects anticipated future cash flows on the property. Proved oil and gas property values are reviewed when circumstances suggest the need for such a review and, if required, the proved properties are written down to their estimated fair value based on proved reserves and other market factors. Unproved properties are reviewed quarterly to determine if there has been impairment of the carrying value, with any such impairment charges to expense in the current period. As a result of decreases in proved undeveloped reserves located in South Texas and proved developed non-producing reserves in Offshore Gulf of Mexico, a non-cash impairment charge of approximately \$202.1 was recorded for the year ended December 31, 2004, to the “Oil and gas impairment” line of the Consolidated Statement of Operations. For the years ended December 31, 2003 and 2002, the impairment charge recorded to the same line item was \$2.9 million and \$3.4 million, respectively. These charges related exclusively to the Oil and Gas Production and Marketing segment.

**CALPINE CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

***Geothermal Properties***

The Company capitalizes costs incurred in connection with the development of geothermal properties, including costs of drilling wells and overhead directly related to development activities as well as costs of production equipment, the related facilities and the operating power plants. Proceeds from the sale of geothermal properties are applied against capitalized costs, with no gain or loss recognized.

Geothermal costs, including an estimate of future costs to be incurred, costs to optimize the productivity of the assets, and the estimated costs to dismantle, are amortized by the units of production method based on the estimated total productive output over the estimated useful lives of the related steam fields. Depreciation of the buildings and roads is computed using the straight-line method over their estimated useful lives. It is reasonably possible that the estimate of useful lives, total unit-of-production or total capital costs to be amortized using the units-of-production method could differ materially in the near term from the amounts assumed in arriving at current depreciation expense. These estimates are affected by such factors as the ability of the Company to continue selling electricity to customers at estimated prices, changes in prices of alternative sources of energy such as hydro-generation and gas, and changes in the regulatory environment. Geothermal steam turbine generator refurbishments are expensed as incurred.

***Other***

This component primarily includes software and emission reduction credits (“ERCs”). Software is amortized over its estimated useful life, generally 3 to 5 years. The Company holds ERCs that must generally be acquired during the permitting process for power plants in construction. ERCs are related to reductions in environmental emissions that result from some action like increasing energy efficiency, and are measured and registered in a way so that they can be bought, sold, and traded. The lives of the ERCs are usually consistent with the life of the related plant. The gross ERC balance recorded in property, plant and equipment and included in “Other” above was \$103.6 million and \$104.8 million as of December 31, 2004 and 2003, respectively. Of this balance \$21.3 million and \$21.3 million related to plants in operation as of December 31, 2004 and 2003, respectively. The depreciation expense recorded in 2004, 2003 and 2002, related to ERCs was \$0.5 million, \$0.5 million and \$0.4 million, respectively.

***Construction in Progress***

CIP is primarily attributable to gas-fired power projects under construction including prepayments on gas and steam turbine generators and other long lead-time items of equipment for certain development projects not yet in construction. Upon commencement of plant operation, these costs are transferred to the applicable property category, generally buildings, machinery and equipment.

**CALPINE CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

*Capital Spending — Development and Construction*

Construction and development costs in process consisted of the following at December 31, 2004 (in thousands):

	<u># of Projects</u>	<u>CIP</u>	<u>Equipment Included in CIP</u>	<u>Project Development Costs</u>	<u>Unassigned Equipment</u>
Projects in construction(1)	10	\$3,194,530	\$ 1,094,490	\$ —	\$ —
Projects in advanced development	10	670,806	520,036	102,829	—
Projects in suspended development	6	421,547	168,985	38,398	—
Projects in early development	2	—	—	8,952	—
Other capital projects	NA	35,094	—	—	—
Unassigned equipment	NA	—	—	—	66,073
Total construction and development costs		<u>\$4,321,977</u>	<u>\$ 1,783,511</u>	<u>\$ 150,179</u>	<u>\$ 66,073</u>

- (1) The Company has a total of 11 projects in construction. This includes the 10 projects above that are recorded in CIP and 1 project that is recorded in investments in power projects. Construction activities and the capitalization of interest on one of the construction projects has been suspended or delayed due to current market conditions. The CIP balance on this project was \$461.5 million as of December 31, 2004. Subsequent to December 31, 2004, construction activities and the capitalization of interest on two additional construction projects was suspended or delayed. Total CIP on these two projects was \$683.0 million as of December 31, 2004.

*Projects in Construction* — The 10 projects in construction are projected to come on line from March 2005 to November 2007 or later. These projects will bring on line approximately 4,656 MW of base load capacity (5,264 MW with peaking capacity). Interest and other costs related to the construction activities necessary to bring these projects to their intended use are being capitalized, unless work has been suspended, in which case capitalization of interest expense is suspended until active construction resumes. At December 31, 2004, the estimated funding requirements to complete these projects, net of expected project financing proceeds, is approximately \$84.6 million.

*Projects in Advanced Development* — There are an additional 10 projects in advanced development. These projects will bring on line approximately 5,307 MW of base load capacity (6,095 MW with peaking capacity). Interest and other costs related to the development activities necessary to bring these projects to their intended use are being capitalized. However, the capitalization of interest has been suspended on 2 projects for which development activities are substantially complete but construction will not commence until a PPA and financing are obtained. The estimated cost to complete the 10 projects in advanced development is approximately \$3.0 billion. The Company's current plan is to finance these project costs as PPAs are arranged.

*Suspended Development Projects* — Due to current electric market conditions, we have ceased capitalization of additional development costs and interest expense on certain development projects on which work has been suspended. Capitalization of costs may recommence as work on these projects resumes, if certain milestones and criteria are met indicating that it is again highly probable that the costs will be recovered through future operations. As is true for all projects, the suspended projects are reviewed for impairment whenever there is an indication of potential reduction in a project's fair value. Further, if it is determined that it is no longer probable that the projects will be completed and all capitalized costs recovered through future operations, the carrying values of the projects would be written down to their recoverable value. These projects would bring on line approximately 2,956 MW of base load capacity (3,409 MW with peaking capacity). The estimated cost to complete these projects is approximately \$1.8 billion.

**CALPINE CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

*Projects in Early Development* — Costs for projects that are in early stages of development are capitalized only when it is highly probable that such costs are ultimately recoverable and significant project milestones are achieved. Until then all costs, including interest costs, are expensed. The projects in early development with capitalized costs relate to two projects and include geothermal drilling costs and equipment purchases.

*Other Capital Projects* — Other capital projects primarily consist of enhancements to operating power plants, oil and gas and geothermal resource and facilities development, as well as software developed for internal use.

*Unassigned Equipment* — As of December 31, 2004, the Company had made progress payments on 4 turbines and other equipment with an aggregate carrying value of \$66.1 million. This unassigned equipment is classified on the balance sheet as other assets because it is not assigned to specific development and construction projects. The Company is holding this equipment for potential use on future projects. It is possible that some of this unassigned equipment may eventually be sold, potentially in combination with the Company's engineering and construction services. For equipment that is not assigned to development or construction projects, interest is not capitalized.

*Capitalized Interest* — The Company capitalizes interest on capital invested in projects during the advanced stages of development and the construction period in accordance with SFAS No. 34, "Capitalization of Interest Cost," ("SFAS No. 34") as amended by SFAS No. 58, "Capitalization of Interest Cost in Financial Statements That Include Investments Accounted for by the Equity Method (an Amendment of FASB Statement No. 34)." The Company's qualifying assets include CIP, certain oil and gas properties under development, construction costs related to unconsolidated investments in power projects under construction, advanced stage development costs, as well as such above mentioned assets classified as held for sale. For the years ended December 31, 2004, 2003 and 2002, the total amount of interest capitalized was \$376.1 million, \$444.5 million and \$575.5 million, including \$49.1 million, \$66.0 million and \$114.2 million, respectively, of interest incurred on funds borrowed for specific construction projects and \$327.0 million, \$378.5 million and \$461.3 million, respectively of interest incurred on general corporate funds used for construction. Upon commencement of plant operation, capitalized interest, as a component of the total cost of the plant, is amortized over the estimated useful life of the plant. The decrease in the amount of interest capitalized during the year ended December 31, 2004 reflects the completion of construction for several power plants, the suspension of certain of the Company's development and construction projects, and a reduction in the Company's development and construction program in general.

In accordance with SFAS No. 34, the Company determines which debt instruments best represent a reasonable measure of the cost of financing construction assets in terms of interest cost incurred that otherwise could have been avoided. These debt instruments and associated interest cost are included in the calculation of the weighted average interest rate used for capitalizing interest on general funds. The primary debt instruments included in the rate calculation of interest incurred on general corporate funds are the Company's Senior Notes, the Company's term loan facilities and the secured working capital revolving credit facility.

*Impairment Evaluation* — All construction and development projects and unassigned turbines are reviewed for impairment whenever there is an indication of potential reduction in fair value. Equipment assigned to such projects is not evaluated for impairment separately, as it is integral to the assumed future operations of the project to which it is assigned. If it is determined that it is no longer probable that the projects will be completed and all capitalized costs recovered through future operations, the carrying values of the projects would be written down to the recoverable value in accordance with the provisions of SFAS No. 144. The Company reviews its unassigned equipment for potential impairment based on probability-weighted alternatives of utilizing the equipment for future projects versus selling the equipment. Utilizing this methodology, the Company does not believe that the equipment held for use is impaired. However, during the year ended December 31, 2004, the Company recorded to the "Equipment cancellation

## CALPINE CORPORATION AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

and impairment cost” line of the Consolidated Statement of Operations \$3.2 million in net losses in connection with equipment sales. During the year ended December 31 2003, the Company recorded to the same line \$29.4 million in losses in connection with the sale of four turbines, and it may incur further losses should it decide to sell more unassigned equipment in the future.

*Asset Retirement Obligations*

The Company adopted SFAS No. 143, “Accounting for Asset Retirement Obligations” (“SFAS No. 143”) on January 1, 2003. As required by the new rules, the Company recorded liabilities equal to the present value of expected future asset retirement obligations at January 1, 2003. The Company identified obligations related to operating gas-fired power plants, geothermal power plants and oil and gas properties. The liabilities are partially offset by increases in net assets recorded as if the provisions of SFAS No. 143 had been in effect at the date the obligation was incurred, which for power plants is generally the start of construction, typically building up during construction until commercial operations for the facility is achieved. For oil and gas properties the date the obligation is incurred is generally the start of drilling of a well or the start of construction of a facility, typically building up until completion of drilling a well or completion of construction of a facility.

The information below reconciles the values of the asset retirement obligation from the date the liability was recorded (in thousands):

Asset retirement obligation at January 1, 2003	\$ 33,929
Liabilities incurred	4,311
Liabilities settled	(1,397)
Accretion expense	3,842
Revisions in the estimated cash flows	1,799
Other (primarily foreign currency translation)	<u>(6,815)</u>
Asset retirement obligation at December 31, 2003	\$ 35,669
Liabilities incurred	4,207
Liabilities settled	(1,279)
Accretion expense	6,430
Revisions in the estimated cash flows	(329)
Other (primarily foreign currency translation)	<u>(2,350)</u>
Asset retirement obligation at December 31, 2004	<u><u>\$ 42,348</u></u>

**5. Goodwill and Other Intangible Assets**

On January 1, 2002, the Company adopted SFAS No. 142, “Goodwill and Other Intangible Assets,” (“SFAS No. 142”) which requires that all intangible assets with finite useful lives be amortized and that goodwill and intangible assets with indefinite lives not be amortized, but rather tested upon adoption and at least annually for impairment. The Company completed its annual goodwill impairment test as required under SFAS No. 142 and determined that the fair value of the reporting units with goodwill exceeded their net carrying values. Therefore, the Company’s goodwill asset was not impaired as of December 31, 2004. Subsequent goodwill impairment tests will be performed, at a minimum, in December of each year, in conjunction with the Company’s annual reporting process.

In accordance with the standard, the Company discontinued the amortization of its recorded goodwill as of January 1, 2002, identified reporting units based on its current segment reporting structure and allocated all

## CALPINE CORPORATION AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

recorded goodwill, as well as other assets and liabilities, to the reporting units. The entire balance of goodwill was assigned to the PSM reporting unit, which is included in the Corporate, Other and Eliminations reporting segment as defined by SFAS No. 131. Recorded goodwill, by reporting segment, as of December 31, 2003, was (in thousands):

	<u>2004</u>	<u>2003</u>
Electric Generation and Marketing	\$ —	\$ —
Oil and Gas Production and Marketing	—	—
Corporate, Other and Eliminations	45,160	45,160
Total	<u>\$ 45,160</u>	<u>\$ 45,160</u>

The Company also reassessed the useful lives and the classification of its identifiable intangible assets and determined that they continue to be appropriate. The components of the amortizable intangible assets consist of the following (in thousands):

	Weighted Average Useful Life/ Contract Life	<u>As of December 31, 2004</u>		<u>As of December 31, 2003</u>	
		<u>Carrying Amount(1)</u>	<u>Accumulated Amortization(1)</u>	<u>Carrying Amount(1)</u>	<u>Accumulated Amortization(1)</u>
Patents	5	\$ 485	\$ (417)	\$ 485	\$ (320)
Power sales agreements	23	85,099	(43,115)	86,962	(40,180)
Fuel supply and fuel management contracts	23	5,000	(1,826)	22,198	(4,991)
Geothermal lease rights	20	19,518	(550)	19,518	(450)
Steam purchase agreement	14	6,223	(1,456)	5,766	(944)
Other	15	4,755	(526)	2,088	(208)
Total		<u>\$ 121,080</u>	<u>\$ (47,890)</u>	<u>\$ 137,017</u>	<u>\$ (47,093)</u>

(1) Fully amortized intangible assets are not included.

Amortization expense of Other Intangible Assets was \$5.0 million, \$5.3 million and \$21.5 million, in 2004, 2003 and 2002, respectively. Assuming no future impairments of these assets or additions as the result of acquisitions, annual amortization expense will be \$4.3 million in 2005, \$4.2 million in 2006, \$4.2 million in 2007, \$4.2 million in 2008 and \$3.9 million in 2009.

## 6. Acquisitions

The Company seeks to acquire power generating facilities and certain oil and gas properties that provide significant potential for revenue, cash flow and earnings growth, and that provide the opportunity to enhance the operating efficiency of its plants. Acquisition activity is dependent on the availability of financing on attractive terms and the expectation of returns that meets the Company's long-term requirements. The following material mergers and acquisitions were consummated during the years ended December 31, 2004 and 2003. There were no mergers or acquisitions consummated during the year ended December 31, 2002. For all business combinations, the results of operations of the acquired companies were incorporated into the Company's Consolidated Financial Statements commencing on the date of acquisition.

**CALPINE CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**2004 Acquisitions***Calpine Cogeneration Company Transaction*

On March 23, 2004, the Company completed the acquisition of the remaining 20% interest in Calpine Cogeneration Corporation (“Calpine Cogen”), which holds interests in six power facilities, from NRG Energy, Inc. (“NRG”) for approximately \$2.5 million. The Company purchased its initial 80% interest in Calpine Cogen (formerly known as Cogeneration Corporation of America) from NRG in 1999. Prior to the acquisition, the Company consolidated the assets of Calpine Cogen in its financial statements and reflected the 20% interest held by NRG as a minority interest. NRG’s minority interest had a carrying value of approximately \$37.5 million at the time of acquisition. The carrying value of the underlying assets was adjusted downward on a pro-rata basis for the difference between the purchase price and the carrying value of NRG’s minority interest. As a result of the current transaction, the Company now has a 100% interest in the Newark, Parlin, Morris and Pryor facilities, an 83% interest in the Philadelphia Water Project, and a 50% interest in the Grays Ferry Power Plant.

*Aries Transaction*

On March 26, 2004, the Company acquired the remaining 50% interest in the Aries facility from a subsidiary of Aquila, Inc. (Aquila and its subsidiaries referred to collectively as “Aquila”). At the same time, Aries terminated a tolling contract with another subsidiary of Aquila. Aquila paid \$5 million in cash and assigned certain transmission and other rights to the Company. Aquila and the Company also amended a master netting agreement between them, and as a result, the Company returned cash margin deposits totaling \$10.8 million to Aquila. Contemporaneous with the closing of the acquisition, Aries’ existing construction loan was converted to two term loans totaling \$178.8 million. The Company contributed \$15 million of equity to Aries in connection with the term out of the construction loan.

The amounts below represents 50% of the fair value of the assets acquired and liabilities assumed in the transaction. These amounts together with 50% of the investment owned by the Company prior to the acquisition are now fully consolidated into the Company’s financial statements.

Current assets	\$ 1,028
Contracts	2,505
Property, plant and equipment	100,793
Other assets	1,902
Current liabilities	(1,978)
Derivative liability	(16,022)
Long-term debt	<u><u>\$ (88,228)</u></u>

*Brazos Valley Power Plant Transaction*

On March 31, 2004, the Company closed on the purchase of the 570-megawatt, natural gas-fired, Brazos Valley Power Plant (“Brazos Valley”) in Fort Bend County, Texas, for total consideration of approximately \$181.1 million. The Company used the net proceeds from the sale of its undivided interest in the Lost Pines 1 facility (in January 2004) and cash on hand to acquire this facility in a transaction structured as a tax deferred like-kind exchange under IRS Section 1031. The consortium of banks that had provided construction financing for the power plant and had taken possession of the plant from the original developer in 2003 indirectly owned the special purpose companies that owned Brazos Valley. Brazos Valley has become part of the collateral package for the Calpine Construction Finance Company, L.P. (“CCFC I”) First Priority Secured Institutional Term Loans Due 2009 and Second Priority Senior Secured Floating Rate Notes Due

## CALPINE CORPORATION AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

2011. The fair value of the Brazos Valley facility was equal to the purchase price and as a result, the entire purchase price was allocated to the power plant assets and is recorded in property plant and equipment in the Company's consolidated balance sheet.

**2003 Acquisition***Thomassen Turbine Systems Transaction*

On February 26, 2003, the Company, through its wholly-owned subsidiary Calpine European Finance, LLC, purchased 100% of the outstanding stock of Babcock Borsig Power Turbine Services ("BBPTS") from its parent company, Babcock Borsig. Immediately following the acquisition, the BBPTS name was changed to Thomassen Turbine Systems B.V. ("TTS"). The Company's total cost of the acquisition was \$12.0 million and was comprised of two pieces. The first was a \$7.0 million cash payment to Babcock Borsig to acquire the outstanding stock of TTS. Included in this payment was the right to a note receivable valued at 11.9 million Euro (approximately US\$12.9 million on the acquisition date) due from TTS, which the Company acquired from Babcock Borsig for \$1. Additionally, as of the date of the acquisition, TTS owed \$5.0 million in payments to another of the Company's wholly owned subsidiaries, PSM, under a pre-existing license agreement. Because of the acquisition, TTS ceased to exist as a third party debtor to the Company, thereby resulting in a reduction of third party receivables of \$5.0 million from the Company's consolidated perspective.

*Pro Forma Effects of Acquisitions*

Acquired subsidiaries are consolidated upon closing date of the acquisition. The table below reflects the Company's unaudited pro forma combined results of operations for all business combinations during 2004 and 2003, as if the acquisitions had taken place at the beginning of fiscal year 2002. The Company's combined results include the effects of Calpine Cogen, Aries, Brazos Valley and TTS (in thousands, except per share amounts):

	<u>2004</u>	<u>2003</u>	<u>2002</u>
Total revenue	\$ 9,254,727	\$ 8,958,416	\$ 7,408,668
Income (loss) before discontinued operations and cumulative effect of accounting changes	\$ (448,541)	\$ 70,831	\$ 28,562
Net income (loss)	\$ (250,176)	\$ 266,743	\$ 120,458
Net income (loss) per basic share	\$ (0.58)	\$ 0.68	\$ 0.34
Net income (loss) per diluted share	\$ (0.58)	\$ 0.67	\$ 0.33

In management's opinion, these unaudited pro forma amounts are not necessarily indicative of what the actual combined results of operations might have been if the 2004 and 2003 acquisitions had been effective at the beginning of fiscal year 2002. In addition, they are not intended to be a projection of future results and do not reflect all the synergies that might be achieved from combined operations.

**7. Investments in Power Projects and Oil and Gas Properties**

The Company's investments in power projects and oil and gas properties are integral to its operations. As discussed in Note 2, the Company's joint venture investments were evaluated under FIN 46-R to determine which, if any, entities were VIEs. Based on this evaluation, the Company determined that the Acadia Power Partners, LLC, Valladolid III Energy Center, Grays Ferry Power Plant, Whitby Cogeneration facility and the Androscoggin Energy Center were VIEs, in which the Company held a significant variable interest. However, all of the entities except for Acadia Power Partners, LLC met the definition of a business and qualified for the business scope exception provided in paragraph 4 (h) of FIN 46-R, and consequently were not subject to the VIE consolidated model. Further, based on a qualitative and quantitative assessment of the expected

**CALPINE CORPORATION AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

variability in Acadia Power Partners, LLC, the Company was not the Primary Beneficiary. Consequently, the Company continues to account for its joint venture investments in power projects in accordance with APB Opinion No. 18, “The Equity Method of Accounting For Investments in Common Stock” and FIN 35, “Criteria for Applying the Equity Method of Accounting for Investments in Common Stock (An Interpretation of APB Opinion No. 18).” However, in the fourth quarter of 2004, the Company changed from the equity method to the cost method to account for its investment in Androscoggin as discussed below.

Acadia Power Partners, LLC (“Acadia”) is the owner of a 1,210-megawatt electric wholesale generation facility located in Louisiana and is a joint venture between the Company and Cleco Corporation. The Company’s involvement in this VIE began upon formation of the entity in March 2000. The Company’s maximum potential exposure to loss at December 31, 2004, is limited to the book value of its investment of approximately \$214.5 million.

Valladolid III Energy Center is the owner of a 525-megawatt, natural gas-fired energy center currently under construction for Comision Federal de Electricidad (“CFE”) at Valladolid, Mexico in the Yucatan Peninsula. The facility will deliver electricity to CFE under a 25-year power sales agreement. The project is a joint venture between the Company, Mitsui & Co., Ltd., (“Mitsui”) and Chubu Electric (“Chubu”), both headquartered in Japan. The Company owns 45% of the entity while Mitsui and Chubu each own 27.5%. Construction began in May 2004 and the project is expected to achieve commercial operation in the summer of 2006. The Company’s maximum potential exposure to loss at December 31, 2004, is limited to the book value of its investment of approximately \$77.4 million.

Grays Ferry Cogeneration Partnership (“Grays Ferry”) is the owner of a 175-megawatt gas-fired cogeneration facility located in Pennsylvania and is a joint venture between the Company and Trigen-Schuylkill Cogeneration, Inc. The Company’s involvement in this VIE began with its acquisition of the independent power producer, Cogeneration Corporation of America, Inc. (“Cogen America”), now called Calpine Cogen, in December 1999. The Grays Ferry joint venture project was part of the portfolio of assets owned by Cogen America. The Company’s maximum potential exposure to loss at December 31, 2004, is limited to the book value of its investment of approximately \$48.6 million.

Whitby Cogeneration Limited Partnership (“Whitby”) is the owner of a 50-megawatt gas-fired cogeneration facility located in Ontario, Canada and is a joint venture between the Company and a privately held enterprise. The Company’s involvement in this VIE began with its acquisition of a portfolio of assets from Westcoast Energy Inc. (“Westcoast”) in September 2001, which included the Whitby joint venture project. The Company’s maximum potential exposure to loss at December 31, 2004, is limited to the book value of its investment of approximately \$32.5 million.

Androscoggin Energy LLC (“AELLC”) is the owner of a 136-megawatt gas-fired cogeneration facility located in Maine and is a joint venture between the Company, and affiliates of Wisvest Corporation and International Paper Company (“IP”). The Company’s involvement in this VIE began with its acquisition of the independent power producer, SkyGen Energy LLC (“SkyGen”) in October 2000. Androscoggin Energy LLC project was part of the portfolio of assets owned by SkyGen. The facility had construction debt of \$60.3 million and \$60.8 million outstanding as of December 31, 2004 and 2003, respectively. The debt is non-recourse to Calpine Corporation. On November 3, 2004, a jury verdict was rendered against AELLC in a breach of contract dispute with IP. See Note 25 for more information about the legal proceeding. The Company recorded its \$11.6 million share of the award amount in the third quarter of 2004. On November 26, 2004, AELLC filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. As a result of the bankruptcy, the Company has lost significant influence and control of the project and has adopted the cost method of accounting for its investment in Androscoggin. Also, in December 2004 the Company determined that its investment, in Androscoggin including outstanding notes receivable and O&M receivable, was impaired and recorded a \$5.0 million impairment reserve.

**CALPINE CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

The following investments are accounted for under the equity method except for Androscoggin Energy Center which is accounted for under the cost method (in thousands):

	Ownership Interest as of December 31, 2004	Investment Balance at December 31,	
		2004	2003
Acadia Energy Center(1)	50.0%	\$ 214,501	\$ 221,038
Valladolid III Energy Center	45.0%	77,401	67,320
Grays Ferry Power Plant	50.0%	48,558	53,272
Whitby Cogeneration(2)	15.0%	32,528	31,033
Aries Power Plant(3)	100.0%	—	58,205
Androscoggin Energy Center(4)	32.3%	—	11,823
Other	—	1,044	1,459
Total investments in power projects and oil and gas properties		<u>\$ 374,032</u>	<u>\$ 444,150</u>

- (1) On May 12, 2003, the Company completed the restructuring of its interest in Acadia. As part of the transaction, the partnership terminated its 580-megawatt, 20-year tolling arrangement with a subsidiary of Aquila, Inc. in return for a cash payment of \$105.5 million. Acadia recorded a gain of \$105.5 million and then made a \$105.5 million distribution to Calpine. Contemporaneously, the Company's wholly owned subsidiary, CES, entered into a new 20-year, 580-megawatt tolling contract with Acadia. CES now markets all of the output from the Acadia Power Project under the terms of this new contract and an existing 20-year tolling agreement. Cleco receives a priority cash distributions as its consideration for the restructuring. Also, as a result of this transaction, the Company recorded, as its share of the termination payment from the Aquila subsidiary, a \$52.8 million gain as of December 31, 2003, which was recorded within "Income from unconsolidated investments in power projects and oil and gas properties" in the Consolidated Statement of Operations. Due to the restructuring of its interest in Acadia, the Company was required to reconsider its investment in the entity under FIN 46 and determined that it is not the Primary Beneficiary and accordingly will continue to account for its investment using the equity method. See Note 2 for further information. See Note 25 for a legal proceeding involving Acadia Energy Center.
- (2) Whitby is owned 50% by the Company but a 70% economic share in the Company's ownership interest has been effectively transferred to Calpine Power, Inc. ("CPI") through a loan from CPI to the Company's entity which holds the investment interest in Whitby.
- (3) On March 26, 2004, the Company acquired the remaining 50 percent interest in Aries Power Plant. See Note 6 for a discussion of the acquisition.
- (4) Excludes certain Notes Receivable (see Note 8).

On November 26, 2003, the Company completed the sale of its 50 percent interest in the Gordonsville Power Plant. Under the terms of the transaction, the Company received \$36.2 million in cash for its \$25.4 million investment and recorded a pre-tax gain of \$7.1 million. The remaining cash of \$0.6 million is to be distributed to the partners in late 2005.

On September 2, 2004, the Company completed the sale of its equity investment in the Calpine Natural Gas Trust ("CNGT"). In accordance with SFAS No. 144 the Company's 25 percent equity method investment in the CNGT was considered part of the larger disposal group and therefore evaluated and accounted for as a discontinued operation. Accordingly, the Company made reclassifications to current and prior period financial statements to reflect the sale or designation as "held for sale" of the CNGT investment balance and to separately classify the income from the unconsolidated investment as well as the gain on sale of

## CALPINE CORPORATION AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

the investment from operating results of continuing operations to discontinued operations. The tables below for distributions from investments and related party transactions with unconsolidated investments in power projects and oil and gas properties include CNGT through the date of sale, September 2, 2004. See Note 10 for more information on the sale of the Canadian natural gas reserves and petroleum assets.

The combined unaudited results of operations and financial position of the Company's equity and cost method affiliates are summarized below (in thousands):

	December 31,		
	2004	2003	2002
Condensed statements of operations:			
Revenue	\$ 240,527	\$ 417,395	\$ 372,212
Gross profit	47,339	147,782	151,784
Income from continuing operations before extraordinary items and cumulative effect of a change in accounting principle	(7,951)	175,154	70,596
Net income (loss)	(7,951)	175,154	70,596
Condensed balance sheets:			
Current assets	\$ 67,928	\$ 87,538	
Non-current assets	903,681	1,474,607	
Total assets	<u>\$ 971,609</u>	<u>\$ 1,562,145</u>	
Current liabilities	\$ 150,845	\$ 91,051	
Non-current liabilities	114,620	727,827	
Total liabilities	<u>\$ 265,465</u>	<u>\$ 818,878</u>	

The debt on the books of the unconsolidated investments is not reflected on the Company's balance sheet. At December 31, 2004 and 2003, investee debt was approximately \$126.3 million and \$439.3 million, respectively. Of these amounts, \$60.3 million and \$60.8 million, respectively, relates to the Company's investment in AELLC, for which the cost method of accounting was used as of December 31, 2004. Based on the Company's pro rata ownership share of each of the investments, the Company's share would be approximately \$43.3 million and \$140.8 million for the respective periods. These amounts include the Company's share for AELLC of \$19.5 million and \$19.7 million, respectively. However, all such debt is non-recourse to the Company.

**CALPINE CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

The following details the Company's income and distributions from investments in unconsolidated power projects and oil and gas properties (in thousands):

	<b>Income (loss) from Unconsolidated Investments in Power Projects and Oil and Gas Properties</b>			<b>Distributions</b>		
	<b>For the Years Ended December 31,</b>					
	<b>2004</b>	<b>2003</b>	<b>2002</b>	<b>2004</b>	<b>2003</b>	<b>2002</b>
Acadia Power Partners, LLC	\$ 14,142	\$ 75,272	\$ 14,590	\$ 21,394	\$ 136,977	\$ 11,969
Valladolid III Energy Center	76	—	—	—	—	—
Grays Ferry Power Plant	(2,761)	(1,380)	(1,499)	—	—	—
Whitby Cogeneration	1,433	303	411	1,499	—	—
Aries Power Plant	(4,264)	(3,442)	(43)	—	—	—
Calpine Natural Gas Trust	—	—	—	6,127	1,959	—
Androscoggin Energy Center	(23,566)	(7,478)	(3,951)	—	—	—
Gordonsville Power Plant	—	11,985	5,763	—	2,672	2,125
Lockport Power Plant	—	—	1,570	—	—	—
Other	575	79	(351)	849	19	23
<b>Total</b>	<b>\$ (14,365)</b>	<b>\$ 75,339</b>	<b>\$ 16,490</b>	<b>\$ 29,869</b>	<b>\$ 141,627</b>	<b>\$ 14,117</b>
Interest income on loans to power projects(1)	\$ 840	\$ 465	\$ 62	—	—	—
<b>Total</b>	<b>\$ (13,525)</b>	<b>\$ 75,804</b>	<b>\$ 16,552</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ —</b>

The Company provides for deferred taxes to the extent that distributions exceed earnings.

- (1) At December 31, 2004 and 2003, loans to power projects represented an outstanding loan to the Company's 32.3% owned investment, AELLC, in the amounts of \$4.0 million and \$13.3 million, respectively, after impairment charges and reserves.

In the fourth quarter of 2002, income from unconsolidated investments in power projects and oil and gas properties was reclassified out of total revenue and is now presented as a component of other income from operations. Prior periods have also been reclassified accordingly.

***Related-Party Transactions with Unconsolidated Investments in Power Projects and Oil and Gas Properties***

The Company and certain of its equity and cost method affiliates have entered into various service agreements with respect to power projects and oil and gas properties. Following is a general description of each of the various agreements:

*Operation and Maintenance Agreements* — The Company operates and maintains the Acadia and Androscoggin Energy Centers. This includes routine maintenance, but not major maintenance, which is typically performed under agreements with the equipment manufacturers. Responsibilities include development of annual budgets and operating plans. Payments include reimbursement of costs, including Calpine's internal personnel and other costs, and annual fixed fees.

*Construction Management Services Agreements* — The Company provides construction management services to the Valladolid III Energy Center. Payments include reimbursement of costs, including the Company's internal personnel and other costs.

**CALPINE CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

*Administrative Services Agreements* — The Company handles administrative matters such as bookkeeping for certain unconsolidated investments. Payment is on a cost reimbursement basis, including Calpine's internal costs, with no additional fee.

*Power Marketing Agreements* — Under agreements with Androscoggin Energy LLC, CES can either market the plant's power as the power facility's agent or buy the power directly. Terms of any direct purchase are to be agreed upon at the time and incorporated into a transaction confirmation. Historically, CES has generally bought the power from the power facility rather than acting as its agent.

*Gas Supply Agreement* — CES can be directed to supply gas to the Androscoggin Energy Center facility pursuant to transaction confirmations between the facility and CES. Contract terms are reflected in individual transaction confirmations.

The power marketing and gas supply contracts with CES are accounted for as either purchase and sale arrangements or as tolling arrangements. In a purchase and sale arrangement, title and risk of loss associated with the purchase of gas is transferred from CES to the project at the gas delivery point. In a tolling arrangement, title to fuel provided to the project does not transfer, and CES pays the project a capacity and a variable fee based on the specific terms of the power marketing and gas supply agreements. In addition to the contracts specified above, CES maintains two tolling agreements with the Acadia facility which are accounted for as leases. These tolling agreements expire in 2022. In accordance with the terms of the contracts, CES supplies all necessary fuel to generate the energy it takes and pays a capacity charge as well as an operations and maintenance fee to Acadia. The Company reflects 100% of the lease expense through CES, a consolidated subsidiary, and 50% of the lease revenue in equity in earnings of an unconsolidated subsidiary. The total future minimum lease payments for the tolling agreements are as follows (in thousands):

2005	\$	63,967
2006		63,967
2007		65,902
2008		67,836
2009		67,836
Thereafter		847,952
Total	\$	<u>1,177,460</u>

All of the other power marketing and gas supply contracts are accounted for as purchases and sales.

The related party balances as of December 31, 2004 and 2003, reflected in the accompanying consolidated balance sheets, and the related party transactions for the years ended December 31, 2004, 2003 and 2002, reflected in the accompanying consolidated statements of operations are summarized as follows (in thousands):

	<u>2004</u>	<u>2003</u>
<b>As of December 31,</b>		
Accounts receivable	\$ 765	\$ 1,156
Accounts payable	9,489	12,172
Interest receivable	—	2,074
Note Receivable	4,037	13,262
Other receivables	—	8,794

**CALPINE CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

	2004	2003	2002
<b>For the Years Ended December 31,</b>			
Revenue	\$ 1,241	\$ 3,493	\$ 4,729
Cost of Revenue	115,008	82,205	36,290
Interest income	840	1,117	132
Gain on sale of assets	6,240	62,176	—

### 8. Notes Receivable

Generally, notes receivable are recorded at the face amount, net of allowances. These notes bear interest at rates that approximate current market interest rates at the time of issuance. Certain long-term notes receivable have no stated rate and are recorded by discounting expected future cash flows using then current interest rates at which similar loans would be made to borrowers with similar credit ratings and remaining maturities. The Company intends to hold these notes to maturity. The amortization of the discount is recognized as interest income, using the effective interest method, over the repayment term of the notes. The Company reviews the financial condition of customers prior to granting credit. The allowance represents the Company's best estimate of the amount of probable credit losses in the Company's existing notes receivable. The Company determines the allowance based on a variety of factors, including economic trends and conditions and significant one-time events affecting the note issuer, the length of time principal and interest payments are past due and historical write off experience. Also, specific provisions are recorded for individual notes receivables when the Company becomes aware of a customer's inability to meet its financial obligations, such as in the case of bankruptcy filings or deterioration in the customer's operating results or financial position. The Company reviews the adequacy of its notes receivable allowance quarterly. Generally, individual past due amounts are reviewed for collectibility. Interest income is reserved when amounts are more than 90 days past due or sooner if circumstances indicated that recoverability is not reasonably assured. Past due amounts are charged off against the allowance after all means of collection have been exhausted and the potential for recovery is considered remote.

As of December 31, 2004, and 2003, the components of notes receivable were (in thousands):

	2004	2003
PG&E (Gilroy) note	\$ 145,853	\$ 155,901
Panda note	38,644	38,644
Eastman note	19,748	—
Androscoggin note	4,037	13,262
Mitsui & Co., Ltd note	—	8,779
Other	7,168	8,506
Total notes receivable	215,450	225,092
Less: Notes receivable, current portion included in other current assets	(11,770)	(11,463)
Notes receivable, net of current portion	\$ 203,680	\$ 213,629

#### *Gilroy Note*

Calpine Gilroy Cogen, L.P. ("Gilroy") had a long-term PPA with Pacific Gas and Electric Company ("PG&E") for the sale of energy through 2018. The terms of the PPA provided for 120 megawatts of firm capacity and up to 10 megawatts of as-delivered capacity. On December 2, 1999, the California Public Utilities Commission ("CPUC") approved the restructuring of the PPA between Gilroy and PG&E. Under the terms of the restructuring, PG&E and Gilroy were each released from performance under the PPA

CALPINE CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

effective November 1, 2002. Under the restructured contract, in addition to the normal capacity revenue for the period, Gilroy had earned from September 1999 to October 2002 restructured capacity revenue it would have earned over the November 2002 through March 2018 time period, for which PG&E had issued notes to the Company. These notes are scheduled to be paid by PG&E during the period from February 2003 to September 2014. The first scheduled note repayment of \$1.7 million was received in February 2003.

On December 4, 2003, the Company announced that it had sold to a group of institutional investors its right to receive payments from PG&E under the Agreement between PG&E and Gilroy, a California Limited Partnership (PG&E Log No. 08C002) For Termination and Buy-Out of Standard Offer 4 Power Purchase Agreement, executed by PG&E on July 1, 1999 (the “Gilroy Receivable”) for \$133.4 million in cash. Because the transaction did not satisfy the criteria for sales treatment under SFAS No. 140 it was reflected in the Consolidated Financial Statements as a secured financing, with a note payable of \$133.4 million. The receivable balance and note payable balance are both reduced as PG&E makes payments to the buyer of the Gilroy Note. The \$24.1 million difference between the \$157.5 million book value of the Gilroy Note at the transaction date and the cash received is recognized as additional interest expense over the repayment term. The Company will continue to record interest income over the repayment term and interest expense will be accreted on the amortizing note payable balance.

Pursuant to the applicable transaction agreements, each of Gilroy and Calpine Gilroy 1, Inc., the general partner of Gilroy, has been established as an entity with its existence separate from the Company and other subsidiaries of the Company. The Company consolidates these entities.

*Panda Note*

In June 2000, the Company entered into a series of turbine sale contracts with, and acquired the development rights to construct, own and operate the Oneta Energy Center (“Oneta”) from Panda Energy International, Inc. and certain related entities. As part of the transaction, the Company extended PLC II, LLC (“PLC”) a loan bearing an interest rate of LIBOR plus 5%. The loan is collateralized by PLC’s carried interest in the income generated from Oneta, which achieved full commercial operations in June 2003. Additionally, Panda Energy International, Inc. executed a parental Guaranty as to the loan.

On November 5, 2003, Panda Energy International, Inc. and certain related parties, including PLC, (collectively “Panda”) filed suit against the Company and certain of its affiliates alleging, among other things, that the Company breached duties of care and loyalty allegedly owed to Panda by failing to correctly construct and operate Oneta in accordance with Panda’s original plans. Panda alleges that it is entitled to a portion of the profits from Oneta and that the Company’s actions have reduced the profits from Oneta, thereby undermining Panda’s ability to repay monies owed to the Company under the loan. The Company has filed a counterclaim against PLC based on a guaranty and a motion to dismiss as to the causes of action alleging federal and state securities laws violations. The court recently granted the Company’s motion to dismiss, but allowed Panda an opportunity to re-plead. The Company considers Panda’s lawsuit to be without merit and intends to defend vigorously against it. Discovery is currently in progress.

Panda defaulted on the loan, which was due on December 1, 2003. Because of the Guaranty and the collateral, the Company determined that a reserve was not needed as of December 31, 2004. However, the Company ceased accruing interest after the default date and continues to closely monitor the receivable pending the resolution of the litigation. See Note 25 for more information on the litigation.

*Eastman Note*

In August 2000, the Company entered into an Energy Services Agreement (“ESA”) with Eastman Chemical Company (“Eastman”) at its Columbia facility in South Carolina. As part of the agreement, the Company financed the construction of the Heat Thermal Medium Heater System (“HTM”) facilities. Under

CALPINE CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

this agreement, Eastman will repay the Company \$20.0 million for the HTM financed facilities over a period of 20 years with an annual interest rate of 9.76%. The first note receivable payment was received in April 2004.

*Androscoggin Note*

The Company has a note receivable from its unconsolidated cost method investee AELLC. The Company ceased accruing interest income on its note receivable related to unreimbursed administration costs associated with the Company's management of the project after a jury verdict was rendered against AELLC in a breach of contract dispute. In December 2004, the Company determined that its investment in Androscoggin was impaired and recorded a \$5.0 million impairment reserve. On December 31, 2004, the carrying value after reserves of the Company's notes receivable balance due from AELLC was \$4.0 million. See Note 7 for further information.

*Mitsui Note*

In December 2003, the Company contributed two gas turbines with a book value of approximately \$76.0 million in exchange for a 45% interest in the Valladolid Joint Venture project with Mitsui in Mexico. The Company recorded its interest in the project at a value of \$67.0 million, which reflected the cost of the turbines less a \$9.0 million note receivable that was booked upon transfer of the turbines, representing a return of capital. Subsequently, Mitsui assumed the note receivable from the project and received additional equity in the project. At the time of the original investment, the Company's investment in and notes receivable from Mitsui exceeded its share of its underlying equity by \$31 million, which will be amortized as an adjustment to the Company's share of the project's net income over the depreciable life of the underlying assets. In October 2004, the note receivable matured and all payments were received.

**9. Canadian Power and Gas Trusts**

*Calpine Power Income Fund* — On August 29, 2002, the Company announced it had completed a Cdn\$230 million (US\$147.5 million) initial public offering of its Canadian income fund — Calpine Power Income Fund ("CPIF"). The 23 million Trust Units issued to the public were priced at Cdn\$10 per unit, to initially yield 9.35% per annum. On September 20, 2002, the syndicate of underwriters fully exercised the over-allotment option that it was granted as part of the initial public offering of Trust Units and acquired 3,450,000 additional Trust Units of CPIF at Cdn\$10 per Trust Unit, generating Cdn\$34.5 million (US\$21.9 million). CPIF used the proceeds of the initial offering and over-allotment to purchase an equity interest in CPLP, which holds two of Calpine's Canadian power generating assets, the Island Cogeneration Facility and the Calgary Energy Centre. CPIF also used the proceeds to make a loan to a Calpine subsidiary which owns Calpine's other Canadian power generating asset, the equity investment in the Whitby cogeneration plant. Combined, these assets represent approximately 168.3 net megawatts of power generating capacity.

On February 13, 2003, the Company completed a secondary offering of 17,034,234 Warranted Units of CPIF for gross proceeds of Cdn\$153.3 million (US\$100.9 million). The Warranted Units were sold to a syndicate of underwriters at a price of Cdn\$9.00. Each Warranted Unit consisted of one Trust Unit and one-half of one Trust Unit purchase warrant. Each Warrant entitled the holder to purchase one Trust Unit at a price of Cdn\$9.00 per Trust Unit at any time on or prior to December 30, 2003, after which time the Warrant became null and void. During 2003 a total of 8,508,517 Warrants were exercised, resulting in cash proceeds to the Company of Cdn\$76.6 million (US\$56.7 million). CPIF used the proceeds from the secondary offering and Warrant exercise to purchase an additional equity interest in CPLP.

The Company currently holds less than 1% of CPIF's trust units; however, the Company retains a 30% subordinated equity interest in CPLP and has a significant continuing involvement in the assets transferred to CPLP. The assets of CPLP are included in the Company's consolidated balance sheet under the

CALPINE CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

guidance of SFAS No. 66, “Accounting for Sales of Real Estate” due to the Company’s significant continuing involvement in the assets transferred to CPLP. Therefore, the financial results of CPLP are consolidated in the Company’s financial statements. The proceeds from the initial public offering, the exercise of the underwriters over-allotment, the proceeds from the secondary offering of Trust Units and the proceeds from the exercise of Warrants represent the Fund’s 70% equity interest in CPLP and its underlying generating assets and have been recorded as minority interests in the Company’s consolidated balance sheet. Because of this equity ownership in CPLP, the Company considers CPIF a related party. See Note 13 for a discussion of the capital lease transaction with CPIF.

*Calpine Natural Gas Trust* — On October 15, 2003, the Company closed the initial public offering of CNGT. A total of 18,454,200 trust units were issued at a price of Cdn\$10.00 per trust unit for gross proceeds of approximately Cdn\$184.5 million (US\$139.4 million). CNGT acquired select natural gas and petroleum properties from Calpine with the proceeds from the initial public offering, Cdn\$61.5 million (US\$46.5 million) proceeds from a concurrent issuance of units to a Canadian affiliate of Calpine, and Cdn\$40.0 million (US\$30.2 million) proceeds from bank debt. Net proceeds to Calpine, totaled approximately Cdn\$207.9 million (US\$157.1 million), reflecting a gain of \$62.2 million on the sale of the properties. On October 22, 2003, the syndicate of underwriters fully exercised the over-allotment option associated with the initial public offering resulting in additional cash to the CNGT. As a result of the exercise of the over-allotment option, Calpine acquired an additional 615,140 trust units at Cdn\$10.0 per trust unit for a cash payment to the CNGT of Cdn\$6.2 million (US\$4.7 million). Prior to the subsequent sale of this investment, the Company held 25 percent of the outstanding trust units of CNGT and accounted for it using the equity method.

On September 2, 2004, the Company completed the sale of its equity investment in the CNGT. In accordance with SFAS No. 144 the Company’s 25 percent equity method investment in the CNGT was considered part of the larger disposal group and therefore evaluated and accounted for as a discontinued operation. See Note 10 for more information on the sale of the Canadian natural gas reserves and petroleum assets. In addition, the Company considered CNGT a related party and disclosed all transactions up through the date of sale as such. See Note 7 for more information on related party transactions with unconsolidated investments.

**10. Discontinued Operations**

The Company has adopted a strategy of conserving its core strategic assets and selectively disposing of certain less strategically important assets, which serves primarily to raise cash for general corporate purposes and strengthen the Company’s balance sheet through repayment of debt. Set forth below are the Company’s material asset disposals by reportable segment that impacted the Company’s Consolidated Financial Statements as of December 31, 2004 and December 31, 2003:

*Corporate and Other*

On July 31, 2003, the Company completed the sale of its specialty data center engineering business and recorded a pre-tax loss on the sale of \$11.6 million.

*Oil and Gas Production and Marketing*

On August 29, 2002, the Company completed the sale of certain non-strategic oil and gas properties (“Medicine River properties”) located in central Alberta to NAL Oil and Gas Trust and another institutional investor for Cdn\$125.0 million (US\$80.1 million). As a result of the sale, the Company recorded a pre-tax gain of \$21.9 million in the third quarter 2002.

**CALPINE CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

On October 1, 2002, the Company completed the sale of substantially all of its British Columbia oil and gas properties to Calgary, Alberta-based Pengrowth Corporation for gross proceeds of approximately Cdn\$387.5 million (US\$244.3 million). Of the total consideration, the Company received US\$155.9 million in cash. The remaining US\$88.4 million of consideration was paid by Pengrowth Corporation's purchase in the open market of US\$203.2 million in aggregate principal amount of the Company's debt securities. As a result of the transaction, the Company recorded a US\$37.4 million pre-tax gain on the sale of the properties and a gain on the extinguishment of debt of US\$114.8 million in the fourth quarter 2002. The Company used approximately US\$50.4 million of cash proceeds to repay amounts outstanding under its US\$1.0 billion term loan.

On October 31, 2002, the Company sold all of its oil and gas properties in Drake Bay Field located in Plaquemines Parish, Louisiana for approximately \$3 million to Goldking Energy Corporation. As a result of the sale, the Company recognized a pre-tax loss of \$0.02 million in the fourth quarter 2002.

On November 20, 2003, the Company completed the sale of its Alvin South Field oil and gas assets located near Alvin, Texas for approximately \$0.06 million to Cornerstone Energy, Inc. As a result of the sale, the Company recognized a pre-tax loss of \$0.2 million.

On September 1, 2004, the Company along with Calpine Natural Gas L.P., a Delaware limited partnership, completed the sale of its Rocky Mountain gas reserves that were primarily concentrated in two geographic areas: the Colorado Piceance Basin and the New Mexico San Juan Basin. Together, these assets represented approximately 120 billion cubic feet equivalent ("Bcfe") of proved gas reserves, producing approximately 16.3 million net cubic feet equivalent ("Mmcfe") per day of gas. Under the terms of the agreement Calpine received net cash payments of approximately \$218.7 million, and recorded a pre-tax gain of approximately \$103.7 million.

On September 2, 2004, the Company completed the sale of its Canadian natural gas reserves and petroleum assets. These Canadian assets represented approximately 221 Bcfe of proved reserves, producing approximately 61 Mmcfe per day. Included in this sale was the Company's 25% interest in approximately 80 Bcfe of proved reserves (net of royalties) and 32 Mmcfe per day of production owned by the CNGT. In accordance with SFAS No. 144 the Company's 25% equity method investment in the CNGT was considered part of the larger disposal group (i.e., assets to be disposed of together as a group in a single transaction to the same buyer), and therefore evaluated and accounted for as discontinued operations. Under the terms of the agreement, Calpine received cash payments of approximately Cdn\$808.1 million, or approximately US\$626.4 million. Calpine recorded a pre-tax gain of approximately \$104.5 million on the sale of these Canadian assets net of \$20.1 million in foreign exchange losses recorded in connection with the settlement of forward contracts entered into to preserve the US dollar value of the Canadian proceeds.

In connection with the sale of the oil and gas assets in Canada, the Company entered into a seven-year gas purchase agreement beginning on March 31, 2005, and expiring on October 31, 2011, that allows, but does not require, the Company to purchase gas from the buyer at current market index prices. The agreement is not asset specific and can be settled by any production that the buyer has available.

In connection with the sale of the Rocky Mountain gas reserves, the New Mexico San Juan Basin sales agreement allows for the buyer and the Company to execute a ten-year gas purchase agreement for 100% of the underlying gas production of sold reserves, at market index prices. Any agreement would be subject to mutually agreeable collateral requirements and other customary terms and provisions. As of October 1, 2004, the gas purchase agreement was finalized and executed between the Company and the buyer.

The Company believes that all final terms of the gas purchase agreements described above, are on a market value and arm's length basis. If the Company elects in the future to exercise a call option over production from the disposed components, the Company will consider the call obligation to have been met as

## CALPINE CORPORATION AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

if the actual production delivered to the Company under the call was from assets other than those constituting the disposed components.

*Electric Generation and Marketing*

On December 16, 2002, the Company completed the sale of the 180-megawatt DePere Energy Center in DePere, Wisconsin. The facility was sold to Wisconsin Public Service for \$120.4 million, which included \$72.0 million in cash at closing and a \$48.4 million payment due in December 2003. As a result of the sale, the Company recognized a pre-tax gain of \$35.8 million. On December 17, 2002, the Company sold its right to the December 2003 payment to a third party for \$46.3 million, and recognized a pre-tax loss of \$2.1 million thereon.

On January 15, 2004, the Company completed the sale of its 50-percent undivided interest in the 545-megawatt Lost Pines 1 Power Project to GenTex Power Corporation, an affiliate of the Lower Colorado River Authority (“LCRA”). Under the terms of the agreement, Calpine received a cash payment of \$148.6 million and recorded a pre-tax gain of \$35.3 million. In addition, CES entered into a tolling agreement with LCRA providing for the option to purchase 250 megawatts of electricity through December 31, 2004. At December 31, 2003, the Company’s undivided interest in the Lost Pines facility was classified as “held for sale” and subsequently sold in 2004.

*Summary*

The Company made reclassifications to current and prior period financial statements to reflect the sale of these oil and gas and power plant assets and liabilities and to separately reclassify the operating results of the assets sold and the gain (loss) on sale of those assets from the operating results of continuing operations to discontinued operations.

The tables below present significant components of the Company’s income from discontinued operations for 2004, 2003 and 2002, respectively (in thousands):

	<u>2004</u>			
	<u>Electric Generation and Marketing</u>	<u>Oil and Gas Production and Marketing</u>	<u>Corporate and Other</u>	<u>Total</u>
Total revenue	\$ 2,679	\$ 32,415	\$ —	\$ 35,094
Gain on disposal before taxes	\$ 35,326	\$ 208,172	\$ —	\$ 243,498
Operating income from discontinued operations before taxes	24	4,938	—	4,962
Income from discontinued operations before taxes	\$ 35,350	\$ 213,110	\$ —	\$ 248,460
Income tax provision	\$ (12,394)	\$ (37,701)	\$ —	\$ (50,095)
Income from discontinued operations, net of tax	\$ 22,956	\$ 175,409	\$ —	\$ 198,365

**CALPINE CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

	2003			
	<u>Electric Generation and Marketing</u>	<u>Oil and Gas Production and Marketing</u>	<u>Corporate and Other</u>	<u>Total</u>
Total revenue	\$ 72,968	\$ 49,656	\$ 3,748	\$ 126,372
Loss on disposal before taxes	\$ —	\$ (235)	\$ (11,571)	\$ (11,806)
Operating income (loss) from discontinued operations before taxes	4,147	15,130	(6,918)	12,359
Income (loss) from discontinued operations before taxes	\$ 4,147	\$ 14,895	\$ (18,489)	\$ 553
Income tax (provision) benefit	(1,453)	8,651	7,218	14,416
Income from discontinued operations, net of tax	<u>\$ 2,694</u>	<u>\$ 23,546</u>	<u>\$ (11,271)</u>	<u>\$ 14,969</u>

	2002			
	<u>Electric Generation and Marketing</u>	<u>Oil and Gas Production and Marketing</u>	<u>Corporate and Other</u>	<u>Total</u>
Total revenue	\$ 75,004	\$ 134,200	\$ 7,653	\$ 216,857
Gain on disposal before taxes	\$ 35,840	\$ 59,288	\$ —	\$ 95,128
Operating income (loss) from discontinued operations before taxes	16,388	14,452	(16,968)	13,872
Income (loss) from discontinued operations before taxes	\$ 52,228	\$ 73,740	\$ (16,968)	\$ 109,000
Income tax (provision) benefit	(20,151)	(3,868)	6,915	(17,104)
Income from discontinued operations, net of tax	<u>\$ 32,077</u>	<u>\$ 69,872</u>	<u>\$ (10,053)</u>	<u>\$ 91,896</u>

The table below presents the assets and liabilities designated as held for sale on the Company's balance sheet as of December 31, 2003 (in thousands). At December 31, 2004, there were no held-for-sale assets:

	2003			
	<u>Electric Generation and Marketing</u>	<u>Oil and Gas Production and Marketing</u>	<u>Corporate and Other</u>	<u>Total</u>
Current assets of discontinued operations	\$ 651	\$ 1,914	\$ —	\$ 2,565
Long-term assets of discontinued operations	112,148	631,001	—	743,149
Total assets of discontinued operations	<u>\$ 112,799</u>	<u>\$ 632,915</u>	<u>\$ —</u>	<u>\$ 745,714</u>
Current liabilities of discontinued operations	\$ —	\$ 221	\$ —	\$ 221
Long-term liabilities of discontinued operations	161	17,667	—	17,828
Total liabilities of discontinued operations	<u>\$ 161</u>	<u>\$ 17,888</u>	<u>\$ —</u>	<u>\$ 18,049</u>

The Company allocates interest to discontinued operations in accordance with EITF Issue No. 87-24, "Allocation of Interest to Discontinued Operations." The Company includes interest expense on debt which is required to be repaid as a result of a disposal transaction in discontinued operations. Additionally, other interest expense that cannot be attributed to other operations of the Company is allocated based on the ratio of

## CALPINE CORPORATION AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

net assets to be sold less debt that is required to be paid as a result of the disposal transaction to the sum of total net assets of the Company plus consolidated debt of the Company, excluding (a) debt of the discontinued operation that will be assumed by the buyer, (b) debt that is required to be paid as a result of the disposal transaction and (c) debt that can be directly attributed to other operations of the Company. Using the methodology above, the Company allocated interest expense to its British Columbia oil and gas properties for approximately \$50.4 million of debt the Company is required to pay under the terms of its \$1.0 billion term loan. In addition, the Company allocated interest expense associated with the debt to be repaid as a result of the sale of the Canadian and Rocky Mountain natural gas reserves and petroleum assets as well as other debt related to the Company's operations in the amount of \$17.9 million, \$19.8 million and \$11.0 million in 2004, 2003 and 2002, respectively.

**11. Debt**

The annual principal repayments or maturities of the Company's debt obligations as of December 31, 2004, are as follows (in thousands):

2005	\$	1,033,956
2006		944,046
2007		1,851,022
2008		2,221,435
2009		1,667,272
Thereafter		10,257,034
Total	\$	<u>17,974,765</u>

*Covenant Restrictions* — The covenants in certain of the Company's debt agreements currently impose the following restrictions on its activities:

- Certain of the Company's indentures place conditions on its ability to issue indebtedness if the Company's interest coverage ratio (as defined in those indentures) is below 2:1. Currently, the Company's interest coverage ratio (as so defined) is below 2:1 and, consequently, the Company generally would not be allowed to issue new debt, except for (i) certain types of new indebtedness that refinances or replaces existing indebtedness, and (ii) non-recourse debt and preferred equity interests issued by the Company's subsidiaries for purposes of financing certain types of capital expenditures, including plant development, construction and acquisition expenses. In addition, if and so long as the Company's interest coverage ratio is below 2:1, the Company's ability to invest in unrestricted subsidiaries and non-subsidiary affiliates and make certain other types of restricted payments will be limited. As of December 31, 2004, the Company's interest coverage ratio (as so defined) has fallen below 1.75:1 and, until the ratio is greater than 1.75:1, certain of the Company's indentures will prohibit any further investments in non-subsidiary affiliates.
- Certain of the Company's indebtedness issued in the last half of 2004 was permitted under the Company's indentures on the basis that the proceeds would be used to repurchase or redeem existing indebtedness. While the Company completed a portion of such repurchases during the fourth quarter of 2004 and the first quarter of 2005, the Company is still in the process of completing the required amount of repurchases. While the amount of indebtedness that must still be repurchased will ultimately depend on the market price of the Company's outstanding indebtedness at the time the indebtedness is repurchased, based on current market conditions, the Company currently anticipates that it will spend up to approximately \$202.9 million on additional repurchases in order to fully satisfy this requirement. The Company's bond purchase requirement was estimated to be approximately

CALPINE CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

\$270 million as of December 31, 2004, and this amount has been classified as Senior Notes, current portion on the Company's consolidated balance sheet.

- When the Company or one of its subsidiaries sells a significant asset or issues preferred equity, the Company's indentures generally require that the net proceeds of the transaction be used to make capital expenditures or to repurchase or repay certain types of subsidiary indebtedness, in each case within 365 days of the closing date of the transaction. In light of this requirement, and taking into account the amount of capital expenditures currently budgeted for 2005, the Company anticipates that it will need to use approximately \$250.0 of the net proceeds of the \$360.0 million Two-Year Redeemable Preferred Shares issued on October 26, 2004, and approximately \$200.0 million of the net proceeds of the \$260.0 million Redeemable Preferred Shares issued on January 31, 2005, to repurchase or repay certain subsidiary indebtedness. The \$250.0 million of long-term debt has been reclassified as Senior Notes, current portion liability on the Company's consolidated balance sheet. The actual amount of the net proceeds that will be required to be used to repurchase or repay subsidiary debt will depend upon the actual amount of the net proceeds that is used to make capital expenditures, which may be more or less than the amount currently budgeted.

*Deferred Financing Costs* — The deferred financing costs related to the Company's Senior Notes and the Convertible Senior Notes are amortized over the life of the related debt, ranging from 4 to 20 years, using the effective interest rate method. Costs incurred in connection with obtaining other financing are deferred and amortized over the life of the related debt. However, when timing of debt transactions involve contemporaneous exchanges of cash between the Company and the same creditor(s) in connection with the issuance of a new debt obligation and satisfaction of an existing debt obligation, deferred financing costs are accounted for in accordance with EITF Issue No. 96-19, "Debtor's Accounting for a Modification or Exchange of Debt Instruments" ("EITF Issue No. 96-19"). Depending on whether the transaction qualifies as an extinguishment or modification, EITF Issue No. 96-19 requires the Company to either write-off the original deferred financing costs and capitalize the new issuance costs or continue to amortize the original deferred financing costs and immediately expense the new issuance costs.

See Notes 12-18 below for a description of each of the Company's debt obligations.

**CALPINE CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**12. Notes Payable and Borrowings Under Lines of Credit, Notes Payable to Calpine Capital Trusts and Preferred Interests**

The components of notes payable and borrowings under lines of credit and related outstanding letters of credit are (in thousands):

	Borrowings Outstanding		Letters of Credit	
	December 31,		Outstanding	
	2004	2003	2004	2003
Corporate Cash Collateralized Letter of Credit Facility	\$ —	\$ —	\$ 233,271	\$ —
Power Contract Financing, L.L.C.	688,366	802,246	—	—
Gilroy note payable(1)	125,478	132,385	—	—
Siemens Westinghouse Power Corporation	—	107,994	—	—
Calpine Northbrook Energy Marketing, LLC (“CNEM”) note	52,294	74,632	—	—
Corporate revolving lines of credit	—	—	—	135,600
Power Contract Financing III, LLC	51,592	—	—	—
Calpine Commercial Trust	34,255	—	—	—
Other	22,280	10,606	6,158	603
<b>Total notes payable and borrowings under lines of credit</b>	<b>974,265</b>	<b>1,127,863</b>	<b>239,429</b>	<b>136,203</b>
<b>Total notes payable to Calpine Capital Trusts</b>	<b>517,500</b>	<b>1,153,500</b>	<b>—</b>	<b>—</b>
Preferred interest in Saltend Energy Centre	360,000	—	—	—
Preferred interest in Auburndale Power Plant	79,135	87,632	—	—
Preferred interest in King City Power Plant	—	82,000	—	—
Preferred interest in Gilroy Energy Center, LLC	67,402	74,000	—	—
<b>Total preferred interests</b>	<b>506,537</b>	<b>243,632</b>	<b>—</b>	<b>—</b>
<b>Total notes payable and borrowings under lines of credit, notes payable to Calpine Capital Trusts, preferred interests, and term loan</b>	<b><u>\$ 1,998,302</u></b>	<b><u>\$ 2,524,995</u></b>	<b><u>\$ 239,429</u></b>	<b><u>\$ 136,203</u></b>
Less: notes payable and borrowings under lines of credit, current portion, notes payable to Calpine Capital Trusts, current portion and preferred interests, current portion	<u>213,416</u>	<u>265,512</u>		
Notes payable and borrowings under lines of credit, net of current portion, notes payable to Calpine Capital Trusts, net of current portion, preferred interests, net of current portion, and term loan	<b><u>\$ 1,784,886</u></b>	<b><u>\$ 2,259,483</u></b>		

(1) See Note 8 for information regarding this note.

***Notes Payable and Borrowings Under Lines of Credit and Term Loan***

*Corporate Cash Collateralized Letter of Credit Facility* — On September 30, 2004, the Company established a new \$255 million Cash Collateralized Letter of Credit Facility with Bayerische Landesbank, under which all letters of credit previously issued under the \$300 million Working Capital Revolver and the \$200 million Cash Collateralized Letter of Credit Facility have been transitioned into that new Facility.

**CALPINE CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

*Power Contract Financing, L.L.C.* — On June 13, 2003, PCF, an indirect wholly owned subsidiary of Calpine, completed an offering of \$339.9 million of 5.2% Senior Secured Notes Due 2006 and \$462.3 million of 6.256% Senior Secured Notes Due 2010. The two tranches of Senior Secured Notes, totaling \$802.2 million of gross proceeds, are secured by fixed cash flows from a fixed-priced, long-term PPA with the State of California Department of Water Resources (“CDWR”) and a fixed-priced, long-term power purchase agreement with a third party and are non-recourse to the Company’s other consolidated subsidiaries. The two tranches of Senior Secured Notes have been rated Baa2 by Moody’s Investor Service, Inc. and BBB (with a negative outlook) by Standard & Poor’s (“S&P”). During the year 2004, \$113.9 million was repaid based on the agreed upon bond repayment schedule. The effective interest rates on the 5.2% Senior Secured Notes Due 2006 and 6.256% Senior Secured Notes Due 2010, after amortization of deferred financing costs, were 8.3% and 9.4%, respectively, per annum at December 31, 2004 and 2003.

Pursuant to the applicable transaction agreements, PCF has been established as an entity with its existence separate from the Company and other subsidiaries of the Company. In accordance with FIN 46 the Company consolidates this entity. See Note 2 for more information on FIN 46. The above mentioned power sales and PPAs, which have been acquired by PCF from CES, and the PCF Notes are assets and liabilities of PCF, separate from the assets and liabilities of the Company and other subsidiaries of the Company. The proceeds of the Senior Secured Notes were primarily used by PCF to purchase the power sales and PPAs.

*Siemens Westinghouse Power Corporation* — On January 31, 2002, the Company’s subsidiary, Calpine Construction Management Company, Inc., entered into an agreement with Siemens Westinghouse Power Corporation (“SWPC”) including vendor financing of up to \$232.0 million bearing variable interest for gas and steam turbine generators and related equipment with monthly payment due dates through January 28, 2005. The remaining balance under this agreement was repaid in 2004. The interest rate at December 31, 2004 and 2003, was 8.5%.

*Calpine Northbrook Energy Marketing, LLC (“CNEM”) Note* — On May 15, 2003, CNEM, a wholly owned stand-alone subsidiary of CNEM Holdings, LLC, which is a wholly owned indirect subsidiary of CES, completed an offering of \$82.8 million secured by an existing power sales agreement with the BPA. Under the existing 100-megawatt fixed-price contract, CNEM delivers baseload power to BPA through December 31, 2006. As a part of the secured transaction, CNEM entered into a contract with a third party to purchase that power based on spot prices and a fixed-price swap agreement with an affiliate of Deutsche Bank to lock in the price of the purchased power. The terms of both agreements are through December 31, 2006. To complete the transactions, CNEM then entered into an agreement with an affiliate of Deutsche Bank and borrowed \$82.8 million secured by the BPA contract, the spot market PPA, the fixed price swap agreement and the equity interests in CNEM. The spread between the price for power under the BPA contract and the price for power under the fixed price swap agreement provides the cash flow to pay CNEM’s debt and other expenses. Proceeds from the borrowing were used to pay transaction expenses for plant construction and general corporate purposes, as well as fees and expenses associated with this transaction. CNEM will make quarterly principal and interest payments on the loan that matures on December 31, 2006. The effective interest rate, after amortization of deferred financing charges, was 12.2% and 12.7% per annum at December 31, 2004 and 2003, respectively.

Pursuant to the applicable transaction agreements, each of CNEM and its parent, CNEM Holdings, LLC, has been established as an entity with its existence separate from the Company and other subsidiaries of the Company. In accordance with FIN 46-R the Company consolidates these entities. The above mentioned power sales agreement with BPA has been acquired by CNEM from CES and the spot market PPA with a third party and the swap agreement have been entered into by CNEM and, together with the \$82.8 million loan, are assets and liabilities of CNEM, separate from the assets and liabilities of the Company and other subsidiaries of the Company. The only significant asset of CNEM Holdings, LLC is its equity interest in

**CALPINE CORPORATION AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

CNEM. The proceeds of the \$82.8 million loan were primarily used by CNEM to purchase the power sales agreement with BPA.

*Corporate Revolving Lines of Credit* — On July 16, 2003, the Company entered into agreements for a new \$500 million working capital facility. This first-priority senior secured facility consisted of a two-year, \$300 million working capital revolver and a four-year, \$200 million term loan that together provide up to \$500 million in combined cash borrowing and letter of credit capacity. The facility replaced the Company's prior \$600 million and \$400 million working capital facilities and is secured by a first-priority lien on the same assets that collateralize the Company's \$3.3 billion term loan and second-priority senior secured notes offering (the "\$3.3 billion offering").

On July 16, 2003, the Company entered into a cash collateralized letter of credit facility with The Bank of Nova Scotia under which it was able to issue up to \$200 million of letters of credit through July 15, 2005. Amounts outstanding under letters of credit issued under this facility had a corresponding amount of cash on deposit and held by The Bank of Nova Scotia as collateral, which was classified as restricted cash in the Company's Consolidated Balance Sheet.

As a result of the sale of certain natural gas properties during 2004, the Company repaid all amounts outstanding under its First Priority Senior Secured Term Loan B Notes Due 2007 and the \$300 million Working Capital Revolver.

*Power Contract Financing III, LLC* — On June 2, 2004, the Company's wholly owned subsidiary, PCF III issued \$85.0 million of zero coupon notes collateralized by PCF III's ownership of PCF. PCF III owns all of the equity interests in PCF, which holds the CDWR I contract monetized in June 2003 and maintains a debt reserve fund, which had a balance of approximately \$94.4 million at December 31, 2004. The Company received cash proceeds of approximately \$49.8 million from the issuance of the notes. At December 31, 2004, the interest rate was 12% per annum.

*Calpine Commercial Trust* — In May 2004, in connection with the King City transaction, Calpine Canada Power Limited, a wholly owned subsidiary of the Company, entered into a financing with Calpine Commercial Trust. Interest accrues at 13%, and the loan has principal and interest payments scheduled through maturity in December 2010. The effective interest rate of this loan is 17%.

*Calpine Energy Management, L.P. Letter of Credit Facility* — On August 5, 2004, the Company announced that its newly created entity, Calpine Energy Management, L.P. ("CEM"), entered into a \$250.0 million letter of credit facility with Deutsche Bank (rated Aa3/ AA-) that expires in October 2005. Deutsche Bank will guarantee CEM's power and gas obligations by issuing letters of credit. Receivables generated through power sales serve as collateral to support the letters of credit. As of December 31, 2004, there was approximately \$9.6 million in letters of credit outstanding.

**CALPINE CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

*Notes Payable to Calpine Capital Trusts*

In 1999 and 2000, the Company, through its wholly owned subsidiaries, Calpine Capital Trust I, Calpine Capital Trust II, and Calpine Capital Trust III, statutory business trusts created under Delaware law, (collectively, “the Trusts”) completed offerings of Remarketable Term Income Deferrable Equity Securities (“HIGH TIDES”) at a value of \$50.00 per share. A summary of these offerings follows in the table below (\$ in thousands):

	<u>Issue Date</u>	<u>Shares</u>	<u>Stated Interest Rate</u>	<u>Effective Interest Rate per Annum as of December 31, 2004</u>	<u>Balance December 31, 2004</u>	<u>Balance December 31, 2003</u>	<u>Conversion Ratio — Number of Common Shares per 1 High Tide</u>	<u>First Redemption Date</u>	<u>Initial Redemption Price</u>
HIGH TIDES I	October 1999	5,520,000	5.75%	5.38%	\$ —	\$ 276,000	3.4620	November 5, 2002	101.440%
HIGH TIDES II	January and February 2000	7,200,000	5.50%	5.79%	—	360,000	1.9524	February 5, 2003	101.375%
HIGH TIDES III	August 2000	10,350,000	5.00%	5.09%	517,500	517,500	1.1510	August 5, 2003	101.250%
		<u>23,070,000</u>			<u>\$ 517,500</u>	<u>\$ 1,153,500<sup>(1)</sup></u>			

- (1) Prior to the adoption of FIN 46 as of December 31, 2003, the Trusts were consolidated in the Company’s Consolidated Balance Sheet, and the HIGH TIDES were recorded between total liabilities and stockholders equity as Company-obligated mandatorily redeemable convertible preferred securities of subsidiary trusts. However, upon adoption of FIN 46 as of December 31, 2003, the Company deconsolidated the Trusts as of October 1, 2003, and therefore no longer records the HIGH TIDES in its Consolidated Balance Sheet. As a result, the Company’s convertible subordinated debentures (as discussed below) issued to the Trusts were no longer eliminated in consolidation and were reflected as notes payable to Calpine Capital Trusts in the Company’s Consolidated Balance Sheet with an outstanding balance of \$1.2 billion and \$517.5 million at December 31, 2003 and December 31, 2004, respectively. During 2003 and 2004, the Company exchanged 30.8 million Calpine common shares in privately negotiated transactions for approximately \$77.5 million par value of HIGH TIDES I, and \$75.0 million of HIGH TIDES II. The Company also repurchased \$115.0 million par value of HIGH TIDES III for cash of \$111.6 million. The repurchased HIGH TIDES III are reflected in the Company’s consolidated balance sheet in Other Assets as available-for-sale securities as the repurchase did not meet the debt extinguishment criteria in SFAS No. 140. See Note 2 for further information regarding the adoption of FIN 46 and Note 3 regarding the Company’s available-for-sale securities.

The net proceeds from each of the offerings were used by the Trusts to invest in convertible subordinated debentures of the Company, which represent substantially all of the respective Trusts’ assets. The Company effectively guaranteed all of the respective Trusts’ obligations under the trust preferred securities. The trust preferred securities had or have liquidation values of \$50.00 per share, or \$1.2 billion in total for all of the issuances. The Company had or has the right to defer the interest payments on the debentures for up to twenty consecutive quarters, which would also cause a deferral of distributions on the trust preferred securities. Currently, the Company has no intention of deferring interest payments on the debentures remaining outstanding. The Company considers the Trusts related parties.

On October 20, 2004, the Company repaid the \$276.0 million and \$360.0 million convertible subordinate debentures held by Trust I (“HIGH TIDES I”) and Trust II (“HIGH TIDES II”) respectively, which used those proceeds to redeem its outstanding 5 <sup>3</sup>/<sub>4</sub> % convertible preferred securities issued by Trust I, and 5 <sup>1</sup>/<sub>2</sub> % convertible preferred securities issued by Trust II. The redemption of the HIGH TIDES I and HIGH TIDES II available-for-sale securities previously purchased and held by the Company resulted in a realized gain of approximately \$6.1 million. The Company intends to cause both Trusts, which are related parties, to be terminated.

**CALPINE CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

*Preferred Interests*

In May 2003, FASB issued SFAS No. 150, which establishes standards for how an issuer classifies and measures certain financial instruments with characteristics of both liabilities and equity. SFAS No. 150 applies specifically to a number of financial instruments that companies have historically presented within their financial statements either as equity or between the liabilities section and the equity section, rather than as liabilities. SFAS No. 150 was effective for financial instruments entered into or modified after May 31, 2003, and otherwise was effective at the beginning of the first interim period beginning after June 15, 2003. The Company adopted SFAS No. 150 on July 1, 2003. For those instruments required to be recoded as debt, SFAS No. 150 does not permit reclassification of prior period amounts to conform to the current period presentation. The adoption of SFAS No. 150 and related balance sheet reclassifications did not have an effect on net income or total stockholders' equity but have impacted the Company's debt-to-equity and debt-to-capitalization ratios.

In November 2003, FASB indefinitely deferred certain provisions of SFAS No. 150 as they apply to mandatorily redeemable non-controlling (minority) interests associated with finite-lived subsidiaries. The Company owns approximately 30% of CPLP, which is finite-lived, terminating on December 31, 2050. See Note 7 for a discussion of the Company's investment in CPLP. Upon FASB's finalization of this issue, the Company may be required to reclassify the minority interest relating to the Company's investment in Calpine Power Limited Partnership ("CPLP") to debt. As of December 31, 2004, the minority interest related to CPLP was approximately \$393.4 million. The assets of CPLP are included in the Company's consolidated balance sheet under the guidance of SFAS No. 66, "Accounting for Sales of Real Estate" due to the Company's significant continuing involvement in the assets transferred to CPLP.

*Saltend Energy Centre* — On October 26, 2004, the Company, through its indirect, wholly owned subsidiary Calpine (Jersey) Limited completed a \$360 million offering of two-year, Redeemable Preferred Shares. The Redeemable Preferred Shares will distribute dividends priced at 3-month U.S. LIBOR plus 700 basis points to the shareholders on a quarterly basis. The proceeds of the offering of the Redeemable Preferred Shares were initially loaned to Calpine's 1,200-megawatt Saltend Energy Centre located in Hull, Yorkshire England, and the future payments of principal and interest on such loan will fund payments on the Redeemable Preferred Shares. The net proceeds of the Redeemable Preferred Shares offering are to be used as permitted by the Company's indentures. The maximum cost that the Company would incur to repurchase the Redeemable Preferred Shares at December 31, 2004, is \$370.8 million. The effective interest rate, after amortization of deferred financing charges, was 11.6% per annum at December 31, 2004.

*Auburndale Power Plant* — On September 3, 2003, the Company announced that it had completed the sale of a 70% preferred interest in its Auburndale power plant to Pomifer Power Funding, LLC, ("PPF"), a subsidiary of ArcLight Energy Partners Fund I, L.P., for \$88.0 million. This preferred interest meets the criteria of a mandatorily redeemable financial instrument and has been classified as debt under the guidance of SFAS No. 150, due to certain preferential distributions to PPF. The preferential distributions are to be paid quarterly beginning in November 2003 and total approximately \$204.7 million over the 11-year period. The preferred interest holders' recourse is limited to the net assets of the entity and distribution terms are defined in the agreement. The Company has not guaranteed the payment of these preferential distributions. Calpine will hold the remaining interest in the facility and will continue to provide O&M services. Although the Company cannot readily determine the potential cost to repurchase the interest in Auburndale Holdings, LLC, the carrying value at December 31, 2004, of its aggregate partners' interests was \$79.1 million. The effective interest rate, after amortization of deferred financing charges, was 17.1% and 16.8% per annum at December 31, 2004 and 2003, respectively.

*King City Power Plant* — On April 29, 2003, the Company sold a preferred interest in a subsidiary that leases and operates the 120-megawatt King City Power Plant to GE Structured Finance for \$82.0 million. As a result of adopting SFAS No. 150, approximately \$82 million of mandatorily redeemable non-controlling

## CALPINE CORPORATION AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

interest in the King City facility, which had previously been included within the balance sheet caption “Minority interests,” was reclassified to “Notes payable.” The distributions and accretion of issuance costs related to this preferred interest, which was previously reported as a component of “Minority interest expense” in the Consolidated Condensed Statements of Operations, was accounted for as interest expense. Distributions and related accretion associated with this preferred interest was \$5.3 million for the six months ended December 31, 2003. As of December 31, 2003, there was \$82.0 million outstanding under the preferred interest. The effective interest rate, after amortization of deferred financing charges, was 13.1% and 12.8% per annum at May 2004 (redemption date) and December 31, 2003, respectively. In connection with the acquisition of the King City Power Plant by CPIF in May 2004, which was subject to the Company’s pre-existing operating lease, proceeds from the sale of the Company’s Collateral Securities, which supported the lease payments, were used in part to redeem the balance due under this preferred interest. See Note 3 for a discussion of the Collateral Securities. The Company expensed approximately \$1.2 million in deferred finance costs related to the original issuance of the preferred interest and paid a \$3.0 million termination fee. These debt extinguishment costs were recorded in Other Expense.

Pursuant to the applicable transaction agreements, each of Calpine King City Cogen, LLC, Calpine Securities Company, L.P., a parent company of Calpine King City Cogen, LLC and Calpine King City, LLC, an indirect parent company of Calpine Securities Company, L.P., has been established as an entity with its existence separate from the Company and other subsidiaries of the Company. The Company consolidates these entities.

*Gilroy Energy Center, LLC* — On September 30, 2003, GEC, a wholly owned subsidiary of the Company’s subsidiary GEC Holdings, LLC, completed an offering of \$301.7 million of 4% Senior Secured Notes Due 2011 (see Note 16 for more information on this secured financing). In connection with this secured notes borrowing, the Company received funding on a third party preferred equity investment in GEC Holdings, LLC totaling \$74.0 million. This preferred interest meets the criteria of a mandatorily redeemable financial instrument and has been classified as debt under the guidance of SFAS No. 150, due to certain preferential distributions to the third party. The preferential distributions are due semi-annually beginning in March 2004 through September 2011 and total approximately \$113.3 million over the eight-year period. Although the Company cannot readily determine the potential cost to repurchase the interest in GEC Holdings, LLC, the carrying value at December 31, 2004, of its aggregate partners’ interests was \$67.4 million. The effective interest rate, after amortization of deferred financing charges, was 12.2% and 11.3% per annum at December 31, 2004 and 2003, respectively.

Pursuant to the applicable transaction agreements, GEC has been established as an entity with its existence separate from the Company and other subsidiaries of the Company. The Company consolidates this entity. The long-term power sales agreement with the CDWR has been acquired by GEC by means of a series of capital contributions by CES and certain of its affiliates and is an asset of GEC, and the Senior Secured Notes and preferred interest are liabilities of GEC, separate from the assets and liabilities of the Company and other subsidiaries of the Company. Aside from seven peaker power plants owned directly and the power sales agreement, GEC’s assets include cash and a 100% equity interest in each of Creed Energy Center, LLC (“Creed”) and Goose Haven Energy Center, LLC (“Goose Haven”) each of which is a wholly owned subsidiary of GEC. Each of Creed and Goose Haven has been established as an entity with its existence separate from the Company and other subsidiaries of the Company. Creed and Goose Haven each have assets consisting of various power plants and other assets.

### 13. Capital Lease Obligations

In the first quarter of 2004, CPIF, a related party, acquired the King City power plant from a third party in a transaction that closed May 19, 2004. See Note 9 for a discussion of the Company’s relationship with CPIF. CPIF became the new lessor of the facility, which it purchased subject to the Company’s pre-existing

**CALPINE CORPORATION AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

operating lease. The Company restructured certain provisions of the operating lease, including a 10-year extension and the elimination of the collateral requirements necessary to support the original lease payments. The base term of the restructured lease expires in 2028 with a renewal option at the then fair market rental value of the facility. See Note 3 for more information on the elimination of the collateral requirements. Due to the lease extension and other modifications to the original lease, the lease was reevaluated under SFAS No. 13 and determined to be a capital lease. The present value of the minimum lease payments totaled approximately \$114.9 million which represented more than 90% of the fair value of the facility. As a result, the Company recorded a capital lease asset of \$114.9 million as property, plant and equipment in the Consolidated Balance Sheet. This asset will be depreciated over the 24 year base lease term. In recording the capital lease obligation, the outstanding deferred lease incentive liability (\$53.7 million including the current portion as of December 31, 2003) recorded as part of the original operating lease transaction, and the prepaid operating lease payments asset (\$69.4 million including the current portion as of December 31, 2003) accumulated under the original operating lease terms, were eliminated. The difference between these two balances on May 19, 2004 was approximately \$19.9 million and is reflected as a discount to the \$114.9 million capital lease obligation. This discount will be accreted as additional interest expense using the effective interest method over the 24 year lease term. The net capital lease obligation originally recorded as debt in the Consolidated Balance Sheet was \$94.9 million.

The Company assumed and consolidated its other capital leases in conjunction with certain acquisitions that occurred during 2001. As of December 31, 2004 and 2003, the asset balances for the leased assets totaled \$322.3 million and \$201.5 million, respectively, with accumulated amortization of \$41.8 million and \$26.0 million, respectively. Of these balances as of December 31, 2004, \$114.9 million of leased assets and \$2.7 million of accumulated amortization related to the King City power plant, which is leased from a related party. The primary types of property leased by the Company are power plants and related equipment. The leases generally provide for the lessee to pay taxes, maintenance, insurance, and certain other operating costs of the leased property. The lease terms range up to 28 years. Some of the lease agreements contain customary restrictions on dividends, additional debt and further encumbrances similar to those typically found in project financing agreements. In determining whether a lease qualifies for capital lease treatment, in accordance with SFAS No. 13, the Company includes all increases due to step rent provisions/escalation clauses in its minimum lease payments for its capital lease obligations. Certain capital improvements associated with leased facilities may be deemed to be leasehold improvements and are amortized over the shorter of the term of the lease or the economic life of the capital improvement. Lease concessions including taxes and insurance are excluded from the minimum lease payments. The Company's minimum lease payments are not tied to an existing variable index or rate.

**CALPINE CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

The following is a schedule by years of future minimum lease payments under capital leases together with the present value of the net minimum lease payments as of December 31, 2004 (in thousands):

	<u>King City Capital Lease with related party</u>	<u>Other Capital Leases</u>	<u>Total</u>
Years Ending December 31:			
2005	\$ 16,699	\$ 19,154	\$ 35,853
2006	16,458	19,760	36,218
2007	16,552	19,918	36,470
2008	16,199	21,753	37,952
2009	16,592	21,600	38,192
Thereafter	<u>175,492</u>	<u>268,317</u>	<u>443,809</u>
Total minimum lease payments	257,992	370,502	628,494
Less: Amount representing interest(1)	<u>162,095</u>	<u>177,480</u>	<u>339,575</u>
Present value of net minimum lease payments	95,897	193,022	288,919
Less: Capital lease obligation, current portion	<u>1,199</u>	<u>4,291</u>	<u>5,490</u>
Capital lease obligation, net of current portion	<u>\$ 94,698</u>	<u>\$ 188,731</u>	<u>\$ 283,429</u>

(1) Amount necessary to reduce net minimum lease payments to present value calculated at the incremental borrowing rate at the time of acquisition.

#### 14. CCFC I Financing

The components of CCFC I financing as of December 31, 2004 and 2003, are (in thousands):

	<u>Outstanding at December 31,</u>	
	<u>2004</u>	<u>2003</u>
Calpine Construction Finance Company I Second Priority Senior Secured Floating Rate Notes Due 2011	\$ 408,568	\$ 407,598
First Priority Secured Institutional Term Loans Due 2009	<u>378,182</u>	<u>381,391</u>
Total	786,750	788,989
Less: Current portion	<u>3,208</u>	<u>3,208</u>
CCFC I financing, net of current portion	<u>\$ 783,542</u>	<u>\$ 785,781</u>

In November 1999, the Company entered into a credit agreement for \$1.0 billion through its wholly owned subsidiary CCFC I with a consortium of banks. The lead arranger was The Bank of Nova Scotia and the lead arranger syndication agent was Credit Suisse First Boston. The non-recourse credit facility was utilized to finance the construction of certain of the Company's gas-fired power plants. The Company repaid the outstanding balance of \$880.1 million in August 2003.

On August 14, 2003, the Company's wholly owned subsidiaries, CCFC I and CCFC Finance Corp., closed a \$750.0 million institutional term loans and secured notes offering, proceeds from which were utilized to repay a majority of CCFC I's indebtedness which would have matured in the fourth quarter of 2003. The offering included \$385.0 million of First Priority Secured Institutional Term Loans Due 2009 (the "CCFC I Term Loans") offered at 98% of par and priced at LIBOR plus 600 basis points, with a LIBOR floor of

## CALPINE CORPORATION AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

150 basis points, and \$365.0 million of Second Priority Senior Secured Floating Rate Notes Due 2011 (the “CCFC I Senior Notes”) offered at 98.01% of par and priced at LIBOR plus 850 basis points, with a LIBOR floor of 125 basis points. On September 25, 2003, CCFC I and CCFC Finance Corp. closed on an additional \$50.0 million of the CCFC I Senior Notes offered at 99% of par. The noteholders’ recourse is limited to seven of CCFC I’s natural gas-fired electric generating facilities located in various power markets in the United States, and related assets and contracts. S&P has assigned a B corporate credit rating to CCFC I. S&P also assigned a B+ rating (with a negative outlook) to the CCFC I Term Loans and a B- rating (with a negative outlook) to the CCFC I Senior Notes. The interest rate of the CCFC I Senior Notes was 10.5% at December 31, 2004, and 9.8% at December 31, 2003. The effective interest rate, after amortization of deferred financing costs, was 10.8% per annum at December 31, 2004, and 10.0% at December 31, 2003. The interest rate of the CCFC I Term Loans was 8.4% at December 31, 2004, and 7.5% at December 31, 2003. The effective interest rate, after amortization of deferred financing costs, was 8.5% per annum at December 31, 2004, and 8.2% at December 31, 2003.

**15. CalGen/ CCFC II Financing**

The components of CalGen/ CCFC II financing as of December 31, 2004 and 2003, are (in thousands):

	Outstanding at December 31,		Letters of Credit Outstanding at December 31,	
	2004	2003	2004	2003
Calpine Generating Company, LLC				
Third Priority Secured Floating Rate Notes Due 2011	\$ 680,000	\$ —	\$ —	\$ —
Second Priority Secured Floating Rate Notes Due 2010	631,639	—	—	—
First Priority Secured Term Loans Due 2009	600,000	—	—	—
First Priority Secured Floating Rate Notes Due 2009	235,000	—	—	—
Third Priority Secured Fixed Rate Notes Due 2011	150,000	—	—	—
Second Priority Secured Term Loans Due 2010	98,693	—	—	—
First Priority Secured Revolving Loans	—	—	189,958	—
Calpine Construction Finance Company II Revolver	—	2,200,358	—	53,190
Total CalGen/ CCFC II financing	<u>\$ 2,395,332</u>	<u>\$ 2,200,358</u>	<u>\$ 189,958</u>	<u>\$ 53,190</u>

In October 2000, the Company entered into a credit agreement for \$2.5 billion through its wholly owned subsidiary Calpine Construction Finance Company II, LLC (“CCFC II”) with a consortium of banks. The lead arrangers were The Bank of Nova Scotia and Credit Suisse First Boston. The non-recourse credit facility was utilized to finance the construction of certain of the Company’s gas-fired power plants. The interest rate at December 31, 2003 was 2.6%. The interest rate ranged from 2.6% to 4.8% during 2004 and 2.6% to 2.9% during 2003. The effective interest rate, after amortization of deferred financing costs, was 7.2% and 3.4% per annum at December 31, 2004 and 2003, respectively.

On March 23, 2004, the Company’s wholly owned subsidiary Calpine Generating Company, LLC (“CalGen”), formerly known as CCFC II, completed its offering of secured term loans and secured notes. As expected, the Company realized net total proceeds from the offerings (after payment of transaction fees and

## CALPINE CORPORATION AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

expenses, including the fee payable to Morgan Stanley in connection with an index hedge) in the approximate amount of \$2.3 billion. The interest rates associated with the instruments are as follows:

Description	Interest Rate
First Priority Secured Floating Rate Notes Due 2009	LIBOR plus 375 basis points
Second Priority Secured Floating Rate Notes Due 2010	LIBOR plus 575 basis points
Third Priority Secured Floating Rate Notes Due 2011	LIBOR plus 900 basis points
Third Priority Secured Notes Due 2011	11.50%
First Priority Secured Term Loans due 2009	LIBOR plus 375 basis points(1)
Second Priority Secured Term Loans due 2010	LIBOR plus 575 basis points(2)

(1) The Company may also elect a Base Rate plus 275 basis points.

(2) The Company may also elect a Base Rate plus 475 basis points.

The secured term loans and secured notes described above in each case are collateralized, through a combination of pledges of the equity interests in CalGen and its first tier subsidiary, CalGen Expansion Company, liens on the assets of CalGen's power generating facilities (other than its Goldendale facility) and related assets located throughout the United States. The lenders' recourse is limited to such collateral, and none of the indebtedness is guaranteed by Calpine. Net proceeds from the offerings were used to refinance amounts outstanding under the \$2.5 billion CCFC II revolving construction credit facility, which was scheduled to mature in November 2004, and to pay fees and transaction costs associated with the refinancing. Concurrently with this refinancing, the Company amended and restated the CCFC II credit facility (as amended and restated, the "CalGen revolving credit facility") to reduce the commitments under the facility to \$200.0 million and extend its maturity to March 2007. Borrowings under the CalGen revolving credit facility bear interest at LIBOR plus 350 basis points (or, at the Company's election, the Base Rate plus 250 basis points). Interest rates and effective interest rates, after amortization of deferred financing costs are as follows:

	<u>Interest Rate at December 31, 2004</u>	<u>2004 Effective Interest Rate after Amortization of Deferred Financing Costs</u>
First Priority Secured Floating Rate Notes Due 2009	6.0%	5.8%
Second Priority Secured Floating Rate Notes Due 2010	8.0%	8.1%
Third Priority Secured Floating Rate Notes Due 2011	11.2%	10.9%
Third Priority Secured Fixed Rate Notes Due 2011	11.5%	11.8%
First Priority Secured Term Loans Due 2009	6.0%	5.8%
Second Priority Secured Term Loans Due 2010	8.0%	8.0%
First Priority Secured Revolving Loans	—	17.5%

**CALPINE CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**16. Other Construction/ Project Financing**

The components of the Company's other construction/project financing as of December 31, 2004 and 2003, are (in thousands):

<u>Projects</u>	Outstanding at December 31,		Letters of Credit Outstanding at December 31,	
	2004	2003	2004	2003
Riverside Energy Center, LLC	\$ 368,500	\$ 165,347	\$ —	\$ —
Pasadena Cogeneration, L.P.	282,896	289,115	—	—
Broad River Energy LLC	275,112	291,612	—	—
Fox Energy Company LLC	266,075	—	75,000	—
Rocky Mountain Energy Center, LLC	264,900	—	—	—
Gilroy Energy Center, LLC, 4% Senior Secured Notes Due 2011	261,382	298,065	—	—
Aries Power Plant	174,914	—	—	—
Blue Spruce Energy Center, LLC	98,272	140,000	—	—
Otay Mesa Energy Center, LLC — Ground Lease	7,000	7,000	—	—
Calpine Newark, LLC	—	47,816	—	—
Calpine Parlin, LLC	—	32,451	—	—
Total	1,999,051	1,271,406	\$ 75,000	\$ —
Less: Current portion	93,393	61,900		
Long-term construction/project financing	\$ 1,905,658	\$ 1,209,506		

*Riverside Energy Center* — On August 25, 2003, the Company announced that it had completed a \$230.0 million non-recourse project financing for its 603-megawatt Riverside Energy Center. The natural gas-fueled electric generating facility is currently under construction in Beloit, Wisconsin. Upon completion of the project, which was scheduled for June 2004, Calpine was required to sell 450 megawatts of electricity to Wisconsin Power and Light under the terms of a nine-year tolling agreement and provide 75 megawatts of capacity to Madison Gas & Electric under a nine-year power sales agreement. A group of banks, including Credit Lyonnais, Co-Bank, Bayerische Landesbank, HypoVereinsbank and NordLB, were to finance construction of the plant at a rate of Libor plus 250 basis points. Upon commercial operation of the Riverside Energy Center, the banks were required to provide a three-year term-loan facility initially priced at Libor plus 275 basis points. The interest rate at refinancing on June 29, 2004, and December 31, 2003, was 3.7%. The interest rate ranged from 3.6% to 3.7% during 2004. The effective interest rate, after amortization of deferred financing costs, was 4.7% and 5.3% per annum at refinancing on June 29, 2004, and December 31, 2003, respectively. This facility was refinanced along with Rocky Mountain on June 29, 2004.

*Pasadena Cogeneration, L.P.* — In September 2000, the Company completed the financing, which matures in 2048, for both Phase I and Phase II of the Pasadena, Texas cogeneration project. Under the terms of the project financing, the Company received \$400.0 million in gross proceeds. The interest rate at December 31, 2004 and 2003, was 8.6%.

*Broad River Energy LLC* — In October 2001, the Company completed the financing, which matures in 2041, for the Broad River Energy Center in South Carolina. Under the terms of the project financing, the Company received \$300.0 million in gross proceeds. The interest rate at December 31, 2004 and 2003, was 7.9% and 8.1%, respectively.

## CALPINE CORPORATION AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

*Fox Energy Company LLC* — On November 19, 2004, the Company entered into a \$400 million, 25-year, non-recourse sale/leaseback transaction with affiliates of GE Commercial Finance Energy Financial Services (“GECF”) for the 560-megawatt Fox Energy Center under construction in Wisconsin. The proceeds will be used to reimburse Calpine for construction capital spent to date on the project, to repay existing debt associated with equipment for the project and to complete the construction of the facility. Once construction is complete, the Company will lease the power plant from GECF under a 25-year facility lease. The Company also has an option to renew the lease for a 15-year term. Due to significant continuing involvement, as defined in SFAS No. 98, “Accounting for Leases,” the transaction does not currently qualify for sale lease-back accounting under that statement and has been accounted for as a financing. The proceeds received from GECF are recorded as debt in the Company’s consolidated balance sheet. The power plant assets will be depreciated over their estimated useful life and the lease payments will be applied to principal and interest expense using the effective interest method until such time as the Company’s continuing involvement is removed, expires or is otherwise eliminated. Once the Company no longer has significant continuing involvement in the power plant assets, the legal sale will be recognized for accounting purposes and the underlying lease will be evaluated and classified in accordance with SFAS No. 13. The effective interest rate at December 31, 2004 was 7.1%.

*Rocky Mountain Energy Center, LLC* — On February 20, 2004, the Company completed a \$250.0 million, non-recourse project financing for the 621-megawatt Rocky Mountain Energy Center. A consortium of banks financed the construction of the plant at a rate of LIBOR plus 250 basis points. This loan was refinanced in June 2004, as described below.

*Rocky Mountain Energy Center, LLC and Riverside Energy Center, LLC* — On June 29, 2004, Rocky Mountain Energy Center, LLC and Riverside Energy Center, LLC, wholly owned stand-alone subsidiaries of the Company’s Calpine Riverside Holdings, LLC subsidiary, received funding in the aggregate amount of \$661.5 million comprised of \$633.4 million of First Priority Secured Floating Rate Term Loans Due 2011 priced at LIBOR plus 425 basis points and \$28.1 million letter of credit-linked deposit facility. Net proceeds from the loans, after transaction costs and fees, were used to pay final construction costs and refinance amounts outstanding under the \$250 million non-recourse project financing for the Rocky Mountain facility and the \$230 million non-recourse project financing for the Riverside facility. In connection with this refinancing, the Company wrote off \$13.2 million in deferred financing costs. In addition, approximately \$160.0 million was used to reimburse the Company for costs incurred in connection with the development and construction of the Rocky Mountain and Riverside facilities. The Company also received approximately \$79.0 million in proceeds via a combination of cash and increased credit capacity as a result of the elimination of certain reserves and cancellation of letters of credit associated with the original non-recourse project financings. The interest rate of the Rocky Mountain facility at December 31, 2004, was 8.6%. The interest rate of the Riverside facility at December 31, 2004 was 6.4%.

*Gilroy Energy Center, LLC* — On September 30, 2003, GEC, a wholly owned, stand-alone subsidiary of the Company’s subsidiary GEC Holdings, LLC, closed on \$301.7 million of 4% Senior Secured Notes Due 2011. The senior secured notes are secured by GEC’s and its subsidiaries’ 11 peaking units located at nine power-generating sites in northern California. The notes also are secured by a long-term power sales agreement for 495 megawatts of peaking capacity with the CDRW, which is being served by the 11 peaking units. In addition, payment of the principal and interest on the notes when due is insured by an unconditional and irrevocable financial guaranty insurance policy that was issued simultaneously with the delivery of the notes. Proceeds of the notes offering (after payment of transaction expenses, including payment of the financial guaranty insurance premium, which are capitalized and included in deferred financing costs on the balance sheet) will be used to reimburse costs incurred in connection with the development and construction of the peaker projects. The noteholders’ recourse is limited to the financial guaranty insurance policy and, insofar as payment has not been made under such policy, to the assets of GEC and its subsidiaries. The Company has not guaranteed repayment of the notes. The effective interest rate, after amortization of deferred

CALPINE CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

financing charges, was 6.7% and 5.1% per annum at December 31, 2004 and 2003, respectively. In connection with this offering, the Company has received funding on a third party preferred equity investment in GEC Holdings, LLC totaling \$74.0 million. See Note 12 for more information regarding this preferred interest.

*Aries Power Plant* — On March 26, 2004, in connection with the closing of the acquisition of the Aries Power Plant, the existing construction loan was converted to two term loans totaling \$178.8 million. At December 31, 2004, Tranche A had an aggregate principal amount of \$126.8 million, with quarterly payments maturing in December 2016. At December 31, 2004, Tranche B had an aggregate principal amount of \$48.1 million, with quarterly payments maturing in December 2019. After taking interest rate swaps into consideration, the interest rates on Tranches A and B were 9.25% and 10.32%, respectively.

*Blue Spruce Energy Center, LLC* — On August 22, 2002, the Company completed a \$106.0 million non-recourse project financing for the construction of its 285-megawatt Blue Spruce Energy Center. On November 7, 2003, the Company repaid the outstanding balance of \$102.0 million with the proceeds of a new term financing described below.

On November 7, 2003, the Company completed a new \$140.0 million term loan financing for the Blue Spruce Energy Center. The term loan is made up of two facilities, Tranche A and Tranche B, which have 15-year and 6-year repayment terms, respectively. At December 31, 2004, there was \$98.3 million outstanding under Tranche A while Tranche B was repaid. The effective interest rate, after amortization of deferred financing costs, for Tranche A and Tranche B was 8.2% and 8.6%, respectively, per annum at December 31, 2003. The effective interest rate, after amortization of deferred financing costs, for Tranche A was 14.4% per annum at December 31, 2004.

*Otay Mesa Energy Center, LLC* — On July 8, 2003, Otay Mesa Generating Company, LLC, entered into a ground lease and easement agreement with D&D Landholdings, a Limited Partnership. The interest rate at December 31, 2004 and 2003 was 12.6%.

*Calpine Newark, LLC and Calpine Parlin, LLC* — In December 2002, the Company completed a \$50.0 million project financing secured by the Newark Power Plant. This financing was fully repaid in May 2004 in connection with the contract termination discussed below. The interest rate at repayment in May 2004 and at December 31, 2003, was 10.6%.

In December 2002, the Company completed a \$37.0 million project financing secured by the Parlin Power Plant. This financing was fully repaid in May 2004 in connection with the contract termination discussed below. The interest rate at repayment in May 2004 and at December 31, 2003, was 9.8%.

On May 26, 2004, the Company and Jersey Central Power & Light Company (“JCPL”) terminated their existing toll arrangements with the Newark and Parlin power plants, resulting in a pre-tax gain of \$100.6 million. Proceeds from this transaction were used to retire project financing debt of \$78.8 million. In conjunction with this termination, Utility Contract Funding II, LLC (“UCF”), a wholly owned subsidiary of CES, entered into a long-term PPA with JCPL. UCF was then sold. The Company recognized an \$85.4 million pre-tax gain on the sale of UCF. The total pre-tax gain, net of transaction costs and the write-off of unamortized deferred financing costs, was \$171.5 million.

*California Peaker Financing* — On May 14, 2002, the Company’s subsidiary, Calpine California Energy Finance, LLC, entered into an \$100.0 million amended and restated credit agreement with ING Capital LLC for the funding of 9 California peaker facilities, of which \$100.0 million was drawn on May 24, 2002, and \$50.0 million was repaid on August 7, 2002, and the remaining \$50.0 million was repaid on July 21, 2003. The interest rate ranged from 3.5% to 3.9% during 2003. The effective interest rate, after amortization of deferred financing costs, was 4.0% per annum at December 31, 2003.

**CALPINE CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**17. Convertible Senior Notes***4% Convertible Senior Notes Due 2006*

In December 2001 and January 2002, the Company completed the issuance of \$1.2 billion in aggregate principal amount of 4% Convertible Senior Notes Due 2006 (“2006 Convertible Senior Notes”). These securities are convertible, at the option of the holder, into shares of Calpine common stock at a price of \$18.07. Holders had the right to require the Company to repurchase all or a portion of the 2006 Convertible Senior Notes on December 26, 2004, at 100% of their principal amount plus any accrued and unpaid interest. The Company can repurchase the 2006 Convertible Senior Notes with cash, shares of Calpine common stock, or a combination of cash and stock. During 2004 and 2003 the Company repurchased approximately \$658.7 million and \$474.9 million in aggregate outstanding principal amount of the 2006 Convertible Senior Notes at a repurchase price of \$657.7 million and \$458.8 million plus accrued interest, respectively. Additionally, during 2003 approximately \$65.0 million in aggregate outstanding principal amount of the 2006 Convertible Senior Notes were exchanged for 12.0 million shares of Calpine common stock in privately negotiated transactions. During 2004 and 2003 the Company recorded a pre-tax loss of \$5.3 million and a pre-tax gain of \$13.6 million, respectively, on these transactions, net of write-offs of the associated unamortized deferred financing costs and unamortized premiums or discounts. The effective interest rate on these notes at December 31, 2004 and 2003, after amortization of deferred financing costs, was 4.6% and 4.9% per annum, respectively. At December 31, 2004, approximately \$1.3 million of the 2006 Convertible Senior Notes remain outstanding.

*4<sup>3</sup>/<sub>4</sub>% Contingent Convertible Senior Notes Due 2023*

On November 17, 2003, the Company completed the issuance of \$650 million of 2023 Convertible Senior Notes. These 2023 Convertible Senior Notes are convertible, at the option of holder, into cash and into shares of Calpine common stock at a price of \$6.50 per share, which represents a 38% premium over the New York Stock Exchange closing price of \$4.71 per Calpine common share on November 6, 2003. Holders have the right to require the Company to repurchase all or a portion of these securities on November 15, 2009, November 15, 2013, and November 15, 2018, at 100% of their principal amount plus any accrued and unpaid interest and liquidated damages, if any, up to the date of repurchase. Otherwise, conversion is subject to a common stock price condition where the Company’s common stock is trading for at least 20 trading days in the period of 30 consecutive trading days ending on the last trading day of the calendar quarter preceding the quarter in which the conversion occurs is more than 120% of the conversion price per share of the common stock in effect on that 30th trading day. Conversion is also subject to a trading price condition where during the five trading day period after any five consecutive trading day period in which the trading price of \$1,000 principal amount of the notes for each day of such five-day period was less than 95% of the product of the closing sale price of our common stock price on that day multiplied by the Conversion Rate. Note holders have a limited amount of time to convert their notes once a conversion condition has been achieved. Generally, upon conversion of the notes the Company is required to deliver the par value of the notes in cash and any additional conversion value in Calpine common stock. However, if the notes are put back to the Company on November 15, 2009, November 15, 2013 or November 15, 2018, the Company has the right to pay the repurchase price in cash, shares of Calpine common stock, or a combination of cash and stock.

On January 9, 2004, one of the initial purchasers of the 2023 Convertible Senior Notes exercised in full its option to purchase an additional \$250.0 million of these notes. The notes are convertible into cash and into shares of Calpine common stock upon the occurrence of certain contingencies at an initial conversion price of \$6.50 per share, which represents a 38% premium over the New York Stock Exchange closing price of \$4.71 per share on November 6, 2003, the date the notes were originally priced.

During 2004, the Company repurchased approximately \$266.2 million in aggregate outstanding principal amount of 2023 Convertible Senior Notes at a repurchase price of \$177.0 million plus accrued interest. At December 31, 2004, there was \$633.8 million in outstanding borrowings under these notes. The effective

CALPINE CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

interest rate on these notes, after amortization of deferred financing costs, was approximately 5.3% and 4.9% per annum at December 31, 2004 and 2003.

**6% Contingent Convertible Notes Due 2014**

On September 30, 2004, the Company closed on \$736 million aggregate principal amount at maturity of 2014 Convertible Notes, offered at 83.9% of par. Net proceeds were used to repurchase certain outstanding Senior Notes, 2023 Convertible Senior Notes, and HIGH TIDES securities. The Company recorded a pre-tax gain on these transactions in the amount of \$167.2 million, net of write-offs of unamortized deferred financing costs and the unamortized premiums or discounts.

The 2014 Convertible Notes are convertible into cash and into a variable number of shares of Calpine common stock based on a conversion value derived from the conversion price of \$3.85 per share. The number of shares to be delivered upon conversion will be determined by the market price of Calpine common shares at the time of conversion. However, conversion is subject to a common stock price condition where the Company's common stock is trading for at least 20 trading days in the period of 30 consecutive trading days ending on the last trading day of the calendar quarter preceding the quarter in which the conversion occurs is more than 120% of the conversion price per share of the common stock in effect on the 30th trading day. Conversion is also subject to a trading price condition where during the five trading day period after any five consecutive trading day period in which the trading price of \$1,000 principal amount at maturity of the notes for each day of such five-day period was less than 95% of the product of the closing sale price of our common stock price on that day multiplied by the Conversion Rate. Note holders have a limited amount of time to convert their notes once a conversion condition has been achieved.

The conversion price of \$3.85 per share represents a premium of approximately 23% over The New York Stock Exchange closing price of \$3.14 per Calpine common share on September 27, 2004. The 2014 Convertible Notes will pay Contractual cash interest at a rate of 6%, except that in years three, four and five, in lieu of interest, the original principal amount of \$839 per note will accrete daily beginning September 30, 2006, to the full principal amount of \$1,000 per note at September 30, 2009. For accounting purposes, the Company has calculated the effective interest rate of the 2014 Convertible Notes capturing the 6% stated rate and the 16.1% discount and is recording interest expense over the 10-year term of the instrument using the effective interest method in accordance with paragraph 13-15 of APB Opinion No. 21, "Interest on Receivables and Payables." Upon conversion of the 2014 Convertible Notes, the Company is required to deliver the accreted principal amount of the notes in cash and any additional conversion value in Calpine common stock. However, in certain events of default the Company is required to deliver the par value of the notes in Calpine common stock.

At December 31, 2004, there was \$620.2 million in outstanding borrowings under these notes. The effective interest rate on these notes, after amortization of deferred financing costs, was approximately 6.3% per annum at December 31, 2004.

In conjunction with the 2014 Convertible Notes offering, the Company entered into a ten-year Share Lending Agreement with Deutsche Bank AG London ("DB London"), under which the Company loaned DB London 89 million shares of newly issued Calpine common stock (the "loaned shares") in exchange for a loan fee of \$.001 per share. DB London sold the entire 89 million shares on September 30, 2004, at a price of \$2.75 per share in a registered public offering. The Company did not receive any of the proceeds of the public offering. DB London is required to return the loaned shares to the Company no later than the end of the ten-year term of the Share Lending Agreement, or earlier under certain circumstances. Once loaned shares are returned, they may not be re-borrowed under the Share Lending Agreement. Under the Share Lending Agreement, DB London is required to post and maintain collateral in the form of cash, government securities, certificates of deposit, high-grade commercial paper of U.S. issuers or money market shares at least equal to 100% of the market value of the loaned shares as security for the obligation of DB London to return the loaned

**CALPINE CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

shares to the Company. This collateral is held in an account at a DB London affiliate. The Company has no access to the collateral unless DB London defaults under its obligations.

The Share Lending Agreement is similar to an accelerated share repurchase transaction which is addressed by EITF Issue No. 99-07, *“Accounting for an Accelerated Share Repurchase Program.”* This EITF issue requires an accelerated share repurchase transaction to be accounted for as two transactions: a treasury stock purchase and a forward sales contract. The Share Lending Agreement involved the issuance of 89 million shares of the Company’s common stock in exchange for a physically settling forward contract for the reacquisition of the shares at a future date. We recorded the issuance of shares in equity at the fair value of the Calpine common stock on the date of issuance in the amount of \$258.1 million. As there was minimal cash consideration in the transaction, the requirement to the return of these shares is considered to be a prepaid forward purchase contract. We have evaluated the prepaid forward contract under the guidance of SFAS No. 133, and determined that the instrument was not a derivative in its entirety and that the embedded derivative would not require separate accounting. The hybrid contract was classified similar to a shareholder loan which was recorded in equity at the fair value of the Calpine common stock on the date of issuance in the amount of \$258.1 million.

Under SFAS No. 150, entities that have entered into a forward contract that requires physical settlement by repurchase of a fixed number of the issuer’s equity shares of common stock in exchange for cash shall exclude the common shares to be redeemed or repurchased when calculating basic and diluted EPS. The Share Lending Agreement does not provide for cash settlement, but rather physical settlement is required (i.e. the shares must be returned by the end of the arrangement). The Company analogizes to the guidance in SFAS No. 150 such that the prepaid forward contract results in a reduction in the number of outstanding shares used to calculate basic and diluted EPS. Consequently, the 89 million shares of common stock subject to the Share Lending Agreement are excluded from the earnings per share EPS calculation.

**CALPINE CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**18. Senior Notes**

Senior Notes payable consist of the following as of December 31, 2004 and 2003, (in thousands):

	Interest Rates	First Call Date	December 31,		Fair Value as of December 31, (3)	
			2004	2003	2004	2003
First Priority Senior Secured Notes						
First Priority Senior Secured Notes Due 2014	95/8%	(12)	\$ 778,971	\$ —	\$ 801,367	\$ —
First Priority Senior Secured Term Loan B Notes Due 2007	(4)	(2)	—	199,500	—	202,243
Total First Priority Senior Secured Notes			<u>778,971</u>	<u>199,500</u>	<u>801,367</u>	<u>202,243</u>
Second Priority Senior Secured Notes						
Second Priority Senior Secured Term Loan B Notes Due 2007	(5)	(8)	740,625	748,125	677,672	727,552
Second Priority Senior Secured Floating Rate Notes Due 2007	(6)	(7)	493,750	498,750	449,313	488,775
Second Priority Senior Secured Notes Due 2010	81/2%	(7)	1,150,000	1,150,000	987,563	1,127,000
Second Priority Senior Secured Notes Due 2013	83/4%	(7)	900,000	900,000	740,250	877,500
Second Priority Senior Secured Notes Due 2011	97/8%	(1)	393,150	392,159	344,006	401,963
Total Second Priority Senior Secured Notes			<u>3,677,525</u>	<u>3,689,034</u>	<u>3,198,804</u>	<u>3,622,790</u>
Unsecured Senior Notes						
Senior Notes Due 2005	81/4%	(2)	185,949	224,679	188,424	215,692
Senior Notes Due 2006	101/2%	2001	152,695	166,575	151,359	163,243
Senior Notes Due 2006	75/8%	(1)	111,563	214,613	109,332	191,006
Senior Notes Due 2007	83/4%	2002	195,305	226,120	177,728	187,679
Senior Notes Due 2007(9)	83/4%	(2)	165,572	154,120	150,671	114,049
Senior Notes Due 2008	77/8%	(1)	227,071	305,323	191,875	236,624
Senior Notes Due 2008	81/2%	(2)	1,581,539	1,925,067	1,347,472	1,540,053
Senior Notes Due 2008(10)	83/8%	(2)	160,050	154,140	121,638	114,064
Senior Notes Due 2009	73/4%	(1)	221,539	232,520	177,231	179,041
Senior Notes Due 2010	85/8%	(2)	496,973	496,909	402,548	390,074
Senior Notes Due 2011	81/2%	(2)	1,063,850	1,179,911	792,568	932,130
Senior Notes Due 2011(11)	87/8%	(2)	232,511	215,242	167,989	157,127
Total Unsecured Senior Notes			<u>4,794,617</u>	<u>5,495,219</u>	<u>3,978,835</u>	<u>4,420,782</u>
Total Senior Notes			<u>9,251,113</u>	<u>9,383,753</u>	<u>7,979,006</u>	<u>8,245,815</u>
Less: Senior Notes, current portion			<u>718,449</u>	<u>14,500</u>	<u>198,449</u>	<u>14,500</u>
Senior Notes, net of current portion			<u>\$ 8,532,664</u>	<u>\$ 9,369,253</u>	<u>\$ 7,780,557</u>	<u>\$ 8,231,315</u>

(1) Not redeemable prior to maturity.

(2) Redeemable by the Company at any time prior to maturity.

**CALPINE CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

- (3) Represents the market values of the Senior Notes at the respective dates.
- (4) 3-month US\$ LIBOR, plus a spread.
- (5) U.S. Prime Rate in combination with the Federal Funds Effective Rate, plus a spread.
- (6) British Bankers Association LIBOR Rate for deposit in U.S. dollars for a period of three months, plus a spread.
- (7) At any time before July 15, 2005, with respect to the Second Priority Senior Secured Floating Rate Notes Due 2007 (the “2007 notes”) and before July 15, 2006, with respect to the Second Priority Senior Secured Notes Due 2010 (the “2010 notes”) and the Second Priority Senior Secured Notes Due 2013 (the “2013 notes”), on one or more occasions, the Company can choose to redeem up to 35% of the outstanding principal amount of the applicable series of notes, including any additional notes issued in such series, with the net cash proceeds of any one or more public equity offerings so long as (1) the Company pays holders of the notes a redemption price equal to par plus the applicable Eurodollar rate then in effect with respect to the 2007 notes, 108.500% with respect to the 2010 notes, and 108.750% with respect to the 2013 notes, at the face amount of the notes the Company redeems, plus accrued interest; (2) the Company must redeem the notes within 45 days of such public equity offering; and (3) at least 65% of the aggregate principal amount of the applicable series of notes originally issued under the applicable indenture, including the principal amount of any additional notes, remains outstanding immediately after each such redemption.
- (8) The Company may not voluntarily prepay these notes prior to July 15, 2005, except that the Company may on any one or more occasions make such prepayment with the proceeds of one or more public equity offerings.
- (9) Issued in Canadian dollars.
- (10) Issued in Euros.
- (11) Issued in Sterling.
- (12) The Company may redeem some or all of the notes at any time on or after October 1, 2009 at specified redemption prices. At any time prior to October 1, 2009, the Company may redeem some or all of the notes at a price equal to 100% of their principal amount and the applicable premium plus accrued and unpaid interest. In addition, at any time prior to October 1, 2007, the Company may redeem up to 35% of the aggregate principal amount of the notes with the net proceeds from one or more public equity offerings at a stated redemption price.

The Company has completed a series of public debt offerings since 1994. Interest is payable quarterly or semiannually at specified rates. Deferred financing costs are amortized using the effective interest method, over the respective lives of the notes. There are no sinking fund or mandatory redemptions of principal before the maturity dates of each offering. Certain of the Senior Note indentures limit the Company’s ability to incur additional debt, pay dividends, sell assets and enter into certain transactions. As of December 31, 2004, the Company was in compliance with all debt covenants relating to the Senior Notes. The effective interest rates for each of the Company’s Senior Notes outstanding at December 31, 2004, are consistent with the respective notes outstanding during 2003, unless otherwise noted.

## CALPINE CORPORATION AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

Senior notes repurchased by the Company during 2004 and 2003 totaled \$743.4 million and \$1,378.5 million, respectively, in aggregate outstanding principal amount at a repurchase price of \$559.3 million and \$1,116.5 million, respectively, plus accrued interest. The Company recorded a pre-tax gain on these transactions in the amount of \$177.6 million and \$245.5 million, respectively, net of write-offs of unamortized deferred financing costs and the unamortized premiums or discounts. The following table summarizes the total senior notes repurchased by the Company in the year ended December 31, 2004 and 2003, respectively (in millions):

Debt Security	2004		2003	
	Principal Amount	Amount Paid	Principal Amount	Amount Paid
8 <sup>1/4</sup> % Senior Notes Due 2005	\$ 38.9	\$ 34.9	\$ 25.0	\$ 24.5
10 <sup>1/2</sup> % Senior Notes Due 2006	13.9	12.4	5.2	5.1
7 <sup>5/8</sup> % Senior Notes Due 2006	103.1	96.5	35.3	32.5
8 <sup>3/4</sup> % Senior Notes Due 2007	30.8	24.4	48.9	45.0
7 <sup>7/8</sup> % Senior Notes Due 2008	78.4	56.5	74.8	58.3
8 <sup>1/2</sup> % Senior Notes Due 2008(1)	344.3	249.4	48.3	42.3
8 <sup>3/8</sup> % Senior Notes Due 2008(1)	6.1	4.0	59.2	46.6
7 <sup>3/4</sup> % Senior Notes Due 2009	11.0	8.1	97.2	75.9
8 <sup>5/8</sup> % Senior Notes Due 2010	—	—	210.4	170.7
8 <sup>1/2</sup> % Senior Notes Due 2011	116.9	73.1	648.4	521.3
8 <sup>7/8</sup> % Senior Notes Due 2011(1)	—	—	125.8	94.3
	<u>\$ 743.4</u>	<u>\$ 559.3</u>	<u>\$ 1,378.5</u>	<u>\$ 1,116.5</u>

- (1) \$395.5 million of such repurchased notes have been pledged as security as part of the transactions relating to the issuance by Calpine (Jersey) Limited of Redeemable Preferred Shares. See Note 12 for additional information on such issuance of Redeemable Preferred Shares.

Additionally, senior notes totaling \$80.0 million in principal amount were exchanged for 11.5 million shares of Calpine common stock in privately negotiated transactions during 2003. The Company recorded a \$17.9 million pre-tax gain on these transactions, net of write-offs of unamortized deferred financing costs and the unamortized premiums or discounts. The following table summarizes the total senior notes exchanged for common stock by the Company in the year ended December 31, 2003 (in millions):

Debt Security	Principal Amount	Common Stock Issued
8 <sup>1/2</sup> % Senior Notes Due 2008	\$ 55.0	8.1
8 <sup>1/2</sup> % Senior Notes Due 2011	25.0	3.4
	<u>\$ 80.0</u>	<u>11.5</u>

**First Priority Senior Secured Notes Due 2014**

On September 30, 2004, the Company closed on \$785 million of 9<sup>5/8</sup>% First-Priority Senior Secured Notes Due 2014 (“9<sup>5/8</sup>% Senior Notes”), offered at 99.212% of par. The 9<sup>5/8</sup>% Senior Notes are secured, by substantially all of the assets owned directly by Calpine Corporation, and by the stock of substantially all of its first-tier subsidiaries. Net proceeds from the 9<sup>5/8</sup>% Senior Notes offering were used to make open-market purchases of the Company’s existing indebtedness and any remaining proceeds will be applied toward further open-market purchases (or redemption) of existing indebtedness and as otherwise permitted by the

CALPINE CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

Company's indentures. The Company may redeem some or all of the notes at any time on or after October 1, 2009 at specified redemption prices. At any time prior to October 1, 2009, the Company may redeem some or all of the notes at a price equal to 100% of their principal amount and the applicable premium plus accrued and unpaid interest. In addition, at any time prior to October 1, 2007, the Company may redeem up to 35% of the aggregate principal amount of the notes with the net proceeds from one or more public equity offerings at a stated redemption price. Interest is payable on these notes on April 1 and October 1 of each year, beginning on April 1, 2005. The notes will mature on September 30, 2014. At December 31, 2004, both the book and face value of these notes were \$779.0 million and \$785.0 million, respectively. The effective interest rate, after amortization of deferred financing costs, was 10.0% per annum at December 31, 2004.

***First Priority Senior Secured Term Loan B Notes Due 2007***

The Company was to repay these notes in 16 consecutive quarterly installments, commencing on October 15, 2003, and ending on July 15, 2007, the first fifteen of which were to be for 0.25% of the original principal amount of the notes thru April 15, 2007. These notes were redeemable at any time prior to maturity with certain provisions. These notes were repaid prior to their maturity with the proceeds from the sale of certain oil and gas properties during 2004. The effective interest rate, after amortization of deferred financing costs, was 5.2% and 5.0% per annum at December 31, 2004 and 2003, respectively.

***Second Priority Senior Secured Term Loan B Notes Due 2007***

The Company must repay these notes in 16 consecutive quarterly installments, commencing on October 15, 2003, and ending on July 15, 2007, the first fifteen of which will be 0.25% of the original principal amount of the notes thru April 15, 2007. The final installment, on July 15, 2007, will be 96.25% of the original principal amount. Interest is payable on each quarterly payment date occurring after the closing date of July 16, 2003. The Company may not voluntarily prepay these notes prior to July 15, 2005, except that the Company may on any one or more occasions make such prepayment with the proceeds of one or more public equity offerings. At December 31, 2004, both the book and face value of these notes was \$740.6 million. The effective interest rate, after amortization of deferred financing costs, was 7.8% and 7.5% per annum at December 31, 2004 and 2003, respectively.

***Second Priority Senior Secured Floating Rate Notes Due 2007***

The Company must repay these notes in 16 consecutive quarterly installments, commencing on October 15, 2003, and ending on July 15, 2007, the first fifteen of which will be 0.25% of the original principal amount of the notes thru April 15, 2007. The final installment, on July 15, 2007, will be 96.25% of the original principal amount. On or before July 15, 2005, on one or more occasions, the Company may use the proceeds from one or more public equity offerings to redeem up to 35% of the aggregate principal amount of the notes at the stated redemption price of par plus the applicable Eurodollar rate in effect at the time of redemption. Interest is payable on each quarterly payment date occurring after the closing date of July 16, 2003. At December 31, 2004, both the book and face value of these notes was \$493.8 million. The effective interest rate, after amortization of deferred financing costs, was 7.8% and 7.4% per annum at December 31, 2004 and 2003, respectively.

***Second Priority Senior Secured Notes Due 2010***

Interest is payable on these notes on January 15 and July 15 of each year. The notes will mature on July 15, 2010. On or before July 15, 2006, on one or more occasions, the Company may use the proceeds from one or more public equity offerings to redeem up to 35% of the aggregate principal amount of the notes at the stated redemption price of 108.5%. At December 31, 2003, both the book and face value of these notes were

**CALPINE CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

\$1,150.0 million. The effective interest rate, after amortization of deferred financing costs, was 8.9% and 8.8% per annum at December 31, 2004 and 2003, respectively.

***Second Priority Senior Secured Notes Due 2011***

Interest is payable on these notes on June 1 and December 1 of each year, commencing on June 1, 2004. The notes will mature on December 1, 2011, and are not redeemable prior to maturity. At December 31, 2004, the book and face value of these notes were \$393.2 million and \$400.0 million, respectively. The effective interest rate, after amortization of deferred financing costs, was 10.7% and 10.5% per annum at December 31, 2004 and 2003, respectively.

***Second Priority Senior Secured Notes Due 2013***

Interest is payable on these notes on January 15 and July 15 of each year. The notes will mature on July 15, 2013. On or before July 15, 2006, on one or more occasions, the Company may use the proceeds from one or more public equity offerings to redeem up to 35% of the aggregate principal amount of the notes at the stated redemption price of 108.75%. At December 31, 2004, both the book and face value of these notes were \$900.0 million. The effective interest rate, after amortization of deferred financing costs, was 9.0% per annum at December 31, 2004 and 2003.

***Senior Notes Due 2005***

Interest on the 8 <sup>1</sup>/<sub>4</sub> % notes is payable semi-annually on February 15 and August 15. The notes mature on August 15, 2005, or may be redeemed at any time prior to maturity at a redemption price equal to 100% of their principal amount plus accrued and unpaid interest plus a make-whole premium. At December 31, 2004, the book value and face value of these notes were \$185.9 million and \$186.1 million, respectively. The effective interest rate, after amortization of deferred financing costs, is 8.7% per annum.

***Senior Notes Due 2006***

Interest on the 10 <sup>1</sup>/<sub>2</sub> % notes is payable semi-annually on May 15 and November 15 each year. The notes mature on May 15, 2006, or are redeemable, at the option of the Company, at any time on or after May 15, 2001, at various redemption prices. In addition, the Company may redeem up to \$63.0 million of the Senior Notes Due 2006 from the proceeds of any public equity offering. At December 31, 2004, both the book value and face value of these notes were \$152.7 million. The effective interest rate, after amortization of deferred financing costs, was 11.0% per annum at December 31, 2004, and 10.6% per annum at December 31, 2003.

Interest on the 7 <sup>5</sup>/<sub>8</sub> % notes is payable semi-annually on April 15 and October 15 each year. The notes mature on April 15, 2006, and are not redeemable prior to maturity. At December 31, 2004, the book value and face value of these notes were \$111.6 million. The effective interest rate, after amortization of deferred financing costs, was 8.0% and 7.9% per annum at December 31, 2004 and 2003, respectively.

***Senior Notes Due 2007***

Interest on the 8 <sup>3</sup>/<sub>4</sub> % notes maturing on July 15, 2007, is payable semi-annually on January 15 and July 15 each year. These notes are redeemable, at the option of the Company, at any time on or after July 15, 2002, at various redemption prices. In addition, the Company may redeem up to \$96.3 million of the Senior Notes Due 2007 from the proceeds of any public equity offering. At December 31, 2004, both the book value and face value of these notes were \$195.3 million. The effective interest rate, after amortization of deferred financing costs, was 9.2% and 9.1% per annum at December 31, 2004 and 2003, respectively.

Interest on the 8 <sup>3</sup>/<sub>4</sub> % notes maturing on October 15, 2007, is payable semi-annually on April 15 and October 15 each year. The notes may be redeemed prior to maturity, at any time in whole or from time to time

**CALPINE CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

in part, at a redemption price equal to the greater of (a) the “Discounted Value” of the senior notes, which equals the sum of the present values of all remaining scheduled payments of principal and interest, or (b) 100% of the principal amount plus accrued and unpaid interest to the redemption date. The notes are fully and unconditionally guaranteed by the Company. At December 31, 2004, the book value and face value of these notes were \$165.6 million and \$166.0 million, respectively. The effective interest rate, after amortization of deferred financing costs and the effect of cross currency swaps, was 9.4% at December 31, 2004, and 8.9% at December 31, 2003.

***Senior Notes Due 2008***

Interest on the 7<sup>7</sup>/<sub>8</sub>% notes is payable semi-annually on April 1 and October 1 each year. These notes mature on April 1, 2008, and are not redeemable prior to maturity. At December 31, 2004, the book value and face value of these notes were \$227.1 million and \$227.3 million, respectively. The effective interest rate, after amortization of deferred financing costs, was 8.1% per annum at December 31, 2004 and 2003. The notes are fully and unconditionally guaranteed by the Company.

Interest on the 8<sup>1</sup>/<sub>2</sub>% notes is payable semi-annually on May 1 and November 1 each year. The notes mature on May 1, 2008, or may be redeemed prior to maturity at a redemption price equal to 100% of the principal amount plus accrued and unpaid interest plus a make-whole premium. At December 31, 2004, the book value and face value of these notes were \$1,581.5 million and \$1,582.4 million, respectively. The effective interest rate, after amortization of deferred financing costs, was 8.8% per annum at December 31, 2004, and 8.7% per annum at December 31, 2003.

Interest on the 8<sup>3</sup>/<sub>8</sub>% notes is payable semi-annually on April 15 and October 15 each year. The notes mature on October 15, 2008, or may be redeemed prior to maturity at a redemption price equal to 100% of the principal amount plus accrued and unpaid interest plus a make-whole premium. At December 31, 2004, both the book value and face value of these notes were \$160.0 million. The effective interest rate, after amortization of deferred financing costs and the effect of cross currency swaps, was 8.6% per annum at December 31, 2004, and 8.7% per annum at December 31, 2003.

***Senior Notes Due 2009***

Interest on these 7<sup>3</sup>/<sub>4</sub>% notes is payable semi-annually on April 15 and October 15 each year. The notes mature on April 15, 2009, and are not redeemable prior to maturity. At December 31, 2003, the book value and face value of these notes were \$221.5 million and \$221.6 million, respectively. The effective interest rate, after amortization of deferred financing costs, was 8.0% per annum at December 31, 2004 and 2003.

***Senior Notes Due 2010***

Interest on these 8<sup>5</sup>/<sub>8</sub>% notes is payable semi-annually on August 15 and February 15 each year. The notes mature on August 15, 2010, and may be redeemed at any time prior to maturity at a redemption price equal to 100% of their principal amount plus accrued and unpaid interest plus a make-whole premium. At December 31, 2004, the book value and face value of these notes were \$497.0 million and \$497.3 million, respectively. The effective interest rate, after amortization of deferred financing costs, was 8.8% per annum.

***Senior Notes Due 2011***

Interest on the 8<sup>1</sup>/<sub>2</sub>% notes is payable semi-annually on February 15 and August 15 each year. The notes mature on February 15, 2011, and may be redeemed prior to maturity at a redemption price equal to 100% of the principal amount plus accrued and unpaid interest plus a make-whole premium. At December 31, 2004, the book value and face value of these notes were \$1,063.9 million and \$1,088.6 million, respectively. The

## CALPINE CORPORATION AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

effective interest rate, after amortization of deferred financing costs, was 8.4% and 8.7% per annum at December 31, 2004 and 2003, respectively.

Interest on the 8 <sup>7</sup>/<sub>8</sub>% notes is payable semi-annually on April 15 and October 15 each year. The notes mature on October 15, 2011, and may be redeemed prior to maturity at a redemption price equal to 100% of the principal amount plus accrued and unpaid interest plus a make-whole premium. At December 31, 2004, the book value and face value of these notes were \$232.5 million and \$233.9 million, respectively. The effective interest rate, after amortization of deferred financing costs and the effect of cross currency swaps, was 9.3% per annum at December 31, 2004, and 9.4% per annum at December 31, 2003.

**19. Provision for Income Taxes**

The jurisdictional components of income (loss) from continuing operations and before provision for income taxes at December 31, 2004, 2003, and 2002, are as follows (in thousands):

	<u>2004</u>	<u>2003</u>	<u>2002</u>
U.S.	\$ (552,849)	\$ 35,207	\$ 25,225
International	(164,526)	59,398	12,332
Income (loss) before provision for income taxes	<u>\$ (717,375)</u>	<u>\$ 94,605</u>	<u>\$ 37,557</u>

The components of the provision (benefit) for income taxes for the years ended December 31, 2004, 2003, and 2002, consists of the following (in thousands):

	<u>2004</u>	<u>2003</u>	<u>2002</u>
Current:			
Federal	\$ —	\$ 350	\$ (72,835)
State	1,198	(21,305)	3,837
Foreign	9,975	—	—
Total Current	<u>11,173</u>	<u>(20,955)</u>	<u>(68,998)</u>
Deferred:			
Federal	(161,542)	413	75,377
State	(6,194)	23,089	13,964
Foreign	(119,986)	5,948	(9,508)
Total Deferred	<u>(287,722)</u>	<u>29,450</u>	<u>79,833</u>
Total provision (benefit)	<u>\$ (276,549)</u>	<u>\$ 8,495</u>	<u>\$ 10,835</u>

**CALPINE CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

A reconciliation of the Company's overall actual effective tax rate (benefit) to the statutory U.S. Federal income tax rate of 35% to pretax income from continuing operations is as follows for the years ended December 31:

	<u>2004</u>	<u>2003</u>	<u>2002</u>
Expected tax (benefit) rate at United States statutory tax rate	(35.00)%	35.00%	35.00%
State income tax (benefit), net of federal benefit	(0.45)%	1.23%	30.81%
Depletion and other permanent items	1.38%	0.90%	(0.20)%
Valuation allowances	(4.84)%	—	—
Tax credits	(0.21)%	(2.62)%	—
Foreign tax at rates other than U.S. statutory rate	0.57%	(34.44)%	(36.76)%
Other, net (including U.S. tax on Foreign Income)	—	8.91%	—
Effective income tax (benefit) rate	<u>(38.55)%</u>	<u>8.98%</u>	<u>28.85%</u>

The components of the deferred income taxes, net as of December 31, 2004 and 2003, are as follows (in thousands):

	<u>2004</u>	<u>2003</u>
Deferred tax assets:		
Net operating loss and credit carryforwards	\$ 1,098,446	\$ 478,118
Taxes related to risk management activities and SFAS No. 133	77,017	77,905
Other differences	324,040	105,280
Deferred tax assets before valuation allowance	<u>1,499,503</u>	<u>661,303</u>
Valuation allowance	<u>(62,822)</u>	<u>(19,335)</u>
Total Deferred tax assets	<u>1,436,681</u>	<u>641,968</u>
Deferred tax liabilities:		
Property differences	<u>(2,382,813)</u>	<u>(1,968,012)</u>
Total Deferred tax liabilities	<u>(2,382,813)</u>	<u>(1,968,012)</u>
Net deferred tax liability	(946,132)	(1,326,044)
Less: Current portion: asset/(liability)(1)	(75,608)	15,709
Deferred income taxes, net of current portion	<u>\$ (1,021,740)</u>	<u>\$ (1,310,335)</u>

- (1) Current portion of net deferred income taxes are classified within other current assets in 2004 and other current liabilities in 2003 on the Consolidated Balance Sheet.

The net operating loss carryforward consists of federal and state carryforwards of approximately \$2.3 billion which expire between 2017 and 2019. The federal and state net operating loss carryforwards available are subject to limitations on their annual usage. The Company also has loss carryforwards in certain foreign subsidiaries, resulting in tax benefits of approximately \$152 million, the majority of which expire by 2008. The Company provided a valuation allowance on certain state and foreign tax jurisdiction deferred tax assets to reduce the gross amount of these assets to the extent necessary to result in an amount that is more likely than not of being realized. Realization of the deferred tax assets and net operating loss carryforwards is dependent, in part, on generating sufficient taxable income prior to expiration of the loss carryforwards. The amount of the deferred tax asset considered realizable, however, could be reduced in the near term if estimates of future taxable income during the carryforward period are reduced. The Company is under an Internal

CALPINE CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

Revenue Service review for the years 1999 through 2002 and is periodically under audit for various state and foreign jurisdictions for income and sales and use taxes. The Company believes that the ultimate resolution of these examinations will not have a material effect on its consolidated financial position.

The Company's foreign subsidiaries had no cumulative undistributed earnings at December 31, 2004.

For the years ended December 31, 2004, 2003 and 2002, the net change in the valuation allowance was an increase (decrease) of \$43.5 million, \$(7.3) million and \$26.7 million, respectively, and is primarily related to loss carryforwards that are not currently realizable.

On October 22, 2004, the American Jobs Creation Act of 2004 was signed into law. This legislation contains a number of changes to the Internal Revenue Code. The Company has analyzed the law in order to determine its effects. The two most notable provisions are those dealing with the reduced tax rate on the repatriation of money from foreign operations and the deduction for domestic-based manufacturing activity. The Company determined that it qualifies for both of these provisions. See Note 10 for further information. Since the Company is projecting that it will continue to generate net operating losses for at least the next twelve months it cannot take advantage of the domestic-based manufacturing deduction at this time.

**20. Employee Benefit Plans**

*Retirement Savings Plan*

The Company has a defined contribution savings plan under Section 401(a) and 501(a) of the Internal Revenue Code. The plan provides for tax deferred salary deductions and after-tax employee contributions. Employees are immediately eligible upon hire. Contributions include employee salary deferral contributions and employer profit-sharing contributions made entirely in cash of 4% of employees' salaries, with employer contributions capped at \$8,200 per year for 2004 and \$8,400 per year for 2005. Employer profit-sharing contributions in 2004, 2003, and 2002 totaled \$12.8 million, \$10.7 million, and \$11.6 million, respectively.

*2000 Employee Stock Purchase Plan*

The Company adopted the 2000 Employee Stock Purchase Plan ("ESPP") in May 2000. Eligible employees may in the aggregate purchase up to 28,000,000 shares of common stock at semi-annual intervals through periodic payroll deductions. Purchases are limited to a maximum value of \$25,000 per calendar year based on the IRS code Section 423 limitation. Shares are purchased on May 31 and November 30 of each year until termination of the plan on May 31, 2010 and limited to 2,400 shares per purchase interval. Under the ESPP, 4,545,858 and 3,636,139 shares were issued at a weighted average fair value of \$3.26 and \$3.69 per share in 2004 and 2003, respectively. The purchase price is 85% of the lower of (i) the fair market value of the common stock on the participant's entry date into the offering period, or (ii) the fair market value on the semi-annual purchase date. The purchase price discount is significant enough to cause the ESPP to be considered compensatory under SFAS No. 123. As a result, the ESPP is accounted for as stock-based compensation in accordance with SFAS No. 123. See Note 21 for information related to the Company's stock-based compensation expense.

*1996 Stock Incentive Plan*

The Company adopted the 1996 Stock Incentive Plan ("SIP") in September 1996. The SIP succeeded the Company's previously adopted stock option program. Prior to the adoption of SFAS No. 123 prospectively on January 1, 2003, (see Note 21), the Company accounted for the SIP under APB Opinion No. 25, under which no compensation cost was recognized through December 31, 2002. See Note 21 for the effects the SIP would have on the Company's financial statements if stock-based compensation had been accounted for under SFAS No. 123 prior to January 1, 2003.

**CALPINE CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

For the year ended December 31, 2004, the Company granted options to purchase 5,660,262 shares of common stock. Over the life of the SIP, options exercised have equaled 5,088,290, leaving 32,937,993 granted and not yet exercised. Under the SIP, the option exercise price generally equals the stock's fair market value on date of grant. The SIP options generally vest ratably over four years and expire after 10 years.

In connection with the merger with Encal in 2001, the Company adopted Encal's existing stock option plan. All outstanding options under the Encal stock option plan were converted at the time of the merger into options to purchase Calpine stock. No new options may be granted under the Encal stock option plan. As of December 31, 2004, there were 87,274 and 1,752,590 options granted and not yet exercised under the Encal and Calpine's 1992 stock option plans, respectively.

Changes in options outstanding, granted, exercisable and canceled during the years 2004, 2003, and 2002, under the option plans of Calpine and Encal were as follows:

	Available for Option or Award	Outstanding Number of Options	Weighted Average Exercise Price
Outstanding January 1, 2002	2,855,949	27,690,564	\$ 9.32
Additional shares reserved	15,070,588		
Granted	(8,997,720)	8,997,720	7.20
Exercised	—	(5,112,535)	0.77
Canceled	1,470,802	(1,470,802)	26.53
Canceled options(1)	(237,705)	—	—
Outstanding December 31, 2002	10,161,914	30,104,947	\$ 9.30
Granted	(5,998,585)	5,998,585	3.93
Exercised	—	(536,730)	2.01
Canceled	1,725,221	(1,725,221)	13.59
Canceled options(1)	(72,470)		
Awards issued	—	(3,150)	4.03
Outstanding December 31, 2003	5,816,080	33,838,431	\$ 8.25
Additional shares reserved	21,000,000		
Granted	(5,660,262)	5,660,262	5.47
Exercised	—	(3,629,824)	0.83
Canceled	1,089,032	(1,089,032)	18.21
Canceled options(1)	(38,945)	—	—
Awards issued	—	(1,980)	4.33
Outstanding December 31, 2004	22,205,905	34,777,857	8.42
Options exercisable:			
December 31, 2002		19,418,239	7.14
December 31, 2003		22,953,781	8.02
December 31, 2004		22,949,497	9.30

(1) Represents cessation of options awarded under the Encal stock option plan

**CALPINE CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

The following tables summarizes information concerning outstanding and exercisable options at December 31, 2004:

Range of Exercise Prices	Number of Options Outstanding	Weighted Average Remaining Contractual Life in Years	Weighted Average Exercise Price	Number of Options Exercisable	Weighted Average Exercise Price
\$ 0.645-\$ 2.150	4,073,196	2.55	\$ 1.606	4,072,693	\$ 1.606
\$ 2.240-\$ 3.860	5,220,014	3.58	3.321	5,166,889	3.321
\$ 3.910-\$ 3.980	5,254,837	8.02	3.980	1,720,183	3.980
\$ 4.010-\$ 5.240	3,036,785	7.36	5.157	1,691,122	5.094
\$ 5.250-\$ 5.560	5,397,275	9.15	5.560	152,350	5.549
\$ 5.565-\$ 7.640	3,854,747	5.97	7.561	2,847,889	7.538
\$ 7.750-\$13.850	3,735,013	4.86	10.595	3,465,918	10.343
\$13.917-\$48.150	4,063,810	5.00	31.054	3,705,184	29.569
\$48.188-\$56.920	140,330	6.23	51.292	125,419	51.271
\$56.990-\$56.990	1,850	6.33	56.990	1,850	56.990
\$ 0.645-\$56.990	<u>34,777,857</u>	5.90	\$ 8.416	<u>22,949,497</u>	\$ 9.299

## 21. Stockholders' Equity

### Common Stock

*Increase in Authorized Shares* — On June 2, 2004, the Company filed amended certificates with the Delaware Secretary of State to increase the number of authorized shares of common stock to 2,000,000,000 from 1,000,000,000.

*Equity Offerings* — On April 30, 2002, Calpine completed a registered offering of 66,000,000 shares of common stock at \$11.50 per share. The proceeds from this offering, after underwriting fees, were \$734.3 million.

On September 30, 2004, in conjunction with the 2014 Convertible Notes offering (see Note 17 for more information regarding this offering), the Company entered into a ten-year Share Lending Agreement with Deutsche Bank AG London ("DB London"), under which the Company loaned DB London 89 million shares of newly issued Calpine common stock in exchange for a loan fee of \$0.001 per share. DB London sold the 89 million shares on September 30, 2004 at a price of \$2.75 per share in a registered public offering. The Company did not receive any of the proceeds of the public offering. As discussed in Note 17, the requirement to return these shares is considered to be a prepaid forward purchase contract and the Company analogizes to the guidance in SFAS No. 150 so that the 89 million shares of common stock subject to the Share Lending Agreement are excluded from the EPS calculation.

### Preferred Stock and Preferred Share Purchase Rights

On June 5, 1997, Calpine adopted a stockholders' rights plan to strengthen Calpine's ability to protect Calpine's stockholders. The plan was amended on September 19, 2001, and further amended on September 28, 2004 and March 18, 2005. The rights plan was designed to protect against abusive or coercive takeover tactics that are not in the best interests of Calpine or its stockholders. To implement the rights plan, Calpine declared a dividend of one preferred share purchase right for each outstanding share of Calpine's common stock held on record as of June 18, 1997, and directed the issuance of one preferred share purchase right with respect to each share of Calpine's common stock that shall become outstanding thereafter until the rights

**CALPINE CORPORATION AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

become exercisable or they expire as described below. On December 31, 2004, there were 536,509,231 rights outstanding. Each right initially represents a contingent right to purchase, under certain circumstances, one one-thousandth of a share, called a "unit," of Calpine's Series A Participating Preferred Stock, par value \$.001 per share, at a price of \$140.00 per unit, subject to adjustment. The rights become exercisable and trade independently from Calpine's common stock upon the public announcement of the acquisition by a person or group of 15% or more of Calpine's common stock, or ten days after commencement of a tender or exchange offer that would result in the acquisition of 15% or more of Calpine's common stock. Each unit purchased upon exercise of the rights will be entitled to a dividend equal to any dividend declared per share of common stock and will have one vote, voting together with the common stock. In the event of Calpine's liquidation, each share of the participating preferred stock will be entitled to any payment made per share of common stock.

If Calpine is acquired in a merger or other business combination transaction after a person or group has acquired 15% or more of Calpine's common stock, each right will entitle its holder to purchase at the right's exercise price a number of the acquiring company's shares of common stock having a market value of twice the right's exercise price. In addition, if a person or group acquires 15% or more of Calpine's common stock, each right will entitle its holder (other than the acquiring person or group) to purchase, at the right's exercise price, a number of fractional shares of Calpine's participating preferred stock or shares of Calpine's common stock having a market value of twice the right's exercise price.

The rights remain exercisable for up to 90 days following a triggering event (such as a person acquiring 15% or more of the Company's common stock). The rights expire on May 1, 2005, unless redeemed earlier by Calpine. Calpine can redeem the rights at a price of \$.01 per right at any time before the rights become exercisable, and thereafter only in limited circumstances.

***Stock-Based Compensation***

On January 1, 2003, the Company prospectively adopted the fair value method of accounting for stock-based employee compensation pursuant to SFAS No. 123 as amended by SFAS No. 148. SFAS No. 148 amends SFAS No. 123 to provide alternative methods of transition for companies that voluntarily change their accounting for stock-based compensation from the less preferred intrinsic value based method to the more preferred fair value based method. Prior to its amendment, SFAS No. 123 required that companies enacting a voluntary change in accounting principle from the intrinsic value methodology provided by APB Opinion No. 25 could only do so on a prospective basis; no adoption or transition provisions were established to allow for a restatement of prior period financial statements. SFAS No. 148 provides two additional transition options to report the change in accounting principle — the modified prospective method and the retroactive restatement method. Additionally, SFAS No. 148 amends the disclosure requirements of SFAS No. 123 to require prominent disclosures in both annual and interim financial statements about the method of accounting for stock-based employee compensation and the effect of the method used on reported results. The Company elected to adopt the provisions of SFAS No. 123 on a prospective basis; consequently, the Company is required to provide a pro-forma disclosure of net income and EPS as if SFAS No. 123 accounting had been applied to all prior periods presented within its financial statements. As shown below, the adoption of SFAS No. 123 has had a material impact on the Company's financial statements. The table below reflects the pro forma impact of stock-based compensation on the Company's net income (loss) and earnings (loss) per share for the years ended December 31, 2004, 2003 and 2002, had the Company applied the accounting

**CALPINE CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

provisions of SFAS No. 123 to its financial statements in years prior to adoption of SFAS No. 123 on January 1, 2003 (in thousands, except per share amounts):

	<u>2004</u>	<u>2003</u>	<u>2002</u>
Net income (loss)			
As reported	\$ (242,461)	\$ 282,022	\$ 118,618
Pro Forma	(247,316)	270,418	83,025
Earnings (loss) per share data:			
Basic earnings (loss) per share			
As reported	\$ (0.56)	\$ 0.72	\$ 0.33
Pro Forma	(0.57)	0.69	0.23
Diluted earnings per share			
As reported	\$ (0.56)	\$ 0.71	\$ 0.33
Pro Forma	(0.57)	0.68	0.23
Stock-based compensation cost included in net income (loss), as reported	\$ 12,734	\$ 9,724	\$ —
Stock-based compensation cost included in net income (loss), pro forma	17,589	21,328	35,593

The range of fair values of the Company's stock options granted in 2004, 2003, and 2002 were as follows, based on varying historical stock option exercise patterns by different levels of Calpine employees: \$1.83-\$4.45 in 2004, \$1.50-\$4.38 in 2003 and \$3.73-\$6.62 in 2002 on the date of grant using the Black-Scholes option pricing model with the following weighted-average assumptions: expected dividend yields of 0%, expected volatility of 69%-98% for 2004, 70%-113% for 2003 and 70%-83% for 2002, risk-free interest rates of 2.35%-4.54% for 2004, 1.39%-4.04% for 2003 and 2.39%-3.83% for 2002, and expected option terms of 3-9.5 years for 2004, 1.5-9.5 years for 2003 and 4-9 years for 2002.

In December 2004, FASB issued SFAS No. 123-R. This Statement revises SFAS No. 123 and supersedes APB Opinion No. 25, and its related implementation guidance. See Note 2 for further information.

***Comprehensive Income (Loss)***

Comprehensive income is the total of net income and all other non-owner changes in equity. Comprehensive income includes the Company's net income, unrealized gains and losses from derivative instruments that qualify as cash flow hedges, unrealized gains and losses from available-for-sale securities which are marked to market, the Company's share of its equity method investee's OCI, and the effects of foreign currency translation adjustments. The Company reports Accumulated Other Comprehensive Income ("AOCI") in its

## CALPINE CORPORATION AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

Consolidated Balance Sheet. The tables below detail the changes during 2004, 2003 and 2002 in the Company's AOCI balance and the components of the Company's comprehensive income (in thousands):

	<u>Cash Flow Hedges(1)</u>	<u>Available-For- Sale Investments</u>	<u>Foreign Currency Translation</u>	<u>Total Accumulated Other Comprehensive Income (Loss)</u>	<u>Comprehensive Income (Loss)</u>
Accumulated other comprehensive loss at January 1, 2002	\$(180,819)	\$ —	\$ (60,061)	\$ (240,880)	
Net income					\$ 118,618
Cash flow hedges:					
Comprehensive pre-tax gain on cash flow hedges before reclassification adjustment	96,905				
Reclassification adjustment for gain included in net income	(169,205)				
Income tax benefit	28,705				
	<u>(43,595)</u>			(43,595)	(43,595)
Foreign currency translation gain			47,018	47,018	47,018
Total comprehensive income					<u>\$ 122,041</u>
Accumulated other comprehensive loss at December 31, 2002	<u>\$(224,414)</u>		<u>\$ (13,043)</u>	<u>\$ (237,457)</u>	
Net income					\$ 282,022
Cash flow hedges:					
Comprehensive pre-tax gain on cash flow hedges before reclassification adjustment	112,481				
Reclassification adjustment for loss included in net income	55,620				
Income tax provision	<u>(74,106)</u>				
	93,995			93,995	93,995
Foreign currency translation gain			200,056	200,056	200,056
Total comprehensive income					<u>\$ 576,073</u>
Accumulated other comprehensive gain (loss) at December 31, 2003	<u>\$(130,419)</u>		<u>\$ 187,013</u>	<u>\$ 56,594</u>	
Net loss					\$ (242,461)
Cash flow hedges:					
Comprehensive pre-tax loss on cash flow hedges before reclassification adjustment	(106,071)				
Reclassification adjustment for loss included in net loss	89,888				
Income tax provision	<u>6,451</u>				
	(9,732)			(9,732)	(9,732)
Available-for-sale investments:					
Comprehensive pre-tax gain on available-for-sale investments before reclassification adjustment		19,239			
Reclassification adjustment for gain included in net loss		(18,281)			
Income tax provision		<u>(376)</u>			
		582		582	582
Foreign currency translation gain			62,067	62,067	62,067
Total comprehensive loss					<u>\$ (189,544)</u>
Accumulated other comprehensive gain (loss) at December 31, 2004	<u>\$(140,151)</u>	<u>\$ 582</u>	<u>\$ 249,080</u>	<u>\$ 109,511</u>	

(1) Includes AOCI from cash flow hedges held by unconsolidated investees. At December 31, 2004, 2003 and 2002, these amounts were \$1,698, \$6,911 and \$12,018, respectively.

**CALPINE CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**22. Customers**

*Significant Customer*

In 2004, 2003 and 2002, Calpine had one significant customer that accounted for more than 10% of the Company's annual consolidated revenues: the CDWR. See below for a discussion of the Company's contracts with CDWR.

For the years ended December 31, 2004, 2003, and 2002, CDWR revenues were \$1,148.0 million, \$1,219.7 million and \$754.2 million, respectively.

Calpine's receivables from CDWR at December 31, 2004, 2003 and 2002, were \$98.5 million, \$97.8 million and \$78.8 million, respectively.

*Counterparty Exposure*

The Company's customer and supplier base is concentrated within the energy industry. Additionally, the Company has exposure to trends within the energy industry, including declines in the creditworthiness of its marketing counterparties. Currently, certain companies within the energy industry are in bankruptcy or have below investment grade credit ratings. However, we do not currently have any significant exposure to counterparties that are not paying on a current basis.

*California Department of Water Resources*

In 2001, California adopted legislation permitting it to issue long-term revenue bonds to fund wholesale purchases of power by the CDWR. The bonds will be repaid with the proceeds of payments by retail power customers over time. CES and CDWR entered into four long-term supply contracts during 2001. The Company has recorded deferred revenue in connection with one of the long-term power supply contracts ("Contract 3"). All of the Company's accounts receivables from CDWR are current, with the exception of approximately \$1.0 million which the Company is working to resolve with the customer.

In early 2002, the CPUC and the California Electricity Oversight Board ("EOB") filed complaints under Section 206 of the Federal Power Act with the Federal Energy Regulatory Commission ("FERC") alleging that the prices and terms of the long-term contracts with CDWR were unjust and unreasonable and contrary to the public interest (the "206 Complaint"). The contracts entered into by CES and CDWR were subject to the 206 Complaint.

On April 22, 2002, the Company announced that it had renegotiated CES's long-term power contracts with CDWR and settled the 206 Complaint. The Office of the Governor, the CPUC, the EOB and the Attorney General for the State of California all endorsed the renegotiated contracts and dropped all pending claims against the Company and its affiliates, including any efforts by the CPUC and the EOB to seek refunds from the Company and its affiliates through the FERC California Refund Proceedings. In connection with the renegotiation, the Company agreed to pay \$6 million over three years to the Attorney General to resolve any and all possible claims.

*Lease Income*

The Company records income under power purchase agreements that are accounted for as operating leases under SFAS No. 13 and EITF Issue No. 01-08. For income statement presentation purposes, this income is classified within electricity and steam revenue in the Consolidated Statements of Operations.

**CALPINE CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

The total contractual future minimum lease payments for these power purchase agreements are as follows (in thousands):

2005	\$ 123,435
2006	175,349
2007	213,431
2008	285,386
2009	288,516
Thereafter	2,844,717
Total	<u>\$ 3,930,834</u>

The contingent income for these agreements related to our Canadian power generation asset was \$20.1 million, \$25.3 million and \$28.7 million for the respective periods, while contingent income under the other power purchase agreements were collectively immaterial. Property leased to customers under operating leases is recorded at cost and is depreciated on the straight line basis to its estimated residual value. Estimated useful lives are 35 years. As of December 31, 2004, the cost of the leased property was \$1,409.6 million and the accumulated depreciation was \$55.6 million. These power purchase agreements expire over the next 27 years.

*Credit Evaluations*

The Company's treasury department includes a credit group focused on monitoring and managing counterparty risk. The credit group monitors the net exposure with each counterparty on a daily basis. The analysis is performed on a mark-to-market basis using the forward curves analyzed by the Company's Risk Controls group. The net exposure is compared against a counterparty credit risk threshold which is determined based on each counterparty's credit rating and evaluation of the financial statements. The credit department monitors these thresholds to determine the need for additional collateral or restriction of activity with the counterparty.

**23. Derivative Instruments**

*Commodity Derivative Instruments*

As an independent power producer primarily focused on generation of electricity using gas-fired turbines, the Company's natural physical commodity position is "short" fuel (i.e., natural gas consumer) and "long" power (i.e., electricity seller). To manage forward exposure to price fluctuation in these and (to a lesser extent) other commodities, the Company enters into derivative commodity instruments. The Company enters into commodity instruments to convert floating or indexed electricity and gas (and to a lesser extent oil and refined product) prices to fixed prices in order to lessen its vulnerability to reductions in electric prices for the electricity it generates, to reductions in gas prices for the gas it produces, and to increases in gas prices for the fuel it consumes in its power plants. The Company seeks to "self-hedge" its gas consumption exposure to an extent with its own gas production position. The hedging, balancing, or optimization activities that the Company engages in are directly related to the Company's asset-based business model of owning and operating gas-fired electric power plants and are designed to protect the Company's "spark spread" (the difference between the Company's fuel cost and the revenue it receives for its electric generation). The Company hedges exposures that arise from the ownership and operation of power plants and related sales of electricity and purchases of natural gas. The Company also utilizes derivatives to optimize the returns it is able to achieve from these assets. From time to time the Company has entered into contracts considered energy trading contracts under EITF Issue No. 02-03. However, the Company's traders have low capital at risk and value at risk limits for energy trading, and its risk management policy limits, at any given time, its net sales of

**CALPINE CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

power to its generation capacity and limits its net purchases of gas to its fuel consumption requirements on a total portfolio basis. This model is markedly different from that of companies that engage in significant commodity trading operations that are unrelated to underlying physical assets. Derivative commodity instruments are accounted for under the requirements of SFAS No. 133.

The Company also routinely enters into physical commodity contracts for sales of its generated electricity and sales of its natural gas production to ensure favorable utilization of generation and production assets. Such contracts often meet the criteria of SFAS No. 133 as derivatives but are generally eligible for the normal purchases and sales exception. Some of those contracts that are not deemed normal purchases and sales can be designated as hedges of the underlying consumption of gas or production of electricity.

***Interest Rate and Currency Derivative Instruments***

The Company also enters into various interest rate swap agreements to hedge against changes in floating interest rates on certain of its project financing facilities and to adjust the mix between fixed and floating rate debt in its capital structure to desired levels. Certain of the interest rate swap agreements effectively convert floating rates into fixed rates so that the Company can predict with greater assurance what its future interest costs will be and protect itself against increases in floating rates.

In conjunction with its capital markets activities, the Company enters into various forward interest rate agreements to hedge against interest rate fluctuations that may occur after the Company has decided to issue long-term fixed rate debt but before the debt is actually issued. The forward interest rate agreements effectively prevent the interest rates on anticipated future long-term debt from increasing beyond a certain level, allowing the Company to predict with greater assurance what its future interest costs on fixed rate long-term debt will be.

Also, in conjunction with its capital market activities, the Company enters into various interest rate swap agreements to hedge against the change in fair value on certain of its fixed rate Senior Notes. These interest rate swap agreements effectively convert fixed rates into floating rates so that the Company can predict with greater assurance what the fair value of its fixed rate Senior Notes will be and protect itself against unfavorable future fair value movements.

The Company enters into various foreign currency swap agreements to hedge against changes in exchange rates on certain of its senior notes denominated in currencies other than the U.S. dollar. The foreign currency swaps effectively convert floating exchange rates into fixed exchange rates so that the Company can predict with greater assurance what its U.S. dollar cost will be for purchasing foreign currencies to satisfy the interest and principal payments on these senior notes.

**CALPINE CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

*Summary of Derivative Values*

The table below reflects the amounts (in thousands) that are recorded as assets and liabilities at December 31, 2004, for the Company's derivative instruments:

	<b>Interest Rate Derivative Instruments</b>	<b>Commodity Derivative Instruments Net</b>	<b>Total Derivative Instruments</b>
Current derivative assets	\$ 620	\$ 323,586	\$ 324,206
Long-term derivative assets	—	506,050	506,050
Total assets	<u>\$ 620</u>	<u>\$ 829,636</u>	<u>\$ 830,256</u>
Current derivative liabilities	\$ 21,578	\$ 343,387	\$ 364,965
Long-term derivative liabilities	58,909	467,689	526,598
Total liabilities	<u>\$ 80,487</u>	<u>\$ 811,076</u>	<u>\$ 891,563</u>
Net derivative assets (liabilities)	<u>\$ (79,867)</u>	<u>\$ 18,560</u>	<u>\$ (61,307)</u>

Of the Company's net derivative assets, \$289.9 million and \$55.4 million are net derivative assets of PCF and CNEM, respectively, each of which is an entity with its existence separate from the Company and other subsidiaries of the Company. The Company fully consolidates CNEM and, as discussed more fully in Note 2, the Company records the derivative assets of PCF in its balance sheet.

At any point in time, it is highly unlikely that total net derivative assets and liabilities will equal AOCI, net of tax from derivatives, for three primary reasons:

- *Tax effect of OCI* — When the values and subsequent changes in values of derivatives that qualify as effective hedges are recorded into OCI, they are initially offset by a derivative asset or liability. Once in OCI, however, these values are tax effected against a deferred tax liability or asset account, thereby creating an imbalance between net OCI and net derivative assets and liabilities.
- *Derivatives not designated as cash flow hedges and hedge ineffectiveness* — Only derivatives that qualify as effective cash flow hedges will have an offsetting amount recorded in OCI. Derivatives not designated as cash flow hedges and the ineffective portion of derivatives designated as cash flow hedges will be recorded into earnings instead of OCI, creating a difference between net derivative assets and liabilities and pre-tax OCI from derivatives.
- *Termination of effective cash flow hedges prior to maturity* — Following the termination of a cash flow hedge, changes in the derivative asset or liability are no longer recorded to OCI. At this point, an AOCI balance remains that is not recognized in earnings until the forecasted initially hedged transactions occur. As a result, there will be a temporary difference between OCI and derivative assets and liabilities on the books until the remaining OCI balance is recognized in earnings.

**CALPINE CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

Below is a reconciliation of the Company's net derivative liabilities to its accumulated other comprehensive loss, net of tax from derivative instruments at December 31, 2004 (in thousands):

Net derivative liabilities	\$ (61,307)
Derivatives not designated as cash flow hedges and recognized hedge ineffectiveness	(86,496)
Cash flow hedges terminated prior to maturity	(75,725)
Deferred tax asset attributable to accumulated other comprehensive loss on cash flow hedges	77,640
AOCI from unconsolidated investees	<u>5,737</u>
Accumulated other comprehensive loss from derivative instruments, net of tax(1)	<u><u>\$ (140,151)</u></u>

(1) Amount represents one portion of the Company's total AOCI balance. See Note 21 for further information.

The asset and liability balances for the Company's commodity derivative instruments represent the net totals after offsetting certain assets against certain liabilities under the criteria of FIN 39. For a given contract, FIN 39 will allow the offsetting of assets against liabilities so long as four criteria are met: (1) each of the two parties under contract owes the other determinable amounts; (2) the party reporting under the offset method has the right to set off the amount it owes against the amount owed to it by the other party; (3) the party reporting under the offset method intends to exercise its right to set off; and; (4) the right of set-off is enforceable by law. The table below reflects both the amounts (in thousands) recorded as assets and liabilities by the Company and the amounts that would have been recorded had the Company's commodity derivative instrument contracts not qualified for offsetting as of December 31, 2004.

	December 31, 2004	
	Gross	Net
Current derivative assets	\$ 844,050	\$ 323,586
Long-term derivative assets	967,089	506,050
Total derivative assets	<u>\$ 1,811,139</u>	<u>\$ 829,636</u>
Current derivative liabilities	\$ 863,850	\$ 343,387
Long-term derivative liabilities	928,729	467,689
Total derivative liabilities	<u>\$ 1,792,579</u>	<u>\$ 811,076</u>
Net commodity derivative assets	<u>\$ 18,560</u>	<u>\$ 18,560</u>

The table above excludes the value of interest rate and currency derivative instruments.

**CALPINE CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

The tables below reflect the impact of unrealized mark-to-market gains (losses) on the Company's pre-tax earnings, both from cash flow hedge ineffectiveness and from the changes in market value of derivatives not designated as hedges of cash flows, for the years ended December 31, 2004, 2003 and 2002, respectively (in thousands):

	2004			2003			2002		
	Hedge Ineffectiveness	Undesignated Derivatives	Total	Hedge Ineffectiveness	Undesignated Derivatives	Total	Hedge Ineffectiveness	Undesignated Derivatives	Total
Natural gas derivatives									
(1)	\$ 5,827	\$ (10,700)	\$ (4,873)	\$ 3,153	\$ 7,768	\$ 10,921	\$ 2,147	\$ (14,792)	\$ (12,645)
Power derivatives(1)	1,814	(31,666)	(29,852)	(5,001)	(56,693)	(61,694)	(4,934)	12,974	8,040
Interest rate derivatives									
(2)	1,492	6,035	7,527	(974)	—	(974)	(810)	—	(810)
Currency derivatives	—	(12,897)	(12,897)	—	—	—	—	—	—
Total	<u>\$ 9,133</u>	<u>\$ (49,228)</u>	<u>\$ (40,095)</u>	<u>\$ (2,822)</u>	<u>\$ (48,925)</u>	<u>\$ (51,747)</u>	<u>\$ (3,597)</u>	<u>\$ (1,818)</u>	<u>\$ (5,415)</u>

- (1) Represents the unrealized portion of mark-to-market activity on gas and power transactions. The unrealized portion of mark-to-market activity is combined with the realized portions of mark-to-market activity and presented in the Consolidated Statements of Operations as mark-to-market activities, net.
- (2) Recorded within Other Income

The table below reflects the contribution of the Company's cash flow hedge activity to pre-tax earnings based on the reclassification adjustment from OCI to earnings for the years ended December 31, 2004, 2003 and 2002, respectively (in thousands):

	2004	2003	2002
Natural gas and crude oil derivatives	\$ 58,308	\$ 40,752	\$ (119,419)
Power derivatives	(128,556)	(79,233)	304,073
Interest rate derivatives	(17,625)	(27,727)	(10,993)
Foreign currency derivatives	(2,015)	10,588	(4,456)
Total derivatives	<u>\$ (89,888)</u>	<u>\$ (55,620)</u>	<u>\$ 169,205</u>

As of December 31, 2004, the maximum length of time over which the Company was hedging its exposure to the variability in future cash flows for forecasted transactions was 7 and 12 years, for commodity and interest rate derivative instruments, respectively. The Company estimates that pre-tax losses of \$137.6 million would be reclassified from AOCI into earnings during the twelve months ended December 31, 2005, as the hedged transactions affect earnings assuming constant gas and power prices, interest rates, and exchange rates over time; however, the actual amounts that will be reclassified will likely vary based on the probability that gas and power prices as well as interest rates and exchange rates will, in fact, change. Therefore, management is unable to predict what the actual reclassification from OCI to earnings (positive or negative) will be for the next twelve months.

**CALPINE CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

The table below presents (in thousands) the pre-tax gains (losses) currently held in OCI that will be recognized annually into earnings, assuming constant gas and power prices, interest rates, and exchange rates over time.

	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010 &amp; After</u>	<u>Total</u>
Gas OCI	\$ (29,476)	\$ 55,612	\$ 1,111	\$ 702	\$ 343	\$ 250	\$ 28,542
Power OCI	(88,357)	(80,619)	(3,854)	(589)	(343)	(94)	(173,856)
Interest rate OCI	(17,745)	(10,960)	(7,941)	(5,170)	(4,126)	(20,855)	(66,797)
Foreign currency OCI	(2,014)	(2,014)	(1,624)	(28)	—	—	(5,680)
Total pre-tax OCI	<u>\$ (137,592)</u>	<u>\$ (37,981)</u>	<u>\$ (12,308)</u>	<u>\$ (5,085)</u>	<u>\$ (4,126)</u>	<u>\$ (20,699)</u>	<u>\$ (217,791)</u>

**CALPINE CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**24. Earnings per Share**

Basic earnings (loss) per common share were computed by dividing net income (loss) by the weighted average number of common shares outstanding for the respective periods. The dilutive effect of the potential exercise of outstanding options to purchase shares of common stock is calculated using the treasury stock method. The dilutive effect of the assumed conversion of certain convertible securities into the Company's common stock is based on the dilutive common share equivalents and the after tax distribution expense avoided upon conversion. The calculation of basic and diluted earnings (loss) per common share is shown in the following table (in thousands, except per share data).

	For the Years Ended December 31,								
	2004			2003			2002		
	Net Income	Shares	EPS	Net Income	Shares	EPS	Net Income	Shares	EPS
<b>Basic earnings (loss) per common share:</b>									
Income (loss) before discontinued operations and cumulative effect of a change in accounting principle	\$ (440,826)	430,775	\$(1.02)	\$ 86,110	390,772	\$0.22	\$ 26,722	354,822	\$0.07
Discontinued operations, net of tax	198,365	—	0.46	14,969	—	0.04	91,896	—	0.26
Cumulative effect of a change in accounting principle, net of tax	—	—	—	180,943	—	0.46	—	—	—
Net income	<u>\$ (242,461)</u>	<u>430,775</u>	<u>\$(0.56)</u>	<u>\$ 282,022</u>	<u>390,772</u>	<u>\$0.72</u>	<u>\$ 118,618</u>	<u>354,822</u>	<u>\$0.33</u>
<b>Diluted earnings per common share:</b>									
Common shares issuable upon exercise of stock options using treasury stock method		—			5,447			7,711	
Income before dilutive effect of certain convertible securities, discontinued operations and cumulative effect of a change in accounting principle	\$ (440,826)	430,775	\$(1.02)	\$ 86,110	396,219	\$0.22	\$ 26,722	362,533	\$0.07
Dilutive effect of certain convertible securities	—	—	—	—	—	—	—	—	—
Income before discontinued operations and cumulative effect of a change in accounting principle	(440,826)	430,775	(1.02)	86,110	396,219	0.22	26,722	362,533	0.07
Discontinued operations, net of tax	198,365	—	0.46	14,969	—	0.04	91,896	—	0.26
Cumulative effect of a change in accounting principle, net of tax	—	—	—	180,943	—	0.45	—	—	—
Net income	<u>\$ (242,461)</u>	<u>430,775</u>	<u>\$(0.56)</u>	<u>\$ 282,022</u>	<u>396,219</u>	<u>\$0.71</u>	<u>\$ 118,618</u>	<u>362,533</u>	<u>\$0.33</u>

**CALPINE CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

The Company incurred losses before discontinued operations and cumulative effect of a change in accounting principle for the year ended December 31, 2004. As a result, basic shares were used in the calculations of fully diluted loss per share for these periods, under the guidelines of SFAS No. 128 as using the basic shares produced the more dilutive effect on the loss per share. Potentially convertible securities, shares to be purchased under the Company's ESPP and unexercised employee stock options to purchase a weighted average of 47.2 million, 127.1 million and 136.7 million shares of the Company's common stock were not included in the computation of diluted shares outstanding during the years ended December 31, 2004, 2003 and 2002, respectively, because such inclusion would be antidilutive.

For the years ended December 31, 2004, 2003 and 2002, approximately 8.9 million, 61.0 million and 66.4 million, respectively, weighted common shares of the Company's outstanding 2006 Convertible Senior Notes were excluded from the diluted EPS calculations as the inclusion of such shares would have been antidilutive. See Note 17 for a further discussion of these convertible securities.

In connection with the convertible notes payable to Trust I, Trust II and Trust III, net of repurchases, there were 34.4 million, 44.1 million and 44.9 million weighted average common shares potentially issuable, respectively, that were excluded from the diluted EPS calculation for the years ended December 31, 2004, 2003 and 2002 as their inclusion would be antidilutive. See Note 12 for a further discussion of these securities.

For the years ended December 31, 2004 and 2003, under the new guidance of EITF 04-08 there were no shares potentially issuable and thus potentially included in the diluted EPS calculation under the Company's 2023 Convertible Senior Notes issued in November 2003, because the Company's closing stock price at each period end was below the conversion price. However, in future reporting periods where the Company's closing stock price is above \$6.50, and depending on the closing stock price at conversion, the maximum potential shares issuable under the conversion provisions of the 2023 Convertible Senior Notes and included (if dilutive) in the diluted EPS calculation is approximately 97.5 million shares. See Note 17 for a further discussion of these convertible securities.

For the year ended December 31, 2004, under the new guidance of EITF 04-08 approximately 8.6 million weighted common shares potentially issuable under the Company's outstanding 2014 Convertible Notes were excluded from the diluted earnings per share calculations as the inclusion of such shares would have been antidilutive because of the Company's net loss. However, in future reporting periods where the Company's has net income and closing stock price is above \$3.85, and depending on the closing stock price at conversion, the maximum potential shares issuable under the conversion provisions of the 2014 Convertible Notes and included in the diluted EPS calculation is approximately 191.2 million shares. See Note 17 for a further discussion of these convertible securities.

As discussed in Note 17, the Company has excluded the 89 million shares of common stock subject to the Share Lending Agreement from the EPS calculation.

See Note 2 for a discussion of the potential impact of SFAS No. 128-R on the calculation of diluted EPS.

**CALPINE CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**25. Commitments and Contingencies**

*Turbines* — On February 11, 2003, the Company announced a significant restructuring of its turbine agreements, which enabled the Company to cancel up to 131 steam and gas turbines. The Company recorded a pre-tax charge of \$207.4 million in the quarter ending December 31, 2002, in connection with fees paid to vendors to restructure these contracts. This charge was recorded in the Equipment cancellation and impairment costs line item on the Consolidated Statements of Operations in the year ended December 31, 2002. As of December 31, 2004, 91 of these turbines had been cancelled and 2 had been applied to Calpine projects, leaving the disposition of 38 turbines still to be determined. The following table sets forth an analysis of the components of the turbine restructuring charges recorded in the fourth quarter of fiscal 2002 (in thousands):

Description	Three Months Ended December 31, 2002		Total Turbine Restructuring Charge
	Turbine CIP Write-Off	Turbine Restructuring Accrual	
Turbine write-offs and contract restructuring charges	\$ 182,534	\$ 24,824	\$ 207,358

The following table sets forth in the Company's turbine restructuring reserves as of December 31, 2003 (in thousands):

	As of December 31, 2002	Payments	Adjustments to Accrual(1)	As of December 31, 2003
Turbine restructuring accrual	\$ 24,824	\$ (15,805)	\$ (473)	\$ 8,546

- (1) In March 2003, it was determined that the actual invoices for the steam turbine equipment cancellations were less than the amount which had been accrued as of December 31, 2002.

The following table sets forth in the Company's restructuring reserves as of December 31, 2004 (in thousands):

	As of December 31, 2003	Payments	Adjustments to Accrual(1)	As of December 31, 2004
Turbine restructuring accrual	\$ 8,546	\$ (4,498)	\$ —	\$ 4,048

In July 2003, the Company completed a restructuring of its existing agreements with Siemens Westinghouse Power Corporation for 20 gas and 2 steam turbines. The new agreement provides for later payment dates, which are in line with the Company's construction program. The table below sets forth future turbine payments for construction and development projects, as well as for unassigned turbines. It includes previously delivered turbines, payments and delivery year for the last turbine to be delivered as well as payment required for the potential cancellation costs of the remaining 38 gas and steam turbines. The table does not include payments that would result if the Company were to release for manufacturing any of these remaining 38 turbines.

Year	Total (In thousands)	Units to be Delivered
2005	\$ 27,463	1
2006	4,862	—
2007	977	—
Total	\$ 33,302	1

## CALPINE CORPORATION AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

*Other Restructuring Charges* — In fiscal years 2002, 2003 and 2004, in connection with management's plan to reduce costs and improve operating efficiencies, the Company recorded restructuring charges primarily comprised of severance and benefits related to the involuntary termination of employees and charges related to the vacancy of a number of facilities.

The following table sets forth the Company's restructuring reserves relating to its vacancy of various facilities as of December 31, 2003 (in thousands):

	As of December 31, 2002	Additions	Reclass from Long-term	Amortization	Adjustments to Accrual	As of December 31, 2003
Accrued rent — Short-term	\$ 4,009	\$ 2,062	\$ 825	\$ (3,718)	\$ (166)	\$ 3,012
Accrued rent — Long-term	2,370	8,341	(825)	(162)	195	9,919
Total accrued rent liability	<u>\$ 6,379</u>	<u>\$ 10,403</u>	<u>\$ —</u>	<u>\$ (3,880)</u>	<u>\$ 29</u>	<u>\$ 12,931</u>

The following table sets forth the Company's restructuring reserves relating to its vacancy of various facilities as of December 31, 2004 (in thousands):

	As of December 31, 2003	Additions	Reclass from Long-term	Amortization	Accretion	Adjustments to Accrual	As of December 31, 2004
Accrued rent — Short-term	\$ 3,012	\$ 1,313	\$ 2,512	\$ (2,585)	\$ —	\$ 12	\$ 4,264
Accrued rent — Long-term	9,919	354	(2,512)	—	1,325	54	9,140
Total accrued rent liability	<u>\$ 12,931</u>	<u>\$ 1,667</u>	<u>\$ —</u>	<u>\$ (2,585)</u>	<u>\$ 1,325</u>	<u>\$ 66</u>	<u>\$ 13,404</u>

The 2003 charge of \$10.4 million was recorded in the "Sales, general and administrative expense" line item on the Consolidated Statements of Operations for the year ended December 31, 2003. In 2004 \$1.5 million of the vacancy related charges were recorded in the "Discontinued operations, net" line and \$0.1 million in the "Sales, general and administrative expense" line of the Consolidated Statement of Operations as of December 31, 2004.

The following table sets forth the Company's restructuring reserves relating to its involuntary termination of employees as of December 31, 2003 (in thousands):

	As of December 31, 2002	Additions	Payments	Adjustments	As of December 31, 2003
Severance liability	\$ 1,556	\$ 3,914	\$ (5,191)	\$ 414	\$ 693

The following table sets forth the Company's restructuring reserves relating to its involuntary termination of employees as of December 31, 2004 (in thousands):

	As of December 31, 2003	Additions	Payments	Adjustments	As of December 31, 2004
Severance liability	\$ 693	\$ 6,154	\$ (5,292)	\$ (1,555)	\$ —

Severance-related charges of \$1.1 million were recorded in the "Plant operating expense" line with the remaining \$2.8 million in the "Selling, general and administrative expense" line of the Consolidated Statements of Operations for the year ended December 31, 2003. Severance-related charges of \$6.2 million were recorded in the "Discontinued operations, net" line of the Consolidated Statement of Operations for the year ended December 31, 2004.

## CALPINE CORPORATION AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

*Power Plant Operating Leases* — The Company has entered into long-term operating leases for power generating facilities, expiring through 2049, including renewal options. Many of the lease agreements provide for renewal options at fair value, and some of the agreements contain customary restrictions on dividends, additional debt and further encumbrances similar to those typically found in project finance agreements. In accordance with SFAS No. 13 and SFAS No. 98 the Company's operating leases are not reflected on our balance sheet. Lease payments on the Company's operating leases which contain escalation clauses or step rent provisions are recognized on a straight-line basis. Certain capital improvements associated with leased facilities may be deemed to be leasehold improvements and are amortized over the shorter of the term of the lease or the economic life of the capital improvement. Future minimum lease payments under these leases are as follows (in thousands):

	<u>Initial Year</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>Thereafter</u>	<u>Total</u>
Watsonville	1995	\$ 2,905	\$ 2,905	\$ 2,905	\$ 2,905	\$ 4,065	\$ —	\$ 15,685
Greenleaf	1998	8,723	8,650	8,650	7,495	8,490	29,643	71,651
Geysers	1999	55,890	47,991	47,150	42,886	34,566	106,017	334,500
KIAC	2000	24,077	23,875	23,845	24,473	24,537	240,082	360,889
Rumford/ Tiverton	2000	44,942	45,000	45,000	45,000	45,000	563,292	788,234
South Point	2001	9,620	9,620	9,620	9,620	9,620	307,190	355,290
RockGen	2001	27,031	26,088	27,478	28,732	29,360	169,252	307,941
Total		<u>\$ 173,188</u>	<u>\$ 164,129</u>	<u>\$ 164,648</u>	<u>\$ 161,111</u>	<u>\$ 155,638</u>	<u>\$ 1,415,476</u>	<u>\$ 2,234,190</u>

In 2004, 2003, and 2002, rent expense for power plant operating leases amounted to \$105.9 million, \$112.1 million and \$111.0 million, respectively. Calpine guarantees \$1.6 billion of the total future minimum lease payments of its consolidated subsidiaries.

On May 19, 2004, the Company restructured the King City power plant operating lease. Due to the lease extension and other modifications to the original lease, the lease classification was reevaluated under SFAS No. 13 and determined to be a capital lease. See Notes 3 and 13 for more information on the restructuring.

*Production Royalties and Leases* — The Company is committed under numerous geothermal leases and right-of-way, easement and surface agreements. The geothermal leases generally provide for royalties based on production revenue with reductions for property taxes paid. The right-of-way, easement and surface agreements are based on flat rates or adjusted based on CPI changes and are not material. Under the terms of most geothermal leases, prior to May 1999, when the Company consolidated the steam field and power plant operations in Lake and Sonoma Counties in northern California ("The Geysers"), royalties were based on steam and effluent revenue. Following the consolidation of operations, the royalties began to accrue as a percentage of electrical revenues. Certain properties also have net profits and overriding royalty interests that are in addition to the land base lease royalties. Some lease agreements contain clauses providing for minimum lease payments to lessors if production temporarily ceases or if production falls below a specified level.

Production royalties for gas-fired and geothermal facilities for the years ended December 31, 2004, 2003, and 2002, were \$28.7 million, \$24.9 million and \$17.6 million, respectively.

**CALPINE CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

*Office and Equipment Leases* — The Company leases its corporate, regional and satellite offices as well as some of its office equipment under noncancellable operating leases expiring through 2014. Future minimum lease payments under these leases are as follows (in thousands):

2005	\$ 29,244
2006	24,415
2007	22,299
2008	21,291
2009	21,127
Thereafter	58,172
Total	<u>\$ 176,548</u>

Lease payments are subject to adjustments for the Company's pro rata portion of annual increases or decreases in building operating costs. In 2004, 2003, and 2002, rent expense for noncancellable operating leases amounted to \$29.7 million, \$21.6 million and \$25.8 million, respectively.

*Natural Gas Purchases* — The Company enters into gas purchase contracts of various terms with third parties to supply gas to its gas-fired cogeneration projects.

*Gas Pipeline Transportation in Canada* — To support production and marketing operations, Calpine, through CES, has firm commitments in the ordinary course of business for gathering, processing and transmission services that require the Company to deliver certain minimum quantities of natural gas to third parties or pay the corresponding tariffs. The agreements expire at various times through 2017. Estimated payments to be made under these arrangements are \$39.9 million, \$33.4 million, \$31.8 million, \$31.1 million, \$27.8 million and \$115.0 million for each of the next five years and thereafter, respectively.

*Guarantees* — As part of normal business, Calpine enters into various agreements providing, or otherwise arranges, financial or performance assurance to third parties on behalf of its subsidiaries. Such arrangements include guarantees, standby letters of credit and surety bonds. These arrangements are entered into primarily to support or enhance the creditworthiness otherwise attributed to a subsidiary on a stand-alone basis, thereby facilitating the extension of sufficient credit to accomplish the subsidiaries' intended commercial purposes.

Calpine routinely issues guarantees to third parties in connection with contractual arrangements entered into by Calpine's direct and indirect wholly owned subsidiaries in the ordinary course of such subsidiaries' respective business, including power and natural gas purchase and sale arrangements and contracts associated with the development, construction, operation and maintenance of Calpine's fleet of power generating facilities and natural gas facilities. Under these guarantees, if the subsidiary in question were to fail to perform its obligations under the guaranteed contract, giving rise to a default and/or an amount owing by the subsidiary to the third party under the contract, Calpine could be called upon to pay such amount to the third party or, in some instances, to perform the subsidiary's obligations under the contract. It is Calpine's policy to attempt to negotiate specific limits or caps on Calpine's overall liability under these types of guarantees; however, in some instances, Calpine's liability is not limited by way of such a contractual liability cap.

**CALPINE CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

At December 31, 2004, guarantees of subsidiary debt, standby letters of credit and surety bonds to third parties and guarantees of subsidiary operating lease payments and their respective expiration dates were as follows (in thousands):

<u>Commitments Expiring</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>Thereafter</u>	<u>Total</u>
Guarantee of subsidiary debt	\$ 18,333	\$ 16,284	\$ 18,798	\$ 1,930,657	\$ 19,848	\$ 1,133,896	\$ 3,137,817
Standby letters of credit(1)(3)	579,607	3,641	2,802	400	—	—	586,450
Surety bonds(2)(3)	—	—	—	—	—	12,531	12,531
Guarantee of subsidiary operating lease payments(3)	83,169	81,772	82,487	115,604	113,977	1,163,783	1,640,792
Total	<u>\$ 681,109</u>	<u>\$ 101,697</u>	<u>\$ 104,087</u>	<u>\$ 2,046,661</u>	<u>\$ 133,825</u>	<u>\$ 2,310,210</u>	<u>\$ 5,377,589</u>

- (1) The standby letters of credit disclosed above include those disclosed in Notes 12, 15 and 16.
- (2) The surety bonds do not have expiration or cancellation dates.
- (3) These are off balance sheet obligations.

The balance of the guarantees of subsidiary debt, standby letters of credit and surety bonds were as follows (in thousands):

	<u>Balance at December 31,</u>	
	<u>2004</u>	<u>2003</u>
Guarantee of subsidiary debt	\$ 3,137,817	\$ 4,102,829
Standby letters of credit	586,450	410,803
Surety bonds	12,531	70,480
	<u>\$ 3,736,798</u>	<u>\$ 4,584,112</u>

The Company has guaranteed the principal payment of \$2,139.7 million and \$2,448.6 million, as of December 31, 2004 and 2003, respectively, of Senior Notes for two wholly owned finance subsidiaries of Calpine, Calpine Canada Energy Finance ULC and Calpine Canada Energy Finance II ULC. As of December 31, 2004, the Company has guaranteed \$275.1 million and \$72.4 million, respectively, of project financing for the Broad River Energy Center and Pasadena Power Plant and \$291.6 million and \$71.8 million, respectively, as of December 31, 2003, for these power plants. In 2004 and 2003 the Company has debenture obligations in the amount of \$517.5 million and \$1,153.5 million, respectively, the payment of which will fund the obligations of the Trusts (see Note 12 for more information). The Company agreed to indemnify Duke Capital Corporation \$101.4 million and \$101.7 million as of December 31, 2004 and 2003, respectively, in the event Duke Capital Corporation is required to make any payments under its guarantee of the lease of the Hidalgo Energy Center. As of December 31, 2004 and 2003, the Company has also guaranteed \$31.7 million and \$35.6 million, respectively, of other miscellaneous debt. All of the guaranteed debt is recorded on the Company's Consolidated Balance Sheet.

Calpine has guaranteed the payment of a portion of the rents due under the lease of the Greenleaf generating facilities in California, which lease is between an owner trustee acting on behalf of Union Bank of California, as lessor, and a Calpine subsidiary, Calpine Greenleaf, Inc., as lessee. Calpine does not currently meet the requirements of a financial covenant contained in the guarantee agreement. The lessor has waived this non-compliance through April 30, 2005, and Calpine is currently in discussions with the lessor concerning the possibility of modifying the lease and/or Calpine's guarantee thereof so as to eliminate or modify the covenant in question. In the event the lessor's waiver were to expire prior to completion of this amendment, the lessor could at that time elect to accelerate the payment of certain amounts owing under the lease, totaling approximately \$15.9 million. In the event the lessor were to elect to require Calpine to make this payment, the

**CALPINE CORPORATION AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

lessor's remedy under the guarantee and the lease would be limited to taking steps to collect damages from Calpine; the lessor would not be entitled to terminate or exercise other remedies under the Greenleaf lease.

In connection with several of the Company's subsidiaries' lease financing transactions (Greenleaf, Pasadena, Broad River, RockGen and South Point) the insurance policies the Company has in place do not comply in every respect with the insurance requirements set forth in the financing documents. The Company has requested from the relevant financing parties, and is expecting to receive, waivers of this noncompliance. While failure to have the required insurance in place is listed in the financing documents as an event of default, the financing parties may not unreasonably withhold their approval of the Company's waiver request so long as the required insurance coverage is not reasonably available or commercially feasible and the Company delivers a report from its insurance consultant to that effect.

The Company has delivered the required insurance consultant reports to the relevant financing parties and therefore anticipates that the necessary waivers will be executed shortly.

Calpine routinely arranges for the issuance of letters of credit and various forms of surety bonds to third parties in support of its subsidiaries' contractual arrangements of the types described above and may guarantee the operating performance of some of its partially owned subsidiaries up to the Company's ownership percentage. The letters of credit outstanding under various credit facilities support CES risk management, and other operational and construction activities. Of the total letters of credit outstanding, \$2.5 million and \$14.5 million were issued to support CES risk management at December 31, 2004 and 2003, respectively. In the event a subsidiary were to fail to perform its obligations under a contract supported by such a letter of credit or surety bond, and the issuing bank or surety were to make payment to the third party, Calpine would be responsible for reimbursing the issuing bank or surety within an agreed timeframe, typically a period of 1 to 10 days. To the extent liabilities are incurred as a result of activities covered by letters of credit or the surety bonds, such liabilities are included in the Consolidated Balance Sheets.

At December 31, 2004, investee debt was \$126.3 million. Based on the Company's ownership share of each of the investments, the Company's share would be approximately \$43.3 million. However, all such debt is non-recourse to the Company.

In the course of its business, Calpine and its subsidiaries have entered into various purchase and sale agreements relating to stock and asset acquisitions or dispositions. These purchase and sale agreements customarily provide for indemnification by each of the purchaser and the seller, and/or their respective parent, to the counter-party for liabilities incurred as a result of a breach of a representation or warranty by the indemnifying party. These indemnification obligations generally have a discrete term and are intended to protect the parties against risks that are difficult to predict or impossible to quantify at the time of the consummation of a particular transaction. The Company has no reason to believe that it currently has any material liability relating to such routine indemnification obligations.

Additionally, Calpine and its subsidiaries from time to time assume other indemnification obligations in conjunction with transactions other than purchase or sale transactions. These indemnification obligations generally have a discrete term and are intended to protect our counterparties against risks that are difficult to predict or impossible to quantify at the time of the consummation of a particular transaction, such as the costs associated with litigation that may result from the transaction. The Company has no reason to believe that it currently has any material liability relating to such routine indemnification obligations.

Calpine has in a few limited circumstances directly or indirectly guaranteed the performance of obligations by unrelated third parties. These circumstances have arisen in situations in which a third party has contractual obligations with respect to the construction, operation or maintenance of a power generating facility or related equipment owned in whole or in part by Calpine. Generally, the third party's obligations with respect to related equipment are guaranteed for the direct or indirect benefit of Calpine by the third party's parent or other party. A financing party or investor in such facility or equipment may negotiate for Calpine also

CALPINE CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

to guarantee the performance of such third party's obligations as additional support for the third party's obligations. For example, in conjunction with the financing of California peaker program, Calpine guaranteed for the benefit of the lenders certain warranty obligations of third party suppliers and contractors. Calpine has entered into few guarantees of unrelated third party's obligations. Calpine has no reason to believe that it currently has any liability with respect to these guarantees.

The Company believes that the likelihood that it would be required to perform or otherwise incur any significant losses associated with any of these guarantees is remote.

*Litigation*

The Company is party to various litigation matters arising out of the normal course of business, the more significant of which are summarized below. The ultimate outcome of each of these matters cannot presently be determined, nor can the liability that could potentially result from a negative outcome be reasonably estimated presently for every case. The liability the Company may ultimately incur with respect to any one of these matters in the event of a negative outcome may be in excess of amounts currently accrued with respect to such matters and, as a result of these matters, may potentially be material to the Company's Consolidated Financial Statements.

*Securities Class Action Lawsuits.* Beginning on March 11, 2002, fifteen securities class action complaints were filed in the U.S. District Court for the Northern District of California against Calpine and certain of its employees, officers, and directors. All of these actions were ultimately assigned to Judge Saundra Brown Armstrong, and Judge Armstrong ordered the actions consolidated for all purposes on August 16, 2002, as *In re Calpine Corp. Securities Litigation*, Master File No. C 02-1200 SBA. There is currently only one claim remaining from the consolidated actions: a claim for violation of Section 11 of the Securities Act of 1933 ("Securities Act"). The Court has dismissed all of the claims brought under Section 10(b) of the Securities Exchange Act of 1934 with prejudice.

On October 17, 2003, plaintiffs filed their third amended complaint ("TAC"), which alleges violations of Section 11 of the Securities Act by Calpine, Peter Cartwright, Ann B. Curtis and Charles B. Clark, Jr. The TAC alleges that the registration statement and prospectuses for Calpine's 2011 Notes contained materially false or misleading statements about the factors that caused the power shortages in California in 2000-2001 and the resulting increase in wholesale energy prices. The TAC alleges that the true but undisclosed cause of the energy crisis is that Calpine and other power producers were engaging in physical withholding of electricity. In discovery, plaintiff has argued that the TAC is not based solely on allegedly concealed physical withholding, but instead is based on alleged undisclosed market manipulation in the form of physical withholding, economic withholding, and trading strategies. The TAC defines the potential class to include all purchasers of the Notes pursuant to the registration statement and prospectuses on or before January 27, 2003. The Court has not yet certified the class. The class certification hearing will be set for May 3, 2005.

On April 15, 2004, The Policemen and Firemen Retirement System of the City of Detroit (the "Detroit Fund") filed a request to be appointed as lead plaintiff in the case. The Court granted the Detroit Fund's request for appointment as lead plaintiff on May 7, 2004. The Court also approved the Detroit Fund's choice of Kohn, Swift & Graf, P.C. (Philadelphia) as lead counsel for the class.

At the Court's invitation, defendants subsequently moved for summary judgment on grounds that the Section 11 claim was barred by the statute of limitations. On November 2, 2004, the Court denied the motion on grounds that defendants had not established as a matter of law that plaintiff was on notice of the alleged misstatement prior to January 27, 2002, one year before plaintiff first alleged that Calpine had misrepresented the causes of the energy crisis. The Court has set a November 7, 2005 trial date. Fact discovery will close on July 1, 2005. We consider the lawsuit to be without merit and intend to continue to defend vigorously against the allegations.

**CALPINE CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

*Hawaii Structural Ironworkers Pension Fund v. Calpine, et al.* This case is a Section 11 case brought as a class action on behalf of purchasers in Calpine's April, 2002 stock offering. This case was filed in San Diego County Superior Court on March 11, 2003, but defendants won a motion to transfer the case to Santa Clara County. Defendants in this case are Calpine, Cartwright, Curtis, John Wilson, Kenneth Derr, George Stathakis, CSFB, Banc of America Securities, Deutsche Bank Securities, and Goldman, Sachs & Co. Plaintiff is the Hawaii Structural Ironworkers Pension Trust Fund.

The Hawaii Fund alleges that the prospectus and registration statement for the April 2002 offering had false or misleading statements regarding: Calpine's actual financial results for 2000 and 2001; Calpine's projected financial results for 2002; Cartwright's agreement not to sell or purchase shares within 90 days of the offering; and Calpine's alleged involvement in "wash trades." The core allegation of the complaint is that a March 2003 restatement (concerning two sales-leaseback transactions) revealed that Calpine had misrepresented its financial results in the prospectus/registration statement for the April 2002 offering.

There is no discovery cut off date or trial date in this action. The next scheduled court hearing will be a case management conference on July 5, 2005, at which time the court should set a discovery deadline and trial date. We consider this lawsuit to be without merit and intend to continue to defend vigorously against the allegations.

*Phelps v. Calpine Corporation, et al.* On April 17, 2003, James Phelps filed a class action complaint in the Northern District of California, alleging claims under the Employee Retirement Income Security Act ("ERISA"). On May 19, 2003, a nearly identical class action complaint was filed in the Northern District by Lenette Poor-Herena. The parties agreed to have both of the ERISA actions assigned to Judge Armstrong, who oversees the above-described federal securities class action and the *Gordon* derivative action (see below). On August 20, 2003, pursuant to an agreement between the parties, Judge Armstrong ordered that the two ERISA actions be consolidated under the caption, *In re Calpine Corp. ERISA Litig.*, Master File No. C 03-1685 SBA (the "ERISA Class Action"). Plaintiff James Phelps filed a consolidated ERISA complaint on January 20, 2004 ("Consolidated Complaint"). Ms. Poor-Herena is not identified as a plaintiff in the Consolidated Complaint.

The Consolidated Complaint defines the class as all participants in, and beneficiaries of, the Calpine Corporation Retirement Savings Plan (the "Plan") for whose accounts investments were made in Calpine stock during the period from January 5, 2001 to the present. The Consolidated Complaint names as defendants Calpine, the members of its Board of Directors, the Plan's Advisory Committee and its members (Kati Miller, Lisa Bodensteiner, Rick Barraza, Tom Glymph, Patrick Price, Trevor Thor, Bob McCaffrey, and Bryan Bertacchi), signatories of the Plan's Annual Return/ Report of Employee Benefit Plan Forms 5500 for 2001 and 2002 (Pamela J. Norley and Marybeth Kramer-Johnson, respectively), an employee of a consulting firm hired by the Plan (Scott Farris), and unidentified fiduciary defendants.

The Consolidated Complaint alleges that defendants breached their fiduciary duties involving the Plan, in violation of ERISA, by misrepresenting Calpine's actual financial results and earnings projections, failing to disclose certain transactions between Calpine and Enron that allegedly inflated Calpine's revenues, failing to disclose that the shortage of power in California during 2000-2001 was due to withholding of capacity by certain power companies, failing to investigate whether Calpine common stock was an appropriate investment for the Plan, and failing to take appropriate actions to prevent losses to the Plan. In addition, the consolidated ERISA complaint alleges that certain of the individual defendants suffered from conflicts of interest due to their sales of Calpine stock during the class period.

Defendants moved to dismiss the consolidated complaint. At a February 11, 2005 hearing, Judge Armstrong granted the motion and dismissed three of the four claims with prejudice. The fourth claim was dismissed with leave to amend. This claim was based, in part, on the same statements that are at issue in the Section 11 bond class action. Plan participants did not receive the prospectus supplements that are at issue in

CALPINE CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

the Section 11 bond class action, but plaintiffs' counsel told Judge Armstrong that these statements appeared in documents that were given to Plan participants. Relying on assurances by plaintiffs' counsel that misstatements about the California energy crisis appeared in documents that were given to Plan participants (or that were incorporated by reference into documents given to participants), the Court granted leave to re-plead this claim. We expect the second amended consolidated complaint to be due in the near future. We consider this lawsuit to be without merit and intend to continue to defend vigorously against the allegations.

*Johnson v. Peter Cartwright, et al.* On December 17, 2001, a shareholder filed a derivative lawsuit on behalf of Calpine against its directors and one of its senior officers. This lawsuit is styled *Johnson vs. Cartwright, et al.* (No. CV803872) and is pending in state superior court of Santa Clara County, California. Calpine is a nominal defendant in this lawsuit, which alleges claims relating to purportedly misleading statements about Calpine and stock sales by certain of the director defendants and the officer defendant. In December 2002, the court dismissed the complaint with respect to certain of the director defendants for lack of personal jurisdiction, though plaintiff may appeal this ruling. In early February 2003, plaintiff filed an amended complaint, naming a few additional officer defendants. Calpine and the individual defendants filed demurrers (motions to dismiss) and a motion to stay the case in March 2003. On July 1, 2003, the Court granted Calpine's motion to stay this proceeding until the above-described Section 11 action is resolved, or until further order of the Court. We consider the lawsuit to be without merit.

*Gordon v. Peter Cartwright, et al.* On August 8, 2002, a shareholder filed a derivative suit in the United States District Court for the Northern District of California on behalf of Calpine against its directors, captioned *Gordon v. Cartwright, et al.* similar to *Johnson v. Cartwright*. Motions have been filed to dismiss the action against certain of the director defendants on the grounds of lack of personal jurisdiction, as well as to dismiss the complaint in total on other grounds. In February 2003, plaintiff agreed to stay these proceedings until the above-described federal Section 11 action is resolved, and to dismiss without prejudice certain director defendants. On March 4, 2003, plaintiff filed papers with the court voluntarily agreeing to dismiss without prejudice his claims against three of the outside directors. We consider this lawsuit to be without merit.

*International Paper Company v. Androscoggin Energy LLC.* In October 2000, International Paper Company filed a complaint against Androscoggin Energy LLC ("AELLC") alleging that AELLC breached certain contractual representations and warranties arising out of an Amended Energy Services Agreement ("ESA") by failing to disclose facts surrounding the termination, effective May 8, 1998, of one of AELLC's fixed-cost gas supply agreements. The steam price paid by IP under the ESA is derived from AELLC's cost of gas under its gas supply agreements. We had acquired a 32.3% economic interest and a 49.5% voting interest in AELLC as part of the Skygen transaction, which closed in October 2000. AELLC filed a counterclaim against International Paper Company that has been referred to arbitration that AELLC may commence at its discretion upon further evaluation. On November 7, 2002, the court issued an opinion on the parties' cross motions for summary judgment finding in AELLC's favor on certain matters though granting summary judgment to International Paper Company on the liability aspect of a particular claim against AELLC. The court also denied a motion submitted by IP for preliminary injunction to permit IP to make payment of funds into escrow (not directly to AELLC) and require AELLC to post a significant bond.

In mid-April of 2003, IP unilaterally availed itself to self-help in withholding amounts in excess of \$2 million as a setoff for litigation expenses and fees incurred to date as well as an estimated portion of a rate fund to AELLC. AELLC has submitted an amended complaint and request for immediate injunctive relief against such actions. The court heard the motion on April 24, 2003 and ordered that IP must pay the approximate \$1.2 million withheld as attorneys' fees related to the litigation as any such perceived entitlement was premature, but declined to order injunctive relief on the incomplete record concerning the offset of \$799,000 as an estimated pass-through of the rate fund. IP complied with the order on April 29, 2003 and tendered payment to AELLC of the approximate \$1.2 million. On June 26, 2003, the court entered an order

CALPINE CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

dismissing AELLC's amended counterclaim without prejudice to AELLC re-filing the claims as breach of contract claims in a separate lawsuit. On December 11, 2003, the court denied in part IP's summary judgment motion pertaining to damages. In short, the court: (i) determined that, as a matter of law, IP is entitled to pursue an action for damages as a result of AELLC's breach, and (ii) ruled that sufficient questions of fact remain to deny IP summary judgment on the measure of damages as IP did not sufficiently establish causation resulting from AELLC's breach of contract (the liability aspect of which IP obtained a summary judgment in December 2002). On February 2, 2004, the parties filed a Final Pretrial Order with the court. The case recently proceeded to trial, and on November 3, 2004, a jury verdict in the amount of \$41 million was rendered in favor of IP. AELLC was held liable on the misrepresentation claim, but not on the breach of contract claim. The verdict amount was based on calculations proffered by IP's damages experts. AELLC has made an additional accrual to recognize the jury verdict and the Company has recognized its 32.3% share.

AELLC filed a post-trial motion challenging both the determination of its liability and the damages award and, on November 16, 2004, the court entered an order staying the execution of the judgment. The order staying execution of the judgment has not expired. If the judgment is not vacated as a result of the post-trial motions, AELLC intends to appeal the judgment.

Additionally, on November 26, 2004, AELLC filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. As noted above, we had acquired a 32.3% economic interest and a 49.5% voting interest in AELLC as part of the Skygen transaction, which closed in October 2000. AELLC is continuing in possession of its property and is operating and maintaining its business as a debtor in possession, pursuant to Section 1107(a) and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner in the proceeding, and no official committee of unsecured creditors has yet been appointed by the Office of the United States Trustee.

*Panda Energy International, Inc., et al. v. Calpine Corporation, et al.* On November 5, 2003, Panda Energy International, Inc. and certain related parties, including PLC II, LLC, (collectively "Panda") filed suit against Calpine and certain of its affiliates in the United States District Court for the Northern District of Texas, alleging, among other things, that the Company breached duties of care and loyalty allegedly owed to Panda by failing to correctly construct and operate the Oneta Energy Center ("Oneta"), which the Company acquired from Panda, in accordance with Panda's original plans. Panda alleges that it is entitled to a portion of the profits from Oneta and that Calpine's actions have reduced the profits from Oneta thereby undermining Panda's ability to repay monies owed to Calpine on December 1, 2003, under a promissory note on which approximately \$38.6 million (including interest through December 1, 2003) is currently outstanding and past due. The note is collateralized by Panda's carried interest in the income generated from Oneta, which achieved full commercial operations in June 2003. Calpine filed a counterclaim against Panda Energy International, Inc. (and PLC II, LLC) based on a guaranty and a motion to dismiss as to the causes of action alleging federal and state securities laws violations. The court recently granted Calpine's motion to dismiss, but allowed Panda an opportunity to re-plead. The Company considers Panda's lawsuit to be without merit and intends to vigorously defend it. Discovery is currently in progress. The Company stopped accruing interest income on the promissory note due December 1, 2003, as of the due date because of Panda's default in repayment of the note.

*California Business & Professions Code Section 17200 Cases, of which the lead case is T&E Pastorino Nursery v. Duke Energy Trading and Marketing, L.L.C., et al.* This purported class action complaint filed in May 2002 against 20 energy traders and energy companies, including CES, alleges that defendants exercised market power and manipulated prices in violation of California Business & Professions Code Section 17200 et seq., and seeks injunctive relief, restitution, and attorneys' fees. The Company also has been named in eight other similar complaints for violations of Section 17200. All eight cases were removed from the various state courts in which they were originally filed to federal court for pretrial proceedings with other cases in which the Company is not named as a defendant. However, at the present time, the Company cannot estimate the

CALPINE CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

potential loss, if any, that might arise from this matter. The Company considers the allegations to be without merit, and filed a motion to dismiss on August 28, 2003. The court granted the motion, and plaintiffs have appealed.

Prior to the motion to dismiss being granted, one of the actions, captioned *Millar v. Allegheny Energy Supply Co., LLP, et al.*, was remanded to state superior court of Alameda County, California. On January 12, 2004, CES was added as a defendant in *Millar*. This action includes similar allegations to the other Section 17200 cases, but also seeks rescission of the long-term power contracts with the California Department of Water Resources. *Millar* was removed to federal court and transferred to the same judge that is presiding over the other Section 17200 cases described above, where it was to be consolidated. However, that judge recently remanded the case back to state superior court for handling.

*Nevada Power Company and Sierra Pacific Power Company v. Calpine Energy Services, L.P. before the FERC, filed on December 4, 2001, Nevada Section 206 Complaint.* On December 4, 2001, Nevada Power Company (“NPC”) and Sierra Pacific Power Company (“SPPC”) filed a complaint with FERC under Section 206 of the Federal Power Act against a number of parties to their power sales agreements, including Calpine. NPC and SPPC allege in their complaint, that the prices they agreed to pay in certain of the power sales agreements, including those signed with Calpine, were negotiated during a time when the spot power market was dysfunctional and that they are unjust and unreasonable. The complaint therefore sought modification of the contract prices. The administrative law judge issued an Initial Decision on December 19, 2002, that found for Calpine and the other respondents in the case and denied NPC and SPPC the relief that they were seeking. In a June 26, 2003 order, FERC affirmed the judge’s findings and dismissed the complaint, and subsequently denied rehearing of that order. The matter is pending on appeal before the United States Court of Appeals for the Ninth Circuit. The Company has participated in briefing and arguments before the Ninth Circuit defending the FERC orders, but the Company is not able to predict at this time the outcome of the Ninth Circuit appeal.

*Transmission Service Agreement with Nevada Power Company.* On March 16, 2004, NPC filed a petition for declaratory order at FERC (Docket No. EL04-90-000) asking that an order be issued requiring Calpine and Reliant Energy Services, Inc. (“Reliant”) to pay for transmission service under their Transmission Service Agreements (“TSAs”) with NPC or, if the TSAs are terminated, to pay the lesser of the transmission charges or a pro rata share of the total cost of NPC’s Centennial Project (approximately \$33 million for Calpine). The Centennial Project involves construction of various transmission facilities in two phases; Calpine’s Moapa Energy Center (“MEC”) was scheduled to receive service under its TSA from facilities yet to be constructed in the second phase of the Centennial Project. Calpine filed a protest to the petition asserting that (a) Calpine would take service under the TSA if NPC proceeds to execute a purchase power agreement (“PPA”) with MEC based on MEC’s winning bid in the Request for Proposals that NPC conducted in 2003; (b) if NPC did not execute a PPA with MEC, Calpine would terminate the TSA and any payment by Calpine would be limited to a pro rata allocation of certain costs incurred by NPC in connection with the second phase of the project (approximately \$4.5 million in total to date) among the three customers to be served.

On November 18, 2004, FERC issued a decision in Docket No. EL04-90-000 which found that neither Calpine nor Reliant had the right to unilaterally terminate their respective TSAs, and that upon commencement of service both Calpine and Reliant would be obligated to pay either the associated demand charges for service or their respective share of the capital cost associated with the transmission upgrades that have been made in order to provide such service. The November 18, 2004 order, however, did not indicate the amount or measure of damages that would be owed to NPC in the event that either Calpine or Reliant breached its respective obligations under the TSAs.

On December 10, 2004, NPC filed a request for rehearing of the November 18, 2004 decision, alleging that FERC had erred in holding that a determination of damages for breach of either Calpine or Reliant was

**CALPINE CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

premature and that both Calpine and Reliant had breached their respective TSAs. Calpine filed an answer on January 4, 2005 requesting that FERC deny NPC's request for rehearing. NPC's request for rehearing remains pending before FERC for further consideration. The Company cannot predict how FERC will rule on NPC's rehearing request.

In light of the November 18, 2004 order, on November 22, 2004 Calpine delivered to NPC a notice (the "November 22, 2004 Letter") that it did not intend to perform its obligations under the Calpine TSA, that NPC should exercise its duty to mitigate its damages, if any, and that NPC should not incur any additional costs or expenses in reliance upon the TSA for Calpine's account. Calpine introduced the November 22, 2004 Letter into evidence in proceedings before the Public Utilities Commission of Nevada ("PUCN") regarding NPC's third amendment to its integrated resource plan ("Resource Plan"). In the Resource Plan, NPC sought approval to proceed with the construction of the second phase of the Centennial Project (the transmission project intended to serve the Calpine and Reliant TSAs) (the "HAM Line"). On December 28, 2004, the PUCN issued an order granting NPC's request to proceed with the construction of the HAM Line. On January 11, 2005, Calpine filed a petition for reconsideration of the December 28, 2004 order. On February 9, 2005, the PUCN issued an order denying Calpine's petitions for reconsideration. At this time Calpine is unable to predict the impact of the December 28, 2004 and the February 9, 2005 PUCN orders, if any on the District Court Complaint (discussed below) or any possible action by NPC before FERC regarding Calpine's notice that it will not perform its obligations under the Calpine TSA.

Calpine had previously provided security to NPC for Calpine's share of the HAM Line costs, in the form of a surety bond issued by Fireman's Fund Insurance Company ("FFIC"). The bond issued by FFIC, by its terms, expired on May 1, 2004. On or about April 27, 2004, NPC asserted to FFIC that Calpine had committed a default under the bond by failing to agree to renew or replace the bond upon its expiration and made demand on FFIC for the full amount of the surety bond, \$33,333,333. On April 29, 2004, FFIC filed a complaint for declaratory relief in state superior court of Marin County, California in connection with this demand.

FFIC's complaint sought an order declaring that (a) FFIC has no obligation to make payment under the bond; and (b) if the court were to determine that FFIC has an obligation to make payment, then (i) Calpine has an obligation to replace it with funds equal to the amount of NPC's demand against the bond and (ii) Calpine is obligated to indemnify and hold FFIC harmless for all loss, costs and fees incurred as a result of the issuance of the bond. Calpine filed an answer denying the allegations of the complaint and asserting affirmative defenses, including that it has fully performed its obligations under the TSA and surety bond. NPC filed a motion to quash service for lack of personal jurisdiction in California.

On September 3, 2004, the superior court granted NPC's motion, and NPC was dismissed from the proceeding. Subsequently, FFIC agreed to dismiss the complaint as to Calpine. On September 30, 2004 NPC filed a complaint in state district court of Clark County, Nevada against Calpine, Moapa Energy Center, LLC, FFIC and unnamed parties alleging, among other things, breach by Calpine of its obligations under the TSA and breach by FFIC of its obligations under the surety bond. On November 4, 2004, the case was removed to Federal District Court. At this time, Calpine is unable to predict the outcome of this proceeding.

*Calpine Canada Natural Gas Partnership v. Enron Canada Corp.* On February 6, 2002, Calpine Canada Natural Gas Partnership ("Calpine Canada") filed a complaint in the Alberta Court of Queens Branch alleging that Enron Canada Corp. ("Enron Canada") owed it approximately US\$1.5 million from the sale of gas in connection with two Master Firm gas Purchase and Sale Agreements. To date, Enron Canada has not sought bankruptcy relief and has counterclaimed in the amount of US\$18 million. Discovery is currently in progress, and the Company believes that Enron Canada's counterclaim is without merit and intends to vigorously defend against it.

**CALPINE CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

*Estate of Jones, et al. v. Calpine Corporation.* On June 11, 2003, the Estate of Darrell Jones and the Estate of Cynthia Jones filed a complaint against Calpine in the United States District Court for the Western District of Washington. Calpine purchased Goldendale Energy, Inc., a Washington corporation, from Darrell Jones of National Energy Systems Company (“NESCO”). The agreement provided, among other things, that upon “Substantial Completion” of the Goldendale facility, Calpine would pay Mr. Jones (i) the fixed sum of \$6.0 million and (ii) a decreasing sum equal to \$18.0 million less \$0.2 million per day for each day that elapsed between July 1, 2002, and the date of Substantial Completion. Substantial Completion of the Goldendale facility occurred in September 2004 and the daily reduction in the payment amount reduced the \$18.0 million payment to zero. The complaint alleged that by not achieving Substantial Completion by July 1, 2002, Calpine breached its contract with Mr. Jones, violated a duty of good faith and fair dealing, and caused an inequitable forfeiture. On July 28, 2003, Calpine filed a motion to dismiss the complaint for failure to state a claim upon which relief can be granted. The Court granted Calpine’s motion to dismiss the complaint on March 10, 2004. The Court denied the plaintiffs’ subsequent motions for reconsideration and for leave to amend, granted in part Calpine’s motion for an award of attorneys’ fees, and entered judgment dismissing the action. The plaintiffs appealed the dismissal to the United States Court of Appeals for the Ninth Circuit, where the matter is pending. Briefing is complete. Oral argument has not yet been scheduled. Calpine believes the facility reached Substantial Completion in the second half of 2004. Calpine thereafter paid to or for the benefit of the Jones estate the fixed sum of \$6 million, which Calpine agreed it was obligated to pay upon Substantial Completion whenever achieved.

*Calpine Energy Services v Acadia Power Partners.* Calpine, through its subsidiaries, owns 50% of Acadia Power Partners, LLC (“APP”) which company owns the Acadia Energy Center near Eunice, Louisiana (the “Facility”). A Cleco Corp subsidiary owns the remaining 50% of APP. CES is the purchaser under two power purchase agreements with APP, which agreements entitle CES to all of the Facility’s capacity and energy. In August 2003 certain transmission constraints previously unknown to CES and APP began to severely limit the ability of CES to obtain all of the energy from the Facility. CES has asserted that it is entitled to certain relief under the purchase agreements, to which assertions APP disagrees. Accordingly, the parties are engaging in the initial alternative dispute resolution steps set forth in the power purchase agreements. It is possible that the dispute will result in binding arbitration pursuant to the agreements if a settlement is not reached. In addition, CES and APP are discussing certain billing calculation disputes which relate to efficiency matters. The dispute covers the time period from June 2002 (commercial operation date of the plant) to June 2004. It is expected that the parties will be able to resolve these disputes, and that APP could be liable to CES for an amount up to \$3.1 million.

*Hulsey, et al. v. Calpine Corporation.* On September 20, 2004, Virgil D. Hulsey, Jr. (a current employee) and Ray Wesley (a former employee) filed a class action wage and hour lawsuit against Calpine Corporation and certain of its affiliates. The complaint alleges that the purported class members were entitled to overtime pay and Calpine failed to pay the purported class members at legally required overtime rates. The matter has been transferred to the Santa Clara County Superior Court and Calpine filed an answer on January 7, 2005, denying plaintiffs’ claims. The parties have agreed to discuss possible resolutions alternative to litigation.

*Michael Portis v. Calpine Corp. — Department of Labor Claim.* On January 25, 2005, Michael Portis (“Portis”), a former employee of Calpine, brought a complaint to the United States Department of Labor (the “DOL”), alleging that his employment with the Company was wrongfully terminated. Portis alleges that Calpine and its subsidiaries evaded sales and use tax in various states and in doing so filed false tax reports and that his employment was terminated in retaliation for having reported these allegations to management. Portis claims that the Company’s alleged actions constitute violations of the employee protection provisions of the Sarbanes Oxley Act of 2002. The Company considers Portis’ claims to be without merit and intends to vigorously defend against the allegations.

**CALPINE CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

*Auburndale Power Partners and Cutrale.* Calpine Corporation owns an interest in the Auburndale Power Partners cogeneration facility (the “APP facility”), which provides steam to Cutrale, a juice company. The APP facility currently operates on a “cycling” basis whereby the plant operates only a portion of the day. During the hours that the APP facility is not operating, APP does not provide Cutrale Steam. Cutrale has filed an arbitration claim alleging that they are entitled to damages due to APP’s failure to provide them with steam 24 hours a day. APP believes that Cutrale’s position is not supported by the language of the contract in place between APP and Cutrale and that it will prevail in arbitration. Nevertheless, to preserve its positive relationship with Cutrale, APP will continue to try to resolve the matter through a commercial settlement.

*Sargent Electric Company v. Kvaerner-Songer Inc., et al. v. CCFC; McCarls Inc. v. Kvaerner-Songer Inc., CCFC, et al.* On June 18, 2003, Kvaerner-Songer Inc. (“KSI”) filed a third-party complaint against CCFC in the Court of Common Pleas of Berks County, Pennsylvania, alleging material breach of contract and seeking unspecified damages in an amount in excess of the jurisdictional amount of \$75,000. KSI, along with Kvaerner-Jaddco and Safeco Insurance Company of America were defendants in a claim filed by Sargent Electric Company (“Sargent”) in the Court of Common Pleas of Berks County, Pennsylvania on October 11, 2002, which claim alleged breach of contract stemming from Sargent’s work as an electrical subcontractor for KSI during construction of the Ontelaunee project, claiming, among other things, change in work scope, delays and increased costs. KSI’s third-party claim against CCFC alleged that CCFC was liable to KSI to the extent that Sargent was entitled to any recovery from KSI. In separate submittals to us, as part of our claims evaluation process, KSI informed us that Sargent had submitted claims in the amount of \$5.7 million against KSI and KSI had submitted claims to us in the amount of \$3.5 million. R.L. Bondy Inc. had submitted claims to KSI in the amount of approximately \$1.7 million for miscellaneous work on the Ontelaunee project. On June 1, 2004, CCFC filed an answer, new matter and counterclaim specifically denying KSI’s allegations and requesting that the third party complaint be dismissed. In addition, CCFC submitted that KSI had breached its contract with respect to warranty, commissioning and acceleration matters and requested restitution in the amount of \$7,744,586.

On February 3, 2004, McCarls Inc. (“McCarls”) filed suit against KSI and CCFC for unjust enrichment relating to certain piping work. McCarls had also filed claims for promissory estoppel and unjust enrichment against Calpine Corporation. These claims totaled approximately \$12 million. In addition, in April 2004, KSI filed a cross claim against Calpine and CCFC alleging breach of contract. On April 12, 2004, the Court overruled preliminary objections filed by CCFC and Calpine in opposition to the complaint. Following the Court’s ruling, CCFC and Calpine filed a motion to extend the time to answer the McCarls complaint. The Court allowed Calpine’s motion to extend and on May 24, 2004 and June 1, 2004, Calpine filed its answer, new matter and counterclaim against McCarls and KSI respectively. Calpine and CCFC denied the allegations of both McCarls and KSI, requested that the actions be dismissed and filed a counterclaim for unjust enrichment, promissory estoppel and misrepresentation. In addition, Calpine filed a request for indemnification against KSI and asserted that KSI breached its contract with respect to warranty, commissioning and acceleration matters and requested restitution in the amount of \$7,744,586.

On August 20, 2004, Sargent filed a companion case captioned Sargent Electric v. CCFC for Judgment of Foreclosure of Mechanic’s Lien. The underlying basis for the complaint stems from the same cause of action set forth above. An answer was to be filed by October 15, but the case was dismissed with prejudice on September 22, 2004.

The Sargent/ KSI and McCarls cases were settled on December 31, 2004 and January 28, 2005 respectively. Calpine paid a total sum of \$14,250,000 to KSI (the general contractor) as part of the settlement of both cases and KSI paid a portion to Sargent (the electrical subcontractor) and to McCarls (the piping subcontractor). Calpine’s settlement payment was for construction costs of the Ontelaunee project.

**CALPINE CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

In addition, the Company is involved in various other claims and legal actions arising out of the normal course of its business. The Company does not expect that the outcome of these proceedings will have a material adverse effect on its financial position or results of operations.

**26. Operating Segments**

The Company is first and foremost an electric generating company. In pursuing this business strategy, it is the Company's long-range objective to produce a portion of its fuel consumption requirements from its own natural gas reserves ("equity gas"). The Company's oil and gas production and marketing activity has reached the quantitative criteria to be considered a reportable segment under SFAS No. 131. The Company's segments are therefore electric generation and marketing; oil and gas production and marketing; and corporate and other activities. Electric generation and marketing includes the development, acquisition, ownership and operation of power production facilities, hedging, balancing, optimization, and trading activity transacted on behalf of the Company's power generation facilities. Oil and gas production includes the ownership and operation of gas fields, gathering systems and gas pipelines for internal gas consumption, third party sales and hedging, balancing, optimization, and trading activity transacted on behalf of the Company's oil and gas operations. Corporate activities and other consists primarily of financing transactions, activities of the Company's parts and services businesses, including the Company's specialty data center engineering business, which was divested in the third quarter of 2003, and general and administrative costs. Certain costs related to company-wide functions are allocated to each segment, such as interest expense, distributions on HIGH TIDES prior to October 1, 2003, and interest income, which are allocated based on a ratio of segment assets to total assets.

The Company evaluates performance based upon several criteria including profits before tax. The accounting policies of the operating segments are the same as those described in Note 2. The financial results for the Company's operating segments have been prepared on a basis consistent with the manner in which the Company's management internally disaggregates financial information for the purposes of assisting in making internal operating decisions.

**CALPINE CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

Due to the integrated nature of the business segments, estimates and judgments have been made in allocating certain revenue and expense items, and reclassifications have been made to prior periods to present the allocation consistently.

	<u>Electric Generation and Marketing</u>	<u>Oil and Gas Production and Marketing</u>	<u>Corporate and Other</u>	<u>Total</u>
	(In thousands)			
<b>2004</b>				
Revenue from external customers	\$ 9,102,959	\$ 63,153	\$ 63,776	\$ 9,229,888
Intersegment revenues	—	208,170	—	208,170
Depreciation and amortization	486,927	85,225	2,048	574,200
Oil and gas impairment	—	202,120	—	202,120
(Income) from unconsolidated investments in power projects and oil and gas properties	13,525	—	—	13,525
Equipment cancellation and impairment costs	42,374	—	—	42,374
Interest expense	1,055,767	41,867	43,168	1,140,802
Interest (income)	(52,207)	(2,070)	(2,135)	(56,412)
(Income) from repurchase of various issuances of debt	—	—	(246,949)	(246,949)
Other (income) expense	(222,515)	5,221	68,201	(149,093)
Income before taxes	(818,865)	(207,602)	309,092	(717,375)
Provision (benefit) for income taxes	(112,150)	(167,654)	3,255	(276,549)
Discontinued operations, net of tax	22,956	175,409	—	198,365
Total assets	25,187,414	998,810	1,029,864	27,216,088
Investments in power projects and oil and gas properties	374,032	—	—	374,032
Property additions	1,465,400	60,197	23,760	1,549,357
<b>2003</b>				
Revenue from external customers	\$ 8,773,574	\$ 59,156	\$ 38,303	\$ 8,871,033
Intersegment revenues	—	284,951	—	284,951
Depreciation and amortization	407,547	93,733	3,103	504,383
Oil and gas impairment	—	2,931	—	2,931
(Income) from unconsolidated investments in power projects and oil and gas properties	(75,804)	—	—	(75,804)
Equipment cancellation and impairment cost	64,384	—	—	64,384
Interest expense	621,912	47,177	37,218	706,307
Interest (income)	(34,971)	(2,652)	(2,093)	(39,716)
(Income) from repurchase of various issuances of debt	—	—	(278,612)	(278,612)
Other (income) expense	(44,961)	(47,941)	46,776	(46,126)
Income before taxes	124,627	135,459	(165,481)	94,605
Provision (benefit) for income taxes	(23,497)	(45,243)	77,235	8,495
Discontinued operations, net of tax	2,694	23,546	(11,271)	14,969
Cumulative effect of a change in accounting principle, net of tax	183,270	(1,443)	(884)	180,943
Total assets	24,041,450	1,823,751	1,438,731	27,303,932
Investments in power plants and oil and gas properties	444,150	—	—	444,150
Property Additions	1,737,159	107,644	15,822	1,860,625

## CALPINE CORPORATION AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

	<u>Electric Generation and Marketing</u>	<u>Oil and Gas Production and Marketing</u>	<u>Corporate and Other</u>	<u>Total</u>
	(In thousands)			
<b>2002</b>				
Revenue from external customers	\$ 7,103,972	\$ 243,889	\$ 1,892	\$ 7,349,753
Intersegment revenues	—	141,263	—	141,263
Depreciation and amortization	298,928	91,926	8,035	398,889
Oil and gas impairment	—	3,399	—	3,399
(Income) from unconsolidated investments in power projects and oil and gas properties	(16,552)	—	—	(16,552)
Equipment cancellation and impairment costs	404,737	—	—	404,737
Interest expense	331,066	19,501	52,110	402,677
Interest (income)	(34,500)	(3,182)	(5,404)	(43,086)
(Income) from repurchase of various issuances of debt	—	—	(118,020)	(118,020)
Other (income) expense	(41,043)	(7,674)	14,517	(34,200)
Income before taxes	175,960	(6,127)	(132,276)	37,557
Provision (benefit) for income taxes	95,590	(107,882)	23,126	10,835
Discontinued operations, net of tax	32,077	69,872	(10,053)	91,896

Intersegment revenues primarily relate to the use of internally procured gas for the Company's power plants. These intersegment revenues have been included in Total Revenue and Income before taxes in the oil and gas production and marketing reporting segment and eliminated in the corporate and other reporting segment.

**Geographic Area Information**

During the year ended December 31, 2004, the Company owned interests in 88 operating power plants in the United States, three operating power plants in Canada and one operating power plant in the United Kingdom. In addition, the Company had oil and gas interests in the United States. Geographic revenue and property, plant and equipment information is based on physical location of the assets at the end of each period.

	<u>United States</u>	<u>Canada</u>	<u>Europe</u>	<u>Total</u>
	(In thousands)			
<b>2004</b>				
Total Revenue	\$ 8,704,249	\$ 93,071	\$ 432,568	\$ 9,229,888
Property, plant and equipment, net	19,041,875	498,136	1,096,383	20,636,394
<b>2003</b>				
Total Revenue	\$ 8,436,176	\$ 121,219	\$ 313,638	\$ 8,871,033
Property, plant and equipment, net	17,959,466	474,280	1,044,904	19,478,650
<b>2002</b>				
Total Revenue	\$ 7,073,283	\$ 70,586	\$ 205,884	\$ 7,349,753

**27. California Power Market**

*California Refund Proceeding.* On August 2, 2000, the California Refund Proceeding was initiated by a complaint made at FERC by San Diego Gas & Electric Company under Section 206 of the Federal Power Act alleging, among other things, that the markets operated by the California Independent System Operator ("CAISO") and the California Power Exchange ("CalPX") were dysfunctional. FERC established a refund effective period of October 2, 2000, to June 19, 2001 (the "Refund Period"), for sales made into those markets.

**CALPINE CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

On December 12, 2002, an Administrative Law Judge issued a Certification of Proposed Finding on California Refund Liability (“December 12 Certification”) making an initial determination of refund liability. On March 26, 2003, FERC issued an order (the “March 26 Order”) adopting many of the findings set forth in the December 12 Certification. In addition, as a result of certain findings by the FERC staff concerning the unreliability or misreporting of certain reported indices for gas prices in California during the Refund Period, FERC ordered that the basis for calculating a party’s potential refund liability be modified by substituting a gas proxy price based upon gas prices in the producing areas plus the tariff transportation rate for the California gas price indices previously adopted in the California Refund Proceeding. The Company believes, based on information that the Company has analyzed to date, that any refund liability that may be attributable to it could total approximately \$9.9 million (plus interest, if applicable), after taking the appropriate set-offs for outstanding receivables owed by the CalPX and CAISO to Calpine. The Company believes it has appropriately reserved for the refund liability that by its current analysis would potentially be owed under the refund calculation clarification in the March 26 Order. The final determination of the refund liability and the allocation of payment obligations among the numerous buyers and sellers in the California markets is subject to further Commission proceedings. It is possible that there will be further proceedings to require refunds from certain sellers for periods prior to the originally designated Refund Period. In addition, the FERC orders concerning the Refund Period, the method for calculating refund liability and numerous other issues are pending on appeal before the U.S. Court of Appeals for the Ninth Circuit. At this time, the Company is unable to predict the timing of the completion of these proceedings or the final refund liability. Thus, the impact on the Company’s business is uncertain.

On April 26, 2004, Dynegy Inc. entered into a settlement of the California Refund Proceeding and other proceedings with California governmental entities and the three California investor-owned utilities. The California governmental entities include the Attorney General, the CPUC, the CDWR, and the EOB. Also, on April 27, 2004, The Williams Companies, Inc. (“Williams”) entered into a settlement of the California Refund Proceeding and other proceedings with the three California investor-owned utilities; previously, Williams had entered into a settlement of the same matters with the California governmental entities. The Williams settlement with the California governmental entities was similar to the settlement that Calpine entered into with the California governmental entities on April 22, 2002. Calpine’s settlement resulted in a FERC order issued on March 26, 2004, which partially dismissed Calpine from the California Refund Proceeding to the extent that any refunds are owed for power sold by Calpine to CDWR or any other agency of the State of California. On June 30, 2004, a settlement conference was convened at the FERC to explore settlements among additional parties. On December 7, 2004, FERC approved the settlement of the California Refund Proceeding and other proceedings among Duke Energy Corporation and its affiliates, the three California investor-owned utilities, and the California governmental entities.

*FERC Investigation into Western Markets.* On February 13, 2002, FERC initiated an investigation of potential manipulation of electric and natural gas prices in the western United States. This investigation was initiated as a result of allegations that Enron and others used their market position to distort electric and natural gas markets in the West. The scope of the investigation is to consider whether, as a result of any manipulation in the short-term markets for electric energy or natural gas or other undue influence on the wholesale markets by any party since January 1, 2000, the rates of the long-term contracts subsequently entered into in the West are potentially unjust and unreasonable. On August 13, 2002, the FERC staff issued the Initial Report on Company-Specific Separate Proceedings and Generic Reevaluations; Published Natural Gas Price Data; and Enron Trading Strategies (the “Initial Report”), summarizing its initial findings in this investigation. There were no findings or allegations of wrongdoing by Calpine set forth or described in the Initial Report. On March 26, 2003, the FERC staff issued a final report in this investigation (the “Final Report”). In the Final Report, the FERC staff recommended that FERC issue a show cause order to a number of companies, including Calpine, regarding certain power scheduling practices that may have been in violation of the CAISO’s or CalPX’s tariff. The Final Report also recommended that FERC modify the basis

## CALPINE CORPORATION AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

for determining potential liability in the California Refund Proceeding discussed above. Calpine believes that it did not violate these tariffs and that, to the extent that such a finding could be made, any potential liability would not be material.

Also, on June 25, 2003, FERC issued a number of orders associated with these investigations, including the issuance of two show cause orders to certain industry participants. FERC did not subject Calpine to either of the show cause orders. FERC also issued an order directing the FERC Office of Markets and Investigations to investigate further whether market participants who bid a price in excess of \$250 per megawatt hour into markets operated by either the CAISO or the CalPX during the period of May 1, 2000, to October 2, 2000, may have violated CAISO and CalPX tariff prohibitions. No individual market participant was identified. The Company believes that it did not violate the CAISO and CalPX tariff prohibitions referred to by FERC in this order; however, the Company is unable to predict at this time the final outcome of this proceeding or its impact on Calpine.

*CPUC Proceeding Regarding QF Contract Pricing for Past Periods.* Our Qualifying Facilities (“QF”) contracts with PG&E provide that the CPUC has the authority to determine the appropriate utility “avoided cost” to be used to set energy payments by determining the short run avoided cost (“SRAC”) energy price formula. In mid-2000 our QF facilities elected the option set forth in Section 390 of the California Public Utilities Code, which provided QFs the right to elect to receive energy payments based on the CalPX market clearing price instead of the SRAC price administratively determined by the CPUC. Having elected such option, the Company’s QF facilities were paid based upon the CalPX zonal day-ahead clearing price (“CalPX Price”) for various periods commencing in the summer of 2000 until January 19, 2001, when the CalPX ceased operating a day-ahead market. The CPUC has conducted proceedings (R.99-11-022) to determine whether the CalPX Price was the appropriate price for the energy component upon which to base payments to QFs which had elected the CalPX-based pricing option. One CPUC Commissioner at one point issued a proposed decision to the effect that the CalPX Price was the appropriate energy price to pay QFs who selected the pricing option then offered by Section 390. No final decision, however, has been issued to date. Therefore, it is possible that the CPUC could order a payment adjustment based on a different energy price determination. On January 10, 2001, PG&E filed an emergency motion (the “Emergency Motion”) requesting that the CPUC issue an order that would retroactively change the energy payments received by QFs based on CalPX-based pricing for electric energy delivered during the period commencing during June 2000 and ending on January 18, 2001. On April 29, 2004, PG&E, the Utility Reform Network, a consumer advocacy group, and the Office of Ratepayer Advocates, an independent consumer advocacy department of the CPUC (collectively, the “PG&E Parties”), filed a Motion for Briefing Schedule Regarding True-Up of Payments to QF Switchers (the “April 2004 Motion”). The April 2004 Motion requests that the CPUC set a briefing schedule in R.99-11-022 to determine what is the appropriate price that should be paid to the QFs that had switched to the CalPX Price. The PG&E Parties allege that the appropriate price should be determined using the methodology that has been developed thus far in the California Refund Proceeding discussed above. Supplemental pleadings have been filed on the April 2004 Motion, but neither the CPUC nor the assigned administrative law judge has issued any rulings with respect to either the April 2004 Motion or the initial Emergency Motion. The Company believes that the CalPX Price was the appropriate price for energy payments for its QFs during this period, but there can be no assurance that this will be the outcome of the CPUC proceedings.

*City of Lodi Agreement.* On February 9, 2001, the Company entered into an agreement with the City of Lodi (the Northern California Power Agency acted as agent on behalf of the City of Lodi) whereby CES would sell 25 MW of ATC fixed price power plus a 1.7 MW day-ahead call option to the City of Lodi for delivery from January 1, 2002, through December 31, 2011. In September 2002 the City of Lodi and Calpine agreed to terminate this agreement resulting in a \$41.5 million gain to the Company. The gain is included in Other income in the accompanying consolidated financial statements.

## CALPINE CORPORATION AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

*Geysers Reliability Must Run Section 206 Proceeding.* CAISO, EOB, CPUC, PG&E, San Diego Gas & Electric Company, and Southern California Edison Company (collectively referred to as the “Buyers Coalition”) filed a complaint on November 2, 2001 at FERC requesting the commencement of a Federal Power Act Section 206 proceeding to challenge one component of a number of separate settlements previously reached on the terms and conditions of “reliability must run” contracts (“RMR Contracts”) with certain generation owners, including Geysers Power Company, LLC, which settlements were also previously approved by FERC. RMR Contracts require the owner of the specific generation unit to provide energy and ancillary services when called upon to do so by the ISO to meet local transmission reliability needs or to manage transmission constraints. The Buyers Coalition has asked FERC to find that the availability payments under these RMR Contracts are not just and reasonable. Geysers Power Company, LLC filed an answer to the complaint in November 2001. To date, FERC has not established a Section 206 proceeding. The outcome of this litigation and the impact on the Company’s business cannot be determined at the present time.

**28. Subsequent Events**

On January 28, 2005, the Company’s indirect subsidiary Metcalf Energy Center, LLC obtained a \$100.0 million, non-recourse credit facility for the Metcalf Energy Center in San Jose, CA. Loans extended to Metcalf under the facility will fund the balance of construction activities for the 602-megawatt, natural gas-fired power plant. The project finance facility will mature in July 2008.

On January 31, 2005, the Company received funding on a \$260.0 million offering of Redeemable Preferred Shares, due on July 30, 2005. The Company offered the shares in a private placement in the United States under Regulation D under the Securities Act of 1933 and outside of the United States pursuant to Regulation S under the Securities Act of 1933. The Redeemable Preferred Shares priced at U.S. LIBOR plus 850 basis points, were offered at 99% of par. The proceeds from the offering of the shares were used in accordance with the provisions of the Company’s existing bond indentures.

On March 1, 2005, our indirect subsidiary, Calpine Steamboat Holdings, LLC, closed on a \$503.0 million non-recourse project finance facility that will provide \$466.5 million to complete the construction of the Mankato Energy Center (“Mankato”) in Blue Earth County, Minnesota, and the Freeport Energy center in Freeport, Texas. The remaining \$36.5 million of the facility provides a letter of credit for Mankato that is required to serve as collateral available to Northern States Power Company if Mankato does not meet its obligations under the power purchase agreement. The project finance facility will initially be structured as a construction loan, converting to a term loan upon commercial operations of the plants, and will mature in December 2011. The facility will initially be priced at LIBOR plus 1.75%.

On March 31, 2005, Deer Park Energy Center, Limited Partnership (“Deer Park”), an indirect, wholly-owned subsidiary of Calpine, entered into an agreement to sell power to and buy gas from Merrill Lynch Commodities, Inc. (“MLCI”). The agreement covers 650 MW of Deer Park’s capacity and deliveries under the agreement will begin on April 1, 2005 and continue through December 31, 2010. Under the terms of the agreement, Deer Park will sell power to MLCI at a discount to prevailing market prices at the time the agreement was executed. In exchange for the discounted pricing, Deer Park received a cash payment of approximately \$195 million and expects to receive additional cash payments as additional power transactions are executed with discounts to prevailing market prices. The agreements are derivatives under SFAS No. 133 and because of their discounted pricing will result in the recognition of a derivative liability. The upfront payments received by Deer Park from the transaction will be recorded as cash flow from financing activity in accordance with guidance contained in SFAS No. 149, “Amendment of Statement 133 on Derivative Instruments and Hedging Activities.”

Subsequent to December 31, 2004, the Company repurchased \$31.8 million in principal amount of its outstanding 8 1/2% Senior Notes Due 2011 in exchange for \$23.0 million in cash plus accrued interest. The Company also repurchased \$48.7 million in principal amount of its outstanding 8 5/8% Senior Notes Due 2010

## CALPINE CORPORATION AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

in exchange for \$35.0 million in cash plus accrued interest. The Company recorded a pre-tax gain on these transactions in the amount of \$22.5 million before write-offs of unamortized deferred financing costs and the unamortized premiums or discounts.

**29. Quarterly Consolidated Financial Data (unaudited)**

The Company's quarterly operating results have fluctuated in the past and may continue to do so in the future as a result of a number of factors, including, but not limited to, the timing and size of acquisitions, the completion of development projects, the timing and amount of curtailment of operations under the terms of certain power sales agreements, the degree of risk management and trading activity, and variations in levels of production. Furthermore, the majority of the dollar value of capacity payments under certain of the Company's power sales agreements are received during the months of May through October.

The Company's common stock has been traded on the New York Stock Exchange since September 19, 1996. There were 2,366 common stockholders of record at December 31, 2004. No dividends were paid for the years ended December 31, 2004 and 2003. All share data has been adjusted to reflect the two-for-one stock split effective June 8, 2000, and the two-for-one stock split effective November 14, 2000.

	Quarter Ended			
	December 31,	September 30,	June 30,	March 31,
	(In thousands, except per share amounts)			
<b>2004 Common stock price per share:</b>				
High	\$ 4.08	\$ 4.46	\$ 4.98	\$ 6.42
Low	2.24	2.87	3.04	4.35
<b>2004, Restated (for periods through September 30, 2004)</b>				
Total revenue	\$ 2,336,181	\$ 2,557,200	\$ 2,304,215	\$ 2,032,292
Oil and gas impairment	201,475	—	645	—
(Income) from repurchase of various issuances of debt	(76,401)	(167,154)	(2,559)	(835)
Gross profit (loss)	(68,314)	254,403	56,851	112,152
Income (loss) from operations	(189,242)	162,419	(12,586)	45,117
Income (loss) before discontinued operations	(290,113)	14,587	(58,069)	(107,231)
Discontinued operations, net of tax	6,416	126,538	29,371	36,040
Net income (loss)	\$ (283,696)	\$ 141,125	\$ (28,698)	\$ (71,192)
Basic earnings per common share:				
Income (loss) before discontinued operations	\$ (0.65)	\$ 0.03	\$ (0.14)	\$ (0.26)
Discontinued operations, net of tax	0.01	0.29	0.07	0.09
Net income (loss)	(0.64)	0.32	(0.07)	(0.17)
Diluted earnings per common share:				
Income (loss) before discontinued operations and dilutive effect of certain trust preferred securities	\$ (0.65)	\$ 0.03	\$ (0.14)	\$ (0.26)
Dilutive effect of certain trust preferred securities	—	—	—	—
Income (loss) before discontinued operations	(0.65)	0.03	(0.14)	(0.26)
Discontinued operations, net of tax	0.01	0.29	0.07	0.09
Net income (loss)	(0.64)	0.32	(0.07)	(0.17)
<b>2004, As Reported(i)</b>				
Total revenue	\$ 2,336,181	\$ 2,557,200	\$ 2,314,634	\$ 2,042,738
Oil and gas impairment	201,475	—	645	—
(Income) from repurchase of various issuances of debt	(76,401)	(167,154)	(2,559)	(835)
Gross profit (loss)	(68,314)	254,403	67,690	120,544
Income (loss) from operations	(189,242)	162,418	(3,167)	51,911
Income (loss) before discontinued operations	(258,807)	(47,532)	(28,896)	(94,049)

## CALPINE CORPORATION AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

	Quarter Ended			
	December 31,	September 30,	June 30,	March 31,
	(In thousands, except per share amounts)			
Discontinued operations, net of tax	31,507	62,551	198	22,857
Net income (loss)	\$ (227,301)	\$ 15,019	\$ (28,698)	\$ (71,192)
Basic earnings per common share:				
Income (loss) before discontinued operations	\$ (0.58)	\$ (0.11)	\$ (0.07)	\$ (0.23)
Discontinued operations, net of tax	0.07	0.14	—	0.06
Net income (loss)	(0.51)	0.03	(0.07)	(0.17)
Diluted earnings per common share:				
Income (loss) before discontinued operations and dilutive effect of certain trust preferred securities	\$ (0.58)	\$ (0.11)	\$ (0.07)	\$ (0.23)
Dilutive effect of certain trust preferred securities	—	—	—	—
Income (loss) before discontinued operations	(0.58)	(0.11)	(0.07)	(0.23)
Discontinued operations, net of tax	0.07	0.14	—	0.06
Net income (loss)	(0.51)	0.03	(0.07)	(0.17)
<b>2003 Common stock price per share:</b>				
High	\$ 5.25	\$ 8.03	\$ 7.25	\$ 4.42
Low	3.28	4.76	3.33	2.51
<b>2003, Restated</b>				
Total revenue	\$ 1,909,598	\$ 2,656,588	\$ 2,152,478	\$ 2,152,368
Oil and gas impairment	2,931	—	—	—
(Income) from repurchase of various issuances of debt	(64,611)	(207,238)	(6,763)	—
Gross profit	117,979	338,872	162,900	144,486
Income (loss) from operations	(19,818)	287,096	142,760	100,360
Income (loss) before discontinued operations	(21,476)	176,530	(14,729)	(54,215)
Discontinued operations, net of tax	(39,316)	61,252	(8,637)	1,670
Cumulative effect of a change in accounting principle	180,414	—	—	529
Net income (loss)	\$ 119,622	\$ 237,782	\$ (23,366)	\$ (52,016)
Basic earnings per common share:				
Income (loss) before discontinued operations and cumulative effect of a change in accounting principle	\$ (0.05)	\$ 0.45	\$ (0.04)	\$ (0.14)
Discontinued operations, net of tax	(0.10)	0.16	(0.02)	—
Cumulative effect of a change in accounting principle	0.44	—	—	—
Net income (loss)	0.29	0.61	(0.06)	(0.14)
Diluted earnings per common share:				
Income (loss) before discontinued operations and dilutive effect of certain trust preferred securities	\$ (0.05)	\$ 0.45	\$ (0.04)	\$ (0.14)
Dilutive effect of certain trust preferred securities	—	(0.09)	—	—
Income (loss) before discontinued operations and cumulative effect of a change in accounting principle	(0.05)	0.36	(0.04)	(0.14)
Discontinued operations, net of tax	(0.10)	0.15	(0.02)	—
Cumulative effect of a change in accounting principle	0.44	—	—	—
Net income (loss)	0.29	0.51	(0.06)	(0.14)
<b>2003, As Reported(i)</b>				
Total revenue	\$ 1,920,575	\$ 2,656,588	\$ 2,165,308	\$ 2,165,933
Oil and gas impairment(ii)	2,931	—	—	—
(Income) from repurchase of various issuances of debt	(64,611)	(207,238)	(6,763)	—

**CALPINE CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

	Quarter Ended			
	December 31,	September 30,	June 30,	March 31,
	(In thousands, except per share amounts)			
Gross profit	126,691	338,872	175,593	165,137
Income (loss) from operations	(20,032)	287,096	153,471	119,040
Income (loss) before discontinued operations	(59,827)	237,701	(16,375)	(51,538)
Discontinued operations, net of tax	(967)	81	(6,991)	(1,007)
Cumulative effect of a change in accounting principle	180,414	—	—	529
Net income (loss)	\$ 119,622	\$ 237,782	\$ (23,366)	\$ (52,016)
Basic earnings per common share:				
Income (loss) before discontinued operations and cumulative effect of a change in accounting principle	\$ (0.15)	\$ 0.61	\$ (0.04)	\$ (0.14)
Discontinued operations, net of tax	—	—	(0.02)	—
Cumulative effect of a change in accounting principle	0.44	—	—	—
Net income (loss)	0.29	0.61	(0.06)	(0.14)
Diluted earnings per common share:				
Income (loss) before discontinued operations and dilutive effect of certain trust preferred securities	\$ (0.15)	\$ 0.60	\$ (0.04)	\$ (0.14)
Dilutive effect of certain trust preferred securities	—	(0.09)	—	—
Income (loss) before discontinued operations and cumulative effect of a change in accounting principle	(0.15)	0.51	(0.04)	(0.14)
Discontinued operations, net of tax	—	—	(0.02)	—
Cumulative effect of a change in accounting principle	0.44	—	—	—
Net income (loss)	0.29	0.51	(0.06)	(0.14)

- (i) As reported in 2004 Form 10-Q filings for quarters ended March 31, 2004, June 30, 2004 and September 30, 2004. The consolidated financial statements for the three and nine months ended September 30, 2004 and as of September 30, 2004 were restated to correct the tax provision.
- (ii) Oil and gas impairment for quarter ended December 31, 2003, was previously a component of Depreciation Expense.

## SCHEDULE II VALUATION AND QUALIFYING ACCOUNTS

Description	Balance at Beginning of Year	Charged to Expense	Charged to Accumulated Other Comprehensive Loss	Reductions(1)		Other(2)	Balance at End of Year
(In thousands)							
<b>Year ended December 31, 2004</b>							
Allowance for doubtful accounts	\$ 7,614	\$ 8,412	\$ —	\$ (7,828)	\$ 481	\$ 8,679	
Reserve for notes receivable	273	2,637	—	—	—	2,910	
Gross reserve for California Refund Liability	12,905	—	—	—	—	12,905	
Reserve for impairment of investment in Androscoggin Energy Center	—	\$ 5,000	—	—	—	\$ 5,000	
Reserve for derivative assets	7,454	2,825	173	(7,184)	—	3,268	
Repayment reserve for third-party default on emission reduction credits' settlement	3,000	2,850	—	(5,850)	—	—	
Deferred tax asset valuation allowance	19,335	43,487	—	—	—	62,822	
<b>Year ended December 31, 2003</b>							
Allowance for doubtful accounts	\$ 5,955	\$ 3,278	\$ —	\$ (2,099)	\$ 480	\$ 7,614	
Reserve for notes receivable	—	273	—	—	—	273	
Gross reserve for California Refund Liability	10,700	2,205	—	—	—	12,905	
Reserve for derivative assets	16,452	19,459	3,640	(32,097)	—	7,454	
Gain reserved on certain Enron transactions	17,862	—	—	(17,862)	—	—	
Repayment reserve for third-party default on emission reduction credits' settlement	—	3,000	—	—	—	3,000	
Deferred tax asset valuation allowance	26,665	—	—	(7,330)	—	19,335	
<b>Year Ended December 31, 2002</b>							
Allowance for doubtful accounts	\$ 15,422	\$ 1,636	\$ —	\$ (11,246)	\$ 143	\$ 5,955	
Gross reserve for California Refund Liability	—	10,700	—	—	—	10,700	
Reserve for derivative assets	1,583	17,253	8,444	(10,828)	—	16,452	
Gain reserved on certain Enron transactions	17,862	—	—	—	—	17,862	
Reserve for third-party default on emission reduction credits	17,677	—	—	(17,677)	—	—	
Deferred tax asset valuation allowance	26,665	—	—	—	—	26,665	

(1) Represents write-offs of accounts considered to be uncollectible and recoveries of amounts previously written off or reserved.

(2) Primarily relates to foreign currency translation adjustments.

**SUPPLEMENTAL OIL AND GAS DISCLOSURES**  
**(Unaudited)**

**Oil and Gas Producing Activities**

The following disclosures for Calpine Corporation (the “Company”) are made in accordance with Statement of Financial Accounting Standards (“SFAS”) No. 69, “Disclosures About Oil and Gas Producing Activities (An Amendment of FASB Statements 19, 25, 33 and 39)” (“SFAS No. 69”). Users of this information should be aware that the process of estimating quantities of proved, proved developed and proved undeveloped crude oil and natural gas reserves is very complex, requiring significant subjective decisions in the evaluation of all available geological, engineering and economic data for each reservoir. The data for a given reservoir may also change substantially over time as a result of numerous factors including, but not limited to, additional development activity, evolving production history and continual reassessment of the viability of production under varying economic conditions. Consequently, material revisions to existing reserve estimates occur from time to time. Although every reasonable effort is made to ensure that reserve estimates reported represent the most accurate assessments possible, the significance of the subjective decisions required and variances in available data for various reservoirs make these estimates generally less precise than other estimates presented in connection with financial statement disclosures.

Proved reserves represent estimated quantities of natural gas and crude oil that geological and engineering data demonstrate, with reasonable certainty, to be recoverable in future years from known reservoirs under economic and operating conditions existing at the time the estimates were made.

Proved developed reserves are proved reserves expected to be recovered, through wells and equipment in place and under operating methods being utilized at the time the estimates were made.

Proved undeveloped reserves are reserves that are expected to be recovered from new wells on undrilled acreage or from existing wells where a relatively major expenditure is required for recompletion. Reserves on undrilled acreage are limited to those drilling units offsetting productive units that are reasonably certain of production when drilled. Proved reserves for other undrilled units can be claimed only where it can be demonstrated with certainty that there is continuity of production from the existing productive formation. Estimates for proved undeveloped reserves are not attributed to any acreage for which an application of fluid injection or other improved recovery technique is contemplated, unless such techniques have been proved effective by actual tests in the area and in the same reservoir.

Estimates of proved developed and proved undeveloped reserves as of December 31, 2004, 2003 and 2002, were based on estimates made by Netherland, Sewell & Associates Inc. (“NSA”) for reserves in the United States and by Gilbert Laustsen Jung Associates Ltd. (“GLJ”) for 2003 and 2002 reserves in Canada, both independent petroleum reservoir engineers.

Our independent engineers are engaged by and provide their reports to our senior management team at Calpine Fuels Company (“CFC”), our oil and gas subsidiary, and these reservoir engineers are independent and are engaged to prepare the reserves reports independently rather than to audit reports prepared by CFC management. CFC management represents to the independent engineers that we have provided all relevant operating data and documents, and CFC management reviews the reports to ensure completeness and accuracy. The President of our CFC subsidiary, in consultation with CFC’s Senior Vice President, Exploration and Development, makes the final decision on booked proved reserves by incorporating the proved reserves from the independent engineers’ reports.

Our relevant management controls over proved reserve attribution, estimation and evaluation include:

- controls over and processes for the collection and processing of all pertinent operating data and documents needed by our independent reservoir engineers to estimate our proved reserves;
- engagement of well qualified and independent reservoir engineers for review of our operating data and documents and preparation of reserve reports annually in accordance with all SEC reserve estimation guidelines; and
- review by our senior reservoir engineer and his staff of the independent reservoir engineers’ reserves reports for completion and accuracy.

## Table of Contents

Prior to 2003, all CFC management and staff were under the Company's existing Management Incentive Plan ("MIP"), which did not consider proved reserves in determining bonus amounts. In 2003, a Fuel's Incentive Plan ("FIP") was put in place whereby 70% of the CFC bonus compensation was based on oil and gas financial and operational criteria while 30% continued under the existing MIP plan. Of the 70% oil and gas bonus portion, 25% was related to reserve additions, 25% to annual production, 25% to earnings before interest, taxes, depreciation, depletion and amortization, 15% to finding cost, 5% to lifting cost and 5% to general and administrative cost budget targets. Proved reserves are only utilized in the calculation of reserve additions and related finding cost and include proved reserve revisions of prior estimates. The President of CFC is not eligible to participate in the FIP. We believe that our FIP is consistent with industry standards and is structured and monitored in a manner to assure compliance with all existing SEC and industry proved reserve guidelines.

Market prices as of each year-end were used for future sales of natural gas, crude oil and natural gas liquids. Future operating costs, production and ad valorem taxes and capital costs were based on current costs as of each year-end, with no escalation. There are numerous uncertainties inherent in estimating quantities of proved reserves and in projecting the future rates of production and timing of development expenditures. Reserve data represent estimates only and should not be construed as being exact. Moreover, the standardized measure should not be construed as the current market value of the proved oil and gas reserves or the costs that would be incurred to obtain equivalent reserves. A market value determination would include many additional factors including (a) anticipated future changes in natural gas and crude oil prices, production and development costs, (b) an allowance for return on investment, (c) the value of additional reserves, not considered proved at present, which may be recovered as a result of further exploration and development activities, and (d) other business risk.

In accordance with SFAS No. 144 "Accounting for Impairment or Disposal of Long-Lived Assets" ("SFAS No. 144"), United States and Canadian natural gas reserves and petroleum asset divestments were accounted for as discontinued operations in preparing SFAS No. 69 data. Discontinued operations is discussed in detail under Note 10 of the Notes to Consolidated Financial Statements.

### *Capitalized Costs Relating to Oil and Gas Producing Activities*

The following table sets forth the capitalized costs relating to the Company's natural gas and crude oil producing activities (excluding pipeline and related assets) at December 31, 2004, 2003 and 2002, (in thousands):

	<b>Continuing Operations</b>			
	<b>2004</b>	<b>2003</b>	<b>2002</b>	<b>2001</b>
Proved properties	\$ 1,095,022	\$ 1,084,499	\$ 909,494	\$ 853,857
Unproved properties	10,538	11,283	268,983	260,454
Total	1,105,560	1,095,782	1,178,477	1,114,311
Less: Accumulated depreciation, depletion and amortization	(500,722)	(237,374)	(220,376)	(145,467)
Net capitalized costs	<u>\$ 604,838</u>	<u>\$ 858,408</u>	<u>\$ 958,101</u>	<u>\$ 968,844</u>
Company's share of equity method investees' net capitalized costs	<u>\$ 1,160</u>	<u>\$ 1,255</u>	<u>\$ —</u>	<u>\$ —</u>

	<b>Discontinued Operations</b>			
	<b>2004</b>	<b>2003</b>	<b>2002</b>	<b>2001</b>
Proved properties	\$ —	\$ 995,372	\$ 759,132	\$ 1,059,168
Unproved properties	—	51,860	36,656	62,281
Total	—	1,047,232	795,788	1,121,449
Less: Accumulated depreciation, depletion and amortization	—	(466,207)	(305,324)	(374,280)
Net capitalized costs	<u>\$ —</u>	<u>\$ 581,025</u>	<u>\$ 490,464</u>	<u>\$ 747,169</u>
Company's share of equity method investees' net capitalized costs	<u>\$ —</u>	<u>\$ 53,228</u>	<u>\$ —</u>	<u>\$ —</u>

## Table of Contents

Pursuant to SFAS No. 143 “Accounting for Asset Retirement Obligations”, net capitalized cost includes related asset retirement cost of \$6,560 and \$13,819 as of December 31, 2004, and December 31, 2003, respectively.

### *Costs Incurred in Oil and Gas Property Acquisition, Exploration and Development Activities*

The acquisition, exploration and development costs disclosed in the following tables are in accordance with definitions in SFAS No. 19, “Financial Accounting and Reporting by Oil and Gas Producing Companies.” Acquisition costs include costs incurred to purchase, lease or otherwise acquire property. Exploration costs include exploration expenses and additions to exploration wells, including those in progress. Development costs include additions to production facilities and equipment, as well as additions to development wells, including those in progress. The following table sets forth costs incurred related to the Company’s oil and gas activities for the years ended December 31, 2004, 2003, and 2002, (in thousands):

	<u>United States</u>	<u>Canada</u>	<u>Continuing Operations</u>	<u>Discontinued Operations</u>
<b>December 31, 2004:</b>				
Acquisition costs of properties				
Proved	\$ 1,425	\$ —	\$ 1,425	\$ 3,571
Unproved	3,060	—	3,060	105
Subtotal	<u>4,485</u>	<u>—</u>	<u>4,485</u>	<u>3,676</u>
Exploration costs	22,471	50	22,521	1,313
Development costs	42,038	5,554	47,592	37,243
Total	<u>\$ 68,994</u>	<u>\$ 5,604</u>	<u>\$ 74,598</u>	<u>\$ 42,232</u>
Company’s share of equity method investees’ costs of property acquisition, exploration and development	<u>\$ 56</u>	<u>\$ —</u>	<u>\$ 56</u>	<u>\$ 2,020</u>
<b>December 31, 2003:</b>				
Acquisition costs of properties				
Proved	\$ 8,178	\$ —	\$ 8,178	\$ 13,087
Unproved	13,597	—	13,597	3,324
Subtotal	<u>21,775</u>	<u>—</u>	<u>21,775</u>	<u>16,411</u>
Exploration costs	33,364	603	33,967	6,235
Development costs	41,911	13,199	55,110	55,006
Total	<u>\$ 97,050</u>	<u>\$ 13,802</u>	<u>\$ 110,852</u>	<u>\$ 77,652</u>
Company’s share of equity method investees’ costs of property acquisition, exploration and development	<u>\$ 1,268</u>	<u>\$ —</u>	<u>\$ 1,268</u>	<u>\$ 53,039</u>
<b>December 31, 2002:</b>				
Acquisition costs of properties				
Proved	\$ 3,415	\$ —	\$ 3,415	\$ 8,998
Unproved	14,769	—	14,769	(4,615)
Subtotal	<u>18,184</u>	<u>—</u>	<u>18,184</u>	<u>4,383</u>
Exploration costs	10,958	1,818	12,776	5,741
Development costs	44,309	11,084	55,393	60,802
Total	<u>\$ 73,451</u>	<u>\$ 12,902</u>	<u>\$ 86,353</u>	<u>\$ 70,926</u>

## Table of Contents

### Results of Operations for Oil and Gas Producing Activities

The following table sets forth results of operations for oil and gas producing activities (excluding pipeline and related operations) for the years ended December 31, 2004, 2003, and 2002, (in thousands):

	<u>United States</u>	<u>Canada</u>	<u>Total</u>
<b>December 31, 2004:</b>			
Oil and gas production revenues			
Third-party	\$ 57,644	\$ 5,461	\$ 63,105
Intercompany	190,143	3,458	193,601
Total revenues	<u>247,787</u>	<u>8,919</u>	<u>256,706</u>
Exploration expenses, including dry hole	8,175	—	8,175
Production costs	43,016	3,521	46,537
Depreciation, depletion and amortization	81,590	776	82,366
Oil and gas impairment	<u>202,120</u>	<u>—</u>	<u>202,120</u>
Income (loss) before income taxes	(87,114)	4,622	(82,492)
Income tax provision (benefit)	<u>(33,289)</u>	<u>1,949</u>	<u>(31,340)</u>
Results of continuing operations	\$ (53,825)	\$ 2,673	\$ (51,152)
Results of discontinued operations	\$ 7,162	\$ 14,103	\$ 21,265
Company's share of equity method investees' results of operations for producing activities	<u>\$ 324</u>	<u>\$ —</u>	<u>\$ 324</u>
<b>December 31, 2003:</b>			
Oil and gas production revenues			
Third-party	\$ 56,162	\$ 10,030	\$ 66,192
Intercompany	223,532	47,379	270,911
Total revenues	<u>279,694</u>	<u>57,409</u>	<u>337,103</u>
Exploration expenses, including dry hole	16,753	2,443	19,196
Production costs	40,956	12,384	53,340
Depreciation, depletion and amortization	72,766	16,823	89,589
Oil and gas impairment	<u>2,931</u>	<u>—</u>	<u>2,931</u>
Income before income taxes	146,288	25,759	172,047
Income tax provision	<u>55,620</u>	<u>16,450</u>	<u>72,070</u>
Results of continuing operations	\$ 90,668	\$ 9,309	\$ 99,977
Results of discontinued operations	\$ 6,903	\$ 21,764	\$ 28,667
Company's share of equity method investees' results of operations for producing activities	<u>\$ 86</u>	<u>\$ 101</u>	<u>\$ 187</u>
<b>December 31, 2002:</b>			
Oil and gas production revenues			
Third-party	\$ 37,716	\$ 35,541	\$ 73,257
Intercompany	126,833	5,262	132,095
Total revenues	<u>164,549</u>	<u>40,803</u>	<u>205,352</u>
Exploration expenses, including dry hole	10,204	2,797	13,001
Production costs	33,249	15,214	48,463
Depreciation, depletion and amortization	67,060	23,631	90,691
Oil and gas impairment	<u>3,399</u>	<u>—</u>	<u>3,399</u>
Income (loss) before income taxes	50,637	(839)	49,798
Income tax provision	<u>19,749</u>	<u>5,708</u>	<u>25,457</u>
Results of continuing operations	\$ 30,888	\$ (6,547)	\$ 24,341
Results of discontinued operations	\$ (330)	\$ 28,281	\$ 27,951

The results of operations for oil and gas producing activities exclude interest charges and general corporate expenses.

**Net Proved and Proved Developed Reserve Summary**

The following table sets forth the Company's net proved and proved developed reserves at December 31 for each of the three years in the period ended December 31, 2004, and the changes in the net proved reserves for each of the three years in the period then ended as estimated by the independent petroleum consultants.

During 2004, the Company revised downward its estimate of continuing proved reserves by a total of approximately 58 Bcfe or 12%. Approximately 69% of the total revision was attributable to the downward revision of the Company's estimate of proved reserves in the Company's South Texas fields. The downward revisions of the Company's estimates were due to information received from production results and drilling activity that occurred during 2004. As a result of the decreases in proved undeveloped reserves, a non-cash impairment charge of approximately \$202.1 million was recorded for the year ended December 31, 2004, to the "Oil and gas impairment" line of the Consolidated Statement of Operations. For the years ended December 31, 2003 and 2002, the impairment charge recorded to the same line item was \$2.9 million and \$3.4 million, respectively.

	United States	Canada	Continuing Operations	Discontinued Operations
<b>Natural gas (Bcf)(1):</b>				
Net proved reserves at December 31, 2001	509	72	581	454
Revisions of previous estimates	(24)	20	(4)	(20)
Purchases in place	—	—	—	—
Extensions, discoveries and other additions	41	1	42	44
Sales in place	—	—	—	(122)
Production	(47)	(12)	(59)	(40)
Net proved reserves at December 31, 2002	479	81	560	316
Revisions of previous estimates	(21)	(1)	(22)	(25)
Purchases in place	1	—	1	9
Extensions, discoveries and other additions	51	—	51	21
Sales in place	(5)	(60)	(65)	(4)
Production	(50)	(8)	(58)	(28)
Net proved reserves at December 31, 2003	455	12	467	289
Revisions of previous estimates	(60)	—	(60)	17
Purchases in place	1	—	1	3
Extensions, discoveries and other additions	17	—	17	5
Sales in place	(2)	(12)	(14)	(296)
Production	(37)	—	(37)	(18)
Net proved reserves at December 31, 2004	<u>374</u>	<u>—</u>	<u>374</u>	<u>—</u>
<b>Natural gas liquids and crude oil (MBbl)(2)(3):</b>				
Net proved reserves at December 31, 2001	3,640	3,986	7,626	35,564
Revisions of previous estimates	269	1,192	1,461	(414)
Purchases in place	—	—	—	—
Extensions, discoveries and other additions	165	49	214	796
Sales in place	—	—	—	(23,967)
Production	(543)	(655)	(1,198)	(3,080)
Net proved reserves at December 31, 2002	3,531	4,572	8,103	8,899
Revisions of previous estimates	(338)	(254)	(592)	(647)
Purchases in place	18	—	18	12
Extensions, discoveries and other additions	133	—	133	822
Sales in place	(8)	(3,775)	(3,783)	(118)
Production	(434)	(542)	(976)	(960)
Net proved reserves at December 31, 2003	2,902	1	2,903	8,008
Revisions of previous estimates	260	—	260	(929)
Purchases in place	3	—	3	—
Extensions, discoveries and other additions	48	—	48	422
Sales in place	(2)	(1)	(3)	(6,862)
Production	(600)	—	(600)	(639)
Net proved reserves at December 31, 2004	<u>2,611</u>	<u>—</u>	<u>2,611</u>	<u>—</u>

(1) Billion cubic feet or billion cubic feet equivalent, as applicable.

## Table of Contents

	United States	Canada	Continuing Operations	Discontinued Operations
<b>(Bcfe)(1) equivalents(4):</b>				
Net proved reserves at December 31, 2001	530	96	626	668
Revisions of previous estimates	(23)	23	—	(17)
Purchases in place	—	—	—	—
Extensions, discoveries and other additions	42	2	44	48
Sales in place	—	—	—	(266)
Production	(50)	(12)	(62)	(63)
Net proved reserves at December 31, 2002	499	109	608	370
Revisions of previous estimates	(23)	(1)	(24)	(30)
Purchases in place	1	—	1	9
Extensions, discoveries and other additions	52	—	52	26
Sales in place	(5)	(83)	(88)	(5)
Production	(52)	(11)	(63)	(35)
Net proved reserves at December 31, 2003	472	14	486	335
Revisions of previous estimates	(58)	—	(58)	12
Purchases in place	1	—	1	3
Extensions, discoveries and other additions	17	—	17	7
Sales in place	(2)	(14)	(16)	(335)
Production	(41)	—	(41)	(22)
Net proved reserves at December 31, 2004	389	—	389	—
Company's proportional interest in reserves of investees accounted for by the equity method — December 31, 2004	1	—	1	—
<b>Net proved developed reserves:</b>				
<b>Natural gas (Bcf)(1)</b>				
December 31, 2002	318	75	393	247
December 31, 2003	306	12	318	227
December 31, 2004	256	—	256	—
<b>Natural gas liquids and crude oil (MBbl)(2)(3)</b>				
December 31, 2002	2,030	4,271	6,301	7,831
December 31, 2003	1,508	219	1,727	6,963
December 31, 2004	1,402	—	1,402	—
<b>Bcf(1) equivalents(4)</b>				
December 31, 2002	330	100	430	295
December 31, 2003	315	13	328	268
December 31, 2004	264	—	264	—

(1) Billion cubic feet or billion cubic feet equivalent, as applicable.

(2) Thousand barrels.

(3) Includes crude oil, condensate and natural gas liquids.

(4) Natural gas liquids and crude oil volumes have been converted to equivalent gas volumes using a conversion factor of six cubic feet of gas to one barrel of natural gas liquids and crude oil.

### *Standardized Measure of Discounted Future Net Cash Flows Relating to Proved Oil and Gas Reserves*

The following information has been developed utilizing procedures prescribed by SFAS No. 69 and based on natural gas and crude oil reserve and production volumes estimated by the independent petroleum reservoir engineers. This information may be useful for certain comparison purposes but should not be solely relied upon in evaluating the Company or its performance. Further, information contained in the following table should not be considered as representative of realistic assessments of future cash flows, nor should the standardized measure of discounted future net cash flows be viewed as representative of the current value of the Company's oil and gas assets.

The future cash flows presented below are based on sales prices, cost rates and statutory income tax rates in existence as of the date of the projections. It is expected that material revisions to some estimates of natural gas and crude oil reserves may occur in the future, development and production of the reserves may occur in periods other than those assumed, and actual prices realized and costs incurred may vary significantly from those used. Income tax expense, for both the United States and Canada, has been computed using expected future tax rates and giving effect to tax deductions and credits available, under current laws, and which relate to oil and gas producing activities.

Management does not rely upon the following information in making investment and operating decisions. Such decisions are based upon a wide range of factors, including estimates of probable as well as proved

## Table of Contents

reserves and varying price and cost assumptions considered more representative of a range of possible economic conditions that may be anticipated.

The following table sets forth the standardized measure of discounted future net cash flows from projected production of the Company's natural gas and crude oil reserves for the years ended December 31, 2004, 2003, and 2002, (in millions):

	<u>United States</u>	<u>Canada</u>	<u>Continuing Operations</u>	<u>Discontinued Operations</u>
<b>December 31, 2004:</b>				
Future cash inflows	\$ 2,427	\$ —	\$ 2,427	\$ —
Future production costs	(568)	—	(568)	—
Future development costs	(190)	—	(190)	—
Future net cash flows before income taxes	1,669	—	1,669	—
Future income taxes	(474)	—	(474)	—
Future net cash flows	1,195	—	1,195	—
Discount to present value at 10% annual rate	(542)	—	(542)	—
Standardized measure of discounted future net cash flows relating to proved gas, natural gas liquids and crude oil reserves	<u>\$ 653</u>	<u>\$ —</u>	<u>\$ 653</u>	<u>\$ —</u>
Company's share of equity method investees' standardized measure of discounted future net cash flows	<u>\$ 2</u>	<u>\$ —</u>	<u>\$ 2</u>	<u>\$ —</u>

Pursuant to SFAS No. 143, future development costs in 2004 includes future cash outflows related to the settlement of asset retirement obligations within the United States of \$11 million.

	<u>United States</u>	<u>Canada</u>	<u>Continuing Operations</u>	<u>Discontinued Operations</u>
<b>December 31, 2003:</b>				
Future cash inflows	\$ 2,752	\$ 62	\$ 2,814	\$ 1,784
Future production costs	(563)	(14)	(577)	(573)
Future development costs	(200)	(10)	(210)	(118)
Future net cash flows before income taxes	1,989	38	2,027	1,093
Future income taxes	(553)	(8)	(561)	(240)
Future net cash flows	1,436	30	1,466	853
Discount to present value at 10% annual rate	(661)	(7)	(668)	(310)
Standardized measure of discounted future net cash flows relating to proved gas, natural gas liquids and crude oil reserves	<u>\$ 775</u>	<u>\$ 23</u>	<u>\$ 798</u>	<u>\$ 543</u>
Company's share of equity method investees' standardized measure of discounted future net cash flows	<u>\$ 2</u>	<u>\$ —</u>	<u>\$ 2</u>	<u>\$ 18</u>

## Table of Contents

Pursuant to SFAS No. 143, future development costs in 2003 includes future cash outflows related to the settlement of asset retirement obligations within the United States of \$45 million and within Canada of \$61 million.

### December 31, 2002:

Future cash inflows	\$ 2,391	\$ 439	\$ 2,830	\$ 1,537
Future production costs	(538)	(95)	(633)	(434)
Future development costs	<u>(156)</u>	<u>(11)</u>	<u>(167)</u>	<u>(53)</u>
Future net cash flows before income taxes	1,697	333	2,030	1,050
Future income taxes	<u>(480)</u>	<u>(110)</u>	<u>(590)</u>	<u>(337)</u>
Future net cash flows	1,217	223	1,440	713
Discount to present value at 10% annual rate	<u>(537)</u>	<u>(77)</u>	<u>(614)</u>	<u>(280)</u>
Standardized measure of discounted future net cash flows relating to proved gas, natural gas liquids and crude oil reserves	<u>\$ 680</u>	<u>\$ 146</u>	<u>\$ 826</u>	<u>\$ 433</u>

## Table of Contents

### *Changes in Standardized Measure of Discounted Future Net Cash Flows*

The following table sets forth the changes in the standardized measure of discounted future net cash flows at December 31, 2004, 2003, and 2002 (in millions):

	<u>United States</u>	<u>Canada</u>	<u>Continuing Operations</u>	<u>Discontinued Operations</u>
Balance, December 31, 2001	\$ 402	\$ 63	\$ 465	\$ 514
Sales and transfers of gas, natural gas liquids and crude oil produced, net of production costs	(131)	(26)	(157)	(126)
Net changes in prices and production costs	491	63	554	615
Extensions, discoveries, additions and improved recovery, net of related costs	96	—	96	68
Development costs incurred	36	—	36	(11)
Revisions of previous quantity estimates and development costs	(81)	15	(66)	(10)
Accretion of discount	40	3	43	7
Net change in income taxes	(173)	(23)	(196)	(50)
Purchases of reserves in place	—	—	—	2
Sales of reserves in place	—	—	—	(521)
Changes in timing and other	—	51	51	(55)
Balance, December 31, 2002	<u>\$ 680</u>	<u>\$ 146</u>	<u>\$ 826</u>	<u>\$ 433</u>
Sales and transfers of gas, natural gas liquids and crude oil produced, net of production costs	(239)	(45)	(284)	(119)
Net changes in prices and production costs	248	(27)	221	17
Extensions, discoveries, additions and improved recovery, net of related costs	117	—	117	60
Development costs incurred	48	—	48	41
Revisions of previous quantity estimates and development costs	(80)	(11)	(91)	(69)
Accretion of discount	68	2	70	44
Net change in income taxes	(28)	74	46	95
Purchases of reserves in place	2	—	2	19
Sales of reserves in place	(6)	(124)	(130)	(42)
Changes in timing and other	(35)	8	(27)	64
Balance, December 31, 2003	<u>\$ 775</u>	<u>\$ 23</u>	<u>\$ 798</u>	<u>\$ 543</u>
Sales and transfers of gas, natural gas liquids and crude oil produced, net of production costs	(205)	(5)	(210)	(81)
Net changes in prices and production costs	39	7	46	128
Extensions, discoveries, additions and improved recovery, net of related costs	60	—	60	15
Development costs incurred	25	—	25	29
Revisions of previous quantity estimates and development costs	(193)	—	(193)	6
Accretion of discount	78	2	80	71
Net change in income taxes	39	—	39	60
Purchases of reserves in place	2	—	2	3
Sales of reserves in place	(5)	(23)	(28)	(733)
Changes in timing and other	38	(4)	34	(41)
Balance, December 31, 2004	<u><u>\$ 653</u></u>	<u><u>\$ —</u></u>	<u><u>\$ 653</u></u>	<u><u>\$ —</u></u>

## EXHIBIT INDEX

Exhibit Number	Description
2.1	Purchase and Sale Agreement, dated July 1, 2004, among Calpine Corporation (the “Company”), Calpine Natural Gas L.P. and Pogo Producing Company.(a)
2.2	Purchase and Sale Agreement, dated July 1, 2004, among the Company, Calpine Natural Gas L.P. and Bill Barrett Corporation.(a)
2.3	Asset and Trust Unit Purchase and Sale Agreement, dated July 1, 2004, among the Company, Calpine Canada Natural Gas Partnership, Calpine Energy Holdings Limited, PrimeWest Gas Corp. and PrimeWest Energy Trust.(a)
3.1	Amended and Restated Certificate of Incorporation of the Company, as amended through June 2, 2004.(b)
3.2	Amended and Restated By-laws of the Company.(c)
4.1.1	Indenture dated as of May 16, 1996, between the Company and U.S. Bank (as successor trustee to Fleet National Bank), as Trustee, including form of Notes.(d)
4.1.2	First Supplemental Indenture dated as of August 1, 2000, between the Company and U.S. Bank (as successor trustee to Fleet National Bank), as Trustee.(e)
4.1.3	Second Supplemental Indenture dated as of April 26, 2004, between the Company and U.S. Bank (as successor trustee to Fleet National Bank), as Trustee.(f)
4.2.1	Indenture dated as of July 8, 1997, between the Company and The Bank of New York, as Trustee, including form of Notes.(g)
4.2.2	Supplemental Indenture dated as of September 10, 1997, between the Company and The Bank of New York, as Trustee.(h)
4.2.3	Second Supplemental Indenture dated as of July 31, 2000, between the Company and The Bank of New York, as Trustee.(e)
4.2.4	Third Supplemental Indenture dated as of April 26, 2004, between the Company and The Bank of New York, as Trustee.(f)
4.3.1	Indenture dated as of March 31, 1998, between the Company and The Bank of New York, as Trustee, including form of Notes.(i)
4.3.2	Supplemental Indenture dated as of July 24, 1998, between the Company and The Bank of New York, as Trustee.(i)
4.3.3	Second Supplemental Indenture dated as of July 31, 2000, between the Company and The Bank of New York, as Trustee.(e)
4.3.4	Third Supplemental Indenture dated as of April 26, 2004, between the Company and The Bank of New York, as Trustee.(f)
4.4.1	Indenture dated as of March 29, 1999, between the Company and The Bank of New York, as Trustee, including form of Notes.(j)
4.4.2	First Supplemental Indenture dated as of July 31, 2000, between the Company and The Bank of New York, as Trustee.(e)
4.4.3	Second Supplemental Indenture dated as of April 26, 2004, between the Company and The Bank of New York, as Trustee.(f)
4.5.1	Indenture dated as of March 29, 1999, between the Company and The Bank of New York, as Trustee, including form of Notes.(j)
4.5.2	First Supplemental Indenture dated as of July 31, 2000, between the Company and The Bank of New York, as Trustee.(e)
4.5.3	Second Supplemental Indenture dated as of April 26, 2004, between the Company and The Bank of New York, as Trustee.(f)

- 4.6.1 Indenture dated as of August 10, 2000, between the Company and Wilmington Trust Company, as Trustee.(k)
  - 4.6.2 First Supplemental Indenture dated as of September 28, 2000, between the Company and Wilmington Trust Company, as Trustee.(e)
-

## Table of Contents

Exhibit Number	Description
4.6.3	Second Supplemental Indenture dated as of September 30, 2004, between the Company and Wilmington Trust Company, as Trustee.(l)
4.7.1	Amended and Restated Indenture dated as of October 16, 2001, between Calpine Canada Energy Finance ULC and Wilmington Trust Company, as Trustee.(m)
4.7.2	Guarantee Agreement dated as of April 25, 2001, between the Company and Wilmington Trust Company, as Trustee.(n)
4.7.3	First Amendment, dated as of October 16, 2001, to Guarantee Agreement dated as of April 25, 2001, between the Company and Wilmington Trust Company, as Trustee.(m)
4.8.1	Indenture dated as of October 18, 2001, between Calpine Canada Energy Finance II ULC and Wilmington Trust Company, as Trustee.(m)
4.8.2	First Supplemental Indenture, dated as of October 18, 2001, between Calpine Canada Energy Finance II ULC and Wilmington Trust Company, as Trustee.(m)
4.8.3	Guarantee Agreement dated as of October 18, 2001, between the Company and Wilmington Trust Company, as Trustee.(m)
4.8.4	First Amendment, dated as of October 18, 2001, to Guarantee Agreement dated as of October 18, 2001, between the Company and Wilmington Trust Company, as Trustee.(m)
4.9	Indenture, dated as of June 13, 2003, between Power Contract Financing, L.L.C. and Wilmington Trust Company, as Trustee, Accounts Agent, Paying Agent and Registrar, including form of Notes.(o)
4.10	Indenture, dated as of July 16, 2003, between the Company and Wilmington Trust Company, as Trustee, including form of Notes.(o)
4.11	Indenture, dated as of July 16, 2003, between the Company and Wilmington Trust Company, as Trustee, including form of Notes.(o)
4.12	Indenture, dated as of July 16, 2003, between the Company and Wilmington Trust Company, as Trustee, including form of Notes.(o)
4.13.1	Indenture, dated as of August 14, 2003, among Calpine Construction Finance Company, L.P., CCFC Finance Corp., each of Calpine Hermiston, LLC, CPN Hermiston, LLC and Hermiston Power Partnership, as Guarantors, and Wilmington Trust Company, as Trustee, including form of Notes.(p)
4.13.2	Supplemental Indenture, dated as of September 18, 2003, among Calpine Construction Finance Company, L.P., CCFC Finance Corp., each of Calpine Hermiston, LLC, CPN Hermiston, LLC and Hermiston Power Partnership, as Guarantors, and Wilmington Trust Company, as Trustee.(p)
4.13.3	Second Supplemental Indenture, dated as of January 14, 2004, among Calpine Construction Finance Company, L.P., CCFC Finance Corp., each of Calpine Hermiston, LLC, CPN Hermiston, LLC and Hermiston Power Partnership, as Guarantors, and Wilmington Trust Company, as Trustee.(q)
4.13.4	Third Supplemental Indenture, dated as of March 5, 2004, among Calpine Construction Finance Company, L.P., CCFC Finance Corp., each of Calpine Hermiston, LLC, CPN Hermiston, LLC and Hermiston Power Partnership, as Guarantors, and Wilmington Trust Company, as Trustee.(q)
4.14	Indenture, dated as of September 30, 2003, among Gilroy Energy Center, LLC, each of Creed Energy Center, LLC and Goose Haven Energy Center, as Guarantors, and Wilmington Trust Company, as Trustee and Collateral Agent, including form of Notes.(p)
4.15	Indenture, dated as of November 18, 2003, between the Company and Wilmington Trust Company, as Trustee, including form of Notes.(q)
4.16.1	Amended and Restated Indenture, dated as of March 12, 2004, between the Company and Wilmington Trust Company, including form of Notes.(q)
4.16.2	Registration Rights Agreement, dated as of November 14, 2003, between the Company and Deutsche Bank

Securities, Inc., as Representative of the Initial Purchasers.(q)

- 4.17.1 First Priority Indenture, dated as of March 23, 2004, among Calpine Generating Company, LLC, CalGen Finance Corp. and Wilmington Trust FSB, as Trustee, including form of Notes.(q)
  - 4.17.2 Second Priority Indenture, dated as of March 23, 2004, among Calpine Generating Company, LLC, CalGen Finance Corp. and Wilmington Trust FSB, as Trustee, including form of Notes.(q)
-

## Table of Contents

Exhibit Number	Description
4.17.3	Third Priority Indenture, dated as of March 23, 2004, among Calpine Generating Company, LLC, CalGen Finance Corp. and Wilmington Trust FSB, as Trustee, including form of Notes.(q)
4.18	Indenture, dated as of June 2, 2004, between Power Contract Financing III, LLC and Wilmington Trust Company, as Trustee, Accounts Agent, Paying Agent and Registrar, including form of Notes.(b)
4.19	Indenture, dated as of September 30, 2004, between the Company and Wilmington Trust Company, as Trustee, including form of Notes.(r)
4.20.1	Amended and Restated Rights Agreement, dated as of September 19, 2001, between Calpine Corporation and Equiserve Trust Company, N.A., as Rights Agent.(s)
4.20.2	Amendment No. 1 to Rights Agreement, dated as of September 28, 2004, between Calpine Corporation and Equiserve Trust Company, N.A., as Rights Agent.(l)
4.20.3	Amendment No. 2 to Rights Agreement, dated as of March 18, 2005, between Calpine Corporation and Equiserve Trust Company, N.A., as Rights Agent.(bb)
4.21	Memorandum and Articles of Association of Calpine (Jersey) Limited.(t)
4.22	Memorandum and Articles of Association of Calpine European Funding (Jersey) Limited.(t)
4.23	High Tides III
4.23.1	Amended and Restated Certificate of Trust of Calpine Capital Trust III, a Delaware statutory trust, filed July 19, 2000.(u)
4.23.2	Declaration of Trust of Calpine Capital Trust III dated June 28, 2000, among the Company, as Depositor and Debenture Issuer, The Bank of New York (Delaware), as Delaware Trustee, The Bank of New York, as Property Trustee and the Administrative Trustees named therein.(u)
4.23.3	Amendment No. 1 to the Declaration of Trust of Calpine Capital Trust III dated July 19, 2000, among the Company, as Depositor and Debenture Issuer, Wilmington Trust Company, as Delaware Trustee, Wilmington Trust Company, as Property Trustee, and the Administrative Trustees named therein.(u)
4.23.4	Indenture dated as of August 9, 2000, between the Company and Wilmington Trust Company, as Trustee.(u)
4.23.5	Remarketing Agreement dated as of August 9, 2000, among the Company, Calpine Capital Trust III, Wilmington Trust Company, as Tender Agent, and Credit Suisse First Boston Corporation, as Remarketing Agent.(u)
4.23.6	Registration Rights Agreement dated as August 9, 2000, between the Company, Calpine Capital Trust III, Credit Suisse First Boston Corporation, ING Barings LLC and CIBC World Markets Corp.(u)
4.23.7	Amended and Restated Declaration of Trust of Calpine Capital Trust III dated as of August 9, 2000, the Company, as Depositor and Debenture Issuer, Wilmington Trust Company, as Delaware Trustee, Wilmington Trust Company, as Property Trustee, and the Administrative Trustees named therein, including the form of Preferred Security and form of Common Security.(u)
4.23.8	Preferred Securities Guarantee Agreement dated as of August 9, 2000, between the Company, as Guarantor, and Wilmington Trust Company, as Guarantee Trustee.(u)
4.24	Pass Through Certificates (Tiverton and Rumford)
4.24.1	Pass Through Trust Agreement dated as of December 19, 2000, among Tiverton Power Associates Limited Partnership, Rumford Power Associates Limited Partnership and State Street Bank and Trust Company of Connecticut, National Association, as Pass Through Trustee, including the form of Certificate.(e)
4.24.2	Participation Agreement dated as of December 19, 2000, among the Company, Tiverton Power Associates Limited Partnership, Rumford Power Associates Limited Partnership, PMCC Calpine New England Investment LLC, PMCC Calpine NEIM LLC, State Street Bank and Trust Company of Connecticut, National Association, as Indenture Trustee, and State Street Bank and Trust Company of Connecticut, National Association, as Pass Through Trustee.(e)



## Table of Contents

Exhibit Number	Description
4.24.4	Indenture of Trust, Mortgage and Security Agreement, dated as of December 19, 2000, between PMCC Calpine New England Investment LLC and State Street Bank and Trust Company of Connecticut, National Association, as Indenture Trustee, including the forms of Lessor Notes.(e)
4.24.5	Calpine Guaranty and Payment Agreement (Tiverton) dated as of December 19, 2000, by the Company, as Guarantor, to PMCC Calpine New England Investment LLC, PMCC Calpine NEIM LLC, State Street Bank and Trust Company of Connecticut, as Indenture Trustee, and State Street Bank and Trust Company of Connecticut, as Pass Through Trustee.(e)
4.24.6	Calpine Guaranty and Payment Agreement (Rumford) dated as of December 19, 2000, by the Company, as Guarantor, to PMCC Calpine New England Investment LLC, PMCC Calpine NEIM LLC, State Street Bank and Trust Company of Connecticut, as Indenture Trustee, and State Street Bank and Trust Company of Connecticut, as Pass Through Trustee.(e)
4.25	Pass Through Certificates (South Point, Broad River and RockGen)
4.25.1	Pass Through Trust Agreement A dated as of October 18, 2001, among South Point Energy Center, LLC, Broad River Energy LLC, RockGen Energy LLC and State Street Bank and Trust Company of Connecticut, National Association, as Pass Through Trustee, including the form of 8.400% Pass Through Certificate, Series A.(c)
4.25.2	Pass Through Trust Agreement B dated as of October 18, 2001, among South Point Energy Center, LLC, Broad River Energy LLC, RockGen Energy LLC and State Street Bank and Trust Company of Connecticut, National Association, as Pass Through Trustee, including the form of 9.825% Pass Through Certificate, Series B.(c)
4.25.3	Participation Agreement (SP-1) dated as of October 18, 2001, among the Company, South Point Energy Center, LLC, South Point OL-1, LLC, Wells Fargo Bank Northwest, National Association, as Lessor Manager, SBR OP-1, LLC, State Street Bank and Trust Company of Connecticut, National Association, as Indenture Trustee, and State Street Bank and Trust Company of Connecticut, National Association, as Pass Through Trustee, including Appendix A — Definitions and Rules of Interpretation.(c)
4.25.4	Participation Agreement (SP-2) dated as of October 18, 2001, among the Company, South Point Energy Center, LLC, South Point OL-2, LLC, Wells Fargo Bank Northwest, National Association, as Lessor Manager, SBR OP-2, LLC, State Street Bank and Trust Company of Connecticut, National Association, as Indenture Trustee, and State Street Bank and Trust Company of Connecticut, National Association, as Pass Through Trustee, including Appendix A — Definitions and Rules of Interpretation.(c)
4.25.5	Participation Agreement (SP-3) dated as of October 18, 2001, among the Company, South Point Energy Center, LLC, South Point OL-3, LLC, Wells Fargo Bank Northwest, National Association, as Lessor Manager, SBR OP-3, LLC, State Street Bank and Trust Company of Connecticut, National Association, as Indenture Trustee, and State Street Bank and Trust Company of Connecticut, National Association, as Pass Through Trustee, including Appendix A — Definitions and Rules of Interpretation.(c)
4.25.6	Participation Agreement (SP-4) dated as of October 18, 2001, among the Company, South Point Energy Center, LLC, South Point OL-4, LLC, Wells Fargo Bank Northwest, National Association, as Lessor Manager, SBR OP-4, LLC, State Street Bank and Trust Company of Connecticut, National Association, as Indenture Trustee, and State Street Bank and Trust Company of Connecticut, National Association, as Pass Through Trustee, including Appendix A — Definitions and Rules of Interpretation.(c)
4.25.7	Participation Agreement (BR-1) dated as of October 18, 2001, among the Company, Broad River Energy LLC, Broad River OL-1, LLC, Wells Fargo Bank Northwest, National Association, as Lessor Manager, SBR OP-1, LLC, State Street Bank and Trust Company of Connecticut, National Association, as Indenture Trustee, and State Street Bank and Trust Company of Connecticut, National Association, as Pass Through Trustee, including Appendix A — Definitions and Rules of Interpretation.(c)

---

## Table of Contents

Exhibit Number	Description
4.25.8	Participation Agreement (BR-2) dated as of October 18, 2001, among the Company, Broad River Energy LLC, Broad River OL-2, LLC, Wells Fargo Bank Northwest, National Association, as Lessor Manager, SBR OP-2, LLC, State Street Bank and Trust Company of Connecticut, National Association, as Indenture Trustee, and State Street Bank and Trust Company of Connecticut, National Association, as Pass Through Trustee, including Appendix A — Definitions and Rules of Interpretation.(c)
4.25.9	Participation Agreement (BR-3) dated as of October 18, 2001, among the Company, Broad River Energy LLC, Broad River OL-3, LLC, Wells Fargo Bank Northwest, National Association, as Lessor Manager, SBR OP-3, LLC, State Street Bank and Trust Company of Connecticut, National Association, as Indenture Trustee, and State Street Bank and Trust Company of Connecticut, National Association, as Pass Through Trustee, including Appendix A — Definitions and Rules of Interpretation.(c)
4.25.10	Participation Agreement (BR-4) dated as of October 18, 2001, among the Company, Broad River Energy LLC, Broad River OL-4, LLC, Wells Fargo Bank Northwest, National Association, as Lessor Manager, SBR OP-4, LLC, State Street Bank and Trust Company of Connecticut, National Association, as Indenture Trustee, and State Street Bank and Trust Company of Connecticut, National Association, as Pass Through Trustee, including Appendix A — Definitions and Rules of Interpretation.(c)
4.25.11	Participation Agreement (RG-1) dated as of October 18, 2001, among the Company, RockGen Energy LLC, RockGen OL-1, LLC, Wells Fargo Bank Northwest, National Association, as Lessor Manager, SBR OP-1, LLC, State Street Bank and Trust Company of Connecticut, National Association, as Indenture Trustee, and State Street Bank and Trust Company of Connecticut, National Association, as Pass Through Trustee, including Appendix A — Definitions and Rules of Interpretation.(c)
4.25.12	Participation Agreement (RG-2) dated as of October 18, 2001, among the Company, RockGen Energy LLC, RockGen OL-2, LLC, Wells Fargo Bank Northwest, National Association, as Lessor Manager, SBR OP-2, LLC, State Street Bank and Trust Company of Connecticut, National Association, as Indenture Trustee, and State Street Bank and Trust Company of Connecticut, National Association, as Pass Through Trustee, including Appendix A — Definitions and Rules of Interpretation.(c)
4.25.13	Participation Agreement (RG-3) dated as of October 18, 2001, among the Company, RockGen Energy LLC, RockGen OL-3, LLC, Wells Fargo Bank Northwest, National Association, as Lessor Manager, SBR OP-3, LLC, State Street Bank and Trust Company of Connecticut, National Association, as Indenture Trustee, and State Street Bank and Trust Company of Connecticut, National Association, as Pass Through Trustee, including Appendix A — Definitions and Rules of Interpretation.(c)
4.25.14	Participation Agreement (RG-4) dated as of October 18, 2001, among the Company, RockGen Energy LLC, RockGen OL-4, LLC, Wells Fargo Bank Northwest, National Association, as Lessor Manager, SBR OP-4, LLC, State Street Bank and Trust Company of Connecticut, National Association, as Indenture Trustee, and State Street Bank and Trust Company of Connecticut, National Association, as Pass Through Trustee, including Appendix A — Definitions and Rules of Interpretation.(c)
4.25.15	Indenture of Trust, Deed of Trust, Assignment of Rents and Leases, Security Agreement and Financing Statement, dated as of October 18, 2001, between South Point OL-1, LLC and State Street Bank and Trust Company of Connecticut, National Association, as Indenture Trustee and Account Bank, including the form of South Point Lessor Notes.(c)
4.25.16	Indenture of Trust, Deed of Trust, Assignment of Rents and Leases, Security Agreement and Financing Statement, dated as of October 18, 2001, between South Point OL-2, LLC and State Street Bank and Trust Company of Connecticut, National Association, as Indenture Trustee and Account Bank, including the form of South Point Lessor Notes.(c)
4.25.17	Indenture of Trust, Deed of Trust, Assignment of Rents and Leases, Security Agreement and Financing Statement, dated as of October 18, 2001, between South Point OL-3, LLC and State Street Bank and Trust Company of Connecticut, National Association, as Indenture Trustee and Account Bank, including the form of South Point Lessor Notes.(c)

## Table of Contents

Exhibit Number	Description
4.25.18	Indenture of Trust, Deed of Trust, Assignment of Rents and Leases, Security Agreement and Financing Statement, dated as of October 18, 2001, between South Point OL-4, LLC and State Street Bank and Trust Company of Connecticut, National Association, as Indenture Trustee and Account Bank, including the form of South Point Lessor Notes.(c)
4.25.19	Indenture of Trust, Mortgage, Security Agreement and Fixture Filing, dated as of October 18, 2001, between Broad River OL-1, LLC and State Street Bank and Trust Company of Connecticut, National Association, as Indenture Trustee, Mortgagee and Account Bank, including the form of Broad River Lessor Notes.(c)
4.25.20	Indenture of Trust, Mortgage, Security Agreement and Fixture Filing, dated as of October 18, 2001, between Broad River OL-2, LLC and State Street Bank and Trust Company of Connecticut, National Association, as Indenture Trustee, Mortgagee and Account Bank, including the form of Broad River Lessor Notes.(c)
4.25.21	Indenture of Trust, Mortgage, Security Agreement and Fixture Filing, dated as of October 18, 2001, between Broad River OL-3, LLC and State Street Bank and Trust Company of Connecticut, National Association, as Indenture Trustee, Mortgagee and Account Bank, including the form of Broad River Lessor Notes.(c)
4.25.22	Indenture of Trust, Mortgage, Security Agreement and Fixture Filing, dated as of October 18, 2001, between Broad River OL-4, LLC and State Street Bank and Trust Company of Connecticut, National Association, as Indenture Trustee, Mortgagee and Account Bank, including the form of Broad River Lessor Notes.(c)
4.25.23	Indenture of Trust, Mortgage and Security Agreement, dated as of October 18, 2001, between RockGen OL-1, LLC and State Street Bank and Trust Company of Connecticut, National Association, as Indenture Trustee and Account Bank, including the form of RockGen Lessor Notes.(c)
4.25.24	Indenture of Trust, Mortgage and Security Agreement, dated as of October 18, 2001, between RockGen OL-2, LLC and State Street Bank and Trust Company of Connecticut, National Association, as Indenture Trustee and Account Bank, including the form of RockGen Lessor Notes.(c)
4.25.25	Indenture of Trust, Mortgage and Security Agreement, dated as of October 18, 2001, between RockGen OL-3, LLC and State Street Bank and Trust Company of Connecticut, National Association, as Indenture Trustee and Account Bank, including the form of RockGen Lessor Notes.(c)
4.25.26	Indenture of Trust, Mortgage and Security Agreement, dated as of October 18, 2001, between RockGen OL-4, LLC and State Street Bank and Trust Company of Connecticut, National Association, as Indenture Trustee and Account Bank, including the form of RockGen Lessor Notes.(c)
4.25.27	Calpine Guaranty and Payment Agreement (South Point SP-1) dated as of October 18, 2001, by Calpine, as Guarantor, to South Point OL-1, LLC, SBR OP-1, LLC, State Street Bank and Trust Company of Connecticut, as Indenture Trustee, and State Street Bank and Trust Company of Connecticut, as Pass Through Trustee.(c)
4.25.28	Calpine Guaranty and Payment Agreement (South Point SP-2) dated as of October 18, 2001, by Calpine, as Guarantor, to South Point OL-2, LLC, SBR OP-2, LLC, State Street Bank and Trust Company of Connecticut, as Indenture Trustee, and State Street Bank and Trust Company of Connecticut, as Pass Through Trustee.(c)
4.25.29	Calpine Guaranty and Payment Agreement (South Point SP-3) dated as of October 18, 2001, by Calpine, as Guarantor, to South Point OL-3, LLC, SBR OP-3, LLC, State Street Bank and Trust Company of Connecticut, as Indenture Trustee, and State Street Bank and Trust Company of Connecticut, as Pass Through Trustee.(c)
4.25.30	Calpine Guaranty and Payment Agreement (South Point SP-4) dated as of October 18, 2001, by Calpine, as Guarantor, to South Point OL-4, LLC, SBR OP-4, LLC, State Street Bank and Trust Company of Connecticut, as Indenture Trustee, and State Street Bank and Trust Company of Connecticut, as Pass Through Trustee.(c)

## Table of Contents

Exhibit Number	Description
4.25.31	Calpine Guaranty and Payment Agreement (Broad River BR-1) dated as of October 18, 2001, by Calpine, as Guarantor, to Broad River OL-1, LLC, SBR OP-1, LLC, State Street Bank and Trust Company of Connecticut, as Indenture Trustee, and State Street Bank and Trust Company of Connecticut, as Pass Through Trustee.(c)
4.25.32	Calpine Guaranty and Payment Agreement (Broad River BR-2) dated as of October 18, 2001, by Calpine, as Guarantor, to Broad River OL-2, LLC, SBR OP-2, LLC, State Street Bank and Trust Company of Connecticut, as Indenture Trustee, and State Street Bank and Trust Company of Connecticut, as Pass Through Trustee.(c)
4.25.33	Calpine Guaranty and Payment Agreement (Broad River BR-3) dated as of October 18, 2001, by Calpine, as Guarantor, to Broad River OL-3, LLC, SBR OP-3, LLC, State Street Bank and Trust Company of Connecticut, as Indenture Trustee, and State Street Bank and Trust Company of Connecticut, as Pass Through Trustee.(c)
4.25.34	Calpine Guaranty and Payment Agreement (Broad River BR-4) dated as of October 18, 2001, by Calpine, as Guarantor, to Broad River OL-4, LLC, SBR OP-4, LLC, State Street Bank and Trust Company of Connecticut, as Indenture Trustee, and State Street Bank and Trust Company of Connecticut, as Pass Through Trustee.(c)
4.25.35	Calpine Guaranty and Payment Agreement (RockGen RG-1) dated as of October 18, 2001, by Calpine, as Guarantor, to RockGen OL-1, LLC, SBR OP-1, LLC, State Street Bank and Trust Company of Connecticut, as Indenture Trustee, and State Street Bank and Trust Company of Connecticut, as Pass Through Trustee.(c)
4.25.36	Calpine Guaranty and Payment Agreement (RockGen RG-2) dated as of October 18, 2001, by Calpine, as Guarantor, to RockGen OL-2, LLC, SBR OP-2, LLC, State Street Bank and Trust Company of Connecticut, as Indenture Trustee, and State Street Bank and Trust Company of Connecticut, as Pass Through Trustee.(c)
4.25.37	Calpine Guaranty and Payment Agreement (RockGen RG-3) dated as of October 18, 2001, by Calpine, as Guarantor, to RockGen OL-3, LLC, SBR OP-3, LLC, State Street Bank and Trust Company of Connecticut, as Indenture Trustee, and State Street Bank and Trust Company of Connecticut, as Pass Through Trustee.(c)
4.25.38	Calpine Guaranty and Payment Agreement (RockGen RG-4) dated as of October 18, 2001, by Calpine, as Guarantor, to RockGen OL-4, LLC, SBR OP-4, LLC, State Street Bank and Trust Company of Connecticut, as Indenture Trustee, and State Street Bank and Trust Company of Connecticut, as Pass Through Trustee.(c)
10.1	Financing and Term Loan Agreements
10.1.1	Share Lending Agreement, dated as of September 28, 2004, among the Company, as Lender, Deutsche Bank AG London, as Borrower, through Deutsche Bank Securities Inc., as agent for the Borrower, and Deutsche Bank Securities Inc., in its capacity as Collateral Agent and Securities Intermediary.(l)
10.1.2	Amended and Restated Credit Agreement, dated as of March 23, 2004, among Calpine Generating Company, LLC, the Guarantors named therein, the Lenders named therein, The Bank of Nova Scotia, as Administrative Agent, LC Bank, Lead Arranger and Sole Bookrunner, Bayerische Landesbank Cayman Islands Branch, as Arranger and Co-Syndication Agent, Credit Lyonnais New York Branch, as Arranger and Co-Syndication Agent, ING Capital LLC, as Arranger and Co-Syndication Agent, Toronto-Dominion (Texas) Inc., as Arranger and Co-Syndication Agent, and Union Bank of California, N.A., as Arranger and Co-Syndication Agent.(q)
10.1.3.1	Letter of Credit Agreement, dated as of July 16, 2003, among the Company, the Lenders named therein, and The Bank of Nova Scotia, as Administrative Agent.(o)
10.1.3.2	Amendment to Letter of Credit Agreement, dated as of September 30, 2004, between the Company and The Bank of Nova Scotia, as Administrative Agent.(v)
10.1.4	Letter of Credit Agreement, dated as of September 30, 2004, between the Company and Bayerische Landesbank, acting through its Cayman Islands Branch, as the Issuer.(v)

## Table of Contents

Exhibit Number	Description
10.1.5	Credit Agreement, dated as of July 16, 2003, among the Company, the Lenders named therein, Goldman Sachs Credit Partners L.P., as Sole Lead Arranger, Sole Bookrunner and Administrative Agent, The Bank of Nova Scotia, as Arranger and Syndication Agent, TD Securities (USA) Inc., ING (U.S.) Capital LLC and Landesbank Hessen-Thuringen, as Co-Arrangers, and Credit Lyonnais New York Branch and Union Bank of California, N.A., as Managing Agents.(o)
10.1.6.1	Credit and Guarantee Agreement, dated as of August 14, 2003, among Calpine Construction Finance Company, L.P., each of Calpine Hermiston, LLC, CPN Hermiston, LLC and Hermiston Power Partnership, as Guarantors, the Lenders named therein, and Goldman Sachs Credit Partners L.P., as Administrative Agent and Sole Lead Arranger.(p)
10.1.6.2	Amendment No. 1 to the Credit and Guarantee Agreement, dated as of September 12, 2003, among Calpine Construction Finance Company, L.P., each of Calpine Hermiston, LLC, CPN Hermiston, LLC and Hermiston Power Partnership, as Guarantors, the Lenders named therein, and Goldman Sachs Credit Partners L.P., as Administrative Agent and Sole Lead Arranger.(p)
10.1.6.3	Amendment No. 2 to the Credit and Guarantee Agreement, dated as of January 13, 2004, among Calpine Construction Finance Company, L.P., each of Calpine Hermiston, LLC, CPN Hermiston, LLC and Hermiston Power Partnership, as Guarantors, the Lenders named therein, and Goldman Sachs Credit Partners L.P., as Administrative Agent and Sole Lead Arranger.(q)
10.1.6.4	Amendment No. 3 to the Credit and Guarantee Agreement, dated as of March 5, 2004, among Calpine Construction Finance Company, L.P., each of Calpine Hermiston, LLC, CPN Hermiston, LLC and Hermiston Power Partnership, as Guarantors, the Lenders named therein, and Goldman Sachs Credit Partners L.P., as Administrative Agent and Sole Lead Arranger.(q)
10.1.7	Credit and Guarantee Agreement, dated as of March 23, 2004, among Calpine Generating Company, LLC, the Guarantors named therein, the Lenders named therein, Morgan Stanley Senior Funding, Inc., as Administrative Agent, and Morgan Stanley Senior Funding, Inc., as Sole Lead Arranger and Sole Bookrunner.(q)
10.1.8	Credit and Guarantee Agreement, dated as of March 23, 2004, among Calpine Generating Company, LLC, the Guarantors named therein, the Lenders named therein, Morgan Stanley Senior Funding, Inc., as Administrative Agent, and Morgan Stanley Senior Funding, Inc., as Sole Lead Arranger and Sole Bookrunner.(q)
10.1.9	Credit Agreement, dated as of June 24, 2004, among Riverside Energy Center, LLC, the Lenders named therein, Union Bank of California, N.A., as the Issuing Bank, Credit Suisse First Boston, acting through its Cayman Islands Branch, as Lead Arranger, Book Runner, Administrative Agent and Collateral Agent, and CoBank, ACB, as Syndication Agent.(*)
10.1.10	Credit Agreement, dated as of June 24, 2004, among Rocky Mountain Energy Center, LLC, the Lenders named therein, Union Bank of California, N.A., as the Issuing Bank, Credit Suisse First Boston, acting through its Cayman Islands Branch, as Lead Arranger, Book Runner, Administrative Agent and Collateral Agent, and CoBank, ACB, as Syndication Agent.(*)
10.1.11	Credit Agreement, dated as of February 25, 2005, among Calpine Steamboat Holdings, LLC, the Lenders named therein, Calyon New York Branch, as a Lead Arranger, Underwriter, Co-Book Runner, Administrative Agent, Collateral Agent and LC Issuer, CoBank, ACB, as a Lead Arranger, Underwriter, Co-Syndication Agent and Co-Book Runner, HSH Nordbank AG, as a Lead Arranger, Underwriter and Co-documentation Agent, UFJ Bank Limited, as a Lead Arranger, Underwriter and Co-Documentation Agent, and Bayerische Hypo-Und Vereinsbank AG, New York Branch, as a Lead Arranger, Underwriter and Co-Syndication Agent.(*)
10.2	Security Agreements
10.2.1	Guarantee and Collateral Agreement, dated as of July 16, 2003, made by the Company, JOQ Canada, Inc., Quintana Minerals (USA) Inc., and Quintana Canada Holdings LLC, in favor of The Bank of New York, as Collateral Trustee.(o)
10.2.2	First Amendment Pledge Agreement, dated as of July 16, 2003, made by JOQ Canada, Inc., Quintana Minerals (USA) Inc., and Quintana Canada Holdings LLC in favor of The Bank of New York, as Collateral Trustee.(o)
10.2.3	First Amendment Assignment and Security Agreement, dated as of July 16, 2003, made by the Company in favor of The Bank of New York, as Collateral Trustee.(o)



## Table of Contents

<u>Exhibit Number</u>	<u>Description</u>
10.2.4.1	Second Amendment Pledge Agreement (Stock Interests), dated as of July 16, 2003, made by the Company in favor of The Bank of New York, as Collateral Trustee.(o)
10.2.4.2	Amendment No. 1 to the Second Amendment Pledge Agreement (Stock Interests), dated as of November 18, 2003, made by the Company in favor of The Bank of New York, as Collateral Trustee.(q)
10.2.5.1	Second Amendment Pledge Agreement (Membership Interests), dated as of July 16, 2003, made by the Company in favor of The Bank of New York, as Collateral Trustee.(o)
10.2.5.2	Amendment No. 1 to the Second Amendment Pledge Agreement (Membership Interests), dated as of November 18, 2003, made by the Company in favor of The Bank of New York, as Collateral Trustee.(q)
10.2.6	First Amendment Note Pledge Agreement, dated as of July 16, 2003, made by the Company in favor of The Bank of New York, as Collateral Trustee.(o)
10.2.7.1	Collateral Trust Agreement, dated as of July 16, 2003, among the Company, JOQ Canada, Inc., Quintana Minerals (USA) Inc., Quintana Canada Holdings LLC, Wilmington Trust Company, as Trustee, The Bank of Nova Scotia, as Agent, Goldman Sachs Credit Partners L.P., as Administrative Agent, and The Bank of New York, as Collateral Trustee.(o)
10.2.7.2	First Amendment to the Collateral Trust Agreement, dated as of November 18, 2003, among the Company, JOQ Canada, Inc., Quintana Minerals (USA) Inc., Quintana Canada Holdings LLC, Wilmington Trust Company, as Trustee, The Bank of Nova Scotia, as Agent, Goldman Sachs Credit Partners L.P., as Administrative Agent, and The Bank of New York, as Collateral Trustee.(q)
10.2.8	Form of Amended and Restated Mortgage, Deed of Trust, Assignment, Security Agreement, Financing Statement and Fixture Filing (Multistate), dated as of July 16, 2003, from the Company to Messrs. Denis O'Meara and James Trimble, as Trustees, and The Bank of New York, as Collateral Trustee.(o)
10.2.9	Form of Amended and Restated Mortgage, Deed of Trust, Assignment, Security Agreement, Financing Statement and Fixture Filing (Multistate), dated as of July 16, 2003, from the Company to Messrs. Kemp Leonard and John Quick, as Trustees, and The Bank of New York, as Collateral Trustee.(o)
10.2.10	Form of Amended and Restated Mortgage, Deed of Trust, Assignment, Security Agreement, Financing Statement and Fixture Filing (Colorado), dated as of July 16, 2003, from the Company to Messrs. Kemp Leonard and John Quick, as Trustees, and The Bank of New York, as Collateral Trustee.(o)
10.2.11	Form of Amended and Restated Mortgage, Deed of Trust, Assignment, Security Agreement, Financing Statement and Fixture Filing (New Mexico), dated as of July 16, 2003, from the Company to Messrs. Kemp Leonard and John Quick, as Trustees, and The Bank of New York, as Collateral Trustee.(o)
10.2.12	Form of Amended and Restated Mortgage, Assignment, Security Agreement and Financing Statement (Louisiana), dated as of July 16, 2003, from the Company to The Bank of New York, as Collateral Trustee.(o)
10.2.13	Form of Amended and Restated Deed of Trust with Power of Sale, Assignment of Production, Security Agreement, Financing Statement and Fixture Filings (California), dated as of July 16, 2003, from the Company to Chicago Title Insurance Company, as Trustee, and The Bank of New York, as Collateral Trustee.(o)
10.2.14	Form of Deed to Secure Debt, Assignment of Rents and Security Agreement (Georgia), dated as of July 16, 2003, from the Company to The Bank of New York, as Collateral Trustee.(o)
10.2.15	Form of Mortgage, Assignment of Rents and Security Agreement (Florida), dated as of July 16, 2003, from the Company to The Bank of New York, as Collateral Trustee.(o)
10.2.16	Form of Deed of Trust, Assignment of Rents and Security Agreement and Fixture Filing (Texas), dated as of July 16, 2003, from the Company to Malcolm S. Morris, as Trustee, in favor of The Bank of New York, as Collateral Trustee.(o)

## Table of Contents

<u>Exhibit Number</u>	<u>Description</u>
10.2.17	Form of Deed of Trust, Assignment of Rents and Security Agreement (Washington), dated as of July 16, 2003, from the Company to Chicago Title Insurance Company, in favor of The Bank of New York, as Collateral Trustee.(o)
10.2.18	Form of Deed of Trust, Assignment of Rents, and Security Agreement (California), dated as of July 16, 2003, from the Company to Chicago Title Insurance Company, in favor of The Bank of New York, as Collateral Trustee.(o)
10.2.19	Form of Mortgage, Collateral Assignment of Leases and Rents, Security Agreement and Financing Statement (Louisiana), dated as of July 16, 2003, from the Company to The Bank of New York, as Collateral Trustee.(o)
10.2.20	Amended and Restated Hazardous Materials Undertaking and Indemnity (Multistate), dated as of July 16, 2003, by the Company in favor of The Bank of New York, as Collateral Trustee.(o)
10.2.21	Amended and Restated Hazardous Materials Undertaking and Indemnity (California), dated as of July 16, 2003, by the Company in favor of The Bank of New York, as Collateral Trustee.(o)
10.2.22	Designated Asset Sale Proceeds Account Control Agreement, dated as of July 16, 2003, among the Company, Union Bank of California, N.A., and The Bank of New York, as Collateral Agent.(q)
10.3	Management Contracts or Compensatory Plans or Arrangements.
10.3.1.1	Employment Agreement, dated as of January 1, 2005, between the Company and Mr. Peter Cartwright.(w)(x)
10.3.1.2	Employment Agreement, dated as of January 1, 2000, between the Company and Mr. Peter Cartwright.(y)(x)
10.3.2	Employment Agreement, dated as of January 1, 2000, between the Company and Ms. Ann B. Curtis.(c)(x)
10.3.3	Employment Agreement, dated as of January 1, 2000, between the Company and Mr. Ron A. Walter.(c)(x)
10.3.4	Employment Agreement, dated as of January 1, 2000, between the Company and Mr. Robert D. Kelly.(c)(x)
10.3.5	Employment Agreement, dated as of January 1, 2000, between the Company and Mr. Thomas R. Mason.(c)(x)
10.3.6.1	Consulting Contract, dated as of January 1, 2005, between the Company and Mr. George J. Stathakis.(*)(x)
10.3.6.2	Consulting Contract, dated as of January 1, 2004, between the Company and Mr. George J. Stathakis.(q)(x)
10.3.7	Form of Indemnification Agreement for directors and officers.(z)(x)
10.3.8	Form of Indemnification Agreement for directors and officers.(c)(x)
10.3.9	Calpine Corporation 1996 Stock Incentive Plan and forms of agreements there under.(q)(x)
10.3.10	Base Salary, Bonus, Stock Option Grant and Restricted Stock Summary Sheet.(w)(x)
10.3.11	Form of Stock Option Agreement.(w)(x)
10.3.12	Form of Restricted Stock Agreement.(w)(x)
10.3.13	Calpine Corporation 2003 Management Incentive Plan.(*)(x)
10.3.14	2000 Employee Stock Purchase Plan.(aa)(x)
12.1	Statement on Computation of Ratio of Earnings to Fixed Charges.(*)
21.1	Subsidiaries of the Company.(*)
23.1	Consent of Deloitte & Touche LLP, Independent Registered Public Accounting Firm.(*)
23.2	Consent of PricewaterhouseCoopers LLP, Independent Registered Public Accounting Firm.(*)
23.3	Consent of Netherland, Sewell & Associates, Inc., independent engineer.(*)

- 23.4 Consent of Gilbert Laustsen Jung Associates Ltd., independent engineer.(\*)
  - 24.1 Power of Attorney of Officers and Directors of Calpine Corporation (set forth on the signature pages of this report).  
(\*)
-

## Table of Contents

Exhibit Number	Description
31.1	Certification of the Chairman, President and Chief Executive Officer Pursuant to Rule 13a-14(a) or Rule 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002. (*)
31.2	Certification of the Executive Vice President and Chief Financial Officer Pursuant to Rule 13a-14(a) or Rule 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002. (*)
32.1	Certification of Chief Executive Officer and Chief Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. (*)
99.1	Acadia Power Partners, LLC and Subsidiary, Consolidated Financial Statements, December 31, 2003, 2002 and 2001. (*)
99.2	Consent of PricewaterhouseCoopers LLP, Independent Registered Public Accounting Firm. (*)

(\*) Filed herewith.

- (a) Incorporated by reference to Calpine Corporation's Current Report on Form 8-K/ A filed with the SEC on September 14, 2004.
- (b) Incorporated by reference to Calpine Corporation's Quarterly Report on Form 10-Q dated June 30, 2004, filed with the SEC on August 9, 2004.
- (c) Incorporated by reference to Calpine Corporation's Annual Report on Form 10-K dated December 31, 2001, filed with the SEC on March 29, 2002.
- (d) Incorporated by reference to Calpine Corporation's Registration Statement on Form S-4 (Registration Statement No. 333-06259) filed with the SEC on June 19, 1996.
- (e) Incorporated by reference to Calpine Corporation's Annual Report on Form 10-K for the year ended December 31, 2000, filed with the SEC on March 15, 2001.
- (f) Incorporated by reference to Calpine Corporation's Quarterly Report on Form 10-Q dated March 31, 2004, filed with the SEC on May 10, 2004.
- (g) Incorporated by reference to Calpine Corporation's Quarterly Report on Form 10-Q dated June 30, 1997, filed with the SEC on August 14, 1997.
- (h) Incorporated by reference to Calpine Corporation's Registration Statement on Form S-4 (Registration Statement No. 333-41261) filed with the SEC on November 28, 1997.
- (i) Incorporated by reference to Calpine Corporation's Registration Statement on Form S-4 (Registration Statement No. 333-61047) filed with the SEC on August 10, 1998.
- (j) Incorporated by reference to Calpine Corporation's Registration Statement on Form S-3/ A (Registration Statement No. 333-72583) filed with the SEC on March 8, 1999.
- (k) Incorporated by reference to Calpine Corporation's Registration Statement on Form S-3 (Registration No. 333-76880) filed with the SEC on January 17, 2002.
- (l) Incorporated by reference to Calpine Corporation's Current Report on Form 8-K filed with the SEC on September 30, 2004.
- (m) Incorporated by reference to Calpine Corporation's Current Report on Form 8-K dated October 16, 2001, filed with the SEC on November 13, 2001.
- (n) Incorporated by reference to Calpine Corporation's Registration Statement on Form S-3/ A (Registration No. 333-57338) filed with the SEC on April 19, 2001.
- (o) Incorporated by reference to Calpine Corporation's Quarterly Report on Form 10-Q dated June 30, 2003, filed with the SEC on August 14, 2003.
- (p) Incorporated by reference to Calpine Corporation's Quarterly Report on Form 10-Q dated September 30, 2003, filed with the SEC on November 13, 2003.
- (q) Incorporated by reference to Calpine Corporation's Annual Report on Form 10-K for the year ended December 31, 2003, filed with the SEC on March 25, 2004.
- (r) Incorporated by reference to Calpine Corporation's Current Report on Form 8-K filed with the SEC on October 6, 2004.
- (s) Incorporated by reference to Calpine Corporation's Registration Statement on Form 8-A/ A (Registration No. 001-12079) filed with the SEC on September 28, 2001.

## Table of Contents

- (t) This document has been omitted in reliance on Item 601(b)(4)(iii) of Regulation S-K. Calpine Corporation agrees to furnish a copy of such document to the SEC upon request.
- (u) Incorporated by reference to Calpine Corporation's Registration Statement on Form S-3 (Registration Statement No. 333-47068) filed with the SEC on September 29, 2000.
- (v) Incorporated by reference to Calpine Corporation's Quarterly Report on Form 10-Q dated September 30, 2004, filed with the SEC on November 9, 2004.
- (w) Incorporated by reference to Calpine Corporation's Current Report on Form 8-K filed with the SEC on March 17, 2005.
- (x) Management contract or compensatory plan or arrangement.
- (y) Incorporated by reference to Calpine Corporation's Annual Report on Form 10-K for the year ended December 31, 1999, filed with the SEC on February 29, 2000.
- (z) Incorporated by reference to Calpine Corporation's Registration Statement on Form S-1/ A (Registration Statement No. 333-07497) filed with the SEC on August 22, 1996.
- (aa) Incorporated by reference to Calpine Corporation's Definitive Proxy Statement on Schedule 14A dated April 13, 2000, filed with the SEC on April 13, 2000.
- (bb) Incorporated by reference to Calpine Corporation's Current Report on Form 8-K filed with the SEC on March 23, 2005.

**EXHIBIT 10.1.9  
EXECUTION VERSION**

**CREDIT AGREEMENT**

among

**RIVERSIDE ENERGY CENTER, LLC,**  
a Wisconsin limited liability company  
(Borrower)

and

**CREDIT SUISSE FIRST BOSTON,**  
acting through its Cayman Islands Branch  
(Lead Arranger, Book Runner, Administrative Agent and Collateral Agent)

and

**COBANK, ACB**  
(Syndication Agent)

and

**THE FINANCIAL INSTITUTIONS PARTIES HERETO**  
(Lenders)

617 MW Combined Cycle Power Generation Plant located in Town of Beloit, Wisconsin

# TABLE OF CONTENTS

	PAGE
	----
ARTICLE 1 DEFINITIONS.....	1
1.1    Definitions.....	1
1.2    Rules of Interpretation.....	1
ARTICLE 2 THE TERM LOAN FACILITY.....	2
2.1    Term Loan Facility.....	2
2.2    Fees.....	10
2.3    Other Payment Terms.....	10
2.4    Pro Rata Treatment.....	14
2.5    Change of Circumstances.....	15
2.6    Funding Losses.....	17
2.7    Alternate Office; Minimization of Costs.....	17
ARTICLE 3 CONDITIONS PRECEDENT.....	19
3.1    Conditions Precedent to the Closing Date.....	19
ARTICLE 4 REPRESENTATIONS AND WARRANTIES.....	28
4.1    Organization.....	28
4.2    Authorization; No Conflict.....	28
4.3    Enforceability.....	28
4.4    Compliance with Law.....	29
4.5    Business, Debt, Contracts, Joint Ventures Etc.....	29
4.6    Anti-Terrorism Laws.....	29
4.7    Investment Company Act.....	30
4.8    ERISA.....	30
4.9    Permits.....	30
4.10   Hazardous Substances.....	31
4.11   Litigation.....	32
4.12   Labor Disputes and Acts of God.....	32
4.13   Disclosure.....	33
4.14   Flood Zone Disclosure.....	33
4.15   Taxes.....	33
4.16   Governmental Regulation.....	34
4.17   Regulation U, Etc.....	34
4.18   Initial Operating Budget; Projections.....	35
4.19   Financial Statements.....	35
4.20   No Default.....	35
4.21   Organizational ID Number; Location of Collateral.....	35
4.22   Title and Liens.....	35
4.23   Intellectual Property.....	36

	PAGE
	----
4.24 Collateral.....	36
4.25 Sufficiency of Project Documents.....	37
4.26 Utilities.....	37
4.27 Other Facilities.....	37
4.28 Proper Subdivision.....	38
ARTICLE 5 AFFIRMATIVE COVENANTS.....	38
5.1 Use of Proceeds and Project Revenues.....	38
5.2 Payment.....	38
5.3 Warranty of Title.....	38
5.4 Notices.....	39
5.5 Financial Statements.....	40
5.6 Books, Records, Access.....	41
5.7 Compliance with Laws, Instruments, Applicable Permits, Etc.....	41
5.8 Reports.....	41
5.9 Existence, Conduct of Business, Properties, Etc.....	41
5.10 Debt Service Coverage Ratio.....	42
5.11 Exemption from Regulation.....	42
5.12 Punchlist Items.....	42
5.13 Offer to Prepay Upon Change of Control.....	42
5.14 Operation and Maintenance of Project; Annual Operating Budget.....	43
5.15 Preservation of Rights; Further Assurances.....	44
5.16 Additional Consents.....	45
5.17 Maintenance of Insurance.....	46
5.18 Taxes, Other Government Charges and Utility Charges.....	46
5.19 Event of Eminent Domain.....	46
5.20 Interest Rate Protection.....	47
5.21 Rocky Mountain Distributions.....	47
5.22 Financial Covenants.....	48
5.23 Required HoldCo Transfer.....	48
5.24 Maintenance of Ratings.....	48
ARTICLE 6 NEGATIVE COVENANTS.....	49
6.1 Contingent Liabilities.....	49
6.2 Limitations on Liens.....	49
6.3 Indebtedness.....	49
6.4 Sale or Lease of Assets.....	49
6.5 Changes.....	50
6.6 Distributions.....	50
6.7 Investments.....	51
6.8 Transactions With Affiliates.....	51
6.9 Regulations.....	51
6.10 Partnerships, etc.....	51
6.11 Dissolution; Merger.....	51
6.12 Amendments; Change Orders.....	51
6.13 Name and Location; Fiscal Year.....	52

	PAGE
	----
6.14 Use of Site.....	52
6.15 Assignment.....	52
6.16 Accounts.....	52
6.17 Hazardous Substances.....	53
6.18 Additional Project Documents.....	53
6.19 Assignment By Third Parties.....	53
6.20 Acquisition of Real Property.....	53
6.21 Employee Benefit Plans.....	54
6.22 Power Sales.....	54
6.23 Governing Document Changes.....	54
ARTICLE 7 EVENTS OF DEFAULT; REMEDIES.....	54
7.1 Events of Default.....	54
7.2 Remedies.....	59
ARTICLE 8 SCOPE OF LIABILITY.....	61
ARTICLE 9 AGENTS; SUBSTITUTION.....	62
9.1 Appointment, Powers and Immunities.....	62
9.2 Reliance.....	63
9.3 Non-Reliance.....	64
9.4 Defaults; Material Adverse Effect.....	64
9.5 Successor Agent.....	65
9.6 Authorization.....	66
9.7 Other Roles.....	66
9.8 Amendments and Waivers.....	66
9.9 Withholding Tax.....	68
9.10 General Provisions as to Payments.....	68
9.11 Expenses; Indemnity; Damage Waiver.....	69
9.12 Successors and Assigns.....	70
9.13 Laws.....	74
ARTICLE 10 INDEPENDENT CONSULTANTS.....	74
10.1 Removal and Fees.....	74
10.2 Duties.....	74
10.3 Independent Consultants' Certificates.....	74
10.4 Certification of Dates.....	75
ARTICLE 11 MISCELLANEOUS.....	75
11.1 Addresses.....	75
11.2 Additional Security; Right to Set-Off.....	76
11.3 Delay and Waiver.....	76
11.4 Entire Agreement.....	77
11.5 Governing Law.....	77
11.6 Severability.....	77

	PAGE
	----
11.7	Headings..... 77
11.8	Accounting Terms..... 77
11.9	Additional Financing..... 78
11.10	No Partnership, Etc..... 78
11.11	Mortgage/Collateral Documents..... 78
11.12	Limitation on Liability..... 78
11.13	Waiver of Jury Trial..... 79
11.14	Consent to Jurisdiction..... 79
11.15	Knowledge and Attribution..... 79
11.16	Counterparts..... 79
11.17	Usury..... 80
11.18	Survival..... 80
11.19	Intercreditor Agreement..... 80
11.20	Confidentiality..... 80

## INDEX OF EXHIBITS

Exhibit A	Definitions and Rules of Interpretation
	NOTES
Exhibit B	Form of Note
	LOAN DISBURSEMENT PROCEDURES
Exhibit C-1	Form of Notice of Borrowing
Exhibit C-2	Form of Confirmation of Interest Period Selection
Exhibit C-3	Form of Notice of Conversion of Loan Type
	SECURITY-RELATED DOCUMENTS
Exhibit D-1	Form of Mortgage
Exhibit D-2	Form of Security Agreement
Exhibit D-3	Form of Pledge Agreement
Exhibit D-4	Form of Depositary Agreement
Exhibit D-5	Form of Subordination Agreement
Exhibit D-6	Schedule of Security Filings
Exhibit D-7	Form of Intercreditor Agreement
	CONSENTS
Exhibit E-1	Form of Consent for Contracting Party
Exhibit E-2	Schedule of Closing Date Consents
	CLOSING CERTIFICATES
Exhibit F-1	Form of Borrower's Closing Certificate
Exhibit F-2	Form of Insurance Consultant's Certificate
Exhibit F-3	Form of Independent Engineer's Certificate
Exhibit F-4	Form of Power Market Consultant's Certificate
	PROJECT DESCRIPTION EXHIBITS
Exhibit G-1	Schedule of Applicable Permits
Exhibit G-2	Sources and Uses
Exhibit G-3	Base Case Project Projections
Exhibit G-4	Initial O&M Budget
Exhibit G-5	Pending Litigation
Exhibit G-6	Hazardous Substances Disclosure

OTHER

Exhibit H	Lenders Proportionate Shares
Exhibit I	Amortization Schedule
Exhibit J	Form of Non-Bank Certificate
Exhibit K	Insurance Requirements
Exhibit L	Form of Annual Insurance Certificate
Exhibit M	Form of Assignment and Acceptance

is entered into among RIVERSIDE ENERGY CENTER, LLC, a limited liability company formed under the laws of the State of Wisconsin, as borrower ("Borrower"), the financial institutions listed on Exhibit H or who later become a party hereto, as lenders (the financial institutions party to this Agreement being collectively referred to as the "Lenders"), CREDIT SUISSE FIRST BOSTON, acting through its Cayman Islands Branch, as lead arranger (in such capacity, "Lead Arranger"), as book runner (in such capacity, "Book Runner"), as administrative agent for the Lenders (in such capacity, "Administrative Agent") and as collateral agent for the Secured Parties (in such capacity, "Collateral Agent"), and COBANK, ACB, as syndication agent (in such capacity, "Syndication Agent").

## **RECITALS**

A. Borrower leases, owns, operates, maintains and uses the Project referred to herein, consisting of an approximately 617 megawatt natural gas fired combined cycle electric generating facility located in the Town of Beloit, Wisconsin, and, in connection therewith, Borrower has requested that the Lenders provide senior secured credit facilities in order to repay certain existing indebtedness under the Existing Riverside Credit Facility, fund certain reserves, fund a distribution to the direct or indirect owners of Borrower representing the repayment of capital initially provided to finance the construction or purchase of, or repairs, improvements or additions to, the Site and/or the Project, fund a portion of Borrower's working capital requirements and for such other purposes set forth herein; and

B. The Lenders are willing to provide such financing upon the terms and subject to the conditions set forth herein and in the other Credit Documents.

## **AGREEMENT**

NOW, THEREFORE, in consideration of the agreements herein and in the other Credit Documents and in reliance upon the representations and warranties set forth herein and therein, the parties hereto agree as follows:

### **ARTICLE 1 DEFINITIONS**

#### **1.1 DEFINITIONS.**

Except as otherwise expressly provided, capitalized terms used in this Agreement (including its exhibits and schedules) shall have the meanings given to such terms in Exhibit A.

#### **1.2 RULES OF INTERPRETATION.**

Except as otherwise expressly provided, the rules of interpretation set forth in Exhibit A shall apply to this Agreement and the other Credit Documents.

**ARTICLE 2**  
**THE TERM LOAN FACILITY**

**2.1 TERM LOAN FACILITY.**

2.1.1 Total Term Loan Commitment. Notwithstanding anything that may be construed to the contrary in this Agreement, the aggregate principal amount of all Term Loans made by the Lenders shall not exceed \$368,500,000 (the "Total Term Loan Commitment").

2.1.2 Availability; Term Loans. Subject to the terms and conditions set forth in this Agreement and in reliance upon the representations and warranties of Borrower set forth herein, each Lender severally agrees to make, on the Closing Date, a term loan under this Section 2.1.2 (individually a "Term Loan" and, collectively, the "Term Loans") to Borrower in an amount equal to such Lender's Proportionate Share of the Total Term Loan Commitment. Borrower may make only one borrowing under the Total Term Loan Commitment, which shall be on the Closing Date. Any amount borrowed under this Agreement and subsequently repaid or prepaid may not be reborrowed. All amounts owed hereunder with respect to the Term Loans shall be paid in full no later than the Maturity Date.

**2.1.3 Borrowing Mechanics for Term Loans.**

(a) Notice of Borrowing. On or before the date which is three Banking Days prior to the Closing Date, Borrower shall deliver to Administrative Agent a written notice in the form of Exhibit C-1, appropriately completed (the "Notice of Borrowing"). Such Notice of Borrowing shall be delivered by first-class mail, facsimile or electronic mail to Administrative Agent at the office, to the facsimile number or to the electronic mail address and during the hours specified in Section 11.1. Administrative Agent shall promptly notify each Lender of the contents of such Notice of Borrowing.

(b) Lender Funding. Each Lender shall make the Term Loan to be made by it hereunder available to Administrative Agent not later than 12:00 noon (New York City time) on the Closing Date, by wire transfer of same day funds in Dollars, to the account designated for such purpose from time to time by Administrative Agent. Upon satisfaction or waiver of the conditions precedent specified in Article 3 and subject to Sections 2.1.4 (b) and 2.1.5, Administrative Agent shall make the proceeds of the Term Loans available to Borrower on the Closing Date by causing an amount of same day funds in Dollars equal to the proceeds of all such Term Loans received by Administrative Agent from the Lenders to be credited to one or more accounts as may be designated in writing to Administrative Agent by Borrower.

**2.1.4 Amount of Term Loans; Availability of Funds.**

(a) Amount of Term Loans. All Term Loans shall be made by the Lenders simultaneously in the amount of their respective Term Loan Commitments, it being understood that no Lender shall be responsible for any default by any other Lender in such other Lender's obligation to make a Term Loan hereunder nor shall any Term Loan Commitment of any Lender be increased or decreased as a result of a default by any other Lender in such other Lender's obligation to make a Term Loan hereunder.

(b) Availability of Funds. Unless Administrative Agent shall have been notified by any Lender prior to the Closing Date that such Lender does not intend to make available to Administrative Agent the amount of such Lender's Proportionate Share of the Total Term Loan Commitment, Administrative Agent may assume that such Lender has made such amount available to Administrative Agent on such date in accordance with the prior paragraph and Administrative Agent may, in its sole discretion and in reliance upon such assumption, make available to Borrower a corresponding amount on such date. If such corresponding amount is not in fact made available to Administrative Agent by such Lender, Administrative Agent shall be entitled to recover such corresponding amount on demand (and, in any event, within three Banking Days from the Closing Date) from such Lender together with interest thereon, for each day from the Closing Date until the date such amount is paid to Administrative Agent, at the Federal Funds Rate for the first three Banking Days after the Closing Date. If such Lender pays such amount to Administrative Agent, then such amount shall constitute such Lender's Proportionate Share of the Total Term Loan Commitment. If such Lender does not pay such corresponding amount forthwith upon Administrative Agent's demand therefore or within three Banking Days from the Closing Date, Administrative Agent shall promptly notify Borrower and Borrower shall immediately pay such corresponding amount to Administrative Agent together with interest thereon (but no penalty or premium), for each day from the Closing Date until the date such amount is paid to Administrative Agent, at the rate then payable under this Agreement for Base Rate Term Loans. Nothing in this Section 2.1.4(b) shall be deemed to relieve any Lender from its obligation to fulfill its obligations hereunder or to prejudice any rights that Borrower may have against any Lender as a result of any default by such Lender hereunder.

2.1.5 Use of Proceeds. Borrower shall apply the proceeds of the Term Loans on the Closing Date as follows: (a) \$157,457,127.38 shall be applied to indefeasibly fund the Payout Amount, (b) \$2,073,000 shall be applied to fund the anticipated O&M Costs to be incurred by Borrower during the 30 days immediately following the Closing Date, (c) \$32,019,865 shall be applied to fund the Pre-Funded Punchlist Expense Account, (d) to pay the fees and expenses then due under this Agreement and the other Credit Documents, (e) \$164,527,793.35 shall be applied to fund a distribution to Sponsor representing the repayment of capital initially provided to finance the construction or purchase of, or repairs, improvements or additions to, the Site and/or the Project (such distribution, the "Riverside Closing Date Distribution") and (f) as otherwise set forth on Exhibit G-2. Borrower shall not use any portion of the proceeds of any Term Loan in any manner that causes or might cause the funding of the Term Loans or the application of such proceeds to violate Regulation T, Regulation U or Regulation X or any other regulation of the Federal Reserve Board.

2.1.6 Term Loan Principal Payment. Borrower shall repay to Administrative Agent, for the account of each Lender, the aggregate unpaid principal amount of the Term Loan made by such Lender (as reduced in connection with any voluntary prepayment or Mandatory Prepayments of, or any accepted Mandatory Repayment Offers on, the Term Loans, in accordance with Section 2.1.10) in installments payable on each Principal Repayment Date following the Closing Date in accordance with the repayment schedule set forth on Exhibit I, with any remaining unpaid principal, interest, fees and costs due and payable on the Maturity Date.

### 2.1.7 Interest Provisions Relating to Term Loans.

(a) Term Loan Interest. Except as otherwise set forth herein, Borrower shall pay interest on the unpaid principal amount of each Term Loan from the Closing Date until the maturity or prepayment thereof at one of the following rates per annum:

(i) With respect to the principal portion of such Term Loan which is, and during such periods as such Term Loan is, a Base Rate Term Loan, at a rate per annum equal to the Base Rate (such rate to change from time to time as the Base Rate shall change) plus 3.25%.

(ii) With respect to the principal portion of such Term Loan which is, and during such periods as such Term Loan is, a LIBOR Term Loan, at a rate per annum during each Interest Period for such LIBOR Term Loan equal to the LIBO Rate for such Interest Period plus 4.25%.

(b) Applicable Interest Rate. Subject to Section 2.3.3, the applicable basis for determining the rate of interest with respect to any Term Loan shall be selected by Borrower initially at the time the Notice of Borrowing is given pursuant to Section 2.1.3(a). The basis for determining the interest rate with respect to any Term Loan may be changed from time to time as specified in a Notice of Conversion of Loan Type delivered pursuant to Section 2.1.9. If on any day a Term Loan is outstanding with respect to which notice has not been delivered to Administrative Agent in accordance with the terms of this Agreement specifying the applicable basis for determining the rate of interest, then for that day such Term Loan shall bear interest determined by reference to the Base Rate. Borrower shall not request, and the Lenders shall not be obligated to make, LIBOR Term Loans at any time an Event of Default exists.

(c) Interest Payment Dates. Borrower shall pay accrued interest on the unpaid principal amount of each Term Loan (i) on each Interest Payment Date, and (ii) in all cases, upon repayment or prepayment (to the extent thereof and including Mandatory Prepayments and, to the extent permitted by this Agreement, any optional prepayments), upon conversion from one Type of Loan to another Type of Loan and at maturity (whether by acceleration or otherwise).

(d) LIBOR Term Loan Interest Periods.

(i) The initial Interest Period for all LIBOR Term Loans made on the Closing Date shall be from the Closing Date through October 29, 2004. Thereafter, each subsequent Interest Period selected by Borrower for all LIBOR Term Loans shall be one, two, three or six months or, to the extent that nine or twelve month Interest Periods are available to all Lenders, nine or twelve months. Notwithstanding anything to the contrary in the preceding two sentences, (A) any Interest Period which would otherwise end on a day which is not a Banking Day shall be extended to the next succeeding Banking Day unless such next Banking Day falls in another calendar month, in which case such Interest Period shall end on the immediately preceding Banking Day; (B) any Interest Period which begins on the last Banking Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Banking Day of a calendar month;

(C) Borrower may not select Interest Periods which would leave a greater principal amount of

Term Loans subject to Interest Periods ending after a date upon which Term Loans are or may be required to be repaid (including the Maturity Date and each Principal Repayment Date) than the principal amount of Term Loans scheduled to be outstanding after such date; (D) any Interest Period for a Term Loan which would otherwise end after the Maturity Date shall end on the Maturity Date; (E) LIBOR Term Loans for each Interest Period shall be in the minimum amount of \$5,000,000 or an integral multiple of \$1,000,000 in excess thereof; (F) Borrower may not at any time have outstanding more than five different Interest Periods relating to LIBOR Term Loans; and (G) Borrower shall select Types and Interest Periods for Term Loans corresponding to the "types" and "interest periods" used for floating rate payments in the Interest Rate Agreements so as to create, to the greatest extent possible, a complete hedge.

(ii) Borrower may contact Administrative Agent at any time prior to the end of an Interest Period for a quotation of Interest Rates in effect at such time for given Interest Periods and Administrative Agent shall promptly provide such quotation. Borrower may select an Interest Period telephonically or by electronic mail within the time periods specified in

Section 2.1.9, which selection shall be irrevocable on and after commencement of the applicable Minimum Notice Period. Borrower shall confirm such telephonic or electronic mail notice to Administrative Agent by facsimile on the day such notice is given by delivery to Administrative Agent of a written notice in substantially the form of Exhibit C-2, appropriately completed (a "Confirmation of Interest Period Selection"). If Borrower fails to notify Administrative Agent of the next Interest Period for any LIBOR Term Loans in accordance with this Section 2.1.7(d)(ii), such Term Loans shall automatically convert to Base Rate Term Loans on the last day of the current Interest Period therefor. Administrative Agent shall promptly notify Borrower of each determination of the Interest Rate applicable to each Term Loan.

(e) Interest Computations. All computations of interest on Base Rate Term Loans shall be based upon a year of 365 days or, in the case of a leap year, 366 days, shall be payable for the actual days elapsed (including the first day but excluding the last day), and shall be adjusted in accordance with any changes in the Base Rate to take effect on the beginning of the day of such change in the Base Rate. All computations of interest on LIBOR Term Loans shall be based upon a year of 360 days and shall be payable for the actual days elapsed (including the first day but excluding the last day). Borrower agrees that all computations by Administrative Agent of interest shall be conclusive and binding in the absence of manifest error.

2.1.8 Promissory Notes. The obligation of Borrower to repay the Term Loans made by a Lender and to pay interest thereon at the rates provided herein shall, upon the written request of such Lender, be evidenced by promissory notes in the form of Exhibit B (individually, a "Note" and, collectively, the "Notes"), each payable to the order of such requesting Lender and in the principal amount of such Lender's Term Loan Commitment. Borrower authorizes each such requesting Lender to record on the schedule annexed to such Lender's Note, the date and amount of the Term Loan made by such requesting Lender, and each payment or prepayment of principal thereunder and agrees that all such notations shall constitute prima facie evidence of the matters noted; provided that in the event of any inconsistency between the records or books of Administrative Agent and any Lender's records or Note, the records of Administrative Agent shall be conclusive and binding in the absence of manifest error. Borrower further authorizes each such requesting Lender to attach to and make a part of such requesting Lender's Note continuations of the schedule attached thereto as necessary. No failure to make any such

notations, nor any errors in making any such notations, shall affect the validity of Borrower's obligations to repay the full unpaid principal amount of the Term Loans or the duties of Borrower hereunder or thereunder. Upon the payment in full in cash of the aggregate principal amount of, and all accrued and unpaid interest on, the Term Loans, the Lenders holding such Notes shall promptly mark the applicable Notes cancelled and return such cancelled Notes to Borrower.

2.1.9 Conversion of Loans. Borrower may convert Term Loans from one Type of Term Loans to another Type of Term Loans; provided, however, that (i) any conversion of LIBOR Term Loans into Base Rate Term Loans shall be effective on, and only on, the last day of an Interest Period for such LIBOR Term Loans and (ii) Term Loans shall be converted only in amounts of \$5,000,000 and increments of \$1,000,000 in excess thereof. Borrower shall request such a conversion by delivering to Administrative Agent a written notice in the form of Exhibit C-3, appropriately completed (a "Notice of Conversion of Loan Type"), which contains or specifies, among other things:

- (a) the Term Loans, or portion thereof, which are to be converted;
- (b) the Type of Term Loans into which such Term Loans, or portion thereof, are to be converted;
- (c) if such Term Loans are to be converted into LIBOR Term Loans, the initial Interest Period selected by Borrower for such Term Loans (which Interest Period shall be selected in accordance with Section 2.1.7(d) and if an Interest Period is not so designated a one month Interest Period shall be deemed selected by Borrower);
- (d) the proposed date of the requested conversion (which shall be a Banking Day and otherwise in accordance with this Section 2.1.9; and
- (e) a certification by Borrower that no Event of Default has occurred and is continuing.

Borrower shall so deliver each Notice of Conversion of Loan Type so as to provide at least the applicable Minimum Notice Period. Any Notice of Conversion of Loan Type may be modified or revoked by Borrower through the Banking Day prior to the Minimum Notice Period, and shall thereafter be irrevocable. Each Notice of Conversion of Loan Type shall be delivered by first-class mail, facsimile or electronic mail to Administrative Agent at the office, to the facsimile number or to the electronic mail address and as otherwise specified in Section 11.1; provided, however, that Borrower shall promptly deliver to Administrative Agent the original of any Notice of Conversion of Loan Type initially delivered by facsimile or electronic mail. Administrative Agent shall promptly notify each Lender of the contents of each Notice of Conversion of Loan Type.

2.1.10 Prepayments.

(a) Terms of All Prepayments.

(i) Upon the prepayment of any Term Loan (whether such prepayment is an optional prepayment under Section 2.1.10(b) or a Mandatory Prepayment),

Borrower shall pay to Administrative Agent for the account of the Lender which made such Term Loan and/or Hedge Lender, as applicable, (A) all accrued interest to the date of such prepayment on the amount of such Term Loan prepaid, (B) all accrued fees to the date of such prepayment relating to the amount of such Term Loan being prepaid, (C) to the extent required by the terms of the applicable Interest Rate Agreement, all Hedge Breaking Fees owed by Borrower to such Hedge Lender as a result of such prepayment, and (D) if such prepayment is the prepayment of a LIBOR Term Loan on a day other than the last day of an Interest Period for such LIBOR Term Loan, all Liquidation Costs incurred by such Lender as a result of such prepayment (pursuant to the terms of Section 2.6).

(ii) Notwithstanding the foregoing, but only in respect of any Mandatory Prepayment (other than a Mandatory Prepayment resulting from any Mandatory Repayment Offer accepted by a Lender), Borrower shall have the right, by giving three Banking Days' notice to Administrative Agent, in lieu of prepaying a LIBOR Term Loan on a day other than the last day of an Interest Period for such LIBOR Term Loan, to deposit or cause Administrative Agent to deposit into an account to be held by Depositary Agent (which account shall be subjected to the Lien of the Collateral Documents in a manner reasonably satisfactory to Collateral Agent) an amount equal to the LIBOR Term Loans to be prepaid. Such funds shall be held in such account until the expiration of the Interest Period applicable to the LIBOR Term Loan to be prepaid at which time the amount deposited in such account shall be used to prepay such LIBOR Term Loan and any interest accrued on such amount shall be deposited into the Revenue Account. All Term Loans to be prepaid using the proceeds from such account shall continue to accrue interest at the then applicable interest rate for such Term Loans until actually prepaid. All amounts in such account shall only be invested in Permitted Investments as directed by and at the expense and risk of Borrower.

(iii) All prepayments of Term Loans shall be applied to reduce the remaining payments required under Section 2.1.6 in inverse order of maturity. Borrower may not re-borrow the principal amount of any Term Loan which is prepaid.

(b) Optional Prepayments.

(i) Borrower may not voluntarily prepay Term Loans except as provided in clauses (ii) and (iii) of this Section 2.1.10(b).

(ii) In the event any voluntary prepayment is permitted under this Agreement in accordance with clause (iii) of this Section 2.1.10(b), Borrower may prepay any such Term Loans on any Banking Day in whole or in part, in an aggregate minimum amount of \$5,000,000 and integral multiples of \$1,000,000 (or the remaining amount outstanding) in excess of that amount. All such prepayments shall be made upon (A) in the case of Base Rate Term Loans, one Banking Day's prior written, email or telephonic notice to Administrative Agent by 1:00 p.m. (New York City time) and (B) in the case of LIBOR Term Loans, three Banking Days' prior written, email or telephonic notice to Administrative Agent by 1:00 p.m. (New York City time) and in each case, if given by telephone, promptly confirmed in writing to Administrative Agent (and Administrative Agent will promptly notify each Lender of such notice). Upon the giving of any such notice, the principal amount of the Term Loans specified in such notice shall become due and payable on the prepayment date specified therein. Any prepayment of any Term

Loan pursuant to this Section 2.1.10(b) shall be applied in accordance with Sections 2.4.1 and 9.10. In connection with any optional prepayments under this

Section 2.1.10(b), Borrower shall terminate or partially terminate Hedge Transactions such that the notional amount under all of the Hedge Transactions does not exceed, in the aggregate, the principal amount of Terms Loans outstanding immediately after giving effect to such prepayment.

(iii) Borrower shall not voluntarily prepay Term Loans

(a) at any time on or prior to June 24, 2007 or (b) notwithstanding anything to the contrary in this Section 2.1.10(b)(iii), at any time prior to the date on which Rocky Mountain Borrower's "Obligations" under the Rocky Mountain Credit Agreement (other than those "Obligations" of Rocky Mountain Borrower intended to survive the termination of the Rocky Mountain Credit Agreement) have been paid in full in cash by Rocky Mountain Borrower. Upon the later of (A) June 24, 2007 and (B) the date on which Rocky Mountain Borrower's "Obligations" under the Rocky Mountain Credit Agreement (other than those "Obligations" of Rocky Mountain Borrower intended to survive the termination of the Rocky Mountain Credit Agreement) have been paid in full in cash by Rocky Mountain Borrower, Borrower may voluntarily prepay Term Loans pursuant to the applicable provision below:

(1) Subject to clause (ii) of this Section 2.1.10(b), Borrower may, at its option prepay at any time all, or from time to time any part of, the Term Loans, if such prepayment is (x) after June 24, 2007 but on or before June 24, 2008, in an amount equal to 102% of the principal amount of the Term Loans so prepaid, plus all accrued and unpaid interest thereon and other amounts owed hereunder in connection with such prepayment (including amounts payable under Sections 2.5 and 2.6 hereof), or (y) after June 24, 2008 but on or before June 24, 2009, in an amount equal to 101% of the principal amount so prepaid, plus all accrued and unpaid interest and other amounts thereon owed hereunder in connection with such prepayment (including amounts payable under Sections 2.5 and 2.6 hereof); and

(2) Subject to Section 2.1.10(a) and clause (ii) of this

Section 2.1.10(b), Term Loans may be prepaid at any time without premium or penalty after June 24, 2009.

(c) Mandatory Prepayments. Borrower shall prepay (or cause to be prepaid) Term Loans to the extent required by Section 3.2.2(b), 3.2.2(c) or 3.5 of the Depositary Agreement, Section 2.1.10(d) (to the extent any Mandatory Repayment Offer is accepted by a Lender) or 7.2 of this Agreement or any other provision of this Agreement or any other Credit Document which requires such prepayment (such prepayment, a "Mandatory Prepayment").

(d) Mandatory Repayment Offers.

In the event that, pursuant to Section 5.13, Borrower shall be required to offer to prepay Term Loans, then Borrower shall make an offer to each Lender (a "Mandatory Repayment Offer") in accordance with the following procedures specified below:

(i) Borrower shall make a Mandatory Repayment Offer under this Agreement within 30 days following a Change of Control and shall keep such Mandatory

Repayment Offer open until 5:00 p.m. (New York City time) on the date specified in such Mandatory Repayment Offer, which date shall be no earlier than 30 days and no later than 60 days from the date such Mandatory Repayment Offer was made, except to the extent that a longer period is required by applicable law (the "Offer Period");

(ii) Borrower shall make the Mandatory Repayment Offer by sending a notice to Administrative Agent (for delivery to each Lender) in accordance with Section 11.1. The notice shall contain all instructions and materials necessary to enable the Lenders to accept the Mandatory Repayment Offer for all of their Term Loans pursuant to the Mandatory Repayment Offer. The Mandatory Repayment Offer shall be made to all Lenders. The notice, which shall govern the terms of the Mandatory Repayment Offer, shall state:

(A) the total amount Borrower is offering to prepay (the "Offer Amount"), which amount shall be an amount equal to at least 101% of the aggregate principal amount of Term Loans then outstanding, plus, in each case, accrued and unpaid interest thereon, to but excluding the date of repayment, plus, in each case, any other amount then required to be paid hereunder, and the Mandatory Repayment Date therefor;

(B) that Rocky Mountain Borrower is making the same offer to the Rocky Mountain Lenders to purchase the Rocky Mountain Term Loans;

(C) that the Mandatory Repayment Offer is being made pursuant to this Section 2.1.10(d) and Section 5.13 and the date on which the Mandatory Repayment Offer shall end;

(D) that, unless Borrower defaults in making such payment, any Term Loan with respect to which a Lender accepts the Mandatory Repayment Offer shall cease to accrue interest from and after the Mandatory Repayment Date;

(E) that a Lender that accepts a Mandatory Repayment Offer must accept such Mandatory Repayment Offer with respect to all (but not part) of its Term Loans and all (but not part) of its Rocky Mountain Term Loans; and

(F) that the Lenders shall be entitled to withdraw their acceptance of a Mandatory Repayment Offer if Borrower and Administrative Agent receive, not later than the expiration of the Offer Period, a notice setting forth the name of the Lender, the principal amount of the Term Loans and Rocky Mountain Term Loans for which the Lender previously accepted such Mandatory Repayment Offer and a statement that such Lender is rescinding its acceptance of such Mandatory Repayment Offer under this Agreement and under the Rocky Mountain Credit Agreement; and

(iii) On or before the fifth day after the termination of the Offer Period (the "Mandatory Repayment Date"), Borrower shall (A) to the extent lawful, pay, in accordance with Sections 2.4.1 and 9.10, the amount of Term Loans with respect to which the Mandatory Repayment Offer was accepted (together with all accrued and unpaid interest thereon, to but excluding the date of repayment and any other amount then required to be paid under this Agreement), and (B) deliver to Administrative Agent (for delivery to the Lenders) a certificate duly executed by a Responsible Officer stating the amount of the Term Loans to be repaid in

accordance with the terms of this Section 2.1.10(d). Administrative Agent shall promptly forward the appropriate amount to each Lender being repaid.

## 2.2 FEES.

Borrower agrees to pay to, as applicable, each Lender and each of Administrative Agent, Collateral Agent, Depository Agent and Lead Arranger the fees and expenses in the amounts and at the times separately agreed upon by Borrower and such Person in writing, including those fees and expenses set forth in the Fee Letters.

## 2.3 OTHER PAYMENT TERMS.

2.3.1 Place and Manner. Except as otherwise provided in the Fee Letters or any other provision contained in any of the Credit Documents, Borrower shall make all payments due to any Lender, Collateral Agent, or Administrative Agent hereunder to Administrative Agent, for the account of such Lender, Collateral Agent, or Administrative Agent (as the case may be), to the account designated for such purpose from time to time by Administrative Agent to Borrower, in Dollars and in immediately available funds not later than 1:00 p.m. on the date on which such payment is due. Any payment made after such time on any day shall be deemed received on the Banking Day after such payment is received. Administrative Agent shall disburse to each Lender or Collateral Agent (as the case may be) each such payment received by Administrative Agent for such Lender or Collateral Agent (as the case may be), such disbursement to occur on the day such payment is received if received by 1:00 p.m. or if otherwise reasonably possible, or otherwise on the next Banking Day.

2.3.2 Date. Whenever any payment due hereunder shall fall due on a day other than a Banking Day, such payment shall be made on the next succeeding Banking Day, and such extension of time shall be included in the computation of interest or fees, as the case may be, without duplication of any interest or fees so paid in the next subsequent calculation of interest or fees payable.

2.3.3 Default Interest. Notwithstanding anything to the contrary herein, upon the occurrence and during the continuation of any Event of Default, the outstanding principal amount of all Term Loans and, to the extent permitted by applicable Legal Requirements, any accrued but unpaid interest payments thereon and any accrued but unpaid fees and other amounts hereunder, shall thereafter bear interest (including post-petition interest in any proceeding under applicable Bankruptcy Laws) payable upon demand at a rate that is (a) 2% per annum in excess of the interest rate then otherwise payable under this Agreement with respect to the applicable Term Loans or (b) in the case of any such fees and other amounts, at a rate that is 2% per annum in excess of the interest rate then otherwise payable under this Agreement for Base Rate Term Loans (the "Default Rate"); provided that, in the case of LIBOR Term Loans, upon the expiration of the Interest Period in effect at the time any such increase in interest rate is effective, such LIBOR Term Loans shall thereupon become Base Rate Term Loans and shall thereafter bear interest payable upon demand at a rate that is 2% per annum in excess of the interest rate then otherwise payable under this Agreement for Base Rate Term Loans.

#### 2.3.4 Taxes.

(a) Payments to Be Free and Clear. Except as otherwise provided in this Section 2.3.4 and in Section 9.9, all sums payable by or on behalf of Borrower or any of its Affiliates hereunder and under the other Credit Documents shall (except to the extent required by any applicable Legal Requirement) be paid free and clear of, and without any deduction or withholding on account of, any Tax imposed, levied, collected, withheld or assessed by or within the U.S. or any political subdivision in or of the U.S. or any other jurisdiction from or to which a payment is made by or on behalf of Borrower or such Affiliate.

(b) Withholding of Taxes. If Borrower or any other Person is required by law to make any deduction or withholding on account of any such Tax from any sum paid or payable by or on behalf of Borrower to Administrative Agent, Collateral Agent or any Lender under any of the Credit Documents but excluding, for purposes of this Section 2.3.4, the Interest Rate Agreements, including the Hedge Transactions thereunder:

(i) Borrower shall notify Administrative Agent of any such requirement or any change in any such requirement as soon as Borrower becomes aware of it;

(ii) Borrower shall pay any such Tax before the date on which penalties attach thereto, such payment to be made (if the liability to pay is imposed on Borrower or such other Person) for its own account or (if that liability is imposed on such Administrative Agent, Collateral Agent or Lender, as the case may be) on behalf of and in the name of such Administrative Agent, Collateral Agent or Lender;

(iii) the sum payable by Borrower or such other Person in respect of which the relevant deduction, withholding or payment is required shall be increased to the extent necessary to ensure that, after the making of all deductions, withholding or payments for or with respect to Taxes, such Administrative Agent, Collateral Agent or Lender, as the case may be, receives on the due date a net sum equal to what it would have received had no such deduction, withholding or payment been required or made; and

(iv) within 30 days after paying any sum from which it is required by law to make any deduction or withholding, and within 30 days after the due date of payment of any Tax which it is required by clause (ii) of this Section 2.3.4(b) to pay, Borrower shall deliver to Administrative Agent evidence satisfactory to the other affected parties of such deduction, withholding or payment and of the remittance thereof to the relevant taxing or other authority;

provided that no such additional amount shall be required to be paid to any Lender, Administrative Agent or Collateral Agent under clause (iii) of this

Section 2.3.4(b) except to the extent that any change after the date hereof (in the case of each Lender, Administrative Agent and Collateral Agent listed on the signature pages hereof on the Closing Date) or after the effective date of the Assignment and Acceptance pursuant to which such Lender became a Lender (in the case of each other Lender), as the case may be, in any such requirement for a deduction, withholding or payment as is mentioned therein shall result in either the imposition of deduction, withholding or payment or an increase in the rate of such deduction, withholding or payment from the rate in effect at the date hereof or at the date of such Assignment and

Acceptance, as the case may be, in respect of payments to such Lender, Administrative Agent or Collateral Agent.

(c) Other Taxes. Borrower shall pay any Other Taxes to the relevant taxing or other authority in accordance with applicable Legal Requirements, and shall comply with the requirements of this Section 2.3.4 with respect to such payments.

(d) Indemnification. Subject to the provisions below and the provisions of Section 9.9, Borrower shall indemnify Administrative Agent, Collateral Agent and each Lender for the full amount of Taxes (to the extent Borrower would be required to pay additional amounts with respect to such Taxes pursuant to this Section 2.3.4) or Other Taxes arising in connection with payments made under any of the Credit Documents (including any Taxes or Other Taxes imposed by any jurisdiction on amounts payable under this Section 2.3.4) paid by such Administrative Agent, Collateral Agent or Lender and any penalties, additions to tax, interest and expenses arising from or with respect to such Taxes or Other Taxes, whether or not such Taxes or Other Taxes were correctly or legally asserted; provided that Borrower shall not be obligated to indemnify such Administrative Agent, Collateral Agent or Lender for any penalties, interest or expenses relating to Taxes or Other Taxes arising from such Administrative Agent's, Collateral Agent's or Lender's gross negligence or willful misconduct. Each Lender and each of Administrative Agent and Collateral Agent agrees to give written notice to Borrower of the assertion of any claim against such Lender, Administrative Agent or Collateral Agent relating to such Taxes or Other Taxes as promptly as is practicable after being notified of such assertion, and in no event later than 180 days after the principal officer of such Lender, Administrative Agent or Collateral Agent responsible for administering this Agreement obtains knowledge thereof; provided that any Lender's, Administrative Agent's or Collateral Agent's failure to notify Borrower of such assertion within such 180 day period shall not relieve Borrower of its obligation under this Section 2.3.4 with respect to Taxes or Other Taxes, penalties, interest or expenses arising prior to the end of such period, but shall relieve Borrower of its obligations under this Section 2.3.4 with respect to Taxes or Other Taxes, penalties, interest or expenses between the end of such period and such time as Borrower receives notice from such Lender, Administrative Agent or Collateral Agent as provided herein. Payment under this indemnification shall be made within 30 days from the date any Lender, Administrative Agent or Collateral Agent makes written demand therefor. A certificate setting forth in reasonable detail the amount of such indemnification payment and the basis for determining such indemnification payment, shall be submitted by such Person to Borrower and shall, in the absence of manifest error, be conclusive and binding on Borrower for purposes of this Agreement.

(e) Evidence of Exemption From U.S. Withholding Tax. Administrative Agent, Collateral Agent and each Lender that is not a United States Person (as such term is defined in Section 7701(a)(30) of the Code) for U.S. federal income tax purposes (a "Non-U.S. Lender") shall deliver to the Administrative Agent for transmission to Borrower, on or prior to the Closing Date (in the case of each Lender listed on the signature pages hereof on the Closing Date) or on or prior to the date of the Assignment and Acceptance pursuant to which it becomes a Lender (in the case of each other Lender), and at such other times as may be necessary in the determination of Borrower or the Administrative Agent (each in the reasonable exercise of its discretion):

(i) two original copies of Internal Revenue Service Form W-8BEN or W-8ECI (or any successor forms), properly completed and duly executed by such Administrative Agent, Collateral Agent or Lender, and such other documentation required under the Code and reasonably requested by Borrower to establish that such Administrative Agent, Collateral Agent or Lender is not subject to deduction or withholding of United States federal income tax with respect to any payments to such Administrative Agent, Collateral Agent or Lender of principal, interest, fees or other amounts payable under any of the Credit Documents or is subject to such deduction or withholding at a reduced rate; or

(ii) if such Administrative Agent, Collateral Agent or Lender is not a "bank" or other Person described in Section 881(c)(3) of the Code and is claiming exemption from U.S. federal withholding tax under Section 871(h) or 881(c) of the Code with respect to payments of "portfolio interest", a Certificate Re Non-Bank Status in the form of Exhibit J hereto, together with two original copies of Internal Revenue Service Form W-8 (or any successor form), properly completed and duly executed by such Administrative Agent, Collateral Agent or Lender, and such other documentation required under the Code and reasonably requested by Borrower to establish that such Administrative Agent, Collateral Agent or Lender is not subject to deduction or withholding of United States federal income tax with respect to any payments to such Administrative Agent, Collateral Agent or Lender of interest payable under any of the Credit Documents.

Each Person required to deliver any forms, certificates or other evidence with respect to United States federal income tax withholding matters pursuant to this

Section 2.3.4 hereby agrees, from time to time after the initial delivery by such Person of such forms, certificates or other evidence, whenever a lapse in time or change in circumstances renders such forms, certificates or other evidence obsolete or inaccurate in any material respect, that such Person shall promptly deliver to Administrative Agent for transmission to Borrower two new original copies of Internal Revenue Service Form W-8BEN or W-8ECI, or a Certificate re Non-Bank Status and two original copies of Internal Revenue Service Form W-8, as the case may be, properly completed and duly executed by such Person, and such other documentation required under the Code and reasonably requested by Borrower to confirm or establish that such Person is not subject to deduction or withholding of United States federal income tax with respect to payments to such Person under the Credit Documents or is subject to such deduction or withholding at a reduced rate, or notify Administrative Agent and Borrower of its inability to deliver any such forms, certificates or other evidence. Borrower shall not be required to pay any additional amount to Administrative Agent, Collateral Agent or any Non-U.S. Lender under this Section 2.3.4 or to indemnify Administrative Agent, Collateral Agent or any Non-U.S. Lender under this Section 2.3.4 if such Person shall have failed (1) to deliver the forms, certificates or other evidence referred to in the second sentence of this Section 2.3.4(e), or (2) to notify Administrative Agent and Borrower of its inability to deliver any such forms, certificates or other evidence, as the case may be; provided, if such Person shall have satisfied the requirements of the first sentence of this Section 2.3.4(e) on the Closing Date or on the date of the Assignment and Acceptance pursuant to which it became a Lender, as applicable, nothing in this last sentence of this Section 2.3.4(e) shall relieve Borrower of its obligation to pay any additional amounts pursuant to Section 2.3.4(b) or to indemnify such Non-U.S. Lender under Section 2.3.4(d) in the event that, as a result of any change in any applicable Legal Requirement, or any change in the interpretation, administration or application thereof, such Person is no longer properly entitled to

deliver forms, certificates or other evidence at a subsequent date establishing the fact that such Person is not subject to withholding as described herein. For the avoidance of doubt, to the extent the form provided by Administrative Agent, Collateral Agent or a Lender at the time such Administrative Agent, Collateral Agent or Lender first becomes a party to this Agreement indicates a U.S. withholding tax rate in excess of zero, withholding tax at such rate shall be considered excluded from Taxes.

2.3.5 Application of Payments. Except as otherwise expressly provided herein or in the other Credit Documents, payments made under this Agreement or the other Credit Documents and other amounts received by Administrative Agent, Collateral Agent, Depositary Agent or the Lenders under this Agreement or the other Credit Documents shall first be applied to any fees, costs, charges or expenses payable to Administrative Agent, Collateral Agent, Depositary Agent or the Lenders hereunder or under the other Credit Documents, next to any accrued but unpaid interest then due and owing, and then to outstanding principal then due and owing or otherwise to be prepaid (in each case, such application to be made on a pro rata basis among such applicable Persons).

#### 2.4 PRO RATA TREATMENT.

2.4.1 Borrowings, Commitment Reductions, Etc. Except as otherwise provided herein, (a) the Closing Date Borrowing of Term Loans and any reduction of Total Term Loan Commitment shall be made or allocated among the Lenders pro rata according to their respective Proportionate Shares of such Term Loans or Term Loan Commitment, as the case may be, (b) except in the case of a Mandatory Repayment Offer pursuant to Section 2.1.10(d) whereby payments shall be allocated to each accepting Lender's Term Loans (and not to all Lenders based on Proportionate Shares), each payment of principal of and interest on Term Loans shall be made or shared among the Lenders holding such Term Loans pro rata according to their respective unpaid principal amounts of such Term Loans held by such Lenders, and (c) each payment of any fees payable to all Lenders shall be shared among the Lenders pro rata according to (i) their respective Proportionate Shares of such fees, and (ii) in the case of each Lender which becomes a party to this Agreement hereunder after the Closing Date, the date upon which such Lender so became a party hereunder.

2.4.2 Sharing of Payments, Etc. Except in the case of a Mandatory Repayment Offer pursuant to Section 2.1.10(d) whereby payments shall be allocated to each accepting Lender's Term Loans (and not to all Lenders based on Proportionate Shares), if any Lender shall obtain any payment (whether voluntary, involuntary, through the exercise of any right of setoff, or otherwise) on account of Term Loans owed to it, in excess of its Proportionate Share of payments on account of such Term Loans obtained by all Lenders entitled to such payments, such Lender shall forthwith purchase from the other Lenders such participation in the Term Loans, as the case may be, as shall be necessary to cause such purchasing Lender to share the excess payment ratably with each of them; provided, however, that if all or any portion of such excess payment is thereafter recovered from such purchasing Lender, such purchase from such Lender shall be rescinded and each other Lender shall repay to the purchasing Lender the purchase price to the extent of such recovery together with an amount equal to such other Lender's Proportionate Share (according to the proportion of (a) the amount of such other Lender's required repayment to (b) the total amount so recovered from the purchasing Lender) of

any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered. Borrower agrees that any Lender so purchasing a participation from another Lender pursuant to this Section 2.4.2 may, to the fullest extent permitted by law, exercise all its rights of payment (including the right of setoff) with respect to such participation as fully as if such Lender were the direct creditor of Borrower in the amount of such participation.

## 2.5 CHANGE OF CIRCUMSTANCES.

2.5.1 Inability to Determine Rates. If, on or before the first day of any Interest Period for any LIBOR Term Loans, (a) Administrative Agent determines that the LIBO Rate for such Interest Period cannot be adequately and reasonably determined due to the unavailability of funds in or other circumstances affecting the London interbank market, or (b) Lenders holding aggregate Proportionate Shares of 33-1/3% or more of the outstanding Term Loans shall advise Administrative Agent that (i) the rates of interest for such LIBOR Term Loans do not adequately and fairly reflect the cost to such Lenders of making or maintaining such Term Loans or (ii) deposits in Dollars in the London interbank market are not available to such Lenders (as conclusively certified by each such Lender in good faith in writing to Administrative Agent and to Borrower) in the ordinary course of business in sufficient amounts to make and/or maintain their LIBOR Term Loans, then Administrative Agent shall immediately give notice of such condition to Borrower. After the giving of any such notice and until Administrative Agent shall otherwise notify Borrower that the circumstances giving rise to such condition no longer exist, Borrower's right to request the making of or conversion to, and the Lenders' obligations to make or convert to, LIBOR Term Loans shall be suspended. Any LIBOR Term Loans outstanding at the commencement of any such suspension shall be converted at the end of the then current Interest Period for such Term Loans into Base Rate Term Loans unless such suspension has then ended.

2.5.2 Illegality. If, after the date of this Agreement, the adoption of any Governmental Rule, any change in any Governmental Rule or the application or requirements thereof (whether such change occurs in accordance with the terms of such Governmental Rule as enacted, as a result of amendment, or otherwise), any change in the interpretation or administration of any Governmental Rule by any Governmental Authority, or compliance by any Lender or Borrower with any request or directive (whether or not having the force of law, but if not having the force of law, being of a type with which a Lender customarily complies) of any Governmental Authority (a "Change of Law") shall make it unlawful or impossible for any Lender to make or maintain any LIBOR Term Loan, then such Lender shall immediately notify Administrative Agent and Borrower of such Change of Law. Upon receipt of such notice, (a) Borrower's right to request the making of or conversion to, and the Lender's obligations to make or convert to, LIBOR Term Loans shall be suspended for so long as such condition shall exist, and (b) Borrower shall, at the request of such Lender, either (i) pursuant to Section 2.1.9, convert any then outstanding LIBOR Term Loans into Base Rate Term Loans at the end of the current Interest Periods for such Term Loans, or (ii) immediately repay, to the extent otherwise permitted under this Agreement, pursuant to Section 2.1.10 or convert LIBOR Term Loans of the affected Type into Base Rate Term Loans if such Lender shall notify Borrower that such Lender may not lawfully continue to fund and maintain such Term Loans. Any conversion or prepayment of LIBOR Term Loans made pursuant to the preceding sentence prior to the last day

of an Interest Period for such Term Loans shall be deemed a prepayment thereof for purposes of Section 2.6.

2.5.3 Increased Costs. If, after the date of this Agreement, any Change of Law:

(a) shall subject any Lender to any tax, duty or other charge with respect to any LIBOR Term Loan or Term Loan Commitment in respect thereof, or shall change the basis of taxation of payments by Borrower to any Lender on such a Term Loan or with respect to any such Term Loan Commitment (except for Taxes, Other Taxes or the imposition of or changes in the rate of taxation on the overall net income of any Lender); or

(b) shall impose, modify or hold applicable any reserve, special deposit or similar requirement (without duplication of any reserve requirement included within the applicable Interest Rate through the definition of "Reserve Requirement") against assets held by, deposits or other liabilities in or for the account of, advances or loans by, or any other acquisition of funds by any Lender for any LIBOR Term Loan; or

(c) shall impose on any Lender any other condition directly related to any LIBOR Term Loan or Term Loan Commitment in respect thereof;

and the effect of any of the foregoing is to increase the cost to such Lender of making, issuing, creating, renewing, participating in (subject to the limitations in Section 9.12) or maintaining any such LIBOR Term Loan or Term Loan Commitment in respect thereof or to reduce any amount receivable by such Lender hereunder, then Borrower shall from time to time, within ten days after demand by such Lender, pay to such Lender additional amounts sufficient to reimburse such Lender for such increased costs or to compensate such Lender for such reduced amounts. A certificate setting forth in reasonable detail the amount of such increased costs or reduced amounts and the basis for determination of such amount, submitted by such Lender to Borrower, shall, in the absence of manifest error, be conclusive and binding on Borrower for purposes of this Agreement.

2.5.4 Capital Requirements. If any Lender determines that (a) any Change of Law after the date of this Agreement increases the amount of capital required or expected to be maintained by such Lender, or the Lending Office of such Lender or any Person controlling such Lender (a "Capital Adequacy Requirement"), and (b) the amount of capital maintained by such Lender or such Person which is attributable to or based upon the Term Loans, the Term Loan Commitment or this Agreement must be increased as a result of such Capital Adequacy Requirement (taking into account such Lender's or such Person's policies with respect to capital adequacy), then Borrower shall pay to such Lender or such Person, within ten days after delivery of demand by such Lender or such Person, such amounts as such Lender or such Person shall reasonably determine are necessary to compensate such Lender or such Person for the increased costs to such Lender or such Person of such increased capital. A certificate of such Lender or such Person, setting forth in reasonable detail the computation of any such increased costs, delivered to Borrower by such Lender or such Person shall, in the absence of manifest error, be conclusive and binding on Borrower for purposes of this Agreement.

2.5.5 Notice; Lenders' Rights. Each Lender shall notify Borrower of any event occurring after the date of this Agreement that will entitle such Lender to compensation pursuant to this Section 2.5, as promptly as practicable, and in no event later than 180 days after the principal officer of such Lender responsible for administering this Agreement obtains knowledge thereof; provided that any Lender's failure to notify Borrower within such 180 day period shall not relieve Borrower of its obligation under this Section 2.5 with respect to claims arising prior to the end of such period, but shall relieve Borrower of its obligations under this Section 2.5 with respect to the time between the end of such period and such time as Borrower receives notice from the indemnitee as provided herein. No Person purchasing from a Lender a participation or assignment in any Term Loan or Term Loan Commitment shall be entitled to any payment from or on behalf of Borrower pursuant to Section 2.5.3 or Section 2.5.4 which would be in excess of the applicable proportionate amount (based on the portion of the Term Loan or Total Term Loan Commitment in which such Person is participating) which would then be payable to such Lender if such Lender had not sold a participation or assignment in that portion of the Term Loan or Term Loan Commitment.

## 2.6 FUNDING LOSSES.

If Borrower shall (a) repay or prepay any LIBOR Term Loans on any day other than the last day of an Interest Period for such Term Loans (whether an optional prepayment or a Mandatory Prepayment), (b) fail to borrow any LIBOR Term Loans in accordance with a Notice of Borrowing delivered to Administrative Agent (whether as a result of the failure to satisfy any applicable conditions or otherwise) after such Notice of Borrowing has become irrevocable, (c) fail to convert any Term Loans into LIBOR Term Loans in accordance with a Notice of Conversion of Loan Type delivered to Administrative Agent (whether as a result of the failure to satisfy any applicable conditions or otherwise) after such Notice of Conversion of Loan Type has become irrevocable, (d) fail to continue a LIBOR Term Loan in accordance with a Confirmation of Interest Period Selection delivered to Administrative Agent, or (e) fail to make any prepayment in accordance with any notice of prepayment delivered to Administrative Agent, then Borrower shall, within ten days after demand by any Lender, reimburse such Lender for all reasonable costs and losses incurred by such Lender as a result of such repayment, prepayment or failure ("Liquidation Costs"). Borrower understands that such costs and losses may include losses incurred by a Lender as a result of funding and other contracts entered into by such Lender to fund LIBOR Term Loans (other than non-receipt of the margin applicable to such LIBOR Term Loans). Each Lender demanding payment under this Section 2.6 shall deliver to Borrower a certificate setting forth in reasonable detail the basis for and the amount of costs and losses for which demand is made. Such a certificate so delivered to Borrower shall, in the absence of manifest error, be conclusive and binding as to the amount of such loss for purposes of this Agreement.

## 2.7 ALTERNATE OFFICE; MINIMIZATION OF COSTS.

2.7.1 To the extent reasonably possible, each Lender shall designate an alternative Lending Office with respect to its LIBOR Term Loans and otherwise take any reasonable actions to reduce any liability of Borrower to any Lender under Section 2.3.4, 2.5.3, 2.5.4 or 2.6, or to avoid the unavailability of any Type of Term Loans under Section 2.5.2 so long as (in the case of the designation of an alternative Lending Office) such Lender, in its sole

discretion, determines that (a) such designation is not disadvantageous to such Lender and (b) such actions would eliminate or reduce liability to such Lender. Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or actions within ten Banking Days of demand thereof to Borrower.

2.7.2 Notwithstanding anything to the contrary herein, in the event that:

(a) any Lender (an "Increased-Cost Lender") shall give notice to Borrower that such Lender is a Lender is entitled to receive payments under Sections 2.3.4 or 2.5, (ii) the circumstances which have caused such Lender to be an Increased-Cost Lender or which entitle such Lender to receive such payments shall remain in effect, and (iii) such Lender shall fail to withdraw such notice within five Business Days after Borrower's request for such withdrawal; or

(b) in connection with any proposed amendment, modification, termination, waiver or consent with respect to any of the provisions hereof as contemplated by Section 9.8, the consent of Majority Lenders, Supermajority Lenders or all necessary Lenders, as the case may be, shall have been obtained, except for one or more of such other Lenders (each a "Non-Consenting Lender") whose consent is required shall not have been obtained;

then, with respect to each such Increased-Cost Lender or Non-Consenting Lender (the "Terminated Lender"), Borrower may, by giving written notice to Administrative Agent and any Terminated Lender of its election to do so, elect to cause such Terminated Lender (and such Terminated Lender hereby irrevocably agrees) to assign its outstanding Term Loans in full to one or more Eligible Assignees who are reasonably acceptable to Administrative Agent (each a "Replacement Lender") in accordance with the provisions of Section 9.12 (including the requirement that the Terminated Lender assign its outstanding Rocky Mountain Term Loans to such Replacement Lender in accordance with the Rocky Mountain Credit Agreement) and Borrower shall pay any fees payable thereunder in connection with such assignment; provided:

(i) on the date of such assignment, the Replacement Lender and/or Borrower shall pay to such Terminated Lender an amount equal to the sum of (A) an amount equal to the principal of, and all accrued interest on, all outstanding Term Loans of the Terminated Lender, and (B) an amount equal to all accrued, but theretofore unpaid, fees owing to such Terminated Lender pursuant to Section 2.2;

(ii) on the date of such assignment, the Borrower shall pay any amounts payable to such Terminated Lender pursuant to Section 2.3.4 or 2.5; provided that no premium on such amounts shall be required to be paid;

(iii) in the event such Terminated Lender is a Non-Consenting Lender, each Replacement Lender shall consent, at the time of such assignment, to each matter in respect of which such Terminated Lender was a Non-Consenting Lender; and

(iv) no Event of Default shall have occurred and be continuing at the time of such termination and replacement (other than, in the case of a replacement predicated upon clause (b) above, the Event of Default that is the subject of the vote referred to in clause (b) above).

Upon the prepayment of all amounts owing to any Terminated Lender, such Terminated Lender shall no longer constitute a "Lender" under any of the Credit Documents; provided, any rights of such Terminated Lender to indemnification hereunder shall survive as to such Terminated Lender.

2.7.3 Upon written notice to Administrative Agent, any Lender may designate a Lending Office other than the Lending Office most recently designated to Administrative Agent and may assign all of its interests under the Credit Documents and its Notes (if any) to such Lending Office; provided that such designation and assignment do not at the time of such designation and assignment increase the reasonably foreseeable liability of Borrower under Section 2.3.4, 2.5.3 or 2.5.4 or make an Interest Rate option unavailable pursuant to Section 2.5.2.

### **ARTICLE 3 CONDITIONS PRECEDENT**

#### **3.1 CONDITIONS PRECEDENT TO THE CLOSING DATE.**

The obligation of each Lender to make the Term Loans under this Agreement is subject to the prior satisfaction of each of the following conditions (unless waived in writing by Administrative Agent with the consent of the Lenders) (the date such conditions precedent are so satisfied or waived and the date the Term Loans are made hereunder being referred to as the "Closing Date"):

3.1.1 Resolutions. Delivery to Administrative Agent of a copy of one or more resolutions or other authorizations, in form and substance reasonably satisfactory to Administrative Agent, of Borrower, the Pledgor and Operator (the "Calpine Entities") as of the Closing Date certified by a Responsible Officer of each such Calpine Entity as being in full force and effect on the Closing Date, authorizing, as applicable and among other things, the Borrowing herein provided for, the granting of the Liens under the Collateral Documents and the execution, delivery and performance of this Agreement and the other Operative Documents and any instruments or agreements required hereunder or thereunder to which such Calpine Entity is a party.

3.1.2 Incumbency. Delivery to Administrative Agent of a certificate, in form and substance reasonably satisfactory to Administrative Agent, from each Calpine Entity signed by the appropriate authorized officer or manager of each such Calpine Entity and dated as of the Closing Date, as to the incumbency of the natural Persons authorized to execute and deliver this Agreement and the other Operative Documents and any instruments or agreements required hereunder or thereunder to which such Calpine Entity is a party.

3.1.3 Formation Documents. Delivery to Administrative Agent of:

(a) copies of the articles of incorporation, certificate of incorporation, charter or other state certified constituent documents of each Calpine Entity, certified by the secretary of state of such Calpine Entity's state of incorporation or formation, as applicable; and

(b) copies of the bylaws, limited liability company operating agreement or other comparable constituent documents, if applicable, of each Calpine Entity, certified by a

Responsible Officer of such Calpine Entity as being true, correct and complete on the Closing Date.

3.1.4 Good Standing Certificates. Delivery to Administrative Agent of certificates issued by (a) the secretary of state of the state in which each Calpine Entity is formed or incorporated, as applicable, and (b) in the case of Borrower and Operator, the Secretary of State of Wisconsin, in each case (i) dated a date reasonably close to the Closing Date and (ii) certifying that such Calpine Entity is in good standing and is qualified to do business in, and has paid all franchise taxes or similar taxes due to, such states.

3.1.5 Third Party Approvals. Administrative Agent shall have received all information and copies of all documents and copies of any approval by any Person (including any Governmental Authority) reasonably required in connection with any transaction herein contemplated or contemplated in any other Credit Document, which Administrative Agent may reasonably have requested in connection herewith.

3.1.6 Credit Documents and Project Documents. Delivery to Administrative Agent of (a) executed originals of this Agreement and each other Credit Document to be executed on the Closing Date (including the Notes (if any), the Security Agreement, the Pledge Agreement, the Intercreditor Agreement, the Mortgage, the Depositary Agreement, the Subordination Agreements, but excluding the Consents, the delivery of which is provided for under Section 3.1.31) and any supplements or amendments thereto, all of which shall be in form and substance reasonably satisfactory to the Lenders, and (b) a certified list of, and true, correct and complete copies of, each Major Project Document executed on or prior to the Closing Date, each in form and substance reasonably satisfactory to the Lenders, and, in each case, all of which shall have been duly authorized, executed and delivered by the parties thereto, and all of which Major Project Documents shall be certified by a Responsible Officer of Borrower as being true, complete and correct and in full force and effect on the Closing Date pursuant to the certificate delivered pursuant to Section 3.1.7 below.

3.1.7 Certificate of Borrower. Delivery to Administrative Agent of a certificate, dated as of the Closing Date, duly executed by a Responsible Officer of Borrower, in substantially the form of Exhibit F-1, which certificate shall, among other things, (a) state that neither Borrower nor, to Borrower's knowledge, any other party to any Major Project Document is or, but for the passage of time or giving of notice or both will be, in breach of any material obligation thereunder, (b) state that all conditions precedent to the performance of Borrower, and, to Borrower's knowledge, all conditions precedent to the performance of the other parties under such Major Project Documents then required to have been performed shall have been satisfied, (c) state that the representations and warranties of Borrower in this Agreement and the other Credit Documents are true and correct as of the Closing Date (except to the extent such representation or warranty relates to an earlier date), (d) state that Borrower has complied with all agreements and satisfied all conditions (or such conditions have been waived) on its part to be performed or satisfied hereunder at or prior to the Closing Date, (e) state that, subsequent to December 31, 2003, no Material Adverse Effect has occurred and is continuing except as set forth in or contemplated by the Bank Book or otherwise disclosed in writing to Administrative Agent prior to the Closing Date, (f) state that Borrower is Solvent and (g) contain each other

certification required to be made by a Responsible Officer of Borrower on the Closing Date pursuant to Sections 3.1.6(b), 3.1.18 and 3.1.36.

3.1.8 Legal Opinions. Delivery to Administrative Agent of legal opinions of counsel to the Calpine Entities and, unless otherwise consented to by Administrative Agent, each Major Project Participant, in each case in form and substance reasonably satisfactory to the Lenders.

3.1.9 Certificate and Report of Insurance Consultant. Delivery to Administrative Agent of the Insurance Consultant's certificate, dated as of the Closing Date and in substantially the form of Exhibit F-2, together with the Insurance Consultant's report, in form and substance reasonably satisfactory to the Lenders, attached thereto.

3.1.10 Insurance. Insurance complying with terms and conditions set forth in Exhibit K shall be in full force and effect and Administrative Agent and the Insurance Consultant shall have received a certificate from Borrower's insurance broker(s), dated as of the Closing Date and in form and substance reasonably satisfactory to Administrative Agent, (a) identifying underwriters, type of insurance, insurance limits and policy terms, (b) listing the special provisions required as set forth in Exhibit K, (c) describing the insurance obtained and (d) stating that such insurance is in full force and effect and that all premiums then due thereon have been paid and that, in the opinion of such broker(s), such insurance complies with the terms and conditions set forth in Exhibit K.

3.1.11 Certificate and Report of the Independent Engineer. Delivery to Administrative Agent of the Independent Engineer's certificate, dated as of the Closing Date and in substantially the form of Exhibit F-3, together with the Independent Engineer's report, in form and substance reasonably satisfactory to the Lenders, attached thereto.

3.1.12 Reports of Borrower's Environmental Consultant. Delivery to Administrative Agent of the Environmental Reports along with the corresponding reliance letters, each in form and substance reasonably satisfactory to the Lenders.

3.1.13 Certificate and Report of Power Market Consultant. Delivery to Administrative Agent of the Power Market Consultant's certificate, dated as of the Closing Date and in substantially the form of Exhibit F-4, together with the Power Market Consultant's report, in form and substance reasonably satisfactory to the Lenders, attached thereto.

3.1.14 Schedule of Applicable Permits and Applicable Third Party Permits.

(a) Delivery to Administrative Agent of Exhibit G-1, the schedule of

(i) Permits required by Borrower to lease, own and operate the Project and (ii) all Permits that to Borrower's knowledge are required to be obtained by any Person (other than Borrower) that is party to any Major Project Document or Credit Document in order to perform such Person's obligations thereunder (other than Permits necessary to conduct its business generally and to maintain its existence and good standing), in form and substance reasonably satisfactory to Administrative Agent. Borrower shall also deliver to Administrative Agent copies of each Permit listed in Part I(A) of Exhibit G-1 in form and substance reasonably satisfactory to the Administrative Agent. Except as disclosed in Exhibit G-1, each Applicable Permit listed in Part I(A) of

Exhibit G-1 shall (A) constitute in Administrative Agent's reasonable opinion all of the Applicable Permits as of the Closing Date, (B) have been duly obtained or been assigned in Borrower's name, (C) be in full force and effect, (D) not be subject to any current legal proceeding and (E) not be subject to any Unsatisfied Condition that could reasonably be expected to result in material modification or revocation of such Applicable Permit, and all applicable appeal periods with respect to each such Applicable Permit shall have expired.

(b) Each Major Project Participant shall have duly obtained or have been assigned in the name of such Major Project Participant each Permit listed in Part I(B) of Exhibit G-1. Each Applicable Third Party Permit listed in Part I(B) of Exhibit G-1 shall (i) be in full force and effect, (ii) not be subject to any current legal proceeding and (iii) not be subject to any Unsatisfied Condition that could reasonably be expected to result in material modification or revocation of such Applicable Third Party Permit, and all applicable appeal periods with respect to each such Applicable Third Party Permit shall have expired.

(c) Part II(A) of Exhibit G-1 shall list all other Permits that are not Applicable Permits (as of the Closing Date) required by Borrower to lease, own and operate the Project as contemplated by the Operative Documents. Part II(B) of Exhibit G-1 shall list all other material Permits that to Borrower's knowledge are required to be obtained by any other Person (other than Borrower) that is a party to any Major Project Document or Credit Document (other than Permits necessary to conduct its business generally and maintain its existence and good standing) to perform its obligations under the Major Project Documents or Credit Documents to which it is a party. The Permits listed in Part II of Exhibit G-1 shall, in the Administrative Agent's reasonable opinion, be timely obtainable (i) on or before the date Borrower or the applicable other Person (as identified in Exhibit G-1) requires such Permit, and (ii) without expense materially in excess of the amounts provided therefor in the Base Case Project Projections by Borrower or such other Person.

(d) Except as disclosed in Exhibit G-1, the Permits listed in Part I of Exhibit G-1 shall not be subject to any restriction, condition, limitation or other provision which could reasonably be expected to have a Material Adverse Effect or result in the Project being operated in a manner substantially inconsistent with the assumptions underlying the Base Case Project Projections.

3.1.15 No Change in Tax Laws. No change shall have occurred, since the date upon which this Agreement was executed and delivered, in any law or regulation or interpretation thereof that would subject any Lender to any material unreimbursed Tax or Other Tax.

3.1.16 Absence of Litigation. No action, suit, proceeding or investigation shall have been instituted or threatened in writing against Borrower. No action, suit, proceeding or investigation shall have been instituted or threatened in writing against any other Major Project Participant that (for purposes of this Section 3.1.16, in Administrative Agent's sole discretion) could reasonably be expected to have a Material Adverse Effect.

3.1.17 Payment of Fees. All taxes, fees and other costs payable in connection with the execution, delivery, recordation and filing of the documents and instruments referred to

in this Section 3.1 and due on the Closing Date shall have been paid in full or, as approved by the Lenders, provided for. Borrower shall have paid (or caused to be paid) all outstanding amounts due, as of the Closing Date, and owing to (a) the Lenders, Administrative Agent, Collateral Agent, or Lead Arranger under any fee or other letter or pursuant to Section 2.2, (b) the Lenders' attorneys and consultants (including the Independent Consultants) and the Title Insurer for all services rendered and billed prior to the Closing Date, (c) the Depositary Agent under the Depositary Agreement, and (d) Administrative Agent for any other amounts required to be paid or deposited by Borrower on the Closing Date.

3.1.18 Financial Statements. Delivery to Administrative Agent of accurate and complete copies of the most recent (a) audited annual financial statements of Borrower for the year ended December 31, 2003, (b) audited annual financial statements or Form 10-K of the Sponsor for the year ended December 31, 2003, (c) unaudited quarterly financial statements or Form 10-Q of Borrower and the Sponsor for the fiscal quarter ended on March 31, 2004, and (d) unaudited pro forma balance sheet of Borrower, together with, in the case of Borrower, a certificate from the appropriate Responsible Officer thereof, dated as of the Closing Date and in substantially the form of Exhibit F-1, stating that no material adverse change in the consolidated assets, liabilities, operations or financial condition of such Person has occurred from those set forth in the most recent financial statements provided to Administrative Agent.

3.1.19 Release; Security; UCC Filings.

(a) Release. Collateral Agent shall have received:

(i) certified copies of Uniform Commercial Code Requests for Information or Copies (Form UCC-11), or a similar search report certified by a party acceptable to Collateral Agent, dated a date reasonably near to the Closing Date, listing all effective Financing Statements which name Borrower or Pledgor (under its present names or any previous name) as the debtor, together with copies of such Financing Statements (none of which shall cover any Collateral, other than Financing Statements that evidence (A) Liens granted in connection with the Existing Riverside Credit Facility or (B) Liens permitted to exist hereunder after the Closing Date);

(ii) appropriately completed copies, which have been duly authorized for filing by the appropriate Person, of each UCC Financing Statement Amendment (Form UCC-3) termination statement, if any, necessary to release all Liens of any Person in any Collateral previously granted by Borrower or Pledgor to the extent not permitted under the Credit Documents after the Closing Date (including (A) Liens granted in connection with the Existing Riverside Credit Facility and (B) other existing Liens which are not permitted hereunder after the Closing Date);

(iii) such releases, reconveyances, satisfactions or other instruments as it may reasonably request to confirm the release, satisfaction and discharge in full of all mortgages and deeds of trust at any time delivered by Borrower or Pledgor to secure any Obligations in respect of the Existing Riverside Credit Facility, duly executed, delivered and acknowledged in recordable form by the grantee named therein or its of record successors or assigns; and

(iv) a letter or letters (in form and substance reasonably satisfactory to Administrative Agent) addressed to Collateral Agent and Administrative Agent executed and delivered by the Existing Riverside Administrative Agent, stating the aggregate amount (the "Payout Amount") required to pay in full in cash on the Closing Date all outstanding Obligations under or in respect of the Existing Riverside Credit Facility.

(b) Security. Collateral Agent shall have received:

(i) appropriately completed copies, which have been duly authorized for filing by the appropriate Person, of Uniform Commercial Code Financing Statements or fixture filings naming, as applicable, Borrower or Pledgor as a debtor and Collateral Agent as the secured party, or other similar instruments or documents to be filed under the UCC of all jurisdictions as may be necessary or, in the reasonable opinion of Collateral Agent and its counsel, desirable to perfect the security interests of the Secured Parties pursuant to the Collateral Documents;

(ii) subject to the Intercreditor Agreement, (A) certificates from Pledgor (which certificates shall be accompanied by irrevocable undated stock powers or transfer documents, duly endorsed in blank and otherwise satisfactory in form and substance to Collateral Agent) representing all limited liability company membership interests pledged to the Secured Parties by Pledgor pursuant to the Collateral Documents and (B) all promissory notes or other instruments (duly endorsed, where appropriate, in a manner reasonably satisfactory to Collateral Agent) evidencing any Collateral; and

(iii) such other documents and instruments as Collateral Agent may reasonably request in order to grant and, subject to the Intercreditor Agreement, perfect the security interests contemplated by the Collateral Documents

(c) Filing. All Uniform Commercial Code Financing Statements (Forms UCC-1) or other similar Financing Statements and UCC Financing Statement Amendments (Forms UCC-3) required pursuant to clauses (a) and (b) above (collectively, the "Financing Statements") shall have been filed or recorded or delivered to Collateral Agent for filing or recording.

3.1.20 Annual Operating Budget. Delivery to Administrative Agent of a budget in substantially the form of Exhibit G-2 (the "Initial Operating Budget") for all anticipated O&M Costs and Project Revenues for the period from the Closing Date through December 31, 2004, which Initial Operating Budget shall be satisfactory to the Lenders.

3.1.21 Base Case Project Projections. Delivery to Administrative Agent of the Base Case Project Projections of operating expenses and cash flow for the Project for the period commencing on the Closing Date and ending on December 31, 2023, which Base Case Project Projections shall be in substantially the form of Exhibit G-3 and otherwise in form and substance satisfactory to the Lenders.

3.1.22 No Material Adverse Change. Since December 31, 2003, no Material Adverse Effect has occurred and is continuing.

3.1.23 A.L.T.A. Surveys. Administrative Agent shall have received:

(a) as-built A.L.T.A. surveys of the Site and, subject to Section 3.1.23(b), the Easements, in each case in form and substance reasonably satisfactory to Administrative Agent and the Title Insurer, certified to Borrower, Administrative Agent and the Title Insurer as to completeness and accuracy as of a date that is not more than 30 days prior to the Closing Date by a licensed Wisconsin surveyor reasonably satisfactory to Administrative Agent, showing, among other things, (i) the location and dimensions of the Site and, subject to Section 3.1.23(b), the Easements, including the location of all means of access thereof and all easements and encumbrances relating thereto; (ii) the location and dimensions of all improvements and encroachments located in or on the Site and, subject to Section 3.1.23(b), the Easements; (iii) the existing utility facilities which service the Project and are necessary to its operation (including, as applicable, water, electricity, fuel, telephone, sanitary sewer and storm water distribution and detention facilities); (iv) that the location of the Project and any improvements relating thereto do not encroach on or interfere in any manner that may be unpermitted or may violate the rights of third parties with adjacent property or existing easements, encumbrances or other rights of third parties (whether on, above or below ground), and that there are no gaps, gores, projections, protrusions or other survey defects affecting the Site or, subject to Section 3.1.23(b), the Easements; (v) whether the Site and, subject to Section 3.1.23(b), the Easements, or any portion thereof, are located in a special earthquake or flood hazard zone; and (vii) that no other matters constituting a defect in title exist other than relevant Title Exceptions; and

(b) in lieu of providing as-built A.L.T.A. surveys of the Easements (or any portion thereof) and at Borrower's election, one or more certificates satisfactory to Administrative Agent dated as of a date that is not more than 30 days prior to the Closing Date, from a licensed third party engineering firm or surveyor satisfactory to Administrative Agent, confirming that the applicable Easements provide contiguous real property interests sufficient for the operation and maintenance of all lateral facilities constructed or installed within such Easements and that all such lateral facilities have been constructed or installed within the boundaries of such Easements.

3.1.24 A.L.T.A. Title Policy. Delivery to Administrative Agent of a lender's A.L.T.A. extended coverage policy of title insurance but without a creditors' rights or mechanics' lien exception included therein (except where applicable Governmental Rules prevent the deletion of the mechanics' lien exception, in which case the Sponsor shall provide the Title Insurer with any affidavits or indemnities (with respect to which Borrower shall have no reimbursement obligations) necessary to cause the Title Insurer to issue affirmative coverage with respect to any risk arising due to mechanics' liens in form and substance reasonably satisfactory to Administrative Agent), together with such endorsements thereto as are reasonably required by Administrative Agent, or the unconditional and irrevocable commitment of the Title Insurer to issue such a policy, dated as of the Closing Date, in an amount equal to \$200,000,000 (with such reinsurance arrangements as are reasonably satisfactory to Administrative Agent) issued by the Title Insurer in form and substance satisfactory to Administrative Agent, insuring (or agreeing to insure) that:

(a) Borrower has a good, marketable and insurable (i) leasehold interest in the Site and (ii) easement or other applicable real property interests in the Easements, in each case

free and clear of Liens, encumbrances or other exceptions to title, other than (A) the Title Exceptions and (B) such Liens, encumbrances or other exceptions to title as are reasonably satisfactory to Administrative Agent; and

(b) the Mortgage is (or will be when recorded) a valid first lien on Borrower's interest in the Mortgaged Property, free and clear of all Liens, encumbrances and exceptions to title whatsoever, other than (i) the Title Exceptions and (ii) such Liens, encumbrances or other exceptions to title as are reasonably satisfactory to Administrative Agent.

3.1.25 Real Estate Rights. Borrower and each other Major Project Participant shall have obtained and shall hold all easements or other possessory rights in real estate, together with necessary real property permits and crossing rights (collectively, "Rights of Way") necessary for (a) performance in full of each such Person's obligations under the Operative Documents to which such Person is a party and each Permit to which such Person or its assets is bound by, and (b) the leasing, operation and maintenance of the Project in accordance with the Base Case Project Projections. The use of such Rights of Way shall not encroach on or interfere in any manner that may be unpermitted or may violate the rights of third parties with property adjacent to such Rights of Way or existing easements or other rights (whether on, above or below ground) and the full length of the Rights of Way shall be continuous, without break, gap or interruption.

3.1.26 Regulatory Status. Delivery to Administrative Agent of (a) an order issued by FERC confirming that the Project is an Eligible Facility and that Borrower is an EWG, (b) an order issued by FERC authorizing Borrower to sell electricity at market-based rates and (c) all necessary approvals from any Governmental Authority in respect of the ATCo Interconnection Agreement, the Tolling Agreement and the Power Purchase Agreement, to the extent applicable, and as to Borrower's acquisition of 100% of the ownership interests of Rocky Mountain Borrower.

3.1.27 Establishment of Accounts; Initial Funding. The Accounts required to be established as of the Closing Date for the Project under the Depositary Agreement shall have been established to the satisfaction of Administrative Agent and, on the Closing Date, Borrower shall deposit or cause to be deposited (a) \$2,073,000 in the O&M Account, which amount shall be applied from time to time after the Closing Date in accordance with Section 3.3.2 of the Depositary Agreement, and (b) \$32,019,865 in the Pre-Funded Punchlist Expense Account, which amount shall be applied from time to time after the Closing Date in accordance with Section 3.1.2 of the Depositary Agreement.

3.1.28 Representations and Warranties. Each representation and warranty of Borrower and each other Calpine Entity under the Credit Documents shall be true and correct as of the Closing Date.

3.1.29 No Default. No Event of Default or Inchoate Default shall have occurred and be continuing as of the Closing Date.

3.1.30 Utilities. Delivery to Administrative Agent of reasonably satisfactory evidence that all potable water, sewer, telephone, electric and all other utility services necessary

for the ownership, operation and maintenance of the Project are either contracted for, or readily available on commercially reasonable terms, at the Project.

3.1.31 Consents. Delivery to Administrative Agent of executed Consents from each of the Major Project Participants as set forth on Exhibit E-2, which Consents shall be reasonably satisfactory to Administrative Agent.

3.1.32 Process Agents. Delivery to Administrative Agent of evidence reasonably acceptable to Administrative Agent that each Calpine Entity has appointed Corporation Service Company as its respective agent for service of process in the State of New York in respect of each Credit Document to which such Person is a party which is governed by the laws of the State of New York.

3.1.33 Ratings. The Term Loans shall have received ratings by S&P and Moody's.

3.1.34 Notice of Borrowing. Administrative Agent shall have received a fully executed and delivered Notice of Borrowing from Borrower at least three Banking Days prior to the Closing Date.

3.1.35 Anti-Terrorism Compliance. At least two Banking Days prior to the Closing Date, Administrative Agent shall have received all documentation and other information requested by Administrative Agent, which is required by bank regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the U.S.A. Patriot Act.

3.1.36 Achievement of Commercial Operation. (a) The Project is able to operate and produce electrical energy for commercial sale in accordance with Prudent Utility Practices, applicable Legal Requirements and consistent with the Base Case Project Projections, (b) the "Initial Delivery Date" (as defined in the Power Purchase Agreement) has occurred, and (c) the "Initial Delivery Date" (as defined in the Tolling Agreement) has occurred, in each case as certified by Borrower and verified by the Independent Engineer.

3.1.37 Conditions Precedent to Closing - Rocky Mountain Project. Rocky Mountain Borrower shall have concurrently satisfied each of the conditions set forth in Section 3.1 of the Rocky Mountain Credit Agreement and the Lenders thereunder shall, concurrent with the funding of the Term Loan hereunder, fund the "Term Loans" under the Rocky Mountain Credit Agreement.

3.1.38 Disbursement Authorization Letter. Borrower and Administrative Agent shall have executed and delivered a disbursement authorization letter, in form and substance reasonably satisfactory to Administrative Agent, pursuant to which, among other things, (a) Borrower shall have authorized the disbursement of the proceeds of the Term Loans in a manner consistent with Section 2.1.5 and Exhibit G-2, (b) Borrower shall have authorized Administrative Agent to disburse the Payout Amount directly to the Existing Riverside Administrative Agent, (c) Borrower shall have authorized Administrative Agent to deposit the amounts specified in Section 3.1.27 directly into the applicable Accounts referred to therein and (d) Borrower shall have authorized Administrative Agent to disburse amounts owing to

**ARTICLE 4**  
**REPRESENTATIONS AND WARRANTIES**

Borrower makes the following representations and warranties to and in favor of Administrative Agent, Collateral Agent, Lead Arranger and the Lenders as of the Closing Date (unless such representation and warranty expressly relates solely to another time), all of which shall survive the Closing Date and the making of the Term Loans:

**4.1 ORGANIZATION.**

Borrower is (a) a limited liability company duly formed, validly existing and in good standing under the laws of the State of Wisconsin and (b) is duly qualified as a foreign limited liability company, and is in good standing, in each jurisdiction in which such qualification is required by law. Borrower has all requisite limited liability company power and authority to (i) own or hold under lease and operate the property it purports to own or hold under lease, (ii) carry on its business as now being conducted and as now proposed to be conducted in respect of the Project, (iii) execute, deliver and perform each Operative Document to which it is a party and (iv) take each action as may be necessary to consummate the transactions contemplated thereunder. As of the Closing Date, the Pledgor is the sole member of Borrower.

**4.2 AUTHORIZATION; NO CONFLICT.**

Borrower has duly authorized, executed and delivered each Operative Document to which Borrower is a party (or such Operative Documents have been duly and validly assigned to Borrower and Borrower has authorized the assumption thereof, and has assumed the obligations of the assignor thereunder) and neither Borrower's execution and delivery thereof nor its consummation of the transactions contemplated thereby nor its compliance with the terms thereof

(a) does or will contravene the Governing Documents or any other Legal Requirement applicable to or binding on Borrower or any of its properties which, in the case of such Legal Requirements, could reasonably be expected to have a Material Adverse Effect, (b) does or will contravene or result in any breach of or constitute any default under, or result in or require the creation of any Lien (other than Permitted Liens) upon any of its property under, any material agreement or instrument to which it is a party or by which it or any of its properties may be bound or affected or (c) does or will require the material consent or approval of any Person, and with respect to any Governmental Authority, does or will require any material registration with, or notice to, or any other action of, with or by any applicable Governmental Authority, in each case which has not already been obtained and disclosed in writing to Administrative Agent (except as set forth on Exhibit G-1 or otherwise provided in Sections 4.9.1 and 4.9.2).

**4.3 ENFORCEABILITY.**

Each of the Operative Documents to which Borrower is a party is a legal, valid and binding obligation of Borrower, enforceable against Borrower in accordance with its terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency,

moratorium, reorganization or other similar laws affecting the enforcement of creditors' rights or by the effect of general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law).

#### 4.4 COMPLIANCE WITH LAW.

There are no material violations by Borrower or, to Borrower's knowledge, any Calpine Entity, of any Legal Requirement (including any Hazardous Substance Laws). No notices of any material violation of any Legal Requirement (including any Hazardous Substance Laws) relating to the Project or the Site have been issued, entered or received by Borrower or, to Borrower's knowledge, any Calpine Entity.

#### 4.5 BUSINESS, DEBT, CONTRACTS, JOINT VENTURES ETC.

4.5.1 Borrower has not conducted any business other than the business contemplated by the Operative Documents and, through the Closing Date, the Existing Riverside Credit Agreement, does not have any outstanding Debt or other material liabilities other than pursuant to or allowed by the Operative Documents, and Borrower is not a party to or bound by any material contract other than the Credit Documents and the Major Project Documents to which it is a party.

4.5.2 Borrower is not a general partner or a limited partner in any general or limited partnership or a joint venturer in any joint venture.

4.5.3 Other than Rocky Mountain Borrower, Borrower does not have any Subsidiaries.

#### 4.6 ANTI-TERRORISM LAWS.

4.6.1 To the best of its knowledge, neither Borrower nor any of its Affiliates is in violation of (a) any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto, (b) Executive Order No. 13,224, 66 Fed Reg 49,079 (2001), issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit or Support Terrorism) (the "Executive Order") or (c) the anti-money laundering provisions of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, Public Law 107-56 (October 26, 2001) amending the Bank Secrecy Act, 31 U.S.C. Section 5311 et seq (collectively, "Anti-Terrorism Laws").

4.6.2 To the best of its knowledge, neither Borrower nor any of its Affiliates is any of the following:

(a) a Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(b) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed on the Annex to, or is otherwise subject to the provisions of, the Executive Order;

(c) a Person with whom Borrower is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;

(d) a Person who commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order; or

(e) a Person that is named as a "specially designated national or blocked person" on the most current list published by the U.S. Treasury Department Office of Foreign Asst Control at its official website or any replacement website or other replacement official publication of such list.

4.6.3 To the best of its knowledge, neither Borrower nor any of its Affiliates (a) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Person described in clause (a), (b), (c) or (d) of Section 4.6.2 or clause (d) of Section 4.6.2; (b) deals in, or otherwise engages in any transaction relating to, any property or interest in property blocked pursuant to the Executive Order, or (c) engages in or conspires to engage in any transaction that evades or avoids, or has the purposes of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

4.6.4 No broker or other similar agent (other than the Lead Arranger) is acting for the benefit of Borrower or any of its Affiliates, or benefiting in any capacity, in each case in connection with the Credit Documents.

#### 4.7 INVESTMENT COMPANY ACT.

Neither Borrower nor any other Calpine Entity is an investment company or a company controlled by an investment company, within the meaning of the Investment Company Act of 1940, as amended.

#### 4.8 ERISA.

Either (a) there are no ERISA Plans or Multiemployer Plans for any Calpine Entity or any ERISA Affiliate or (b) (i) each Calpine Entity and each ERISA Affiliate have fulfilled their obligations (if any) under the minimum funding standards of ERISA and the Code for each ERISA Plan, (ii) each such ERISA Plan is in compliance in all material respects with the currently applicable provisions of ERISA and the Code and (iii) neither any Calpine Entity nor any ERISA Affiliate has incurred any liability to the PBGC or an ERISA Plan or Multiemployer Plan under Title IV of ERISA (other than liability for premiums due in the ordinary course). None of any Calpine Entity's assets constitute assets of an employee benefit plan within the meaning of 29 C.F.R. Section 2510.3-101. Borrower does not maintain or contribute to, and is not obligated to contribute to, nor has it at any point of its existence maintained or contributed to, or been obligated to contribute to, any employee-benefit plan subject to ERISA.

#### 4.9 PERMITS.

4.9.1 There are no material Permits under existing Legal Requirements as the Project is currently designed that are or will become Applicable Permits other than the Permits

listed in Exhibit G-1 hereto. Except as disclosed in Exhibit G-1 (as so supplemented), each Permit listed in Part I(A) of Exhibit G-1 is in full force and effect and is not subject to any current legal proceeding or to any Unsatisfied Condition that could reasonably be expected to have a Material Adverse Effect, and all applicable appeal periods with respect thereto have expired. Each Permit listed in Part II(A) of Exhibit G-1 is of a type that is routinely granted upon submission of a timely application and demonstration that the Project complies with applicable standards and Legal Requirements. No Permit listed in Part II(A) is required under applicable Legal Requirement or Project Documents to be obtained before the time contemplated to be obtained by Borrower. No fact or circumstance exists, to Borrower's knowledge, which makes it likely that any Permit identified in Part II(A) of Exhibit G-1 shall not be timely obtainable by Borrower before it becomes an Applicable Permit without expense materially in excess of amounts provided therefor in the Base Case Project Projections. Borrower is in compliance in all material respects with all Applicable Permits.

4.9.2 To Borrower's knowledge, there are no Permits under existing Legal Requirements as the Project is currently designed that are or will become Applicable Third Party Permits other than the Permits listed in Exhibit G-1 hereto other than those, the failure of which to obtain could not reasonably be expected to have a Material Adverse Effect. To Borrower's knowledge, except as disclosed in Exhibit G-1, each Permit listed in Part I(B) of Exhibit G-1 is in full force and effect and is not subject to current legal proceeding or to any Unsatisfied Condition that could reasonably be expected to have a Material Adverse Effect, and all applicable appeal periods with respect thereto have expired. No fact or circumstance exists, to Borrower's knowledge, which makes it likely that any Permit identified in Part II(B) of Exhibit G-1 shall not be timely obtainable by the applicable Person as identified in Exhibit G-1 at a cost consistent with the Base Case Project Projections before it becomes an Applicable Third Party Permit. Except as disclosed in Exhibit G-1, to Borrower's knowledge, each Person as identified in Exhibit G-1 possesses and is in compliance in all material respects with its respective Applicable Third Party Permits.

#### 4.10 HAZARDOUS SUBSTANCES.

4.10.1 Except as set forth in Exhibit G-6: (a) Borrower, with respect to the Site, Improvements or other Mortgaged Property, is not or has not in the past been in violation of any Hazardous Substance Law which violation could reasonably be expected to result in a material liability to Borrower or its properties and assets or in an inability of Borrower to perform its obligations under the Operative Documents; (b) neither Borrower nor, to Borrower's knowledge, any other Person has used, Released, generated, manufactured, produced or stored in, on, under, or about the Site, Improvements or other Mortgaged Property, or transported thereto or therefrom, any Hazardous Substances that could reasonably be expected to subject any Secured Party to liability, or Borrower to material liability, under any Hazardous Substance Law; (c) to Borrower's knowledge, there are no underground tanks, whether operative or temporarily or permanently closed, located on the Site, Improvements or other Mortgaged Property that could reasonably be expected to subject any Secured Party to liability, or Borrower to material liability, under any Hazardous Substance Law; (d) there are no Hazardous Substances used, stored or present at or on the Site, Improvements or other Mortgaged Property, except in compliance with Hazardous Substance Laws and other Legal Requirements or as disclosed in the Environmental Reports; (e) to Borrower's knowledge, there are no Hazardous Substances that

could reasonably be expected to migrate onto the Site, Improvements or other Mortgaged Property that could reasonably be expected to impose on Borrower a material liability, except as disclosed in the Environmental Reports; and (f) to Borrower's knowledge there neither is nor has been any condition, circumstance, action, activity or event that could reasonably be expected to be, or result in, a material violation by Borrower of any Hazardous Substance Law, or to result in liability to any Secured Party or material liability to Borrower under any Hazardous Substance Law.

4.10.2 Except as set forth on Exhibit G-5 or Exhibit G-6, there is no pending or, to Borrower's knowledge, threatened in writing, action or proceeding by any Governmental Authority (including the Public Service Commission of Wisconsin, Wisconsin Department of Natural Resources, Wisconsin Department of Commerce, Town of Beloit, County of Rock, U.S. Army Corps of Engineers and U.S. Environmental Protection Agency) or any other Person which is not a Governmental Authority with respect to the presence or Release of Hazardous Substances in, on, from or to the Site, Improvements or other Mortgaged Property.

4.10.3 Except as set forth in the Environmental Reports, to Borrower's knowledge, there are no past violations that have not been finally resolved or existing violations of any Hazardous Substances Laws by any Person affecting the Site, Improvements or other Mortgaged Property, which violations could reasonably be expected to result in a material liability to Borrower.

#### 4.11 LITIGATION.

(a) No action, suit, proceeding or investigation has been instituted or, to Borrower's knowledge, threatened in writing against Borrower.

(b) Borrower has no knowledge of (i) any action, suit, proceeding or investigation that has been instituted or threatened in writing against, the Pledgor, the Sponsor or any other Major Project Participant, or by which any of them or their properties are bound, which could reasonably be expected to have a Material Adverse Effect, or (ii) any order, judgment or decree that has been issued or proposed to be issued by any Governmental Authority that, as a result of the ownership or operation of the Project by Borrower, the sale of electricity therefrom by Borrower or the entering into of any Operative Document or any transaction contemplated hereby or thereby, could reasonably be expected to cause or deem the Lenders, Administrative Agent, Collateral Agent, the Lead Arranger or Borrower or any Affiliate of any of them to be subject to, or not exempted from, regulation under PUHCA, or treated as a public utility under the laws of the State of Wisconsin as presently constituted and as construed by the courts of Wisconsin, respecting the rates or the financial or organizational regulation of electric utilities. No action, suit or proceeding before or by any court, arbitrator or other Governmental Authority is pending to which any Calpine Entity is a party or to which its business, assets or property is subject and, to Borrower's knowledge, no such action, suit or proceeding is threatened to which any such Calpine Entity or its business, assets or property would be subject that, in either case, questions the validity of any of the Operative Documents.

#### 4.12 LABOR DISPUTES AND ACTS OF GOD.

Neither the business nor the properties of Borrower or, to Borrower's knowledge, any other Major Project Participant are currently affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy, or other casualty (whether or not covered by insurance), which could reasonably be expected to have a Material Adverse Effect.

#### 4.13 DISCLOSURE.

None of this Agreement, the Bank Book nor any certificate or other documentation (other than the Initial Operating Budget or the Base Case Project Projections or other "forward-looking" statements) furnished to the Lead Arranger, Administrative Agent, Collateral Agent, or the Lenders, or to any consultant submitting a report to Administrative Agent, the Lead Arranger or the Lenders, by or, to Borrower's knowledge, on behalf of Borrower with respect to the Project, the Sponsor, the Pledgor, Borrower or any other Calpine Entity or in connection with the transactions contemplated by this Agreement, the other Credit Documents or the description or operation of the Project, taken as a whole, contained (at the time of delivery thereof) any untrue statement of a material fact or omitted (at the time of delivery thereof) to state a material fact necessary in order to make the statements contained herein or therein not misleading in any material respect under the circumstances in which they were made at the time such statements were made (other than any information that was corrected or updated in writing by Borrower or its Affiliates or representatives to the Lead Arranger prior to the Closing Date). There is no fact known to Borrower which has had or could reasonably be expected to have a Material Adverse Effect which has not been disclosed in writing to Administrative Agent, the Lead Arranger, Collateral Agent, or the Lenders by or on behalf of Borrower on or prior to the Closing Date in connection with the transactions contemplated hereby.

#### 4.14 FLOOD ZONE DISCLOSURE.

No material portion of the Collateral includes Improvements that are or will be located in an area that has been identified by the Federal Emergency Management Agency as an area having special flood or mudslide hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968, as amended.

#### 4.15 TAXES.

(a) Borrower has timely filed, or caused to be filed, all federal, state and local tax returns and reports that it is required to file, has paid all material taxes, assessments, utility charges, fees and other governmental charges it is required to pay to the extent due (other than those taxes that it is contesting in good faith and by appropriate proceedings in accordance with the requirements of Section 5.18). Borrower knows of no proposed tax assessment against the Pledgor, or Borrower which could reasonably be expected to have a Material Adverse Effect (other than those proposed tax assessments that Borrower is contesting in good faith and by appropriate proceedings in accordance with the requirements of Section 5.18). In either case, to the extent such taxes, assessments, charges and fees are not due, Borrower or the applicable Calpine Entity has established reserves that are adequate for the payment thereof in conformity with GAAP.

(b) At all times since its formation, Borrower has been an entity with a single owner that is disregarded as separate from its owner for federal income tax purposes. No Form 8832 has ever been filed with respect to Borrower as other than a disregarded entity and no such election shall have been made.

(c) Borrower has no liability for the taxes of any Person (other than Borrower) (i) under Treasury Regulations Section 1.1502-6 (or any similar provision of state, local or foreign law), (ii) as a transferee or successor, (iii) by contract, or (iv) otherwise.

(d) Borrower does not intend to treat the Term Loans (including the incurrence thereof) as being a "reportable transaction" (within the meaning of Treasury Regulation Section 1.6011-4).

#### 4.16 GOVERNMENTAL REGULATION.

4.16.1 Borrower is not, and after giving effect to the borrowing of any Term Loans will not be, subject to regulation (a) under any provision of PUHCA except Section 32 thereof; or (b) under any state law or regulation with respect to rates or the financial or organizational regulation of electric utilities. Borrower is subject to regulation as a "public utility" under the Federal Power Act, as amended ("FPA").

4.16.2 The Project is an Eligible Facility within the meaning of Section 32 of PUHCA, and Borrower has received a determination from the FERC (not subject to any pending challenge, investigation, or proceeding) that it is an "exempt wholesale generator" ("EWG"), within the meaning of Section 32 of PUHCA. Borrower has validly issued orders from the FERC under the FPA, not subject to any pending challenge, investigation, or proceeding, (a) authorizing Borrower to engage in wholesale sales of electricity, ancillary services and, to the extent permitted under its market-based rate tariff, other services at market-based rates, and (b) granting such waivers and blanket authorizations (including blanket authorization to issue securities and to assume liabilities under Section 204 of the FPA and 18 C.F.R. Pt. 34), as are customarily granted to entities with market-based rate authority. With respect to Borrower, the FERC has not imposed any rate caps or mitigation measures other than rate caps and mitigation measures generally applicable to similarly situated marketers or generators selling electricity, ancillary services or other services at wholesale in the geographic market where Borrower conducts its business.

4.16.3 There are no pending complaints filed with the FERC seeking abrogation or modification of a contract for the sale of power by the Borrower.

#### 4.17 REGULATION U, ETC.

Borrower is not engaged principally, or as one of its principal activities, in the business of extending credit for the purpose of "buying", "carrying" or "purchasing" margin stock (each as defined in Regulations T, U or X of the Federal Reserve Board), and no part of the proceeds of the Term Loans or the Project Revenues will be used by Borrower for the purpose of "buying", "carrying" or "purchasing" any such margin stock or for any other purpose which violates the provisions of the regulations of the Federal Reserve Board.

#### 4.18 INITIAL OPERATING BUDGET; PROJECTIONS.

Borrower has prepared the Initial Operating Budget and the Base Case Project Projections and is responsible for developing the assumptions on which such Initial Operating Budget and the Base Case Project Projections are based; and such Initial Operating Budget and the Base Case Project Projections (a) as of the date delivered, updated or supplemented are based on Borrower's good faith reasonable assumptions (including as to all legal and factual matters material to the estimates set forth therein) and (b) as of the date delivered, updated or supplemented are consistent in all material respects with the provisions of the Project Documents executed on or prior to such date.

#### 4.19 FINANCIAL STATEMENTS.

In the case of the financial statements of Borrower delivered pursuant to Section 3.1.18 (other than the financial statements of Borrower delivered pursuant to Section 3.1.18(d)), each such financial statement and information has been prepared in conformity with GAAP and fairly presents, in all material respects, the financial position (on a consolidated and, where applicable, consolidating basis) of Borrower described in such financial statements as at the respective dates thereof and the results of operations and cash flows (on a consolidated and, where applicable, consolidating basis) of Borrower described therein for each of the periods then ended, subject, in the case of any such unaudited financial statements, to changes resulting from audit and normal year-end adjustments and the absence of footnote disclosure. Except for obligations under the Operative Documents to which it is a party, Borrower does not (and will not following the funding of the initial Loans) have any contingent obligations, unmatured liabilities, contingent liability or liability for taxes, long-term lease or forward or long-term commitment required to be shown under GAAP that is not reflected in the foregoing financial statements or the notes thereto and which in any such case is material in relation to the business, results of operations, properties, financial condition or prospects of Borrower.

#### 4.20 NO DEFAULT.

No Event of Default or Inchoate Default which has not been disclosed to Administrative Agent in writing has occurred and is continuing.

#### 4.21 ORGANIZATIONAL ID NUMBER; LOCATION OF COLLATERAL.

4.21.1 Borrower's organizational identification number is WI W041192.

4.21.2 All of the Collateral (other than the Accounts, the membership interests in Borrower and general intangibles) is located on the Site or the Easements or at Borrower's address set forth in Section 11.1; provided that certain equipment may be temporarily removed from the Site and/or Easements from time to time in the ordinary course of business.

#### 4.22 TITLE AND LIENS.

Borrower has (a) good, marketable and insurable (i) leasehold interest in the Site and (ii) easement interest in the Easements (except that title to certain of the Easements which

are licenses may not be insurable), and (b) good, legal and valid title to all other Collateral, in each case free and clear of all Liens other than Permitted Liens.

#### 4.23 INTELLECTUAL PROPERTY.

Except as disclosed in Exhibit G-5:

(a) Borrower owns or possesses all licenses, permits, franchises, authorizations, patents, copyrights, service marks, trademarks and trade names, or rights thereto, that are necessary for the operation of its business, without known conflict with the rights of others;

(b) to the knowledge of Borrower, no product of Borrower infringes in any material respect any license, permit, franchise, authorization, patent, copyright, service mark, trademark, trade name or other right owned by any other Person;

(c) to the knowledge of Borrower, there is no violation by any Person of any right of Borrower with respect to any patent, copyright, service mark, trademark, trade name or other right owned or used by Borrower; and

(d) to the knowledge of Borrower, there exists no pending or threatened claim or litigation against or affecting Borrower contesting its right to sell or use any such product, process, method, substance, part or other material.

#### 4.24 COLLATERAL.

The respective liens and security interests granted to Collateral Agent (for the benefit of the Secured Parties) pursuant to the Collateral Documents (a) constitute as to personal property included in the Collateral a valid security interest and (b) constitute as to the Mortgaged Property included in the Collateral a valid lien and security interest in the Mortgaged Property, in each case to the extent contemplated by the Collateral Documents. The security interest granted to Collateral Agent (for the benefit of the Secured Parties) pursuant to the Collateral Documents in the Collateral consisting of personal property will be perfected (i) with respect to any property that can be perfected by filing, upon the filing of financing statements in the filing offices identified in Exhibit D-6, (ii) with respect to any property that can be perfected by control, upon execution of the Control Agreement and the Depositary Agreement, and (iii) with respect to any property (if any) that can be perfected by possession, upon Collateral Agent receiving possession thereof, and in each case such security interest will be, as to Collateral perfected under the UCC or otherwise as aforesaid, superior and prior to the rights of all third Persons now existing or hereafter arising whether by way of mortgage, lien, security interests, encumbrance, assignment or otherwise, except (i) Title Exceptions and Permitted Liens described in clauses (a) and (e) of the definition of "Permitted Liens," (ii) to the extent required by Governmental Rule, those matters described in clauses (b), (c) and (g) of the definition of "Permitted Liens" and

(iii) with respect to Borrower's membership interest in Rocky Mountain Borrower, the Permitted Liens described in clause (i) of the definition of "Permitted Liens." Except to the extent possession of portions of the Collateral is required for perfection, all such action as is necessary has been taken (or will be taken immediately after the Closing Date) to establish and perfect Collateral Agent's rights in and to the Collateral in existence on such date to the extent Collateral Agent's security interest can be perfected by filing, including any recording, filing, registration, giving of notice

or other similar action. No filing, recordation, re-filing or re-recording other than those listed on Exhibit D-6 hereto is necessary to perfect and maintain the perfection of the interest, title or Liens of the Collateral Documents, and on the Closing Date all such filings or recordings will have been made to the extent Collateral Agent's security interest can be perfected by filing. Borrower has properly delivered or caused to be delivered, or provided control, to Collateral Agent or Depositary Agent all Collateral that permits perfection of the Lien and security interest described above by possession or control to the extent contemplated by the Collateral Documents.

#### 4.25 SUFFICIENCY OF PROJECT DOCUMENTS.

4.25.1 Other than those that can be reasonably expected to be commercially available when and as required, the services to be performed, the materials to be supplied and the real property interests, the Easements and other rights granted, or to be granted, pursuant to the Project Documents in effect as of the Closing Date:

- (a) comprise all of the property interests necessary to secure any right material to the leasing, operation and maintenance of the Project in accordance with all Legal Requirements, all without reference to any proprietary information not owned by or available to Borrower;
- (b) are sufficient to enable the Project to be located and operated on the Site and the Easements; and
- (c) provide adequate ingress and egress from the Site for any reasonable purpose in connection with the operation of the Project.

4.25.2 There are no services, materials or rights required for operation and maintenance of the Project in accordance with the Major Project Documents and the assumptions that form the basis of Base Case Project Projections, other than those (a) to be provided under the Project Documents or

(b) that can reasonably be expected to be commercially available at or for delivery to the Site on commercially reasonable terms consistent with Base Case Project Projections.

#### 4.26 UTILITIES.

All utility services necessary for the operation of the Project consistent with the Base Case Project Projections are available at the Project or can reasonably be expected to be so available as and when required upon commercially reasonable terms consistent with the Base Case Project Projections.

#### 4.27 OTHER FACILITIES.

4.27.1 All roads necessary for the full utilization of the Project for its intended purposes have either been completed or Borrower possesses the necessary rights of way therefor, other than rights of way that can reasonably be expected to be available on commercially reasonable terms as and when needed.

4.27.2 Borrower possesses, or the counterparties to the Major Project Documents (including the Tolling Agreement and Power Purchase Agreement) pursuant to which interconnection facilities will be operated for the benefit of the Project, possess and are obligated to provide or make available to Borrower, all necessary easements, rights of way, licenses, agreements and other rights for the construction, interconnection and utilization of the interconnection facilities (including fuel, water, wastewater and electrical).

#### 4.28 PROPER SUBDIVISION.

The Site has been subdivided or entitled to exception therefrom, and for all purposes the Site may be mortgaged, conveyed and otherwise dealt with as separate legal lots or parcels.

### **ARTICLE 5 AFFIRMATIVE COVENANTS**

Borrower covenants and agrees that until the Termination Date, Borrower shall:

#### 5.1 USE OF PROCEEDS AND PROJECT REVENUES.

##### 5.1.1 Proceeds.

(a) Unless otherwise applied by Administrative Agent pursuant to this Agreement and the other Credit Documents, apply the proceeds of the Term Loans as provided in Section 2.1.5.

5.1.2 Revenues. Unless otherwise applied by Administrative Agent or Collateral Agent pursuant to the terms of this Agreement or the other Credit Documents, apply any Project Revenues, net payments received by Borrower under the Interest Rate Agreements (including any Hedge Transaction thereunder), Insurance Proceeds, Eminent Domain Proceeds and damage payments solely for the purpose, and in the order and manner, provided for in Article 3 of the Depositary Agreement.

#### 5.2 PAYMENT.

5.2.1 Credit Documents. Pay all sums due under this Agreement and the other Credit Documents to which it is a party according to the terms hereof and thereof.

5.2.2 Project Documents. Pay all obligations of Borrower due under the Project Documents, howsoever arising, as and when due and payable, except

(a) such as may be contested in good faith or as to which a bona fide dispute may exist; provided that adequate cash reserves have been established in conformity with GAAP, (b) as could not reasonably be expected to have a Material Adverse Effect and (c) Borrower's trade payables which shall be paid in the ordinary course of business.

#### 5.3 WARRANTY OF TITLE.

Maintain (a) good, marketable and insurable (i) leasehold interest in the Site and (ii) easement interest in the Easements (except that title to certain of the Easements which are licenses may not be insurable), and (b) good, legal and valid title to all of its other respective material properties and assets (other than properties and assets disposed of in the ordinary course of business or otherwise disposed of in accordance with Section 6.4), in each case free and clear of all Liens other than Permitted Liens.

#### 5.4 NOTICES.

Promptly, upon acquiring notice or giving notice (except as otherwise specified below), as the case may be, or obtaining knowledge thereof, give written notice to Administrative Agent of:

5.4.1 promptly, but in no event later than five Banking Days after Borrower has knowledge of the occurrence of any Inchoate Default or Event of Default, a statement of a Responsible Officer of Borrower setting forth details of such Inchoate Default or Event of Default and the action which Borrower has taken and proposes to take with respect thereto (other than litigation strategy and related documentation subject to the attorney-client privilege);

5.4.2 promptly, but in no event later than five Banking Days after Borrower has knowledge or receives notice of (a) any material litigation or governmental proceeding pending or threatened in writing against Borrower or to Borrower's knowledge, any Major Project Participant, provided that in the case of any threatened litigation or governmental proceeding against Borrower, or any litigation or governmental proceeding pending or threatened in writing against any Major Project Participant, such threatened litigation or governmental proceeding or, in the case of a Major Project Participant, actual or threatened litigation or governmental proceeding could reasonably be expected to have a Material Adverse Effect, or (b) any other event, act or condition which could reasonably be expected to result in a Material Adverse Effect;

5.4.3 copies of all notices of material breach or violation given or received by Borrower pursuant to any of the Major Project Documents other than routine correspondences, given or received in the ordinary course of business relating to routine aspects of financing, operating, maintaining or using the Project;

5.4.4 promptly, but in no event later than ten Banking Days after the existence of any of the following conditions, a duly executed certificate of a Responsible Officer of Borrower specifying in detail the nature of such condition and Borrower's proposed response thereto: (a) the receipt by Borrower of any written communication from a Governmental Authority that alleges that Borrower is not in compliance in any material respect with applicable Hazardous Substance Laws or Applicable Permits; or (b) Borrower shall obtain knowledge of any Release of any Hazardous Substance that could form the basis of an Environmental Claim against Borrower which could reasonably be expected to have a Material Adverse Effect;

5.4.5 copies of any Applicable Permit or Applicable Third Party Permit obtained by Borrower or any other Person after the Closing Date;

5.4.6 the existence of a PSCo Security Fund Shortfall (as defined in the Depositary Agreement) and the amount thereof;

5.4.7 promptly, but in no event later than ten Banking Days after the execution thereof, copies of any Project Document Modifications to any Major Project Documents;

5.4.8 the occurrence of any ERISA event described in Section 7.1.5 that would result in aggregate liability to all Calpine Entities and all ERISA Affiliates in excess of \$5,000,000; and

5.4.9 any other information related to Borrower, the Project or the notices provided above reasonably requested by Administrative Agent.

## 5.5 FINANCIAL STATEMENTS.

5.5.1 Deliver or cause to be delivered to Administrative Agent, in form and detail reasonably satisfactory to Administrative Agent (except where GAAP is specifically required):

(a) as soon as practicable and in any event within 60 days after the end of the first, second and third quarterly accounting periods of its fiscal year (commencing with the fiscal quarter ending June 30, 2004), unaudited quarterly financial statements of Borrower as of the last day of such quarterly period and the related statements of income, cash flow, and shareholders' or members' equity (as applicable) for such quarterly period and (in the case of second and third quarterly periods) for the portion of the fiscal year ending with the last day of such quarterly period, setting forth in each case in comparative form corresponding unaudited figures from the preceding fiscal year, all prepared in accordance with GAAP (subject to changes resulting from audit and normal year-end adjustments and the absence of footnote disclosure); and

(b) as soon as practicable and in any event within 120 days after the close of each applicable fiscal year, audited financial statements of Borrower. Such financial statements shall include a statement of equity, a balance sheet as of the close of such year, an income and expense statement, reconciliation of capital accounts (where applicable), a statement of cash flow and summary results of hedging and trading activities, all prepared in accordance with GAAP and certified by an independent certified public accountant selected by the Person whose financial statements are being prepared. Such certificate shall not be qualified or limited because of restricted or limited examination by such accountant of any material portion of the records of Borrower.

5.5.2 Cause to be delivered, along with such financial statements of Borrower, a certificate signed by a Responsible Officer of Borrower, certifying that (a) such Responsible Officer has made or caused to be made a review of the transactions and financial condition of such Person during the relevant fiscal period and that such review has not, to such Responsible Officer's knowledge, disclosed the existence of any event or condition which constitutes an Event of Default or Inchoate Default, or if any such event or condition existed or exists, the nature thereof and the corrective actions that such Person has taken or proposes to take with respect thereto, (b) such Person is in compliance in all material respects with the provisions of each Credit Document to which such Person is a party or, if such is not the case, stating the

nature of such non-compliance and the corrective actions which such Person has taken or proposes to take with respect thereto, and (c) such financial statements are true and correct in all material respects and that no material adverse change in the consolidated assets, liabilities, operations, or financial condition of such Person has occurred since the date of the immediately preceding financial statements provided to Administrative Agent or, if a material adverse change has occurred, the nature of such change. Such certificate shall also include information demonstrating compliance with Section 5.22.

#### 5.6 BOOKS, RECORDS, ACCESS.

(a) Maintain, or cause to be maintained, adequate books, accounts and records with respect to Borrower and the Project; and (b) subject to requirements of Governmental Rules, safety requirements and existing confidentiality restrictions imposed upon Borrower by any other Person, permit employees or agents of Administrative Agent and the Independent Consultants at any reasonable times and upon reasonable prior notice to Borrower or Operator, as applicable, to inspect all of Borrower's properties, including the Site, to examine or audit all of Borrower's books, accounts and records and make copies and memoranda thereof, to communicate with Borrower's auditors (with a representative of Borrower present, if Borrower so requests).

#### 5.7 COMPLIANCE WITH LAWS, INSTRUMENTS, APPLICABLE PERMITS, ETC.

Comply, or cause compliance (except where noncompliance could not reasonably be expected to have a Material Adverse Effect) with all Legal Requirements (including Legal Requirements and Applicable Permits relating to pollution control, environmental protection, equal employment opportunity or employee benefit plans, ERISA Plans and employee safety, with respect to Borrower or the Project), and make such alterations to the Project and the Site as may be required for such compliance.

#### 5.8 REPORTS.

5.8.1 Deliver to Administrative Agent within 30 days of the end of each fiscal quarter after the Closing Date, a summary operating report with respect to the Project, which shall include, with respect to the period most recently ended, (a) a monthly and year-to-date numerical and narrative assessment of (i) the Project's compliance with each material category in the then-current Annual Operating Budget, (ii) electrical production and delivery, (iii) fuel deliveries and use, including heat rate, and (iv) plant and unit availability, including trips and scheduled and unscheduled outages; and (b) to the extent applicable, a comparison of year-to-date figures to corresponding figures provided in the prior year.

5.8.2 Within 30 days after each annual policy renewal date, deliver to Administrative Agent a certificate, substantially in the form of Exhibit L hereto, and otherwise in form and substance reasonably satisfactory to Administrative Agent in consultation with the Insurance Consultant, certifying that the insurance requirements of Exhibit K have been implemented and are being complied with in all material respects.

#### 5.9 EXISTENCE, CONDUCT OF BUSINESS, PROPERTIES, ETC.

Except as otherwise expressly permitted under this Agreement, (a) maintain and preserve its existence as a Wisconsin limited liability company, (b) maintain and preserve all its material rights, privileges and franchises necessary in the normal conduct of its business, (c) subject to Section 5.2.2, perform (to the extent not excused by force majeure events or the nonperformance of the other party and not subject to a good faith dispute) all of its contractual obligations under the Major Project Documents to which it is party or by which it is bound, except to the extent that any such failure to perform could not reasonably be expected to have a Material Adverse Effect, (d) maintain all Applicable Permits and use reasonable efforts to cause all Major Project Participants to maintain all Applicable Third Party Permits, except to the extent that any such failure to maintain could not reasonably be expected to have a Material Adverse Effect, and (e) at or before the time that any Permit becomes an Applicable Permit, obtain such Permit.

#### 5.10 DEBT SERVICE COVERAGE RATIO.

In no event later than fifteen (15) Banking Days after each Principal Repayment Date, calculate and deliver to Administrative Agent the Debt Service Coverage Ratio for the Calculation Period for such Principal Repayment Date. The calculations of Debt Service Coverage Ratios hereunder shall be used in determining the application and distribution of funds pursuant to Section 6.6 of this Agreement and Section 3.7 of the Depository Agreement.

#### 5.11 EXEMPTION FROM REGULATION.

Take or cause to be taken all necessary or appropriate actions so that (a) (i) Borrower will be an EWG and (ii) the Project will be an Eligible Facility at all times hereunder or (b) Borrower and the Project shall not be subject to, or shall be exempt from, financial or organizational regulation as a "public utility company" or "public utility holding company" under PUHCA or financial, organizational or rate regulation as a public utility under the laws of the State of Wisconsin as presently constituted and as construed by the courts of Wisconsin, and (c) Borrower will be authorized to sell electricity at market-based rates, with all waivers of regulations and blanket authorizations as are customarily granted by the FERC to entities with market-based rate authority.

#### 5.12 PUNCHLIST ITEMS.

Work diligently to complete the Punchlist Items and, upon completion of all the Punchlist Items, deliver to Administrative Agent a certificate (verified by the Independent Engineer) certifying that the Punchlist Items have been completed.

#### 5.13 OFFER TO PREPAY UPON CHANGE OF CONTROL.

If a Change of Control occurs, make a Mandatory Repayment Offer on the terms set forth herein and in Section 2.1.10(d). In such Mandatory Repayment Offer, Borrower shall offer to prepay each Lender's Term Loans in an amount equal to at least 101% of the aggregate principal amount of Term Loans then outstanding, plus, in each case, accrued and unpaid interest thereon, to but excluding the date of repayment, plus, in each case, any other amount then required to be paid hereunder. Notwithstanding anything in this Agreement to the contrary, Borrower shall not be required to make a Mandatory Repayment Offer upon a Change of Control

if a third party makes the Mandatory Repayment Offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Agreement applicable to a Mandatory Repayment Offer required upon a Change of Control and repays all Term Loans (and the other amounts required to be paid pursuant to clause (a) above) required to be repaid pursuant thereto.

#### 5.14 OPERATION AND MAINTENANCE OF PROJECT; ANNUAL OPERATING BUDGET.

5.14.1 Keep the Project, or cause the same to be kept, in good operating condition consistent in all material respects with the standard of care set forth in the O&M Agreement, all Applicable Permits (and, if applicable, Applicable Third Party Permits), Legal Requirements and the Operative Documents, and make or cause to be made all repairs (structural and non-structural, extraordinary or ordinary) necessary to keep the Project in such condition.

5.14.2 Operate and maintain the Project, or cause the same to be operated and maintained, in a manner consistent in all material respects with Prudent Utility Practices and in compliance with the terms of the Tolling Agreement and the Power Purchase Agreement.

5.14.3 On the Closing Date and thereafter 60 days prior to the beginning of each subsequent calendar year, submit an operating plan and a budget, detailed by month, of anticipated revenues and anticipated expenditures under all Waterfall Levels, and anticipated expenditures from the Major Maintenance Reserve Account, such budget to include Debt Service, proposed dividend distributions, Major Maintenance, reserves and all anticipated O&M Costs (including reasonable allowance for contingencies) applicable to the Project for the ensuing calendar year (or, in the case of the Initial Operating Budget, partial calendar year) (each such annual operating plan and budget, including the Initial Operating Budget, an "Annual Operating Budget"). Each Annual Operating Budget (other than the Initial Operating Budget) shall be deemed approved so long as the aggregate amount of anticipated O&M Costs remains within 125% of the amount proposed to be expended by Borrower for all such items during the applicable calendar year (as determined by reference to the then-current Annual Operating Budget); it being acknowledged that the 125% limitation shall not apply to any anticipated Variable O&M Costs to the extent that such anticipated Variable O&M Costs result from the anticipated dispatch of the Project at levels in excess of the levels contemplated by such Annual Operating Budget. In the event that such Annual Operating Budget shall not be deemed approved as provided in the preceding sentence, such Annual Operating Budget shall be subject to the reasonable approval of Administrative Agent acting in consultation with the Independent Engineer, such approval not to be unreasonably withheld. Failure by Administrative Agent to approve or disapprove such draft Annual Operating Budget within 30 days after receipt thereof shall be deemed to be an approval by Administrative Agent of such draft as the final Annual Operating Budget. Borrower shall consider in good faith Administrative Agent's suggestions in preparation of a final Annual Operating Budget (if not deemed approved as provided above). Borrower shall prepare a final Annual Operating Budget no less than 30 days in advance of the anticipated date of commencement of each subsequent calendar year following the Closing Date. The O&M Costs in each Annual Operating Budget which are subject to escalation limitations in the Project Documents shall not, absent extraordinary circumstances, be increased by more than the amounts provided in such Project Documents.

5.14.4 Borrower shall operate and maintain the Project, or cause the Project to be operated and maintained, within amounts for all Operating Budget Categories not to exceed 125% (on a year-to-date basis), in each case of the amounts budgeted therefor as set forth in the then-current Annual Operating Budget as approved or deemed approved by Administrative Agent; provided, however, that (a) subject to Section 6.12, Borrower may propose an amendment to the Annual Operating Budget for Administrative Agent's approval if at any time Borrower cannot comply with the provisions of this Section 5.14.4 (and Administrative Agent shall consider each such amendment in good faith and shall not unreasonably withhold its consent to the approval of any such amendment), (b) the 125% limitation shall not apply to Variable O&M Costs to the extent that such Variable O&M Costs result from the dispatch of the Project at levels in excess of the levels contemplated by the then-current Annual Operating Budget, and (c) the 125% limitation shall not apply to Emergency Operating Costs to the extent that, after deducting such Emergency Operating Costs from the applicable calculation, Borrower otherwise remains in compliance with such 125% limitation. Pending approval of any Annual Operating Budget or amendment thereto in accordance with the terms of this Section 5.14.4, Borrower shall use its best efforts to operate and maintain the Project, or cause the Project to be operated and maintained, within the then-current Annual Operating Budget (it being acknowledged that if a particular calendar year's Annual Operating Budget has not been approved by the time periods provided in Section 5.14.3, then the then-current Annual Operating Budget shall be deemed to be the Annual Operating Budget in effect prior to the delivery of the proposed final Annual Operating Budget pursuant to Section 5.14.3); provided that the amounts specified therein shall be increased to the extent specified in the Project Documents.

#### 5.15 PRESERVATION OF RIGHTS; FURTHER ASSURANCES.

5.15.1 Maintain in full force and effect, perform in all material respects (subject to Section 5.2) the obligations of Borrower under, preserve, protect and defend the material rights of Borrower under and, take all reasonable action necessary to prevent termination (except by expiration in accordance with its terms) of each and every Major Project Document, including (where Borrower in the exercise of its business judgment deems it proper) prosecution of suits to enforce any material right of Borrower thereunder and enforcement of any material claims with respect thereto; provided, however, that upon the occurrence and during the continuance of an Event of Default if Administrative Agent requests that certain actions be taken and Borrower fails to take the requested actions within five Banking Days, Administrative Agent or Collateral Agent (as applicable) may enforce in its own name or in Borrower's name, such rights of Borrower, all as more particularly provided in the Security Agreement and the other Credit Documents.

5.15.2 From time to time, execute, acknowledge, record, register, deliver and/or file all such notices, statements, instruments and other documents (including any memorandum of lease or other agreement, financing statement, continuation statement, certificate of title or estoppel certificate), relating to the Term Loans stating the interest and charges then due and any known Events of Default or Inchoate Defaults, and take such other steps as may be necessary or advisable to render fully valid and enforceable under all applicable laws the rights, liens and priorities of the Secured Parties with respect to all Collateral and other security from time to time furnished under this Agreement and the other Credit Documents or intended to be so furnished, in each case in such form and at such times as shall be reasonably requested by Collateral Agent,

and pay all reasonable fees and expenses (including reasonable attorneys' fees) incident to compliance with this Section 5.15.2.

5.15.3 If Borrower shall at any time acquire any real property or leasehold or other interest in real property not covered by the Mortgage, then promptly upon such acquisition, execute, deliver and record a supplement to the Mortgage, reasonably satisfactory in form and substance to Administrative Agent, subjecting the real property or leasehold or other interests to the Lien and security interest created by the Mortgage. If reasonably requested by Administrative Agent, Borrower shall obtain an appropriate endorsement or supplement to the Title Policy insuring the Lien of the Secured Parties in such additional property, subject only to Permitted Liens and other exceptions to title approved by Administrative Agent.

5.15.4 Upon the request of Administrative Agent or Collateral Agent, execute and deliver all documents as shall be necessary or that Administrative Agent or Collateral Agent (as the case may be) shall reasonably request in connection with the rights and remedies of Administrative Agent or Collateral Agent (as the case may be) and the Lenders under the Operative Documents, and perform, such other reasonable acts as may be necessary to carry out the intent of this Agreement and the other Credit Documents (including any such acts necessary to implement a Required HoldCo Transfer).

5.15.5 Take such action, including the execution and filing of all such documents and instruments, as may be necessary to effect and continue the appointment of Corporation Service Company as its agent for service of process in full force and effect, or if necessary by reason of any fact or condition relating to such agent, to replace such agent (but only after having given notice and evidence thereof to Administrative Agent).

5.15.6 From and after the Support Date (as defined below), if and to the extent that Rocky Mountain Borrower is unable to satisfy all of its payment obligations to the Rocky Mountain Secured Parties, then Borrower shall promptly contribute cash equity which is otherwise available for distribution pursuant to Waterfall Level 9 of Section 3.2.2(b) of the Depositary Agreement or Waterfall Level 4 of Section 3.2.2(d) of the Depositary Agreement, as applicable, to Rocky Mountain Borrower in an amount equal to the amount of such shortfall (the "Required Cash Contribution"); it being understood that (a) as of the date hereof, the Support Date has not occurred and will not occur unless certain debt instruments of Sponsor and its subsidiaries are amended or replaced so as to permit Borrower's commitment to make the Required Cash Contribution, (b) there is no reason to believe that the Support Date will occur and (c) neither Borrower nor any of its Affiliates is under any obligation to use any efforts cause the Support Date to occur. The "Support Date" is the first date on which Borrower's commitment to make the Required Cash Contribution is permitted by the debt instruments of the Sponsor and its subsidiaries (including requirements in such instruments relating to the non-recourse nature of the Rocky Mountain Term Loans), as determined in good faith by the managers of Borrower in their sole discretion.

#### 5.16 ADDITIONAL CONSENTS.

With respect to (a) any Major Project Document (including any Additional Project Document) entered into after the Closing Date and (b) any Major Project Document

entered into by a Replacement Obligor pursuant to Section 6.15 or Article 7, in each case cause the applicable counterparty or Replacement Obligor, as applicable, to execute and deliver to Administrative Agent a Consent in substantially the form of Exhibit E-1, with such changes as are reasonably acceptable to Administrative Agent.

#### 5.17 MAINTENANCE OF INSURANCE.

Without cost to the Secured Parties, maintain or cause to be maintained on its behalf in effect at all times the types of insurance required pursuant to Exhibit K, in the amounts and on the terms and conditions specified therein, from the quality of insurers specified in such Exhibit or other insurance companies of recognized responsibility reasonably satisfactory to Administrative Agent.

#### 5.18 TAXES, OTHER GOVERNMENT CHARGES AND UTILITY CHARGES.

Subject to the second sentence of this Section 5.18, timely file all material tax returns and pay, or cause to be paid, as and when due and prior to delinquency, all material taxes, assessments and governmental charges of any kind that may at any time be lawfully assessed or levied against or with respect to Borrower or the Project, including sales and use taxes and real estate taxes, all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Project, and all assessments and charges lawfully made by any Governmental Authority for public improvements that may be secured by a Lien on the Project. Borrower may contest in good faith any such taxes, assessments and other charges and, in such event, may permit the taxes, assessments or other charges so contested to remain unpaid during any period, including appeals, when Borrower is in good faith contesting the same, so long as (a) reserves to the extent required by GAAP have been established in an amount sufficient to pay any such taxes, assessments or other charges, accrued interest thereon and potential penalties or other costs relating thereto, or other adequate provision for the payment thereof shall have been made and maintained at all times during such contest, (b) enforcement of the contested tax, assessment or other charge is effectively stayed for the entire duration of such contest, and (c) any tax, assessment or other charge determined to be due, together with any interest or penalties thereon, is promptly paid after resolution of such contest.

#### 5.19 EVENT OF EMINENT DOMAIN.

If an Event of Eminent Domain shall occur with respect to any Collateral, (a) diligently pursue all its rights to compensation against the relevant Governmental Authority in respect of such Event of Eminent Domain, (b) not, without the written consent of Administrative Agent (which consent shall not be unreasonably withheld or delayed), compromise or settle any claim against such Governmental Authority if such compromise or settlement could reasonably be expected to have a Material Adverse Effect, and (c) pay or apply all Eminent Domain Proceeds in accordance with Section 3.5 of the Depositary Agreement. Borrower consents to, and agrees not to object to or otherwise impede or impair, the participation of Administrative Agent in any eminent domain proceedings, and Borrower shall from time to time deliver to Administrative Agent all documents and instruments requested by it to permit such participation.

## 5.20 INTEREST RATE PROTECTION.

5.20.1 Compliance With Interest Rate Agreements. Within 45 days after the Closing Date, enter into one or more Interest Rate Agreements with one or more banks or financial institutions for a period commencing on such date and ending on or after June 24, 2009 in a notional amount equal to at least seventy-five percent (75%) of the anticipated amount of Term Loans projected to be outstanding during such period (which anticipated amount (a) shall be determined by reference to the Base Case Project Projections, and (b) shall take into account any scheduled or projected repayments or prepayments of Term Loans contemplated thereunder. Furthermore, Borrower shall at all times comply with and maintain in full force and effect through the end of such period such Interest Rate Agreements. All such Interest Rate Agreements shall be on terms and conditions reasonably satisfactory to Administrative Agent.

5.20.2 Hedge Breaking Fees. To the extent required pursuant to the terms of the Hedge Transactions, pay all costs, fees and expenses incurred by Borrower in connection with any unwinding, breach or termination of such Hedge Transactions ("Hedge Breaking Fees"), all to the extent provided in and as calculated pursuant to the applicable Interest Rate Agreements.

5.20.3 Security. Each Interest Rate Agreement provided by a Lender (or an Affiliate thereof) hereunder, including all Hedge Transactions thereunder, entered into in accordance with the terms of this Agreement, and all Hedge Breaking Fees shall be and are hereby secured by any Collateral Documents, pari passu with the Term Loans. The parties hereto agree that, for purposes of any sharing of Collateral under the Collateral Documents, any Hedge Lender, in its capacity as a counterparty or intermediary to the Interest Rate Agreements, shall be deemed to have made a Term Loan to Borrower in an amount equal to the unpaid amount of any Hedge Breaking Fees owed by Borrower to such Hedge Lender, under any such Hedge Transaction on the date that an Early Termination Date (as defined in the applicable Interest Rate Agreement) occurs. For purposes of any such Collateral sharing, and for purposes of voting on matters under this Agreement to the extent specified in the definition of "Proportionate Share," such Hedge Lender shall be deemed a Lender under the Collateral Documents to the extent of such Term Loan.

5.20.4 Lender Participation. At the election of the counterparty to any Interest Rate Agreement, the Lenders may participate in such Interest Rate Agreements and Hedge Transactions thereunder in proportion to their respective Proportionate Shares by means of a risk sharing agreement in form and substance satisfactory to such Lenders, provided, that if any such Lender's Lending Office is in the State of New York, such Lender may designate another branch to enter into such risk sharing agreement.

## 5.21 ROCKY MOUNTAIN DISTRIBUTIONS.

5.21.1 From and after the Closing Date and until Rocky Mountain Borrower has repaid in full the outstanding principal amount of the Rocky Mountain Term Loans (together with all interest thereon and fees related thereto) under the Rocky Mountain Credit Documents, cause Rocky Mountain Borrower to distribute to Borrower all amounts on deposit in the Rocky Mountain Revenue Account following application of Rocky Mountain Waterfall Levels 1 through 9 pursuant to Section 3.2.2(b) of the Rocky Mountain Depositary Agreement.

5.21.2 From and after the date on which Rocky Mountain Borrower has repaid in full the outstanding principal amount of the Rocky Mountain Term Loans (together with all interest thereon and fees related thereto) under the Rocky Mountain Credit Documents, cause Rocky Mountain Borrower to distribute to Borrower all amounts on deposit in the Rocky Mountain Revenue Account following application of Rocky Mountain Waterfall Level 1 through 3 pursuant to Section 3.2.2(d) of the Rocky Mountain Depositary Agreement.

## 5.22 FINANCIAL COVENANTS.

5.22.1 As of December 31, 2004, cause the Consolidated Debt Service Coverage Ratio for the period commencing on the Closing Date and ending on December 31, 2004 to be equal to or greater than 1.20 to 1.

5.22.2 As of June 30, 2005, cause the Consolidated Debt Service Coverage Ratio for the period commencing on the Closing Date and ending on June 30, 2005 to be equal to or greater than 1.20 to 1.

5.22.3 As of the last day of each fiscal quarter of Borrower (commencing on September 30, 2005), cause the Consolidated Debt Service Coverage Ratio for the period of four consecutive fiscal quarters most recently ended on or prior to such date to be equal to or greater than 1.20 to 1.

5.22.4 As of December 31, 2004, cause the ratio of (a) the product of (i) the then aggregate outstanding principal amount of Term Loans and Rocky Mountain Term Loans and (ii) 0.50 to (b) Consolidated EBITDA for the period commencing on the Closing Date and ending on December 31, 2004, taken as one accounting period, to be equal to or less than 9.0 to 1.

5.22.5 As of the last day of each fiscal quarter of Borrower (commencing on June 30, 2005), cause the ratio of (a) the then aggregate outstanding principal amount of Term Loans and Rocky Mountain Term Loans to (b) Consolidated EBITDA for the period of four consecutive fiscal quarters most recently ended on or prior to such date, taken as one accounting period, to be equal to or less than 9.0 to 1.

## 5.23 REQUIRED HOLDCO TRANSFER.

At any time on or after the date on which there has been a default or breach claimed by any third party under a Major Project Document that could be cured by the Required HoldCo Transfer, Borrower shall promptly implement the Required HoldCo Transfer and all related transactions required thereby, unless the failure to do so could not reasonably be expected to have a Material Adverse Effect.

## 5.24 MAINTENANCE OF RATINGS.

Promptly, perform all reasonable acts necessary to maintain a rating with each of S&P and Moody's.

**ARTICLE 6**  
**NEGATIVE COVENANTS**

Borrower covenants and agrees that until the Termination Date, Borrower shall not:

**6.1 CONTINGENT LIABILITIES.**

Except as provided in this Agreement and the other Credit Documents, become liable as a surety, guarantor, accommodation endorser or otherwise, for or upon the obligation of any other Person; provided, however, that this Section 6.1 shall not be deemed to prohibit or otherwise limit the occurrence of (a) Permitted Debt or (b) other contingent liabilities incident to the ordinary course of business that are not incurred in connection with the obtaining or guaranteeing of any Debt and that do not in the aggregate materially impair the use of the property or assets of Borrower or the value of such property or assets for the purpose of Borrower's business.

**6.2 LIMITATIONS ON LIENS.**

Create, assume or suffer to exist any Lien, securing a charge or obligation on the Project or on any of the Collateral, real or personal, whether now owned or hereafter acquired, except Permitted Liens.

**6.3 INDEBTEDNESS.**

Incur, create, assume or permit to exist any Debt except Permitted Debt.

**6.4 SALE OR LEASE OF ASSETS.**

Except as provided in this Agreement in connection with a Required HoldCo Transfer, sell, lease, assign, transfer or otherwise dispose of assets, whether now owned or hereafter acquired, except (a) in the ordinary course of its business and as contemplated by the Operative Documents, at fair market value, (b) to the extent that such asset is unnecessary, worn out or no longer useful or usable in connection with the operation or maintenance of the Project, at fair market value, (c) in the case of spare parts, to the extent that such spare part is sold or transferred for one or more spare parts of equivalent fair market value, such sold or transferred spare part is otherwise available to Borrower when and as needed at a cost consistent with the then applicable Annual Operating Budget and the spare part or parts received by Borrower are free and clear of all liens and encumbrances, (d) upon any equipment failure, the replacement of such failed equipment with comparable equipment, (e) the sale, transfer or release, with or without consideration, of real property or interests in real property related to the Project to the extent that such real property or interests in real property is only incidental to the leasing, ownership or operation of the Project, or (f) the granting of easements or other interests in real property related to the Project to other Persons if such granting could not reasonably be expected to have a Material Adverse Effect (it being acknowledged and agreed that Borrower may not sell, lease, assign, transfer or dispose of its ownership interests in Rocky Mountain Borrower (except in connection with disposition of such ownership interests to, or at the direction of, the Rocky Mountain Secured Parties in accordance with the Intercreditor Agreement) without the consent

of all Lenders). Upon any such sale, lease, assignment, transfer or other disposition of any such assets, all Liens in favor of any Secured Party relating to such asset shall be automatically released (and Collateral Agent shall execute any document reasonably requested by Borrower evidencing such release).

#### 6.5 CHANGES.

Change the nature of its business or expand its business beyond the business contemplated in the Operative Documents.

#### 6.6 DISTRIBUTIONS.

From and after the first Principal Repayment Date, directly or indirectly, make or declare any dividend or other distribution (in cash, property or obligation) on, or other payment on account of, any interest in Borrower, unless the following conditions have been satisfied (the "Restricted Payment Conditions"):

- (a) such dividend or distribution is on a date occurring within 45 days after the immediately preceding Principal Repayment Date.
- (b) no Event of Default or Inchoate Default has occurred and is continuing as of the date of such applicable dividend or distribution, and such dividend or distribution would not cause an Event of Default or Inchoate Default;
- (c) the Debt Service Coverage Ratio for the Calculation Period relating to the Principal Repayment Date immediately preceding the proposed date of such dividend or distribution is greater than or equal to 1.40 to 1;
- (d) the funds necessary to make any such dividend or distribution are on deposit in the Revenue Account as of the Principal Repayment Date to which the applicable dividend or distribution relates and are otherwise available to be withdrawn from the Revenue Account or the Distribution Suspense Account on such date or a later date in accordance with the terms and conditions of the Depositary Agreement; and
- (e) (i) the amounts on deposit in, or credited to, the Major Maintenance Reserve Account as of the date of the applicable dividend or distribution (taking into account the stated amount of the Major Maintenance Reserve Letter of Credit payable to Administrative Agent on demand for disbursement to the Major Maintenance Reserve Account) equal or exceed the amount necessary to fund in full the then-required Major Maintenance Reserve Requirement, and (ii) the amounts on deposit or credited to the PSCo Security Fund as of the date of the applicable dividend or distribution equal or exceed the then-required PSCo Security Reserve Requirement.

Notwithstanding anything to the contrary contained in this Agreement, nothing in this Section 6.6 shall prohibit, or otherwise limit (1) any Riverside Closing Date Distribution or any Rocky Mountain Closing Date Distribution made to, or for the account of, the Sponsor or the Pledgor in accordance with Section 2.1.5 of this Agreement or Section 2.1.5 of the Rocky Mountain Credit Agreement, (2) the payment of O&M Costs in accordance with Section 3.3 of

the Depositary Agreement or (3) the payment of Subordinated Payments in accordance with Section 3.2.2(b) of the Depositary Agreement.

#### 6.7 INVESTMENTS.

Make any investments (whether by purchase of stocks, bonds, notes or other securities, loan, extension of credit, advance or otherwise) other than Permitted Investments, cash equity contributions to Rocky Mountain Borrower and as necessary to consummate any Required HoldCo Transfer.

#### 6.8 TRANSACTIONS WITH AFFILIATES.

Borrower shall not directly or indirectly enter into any transaction or series of transactions relating to the Project with or for the benefit of an Affiliate without the prior written approval of Administrative Agent, except for (a) the Project Documents in effect on the Closing Date, and the transactions permitted thereby, (b) transactions that contain terms no less favorable to Borrower than would be included in an arm's-length transaction entered into by a prudent Person with a non-Affiliated third party, (c) any employment, noncompetition or confidentiality agreement entered into by Borrower with any of its employees, officers or directors in the ordinary course of business, and (d) as otherwise expressly permitted or contemplated by this Agreement and the other Credit Documents.

#### 6.9 REGULATIONS.

Directly or indirectly apply any part of the proceeds of any Term Loan, any cash equity contributions received by Borrower or other funds or revenues to the "buying", "carrying" or "purchasing" of any margin stock within the meaning of Regulations T, U or X of the Federal Reserve Board, or any regulations, interpretations or rulings thereunder.

#### 6.10 PARTNERSHIPS, ETC.

Other than as expressly permitted or contemplated by this Agreement and the other Credit Documents, become a general or limited partner in any partnership or a joint venturer in any joint venture or create and hold stock in any subsidiary.

#### 6.11 DISSOLUTION; MERGER.

Except as provided in this Agreement in connection with a Required HoldCo Transfer, liquidate or dissolve, or combine, merge or consolidate with or into any other entity, or change its legal form, or purchase or otherwise acquire all or substantially all of the assets of any Person.

#### 6.12 AMENDMENTS; CHANGE ORDERS.

6.12.1 Without the prior written consent of (a) in the case of the Tolling Agreement or the Power Purchase Agreement, the Supermajority Lenders or (b) in the case of any other Major Project Document, the Majority Lenders (in each case, acting in consultation with the Independent Engineer), directly or indirectly, amend, modify, supplement or waive,

accept, or permit or consent to the termination, amendment, modification, supplement or waiver (including any waiver (or refund) of damages (liquidated or otherwise) payable by any contractor under any Major Project Document) of, any of the material provisions of, or give any material consent (each such termination, amendment, modification, supplement, waiver or consent, inclusive of any applicable change orders, being referred to herein as a "Project Document Modification") under any of the Major Project Documents unless such termination, amendment, modification, supplement or waiver could not reasonably be expected to have a Material Adverse Effect (as certified to Administrative Agent and Lenders by Borrower); provided, that the extension of the term of a Major Project Document on substantially the same terms and conditions then in effect shall not require the consent or approval of the Supermajority Lenders or the Majority Lenders.

6.12.2 Construct, install, or permit the construction or installation of, shared or joint facilities between the Project and any plants, facilities, generating stations or other improvements which are not located on the Site or the Easements (including any such plants, facilities, generating stations or other improvements owned by WP & L); provided that Borrower shall have the right to use that portion of the wastewater discharge pipeline from the Project to Rock River owned by WP&L.

If applicable, the Supermajority Lenders or Majority Lenders (as the case may be) shall use good faith efforts to respond to each request for a Project Document Modification pursuant to this Section 6.12 as soon as possible and in all events within 30 days of its receipt of written notification thereof. No Project Document Modification requiring approval by the Supermajority Lenders or Majority Lenders (as the case may be) hereunder shall be deemed approved by the Supermajority Lenders or Majority Lenders (as the case may be) until expressly approved.

#### 6.13 NAME AND LOCATION; FISCAL YEAR.

Unless consented to in writing by Administrative Agent, change its name, its jurisdiction of formation, the location of its principal place of business, its organization identification number or its fiscal year.

#### 6.14 USE OF SITE.

Use, or permit to be used, the Site for any purpose (a) which could reasonably be expected to constitute a public or private nuisance that could reasonably be expected to have a Material Adverse Effect, or (b) other than for the operation and maintenance of the Project as contemplated by the Operative Documents.

#### 6.15 ASSIGNMENT.

Assign its rights hereunder, under the other Credit Documents or under any Major Project Document to any Person, except as set forth in this Agreement and the other Credit Documents (including with respect to, as applicable, any Required HoldCo Transfer).

#### 6.16 ACCOUNTS.

Maintain, establish or use any account (other than the Accounts) without the prior written consent of Administrative Agent.

#### 6.17 HAZARDOUS SUBSTANCES.

Release into the environment any Hazardous Substances in violation of any Hazardous Substance Laws, Legal Requirements or Applicable Permits, except for any Release that could not reasonably be expected to materially impair the value of the Site and the Collateral, taken as a whole, and could not otherwise reasonably be expected to have a Material Adverse Effect.

#### 6.18 ADDITIONAL PROJECT DOCUMENTS.

Without the consent of the Majority Lenders (which consent shall not be unreasonably withheld), enter into, or become a party to any Project Document not in existence on the Closing Date (any such Project Document not subject to exception as follows, an "Additional Project Document"), except contracts entered into on an arm's length basis for the purchase by Borrower of goods or services which:

- (a) provide for the payment by Borrower of, or the provision to Borrower of such goods and services with a value of, \$2,000,000 or less;
- (b) provide for payment of Emergency Operating Costs; or
- (c) replace a Major Project Document as contemplated by the definition of "Replacement Obligor".

provided that in no event shall Borrower enter into any contract or agreement without the consent of the Majority Lenders other than those related to Borrower's owning, leasing, operating, maintaining or using the Project. Notwithstanding anything contained in this Agreement to the contrary, Borrower shall not enter into any Project Document with an Affiliate of Borrower unless Borrower, such Affiliate and Administrative Agent shall have entered into a Subordination Agreement with respect to such Project Document.

#### 6.19 ASSIGNMENT BY THIRD PARTIES.

Without prior written consent of (a) in the case of the Tolling Agreement or the Power Purchase Agreement, the Supermajority Lenders or (b) in the case of any other Major Project Document, the Majority Lenders, consent to the assignment of any obligations under any Major Project Document by any counterparty thereto other than to a Replacement Obligor.

#### 6.20 ACQUISITION OF REAL PROPERTY.

Acquire or lease any real property or other interest in real property (excluding the acquisition of any easements or the acquisition (but not the exercise) of any options to acquire any such interests in real property) other than the Site, Easements and other interests in real property acquired on or prior to the Closing Date, unless Borrower shall have delivered to Administrative Agent a "Phase I" environmental report with respect to such real property and, if

a "Phase II" environmental review is warranted (as reasonably determined by the Administrative Agent upon its review of such "Phase I" environmental report), a "Phase II" environmental report, in each case, along with a corresponding reliance letter from the consultant issuing such report(s), confirming, in form and substance reasonably satisfactory to Administrative Agent, either that (a) no Hazardous Substances were found in, on or under such real property of a nature or concentrations that could reasonably be expected to impose on Borrower or Pledgor a material environmental liability or (b) the conditions and risks associated with such Hazardous Substances were otherwise being addressed in a manner satisfactory to Administrative Agent.

#### 6.21 EMPLOYEE BENEFIT PLANS.

Maintain any employee benefit plans subject to ERISA.

#### 6.22 POWER SALES.

Consent to, or permit, the provision of electrical products to any Person other than (a) WP&L under the Tolling Agreement, (b) MG&E under the Power Purchase Agreement, and (c) CES under the CES Power Sales Agreement.

#### 6.23 GOVERNING DOCUMENT CHANGES.

Consent to, or permit, (a) the termination or cancellation of the Governing Documents of Borrower or (b) any material amendment, supplement or modification of the Governing Documents of Borrower.

### **ARTICLE 7 EVENTS OF DEFAULT; REMEDIES**

#### 7.1 EVENTS OF DEFAULT.

Until the Termination Date, the occurrence of any of the following events shall constitute an event of default (each, an "Event of Default") hereunder:

7.1.1 Failure to Make Payments. Borrower shall fail to pay, in accordance with the terms of this Agreement (a) any principal on any Term Loan on the date that such sum is due, (b) any interest on any Term Loan within five days after the date such sum is due, (c) any scheduled fee, cost, charge or sum due hereunder or under any other Credit Documents within five days of the date that such sum is due, or (d) any other fee, cost, charge or other sum due under this Agreement or the other Credit Documents within 30 days after written notice that such sum is due.

7.1.2 Bankruptcy; Insolvency. The Pledgor, Borrower or any other Major Project Participant (so long as such Major Project Participant shall have outstanding or unperformed obligations under the Operative Document to which it is a party) shall become subject to a Bankruptcy Event; provided that, solely with respect to a Bankruptcy Event with respect to a Person other than Borrower or the Pledgor, no Event of Default shall occur as a result of such Bankruptcy Event if (a) Borrower obtains a Replacement Obligor for the affected party within 90 days thereafter and such Bankruptcy Event has not had and does not have, prior

to so obtaining such Replacement Obligor, a Borrower Material Adverse Effect, (b) the applicable Major Project Participant is substantially performing its remaining obligations with respect to the Project Documents to which it is a party and has affirmed, within 90 days thereafter, the Operative Document(s) to which it is a party or (c) with respect to CES, such Bankruptcy Event does not have a Borrower Material Adverse Effect.

7.1.3 Defaults Under Other Indebtedness. Borrower shall default for a period beyond any applicable grace period (a) in the payment of any principal, interest or other amount due under any agreement involving Debt and the outstanding amount or amounts payable under any such agreement equals or exceeds \$1,000,000 in the aggregate or (b) in the performance of any obligation due under any agreement involving Debt if in the case of this clause (b), pursuant to such default, the holder of the obligation concerned has accelerated the maturity of any indebtedness evidenced thereby which equals or exceeds \$1,000,000 in the aggregate.

7.1.4 Judgments. A final judgment or judgments shall be entered against Borrower in the amount of \$1,000,000 or more individually or in the aggregate, other than, in each case, (a) a judgment which is fully covered by insurance or discharged within 60 days after its entry, or (b) a judgment, the execution of which is effectively stayed within 60 days after its entry but only for 60 days after the date on which such stay is terminated or expires.

7.1.5 ERISA. If any Calpine Entity or any ERISA Affiliate should establish, maintain, contribute to or become obligated to contribute to any ERISA Plan and (a) a Reportable Event (under Section 4043(b) or (c) of ERISA for which notice to the PBGC is not waived) shall have occurred with respect to any ERISA Plan and, within 30 days after the reporting of such Reportable Event to Administrative Agent by Borrower (or Administrative Agent otherwise obtaining knowledge of such event) and the furnishing of such information as Administrative Agent may reasonably request with respect thereto, Administrative Agent shall have notified Borrower in writing that (i) Administrative Agent or the Majority Lenders has made a determination that, on the basis of such Reportable Event, there are reasonable grounds for the termination of such ERISA Plan by the PBGC or for the appointment by the appropriate United States District Court of a trustee to administer such ERISA Plan and (ii) as a result thereof, an Event of Default exists hereunder; or (b) a trustee shall be appointed by a United States District Court to administer any ERISA Plan; or (c) the PBGC shall institute proceedings to terminate any ERISA Plan; or (d) a complete or partial withdrawal by Borrower or any ERISA Affiliate from any Multiemployer Plan shall have occurred and, within 30 days after the reporting of any such occurrence to Administrative Agent by Borrower (or Administrative Agent otherwise obtaining knowledge of such event) and the furnishing of such information as Administrative Agent or Majority Lenders may reasonably request with respect thereto, Administrative Agent shall have notified Borrower in writing that Administrative Agent has made a determination that, on the basis of such occurrence, an Event of Default exists hereunder; or (e) any Calpine Entity or any ERISA Affiliate shall have failed to fulfill its obligations under the minimum funding standards of ERISA or the Code with respect to any ERISA Plan; provided that any of the events described in this Section 7.1.5 shall result in aggregate liability to all Calpine Entities and all ERISA Affiliates in excess of \$5,000,000.

#### 7.1.6 Breach of Terms of Agreement.

(a) Defaults Without Cure Periods. Borrower shall fail to perform or observe any of the covenants set forth in Section 5.1.1, 5.9(a), 5.17 (with respect to the maintenance of the insurance policies required to be in effect on the Closing Date (or any replacement policies therefor obtained in compliance herewith)) or 5.23, or Article 6 (other than Sections 6.1, 6.2, 6.7, 6.8, 6.13, 6.14, 6.16 and 6.17) of this Agreement.

(b) Defaults With 30 Day Cure Periods. Borrower shall fail to perform or observe any of the covenants set forth in Section 5.1.2, 5.13, 5.17 (with respect to all matters other than as specifically provided for in clause

(a) of this Section 7.1.6), 5.19, 5.21, 5.22, 5.24, 6.1, 6.2, 6.7, 6.8, 6.13, 6.14, 6.16 or 6.17, and such failure shall continue unremedied for a period of 30 days after Borrower becomes aware that the failure thereof could result in an Inchoate Default or receives written notice thereof from Administrative Agent.

(c) Other Defaults. Borrower, the Pledgor or any other Calpine Entity shall fail to perform or observe any of the covenants set forth hereunder or any other Credit Document not otherwise specifically provided for in Section 7.1.6(a), Section 7.1.6(b) or elsewhere in this Article 7, and such failure shall continue unremedied for a period of 30 days after Borrower becomes aware that the failure thereof could result in an Inchoate Default or receives written notice thereof from Administrative Agent; provided, however, that, if (i) such failure cannot be cured within such 30 day period, (ii) such failure is susceptible of cure within 90 days, (iii) Borrower, the Pledgor or such other Calpine Entity, as applicable, is proceeding with diligence and in good faith to cure such failure, (iv) the existence of such failure has not had and could not, after considering the nature of the cure, be reasonably expected to have a Material Adverse Effect, and (v) Administrative Agent shall have received an officer's certificate signed by a Responsible Officer to the effect of clauses

(i), (ii), (iii) and (iv) above and stating what action Borrower, the Pledgor or such other Calpine Entity, as applicable, is taking to cure such failure, then such 30 day cure period shall be extended to such date, not to exceed a total of 90 days, as shall be necessary for Borrower, the Pledgor or such other Calpine Entity, as applicable, diligently to cure such failure.

7.1.7 Loss of Collateral. Any substantial portion of the Collateral is damaged, seized or appropriated without appropriate insurance proceeds (subject to the underlying deductible) or without fair value being paid therefor so as to allow replacement of such Collateral and/or prepayment of Term Loans and to allow Borrower to continue satisfying its obligations hereunder and under the other Operative Documents.

7.1.8 Rocky Mountain Credit Agreement Event of Default. An "Event of Default" under, and as defined in, the Rocky Mountain Credit Agreement shall have occurred and be continuing.

#### 7.1.9 Regulatory Status.

(a) If loss of EWG status for Borrower or loss of Eligible Facility status for the Project could reasonably be expected to have a Material Adverse Effect, (i) Borrower shall have tendered notice to FERC that Borrower has ceased to be an EWG or (ii) FERC shall have issued

an order determining that Borrower no longer meets the criteria of an EWG or takes other action revoking such EWG status.

(b) Borrower shall suffer an Adverse PUHCA Event or shall otherwise become subject to, or not exempt from financial, organizational or rate regulation as an "electric utility company", "public-utility company" or "holding company" under PUHCA or as a public utility under the laws of the State of Wisconsin as presently constituted and as construed by the courts of Wisconsin.

7.1.10 Abandonment. Borrower shall announce that (a) it is abandoning the Project or (b) the Project shall be abandoned or operation thereof shall be suspended for a period of more than 30 consecutive days for any reason (other than force majeure); provided that none of (i) scheduled maintenance of the Project, (ii) repairs to the Project, whether or not scheduled, or (iii) a forced outage or scheduled outage of the Project, shall constitute abandonment or suspension of the Project, so long as Borrower is diligently attempting to end such suspension.

7.1.11 Security. Except as the result of the acts or omissions of Administrative Agent, Depositary Agent, Collateral Agent or the Secured Parties, any of the Collateral Documents, once executed and delivered, shall, other than with respect to an immaterial portion of the Collateral, fail to provide to Collateral Agent, for the benefit of the Secured Parties, the Liens, first priority security interest (subject to Permitted Liens in clauses (a), (e) and (i) of the definition thereof and, to the extent required by Governmental Rule, clauses (b), (c) and (g) of the definition thereof), rights, titles, interest, remedies permitted by law, powers or privileges intended to be created thereby or, except in accordance with its terms, cease to be in full force and effect, or, as applicable, the first priority, second priority or validity thereof or the applicability thereof to the Term Loans, the Notes (if any) or any other obligations purported to be secured or guaranteed thereby or any part thereof shall be disaffirmed by or on behalf of Borrower.

7.1.12 Loss of or Failure to Obtain Applicable Permits.

(a) Borrower shall fail to obtain any Permit on or before the date that such Permit becomes an Applicable Permit with respect to the Project, and such failure could reasonably be expected to have a Material Adverse Effect.

(b) Any Applicable Permit necessary for operation of the Project and for Borrower's performance of its obligations under the Project Documents shall be materially modified (other than modifications contemplated in a Project Document requested by Borrower and approved in writing in advance of such modification by Administrative Agent acting at the direction of the Majority Lenders, which approval shall not be unreasonably withheld), revoked, canceled or not renewed by the issuing agency or other Governmental Authority having jurisdiction (or otherwise ceases to be in full force and effect) other than any such modification of, revocation of, cancellation of, failure to renew, or failure to maintain in full force and effect such Permit that could not reasonably be expected to have a Material Adverse Effect.

7.1.13 Unenforceability of Credit Documents. At any time after the execution and delivery thereof and until the Termination Date, any material provision of any material

Credit Document shall cease to be in full force and effect (other than following the Termination Date by reason of the satisfaction in full of the Borrower's Obligations or any other termination of a Credit Document in accordance with the terms hereof or thereof) or any material Credit Document shall be declared null and void by a Governmental Authority of competent jurisdiction.

7.1.14 Misstatements; Omissions. Any representation or warranty made or deemed made by any Calpine Entity in this Agreement, or in any other Credit Document to which such Person is a party, or in any separate statement, certificate or document delivered to Lead Arranger, Administrative Agent, Depositary Agent, Collateral Agent, or any Lender hereunder or under any other Credit Document to which such Person is a party, shall be untrue or misleading in any material respect as of the time made and such representation or warranty has not been corrected within 30 days after Borrower becomes aware that such misstatement or omission could result in an Inchoate Default or receives notice thereof from Administrative Agent.

7.1.15 Project Document Defaults.

(a) Borrower. Borrower shall be in breach of, or in default under, a Major Project Document which breach or default if not cured could reasonably be expected to have a Material Adverse Effect and such breach or default shall not be remediable or, if remediable, shall continue unremedied for the lesser of (i) the greater of (A) a period of 30 days; provided that if (1) such breach cannot be cured within such 30 day period (or such lesser period of time, as the case may be), (2) such breach is susceptible of cure within 90 days after such breach or default, and (3) Borrower is proceeding with diligence and in good faith to cure such breach, then such 30 day cure period (or such lesser period of time, as the case may be) shall be extended to such date, not to exceed a total of 90 days, as shall be necessary for Borrower diligently to cure such breach and (B) the date that is 30 days prior to the date that Collateral Agent's cure period under any applicable Consent relating to such Major Project Document expires, or (ii) such period of time (without giving effect to any extension given to Collateral Agent under any applicable Consent with respect thereto) under such Major Project Document which Borrower has available to it in which to remedy such breach or default.

(b) Third Party. Any Person other than Borrower shall be in breach of, or in default under, a Major Project Document which breach or default if not cured could reasonably be expected to have a Material Adverse Effect and such breach or default shall not be remediable or, if remediable, shall continue unremedied for a period of 30 days from the time Borrower obtains knowledge of such breach; provided that if (i) such breach cannot be cured within such 30 day period, (ii) such breach or default is susceptible of cure within 90 days, and (iii) the breaching Person or Borrower is proceeding with diligence and in good faith to cure such breach, then such 30 day cure period shall be extended to such date, not to exceed a total of 90 days, as shall be necessary for such breaching Person diligently to cure such breach; provided, further, that no Event of Default shall occur as a result of any such action if Borrower obtains a Replacement Obligor for the affected party within the 90 day cure period referred to in this paragraph (or within the 30 day cure period, if no extension is given) and such action does not have prior to so obtaining such Replacement Obligor a Borrower Material Adverse Effect.

(c) Third Party Consents. (i) Any Person other than Borrower shall disaffirm or repudiate in writing its material obligations under any Consent and such disaffirmation or repudiation is not rescinded and revoked in writing by such Person within 60 days thereof, (ii) any representation or warranty made by any Person other than Borrower in a Consent shall be untrue or misleading in any material respect as of the time made and such untrue or misleading representation or warranty could reasonably be expected to materially adversely affect the rights of the Collateral Agent or the Secured Parties thereunder or to otherwise result in a Material Adverse Effect, or (iii) a Person other than Borrower shall breach any material covenant of a Consent and such breach or default shall not be remediable or, if remediable, shall continue unremedied for a period of 30 days from the time Borrower obtains knowledge of such breach; provided that if (A) such breach cannot be cured within such 30 day period, (B) such breach is susceptible of cure within 90 days, (C) the breaching party or Borrower is proceeding with diligence and in good faith to cure such breach, and (D) the existence of such breach has not had and could not after considering the nature of the cure, be reasonably expected to have a Material Adverse Effect, then such 30 day cure period shall be extended to such date, not to exceed a total of 90 days, as shall be necessary for such third party diligently to cure such breach; provided, further, that no Event of Default shall occur as a result of any such action if Borrower obtains a Replacement Obligor for the affected party with respect to the contract or contracts to which such Consent relates, within the 90 day cure period referred to in this paragraph (or within the 30 day cure period, if no extension is given) and such action does not have prior to so obtaining such Replacement Obligor a Material Adverse Effect.

(d) Termination. A Major Project Document shall terminate on or before its scheduled expiration date except upon fulfillment of such party's obligations thereunder, or shall be declared null and void; provided that no Event of Default shall occur as a result of such breach or default if Borrower obtains a Replacement Obligor for the affected party within 90 days thereafter and such breach or default has not had and does not have prior to so obtaining such Replacement Obligor, a Material Adverse Effect.

## 7.2 REMEDIES.

Upon the occurrence and during the continuation of an Event of Default and, subject to the terms of the Intercreditor Agreement, Administrative Agent, Collateral Agent, and the Lenders may, at the election of the Majority Lenders, without further notice of default, presentment or demand for payment, protest or notice of non-payment or dishonor, or other notices or demands of any kind, all such notices and demands (other than notices required by the Credit Documents) being waived, exercise any or all of the following rights and remedies, in any combination or order that the Majority Lenders may elect, in addition to such other rights or remedies as the Secured Parties may have hereunder, under the Collateral Documents or at law or in equity:

7.2.1 No Further Term Loans. Cancel the Total Term Loan Commitment, refuse, and Administrative Agent, and the Lenders shall not be obligated, to continue any Term Loans, or make any payments, or permit the making of payments, from any Account or any Loss Proceeds or other funds held by Administrative Agent or Collateral Agent under the Credit Documents or on behalf of Borrower; provided that in the case of an Event of Default occurring under Section 7.1.2 with respect to Borrower, the Total Term Loan Commitment shall be

cancelled and terminated without further act of Administrative Agent, Collateral Agent, or any Secured Party.

7.2.2 Cure by Agents. Without any obligation to do so, make disbursements to or on behalf of Borrower or disburse amounts from the Accounts to cure (a) any Event of Default or Inchoate Default hereunder and (b) any default and render any performance under any Project Document as the Majority Lenders in their sole discretion may consider necessary or appropriate, whether to preserve and protect the Collateral or the Secured Parties' interests therein or for any other reason. All sums so expended, together with interest on such total amount at the Default Rate (but in no event shall the rate exceed the maximum lawful rate), shall be repaid by Borrower to Administrative Agent or Collateral Agent, as the case may be, on demand and shall be secured by the Credit Documents, notwithstanding that such expenditures may, together with amounts advanced under this Agreement, exceed the aggregate amount of the Total Term Loan Commitment.

7.2.3 Acceleration. Declare and make all or a portion of the sums of accrued and outstanding principal and accrued but unpaid interest remaining under this Agreement, together with all unpaid fees, costs (including Liquidation Costs and Hedge Breaking Fees) and charges due hereunder or under any other Credit Document, immediately due and payable and require Borrower immediately, without presentment, demand, protest or other notice of any kind, all of which Borrower hereby expressly waives, to pay Administrative Agent or the Secured Parties an amount in immediately available funds equal to the aggregate amount of any outstanding Obligations; provided that, in the event of an Event of Default occurring under Section 7.1.2 with respect to Borrower, all such amounts shall become immediately due and payable without further act of Administrative Agent, Collateral Agent, or the Secured Parties.

7.2.4 Cash Collateral. Apply or execute upon any amounts on deposit in any Account or any Loss Proceeds or any other moneys of Borrower on deposit with Administrative Agent, Collateral Agent, Depositary Agent or any Secured Party in the manner provided in the UCC and other relevant statutes and decisions and interpretations thereunder with respect to cash collateral. Without limiting the foregoing, each of Administrative Agent, Collateral Agent and Depositary Agent shall have all rights and powers with respect to Loss Proceeds, the Accounts and the contents of the Accounts as it has with respect to any other Collateral and may apply, or cause the application of, such amounts to the payment of interest, principal, fees, costs, charges or other amounts due or payable to Administrative Agent, Collateral Agent, Depositary Agent or the Secured Parties with respect to the Term Loans or as otherwise provided in the Depositary Agreement in such order as the Majority Lenders may elect in their sole discretion. Until such time as the Majority Lenders so elect to exercise such rights and powers, amounts in the Revenue Account shall be applied as provided in the Depositary Agreement. Borrower shall not have any rights or powers with respect to such amounts except as expressly provided in this Section 7.2.4.

7.2.5 Possession of Project. Enter into possession of the Project and perform any and all work and labor necessary to operate and maintain the Project, and all sums expended by Administrative Agent, Collateral Agent or Depositary Agent in so doing, together with interest on such total amount at the Default Rate, shall be repaid by Borrower to Administrative Agent, Collateral Agent or Depositary Agent, as the case may be, upon demand and shall be secured by the Credit Documents, notwithstanding that such expenditures may, together with

amounts advanced under this Agreement, exceed the aggregate amount of the Total Term Loan Commitment.

7.2.6 Remedies Under Credit Documents. Subject to the applicable terms of the Intercreditor Agreement, exercise, and direct Administrative Agent, Depositary Agent or Collateral Agent (as the case may be) to exercise, any and all rights and remedies available to it under any of the Credit Documents, including judicial or non-judicial foreclosure or public or private sale of any of the Collateral pursuant to the Collateral Documents.

## **ARTICLE 8 SCOPE OF LIABILITY**

Except as set forth in this Article 8, notwithstanding anything in this Agreement or the other Credit Documents to the contrary, the Lenders shall have no claims with respect to the transactions contemplated by the Operative Documents against the Sponsor or any of its Affiliates (other than Borrower and the Pledgor), shareholders, officers, directors or employees (collectively, the "Nonrecourse Persons") and the Lenders' recourse against Borrower and the Pledgor and the Nonrecourse Persons shall be limited to the Collateral, the Project, all Project Revenues, all Term Loan proceeds, Insurance Proceeds, Eminent Domain Proceeds, and all income or revenues of the foregoing as and to the extent provided herein and in the Collateral Documents; provided that the foregoing provision of this Article 8 shall not (a) constitute a waiver, release or discharge of any of the indebtedness, or of any of the terms, covenants, conditions, or provisions of this Agreement or any other Credit Document and the same shall continue (but without personal liability to the Nonrecourse Persons) until fully paid, discharged, observed, or performed; (b) limit or restrict the right of Administrative Agent, Collateral Agent or any Secured Party (or any assignee, beneficiary or successor to any of them) to name Borrower, the Pledgor or any other Person as a defendant in any action or suit for a judicial foreclosure or for the exercise of any other remedy under or with respect to this Agreement or any other Collateral Document or Credit Document, or for injunction or specific performance, so long as no judgment in the nature of a deficiency judgment shall be enforced against any Nonrecourse Person, except as set forth in this Article 8; (c) in any way limit or restrict any right or remedy of Administrative Agent, Collateral Agent or any Secured Party (or any assignee or beneficiary thereof or successor thereto) with respect to, and each of the Nonrecourse Persons shall remain fully liable to the extent that it would otherwise be liable for its own actions with respect to, any fraud, willful misrepresentation (which shall not include innocent or negligent misrepresentation), or misappropriation of Project Revenues, Term Loan proceeds, Insurance Proceeds, Eminent Domain Proceeds or any other earnings, revenues, rents, issues, profits or proceeds from or of the Collateral, that should or would have been paid as provided herein or paid or delivered to Administrative Agent, Collateral Agent or any Secured Party (or any assignee or beneficiary thereof or successor thereto) towards any payment required under this Agreement or any other Credit Document; (d) affect or diminish or constitute a waiver, release or discharge of any specific written obligation, covenant, or agreement in respect of the transactions contemplated by the Operative Documents made by any of the Nonrecourse Persons or any security granted by the Nonrecourse Persons in support of the obligations of such Persons under any Collateral Document (or as security for the obligations of Borrower), or the Pledge Agreement; and (e) limit the liability of (i) any Person who is a party to any Project Document or has issued any certificate or other statement in connection therewith with respect to such

liability as may arise by reason of the terms and conditions of such Project Document (but subject to any limitation of liability in such Project Document), certificate or statement, or (ii) any Person rendering a legal opinion pursuant to this Agreement (including Section 3.1.8 or the definition of Required HoldCo Transfer), in each case under this clause (e) relating solely to such liability of such Person as may arise under such referenced agreement, instrument or opinion. The limitations on recourse set forth in this Article 8 shall survive the termination of this Agreement, the termination of the Total Term Loan Commitment and the Interest Rate Agreements to which any Secured Party is a party and the indefeasible payment in full in cash and performance in full of the Obligations hereunder and under the other Operative Documents.

## **ARTICLE 9 AGENTS; SUBSTITUTION**

### **9.1 APPOINTMENT, POWERS AND IMMUNITIES.**

9.1.1 Each Lender hereby appoints and authorizes (a) Administrative Agent to act as its agent hereunder and under the other Credit Documents, and (b) Collateral Agent to act as its collateral agent hereunder and under the other Credit Documents, in each case with such powers as are expressly delegated to Administrative Agent or Collateral Agent (as the case may be) by the terms of this Agreement and the other Credit Documents, together with such other powers as are reasonably incidental thereto. Neither Administrative Agent nor Collateral Agent shall have any duties or responsibilities except those expressly set forth in this Agreement or in any other Credit Document, or be a trustee or a fiduciary for any Secured Party. Notwithstanding anything to the contrary contained herein, neither Administrative Agent nor Collateral Agent shall be required to take any action which is contrary to this Agreement or any other Credit Documents or any Legal Requirement or exposes Administrative Agent or Collateral Agent (as the case may be) to any liability. Each of Lead Arranger, Collateral Agent, Administrative Agent, the Lenders and any of their respective Affiliates shall not be responsible to any other Secured Party for (i) any recitals, statements, representations or warranties made by Borrower or its Affiliates contained in this Agreement, the other Credit Documents or in any certificate or other document referred to or provided for in, or received by Lead Arranger, Administrative Agent, Collateral Agent, or any Secured Party under this Agreement or any other Credit Document, (ii) the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement, the other Credit Documents, any Notes or any other document referred to or provided for herein, or (iii) any failure by Borrower or its Affiliates to perform their respective obligations hereunder or thereunder. Each of Administrative Agent and Collateral Agent may employ agents and attorneys-in-fact, and neither shall be responsible for the negligence or misconduct of any such agents or attorneys-in-fact selected by it with reasonable care.

9.1.2 None of Collateral Agent, Administrative Agent, Lead Arranger and their respective directors, officers, employees or agents shall be responsible for any action taken or omitted to be taken by it or them hereunder or under any other Credit Document or in connection herewith or therewith, except for its or their own gross negligence or willful misconduct. Without limiting the generality of the foregoing, (a) Administrative Agent may treat the payee of any Note as the holder thereof until Administrative Agent receives written notice of the assignment or transfer thereof signed by such payee and in form satisfactory to Administrative

Agent; (b) each of Administrative Agent and Collateral Agent may consult with legal counsel, independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken in good faith by them in accordance with the advice of such counsel, accountants or experts; (c) none of Collateral Agent, Administrative Agent and Lead Arranger makes any warranty or representation to any Secured Party for any statements, warranties or representations made in or in connection with any Operative Document; (d) none of Collateral Agent, Administrative Agent and Lead Arranger shall have any duty to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions of any Operative Document on the part of any party thereto, to inspect the property (including the books and records) of Borrower or any other Person or to ascertain or determine whether a Material Adverse Effect exists or is continuing; and (e) none of Collateral Agent, Administrative Agent and Lead Arranger shall be responsible to any Secured Party for the due execution, legality, validity, enforceability, genuineness, sufficiency or value of any Operative Document or any other instrument or document furnished pursuant hereto. Except as otherwise provided under this Agreement and the other Credit Documents, each of Administrative Agent and Collateral Agent shall take such action with respect to the Credit Documents as shall be directed by the Majority Lenders.

9.1.3 The Book Runner shall have no right, power, obligation, liability, responsibility or duty under this Agreement, other than those applicable to all Secured Parties and those set forth in this Article 9. The Syndication Agent shall have no right, power, obligation, liability, responsibility or duty under this Agreement, other than those applicable to all Secured Parties and those set forth in this Article 9. Lead Arranger shall only have those rights, powers, obligations, liabilities, responsibilities and duties set forth in Section 3.1 and this Article 9. Without limiting the foregoing, none of Lead Arranger, Syndication Agent and the Book Runner shall have or be deemed to have a fiduciary relationship with any Secured Party. Each Secured Party hereby makes the same acknowledgments with respect to Lead Arranger, Syndication Agent and the Book Runner as it makes with respect to the Administrative Agent or the Collateral Agent in this Article 9. Notwithstanding the foregoing, the parties hereto acknowledge that the Book Runner and the Syndication Agent hold such titles in name only, and that such titles confer no additional rights or obligations relative to those conferred on any Secured Party hereunder.

## 9.2 RELIANCE.

Each of Administrative Agent and Collateral Agent shall be entitled to rely upon any certificate, notice or other document (including any cable, telegram, facsimile, electronic mail or telex) believed by it to be genuine and correct and to have been signed or sent by or on behalf of the proper Person or Persons, and upon advice and statements of legal counsel, independent accountants and other experts selected by it. As to any other matters not expressly provided for by this Agreement, neither Collateral Agent nor Administrative Agent shall be required to take any action or exercise any discretion, but shall be required to act or to refrain from acting upon instructions of the Majority Lenders or, where expressly provided, the Supermajority Lenders or all Lenders (except that neither Collateral Agent nor Administrative Agent shall be required to take any action which exposes Collateral Agent or Administrative Agent (as the case may be) to personal liability or which is contrary to this Agreement, any other Credit Document or any Legal Requirement). Each of Collateral Agent and Administrative

Agent shall in all cases (including when any action by Collateral Agent or Administrative Agent (as the case may be) alone is authorized hereunder, if Collateral Agent or Administrative Agent (as the case may be) elects in its sole discretion to obtain instructions from the Majority Lenders) be fully protected in acting, or in refraining from acting, hereunder or under any other Credit Document in accordance with the instructions of the Majority Lenders (or, where so expressly stated, the Supermajority Lenders or all Lenders), and such instructions of the Majority Lenders (or Supermajority Lenders or all Lenders, where applicable) and any action taken or failure to act pursuant thereto shall be binding on all of the Secured Parties. In addition, for purposes of determining compliance with the conditions specified in Section 3.1, each Lender that has executed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter either sent by Administrative Agent to such Lender for consent, approval, acceptance or satisfaction, or required thereunder to be consented to or approved by or acceptable or satisfactory to Lender.

### 9.3 NON-RELIANCE.

Each Lender represents that it has, independently and without reliance on Lead Arranger, Collateral Agent, Administrative Agent, or any other Lender, and based on such documents and information as it has deemed appropriate, made its own appraisal of the financial condition and affairs of the Calpine Entities and its own decision to enter into this Agreement and agrees that it will, independently and without reliance upon Lead Arranger, Collateral Agent, Administrative Agent, or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own appraisals and decisions in taking or not taking action under this Agreement. Each of Administrative Agent, Lead Arranger, Collateral Agent and any Lender shall not be required to keep informed as to the performance or observance by any Calpine Entity or its Affiliates under this Agreement or any other document referred to or provided for herein or to make inquiry of, or to inspect the properties or books of any Calpine Entity or its Affiliates.

### 9.4 DEFAULTS; MATERIAL ADVERSE EFFECT.

None of Lead Arranger, Collateral Agent and Administrative Agent shall be deemed to have knowledge or notice of the occurrence of any Inchoate Default, Event of Default or Material Adverse Effect, unless such Person has received a notice from a Lender or Borrower, referring to this Agreement, describing such Inchoate Default, Event of Default or Material Adverse Effect and indicating that such notice is a notice of the occurrence of such default or Material Adverse Effect (as the case may be). If Administrative Agent receives such a notice of the occurrence of an Inchoate Default, Event of Default or Material Adverse Effect, Administrative Agent shall give notice thereof to the Lenders. Each of Collateral Agent and Administrative Agent shall take such action with respect to such Inchoate Default, Event of Default or Material Adverse Effect as is provided in Article 3, Article 7 or the terms of the Credit Documents, or if not provided for in Article 3, Article 7 or such Credit Documents, as Administrative Agent or Collateral Agent shall be reasonably directed by the Majority Lenders; provided, however, that unless and until Administrative Agent or Collateral Agent shall have received such directions, each of Administrative Agent and Collateral Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such

Inchoate Default, Event of Default or Material Adverse Effect as it shall deem advisable in the best interest of the Lenders.

#### 9.5 SUCCESSOR AGENT.

Each of Collateral Agent and Administrative Agent may resign at any time by giving fifteen days' written notice thereof to the Secured Parties and Borrower; provided that the resigning Administrative Agent or Collateral Agent may only resign hereunder if such Person also resigns in such capacity under the Rocky Mountain Credit Agreement. Each of Collateral Agent and Administrative Agent may be removed involuntarily only for a material breach of its respective duties and obligations hereunder and under the other Credit Documents or for gross negligence or willful misconduct in connection with the performance of its respective duties hereunder or under the other Credit Documents and then only upon the affirmative vote of the Majority Lenders (excluding Administrative Agent and Collateral Agent (as the case may be) from such vote and Administrative Agent's and Collateral Agent's (as the case may be) Proportionate Share (if any) of the Total Term Loan Commitment and Term Loans from the amounts used to determine the portion of the Total Term Loan Commitment and Term Loans necessary to constitute the required Proportionate Share of the remaining Lenders); provided that the removed Administrative Agent or Collateral Agent may only be removed hereunder if such Person also is removed in such capacity under the Rocky Mountain Credit Agreement. Upon any such resignation or removal of Administrative Agent or Collateral Agent, the Majority Lenders shall have the right, with the consent of Borrower (such consent not to be unreasonably withheld or delayed) to appoint a successor Administrative Agent or Collateral Agent (as the case may be) under this Agreement and under the Rocky Mountain Credit Agreement. If no successor Administrative Agent or Collateral Agent (as the case may be) shall have been so appointed by the Majority Lenders and shall have accepted such appointment, within 30 days after the retiring Administrative Agent's or Collateral Agent's (as the case may be) giving of notice of resignation or the Lenders' removal of the retiring Administrative Agent or Collateral Agent (as the case may be), the retiring Administrative Agent and Collateral Agent (as the case may be) may, on behalf of the Secured Parties, with the consent of Borrower (such consent not to be unreasonably withheld or delayed), appoint a successor Administrative Agent or Collateral Agent (as the case may be) hereunder and under the Rocky Mountain Credit Agreement. Such successor Administrative Agent or Collateral Agent (as the case may be) shall be a Lender, if any Lender shall be willing to serve, and otherwise shall be a commercial bank having a combined capital and surplus of at least \$500,000,000. Upon the acceptance of any appointment as Administrative Agent or Collateral Agent (as the case may be) under the Operative Documents and the Rocky Mountain Operative Documents by a successor Administrative Agent or Collateral Agent (as the case may be), such successor Administrative Agent or Collateral Agent (as the case may be) shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent or Collateral Agent (as the case may be), and the retiring Administrative Agent or Collateral Agent (as the case may be) shall be discharged from its duties and obligations as Administrative Agent or Collateral Agent (as the case may be) only under the Credit Documents and the Rocky Mountain Credit Documents. After any retiring Administrative Agent's or Collateral Agent's resignation or removal hereunder as Administrative Agent or Collateral Agent (as the case may be), the provisions of this Article 9 shall inure to its benefit as to any actions taken or omitted to be taken

by it while it was Administrative Agent or Collateral Agent (as the case may be) under the Operative Documents.

#### 9.6 AUTHORIZATION.

Each of Administrative Agent and Collateral Agent is hereby authorized by the Secured Parties to execute, deliver and perform each of the Credit Documents to which Administrative Agent or Collateral Agent (as the case may be) is or is intended to be a party, and each Lender agrees to be bound by all of the agreements of Administrative Agent and Collateral Agent contained in the Credit Documents. Each of Administrative Agent and Collateral Agent is further authorized by the Secured Parties to (a) release Liens on property that Borrower is permitted to sell, transfer or otherwise release pursuant to the terms of this Agreement or the other Credit Documents, (b) to enter into on behalf of such Secured Parties any and all amendments to, or other modifications of, this Agreement and the other Credit Documents necessary to effectuate any Required HoldCo Transfer, (c) perform all of its obligations under the Intercreditor Agreement and (d) to enter into agreements supplemental hereto for the purpose of curing any formal defect, inconsistency, omission or ambiguity in this Agreement or any Credit Document to which it is a party.

#### 9.7 OTHER ROLES.

With respect to its Total Term Loan Commitment, the Term Loans made by it and any Note issued to it, each of Lead Arranger, Collateral Agent and Administrative Agent in its individual capacity shall have the same rights and powers under the Operative Documents as any other Lender and may exercise the same as though it were not Lead Arranger, Collateral Agent or Administrative Agent. The term "Lender" or "Lenders" shall, unless otherwise expressly indicated, include each of Lead Arranger, Collateral Agent and Administrative Agent in its individual capacity. Each of Lead Arranger, Collateral Agent and Administrative Agent and their respective Affiliates may accept deposits from, lend money to, act as trustee under indentures of, and generally engage in any kind of business with Borrower or any other Person, without any duty to account therefor to the Lenders. For the avoidance of doubt, Credit Suisse First Boston, acting through its Cayman Islands Branch (or any permitted successor or assign) may act as Administrative Agent, Rocky Mountain Administrative Agent, Collateral Agent, Rocky Mountain Collateral Agent, Lead Arranger, Book Runner and Rocky Mountain Lead Arranger notwithstanding any potential or actual conflict of interest presented by the foregoing and Borrower and each of the Lenders hereby waives any claim against each of Lead Arranger, Book Runner, Collateral Agent and Administrative Agent and any of their respective Affiliates based upon any conflict of interest that such Person may have with regard to acting as an agent or arranger hereunder and acting in such other roles.

#### 9.8 AMENDMENTS AND WAIVERS.

9.8.1 Majority Lenders' Consent. Subject to Section 9.8.5 below, no amendment, modification, termination or waiver of any provision of the Credit Documents, or consent to any departure by any Calpine Entity therefrom, shall in any event be effective without the written concurrence of the Majority Lenders and any additional consents required by this Section 9.8.

9.8.2 Affected Lenders' Consent. No amendment, modification, termination, or consent shall be effective if the effect thereof would:

- (a) extend the scheduled final maturity of any Term Loan or Note outstanding to any Lender without the prior written consent of that Lender;
- (b) waive, reduce or postpone any scheduled repayment (but not prepayment) due to any Lender without the prior written consent of that Lender;
- (c) reduce the rate of interest on any Term Loan (other than any waiver of any increase in the interest rate applicable to any Term Loan pursuant to Section 2.3.3) payable to any Lender or reduce or extend any fee payable hereunder to any Lender without the prior written consent of that Lender;
- (d) reduce the principal amount of any Term Loan outstanding to any Lender without the prior written consent of that Lender;
- (e) amend, modify, terminate or waive any provision of this Section 9.8.2, as it applies to any Lender without the prior written consent of that Lender;
- (f) amend the definition of "Majority Lenders", "Supermajority Lenders" or "Proportionate Share" without the prior written consent of all Lenders;
- (g) release any Collateral (other than immaterial portions thereof) from the Liens created by the Collateral Documents, except as specifically provided for in this Agreement and the Collateral Documents, without the prior written consent of all Lenders; or
- (h) amend or modify any provision which requires pro rata payments among and as between the Lenders without the prior written consent of all Lenders.

9.8.3 Other Consents. No amendment, modification, termination or waiver of any provision of the Credit Documents, or consent to any departure by any Calpine Entity therefrom, shall amend, modify, terminate or waive any provision of Article IX as the same applies to Administrative Agent or Collateral Agent, or any other provision hereof as the same applies to the rights or obligations of Administrative Agent or Collateral Agent, in each case without the consent of Administrative Agent or Collateral Agent (as the case may be).

9.8.4 Execution of Amendments, etc. Administrative Agent may, but shall have no obligation to, with the concurrence of any Lender, execute amendments, modifications, waivers or consents on behalf of such Lender. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on any Calpine Entity in any case shall entitle any Calpine Entity to any other or further notice or demand in similar or other circumstances. Any amendment, modification, termination, waiver or consent effected in accordance with this Section shall be binding upon each Lender at the time outstanding, each future Lender and, if signed by a Calpine Entity, on such Calpine Entity.

9.8.5 Certain Amendments. Notwithstanding the preceding provisions of this Section 9.8, Borrower and Administrative Agent may amend or supplement the Credit Documents without the consent of any Lender:

(a) to cure any ambiguity, defect or inconsistency;

(b) to make any change that would provide any additional rights or benefits to the Lenders or that does not adversely affect the legal rights hereunder of any Lender; or

(c) to make, complete or confirm any grant of Collateral permitted or required by this Agreement or any of the Collateral Documents or any release of Collateral that becomes effective as set forth in this Agreement or any of the Collateral Documents.

9.8.6 Related Funds. For the purposes of this Section 9.8, each of the Related Funds of a Lender shall exercise its rights in a manner consistent and collectively with such Lender and each other Related Fund of such Lender.

#### 9.9 WITHHOLDING TAX.

If the forms or other documentation required by Section 2.3.4(e) are not delivered to Administrative Agent, then Administrative Agent may withhold from any interest payment to any Lender not providing such forms or other documentation, an amount equivalent to the applicable withholding tax.

9.9.1 If the Internal Revenue Service or any authority of the United States or other jurisdiction asserts a claim that Administrative Agent did not properly withhold tax from amounts paid to or for the account of any Lender (because the appropriate form was not delivered, was not properly executed, or because such Lender failed to notify Administrative Agent of a change in circumstances which rendered the exemption from, or reduction of, withholding tax ineffective, or for any other reason), then such Lender shall indemnify Administrative Agent fully for all amounts paid, directly or indirectly, by Administrative Agent as tax or otherwise, including penalties and interest, together with all expenses incurred, including legal expenses, allocated staff costs, and any out of pocket expenses. Borrower shall not be responsible for any amounts paid or required to be paid by a Lender under this Section 9.9.1.

9.9.2 If any Lender sells, assigns, grants participation in, or otherwise transfers its rights under this Agreement, the purchaser, assignee, participant or transferee, as applicable, shall comply and be bound by the terms of Section 2.3.4 and this Section 9.9 as though it were such Lender.

#### 9.10 GENERAL PROVISIONS AS TO PAYMENTS.

Administrative Agent shall promptly distribute to each Lender, subject to Section 2.1.10(d) and any accepted Mandatory Repayment Offer whereby payments shall be allocated to each accepting Lender's Term Loans (and not to all Lenders based on Proportionate Shares) and the terms of any separate agreement between Administrative Agent and such Lender, its pro rata share of each payment of principal and interest payable to the Lenders on the Term

Loans and of fees hereunder received by Administrative Agent for the account of the Lenders and of any other amounts owing under the Term Loans. The payments made for the account of each Lender shall be made, and distributed to it, for the account of (a) its domestic lending office in the case of payments of principal of, and interest on, its Base Rate Term Loans, (b) its domestic or foreign lending office, as each Lender may designate in writing to Administrative Agent, in the case of LIBOR Term Loans, and (c) its domestic lending office, or such other lending office as it may designate for the purpose from time to time, in the case of payments of fees and other amounts payable hereunder. Lenders shall have the right to alter designated lending offices upon five Banking Days prior written notice to Administrative Agent and Borrower.

#### 9.11 EXPENSES; INDEMNITY; DAMAGE WAIVER.

##### 9.11.1 Borrower shall pay:

(a) all reasonable out-of-pocket expenses incurred by Administrative Agent, Collateral Agent, Lead Arranger and their Affiliates (including due diligence expenses and the reasonable fees, charges and disbursements of Latham & Watkins LLP, together with a single local counsel retained by Administrative Agent or Collateral Agent in the State of Wisconsin) in connection with the arrangement and syndication of the credit facilities provided for herein, the preparation, execution, delivery and administration of the Credit Documents or any amendments, modifications or waivers of the provisions thereof (whether or not the transactions contemplated hereby or thereby shall be consummated);

(b) all reasonable out-of-pocket expenses and charges of Administrative Agent, Collateral Agent or their Affiliates incurred in connection with any evaluations of Collateral conducted by them;

(c) during the continuation of any Inchoate Default or Event of Default and provided that Borrower has delivered notice to Administrative Agent of the occurrence thereof or Borrower has received notice from Administrative Agent of the occurrence thereof, all reasonable out-of-pocket costs and expenses (including fees and out-of-pocket expenses of counsel) incurred by Administrative Agent, Collateral Agent, Lead Arranger and each Lender in connection with the enforcement or protection of any of their rights in connection with this Agreement and the other Credit Documents, including any of their rights under this Section 9.1.11 and including the negotiation of any restructuring or work-out, whether or not consummated, of any Obligations of Borrower; and

(d) all reasonable out-of-pocket costs and expenses (including fees and out-of-pocket costs and expenses of counsel) incurred by Administrative Agent, Collateral Agent, Lead Arranger and each Lender in connection with the enforcement of any Obligations of Borrower after an Event of Default or in connection with any insolvency proceedings.

9.11.2 Borrower shall indemnify each of Administrative Agent, Collateral Agent, Lead Arranger and each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all third party losses, claims, damages, liabilities and related expenses, including

the reasonable fees, charges and disbursements of any counsel for any Indemnitee, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (a) the execution or delivery of any Credit Document or any agreement or instrument contemplated hereby, the performance by the parties to the Credit Documents of their respective obligations thereunder or the consummation of the Term Loans or any other transactions contemplated thereby or, with respect to Lead Arranger or any Related Party of Lead Arranger, in connection with the arrangement and syndication of the credit facilities provided for herein, (b) any Term Loan or the use of the proceeds therefrom, (c) any actual or alleged presence or release of Hazardous Substances on or from any property owned or operated by Borrower or any of its Subsidiaries, or any Environmental Claim related in any way to Borrower or any of its Subsidiaries, or (d) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted primarily from the gross negligence, willful misconduct or bad faith of such Indemnitee.

9.11.3 To the extent that Borrower fails to pay any amount required to be paid by it to Administrative Agent, Collateral Agent or Lead Arranger under Section 9.11.1 or 9.11.2, each Lender severally agrees to pay to such Administrative Agent, Collateral Agent or Lead Arranger, as the case may be, such Lender's Proportionate Share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against such Administrative Agent, Collateral Agent or Lead Arranger in its capacity as such.

9.11.4 All amounts due under this Section shall be payable promptly after written demand therefor.

## 9.12 SUCCESSORS AND ASSIGNS.

9.12.1 The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that Borrower may not assign or otherwise transfer any of its rights or obligations hereunder other than in accordance with Section 6.15 without the prior written consent of each Lender (and any attempted assignment or transfer by Borrower without such consent shall be null and void). Nothing in this Agreement, expressed or implied; shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby and, to the extent expressly contemplated hereby, the Related Parties of each of Administrative Agent, Collateral Agent, Lead Arranger and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

9.12.2 Any Lender may assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Term Loan Commitment and Term Loans at the time owing to it); provided that: (a) Administrative Agent must give its prior written consent to such assignment (which consent shall not be unreasonably

withheld); (b) except in the case of an assignment to a Lender or an Eligible Assignee, Borrower must provide its prior written consent to such assignment (which consent shall not be unreasonably withheld); (c) such Lender shall at the same time assign a pro rata portion of its "Total Term Commitment" and "Term Loans" under the Rocky Mountain Credit Agreement to the same assignee; (d) except in the case of an assignment to a Lender or an Eligible Assignee or an assignment of the entire remaining amount of the assigning Lender's "Total Term Commitment" and "Term Loans" under this Agreement and the Rocky Mountain Credit Agreement, the aggregate amount of the Term Loan Commitments and Term Loans of the assigning Lender under this Agreement subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to Administrative Agent) shall be in an aggregate amount of not less than \$1,000,000 unless each of Borrower and Administrative Agent otherwise consent; (e) each partial assignment by a Lender of its Term Loan Commitment and Term Loans shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement in respect of its Term Loan Commitment and Term Loans; (f) the parties to each assignment shall execute and deliver to Administrative Agent an Assignment and Acceptance (such Assignment and Acceptance to be (i) electronically executed and delivered to Administrative Agent via an electronic settlement system then acceptable to Administrative Agent, which shall initially be the settlement system of ClearPar, LLC, or (ii) manually executed and delivered with a processing and recordation fee of \$3,500); and (g) the assignee, if it shall not be a Lender, shall deliver to Administrative Agent an Administrative Questionnaire; and provided further that any consent of Borrower otherwise required under this paragraph shall not be required (x) if an Event of Default under this Agreement shall have occurred and is continuing or (y) in connection with the initial syndication of the Total Term Loan Commitment and Term Loans. Subject to acceptance and recording thereof pursuant to Section 9.12.4, from and after the effective date specified in each Assignment and Acceptance the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender under this Agreement other than as set forth in Section 2.5.5, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.3.4, 2.5, 2.6 and 9.12). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 9.12.2 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 9.12.5.

9.12.3 Administrative Agent, acting for this purpose as an agent of Borrower, shall maintain at one of its offices in New York, New York a copy of each Assignment and Acceptance delivered to it and a register (the "Register") setting forth: (a) the Term Loan Commitment and the Term Loans from time to time of each Lender; (b) the interest rates applicable to all Term Loans and the effective dates of all changes thereto; (c) the Interest Period for each LIBOR Term Loan; (d) the date and amount of any principal or interest due and payable or to become due and payable from Borrower to each Lender hereunder; (e) each repayment or prepayment in respect of the principal amount of the Term Loans of each Lender; (f) the amount of any sum received by Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof; (g) the names and addresses of the Lenders, and (h) such other

information as Administrative Agent may determine is necessary for the administering of the Term Loans and this Agreement. The entries in the Register shall be conclusive, and Borrower, Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by Borrower and any Lender at any reasonable time and from time to time upon reasonable prior notice.

9.12.4 Upon its receipt of a duly completed Assignment and Acceptance executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee, if any, referred to in

Section 9.12.2 and any written consent to such assignment required by such

Section 9.12.2, Administrative Agent shall accept such Assignment and Acceptance and record the information contained therein in the Register.

No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this Section 9.12.4.

Upon any transfer by a Lender of all or part of its Term Loan Commitment or Term Loans, Exhibit H shall be automatically updated without any further act by any Person to reflect the Lenders' Proportionate Shares after giving effect to such transfer.

9.12.5 Any Lender may, without the consent of Borrower or Administrative Agent, sell participations to one or more banks or other entities (a "Participant") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Term Loan Commitment and Term Loans owing to it); provided that (a) such Lender's obligations under this Agreement shall remain unchanged, (b) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, (c) Borrower, Administrative Agent, Collateral Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and (d) such Lender shall at the same time sell a participation in a pro rata portion of its "Total Term Commitment" and "Term Loans" under the Rocky Mountain Credit Agreement to the same Participant. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Credit Documents and to approve any amendment, modification or waiver of any provision of this Agreement or the other Credit Documents; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in clause (a), (b), (c), (d) or (g) of Section 9.8.2. Subject to Section 9.12.6, Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.3.4, 2.5 and 2.6 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 9.12.2. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 11.2 as though it were a Lender, provided such Participant agrees to be subject to Section 2.4.1 as though it were a Lender.

9.12.6 A Participant shall not be entitled to receive any greater payment under Section 2.3.4, 2.5 or 2.6 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant. A Participant that would be a non-United States "Lender" under Section 2.3.4(e) if it were a Lender shall not be entitled to the benefits of Section 2.3 unless Borrower is notified of the participation sold to such Participant and such

Participant agrees, for the benefit of Borrower, to comply with Section 2.3.4(e) as though it were a Lender.

9.12.7 Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Lender, and this Section shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto; provided, further, that the pledgor shall retain the sole right to enforce this Agreement and the other Credit Documents and to approve any amendment, modification or waiver of any provision of this Agreement or the other Credit Documents. In the case of any Lender that is a fund that invests in bank loans, such Lender may, without the consent of Borrower or Administrative Agent, assign or pledge all or any portion of its rights under this Agreement, including the Term Loans and Notes or any other instrument evidencing its rights as a Lender under this Agreement, to any holder of, trustee for, or any other representative of holders of, obligations owed or securities issued, by such fund, as security for such obligations or securities; provided that any foreclosure or similar action by such trustee or representative shall be subject to the provisions of Section 9.12.2 concerning assignments.

9.12.8 Notwithstanding anything to the contrary contained herein, any Lender (a "Granting Lender") may grant to a special purpose funding vehicle (an "SPC"), identified as such in writing from time to time by the Granting Lender to Administrative Agent and Borrower, the option to provide to Borrower all or any part of any Term Loan that such Granting Lender would otherwise be obligated to make to Borrower pursuant to this Agreement; provided that (a) nothing herein shall constitute a commitment by any SPC to make any Term Loan and (b) if an SPC elects not to exercise such option or otherwise fails to provide all or any part of such Term Loan, the Granting Lender shall be obligated to make such Term Loan pursuant to the terms of this Agreement. The making of a Term Loan by an SPC shall utilize the Term Loan Commitment of the Granting Lender to the same extent, and as if, such Term Loan were made by such Granting Lender. Each party hereto hereby agrees that no SPC shall be liable for any indemnity or similar payment obligation under this Agreement (all liability for which shall remain with the Granting Lender). In furtherance of the foregoing, each party hereto hereby agrees (which agreement shall survive the termination of this Agreement ) that, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper or other senior indebtedness of any SPC, it will not institute against, or join any other person in instituting against, such SPC in connection with its activities as an SPC hereunder any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings under the laws of the United States or any State thereof. In addition, notwithstanding anything to the contrary in this Section 9.12, any SPC may with notice to, but without the prior written consent of, Borrower and Administrative Agent and without paying any processing fee therefor, assign all or a portion of its interests in any Term Loans to the Granting Lender or to any financial institutions (consented to by Borrower and Administrative Agent) providing liquidity and/or credit support to or for the account of such SPC to support the funding or maintenance of Term Loans. The provisions of this Section 9.12.8 relating any SPC may not be amended without the written consent of such SPC.

## 9.13 LAWS.

Notwithstanding the foregoing provisions of this Article 9, no sale, assignment, transfer, negotiation or other disposition of the interests of any Lender hereunder or under the other Credit Documents shall be allowed if it would require registration under the federal Securities Act of 1933, as then amended, any other federal securities laws or regulations or the securities laws or regulations of any applicable jurisdiction. Borrower shall, from time to time at the request and expense of Administrative Agent, execute and deliver to Administrative Agent, or to such party or parties as Administrative Agent may designate, any and all further instruments as may in the opinion of Administrative Agent be reasonably necessary or advisable to give full force and effect to such sale, assignment, transfer, negotiation or disposition which would not require any such registration.

## **ARTICLE 10 INDEPENDENT CONSULTANTS**

### 10.1 REMOVAL AND FEES.

Administrative Agent (acting at the direction of the Majority Lenders) may remove from time to time, any one or more of the Independent Consultants and, after consulting with Borrower as to an appropriate Person, appoint replacements as Administrative Agent may choose. Notice of any replacement Independent Consultant shall be given by Administrative Agent to Borrower, the Lenders and to the Independent Consultant being replaced. All reasonable fees and expenses of the Independent Consultants (whether the original ones or replacements) shall be paid by Borrower pursuant to agreements reasonably acceptable to Borrower; provided that no such acceptance shall be required at any time an Event of Default shall have occurred and be continuing.

### 10.2 DUTIES.

Each Independent Consultant shall be contractually obligated to Administrative Agent (on behalf of the Lenders) to carry out the activities required of it in this Agreement and as otherwise requested by Administrative Agent and shall be responsible solely to Administrative Agent. Borrower acknowledges that it will not have any cause of action or claim against any Independent Consultant resulting from any decision made or not made, any action taken or not taken or any advice given by such Independent Consultant in the due performance in good faith of its duties to Administrative Agent, except to the extent arising from such Independent Consultant's gross negligence or willful misconduct.

### 10.3 INDEPENDENT CONSULTANTS' CERTIFICATES.

Up to and following the Closing Date, Borrower shall provide such documents and information to the Independent Consultants as they may reasonably consider necessary in order for the Independent Consultants to deliver to Administrative Agent the following certificates or information:

- (a) certificates of the Insurance Consultant, Independent Engineer and Power Market Consultant delivered on and dated as of the Closing Date as described in Sections 3.1.9, 3.1.11 and 3.1.13, respectively, and containing the matters set out therein;
- (b) after the Closing Date, all certificates to be delivered thereafter pursuant to this Agreement and the other Credit Documents;
- (c) annually, a certificate setting forth a full report on the status of the Project and such other information; and
- (d) such other information and certifications as Administrative Agent may reasonably require from the Independent Consultants from time to time.

#### 10.4 CERTIFICATION OF DATES.

Administrative Agent will request that the Independent Consultants act diligently in the issuance of all certificates required to be delivered by the Independent Consultants hereunder, if their issuance is appropriate. Borrower shall provide the Independent Consultants with reasonable notice of the expected occurrence of any such dates or events.

### **ARTICLE 11 MISCELLANEOUS**

#### 11.1 ADDRESSES.

Any communications between the parties hereto or notices provided herein to be given may be given to the following addresses:

If to Administrative Agent or Collateral Agent:	Credit Suisse First Boston 11 Madison Avenue, OMA-2 New York, NY 10010 Attention: Cindy Eng Tel: (212) 325-7110 Fax: (212) 325-8304 E-mail: As may be designated by Administrative Agent
If to Borrower:	Riverside Energy Center, LLC 50 West San Fernando Street, Suite 626 San Jose, CA 95113 Telephone: (408) 794-2515 Fax: (408) 794-2516 Attention: President E-mail: As may be designated by Borrower

With a copy to:

Riverside Energy Center, LLC  
250 Parkway Drive, Suite 380  
Lincolnshire, IL 60069  
Tel: (847) 484-7700  
Fax: (847) 484-7799  
Attention: Project Manager  
E-mail: As may be designated by Borrower

All such notices or other communications required or permitted to be given hereunder shall be in writing and shall be considered as properly given

(a) if delivered in person, (b) if sent by overnight delivery service (including Federal Express, UPS, ETA, Emery, DHL, AirBorne and other similar overnight delivery services), (c) if mailed by first class United States Mail, postage prepaid, registered or certified with return receipt requested, (d) if sent by facsimile or (e) other electronic means (including electronic mail) confirmed by facsimile or telephone as agreed by Administrative Agent from time to time. Notice so given shall be effective upon receipt by the addressee, except that communication or notice so transmitted by facsimile or other direct written electronic means shall be deemed to have been validly and effectively given on the day (if a Banking Day and, if not, on the next following Banking Day) on which it is transmitted if transmitted before 4:00 p.m., recipient's time, and if transmitted after that time, on the next following Banking Day; provided, however, that if any notice is tendered to an addressee and the delivery thereof is refused by such addressee, such notice shall be effective upon such tender. Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by giving of 30 days' notice to the other parties in the manner set forth above.

#### 11.2 ADDITIONAL SECURITY; RIGHT TO SET-OFF.

Any deposits or other sums at any time credited or due from Lenders and any Project Revenues, securities or other property of Borrower in the possession of any Secured Party may at all times be treated as collateral security for the payment of the Term Loans and any Notes and all other obligations of Borrower to the Lenders under this Agreement and the other Credit Documents, and Borrower hereby pledges to Collateral Agent for the benefit of the Secured Parties and grants Collateral Agent for the benefit of the Secured Parties a security interest in and to all such deposits, sums, securities or other property. Subject to Section 2.4.2, regardless of the adequacy of any other collateral, any Secured Party with the prior written consent of the Collateral Agent may execute or realize on its or the Collateral Agent's security interest in any such deposits or other sums credited by or due from Lenders to Borrower, and may apply any such deposits or other sums to or set them off against Borrower's obligations to Lenders under any Notes and this Agreement at any time after the occurrence and during the continuance of any Event of Default.

#### 11.3 DELAY AND WAIVER.

No delay or omission to exercise any right, power or remedy accruing to the Secured Parties upon the occurrence of any Event of Default, Inchoate Default, Material Adverse Effect or any breach or default of Borrower or any other Calpine Entity or unsatisfied condition precedent under this Agreement or any other Credit Document shall impair any such right, power

or remedy of the Secured Parties, nor shall it be construed to be a waiver of any such breach or default or unsatisfied condition precedent, or an acquiescence therein, or of or in any similar breach or default or unsatisfied condition precedent thereafter occurring, nor shall any waiver of any single Event of Default, Inchoate Default, Material Adverse Effect or other breach or default or unsatisfied condition precedent be deemed a waiver of any other Event of Default, Inchoate Default, Material Adverse Effect or other breach or default or unsatisfied condition precedent theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of Administrative Agent, Collateral Agent or the Secured Parties of any Event of Default, Inchoate Default, Material Adverse Effect or other breach or default or unsatisfied condition precedent under this Agreement or any other Credit Document, or any waiver on the part of Administrative Agent, Collateral Agent or the Secured Parties of any provision or condition of this Agreement or any other Credit Document, must be in writing and shall be effective only to the extent in such writing specifically set forth. All remedies, either under this Agreement or any other Credit Document or by law or otherwise afforded to Administrative Agent, Collateral Agent and the Secured Parties, shall be cumulative and not alternative.

#### 11.4 ENTIRE AGREEMENT.

This Agreement and any agreement, document or instrument attached hereto or referred to herein integrate all the terms and conditions mentioned herein or incidental hereto and supersede all oral negotiations and prior writings in respect to the subject matter hereof. In the event of any conflict between the terms, conditions and provisions of this Agreement and any such agreement, document or instrument, the terms, conditions and provisions of this Agreement shall prevail.

#### 11.5 GOVERNING LAW.

This Agreement and any OTHER CREDIT DOCUMENT (UNLESS otherwise expressly provided for therein), shall be governed by, and construed under, the laws of the State of New York, without reference to conflicts of laws (other than Section 5-1401 AND SECTION 5-1402 of the New York General Obligations Law).

#### 11.6 SEVERABILITY.

In case any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

#### 11.7 HEADINGS.

Article, Section and Paragraph headings have been inserted in this Agreement as a matter of convenience for reference only and it is agreed that such headings are not a part of this Agreement and shall not be used in the interpretation of any provision of this Agreement.

#### 11.8 ACCOUNTING TERMS.

All accounting terms not specifically defined herein shall be construed in accordance with GAAP and practices consistent with those applied in the preparation of the financial statements submitted by Borrower to Administrative Agent, and all financial data submitted pursuant to this Agreement shall be prepared in accordance with such principles and practices.

#### 11.9 ADDITIONAL FINANCING.

The parties hereto acknowledge that as of the Closing Date the Lenders have made no agreement or commitment to provide any financing or refinancing to Borrower except as set forth herein.

#### 11.10 NO PARTNERSHIP, ETC.

The Lenders and Borrower intend that the relationship between them shall be solely that of creditor and debtor. Nothing contained in this Agreement, the Notes or in any of the other Credit Documents shall be deemed or construed to create a partnership, tenancy-in-common, joint tenancy, joint venture or co-ownership by or between the Lenders and Borrower or any other Person. None of Lead Arranger, Administrative Agent, Collateral Agent or the Lenders shall be in any way responsible or liable for the debts, losses, obligations or duties of Borrower or any other Person with respect to the Project or otherwise. All obligations to pay real property or other taxes, assessments, insurance premiums, and all other fees and charges arising from the ownership, operation or occupancy of the Project (if any) and to perform all obligations and other agreements and contracts relating to the Project shall be the sole responsibility of Borrower.

#### 11.11 MORTGAGE/COLLATERAL DOCUMENTS.

The Term Loans are secured in part by the Mortgage encumbering certain properties in the State of Wisconsin. Reference is hereby made to the Mortgage and the other Collateral Documents for the provisions, among others, relating to the nature and extent of the security provided thereunder, the rights, duties and obligations of Borrower and the rights of Administrative Agent, Collateral Agent and the other Secured Parties with respect to such security.

#### 11.12 LIMITATION ON LIABILITY.

No claim shall be made by Borrower against Lead Arranger, Administrative Agent, Collateral Agent, the Lenders or any of their respective Affiliates, directors, employees, attorneys or agents for any loss of profits, business or anticipated savings, special or punitive damages or any indirect or consequential loss whatsoever in respect of any breach or wrongful conduct (whether or not the claim therefor is based on contract, tort or duty imposed by law), in connection with, arising out of or in any way related to the transactions contemplated by this Agreement or the other Operative Documents or any act or omission or event occurring in connection therewith, and Borrower hereby waives, releases and agrees not to sue upon any such claim for any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

#### 11.13 WAIVER OF JURY TRIAL.

ADMINISTRATIVE AGENT, COLLATERAL AGENT, THE LENDERS AND BORROWER HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR ACTIONS OF ADMINISTRATIVE AGENT, COLLATERAL AGENT, THE LENDERS OR BORROWER. THIS PROVISION IS A MATERIAL INDUCEMENT FOR BORROWER, ADMINISTRATIVE AGENT, COLLATERAL AGENT, AND THE LENDERS TO ENTER INTO THIS AGREEMENT.

#### 11.14 CONSENT TO JURISDICTION.

Administrative Agent, Collateral Agent, the Lenders and Borrower agree that any legal action or proceeding by or against Borrower or with respect to or arising out of this Agreement, the Notes, or any other Credit Document may be brought in or removed to the courts of the State of New York, in and for the County of New York, or of the United States of America for the Southern District of New York, as Administrative Agent may elect. By execution and delivery of this Agreement, the Lenders, Administrative Agent, Collateral Agent and Borrower accept, for themselves and in respect of their property, generally and unconditionally, the jurisdiction of the aforesaid courts. Administrative Agent, Collateral Agent, the Lenders and Borrower irrevocably consent to the service of process out of any of the aforementioned courts in any manner permitted by law. Nothing herein shall affect the right of Administrative Agent to bring legal action or proceedings in any other competent jurisdiction, including judicial or non-judicial foreclosure of the Mortgage. Administrative Agent, Collateral Agent, the Lenders and Borrower further agree that the aforesaid courts of the State of New York and of the United States of America shall have exclusive jurisdiction with respect to any claim or counterclaim of Borrower based upon the assertion that the rate of interest charged by the Lenders on or under this Agreement, the Loans or the other Credit Documents is usurious. Administrative Agent, Collateral Agent, the Lenders and Borrower hereby waive any right to stay or dismiss any action or proceeding under or in connection with any or all of the Project, this Agreement or any other Credit Document brought before the foregoing courts on the basis of forum non-conveniens.

#### 11.15 KNOWLEDGE AND ATTRIBUTION.

References in this Agreement and the other Credit Documents to the "knowledge," "best knowledge" or facts and circumstances "known to" Borrower, and all like references, mean facts or circumstances of which a Responsible Officer of the applicable Calpine Entity has actual knowledge.

#### 11.16 COUNTERPARTS.

This Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in one or more duplicate counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered

shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document.

#### 11.17 USURY.

Nothing contained in this Agreement or the Notes shall be deemed to require the payment of interest or other charges by Borrower or any other Person in excess of the amount which the holders of the Notes may lawfully charge under applicable usury laws. In the event that the Lenders shall collect moneys which are deemed to constitute interest which would increase the effective interest rate to a rate in excess of that permitted to be charged by applicable Legal Requirements, all such sums deemed to constitute interest in excess of the legal rate shall, upon such determination, at the option of the Lenders, be returned to Borrower or credited against the principal balance then outstanding.

#### 11.18 SURVIVAL.

All representations, warranties, covenants and agreements made herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement and the other Credit Documents shall be considered to have been relied upon by the parties hereto and shall survive the execution and delivery of this Agreement, the other Credit Documents and the making of the Term Loans. Notwithstanding anything in this Agreement or implied by law to the contrary, the agreements and covenants of Borrower set forth in Articles 5, 6 and 7 shall survive through the Termination Date, the agreements of Borrower set forth in Sections 2.1.4(b), 2.1.6, 2.1.10, 2.2, 2.3.4, 2.5.3, 2.5.4, 2.6, 9.1, 9.7, 9.11 and 9.12 and the agreements of the Lenders set forth in Sections 9.1, 9.5 and 9.9 shall survive the payment and performance of the Term Loans and the other Obligations and the reimbursement of any amounts drawn hereunder, and the Termination Date.

#### 11.19 INTERCREDITOR AGREEMENT.

EACH LENDER AND EACH OF ADMINISTRATIVE AGENT AND COLLATERAL AGENT HEREBY ACKNOWLEDGES AND AGREES THAT THEIR RESPECTIVE LIEN PRIORITIES AND OTHER MATTERS RELATED TO THE CREDIT DOCUMENTS AND THE COLLATERAL ARE SUBJECT TO AND GOVERNED BY THE INTERCREDITOR AGREEMENT. Each Lender and each of Administrative Agent and Collateral Agent, by delivering its signature page hereto, funding its Term Loan on the Closing Date and/or executing an Assignment and Acceptance (as the case may be), shall be deemed to have (a) acknowledged receipt of, consented to and approved the Intercreditor Agreement and (b) authorized Administrative Agent and Collateral Agent to perform their respective obligations thereunder.

#### 11.20 CONFIDENTIALITY.

Each Lender shall hold all non-public information regarding Borrower and its business identified as such by Borrower and obtained by such Lender pursuant to the requirements hereof in accordance with such Lender's customary procedures for handling

confidential information of such nature, it being understood and agreed by Borrower that, in any event, a Lender may make:

(a) disclosures of such information to Affiliates of such Lender and to their agents and advisors (and to other Persons authorized by a Lender or Administrative Agent to organize, present or disseminate such information in connection with disclosures otherwise made in accordance with this Section 11.20); provided that such Affiliates, agents, advisors and Persons agree to keep such information confidential in accordance with the requirements of this Section 11.20;

(b) disclosures of such information reasonably required by any bona fide or potential assignee, transferee or participant in connection with the contemplated assignment, transfer or participation by such Lender of any its interests herein (including any of its Term Loans) or any participations therein; provided that such assignees, transferees or participants agree to keep such information confidential in accordance with the requirements of this Section 11.20;

(c) disclosure to any rating agency when required by it; provided that, prior to any disclosure, such rating agency shall undertake in writing to preserve the confidentiality of any confidential information relating to Borrower received by it from Administrative Agent or any Lender, and

(d) disclosures required or requested by any Governmental Authority or representative thereof or by the National Association of Insurance Commissioners or pursuant to legal or judicial process; provided, unless specifically prohibited by applicable law or court order, each Lender shall make reasonable efforts to notify Borrower of any request by any Governmental Authority or representative thereof (other than any such request in connection with any examination of the financial condition or other routine examination of such Lender by such Governmental Authority) for disclosure of any such non-public information prior to disclosure of such information.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the parties hereto, by their officers duly authorized, intending to be legally bound, have caused this Credit Agreement to be duly executed and delivered as of the day and year first above written.

**RIVERSIDE ENERGY CENTER, LLC,**  
a Wisconsin limited liability company

By: /s/ Brian Harenza

---

Name: Brian Harenza  
Title: Vice President

**CREDIT SUISSE FIRST BOSTON,**  
acting through its Cayman Islands Branch,  
as Lead Arranger, Book Runner, Lender,  
Administrative Agent and Collateral Agent

By: /s/ S. William Fox

---

Name: S. William Fox  
Title: Director

By: /s/ David J. Dodd

---

Name: David J. Dodd  
Title: Associate

**COBANK, ACB,**  
as Syndication Agent and Lender

By: /s/ David Boyce

---

Name: David Boyce  
Title: Vice President

**[RIVERSIDE CREDIT AGREEMENT SIGNATURE PAGE]**

**EXHIBIT A**  
**to Credit Agreement**

**DEFINITIONS**

"Accounts" means the Revenue Account, the Distribution Suspense Account, the O&M Account, the Major Maintenance Reserve Account, the Loss Proceeds Account, the Pre-Funded Punchlist Expense Account, the Checking Account, the P&I Payment Account, the PSCo Security Reserve Account and each cash collateral account referred to in the Credit Documents, including any sub-accounts within such accounts.

"Additional Project Documents" has the meaning given in Section 6.18 of the Credit Agreement.

"Administrative Agent" means Credit Suisse First Boston, acting through its Cayman Islands Branch, acting in its capacity as administrative agent for the Secured Parties under the Credit Documents.

"Administrative Questionnaire" means an administrative questionnaire in a form supplied from time to time by Administrative Agent.

"Adverse PUHCA Event" means that Borrower or any of its "affiliates" (within the meaning of Section 2(a)(11)(B) of PUHCA) becomes an "electric utility company", "public utility company", or "holding company" required to register as such within the meaning of PUHCA at a time at which applicable provisions of PUHCA, or any successor statute thereof, and the rules and regulations thereunder are in effect and such event or occurrence has, or with the passage of time will have, a Material Adverse Effect or a material and adverse effect on Administrative Agent, Collateral Agent or the Lenders.

"Affiliate" of a specified Person means any other Person that (a) directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the Person specified, or (b) only with respect to matters relating to PUHCA, holds or beneficially owns 10% or more of the equity interest in the Person specified or 10% or more of any class of voting securities of the Person specified. When used with respect to Borrower, "Affiliate" shall include the Sponsor, the Pledgor, Rocky Mountain Borrower, Operator and any Affiliate thereof (other than Borrower).

"Amortization Schedule" means the schedule for repayment of the principal of the Term Loans as set forth on Exhibit I to the Credit Agreement.

"Annual Operating Budget" has the meaning given in Section 5.14.3 of the Credit Agreement.

"Anti-Terrorism Laws" has the meaning given in Section 4.6.1 of the Credit Agreement.

"Applicable Permit" means, at any time, any Permit, including any zoning, land use, environmental protection, pollution (including air, water or noise), sanitation, FERC, Public Service Commission of Wisconsin, Wisconsin Department of Natural Resources, Wisconsin Department of Commerce, import, export, safety, siting or building Permit (a) that is necessary under applicable Legal Requirements or any of the Operative Documents to be obtained by or on behalf of Borrower at such time in light of the stage of ownership or operation of the Project to operate, maintain, repair, lease, own or use the Project as contemplated by the Operative Documents, to sell electricity from the Project or deliver fuel to the Project, or for Borrower to enter into any Operative Document or to consummate any transaction contemplated thereby, in each case in accordance with all applicable Legal Requirements, or (b) that is necessary so that none of Borrower, Administrative Agent, Collateral Agent, the Lead Arranger or the Secured Parties nor any Affiliate of any of them may be deemed by any Governmental Authority to be subject to regulation under the FPA (except as Borrower may be subject to regulation as a public utility) or PUHCA (except as Borrower may be subject to compliance requirements under Section 32 of PUHCA applicable to it being an EWG) or treated as a public utility under the Constitution and the laws of the State of Wisconsin as presently constituted and as construed by the courts of Wisconsin with respect to the regulation of the rates of, or the financial or organizational regulation of, electric utilities as a result of the development and construction or operation of the Project or the sale of electricity therefrom.

"Applicable Third Party Permit" means, at any time, any Permit, including any zoning, environmental protection, pollution, sanitation, FERC, Public Service Commission of Wisconsin, Wisconsin Department of Natural Resources, Wisconsin Department of Commerce, export, safety, siting or building Permit or that is necessary to be obtained by such time by any Person (other than Borrower) that is a party to a Major Project Document or a Credit Document in order to perform such Person's obligations thereunder (other than Permits necessary to conduct its business generally and maintain its existence and good standing), or in order to consummate any transaction contemplated thereby, in each case in accordance with all applicable Legal Requirements.

"Assignment and Acceptance" means an assignment and acceptance agreement, substantially in the form of Exhibit M to the Credit Agreement, entered into by a Lender and an assignee (with the consent of any applicable Person as required by Section 9.12), and accepted by Administrative Agent.

"ATCo" means American Transmission Company LLC, a Wisconsin limited liability company.

"ATCo Interconnection Agreement" means the Generation-Transmission Interconnection Agreement, dated as of April 4, 2002, by and between ATCo and Borrower (as filed with FERC on November 27, 2002).

"Bank Book" means that certain confidential Bank Book titled "Riverside and Rocky Mountain Project Funding" dated May 2004.

"Banking Day" means any day other than a Saturday, Sunday or other day on which banks are or Administrative Agent is authorized or required to be closed in the State of

Wisconsin or the State of New York and, where such term is used in any respect relating to a LIBOR Term Loan, which is also a day on which dealings in Dollar deposits are carried out in the London interbank market.

"Bankruptcy Event" shall be deemed to occur, with respect to any Person, if that Person shall institute a voluntary case seeking liquidation or reorganization under the Bankruptcy Law, or shall consent to the institution of an involuntary case thereunder against it; or such Person shall file a similar petition or consent or shall otherwise institute any similar proceeding under any Bankruptcy Law, or shall consent thereto; or such Person shall apply for, or consent or acquiesce to, the appointment of, a receiver, administrator, administrative receiver, liquidator, sequestrator or trustee for itself or any substantial part of its assets under any Bankruptcy Law; or such Person shall make a general assignment for the benefit of its creditors; or such Person shall admit in writing its inability to pay its debts generally as they become due; or if an involuntary case seeking liquidation or reorganization of such Person under the Bankruptcy Law shall be commenced against such Person and (a) the petition commencing the involuntary case is not timely controverted, (b) the petition commencing the involuntary case is not dismissed within 60 days of its filing, (c) an interim trustee is appointed to take possession of all or a portion of the property, and/or to operate all or any part of the business of such Person and such appointment is not vacated within 60 days, or (d) an order for relief shall have been issued or entered therein; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, administrator, administrative receiver, liquidator, sequestrator or trustee shall have been entered; or any other similar relief shall be granted against such Person under the Bankruptcy Law.

"Bankruptcy Law" means Title 11, United States Code, and any other state or federal insolvency, reorganization, moratorium or similar law for the relief of debtors, or any successor statute to the aforementioned.

"Base Case Project Projections" means a projection of operating results for the Project over a period commencing on the Closing Date and ending on December 31, 2023, showing at a minimum Borrower's reasonable good faith estimates, as of the Closing Date, of revenues, operating expenses, the Debt Service Coverage Ratio (which Debt Service Coverage Ratio shall be calculated on an annual basis, with the first Principal Repayment Date occurring on July 30, 2004, each other Principal Repayment Date occurring semi-annually thereafter and the final Principal Repayment Date occurring on the Maturity Date), and sources and uses of revenues over the forecast period, which projection is attached as Exhibit G-3 to the Credit Agreement.

"Base Rate" means the greater of (a) the prime commercial lending rate established from time to time by Administrative Agent at its New York office or (b) the Federal Funds Rate plus 0.50%. The Base Rate may not necessarily be the highest or lowest rate of interest charged by Administrative Agent to its commercial borrowers.

"Base Rate Term Loan" means a Term Loan accruing interest at the Base Rate.

"Book Runner" means Credit Suisse First Boston, acting through its Cayman Islands Branch, acting in its capacity as book runner under the Credit Documents.

"Borrower" means Riverside Energy Center, LLC, a Wisconsin limited liability company.

"Borrower Material Adverse Effect" means (a) a material adverse change in the current or reasonably anticipated business, property, results of operation or financial condition of Borrower, (b) any event or occurrence of whatever nature which could reasonably be expected to materially and adversely affect Borrower's ability to perform its material obligations under the Credit Documents (taken as a whole), and (c) any event or occurrence of whatever nature which could reasonably be expected to materially and adversely affect the value, validity or priority of the Secured Parties' security interests in the Collateral, taken as a whole.

"Borrowing" means a borrowing by Borrower of the Term Loans.

"Calculation Period" means, as to a particular date, the 12 month period (or, during the initial 12 months following the Closing Date, the actual number of calendar months or partial calendar months following the Closing Date) immediately preceding such date.

"Calpine Entity(ies)" has the meaning given in Section 3.1.1 of the Credit Agreement.

"Capital Adequacy Requirement" has the meaning given in Section 2.5.4 of the Credit Agreement.

"CES" means Calpine Energy Services, L.P., a Delaware limited partnership.

"CES Power Sales Agreement" means, collectively, that certain (a) Master Power Purchase and Sale Agreement, dated as of June 24, 2004, between Borrower and CES, (b) Master Power Purchase and Sale Agreement Cover Sheet, dated as of June 24, 2004, between Borrower and CES, and (c) Master Power Purchase and Sale Agreement Confirmation Letter, dated as of June 24, 2004, between Borrower and CES.

"Change of Control" means:

(a) with respect to Sponsor, other than in connection with a Permitted Sponsor Transfer, the Sponsor shall cease to directly or indirectly own and control at any time more than 50% of (i) the economic interests in Borrower, and (b) the voting interests (whether by committee, contract or otherwise) in Borrower; or

(b) with respect to Borrower, Borrower shall cease to directly (or, from and after any Required Holdco Transfer, indirectly) own and control at any time less than 100% of (i) the economic interests in Rocky Mountain Borrower, and (b) the voting interests (whether by committee, contract or otherwise) in Rocky Mountain Borrower;

provided, that in connection with any disposition by Pledgor of any of its ownership interests in Borrower, such disposition shall be deemed to be a Change of Control unless (i) such disposition is made pursuant to clause (a) above, (ii) the applicable transferee is a corporation, limited liability company or limited partnership organized or formed in the United States or a state or commonwealth therein, (iii) on or before the date of any such disposition, the applicable

transferee enters into a pledge agreement in substantially the form of Exhibit D-3, pursuant to which such transferee shall pledge all of its ownership interests in Borrower to Collateral Agent, for the benefit of the Secured Parties, and executes and delivers all other applicable Credit Documents necessary to create and perfect a Lien on such membership interests in a manner consistent with Section 5.15 of the Credit Agreement and the Intercreditor Agreement, and (iv) on or before the date of any such disposition, the applicable transferee delivers to Administrative Agent opinions of counsel with respect to such transferee, such transfer and such pledge agreement substantially similar to those opinions delivered pursuant to Section 3.1.8 on the Closing Date.

"Change of Law" has the meaning given in Section 2.5.2 of the Credit Agreement.

"Checking Account" means that certain checking account established by Borrower pursuant to Section 3.6.1 of the Depositary Agreement.

"Checking Account Bank" has the meaning given in Section 3.6.1 of the Depositary Agreement.

"Closing Date" has the meaning given in Section 3.1 of the Credit Agreement.

"CoBank Fee Letter" means that certain letter agreement regarding fees, dated as of June 24, 2004, by and between Borrower and CoBank, ACB.

"Code" means the Internal Revenue Code of 1986, as amended.

"Collateral" means all property which is subject or is intended to become subject to the security interests or liens granted by any of the Collateral Documents.

"Collateral Agent" means Credit Suisse First Boston, acting through its Cayman Islands Branch, acting in its capacity as collateral agent for the Secured Parties under the Credit Documents.

"Collateral Documents" means the Mortgage, the Pledge Agreement, the Security Agreement, the Intercreditor Agreement, the Depositary Agreement, any Control Agreement, each Consent, and any fixture filings, financing statements, or other similar documents filed, recorded or delivered in connection with the foregoing.

"Commitments" means, with respect to each Lender, such Lender's Term Loan Commitment, and with respect to all Lenders, the Total Term Loan Commitment.

"Confirmation of Interest Period Selection" has the meaning given in Section 2.1.7(d)(ii) of the Credit Agreement.

"Consents" means the consents specified on Exhibit E-2 to the Credit Agreement and any other third party consents to the assignments contemplated by the Credit Documents.

"Consolidated Debt Service" means, for any period, the sum of (a) all fees (other than fees paid on the Closing Date) payable during such period to any of the Secured Parties under the Credit Agreement and to any of the Rocky Mountain Secured Parties under the Rocky Mountain Credit Agreement, (b) interest on the Term Loans and Rocky Mountain Term Loans less net payments, if any, received during such period pursuant to Hedge Transactions and Rocky Mountain Hedge Transactions, (c) scheduled Term Loan and Rocky Mountain Term Loan principal payments (as reduced to reflect actual prepayments through the date of such calculation) payable during such period, (d) net payments, if any, payable during such period pursuant to Hedge Transactions and Rocky Mountain Hedge Transactions and (e) amounts payable by Rocky Mountain Borrower to any of the Rocky Mountain Secured Parties under the Rocky Mountain Credit Agreement in respect of Rocky Mountain Funded LC Disbursements and Rocky Mountain Funded LC Credit-Linked Deposits.

"Consolidated Debt Service Coverage Ratio" means, for any period, the ratio of (a) Consolidated Operating Cash Available for Debt Service for such period to (b) Consolidated Debt Service for such period.

"Consolidated EBITDA" means, with respect to any period, Consolidated Net Income for such period plus (a) without duplication and to the extent deducted in determining such Consolidated Net Income, the sum of (i) any and all interest expense for such period, (ii) all amounts attributable to depreciation and amortization for such period, (iii) any extraordinary or non-recurring non-cash charges (other than the write-down of current assets) for such period (including any such non-cash charges for such period relating to the application of fresh start accounting principals), (iv) any non-cash goodwill or other intangible asset impairment charges incurred after the date hereof resulting from the application of Statement Number 142 of the Financial Accounting Standards Board, and (v) any non-recurring expenses incurred in connection with the transactions contemplated by the Credit Documents and the Rocky Mountain Credit Documents, plus (b) without duplication, the cash amount of prepayments received by Borrower under any Major Project Document or Rocky Mountain Borrower under any Rocky Mountain Major Project Document during such period, and minus (c) without duplication (i) all cash payments made during such period on account of reserves, restructuring charges and other non-cash charges added to Consolidated Net Income pursuant to clause (a) above in a previous period and (ii) to the extent included in determining such Consolidated Net Income, any extraordinary gains and all non-cash items of income for such period, all determined on a consolidated basis in accordance with GAAP.

"Consolidated Net Income" means, with respect to any period and without duplication, the consolidated net income of Borrower and Rocky Mountain Borrower for such period, determined in accordance with GAAP; provided, that the cumulative effect of a change in accounting principles will be excluded.

"Consolidated Operating Cash Available for Debt Service" means, for any period, the sum of (a) the positive difference (if any) between (i) Operating Cash Available for Debt Service for such period and (ii) amounts distributed or dividended to Borrower constituting Project Revenues by Rocky Mountain Borrower during such period and (b) Rocky Mountain Operating Cash Available for Debt Service for such period.

"Construction Easement" means the Grant of Temporary Construction Easement, dated as of August 21, 2003, by WP&L for the benefit of Borrower.

"Control Agreement" means that certain control agreement to be entered into among Borrower, Collateral Agent and Checking Account Bank regarding the perfection of Collateral Agent's Lien on the Checking Account.

"Credit Agreement" means the Credit Agreement, dated as of June 24, 2004, by and among Borrower, Administrative Agent, Collateral Agent, Book Runner, Lead Arranger, the other agents and arrangers listed on the signature pages thereto and the Lenders.

"Credit Documents" means the Credit Agreement, the Notes, the Collateral Documents, the Interest Rate Agreements (including all Hedge Transactions thereunder), the Fee Letters, the Subordination Agreement and any other loan intercreditor or security agreements or letter agreement or similar document, entered into by Administrative Agent, Collateral Agent, Depositary Agent, Lead Arranger or any Secured Party, on the one hand, and the Borrower or one or more Affiliates of Borrower, on the other hand, in connection with the transactions contemplated by the Credit Documents.

"CSFB Fee Letter" means that certain letter agreement regarding fees, dated as of June 24, 2004, by and among Lead Arranger, Administrative Agent, Collateral Agent and Borrower.

"Debt" of any Person at any date means, without duplication, (a) all obligations (including contingent obligations) of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable and other accrued expenses arising in the ordinary course of business which in accordance with GAAP would be shown on the liability side of the balance sheet of such Person, (d) all obligations of such Person under leases which are or should be, in accordance with GAAP, recorded as capital leases in respect of which such Person is liable, (e) all obligations of such Person to purchase securities (or other property) which arise out of or in connection with the sale of the same or substantially similar securities (or property), (f) all deferred obligations of such Person to reimburse any bank or other Person in respect of amounts paid or advanced under a letter of credit or other instrument, (g) all Debt of others secured by a Lien on any asset of such Person, whether or not such Debt is assumed by such Person, (h) all Debt of others guaranteed directly or indirectly by such Person or as to which such Person has an obligation substantially the economic equivalent of a guarantee, (i) all monetary obligations of such Person under a so-called synthetic, off-balance sheet or tax retention lease and (j) obligations in respect of Hedge Transactions.

"Debt Service" means, for any period, the sum of (a) all fees (other than fees paid on the Closing Date) payable during such period to Administrative Agent, Collateral Agent, Depositary Agent and the Lenders, (b) interest on the Term Loans less (for purposes of calculating the Debt Service Coverage Ratio) net payments, if any, received during such period pursuant to Hedge Transactions, (c) scheduled Term Loan principal payments (as reduced to

reflect actual prepayments through the date of such calculation) payable during such period and (d) net payments, if any, payable during such period pursuant to Hedge Transactions.

"Debt Service Coverage Ratio" means, for any period, the ratio of (a) Operating Cash Available for Debt Service for such period to (b) Debt Service for such period.

"Default Rate" has the meaning given in Section 2.3.3 of the Credit Agreement.

"Depository Agent" means The Bank of New York, not in its individual capacity but solely as depository agent, bank and securities intermediary under the Depository Agreement.

"Depository Agreement" means the Depository Agreement, dated as of the Closing Date, in substantially the form of Exhibit D-4 to the Credit Agreement, among Borrower, Administrative Agent, Collateral Agent and Depository Agent.

"Distribution Suspense Account" has the meaning given in Section 1.1 of the Depository Agreement.

"Dollars" and "\$" means United States dollars or such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts in the United States of America.

"Easements" shall have the meaning given in the Mortgage.

"Eligible Assignee" means (a) any Lender, any Affiliate of any Lender and any Related Fund (any two or more Related Funds being treated as a single Eligible Assignee for all purposes hereof), and (b) any commercial bank, insurance company, investment or mutual fund or other entity that is an "accredited investor" (as defined in Regulation D under the Securities Act) and which extends credit or buys loans as one of its businesses.

"Eligible Facility" means an "eligible facility" within the meaning of PUHCA and FERC's implementing regulations pertaining thereto.

"Emergency Operating Costs" means those amounts required to be expended for the purchase of goods and services in order to prevent or mitigate an unforeseeable event or circumstances that, in the good faith judgment of Borrower or Operator, necessitates the taking of immediate measures to prevent or mitigate injury to Persons or injury to or loss of property.

"Eminent Domain Proceeds" has the meaning given in Section 3.5.1 of the Depository Agreement.

"Environmental Claim" means any and all liabilities, losses, administrative, regulatory or judicial actions, suits, demands, decrees, claims, liens, judgments, warning notices, notices of noncompliance or violation, investigations, proceedings, removal or remedial actions or orders, or damages (foreseeable and unforeseeable, including consequential and punitive damages), penalties, fees, out-of-pocket costs, expenses, disbursements or attorneys' or consultants' fees, relating in any way to (a) a violation or alleged violation of any Hazardous Substance Law or Permit issued under any Hazardous Substance Law, (b) a Release or

threatened Release of Hazardous Substances, or (c) any legal or administrative proceedings relating to any of the above.

"Environmental Reports" means that certain R.W. Beck, Inc., Phase I Environmental Site Assessment Update Letter Report, Riverside Energy Center, 1401 West B-R Townline Road, Beloit, Wisconsin, 53511, dated as of June 22, 2004.

"Equipment" has the meaning given in the Mortgage.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"ERISA Affiliate" means any trade or business (whether or not incorporated) that is treated as a single employer together with Borrower under Section 414 of the Code.

"ERISA Plan" means any employee benefit plan (a) maintained by Borrower or any ERISA Affiliate, or to which any of them contributes or is obligated to contribute, for its employees and (b) covered by Title IV of ERISA or to which Section 412 of the Code applies.

"Event of Default" has the meaning given in Article 7 of the Credit Agreement.

"Event of Eminent Domain" means any compulsory transfer or taking by condemnation, eminent domain or exercise of a similar power, or transfer under threat of such compulsory transfer or taking, of any part of the Collateral or any of the Mortgaged Property, by any agency, department, authority, commission, board, instrumentality or political subdivision of the State of Wisconsin, the United States or another Governmental Authority having jurisdiction.

"EWG" has the meaning given in Section 4.16.1 of the Credit Agreement.

"Executive Order" has the meaning given in Section 4.6.1 of the Credit Agreement.

"Existing Riverside Administrative Agent" means Calyon New York Branch, in its capacity as administrative agent under the Existing Riverside Credit Facility.

"Existing Riverside Credit Facility" means the Credit Agreement, dated as of August 22, 2003, by and among Borrower, Existing Riverside Administrative Agent, the financial institutions party thereto from time to time as lenders and the other agents and arrangers party thereto.

"Federal Funds Rate" means, for any day, the weighted average of the per annum rates on overnight Federal funds transactions with member banks of the Federal Reserve System arranged by Federal funds brokers as published by the Federal Reserve Bank of New York for such day (or, if such rate is not so published for any day, the average rate charged by Administrative Agent on such day on such transactions as determined by Administrative Agent).

"Federal Reserve Board" means the Board of Governors of the Federal Reserve System.

"Fee Letters" means, collectively, the CSFB Fee Letter and the CoBank Fee Letter.

"FERC" means the Federal Energy Regulatory Commission and its successors.

"Financing Statements" has the meaning given in Section 3.1.19(c) of the Credit Agreement.

"FPA" has the meaning given in Section 4.16.1 of the Credit Agreement.

"GAAP" means generally accepted accounting principles in the United States of America.

"GEI" means General Electric International, Inc.

"Governing Documents" means, with respect to any Person, the certificate or articles of incorporation, bylaws, operating agreement or other organizational or governing documents of such Person.

"Governmental Authority" means any national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, bureau or entity, (including any zoning authority, FERC, the Securities Exchange Commission, the Comptroller of the Currency or the Federal Reserve Board, any central bank or any comparable authority) or any arbitrator with authority to bind a party at law.

"Governmental Rule" means any law, rule, regulation, ordinance, order, code interpretation, treaty, judgment, decree, directive, guidelines, policy or similar form of decision of any Governmental Authority.

"Granting Lender" has the meaning given in Section 9.12.8 of the Credit Agreement.

"Ground Lease" means the Land Lease, dated as of September 24, 2002, between WP&L and Borrower.

"Hazardous Substances" means (statutory acronyms and abbreviations having the meaning given them in the definition of "Hazardous Substances Laws") substances defined as "hazardous substances," "pollutants" or "contaminants" in Section 101 of the CERCLA; those substances defined as "hazardous waste," "hazardous materials" or "regulated substances" by the RCRA; those substances designated as a "hazardous substance" pursuant to Section 311 of the CWA; those substances defined as "hazardous materials" in Section 103 of the HMTA; those substances regulated as a hazardous chemical substance or mixture or as an imminently hazardous chemical substance or mixture pursuant to Section 6 or 7 of the TSCA; those substances defined as "contaminants" by Section 1401 of the SDWA, if present in excess of permissible levels; those substances regulated by the Oil Pollution Act; those substances defined as a pesticide pursuant to Section 2(u) of the FIFRA; those substances defined as a source, special nuclear or by-product material by Section 11 of the AEA; those substances defined as

"toxic materials" or "harmful physical agents" pursuant to Section 6 of the OSHA); those substances defined as hazardous wastes in 40 C.F.R. Part 261.3; those substances defined as hazardous waste constituents in 40 C.F.R. Part 260.10, specifically including Appendix VII and VIII of Subpart D of 40 C.F.R. Part 261; those substances designated as hazardous substances in 40 C.F.R. Parts 116.4 and 302.4; those substances defined as hazardous substances or hazardous materials in 49 C.F.R. Part 171.8; those substances regulated as hazardous materials, hazardous substances, or toxic substances in 40 C.F.R. Part 1910; those substances regulated as hazardous materials, hazardous substances, or toxic substances in any other Hazardous Substances Laws; and those substances regulated as hazardous materials, hazardous substances, or toxic substances in the regulations adopted and publications promulgated pursuant to said laws, whether or not such regulations or publications are specifically referenced herein.

"Hazardous Substances Law" means any of:

- (i) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Section 9601 et seq.) ("CERCLA");
- (ii) the Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.) ("Clean Water Act" or "CWA");
- (iii) the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.) ("RCRA");
- (iv) the Atomic Energy Act of 1954 (42 U.S.C. Section 2011 et seq.) ("AEA");
- (v) the Clean Air Act (42 U.S.C. Section 7401 et seq.) ("CAA");
- (vi) the Emergency Planning and Community Right to Know Act (42 U.S.C. Section 11001 et seq.) ("EPCRA");
- (vii) the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Section 136 et seq.) ("FIFRA");
- (viii) the Oil Pollution Act of 1990 (P.L. 101-380, 104 Stat. 486);
- (ix) the Safe Drinking Water Act (42 U.S.C. Section 300f et seq.) ("SDWA");
- (x) the Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.) ("TSCA");
- (xi) the Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq.) ("HMTA");
- (xii) the Occupational Safety and Health Act (29 U.S.C. Section 651 et seq.) ("OSHA");
- (xiii) the Wisconsin statutes set forth in Chapter 101, 160, 280, 281, 283, 285, 287, 289, 291, 292 or 299 thereof;

(xiv) the Code of Ordinances, Town of Beloit; and

(xv) all other Federal, state and local Governmental Rules relating to the protection of human health or the environment or which otherwise govern Hazardous Substances, and the regulations adopted and publications promulgated pursuant to all such foregoing laws.

"Hedge Breaking Fees" has the meaning given in Section 5.20.2 of the Credit Agreement.

"Hedge Lender" means a Lender, or any Affiliate thereof which, in any case, is party to an Interest Rate Agreement with Borrower, in its capacity as counterparty to such Interest Rate Agreement.

"Hedge Transaction" means any "Transaction" (such as swaps, caps, collars or floors) entered into under an Interest Rate Agreement.

"HoldCo" means a wholly owned subsidiary of Borrower which is a limited liability company (and a disregarded entity for federal tax purposes) formed as of the date required by Section 5.23 of the Credit Agreement and solely for the purpose of owning the ownership interests of Rocky Mountain Borrower.

"Improvements" has the meaning given in the Mortgage.

"Inchoate Default" or "Default" means any occurrence, circumstance or event, or any combination thereof, which, with the lapse of time or the giving of notice or both, would constitute an Event of Default.

"Increased-Cost Lender" has the meaning given in Section 2.7.2(a) of the Credit Agreement.

"Indemnitee" has the meaning given in Section 9.11.2 of the Credit Agreement.

"Independent Consultants" means, collectively, the Insurance Consultant, the Power Market Consultant and the Independent Engineer.

"Independent Engineer" means R.W. Beck, Inc.

"Initial Operating Budget" has the meaning given in Section 3.1.20 of the Credit Agreement.

"Insurance Consultant" means Marsh USA, Inc.

"Insurance Proceeds" has the meaning given in Section 3.5.1 of the Depositary Agreement.

"Intercreditor Agreement" means that certain Intercreditor Agreement, dated as of the Closing Date, in substantially the form of Exhibit D-7 to the Credit Agreement, among

Borrower, Rocky Mountain Borrower, Administrative Agent, Rocky Mountain Administrative Agent, Collateral Agent and Rocky Mountain Collateral Agent.

"Interest Payment Dates" means (a) October 29, 2004, (b) the last Banking Day of each January, April, July and October of each calendar year thereafter until the Maturity Date and (c) the Maturity Date.

"Interest Period" means, with respect to any LIBOR Term Loan, the time period selected by Borrower or provided for pursuant to the Credit Agreement which commences on and includes the first day of such Term Loan, or the effective date of any conversion (as the case may be) and ends on and excludes the last day of such time period.

"Interest Rate" means the Base Rate or the LIBO Rate, as the case may be.

"Interest Rate Agreements" means one or more interest rate swap agreements, caps, collars, or other master interest rate hedging mechanisms, in each case having a term that does not extend beyond the Maturity Date and otherwise in form and substance reasonably satisfactory to Administrative Agent.

"Interest Rate Determination Date" means, with respect to any Interest Period, two Banking Days prior to the first day of such Interest Period.

"Lead Arranger" means Credit Suisse First Boston, acting through its Cayman Islands Branch, in its capacity as lead arranger under the Credit Agreement.

"Legal Requirements" means, as to any Person, the Governing Documents of such Person, any requirement under a Permit, and any Governmental Rule in each case applicable to or binding upon such Person or any of its properties or to which such Person or any of its property is subject.

"Lender" or "Lenders" means each financial institution listed on the signature pages hereto as a Lender, and any other Person that becomes a party hereto pursuant to an Assignment and Acceptance. For purposes of determining Obligations secured by the Collateral, each Hedge Lender shall be deemed a "Lender" party to the Credit Agreement and Credit Documents to the extent so specified in Section 5.20.3 of the Credit Agreement.

"Lending Office" means, with respect to any Lender, the office designated in writing as such to Administrative Agent and Borrower from time to time.

"LIBO Rate" means, with respect to any LIBOR Term Loan for any Interest Period, the rate per annum determined by Administrative Agent at approximately 11:00 a.m. (London time) on the Interest Rate Determination Date by reference to the British Bankers' Association Interest Settlement Rates for deposits in Dollars (as set forth by any service selected by Administrative Agent which has been nominated by the British Bankers' Association as an authorized information vendor for the purpose of displaying such rates) for a period equal to such Interest Period; provided that, to the extent that an interest rate is not ascertainable pursuant to the foregoing provisions of this definition, the "LIBO Rate" shall be the interest rate per annum determined by Administrative Agent to be the average of the rates per annum at which

deposits in Dollars are offered for such Interest Period to major banks in the London interbank market in London, England by Administrative Agent at approximately 11:00 a.m. (London time) on the Interest Rate Determination Date. Each determination by Administrative Agent pursuant to this definition shall be conclusive in the absence of manifest error.

"LIBOR Term Loan" means a Term Loan accruing interest at the LIBO Rate.

"Lien" means, with respect to any property or asset, any mortgage, deed of trust, lien, pledge, charge, security interest, or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected or effective under applicable law, as well as the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such asset.

"Liquidation Costs" has the meaning given in Section 2.6 of the Credit Agreement.

"Loss Proceeds" has the meaning given in Section 3.5.1 of the Depositary Agreement.

"Loss Proceeds Account" has the meaning given in Section 1.1 of the Depositary Agreement.

"Major Casualty Event" has the meaning given in Section 3.5.2 of the Depositary Agreement.

"Major Maintenance" means labor, materials and other direct expenses for any overhaul of, or major maintenance procedure for, the Project which requires significant disassembly or shutdown of the Project, (a) in accordance with Prudent Utility Practices, (b) pursuant to manufacturers' requirements to avoid voiding any such manufacturer's warranty or (c) pursuant to any applicable Legal Requirement.

"Major Maintenance Reserve Account" has the meaning given in Section 1.1 of the Depositary Agreement.

"Major Maintenance Reserve Letter of Credit" has the meaning given in Section 1.1 of the Depositary Agreement.

"Major Maintenance Reserve Requirement" has the meaning given in Section 1.1 of the Depositary Agreement.

"Major Project Documents" means the the Tolling Agreement, the Power Purchase Agreement, the O&M Agreement, the ATCo Interconnection Agreement, the Ground Lease, the Wastewater Construction Contract, the Parts Discount Agreement, the CES Power Sales Agreement, any guaranty agreements (other than the Sponsor O&M Agreement Guaranty), related to the foregoing executed by Persons in favor of Borrower and, unless otherwise agreed by Administrative Agent prior to its execution and delivery, any Additional Project Documents.

"Major Project Participants" means, without duplication, Borrower, Operator, WP&L, MG&E, ATCo, GEI, CES and any other Person which provides any guaranty agreement which is a Major Project Document, and any counterparty to any Additional Project Document which is a Major Project Document.

"Majority Lenders" means, at any time, Lenders having Proportionate Shares which in the aggregate exceed 50%.

"Mandatory Prepayment" has the meaning given in Section 2.1.10(c) of the Credit Agreement.

"Mandatory Repayment Date" has the meaning given in Section 2.1.10(d)(iii) of the Credit Agreement.

"Mandatory Repayment Offer" has the meaning given in Section 2.1.10(d) of the Credit Agreement.

"Material Adverse Effect" means (a) a material adverse change in the current or reasonably anticipated business, property, results of operation or financial condition of Borrower, (b) any event or occurrence of whatever nature which could reasonably be expected to materially and adversely affect Borrower or any other Major Project Participant's ability to perform its material obligations under the Credit Documents (taken as a whole) or Major Project Documents, as the case may be, and (c) any event or occurrence of whatever nature which could reasonably be expected to materially and adversely affect the value, validity or priority of the Secured Parties' security interests in the Collateral, taken as a whole.

"Maturity" or "maturity" means, with respect to any Term Loan, Borrowing, interest, fee or other amount payable by Borrower under the Credit Agreement or the other Credit Documents, the date such Term Loan, Borrowing, interest, fee or other amount becomes due, whether upon the stated maturity or due date, upon acceleration or otherwise.

"Maturity Date" means the earlier of (a) the seventh anniversary of the Closing Date, and (b) the date on which the entire outstanding principal balance of the Term Loans, together with all unpaid interest, fees, charges and costs, becomes due and payable under the Credit Agreement.

"MG&E" means Madison Gas and Electric Company, a Wisconsin corporation.

"Minimum Notice Period" means (a) at least three Banking Days before the Closing Date or any continuation or conversion of a Type of Term Loan resulting in whole or in part in one or more LIBOR Term Loans, and (b) at least one Banking Day before any conversion of a Type of Term Loan resulting in whole or in part in one or more Base Rate Term Loans.

"MMBtu" means one million British Thermal Units.

"Moody's" means Moody's Investors Service, Inc.

"Mortgage" means the Mortgage, Security Agreement and Fixture Filing, dated as of the Closing Date, in substantially the form of Exhibit D-1 to the Credit Agreement, by Borrower to Collateral Agent (for the benefit of the Secured Parties).

"Mortgaged Property" has the meaning given in the Mortgage.

"Multiemployer Plan" means any ERISA Plan that is a "multiemployer plan" (as such term is defined in Section 3(37) of ERISA).

"Mutual Consent" means the Mutual Consent to Encroachment, dated as of August 21, 2003, between WP&L and Borrower.

"Mutual Easement" means the Mutual Consent to Grant of Easements, dated as of August 21, 2003, between WP&L and Borrower.

"Non-Consenting Lender" has the meaning given in Section 2.7.2(b) of the Credit Agreement.

"Nonrecourse Persons" has the meaning given in Article 8 of the Credit Agreement.

"Non-U.S. Lender" has the meaning given in Section 2.3.4(e) of the Credit Agreement.

"Notes" has the meaning given in Section 2.1.8 of the Credit Agreement.

"Notice of Borrowing" has the meaning given in Section 2.1.3(a) of the Credit Agreement.

"Notice of Conversion of Loan Type" has the meaning given in Section 2.1.9 of the Credit Agreement.

"O&M Account" has the meaning given in Section 1.1 of the Depositary Agreement.

"O&M Agreement" means the Operating and Maintenance Agreement, dated as of August 21, 2003, between Borrower and Operator.

"O&M Costs" means, for any period, cash amounts incurred and paid by Borrower for the operation and maintenance of the Project or any portion thereof (other than as funded from the Major Maintenance Reserve Account) and for the purchase of goods and services in connection therewith, including (a) premiums for insurance policies, (b) fuel supply and fuel transportation costs (to the extent incurred in connection with the sale of electrical products under the Power Purchase Agreement or the CES Power Sales Agreement) and the cost of other consumables, (c) costs of obtaining any other materials, supplies, utilities or services for the Project, (d) costs of maintaining, renewing and amending Permits, (e) franchise, licensing, property, real estate, sales and excise taxes, (f) general and administrative expenses, (g) employee salaries, wages and other employment-related costs, (h) business management and

administrative service fees, (i) costs required to be paid by the Project under any Project Document or Credit Document (other than scheduled Debt Service) or to satisfy any Legal Requirement or obtain or maintain any Permit, (j) legal, accounting and consulting fees and other transaction costs and all other fees payable to the Lenders (other than amounts constituting scheduled Debt Service), (k) necessary capital expenditures (other than capital expenditures made in connection with the repair or restoration of any casualty suffered by the Project to the extent funded with insurance or similar proceeds applied pursuant to Section 3.5 of the Depositary Agreement or infusions of equity), (l) all other fees and expenses necessary for the continued operation and maintenance of the Project and the conduct of the business of the Project, and (m) Emergency Operating Costs (except for Emergency Operating Costs in connection with the repair or restoration of any casualty suffered by the Project to the extent funded with insurance or similar proceeds applied pursuant to Section 3.5 of the Depositary Agreement or infusions of equity), but exclusive in all cases of non-cash charges, including depreciation or obsolescence charges or reserves therefor, amortization of intangibles or other bookkeeping entries of a similar nature, and also exclusive of all interest charges and charges for the payment or amortization of principal of indebtedness of Borrower. O&M Costs shall not include (i) costs of Major Maintenance to the extent paid with funds on deposit in the Major Maintenance Reserve Account, (ii) Subordinated Payments, (iii) depreciation, (iv) payments for restoration or repair of the Project from the Loss Proceeds Account in accordance with the terms of the Depositary Agreement or (v) amounts to be paid in respect of any federal or state income tax.

"Obligations" means and includes, with respect to any Person (and, if not specified and the context so requires, Borrower or any applicable Calpine Entity), all loans, advances, debts, liabilities, and obligations, howsoever arising, owed by such Person to Lead Arranger, Administrative Agent, Depositary Agent, Collateral Agent, the Hedge Lenders or the Lenders of every kind and description (whether or not evidenced by any note or instrument and whether or not for the payment of money), direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, pursuant to the terms of the Credit Agreement or any of the other Credit Documents, including all interest, fees, charges, expenses, attorneys' fees and accountants fees chargeable to such Person and payable by such Person hereunder or thereunder.

"Offer Amount" has the meaning given in Section 2.1.10(d)(ii)(B) of the Credit Agreement.

"Offer Period" has the meaning given in Section 2.1.10(d)(i) of the Credit Agreement.

"Operating Cash Available for Debt Service" means, for any period, Project Revenues during such period minus (a) O&M Costs during such period and (b) deposits into the Major Maintenance Reserve Account during such period.

"Operative Documents" means, collectively, the Credit Documents and the Project Documents.

"Operator" means Calpine Operating Services Company, Inc., a Delaware corporation.

"Other Taxes" means any and all present and future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made under any of the Credit Documents other than the Interest Rate Agreements (including all Hedge Transactions thereunder) or from the execution, delivery or enforcement of, or otherwise with respect to, any of the Credit Documents other than the Interest Rate Agreements (including all Hedge Transactions thereunder).

"P&I Payment Account" has the meaning given in Section 1.1 of the Depositary Agreement.

"Participant" has the meaning given in Section 9.12.5 of the Credit Agreement.

"Parts" means any part, appliance, instrument, appurtenance, accessory or other property of any nature necessary or useful to the operation, maintenance, service or repair of the Project.

"Parts Discount Agreement" means that certain Parts Discount Agreement, dated March 31, 2004, by and between Borrower and GEI.

"Payout Amount" has the meaning given in Section 3.1.19(a)(iv) of the Credit Agreement.

"PBGC" means the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA.

"Permit" means any action, approval, consent, waiver, exemption, variance, franchise, order, permit, authorization, right or license of or from a Governmental Authority.

"Permitted Debt" means (a) Debt incurred under the Credit Documents, (b) Debt pursuant to the terms of a Project Document (but not for borrowed money), either not more than 90 days past due or being contested in good faith, (c) trade or other similar Debt incurred in the ordinary course of business (but not for borrowed money), either not more than 90 days past due or being contested in good faith, (d) contingent liabilities, to the extent otherwise constituting Debt, including those relating to (i) the acquisition of goods, supplies or merchandise in the normal course of business or normal trade credit, (ii) the endorsement of negotiable instruments received in the normal course of its business, and (iii) contingent liabilities incurred with respect to any Applicable Permit or Operative Document, (e) purchase money obligations incurred to finance the purchase price of discrete items of equipment not comprising an integral part of the Project that extend only to the equipment being financed in an aggregate amount of secured principal and capital lease obligations not exceeding \$3,000,000 at any one time outstanding, and (f) obligations in respect of surety bonds or similar instruments in an aggregate amount not exceeding \$3,000,000 at any one time outstanding.

"Permitted Investments" means (a) securities issued or directly and fully guaranteed or insured by the United States of America or any agency or instrumentality thereof

(provided that the full faith and credit of the United States of America is pledged in support thereof) having a maturity not exceeding one year from the date of issuance, (b) interest-bearing deposit accounts, including time deposits and certificates of deposit, of any Lender or any domestic or foreign commercial bank whose outstanding long-term debt is rated at least A-1 or the equivalent thereof by S&P or at least P-1 or the equivalent thereof by Moody's having capital and surplus in excess of \$500,000,000 having a maturity not exceeding 90 days from the date of acquisition, (c) commercial paper issued by any domestic corporation rated at least A-1 or the equivalent thereof by S&P or at least P-1 or the equivalent thereof by Moody's and, in each case, having a maturity not exceeding 90 days from the date of acquisition, (d) fully secured repurchase obligations with a term of not more than seven days for underlying securities of the types described in clause (a) above entered into with any bank meeting the qualifications established in clause (b) above, (e) high-grade corporate bonds rated at least AA or the equivalent thereof by S&P or at least Aa2 or the equivalent thereof by Moody's having a maturity not exceeding 90 days from the date of acquisition, (f) banker's acceptances drawn on and accepted by any domestic or foreign commercial bank whose long-term senior unsecured debt is rated at least A or the equivalent thereof by S&P or at least A2 or the equivalent thereof by Moody's, (g) money market mutual funds whose investment criteria are substantially similar to items (a) through (f) of this definition, (h) instruments issued by an investment company rated at least A or the equivalent thereof by S&P or at least A2 or the equivalent thereof by Moody's having a portfolio consisting of 95% or more of the securities described in items (a) through (g) of this definition, and (i) investment contracts pursuant to which moneys are deposited (to bear interest at an agreed rate) with a bank, insurance company or other financial institution whose long-term senior unsecured debt is rated at least A or the equivalent thereof by S&P or at least A2 or the equivalent thereof by Moody's.

"Permitted Liens" means (a) the rights and interests of Collateral Agent and any other Secured Party as provided in the Credit Documents; (b) Liens for any tax, assessment or other governmental charge, either secured by a bond or other security reasonably acceptable to Administrative Agent or not yet due or being contested in good faith and by appropriate proceedings, so long as (i) such proceedings shall not involve any substantial danger of the sale, forfeiture or loss of the Project, the Site or any Easements, as the case may be, title thereto or any interest therein and shall not interfere in any material respect with the use or disposition of the Project, the Site or any Easements, (ii) a bond or other security reasonably acceptable to Administrative Agent has been posted or provided in such manner and amount as to assure Administrative Agent that any taxes, assessments or other charges determined to be due will be promptly paid in full when such contest is determined, or (iii) adequate cash reserves have been provided therefor; (c) materialmen's, mechanics', workers', repairmen's, employees' or other like Liens, arising in the ordinary course of business, either for amounts not yet due or for amounts being contested in good faith and by appropriate proceedings, so long as (i) such proceedings shall not involve any substantial danger of the sale, forfeiture or loss of the Project, the Site or any Easements, as the case may be, title thereto or any interest therein and shall not interfere in any material respect with the use or disposition of the Project, the Site or any Easements, (ii) a bond or other security reasonably acceptable to Administrative Agent has been posted or provided in such manner and amount as to assure Administrative Agent that any amounts determined to be due will be promptly paid in full when such contest is determined, or (iii) adequate cash reserves have been provided therefor; (d) Liens arising out of judgments or awards so long as an appeal or proceeding for review is being prosecuted in good faith and for

the payment of which adequate reserves, bonds or other security reasonably acceptable to Administrative Agent have been provided or are fully covered by insurance; (e) Title Exceptions; (f) Liens, deposits or pledges to secure statutory obligations or performance of bids, tenders, contracts (other than for the repayment of borrowed money) or leases, or for purposes of like general nature in the ordinary course of its business, not to exceed \$1,500,000 in the aggregate at any time, and with any such Lien to be released as promptly as practicable; (g) other Liens incident to the ordinary course of business that are not incurred in connection with the obtaining of any loan, advance or credit and that do not in the aggregate materially impair the use of the property or assets of Borrower or the value of such property or assets for the purposes of such business; (h) involuntary Liens as contemplated by the Operative Documents (including a lien of an attachment, judgment or execution) securing a charge or obligation, on any of Borrower's property, either real or personal, whether now or hereafter owned in the aggregate sum of less than \$1,500,000; and (i) the rights and interests of the Rocky Mountain Collateral Agent and the other Rocky Mountain Secured Parties in Borrower's ownership interests in Rocky Mountain Borrower.

"Permitted Sponsor Transfer" means a transfer by the Sponsor of greater than 50% of its economic and voting interests in Borrower where (a) the electric energy generation business is the principal line of business of the applicable transferee; and (b) immediately after giving effect to the direct or indirect transfer by the Sponsor, the ratings given to the Term Loans and the Rocky Mountain Term Loans by S&P and Moody's shall be at least equal to the higher of (i) the ratings given to the Term Loans and the Rocky Mountain Term Loans by S&P and Moody's as of the Closing Date and (ii) the ratings given to the Term Loans and the Rocky Mountain Term Loans by S&P and Moody's immediately preceding such transfer by the Sponsor.

"Person" means any natural person, corporation, partnership, limited liability company, firm, association, Governmental Authority or any other entity whether acting in an individual, fiduciary or other capacity.

"Pipeline Easement" means the Grant of Pipeline, Pumping Facilities and Access Easement, dated as of August 21, 2003, by WP&L for the benefit of Borrower.

"Pledge Agreement" means, the Pledge and Security Agreement, dated as of the Closing Date, in substantially the form of Exhibit D-3 to the Credit Agreement, among the Pledgor, Borrower, Rocky Mountain Borrower and Collateral Agent.

"Pledgor" means Calpine Riverside Holdings, LLC, a Delaware limited liability company and, from and after any permitted disposition of Calpine Riverside Holdings, LLC's ownership interests in Borrower, the applicable transferee(s).

"Power Market Consultant" means R.W. Beck, Inc.

"Power Purchase Agreement" means the Power Purchase Agreement, dated as of March 5, 2001, between MG&E and CES, as amended by the Amendment No. 1 to Power Purchase Agreement dated March 5, 2001 between MG&E and CES, and as assigned by CES to Borrower pursuant to the Assignment, dated as of September 26, 2002.

"Pre-Funded Punchlist Expense Account" has the meaning given in Section 1.1 of the Depositary Agreement.

"Principal Repayment Dates" means (a) January 31, 2005, July 29, 2005 and the last Banking Day of each January and July of each calendar year thereafter until the Maturity Date, and (b) the Maturity Date.

"Project" means the approximately 617 MW natural gas fired combined cycle power generation plant located on the Site and the Easements.

"Project Documents" means, without duplication, the Major Project Documents, the Construction Easement, the Pipeline Easement, the Mutual Consent, the Mutual Easement, the Staging Lease and any other agreement or document relating to the construction, leasing, ownership or operation of the Project to which Borrower is a party.

"Project Revenues" means, without duplication, all income and cash receipts of Borrower derived from the ownership or operation of the Project, including payments received by Borrower under the Tolling Agreement, Power Purchase Agreement, the O&M Agreement and the other Project Documents (including damages, liquidated damages and any other payments, reimbursements or refunds received by Borrower under a Project Document), proceeds of any business interruption or liability insurance (to the extent such liability insurance proceeds represent reimbursement of third party claims previously paid by Borrower), income derived from the sale or use of electric capacity or energy transmitted or distributed or ancillary services produced by the Project, payments for remarketing of fuel or transportation rights relating thereto and investment income on amounts in the Accounts (solely to the extent deposited in the applicable Account), distributions or dividends by Rocky Mountain Borrower to Borrower but excluding (a) net payments, if any, received by Borrower under Hedge Transactions, as determined in conformity with cash accounting principles, (b) any receipts derived from the sale of any property pertaining to the Project or incidental to the operation of the Project, as determined in conformity with cash accounting principles (other than sales of electricity, gas and related services or commodities), (c) proceeds of casualty insurance, (d) the proceeds of any condemnation awards relating to the Project, (e) proceeds from the Collateral Documents and (f) the proceeds of any Permitted Debt.

"Proportionate Share" means:

(a) in the context of voting in matters requiring the vote of all or a percentage of the Lenders, with respect to each Lender at any time, a percentage equal to the quotient of (i) the sum of (A) the percentage interest of such Lender in the Total Term Loan Commitment, as set forth on Exhibit H to the Credit Agreement (as updated to reflect any permitted assignments) multiplied by the Total Term Loan Commitment plus (B) the percentage interest of such Lender in the Interest Rate Agreements, as set forth on Exhibit H to the Credit Agreement (as updated to reflect any permitted assignments) multiplied by the Hedge Breaking Fees actually payable (and not on a "marked to market" basis) at such time (determined upon the close of the applicable voting period) or, if no Hedge Breaking Fees are outstanding at such time, 5% of the aggregate notional amount of those Hedge Transactions which could result in Hedge Breaking Fees if they were terminated at such time, divided by (ii) the sum of (A) the Total Term

Loan Commitment plus (B) the Hedge Breaking Fees actually payable (and not on a "marked to market" basis) at such time (determined upon the close of the applicable voting period) or, if no Hedge Breaking Fees are outstanding at such time, 5% of the aggregate notional amount of those Hedge Transactions which could result in Hedge Breaking Fees if they were terminated at such time;

(b) with respect to each Lender in the context of funding Term Loans on the Closing Date, the percentage participation of such Lender in the Total Term Loan Commitment as set forth on Exhibit H to the Credit Agreement (as updated to reflect any permitted assignments); and

(c) with respect to each Hedge Lender at any time, the percentage participation of such Hedge Lender in the credit exposure under the Hedge Transactions, as set forth on Exhibit H to the Credit Agreement (as updated to reflect any permitted assignments).

"Prudent Utility Practices" means those practices, methods, equipment, specifications and standards of safety and performance, as the same may change from time to time, as are commonly used by natural gas fired electric generation stations in the Mid-America Interconnected Network of a type and size similar to the Project as good, safe and prudent engineering practices in connection with the operation, maintenance, repair and use of electrical and other equipment, facilities and improvements of such electrical station, with commensurate standards of safety, performance, dependability, efficiency and economy. "Prudent Utility Practices" does not necessarily mean one particular practice, method, equipment specification or standard in all cases, but is instead intended to encompass a broad range of acceptable practices, methods, equipment specifications and standards.

"PSCo" has the meaning given in the Rocky Mountain Credit Agreement.

"PSCo Security Fund" has the meaning given in Section 1.1 of the Depositary Agreement.

"PSCo Security Reserve Account" has the meaning given in Section 1.1 of the Depositary Agreement.

"PSCo Security Reserve Requirement" has the meaning given in Section 1.1 of the Depositary Agreement.

"PUHCA" means the Public Utility Holding Company Act of 1935, as amended.

"Punchlist Items" means those items under the Project's construction, engineering and equipment procurement contracts which have not been completed as of the Closing Date.

"Qualified Letter of Credit" means one or more unconditional, irrevocable letters of credit on terms and conditions, and in form and substance, reasonably satisfactory to Administrative Agent and shall (a) name Administrative Agent on behalf of the Secured Parties as the beneficiary thereof, (b) have an aggregate amount available to be drawn at all times greater than or equal to the amount being secured by such letter of credit, (c) be issued from a bank, banks, trust company or trust companies not a party to the Credit Agreement (and

otherwise reasonably acceptable to Administrative Agent) which bank, banks, trust company or trust companies shall have a combined capital and surplus of at least \$1,000,000,000 and whose long-term senior unsecured indebtedness is rated at least A by S&P and A2 by Moody's, (d) not be secured by any of the Collateral, and (e) not impose on Borrower any obligation to reimburse drawing payments thereunder; provided that such letter of credit shall provide that it shall (i) automatically renew upon the expiration thereof unless, at least 60 days prior to such expiration, the issuer thereof shall provide Administrative Agent with a notice of non-renewal of such letter of credit, (ii) have an initial expiration date of at least one year after issuance, and (iii) have a stated amount equal from time to time to (or, to the extent of cash deposited, less than) amounts required to be issued as set forth in the Credit Documents.

"Register" has the meaning given in Section 9.12.3 of the Credit Agreement.

"Regulation D" means Regulation D of the Board of Governors of the Federal Reserve System (or any successor).

"Regulatory Change" means any change after the Closing Date in federal, state, local or foreign laws, regulations, Legal Requirements or requirements under Applicable Permits, or the adoption or making after such date of any interpretations, directives or requests of or under any federal, state, local or foreign laws, regulations, Legal Requirements or requirements under Applicable Permits (whether or not having the force of law) by any Governmental Authority charged with the interpretation or administration thereof.

"Related Fund" means, with respect to any Lender that is an investment fund, any other investment fund that invests in commercial loans similar to the Term Loans and that is managed or advised by the same investment advisor as such Lender or by an Affiliate of such investment advisor.

"Related Parties" means, with respect to any specified Person, such Person's Affiliates and the respective directors, trustees, officers, employees, agents and advisors of such Person and such Person's Affiliates.

"Release" means disposing, discharging, injecting, spilling, leaking, leaching, dumping, pumping, pouring, emitting, escaping, emptying, seeping, placing or the like, into or upon any land or water or air, or otherwise entering into the environment.

"Repayment Period" means the sixth month period commencing on a Principal Repayment Date and ending on the next Principal Repayment Date.

"Replacement Lender" has the meaning given in Section 2.7.2(c) of the Credit Agreement.

"Replacement Obligor" means either (a) a Person (including any guarantor of such Person's obligations) (i) having, on the date of such replacement, credit, or acceptable credit support, and experience equal to or greater than that of the party to the Major Project Document (including any guaranty thereof) being replaced and (ii) entering into a contract with Borrower with economic terms no less favorable to Borrower than those in the Major Project Document (including any guaranty thereof) being replaced and other terms and conditions no

less favorable to Borrower in any material respect than those in the Major Project Document (including any guaranty thereof) being replaced (provided that if such Replacement Obligor is for an Affiliate of Borrower, such replacement Major Project Document may be on market terms rather than on terms and conditions no less favorable to Borrower and a replacement O&M Agreement need not provide that the fee payable thereunder be subordinated) or (b) a Person acceptable to (i) if the affected Major Project Document is the Tolling Agreement or the Power Purchase Agreement, the Supermajority Lenders or (ii) if the affected Major Project Document is any other Major Project Document, the Majority Lenders, in either case which Person enters into a contract with Borrower on terms and conditions acceptable to the Supermajority Lenders or the Majority Lenders (as the case may be) (which acceptance shall not be unreasonably withheld in the case of the replacement of a Major Project Participant that is an Affiliate of Borrower); provided that in each case, such Person enters into a Consent, in substantially the form of Exhibit E-1 to the Credit Agreement, on the date such replacement contract is entered into.

"Reportable Event" means any of the events set forth in Section 4043(b) or (c) of ERISA for which notice to the PBGC has not been waived.

"Required Cash Contribution" has the meaning given in Section 5.15.6 of the Credit Agreement.

"Required HoldCo Transfer" means any transfer to HoldCo (including by way of equity contribution) of Borrower's ownership interests in Rocky Mountain Borrower; provided that (a) Borrower shall have granted to Rocky Mountain Collateral Agent, for the benefit of the Rocky Mountain Secured Parties, a first priority Lien on its ownership interests in HoldCo (to the same extent provided by Borrower in the Pledge Agreement entered into on the Closing Date), (b) Borrower shall have granted to Collateral Agent, for the benefit of the Secured Parties, a second priority Lien on its ownership interests in HoldCo, (c) the pledge agreement pursuant to which such Liens will be created shall (i) provide that HoldCo is a special purpose vehicle established solely to own the ownership interests of Rocky Mountain Borrower, and (ii) include covenants customary for such a special purpose vehicle (including, negative covenants prohibiting HoldCo from incurring any indebtedness, any obligations and the granting by HoldCo of any Liens (other than those expressly contemplated hereby), (d) Collateral Agent, on behalf of the Secured Parties, shall take such actions as are necessary (and is hereby authorized by the Lenders) to release the Secured Parties interests in and to the Borrower's ownership interests in Rocky Mountain Borrower and to enter into an amendment and restatement or other replacement of the Pledge Agreement to effectuate the foregoing, and (e) Administrative Agent shall have received documentation and evidence (reasonably satisfactory to Administrative Agent) that the conditions set forth in Sections 3.1.1 through 3.1.5 of the Credit Agreement have been satisfied in respect of HoldCo, together with legal opinions of counsel to the Calpine Entities (including, as applicable for purposes of this definition, HoldCo) involved in such transfer, which opinions shall cover or confirm, with respect to such transfer, (i) the due formation or incorporation, as applicable, of each such Calpine Entities, (ii) the due authorization and enforceability of each Operative Document to which any such Calpine Entities is a party as of the date of such transfer, (iii) permitting, and federal and state energy regulatory matters, (iv) the continued validity, perfection and priority of the Liens under the Collateral Documents (including any new Liens granted in connection with any such transfer), (v) Investment Company Act of 1940 matters, (vi) no violations of law and no conflicts with certain agreements,

court orders and Governing Documents, (vii) receipt of all necessary consents and governmental approvals and (viii) such other matters as Administrative Agent may reasonably request.

"Reserve Requirement" means, for LIBOR Term Loans, the maximum rate (expressed as a percentage) at which reserves (including any marginal, supplemental or emergency reserves) are required to be maintained during the Interest Period therefor under Regulation D by member banks of the Federal Reserve System in New York City with deposits exceeding \$1,000,000,000 against "Eurocurrency liabilities" (as such term is used in Regulation D). Without limiting the effect of the foregoing, the Reserve Requirement shall reflect any other reserves required to be maintained by such member banks by reason of any Regulatory Change against (a) any category of liabilities which includes deposits by reference to which the LIBO Rate or LIBOR Term Loans is to be determined, (b) any category of liabilities or extensions of credit or other assets which include LIBOR Term Loans or (c) any category of liabilities or extensions of credit which are considered irrevocable commitments to lend.

"Responsible Officer" means, as to any Person, its president, chief executive officer, any vice president, treasurer, or secretary or any natural Person who is a managing general partner or manager or managing member of a limited liability company (or any of the preceding with regard to any such managing general partner, manager or managing member).

"Restricted Payment Conditions" has the meaning given in Section 6.6 of the Credit Agreement.

"Revenue Account" has the meaning given in Section 1.1 of the Depositary Agreement.

"Rights of Way" has the meaning given in Section 3.1.25 of the Credit Agreement.

"Riverside Closing Date Distribution" has the meaning given in Section 2.1.5 of the Credit Agreement.

"Rocky Mountain Accounts" has the meaning given to the term "Accounts" in Exhibit A to the Rocky Mountain Credit Agreement.

"Rocky Mountain Administrative Agent" has the meaning given to the term "Administrative Agent" in Exhibit A to the Rocky Mountain Credit Agreement.

"Rocky Mountain Applicable Permits" has the meaning given to the term "Applicable Permits" in Exhibit A to the Rocky Mountain Credit Agreement.

"Rocky Mountain Borrower" means Rocky Mountain Energy Center, LLC, a Delaware limited liability company.

"Rocky Mountain Closing Date Distribution" has the meaning given in Section 2.1.5 of the Rocky Mountain Credit Agreement.

"Rocky Mountain Collateral Agent" has the meaning given to the term "Collateral Agent" in Exhibit A to the Rocky Mountain Credit Agreement.

"Rocky Mountain Collateral Documents" has the meaning given to the term "Collateral Documents" in Exhibit A to the Rocky Mountain Credit Agreement.

"Rocky Mountain Credit Documents" has the meaning given to the term "Credit Documents" in Exhibit A to the Rocky Mountain Credit Agreement.

"Rocky Mountain Credit Agreement" means that certain Credit Agreement, dated as of June 24, 2004, by and among Rocky Mountain Borrower, Rocky Mountain Administrative Agent, Rocky Mountain Collateral Agent, the Rocky Mountain Lenders and the other agents, issuing bank and arrangers party thereto.

"Rocky Mountain Depository Agreement" has the meaning given to the term "Depository Agreement" in Exhibit A to the Rocky Mountain Credit Agreement.

"Rocky Mountain Funded LC Credit-Linked Deposits" has the meaning given to the term "Funded LC Credit-Linked Deposits" in Exhibit A to the Rocky Mountain Credit Agreement.

"Rocky Mountain Funded LC Disbursements" has the meaning given to the term "Funded LC Disbursements" in Exhibit A to the Rocky Mountain Credit Agreement.

"Rocky Mountain Hedge Transactions" has the meaning given to the term "Hedge Transactions" in Exhibit A to the Rocky Mountain Credit Agreement.

"Rocky Mountain Lead Arranger" has the meaning given to the term "Lead Arranger" in Exhibit A to the Rocky Mountain Credit Agreement.

"Rocky Mountain Lenders" has the meaning given to the term "Lenders" in Exhibit A to the Rocky Mountain Credit Agreement.

"Rocky Mountain Major Project Document" has the meaning given to the term "Major Project Document" in Exhibit A to the Rocky Mountain Credit Agreement.

"Rocky Mountain Obligations" means the "Obligations" of Rocky Mountain Borrower under the Rocky Mountain Credit Documents.

"Rocky Mountain Operating Cash Available for Debt Service" has the meaning given to the term "Operating Cash Available for Debt Service" in Exhibit A to the Rocky Mountain Credit Agreement.

"Rocky Mountain Operative Documents" has the meaning given to the term "Operative Documents" in Exhibit A to the Rocky Mountain Credit Agreement.

"Rocky Mountain Power Purchase Agreement" has the meaning given to the term "Power Purchase Agreement" in Exhibit A to the Rocky Mountain Credit Agreement.

"Rocky Mountain Project Revenues" has the meaning given to the term "Project Revenues" in Exhibit A to the Rocky Mountain Credit Agreement.

"Rocky Mountain Revenue Account" has the meaning given to the term "Revenue Account" in Exhibit A to the Rocky Mountain Credit Agreement.

"Rocky Mountain Secured Parties" has the meaning given to the term "Secured Parties" in Exhibit A to the Rocky Mountain Credit Agreement.

"Rocky Mountain Term Loans" has the meaning given to the term "Term Loans" in Exhibit A to the Rocky Mountain Credit Agreement.

"Rocky Mountain Total Term Loan Commitment" has the meaning given to the term "Total Term Loan Commitment" in Exhibit A to the Rocky Mountain Credit Agreement.

"Rocky Mountain Waterfall Level" has the meaning given to the term "Waterfall Level" in Exhibit A to the Rocky Mountain Credit Agreement.

"S&P" means Standard & Poor's Corporation and its successors and assigns.

"Secured Obligations" has the meaning given in the Mortgage.

"Secured Parties" means Administrative Agent, the Lead Arranger, the Collateral Agent, the Depositary Agent, Syndication Agent, any Lender (or Affiliate of any Lender) which is a counterparty to an Interest Rate Agreement entered into by Borrower in accordance with the Credit Agreement, each Lender and each of their respective successors, transferees and assigns; provided, that no Affiliate of Sponsor shall be a "Secured Party" hereunder or under any other Credit Document.

"Security Agreement" means the Security Agreement, dated as of the Closing Date, in substantially the form of Exhibit D-2 to the Credit Agreement, between Borrower and Collateral Agent.

"Site" has the meaning given in the Mortgage.

"Solvent" means (a) the present fair saleable value of the assets of Borrower exceeds the amount required to pay the probable liability on its existing debts, respectively (whether matured or unmatured, liquidated or unliquidated, absolute, fixed or contingent), as they become absolute and matured, and as a result of the consummation of the transactions contemplated herein and in the Bank Book, will continue to exceed such amount; (b) Borrower does not, and, as a result of the consummation of the transactions contemplated in the Credit Agreement, the other Credit Documents and the Bank Book, will not, have unreasonably small capital for it to carry on its business as proposed to be conducted; and (c) Borrower is not incurring obligations or making transfers under any evidence of indebtedness (including indebtedness under the Credit Agreement) with the intent to hinder, delay or defraud any entity to which it is or will become indebted.

"SPC" has the meaning given in Section 9.12.8 of the Credit Agreement.

"Sponsor" means Calpine Corporation, a Delaware corporation.

"Sponsor O&M Agreement Guaranty" means that certain Sponsor O&M Agreement Guaranty, dated as of the Closing Date, by the Sponsor for the benefit of Borrower.

"Staging Lease" means the Staging Area Lease, dated as of September 23, 2002, between WP&L and Borrower.

"Subordinated Payments" means any fees, bonuses, profits and any other amounts which are not in the nature of reimbursable costs or expenses, payable by Borrower to any Affiliate under any Project Document and which are subject to the Subordination Agreement applicable to such Project Document.

"Subordination Agreement" means a subordination agreement substantially in the form of Exhibit D-5 to the Credit Agreement.

"Subsidiary" means, as to any Person, a corporation, partnership, limited liability company or other entity of which such Person: (a) owns 10% or more of the shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, partnership or other entity and/or (b) controls the management, directly or indirectly through one or more intermediaries. Unless otherwise qualified, all references to a "Subsidiary" or to "Subsidiaries" in this Agreement shall refer to a Subsidiary or Subsidiaries of a Person. When used with respect to Borrower, "Subsidiary" shall include Rocky Mountain Borrower and, from and after a Required HoldCo Transfer, HoldCo.

"Supermajority Lenders" means, at any time, Lenders having Proportionate Shares which in the aggregate exceed 66.67%.

"Support Date" has the meaning given in Section 5.15.6 of the Credit Agreement.

"Syndication Agent" means CoBank, ACB, in its capacity as syndication agent under the Credit Agreement.

"Tax" means any present or future tax, levy, impost, charge, deduction or withholding of any nature and whatever called, by whomsoever, on whomsoever and wherever imposed, levied, collected, withheld or assessed by a taxing authority other than a "Tax on the overall net income" of any Person. A "Tax on the overall net income" of a Person shall be construed as a reference to a tax (including U.S. backup withholding taxes and branch profit taxes) imposed by the jurisdiction in which that Person is organized or in which that Person's applicable principal office (and/or, in the case of a Lender, its Lending Office) is located or in which that Person (and/or, in the case of a Lender, its Lending Office) is deemed to be doing business on all or part of the net income, profits, capital or gains (whether worldwide, or only insofar as such income, profits, capital or gains are considered to arise in or to relate to a particular jurisdiction, or otherwise) of that Person (and/or, in the case of a Lender, its applicable Lending Office).

"Term" means the entire period that any Term Loans shall be outstanding.

"Term Loan" has the meaning given in Section 2.1.2 of the Credit Agreement.

"Term Loan Commitment" means, at any time with respect to each Lender, such Bank's Proportionate Share of the Total Term Loan Commitment at such time.

"Terminated Lender" has the meaning given in Section 2.7.2(c) of the Credit Agreement.

"Termination Date" means the date on which both (a) all Obligations of Borrower (other than such Obligations which, by their terms, survive the termination of the Credit Agreement) to the Secured Parties shall have been paid in full in cash, each of the Interest Rate Agreements to which any Secured Party is a party shall have terminated and all obligations of the Secured Parties under the Credit Documents have terminated (other than such obligations which, by their terms, survive the termination of the Credit Documents), and (b) all Rocky Mountain Obligations (other than such Rocky Mountain Obligations which, by their terms, survive the termination of the Rocky Mountain Credit Agreement) to the Rocky Mountain Secured Parties shall have been paid in full in cash, each of the Rocky Mountain Interest Rate Agreements to which any Rocky Mountain Secured Party is a party shall have terminated and all obligations of the Rocky Mountain Secured Parties under the Rocky Mountain Credit Documents have terminated (other than such obligations which, by their terms, survive the termination of the Rocky Mountain Credit Documents).

"Title Exception" has the meaning given in the Mortgage.

"Title Insurer" means Stewart Title Guaranty Company.

"Title Policy" means that certain policy of the title insurance issued by the Title Insurer dated as of the Closing Date, as provided in Section 3.1.24 of the Credit Agreement, including all amendments thereto, endorsements thereof and substitutions or replacements therefor.

"Tolling Agreement" means the Tolling Agreement, dated as of February 6, 2001, between WP&L and Borrower.

"Total Term Loan Commitment" has the meaning given in Section 2.1.1 of the Credit Agreement.

"Type" means the type of Term Loan, whether a Base Rate Term Loan or LIBOR Term Loan.

"UCC" means the Uniform Commercial Code as the same may, from time to

time, be in effect in the State of New York; provided, however, in the event that, by reason of mandatory provisions of law, any or all of the perfection or priority of the security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York the term "UCC" shall mean the Uniform Commercial Code as in effect in

such other jurisdiction for purposes of the provisions hereof and of the other Credit Documents relating to such perfection or priority and for purposes of definitions related to such provisions.

"Unsatisfied Condition" means a condition in a Permit that has not been satisfied and that either (a) must be satisfied before such Permit can be come effective, (b) must be satisfied as of the date on which a representation is made or a condition precedent must be satisfied under the Credit Agreement, or (c) must be satisfied as of a future date but with respect to which facts or circumstances exist which, to Borrower's knowledge, could reasonably be expected to result in a failure to satisfy such Permit condition.

"Variable O&M Costs" means those O&M Costs described in the line-items of the Base Case Project Projections entitled "Fuel", "Reverse Osmosis - Water Treatment", "Demineralizer/EDI/Polishing - Water Treatment", "Boiler/Steam Chemicals - Water Treatment", "Cooling Tower - Water Treatment", "Gas Turbine Gasses/Chemicals", "Waste Water Disposal", "Ammonia (SCR)" and "Electricity Usage Cost".

"Wastewater Construction Contract" means the Construction, Operation, Maintenance and Indemnification Agreement, dated as of August 21, 2003, between WP&L and Borrower.

"Waterfall Level" has the meaning given in Section 1.1 of the Depositary Agreement.

"WP&L" means Wisconsin Power and Light Company, a Wisconsin corporation.

## RULES OF INTERPRETATION

1. The singular includes the plural and the plural includes the singular.
2. "or" is not exclusive.
3. A reference to a Governmental Rule includes any amendment or modification to such Governmental Rule, and all regulations, rulings and other Governmental Rules promulgated under such Governmental Rule.
4. A reference to a Person includes its permitted successors, permitted replacements and permitted assigns.
5. Accounting terms have the meanings assigned to them by GAAP, as applied by the accounting entity to which they refer.
6. The words "include", "includes" and "including" are not limiting.
7. A reference in a document to an Article, Section, Exhibit, Schedule, Annex or Appendix is to the Article, Section, Exhibit, Schedule, Annex or Appendix of such document unless otherwise indicated. Exhibits, Schedules, Annexes or Appendices to any document shall be deemed incorporated by reference in such document. In the event of any conflict between the provisions of the Credit Agreement (exclusive of the Exhibits, Schedules, Annexes and Appendices thereto) and any Exhibit, Schedule, Annex or Appendix thereto, the provisions of the Credit Agreement shall control.
8. References to any document, instrument or agreement (a) shall include all exhibits, schedules and other attachments thereto, (b) shall include all documents, instruments or agreements issued or executed in replacement thereof, and (c) shall mean such document, instrument or agreement, or replacement or predecessor thereto, as amended, amended and restated, modified and supplemented from time to time and in effect at any given time.
9. The words "hereof", "herein" and "hereunder" and words of similar import when used in any document shall refer to such document as a whole and not to any particular provision of such document.
10. References to "days" shall mean calendar days, unless the term "Banking Days" shall be used. References to a time of day shall mean such time in New York, New York, unless otherwise specified.
11. If, at any time after the Closing Date, Moody's or S&P shall change its respective system of classifications, then any Moody's or S&P "rating" referred to herein shall be considered to be at or above a specified level if it is at or above the new rating which most closely corresponds to the specified level under the old rating system.
12. The Credit Documents are the result of negotiations between, and have been reviewed by Borrower, each Affiliate of Borrower party thereto, Administrative Agent, the Lead Arranger, each Lender and their respective counsel. Accordingly, the Credit Documents

shall be deemed to be the product of all parties thereto, and no ambiguity shall be construed in favor of or against Borrower, any Affiliate of Borrower party thereto, Administrative Agent or any Lender solely as a result of any such party having drafted or proposed the ambiguous provision.

**Exhibit 10.1.10**

**EXECUTION VERSION**

---

**CREDIT AGREEMENT**

among

**ROCKY MOUNTAIN ENERGY CENTER, LLC,**  
a Delaware limited liability company  
(Borrower)

and

**CREDIT SUISSE FIRST BOSTON,**  
acting through its Cayman Islands Branch  
(Lead Arranger, Book Runner, Administrative Agent and Collateral Agent)

and

**UNION BANK OF CALIFORNIA, N.A.**  
(as Issuing Bank)

and

**COBANK, ACB**  
(Syndication Agent)

and

**THE FINANCIAL INSTITUTIONS PARTIES HERETO**  
(Lenders)

---

601 MW Combined Cycle Power Generation Plant located in Weld County, Colorado

# TABLE OF CONTENTS

	PAGE
ARTICLE 1 DEFINITIONS.....	1
1.1    Definitions.....	1
1.2    Rules of Interpretation.....	1
ARTICLE 2 CREDIT FACILITIES.....	2
2.1    Term Loan Facility.....	2
2.2    Fees.....	10
2.3    Other Payment Terms.....	11
2.4    Pro Rata Treatment.....	15
2.5    Change of Circumstances.....	16
2.6    Funding Losses.....	19
2.7    Alternate Office; Minimization of Costs.....	20
2.8    Credit-Linked Deposit Account; PSCo Letter of Credit.....	21
ARTICLE 3 CONDITIONS PRECEDENT.....	26
3.1    Conditions Precedent to the Closing Date.....	26
ARTICLE 4 REPRESENTATIONS AND WARRANTIES.....	36
4.1    Organization.....	36
4.2    Authorization; No Conflict.....	36
4.3    Enforceability.....	36
4.4    Compliance with Law.....	37
4.5    Business, Debt, Contracts, Joint Ventures Etc.....	37
4.6    Anti-Terrorism Laws.....	37
4.7    Investment Company Act.....	38
4.8    ERISA.....	38
4.9    Permits.....	38
4.10   Hazardous Substances.....	39
4.11   Litigation.....	40
4.12   Labor Disputes and Acts of God.....	40
4.13   Disclosure.....	41
4.14   Flood Zone Disclosure.....	41
4.15   Taxes.....	41
4.16   Governmental Regulation.....	42
4.17   Regulation U, Etc.....	42
4.18   Initial Operating Budget; Projections.....	43
4.19   Financial Statements.....	43
4.20   No Default.....	43
4.21   Organizational ID Number; Location of Collateral.....	43
4.22   Title and Liens.....	43

	PAGE
	----
4.23 Intellectual Property.....	44
4.24 Collateral.....	44
4.25 Sufficiency of Project Documents.....	45
4.26 Utilities.....	45
4.27 Other Facilities.....	45
4.28 Proper Subdivision.....	46
ARTICLE 5 AFFIRMATIVE COVENANTS.....	46
5.1 Use of Proceeds and Project Revenues.....	46
5.2 Payment.....	46
5.3 Warranty of Title.....	46
5.4 Notices.....	47
5.5 Financial Statements.....	48
5.6 Books, Records, Access.....	49
5.7 Compliance with Laws, Instruments, Applicable Permits, Etc.....	49
5.8 Reports.....	49
5.9 Existence, Conduct of Business, Properties, Etc.....	49
5.10 Debt Service Coverage Ratio.....	50
5.11 Exemption from Regulation.....	50
5.12 Punchlist Items.....	50
5.13 Offer to Prepay Upon Change of Control.....	50
5.14 Operation and Maintenance of Project; Annual Operating Budget...	51
5.15 Preservation of Rights; Further Assurances.....	52
5.16 Additional Consents.....	53
5.17 Maintenance of Insurance.....	53
5.18 Taxes, Other Government Charges and Utility Charges.....	53
5.19 Event of Eminent Domain.....	54
5.20 Interest Rate Protection.....	54
5.21 Distributions.....	55
5.22 Financial Covenants.....	55
5.23 Required HoldCo Transfer.....	56
5.24 Maintenance of Ratings.....	56
ARTICLE 6 NEGATIVE COVENANTS.....	56
6.1 Contingent Liabilities.....	56
6.2 Limitations on Liens.....	56
6.3 Indebtedness.....	56
6.4 Sale or Lease of Assets.....	57
6.5 Changes.....	57
6.6 Distributions.....	57
6.7 Investments.....	58
6.8 Transactions With Affiliates.....	58
6.9 Regulations.....	58
6.10 Partnerships, etc.....	59
6.11 Dissolution; Merger.....	59
6.12 Amendments; Change Orders.....	59

	PAGE
	----
6.13 Name and Location; Fiscal Year.....	59
6.14 Use of Site.....	60
6.15 Assignment.....	60
6.16 Accounts.....	60
6.17 Hazardous Substances.....	60
6.18 Additional Project Documents.....	60
6.19 Assignment By Third Parties.....	61
6.20 Acquisition of Real Property.....	61
6.21 Employee Benefit Plans.....	61
6.22 Power Sales.....	61
6.23 Governing Document Changes.....	61
ARTICLE 7 EVENTS OF DEFAULT; REMEDIES.....	62
7.1 Events of Default.....	62
7.2 Remedies.....	67
ARTICLE 8 SCOPE OF LIABILITY.....	69
ARTICLE 9 AGENTS; SUBSTITUTION.....	70
9.1 Appointment, Powers and Immunities.....	70
9.2 Reliance.....	71
9.3 Non-Reliance.....	72
9.4 Defaults; Material Adverse Effect.....	72
9.5 Successor Agent & Issuing Bank.....	72
9.6 Authorization.....	74
9.7 Other Roles.....	74
9.8 Amendments and Waivers.....	75
9.9 Withholding Tax.....	76
9.10 General Provisions as to Payments.....	77
9.11 Expenses; Indemnity; Damage Waiver.....	77
9.12 Successors and Assigns.....	79
9.13 Laws.....	82
ARTICLE 10 INDEPENDENT CONSULTANTS.....	82
10.1 Removal and Fees.....	82
10.2 Duties.....	83
10.3 Independent Consultants' Certificates.....	83
10.4 Certification of Dates.....	83
ARTICLE 11 MISCELLANEOUS.....	84
11.1 Addresses.....	84
11.2 Additional Security; Right to Set-Off.....	85
11.3 Delay and Waiver.....	85
11.4 Entire Agreement.....	86
11.5 Governing Law.....	86

	PAGE
	----
11.6	Severability..... 86
11.7	Headings..... 86
11.8	Accounting Terms..... 86
11.9	Additional Financing..... 86
11.10	No Partnership, Etc..... 86
11.11	Mortgage/Collateral Documents..... 87
11.12	Limitation on Liability..... 87
11.13	Waiver of Jury Trial..... 87
11.14	Consent to Jurisdiction..... 88
11.15	Knowledge and Attribution..... 88
11.16	Counterparts..... 88
11.17	Usury..... 88
11.18	Survival..... 89
11.19	Intercreditor Agreement..... 89
11.20	Confidentiality..... 89

## INDEX OF EXHIBITS

Exhibit A	Definitions and Rules of Interpretation
	NOTES
Exhibit B	Form of Note
	LOAN DISBURSEMENT PROCEDURES
Exhibit C-1	Form of Notice of Borrowing and LC Activity
Exhibit C-2	Form of Confirmation of Interest Period Selection
Exhibit C-3	Form of Notice of Conversion of Loan Type
	SECURITY-RELATED DOCUMENTS
Exhibit D-1	Form of Mortgage
Exhibit D-2	Form of Security Agreement
Exhibit D-3	Form of Pledge Agreement
Exhibit D-4	Form of Depositary Agreement
Exhibit D-5	Form of Subordination Agreement
Exhibit D-6	Schedule of Security Filings
Exhibit D-7	Form of Intercreditor Agreement
Exhibit D-8	Assignment of Rents
Exhibit D-9	Assignment of Water Lease
Exhibit D-10	PSCo Acknowledgment of Subordination
	CONSENTS
Exhibit E-1	Form of Consent for Contracting Party
Exhibit E-2	Schedule of Closing Date Consents
	CLOSING CERTIFICATES
Exhibit F-1	Form of Borrower's Closing Certificate
Exhibit F-2	Form of Insurance Consultant's Certificate
Exhibit F-3	Form of Independent Engineer's Certificate
Exhibit F-4	Form of Power Market Consultant's Certificate
	PROJECT DESCRIPTION EXHIBITS
Exhibit G-1	Schedule of Applicable Permits
Exhibit G-2	Sources and Uses
Exhibit G-3	Base Case Project Projections
Exhibit G-4	Initial O&M Budget
Exhibit G-5	Pending Litigation

OTHER

Exhibit H	Lenders Proportionate Shares
Exhibit I	Amortization Schedule
Exhibit J	Form of Non-Bank Certificate
Exhibit K	Insurance Requirements
Exhibit L	Form of Annual Insurance Certificate
Exhibit M	Form of Assignment and Acceptance
Exhibit N	Form of PSCo Letter of Credit

is entered into among ROCKY MOUNTAIN ENERGY CENTER, LLC, a limited liability company formed under the laws of the State of Delaware, as borrower ("Borrower"), the financial institutions listed on Exhibit H or who later become a party hereto, as lenders (the financial institutions party to this Agreement being collectively referred to as the "Lenders"), UNION BANK OF CALIFORNIA, N.A., as issuer of the PSCo Letter of Credit hereunder ("Issuing Bank"), CREDIT SUISSE FIRST BOSTON, acting through its Cayman Islands Branch, as lead arranger (in such capacity, "Lead Arranger"), as book runner (in such capacity, "Book Runner"), as administrative agent for the Lenders (in such capacity, "Administrative Agent"), and as collateral agent for the Secured Parties (in such capacity, "Collateral Agent"), and COBANK, ACB, as syndication agent (in such capacity, "Syndication Agent").

## **RECITALS**

A. Borrower leases, owns, operates, maintains and uses the Project referred to herein, consisting of an approximately 601 megawatt natural gas fired combined cycle electric generating facility located near the town of Hudson in unincorporated Weld County, Colorado, and, in connection therewith, Borrower has requested that the Lenders provide senior secured credit facilities in order to repay certain existing indebtedness under the Existing Rocky Mountain Credit Facility, fund certain reserves, fund a distribution to the direct or indirect owners of Borrower representing the repayment of capital initially provided to finance the construction or purchase of, or repairs, improvements or additions to, the Site and/or the Project, fund a portion of Borrower's working capital requirements, provide security in the form of a letter of credit to support Borrower's obligations under the Power Purchase Agreement and for such other purposes set forth herein; and

B. The Lenders are willing to provide such financing upon the terms and subject to the conditions set forth herein and in the other Credit Documents.

## **AGREEMENT**

NOW, THEREFORE, in consideration of the agreements herein and in the other Credit Documents and in reliance upon the representations and warranties set forth herein and therein, the parties hereto agree as follows:

### **ARTICLE 1 DEFINITIONS**

#### **1.1 DEFINITIONS.**

Except as otherwise expressly provided, capitalized terms used in this Agreement (including its exhibits and schedules) shall have the meanings given to such terms in Exhibit A.

#### **1.2 RULES OF INTERPRETATION.**

Except as otherwise expressly provided, the rules of interpretation set forth in Exhibit A shall apply to this Agreement and the other Credit Documents.

**ARTICLE 2**  
**CREDIT FACILITIES**

**2.1 TERM LOAN FACILITY.**

2.1.1 Total Term Loan Commitment. Notwithstanding anything that may be construed to the contrary in this Agreement, the aggregate principal amount of all Term Loans made by the Lenders shall not exceed \$264,900,000 (the "Total Term Loan Commitment").

2.1.2 Availability; Term Loans. Subject to the terms and conditions set forth in this Agreement, in reliance upon the representations and warranties of Borrower set forth herein and without limiting each Lender's several obligation to pay Administrative Agent its Funded LC Credit-Linked Deposit on the Closing Date as provided in Section 2.8.2(c) below, each Lender severally agrees to make, on the Closing Date, a term loan under this Section 2.1.2 (individually a "Term Loan" and, collectively, the "Term Loans") to Borrower in an amount equal to such Lender's Proportionate Share of the Total Term Loan Commitment. Borrower may make only one borrowing under the Total Term Loan Commitment, which shall be on the Closing Date. Any amount borrowed under this Agreement and subsequently repaid or prepaid may not be reborrowed. All amounts owed hereunder with respect to the Term Loans shall be paid in full no later than the Maturity Date.

**2.1.3 Borrowing Mechanics for Term Loans.**

(a) Notice of Borrowing and LC Activity. On or before the date which is three Banking Days prior to the Closing Date, Borrower shall deliver to Administrative Agent a written notice in the form of Exhibit C-1, appropriately completed (the "Notice of Borrowing and LC Activity"). Such Notice of Borrowing and LC Activity shall be delivered by first-class mail, facsimile or electronic mail to Administrative Agent at the office, to the facsimile number or to the electronic mail address and during the hours specified in Section 11.1. Administrative Agent shall promptly notify each Lender of the contents of such Notice of Borrowing and LC Activity.

(b) Lender Funding. Each Lender shall make the Term Loan to be made by it hereunder available to Administrative Agent not later than 12:00 noon (New York City time) on the Closing Date, by wire transfer of same day funds in Dollars, to the account designated for such purpose from time to time by Administrative Agent. Upon satisfaction or waiver of the conditions precedent specified in Article 3 and subject to Sections 2.1.4 (b) and 2.1.5, Administrative Agent shall make the proceeds of the Term Loans available to Borrower on the Closing Date by causing an amount of same day funds in Dollars equal to the proceeds of all such Term Loans received by Administrative Agent from the Lenders to be credited to one or more accounts as may be designated in writing to Administrative Agent by Borrower.

**2.1.4 Amount of Term Loans; Availability of Funds.**

(a) Amount of Term Loans. All Term Loans shall be made by the Lenders simultaneously in the amount of their respective Term Loan Commitment, it being understood that no Lender shall be responsible for any default by any other Lender in such other Lender's obligation to make a Term Loan hereunder nor shall any Term Loan Commitment of any Lender

be increased or decreased as a result of a default by any other Lender in such other Lender's obligation to make a Term Loan hereunder.

(b) Availability of Funds. Unless Administrative Agent shall have been notified by any Lender prior to the Closing Date that such Lender does not intend to make available to Administrative Agent the amount of such Lender's Proportionate Share of the Total Term Loan Commitment, Administrative Agent may assume that such Lender has made such amount available to Administrative Agent on such date in accordance with the prior paragraph and Administrative Agent may, in its sole discretion and in reliance upon such assumption, make available to Borrower a corresponding amount on such date. If such corresponding amount is not in fact made available to Administrative Agent by such Lender, Administrative Agent shall be entitled to recover such corresponding amount on demand (and, in any event, within three Banking Days from the Closing Date) from such Lender together with interest thereon, for each day from the Closing Date until the date such amount is paid to Administrative Agent, at the Federal Funds Rate for the first three Banking Days after the Closing Date. If such Lender pays such amount to Administrative Agent, then such amount shall constitute such Lender's Proportionate Share of the Total Term Loan Commitment. If such Lender does not pay such corresponding amount forthwith upon Administrative Agent's demand therefore or within three Banking Days from the Closing Date, Administrative Agent shall promptly notify Borrower and Borrower shall immediately pay such corresponding amount to Administrative Agent together with interest thereon (but no penalty or premium), for each day from the Closing Date until the date such amount is paid to Administrative Agent, at the rate then payable under this Agreement for Base Rate Term Loans. Nothing in this Section 2.1.4(b) shall be deemed to relieve any Lender from its obligation to fulfill its obligations hereunder or to prejudice any rights that Borrower may have against any Lender as a result of any default by such Lender hereunder.

2.1.5 Use of Proceeds. Borrower shall apply the proceeds of the Term Loans on the Closing Date as follows: (a) \$220,269,515.28 shall be applied to indefeasibly fund the Payout Amount, (b) \$1,304,000 shall be applied to fund the anticipated O&M Costs to be incurred by Borrower during the 30 days immediately following the Closing Date, (c) \$17,511,000 shall be applied to fund the Pre-Funded Punchlist Expense Account, (d) to pay the fees and expenses then due under this Agreement and the other Credit Documents, (e) \$19,287,403.76 shall be applied to fund a distribution to Sponsor representing the repayment of capital initially provided to finance the construction or purchase of, or repairs, improvements or additions to, the Site and/or the Project (such distribution, the "Rocky Mountain Closing Date Distribution") and (f) as otherwise set forth on Exhibit G-2. Borrower shall not use any portion of the proceeds of any Term Loan in any manner that causes or might cause the funding of the Term Loans or the application of such proceeds to violate Regulation T, Regulation U or Regulation X or any other regulation of the Federal Reserve Board.

2.1.6 Term Loan Principal Payment. Borrower shall repay to Administrative Agent, for the account of each Lender, the aggregate unpaid principal amount of the Term Loan made by such Lender (as reduced in connection with any voluntary prepayment or Mandatory Prepayments of, or any accepted Mandatory Repayment Offers on, the Term Loans, in accordance with Section 2.1.10) in installments payable on each Principal Repayment Date following the Closing Date in accordance with the repayment schedule set forth on Exhibit I,

with any remaining unpaid principal, interest, fees and costs due and payable on the Maturity Date.

#### 2.1.7 Interest Provisions Relating to Term Loans.

(a) Term Loan Interest. Except as otherwise set forth herein, Borrower shall pay interest on the unpaid principal amount of each Term Loan from the Closing Date until the maturity or prepayment thereof at one of the following rates per annum:

(i) With respect to the principal portion of such Term Loan which is, and during such periods as such Term Loan is, a Base Rate Term Loan, at a rate per annum equal to the Base Rate (such rate to change from time to time as the Base Rate shall change) plus 3.25%.

(ii) With respect to the principal portion of such Term Loan which is, and during such periods as such Term Loan is, a LIBOR Term Loan, at a rate per annum during each Interest Period for such LIBOR Term Loan equal to the LIBO Rate for such Interest Period plus 4.25%.

(b) Applicable Interest Rate. Subject to Section 2.3.3, the applicable basis for determining the rate of interest with respect to any Term Loan shall be selected by Borrower initially at the time the Notice of Borrowing and LC Activity is given pursuant to Section 2.1.3(a). The basis for determining the interest rate with respect to any Term Loan may be changed from time to time as specified in a Notice of Conversion of Loan Type delivered pursuant to

Section 2.1.9. If on any day a Term Loan is outstanding with respect to which notice has not been delivered to Administrative Agent in accordance with the terms of this Agreement specifying the applicable basis for determining the rate of interest, then for that day such Term Loan shall bear interest determined by reference to the Base Rate. Borrower shall not request, and the Lenders shall not be obligated to make, LIBOR Term Loans at any time an Event of Default exists.

(c) Interest Payment Dates. Borrower shall pay accrued interest on the unpaid principal amount of each Term Loan (i) on each Interest Payment Date, and (ii) in all cases, upon repayment or prepayment (to the extent thereof and including Mandatory Prepayments and, to the extent permitted by this Agreement, any optional prepayments), upon conversion from one Type of Loan to another Type of Loan and at maturity (whether by acceleration or otherwise).

(d) LIBOR Term Loan Interest Periods.

(i) The initial Interest Period for all LIBOR Term Loans made on the Closing Date shall be from the Closing Date through October 29, 2004. Thereafter, each subsequent Interest Period selected by Borrower for all LIBOR Term Loans shall be one, two, three or six months or, to the extent that nine or twelve month Interest Periods are available to all Lenders, nine or twelve months. Notwithstanding anything to the contrary in the preceding two sentences, (A) any Interest Period for LIBOR Term Loans which would otherwise end on a day which is not a Banking Day shall be extended to the next succeeding Banking Day unless such next Banking Day falls in another calendar month, in which case such Interest Period shall end on the immediately preceding Banking Day; (B) any Interest Period for LIBOR Term Loans

which begins on the last Banking Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Banking Day of a calendar month; (C) Borrower may not select Interest Periods for LIBOR Term Loans which would leave a greater principal amount of Term Loans subject to Interest Periods for LIBOR Term Loans ending after a date upon which Term Loans are or may be required to be repaid (including the Maturity Date and each Principal Repayment Date) than the principal amount of Term Loans scheduled to be outstanding after such date; (D) any Interest Period for a Term Loan which would otherwise end after the Maturity Date shall end on the Maturity Date; (E) LIBOR Term Loans for each Interest Period shall be in the minimum amount of \$5,000,000 or an integral multiple of \$1,000,000 in excess thereof; (F) Borrower may not at any time have outstanding more than five different Interest Periods relating to LIBOR Term Loans; and (G) Borrower shall select Types and Interest Periods for Term Loans corresponding to the "types" and "interest periods" used for floating rate payments in the Interest Rate Agreements so as to create, to the greatest extent possible, a complete hedge.

(ii) Borrower may contact Administrative Agent at any time prior to the end of an Interest Period for LIBOR Term Loans for a quotation of Interest Rates in effect at such time for given Interest Periods and Administrative Agent shall promptly provide such quotation. Borrower may select an Interest Period for LIBOR Term Loans telephonically or by electronic mail within the time periods specified in Section 2.1.9, which selection shall be irrevocable on and after commencement of the applicable Minimum Notice Period. Borrower shall confirm such telephonic or electronic mail notice to Administrative Agent by facsimile on the day such notice is given by delivery to Administrative Agent of a written notice in substantially the form of Exhibit C-2, appropriately completed (a "Confirmation of Interest Period Selection"). If Borrower fails to notify Administrative Agent of the next Interest Period for any LIBOR Term Loans in accordance with this Section 2.1.7(d)(ii), such Term Loans shall automatically convert to Base Rate Term Loans on the last day of the current Interest Period therefor. Administrative Agent shall promptly notify Borrower of each determination of the Interest Rate applicable to each Term Loan.

(e) Interest Computations. All computations of interest on Base Rate Term Loans shall be based upon a year of 365 days or, in the case of a leap year, 366 days, shall be payable for the actual days elapsed (including the first day but excluding the last day), and shall be adjusted in accordance with any changes in the Base Rate to take effect on the beginning of the day of such change in the Base Rate. All computations of interest on LIBOR Term Loans shall be based upon a year of 360 days and shall be payable for the actual days elapsed (including the first day but excluding the last day). Borrower agrees that all computations by Administrative Agent of interest shall be conclusive and binding in the absence of manifest error.

2.1.8 Promissory Notes. The obligation of Borrower to repay the Term Loans made by a Lender and to pay interest thereon at the rates provided herein shall, upon the written request of such Lender, be evidenced by promissory notes in the form of Exhibit B (individually, a "Note" and, collectively, the "Notes"), each payable to the order of such requesting Lender and in the principal amount of such Lender's Term Loan Commitment. Borrower authorizes each such requesting Lender to record on the schedule annexed to such Lender's Note, the date and amount of the Term Loan made by such requesting Lender, and each payment or prepayment of principal thereunder and agrees that all such notations shall constitute prima facie evidence of

the matters noted; provided that in the event of any inconsistency between the records or books of Administrative Agent and any Lender's records or Note, the records of Administrative Agent shall be conclusive and binding in the absence of manifest error. Borrower further authorizes each such requesting Lender to attach to and make a part of such requesting Lender's Note continuations of the schedule attached thereto as necessary. No failure to make any such notations, nor any errors in making any such notations, shall affect the validity of Borrower's obligations to repay the full unpaid principal amount of the Term Loans or the duties of Borrower hereunder or thereunder. Upon the payment in full in cash of the aggregate principal amount of, and all accrued and unpaid interest on, the Term Loans, the Lenders holding such Notes shall promptly mark the applicable Notes cancelled and return such cancelled Notes to Borrower.

2.1.9 Conversion of Loans. Borrower may convert Term Loans from one Type of Term Loans to another Type of Term Loans; provided, however, that (i) any conversion of LIBOR Term Loans into Base Rate Term Loans shall be effective on, and only on, the last day of an Interest Period for such LIBOR Term Loans and (ii) Term Loans shall be converted only in amounts of \$5,000,000 and increments of \$1,000,000 in excess thereof. Borrower shall request such a conversion by delivering to Administrative Agent a written notice in the form of Exhibit C-3, appropriately completed (a "Notice of Conversion of Loan Type"), which contains or specifies, among other things:

- (a) the Term Loans, or portion thereof, which are to be converted;
- (b) the Type of Term Loans into which such Term Loans, or portion thereof, are to be converted;
- (c) if such Term Loans are to be converted into LIBOR Term Loans, the initial Interest Period selected by Borrower for such Term Loans (which Interest Period shall be selected in accordance with Section 2.1.7(d) and if an Interest Period is not so designated a one month Interest Period shall be deemed selected by Borrower);
- (d) the proposed date of the requested conversion (which shall be a Banking Day and otherwise in accordance with this Section 2.1.9; and
- (e) a certification by Borrower that no Event of Default has occurred and is continuing.

Borrower shall so deliver each Notice of Conversion of Loan Type so as to provide at least the applicable Minimum Notice Period. Any Notice of Conversion of Loan Type may be modified or revoked by Borrower through the Banking Day prior to the Minimum Notice Period, and shall thereafter be irrevocable. Each Notice of Conversion of Loan Type shall be delivered by first-class mail, facsimile or electronic mail to Administrative Agent at the office, to the facsimile number or to the electronic mail address and as otherwise specified in Section 11.1; provided, however, that Borrower shall promptly deliver to Administrative Agent the original of any Notice of Conversion of Loan Type initially delivered by facsimile or electronic mail. Administrative Agent shall promptly notify each Lender of the contents of each Notice of Conversion of Loan Type.

## 2.1.10 Prepayments.

### (a) Terms of All Prepayments.

(i) Upon the prepayment of any Term Loan (whether such prepayment is an optional prepayment under Section 2.1.10(b) or a Mandatory Prepayment), Borrower shall pay to Administrative Agent for the account of the Lender which made such Term Loan and/or Hedge Lender, as applicable, (A) all accrued interest to the date of such prepayment on the amount of such Term Loan prepaid, (B) all accrued fees to the date of such prepayment relating to the amount of such Term Loan being prepaid, (C) to the extent required by the terms of the applicable Interest Rate Agreement, all Hedge Breaking Fees owed by Borrower to such Hedge Lender as a result of such prepayment, and (D) if such prepayment is the prepayment of a LIBOR Term Loan on a day other than the last day of an Interest Period for such LIBOR Term Loan, all Liquidation Costs incurred by such Lender as a result of such prepayment (pursuant to the terms of Section 2.6).

(ii) Notwithstanding the foregoing, but only in respect of any Mandatory Prepayment of Term Loans (other than a Mandatory Prepayment resulting from any Mandatory Repayment Offer accepted by a Lender), Borrower shall have the right, by giving three Banking Days' notice to Administrative Agent, in lieu of prepaying a LIBOR Term Loan on a day other than the last day of an Interest Period for such LIBOR Term Loan, to deposit or cause Administrative Agent to deposit into an account to be held by Depository Agent (which account shall be subjected to the Lien of the Collateral Documents in a manner reasonably satisfactory to Collateral Agent) an amount equal to the LIBOR Term Loans to be prepaid. Such funds shall be held in such account until the expiration of the Interest Period applicable to the LIBOR Term Loan to be prepaid at which time the amount deposited in such account shall be used to prepay such LIBOR Term Loan and any interest accrued on such amount shall be deposited into the Revenue Account. All Term Loans to be prepaid using the proceeds from such account shall continue to accrue interest at the then applicable interest rate for such Term Loans until actually prepaid. All amounts in such account shall only be invested in Permitted Investments as directed by and at the expense and risk of Borrower.

(iii) All prepayments of Term Loans shall be applied to reduce the remaining payments required under Section 2.1.6 in inverse order of maturity. Borrower may not re-borrow the principal amount of any Term Loan which is prepaid.

(iv) Other than with respect to any Mandatory Prepayment of Funded LC Credit-Linked Deposits as provided in Section 2.8.2(b)(i) and any repayment required or permitted on or before the Maturity Date in connection with a Funded LC Disbursement, the aggregate amount to be prepaid or returned on any date pursuant to the Credit Documents (including this Section 2.1.10 and Section 3.2.2 of the Depository Agreement) shall be applied first to the prepayment (to the extent of funds required to be so applied) of Term Loans outstanding on such date and thereafter (to the extent of any residual and subject at all times to the following sentence) to the reimbursement of Funded LC Credit-Linked Deposits. Notwithstanding anything to the contrary in this Agreement, in the event that any prepayment under the Credit Documents would result in the aggregate stated amount of the PSCo Letter of Credit exceeding the aggregate amount on deposit in or credited to the Credit-Linked Deposit

Account, Borrower shall (on or before the date of such prepayment) deposit cash with Administrative Agent for ultimate credit to the Credit-Linked Deposit Account in an amount equal to such excess and Borrower authorizes Administrative Agent to apply such amounts in the manner provided in Section 2.8.2.

(b) Optional Prepayments.

(i) Borrower may not voluntarily prepay Term Loans except as provided in clauses (ii) and (iii) of this Section 2.1.10(b).

(ii) In the event any voluntary prepayment is permitted under this Agreement in accordance with clause (iii) of this Section 2.1.10(b), Borrower may prepay any such Term Loans on any Banking Day in whole or in part, in an aggregate minimum amount of \$5,000,000 and integral multiples of \$1,000,000 (or the remaining amount outstanding) in excess of that amount. All such prepayments shall be made upon (A) in the case of Base Rate Term Loans, one Banking Day's prior written, email or telephonic notice to Administrative Agent by 1:00 p.m. (New York City time) and (B) in the case of LIBOR Term Loans, three Banking Days' prior written, email or telephonic notice to Administrative Agent by 1:00 p.m. (New York City time) and in each case, if given by telephone, promptly confirmed in writing to Administrative Agent (and Administrative Agent will promptly notify each Lender of such notice). Upon the giving of any such notice, the principal amount of the Term Loans specified in such notice shall become due and payable on the prepayment date specified therein. Any prepayment of any Term Loan pursuant to this Section 2.1.10(b) shall be applied in accordance with Sections 2.4.1 and 9.10. In connection with any optional prepayments under this Section 2.1.10(b), Borrower shall terminate or partially terminate Hedge Transactions such that the notional amount under all of the Hedge Transactions does not exceed, in the aggregate, the principal amount of Terms Loans outstanding immediately after giving effect to such prepayment.

(iii) Borrower shall not voluntarily prepay Term Loans at any time on or prior to June 24, 2007. At any time after June 24, 2007, Borrower may voluntarily prepay Term Loans pursuant to the applicable provision below:

(1) Subject to clause (ii) of this Section 2.1.10(b), Borrower may, at its option prepay at any time all, or from time to time any part of, the Term Loans, if such prepayment is (x) after June 24, 2007 but on or before June 24, 2008, in an amount equal to 102% of the principal amount of the Term Loans so prepaid, plus all accrued and unpaid interest thereon and other amounts owed hereunder in connection with such prepayment (including amounts payable under Sections 2.5 and 2.6 hereof), or (y) after June 24, 2008 but on or before June 24, 2009, in an amount equal to 101% of the principal amount so prepaid, plus all accrued and unpaid interest and other amounts thereon owed hereunder in connection with such prepayment (including amounts payable under Sections 2.5 and 2.6 hereof); and

(2) Subject to Section 2.1.10(a) and clause (ii) of this Section 2.1.10(b), Term Loans may be prepaid at any time without premium or penalty after June 24, 2009.

(c) Mandatory Prepayments. Borrower shall prepay (or cause to be prepaid) Term Loans to the extent required by Section 3.2.2(b), 3.2.2(c) or 3.5 of the Depositary Agreement, Section 2.1.10(d) (to the extent any Mandatory Repayment Offer is accepted by a Lender), Section 2.8.2(b)(i) or 7.2 of this Agreement or any other provision of this Agreement or any other Credit Document which requires such prepayment (such prepayment, a "Mandatory Prepayment").

(d) Mandatory Repayment Offers. In the event that, pursuant to Section 5.13, Borrower shall be required to offer to prepay Term Loans and Funded LC Disbursements and return Funded LC Credit-Linked Deposits, then Borrower shall make an offer to each Lender (a "Mandatory Repayment Offer") in accordance with the following procedures specified below:

(i) Borrower shall make a Mandatory Repayment Offer under this Agreement within 30 days following a Change of Control and shall keep such Mandatory Repayment Offer open until 5:00 p.m. (New York City time) on the date specified in such Mandatory Repayment Offer, which date shall be no earlier than 30 days and no later than 60 days from the date such Mandatory Repayment Offer was made, except to the extent that a longer period is required by applicable law (the "Offer Period");

(ii) Borrower shall make the Mandatory Repayment Offer by sending a notice to Administrative Agent (for delivery to each Lender) in accordance with Section 11.1. The notice shall contain all instructions and materials necessary to enable the Lenders to accept the Mandatory Repayment Offer for all of their Term Loans, Funded LC Disbursements and Funded LC Credit-Linked Deposits pursuant to the Mandatory Repayment Offer. The Mandatory Repayment Offer shall be made to all Lenders. The notice, which shall govern the terms of the Mandatory Repayment Offer, shall state:

(A) the total amount Borrower is offering to prepay (the "Offer Amount"), which amount shall be an amount equal to at least the sum of (1) 101% of the aggregate principal amount of Term Loans and Funded LC Disbursements then outstanding, plus (2) 1% of the amount of Funded LC Credit-Linked Deposits, plus (3) in each case, accrued and unpaid interest thereon, to but excluding the date of repayment, plus (4) in each case, any other amount then required to be paid hereunder, and the Mandatory Repayment Date therefor;

(B) that Riverside Borrower is making the same offer to the Riverside Lenders to purchase the Riverside Term Loans;

(C) that the Mandatory Repayment Offer is being made pursuant to this Section 2.1.10(d) and Section 5.13 and the date on which the Mandatory Repayment Offer shall end;

(D) that, unless Borrower defaults in making such payment, any Term Loan with respect to which a Lender accepts the Mandatory Repayment Offer shall cease to accrue interest from and after the Mandatory Repayment Date;

(E) that Borrower shall, on the Mandatory Repayment Date, deposit cash in an aggregate amount equal to the Funded LC Credit-Linked Deposits of all Lender's accepting such Mandatory Repayment Offer;

(F) that a Lender that accepts a Mandatory Repayment Offer must accept such Mandatory Repayment Offer with respect to all (but not part) of its Term Loans, Funded LC Disbursements and Funded LC Credit-Linked Deposits and all (but not part) of its Riverside Term Loans; and

(G) that the Lenders shall be entitled to withdraw their acceptance of a Mandatory Repayment Offer if Borrower and Administrative Agent receive, not later than the expiration of the Offer Period, a notice setting forth the name of the Lender, the principal amount of the Funded LC Credit-Linked Deposit, Term Loans and Funded LC Disbursements and Riverside Term Loans for which the Lender previously accepted such Mandatory Repayment Offer and a statement that such Lender is rescinding its acceptance of such Mandatory Repayment Offer under this Agreement and under the Riverside Credit Agreement; and

(iii) On or before the fifth day after the termination of the Offer Period (the "Mandatory Repayment Date"), Borrower shall (A) to the extent lawful, pay, in accordance with Sections 2.4.1 and 9.10, the amount of Term Loans and Funded LC Disbursements with respect to which the Mandatory Repayment Offer was accepted (together with all accrued and unpaid interest thereon, to but excluding the date of repayment and any other amount then required to be paid under this Agreement), (B) unless such Mandatory Repayment Offer is accepted by all Lenders and Riverside Lenders, deposit cash in an aggregate amount equal to all Funded LC Credit-Linked Deposits returned as part of such Mandatory Payment Offer with Administrative Agent for ultimate deposit in the Credit-Linked Deposit Account for application as provided in Section 2.8.2, and

(C) deliver to Administrative Agent (for delivery to the Lenders) a certificate duly executed by a Responsible Officer stating the amount of the Term Loans and Funded LC Disbursements to be repaid and the Funded LC Credit-Linked Deposits to be returned by Administrative Agent to the Lender's accepting such Mandatory Repayment Offer in accordance with the terms of this Section 2.1.10(d). Administrative Agent shall promptly forward the appropriate amount to each Lender being repaid. Issuing Bank and each Lender hereby authorize Administrative Agent to release to the Lender accepting any such Mandatory Repayment Offer on the Mandatory Repayment Date an aggregate amount of funds on deposit in or credited to the Credit-Linked Deposit Account equal to the amount of cash deposited by Borrower with Administrative Agent in respect of the replacement of such Funded LC Credit-Linked Deposits as set forth in Borrower's Mandatory Repayment Offer and as contemplated by this Section 2.1.10(d).

## 2.2 FEES.

2.2.1 Borrower agrees to pay to, as applicable, each Lender and each of Administrative Agent, Collateral Agent, Depositary Agent and Lead Arranger the fees and expenses in the amounts and at the times separately agreed upon by Borrower and such Person in writing, including those fees and expenses set forth in the Fee Letters.

2.2.2 Borrower agrees to pay (a) to Administrative Agent for the account of each Lender a participation fee with respect to its participations in the PSCo Letter of Credit, which participation fee shall accrue at a rate equal to the sum of (i) a rate per annum equal to 4.25% on the Funded LC Credit-Linked Deposits plus (ii) 0.10% on the average daily amount of such Lender's Proportionate Share of the Total Funded LC Credit-Linked Deposits (excluding any portion thereof attributable to unreimbursed Funded LC Disbursements) during the period from and including the Closing Date to but excluding the later of the date on which such Lender's Funded LC Credit-Linked Deposit is returned to it and the Maturity Date and (b) to Issuing Bank a fronting fee, which shall accrue at a rate per annum equal to .20% on the average daily aggregate face amount of the PSCo Letter of Credit during the period from and including the Closing Date to but excluding the date the PSCo Letter of Credit is cancelled, expires or drawn in full, as well as such Issuing Bank's standard fees with respect to the issuance or amendment of the PSCo Letter of Credit or processing of drawings thereunder. Accrued participation fees in respect of the PSCo Letter of Credit shall be due and payable on the each Interest Payment Date and accrued fronting fees in respect of the PSCo Letter of Credit shall be due and payable monthly; provided that all such fees shall be payable on the date on which the Funded LC Credit-Linked Deposits are returned to the Lenders and any such fees accruing after the date on which the Funded LC Credit-Linked Deposits are returned to the Lenders shall be payable on demand. Any other fees payable to Issuing Bank pursuant to this Section 2.2.2 shall be payable within ten days after demand. All participation fees and fronting fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

## 2.3 OTHER PAYMENT TERMS.

2.3.1 Place and Manner. Except as otherwise provided in the Fee Letters or any other provision contained in any of the Credit Documents, Borrower shall make all payments due to any Lender, Collateral Agent, Issuing Bank or Administrative Agent hereunder to Administrative Agent, for the account of such Lender, Collateral Agent, Issuing Bank or Administrative Agent (as the case may be), to the account designated for such purpose from time to time by Administrative Agent to Borrower, in Dollars and in immediately available funds not later than 1:00 p.m. on the date on which such payment is due. Any payment made after such time on any day shall be deemed received on the Banking Day after such payment is received. Administrative Agent shall disburse to each Lender, Issuing Bank or Collateral Agent (as the case may be) each such payment received by Administrative Agent for such Lender, Issuing Bank or Collateral Agent (as the case may be), such disbursement to occur on the day such payment is received if received by 1:00 p.m. or if otherwise reasonably possible, or otherwise on the next Banking Day.

2.3.2 Date. Whenever any payment due hereunder shall fall due on a day other than a Banking Day, such payment shall be made on the next succeeding Banking Day, and such extension of time shall be included in the computation of interest or fees, as the case may be, without duplication of any interest or fees so paid in the next subsequent calculation of interest or fees payable.

2.3.3 Default Interest. Notwithstanding anything to the contrary herein, upon the occurrence and during the continuation of any Event of Default, the outstanding principal

amount of all Term Loans and Funded LC Disbursements and, to the extent permitted by applicable Legal Requirements, any accrued but unpaid interest payments thereon and any accrued but unpaid fees and other amounts hereunder, shall thereafter bear interest (including post-petition interest in any proceeding under applicable Bankruptcy Laws) payable upon demand at a rate that is (a) 2% per annum in excess of the interest rate then otherwise payable under this Agreement with respect to the applicable Term Loans or Funded LC Disbursements or (b) in the case of any such fees and other amounts, at a rate that is 2% per annum in excess of the interest rate then otherwise payable under this Agreement for Base Rate Term Loans (the "Default Rate"); provided that, in the case of LIBOR Term Loans, upon the expiration of the Interest Period in effect at the time any such increase in interest rate is effective, such LIBOR Term Loans shall thereupon become Base Rate Term Loans and shall thereafter bear interest payable upon demand at a rate that is 2% per annum in excess of the interest rate then otherwise payable under this Agreement for Base Rate Term Loans.

#### 2.3.4 Taxes.

(a) Payments to Be Free and Clear. Except as otherwise provided in this Section 2.3.4 and in Section 9.9, all sums payable by or on behalf of Borrower or any of its Affiliates hereunder and under the other Credit Documents shall (except to the extent required by any applicable Legal Requirement) be paid free and clear of, and without any deduction or withholding on account of, any Tax imposed, levied, collected, withheld or assessed by or within the U.S. or any political subdivision in or of the U.S. or any other jurisdiction from or to which a payment is made by or on behalf of Borrower or such Affiliate.

(b) Withholding of Taxes. If Borrower or any other Person is required by law to make any deduction or withholding on account of any such Tax from any sum paid or payable by or on behalf of Borrower to Administrative Agent, Collateral Agent, Issuing Bank or any Lender under any of the Credit Documents but excluding, for purposes of this Section 2.3.4, the Interest Rate Agreements, including the Hedge Transactions thereunder:

(i) Borrower shall notify Administrative Agent of any such requirement or any change in any such requirement as soon as Borrower becomes aware of it;

(ii) Borrower shall pay any such Tax before the date on which penalties attach thereto, such payment to be made (if the liability to pay is imposed on Borrower or such other Person) for its own account or (if that liability is imposed on such Administrative Agent, Collateral Agent, Issuing Bank or Lender, as the case may be) on behalf of and in the name of such Administrative Agent, Collateral Agent, Issuing Bank or Lender;

(iii) the sum payable by Borrower or such other Person in respect of which the relevant deduction, withholding or payment is required shall be increased to the extent necessary to ensure that, after the making of all deductions, withholding or payments for or with respect to Taxes, such Administrative Agent, Collateral Agent, Issuing Bank or Lender, as the case may be, receives on the due date a net sum equal to what it would have received had no such deduction, withholding or payment been required or made; and

(iv) within 30 days after paying any sum from which it is required by law to make any deduction or withholding, and within 30 days after the due date of payment of any Tax which it is required by clause (ii) of this

Section 2.3.4(b) to pay, Borrower shall deliver to Administrative Agent evidence satisfactory to the other affected parties of such deduction, withholding or payment and of the remittance thereof to the relevant taxing or other authority;

provided that no such additional amount shall be required to be paid to any Lender, Administrative Agent, Issuing Bank or Collateral Agent under clause

(iii) of this Section 2.3.4(b) except to the extent that any change after the date hereof (in the case of each Lender, Administrative Agent, Issuing Bank and Collateral Agent listed on the signature pages hereof on the Closing Date) or after the effective date of the Assignment and Acceptance pursuant to which such Lender became a Lender (in the case of each other Lender), as the case may be, in any such requirement for a deduction, withholding or payment as is mentioned therein shall result in either the imposition of deduction, withholding or payment or an increase in the rate of such deduction, withholding or payment from the rate in effect at the date hereof or at the date of such Assignment and Acceptance, as the case may be, in respect of payments to such Lender, Administrative Agent, Issuing Bank or Collateral Agent.

(c) Other Taxes. Borrower shall pay any Other Taxes to the relevant taxing or other authority in accordance with applicable Legal Requirements, and shall comply with the requirements of this Section 2.3.4 with respect to such payments.

(d) Indemnification. Subject to the provisions below and the provisions of Section 9.9, Borrower shall indemnify Administrative Agent, Collateral Agent, Issuing Bank and each Lender for the full amount of Taxes (to the extent Borrower would be required to pay additional amounts with respect to such Taxes pursuant to this Section 2.3.4) or Other Taxes arising in connection with payments made under any of the Credit Documents (including any Taxes or Other Taxes imposed by any jurisdiction on amounts payable under this Section 2.3.4) paid by such Administrative Agent, Collateral Agent, Issuing Bank or Lender and any penalties, additions to tax, interest and expenses arising from or with respect to such Taxes or Other Taxes, whether or not such Taxes or Other Taxes were correctly or legally asserted; provided that Borrower shall not be obligated to indemnify such Administrative Agent, Collateral Agent, Issuing Bank or Lender for any penalties, interest or expenses relating to Taxes or Other Taxes arising from such Administrative Agent's, Collateral Agent's, Issuing Bank's or Lender's gross negligence or willful misconduct. Each Lender and each of Administrative Agent, Issuing Bank and Collateral Agent agrees to give written notice to Borrower of the assertion of any claim against such Lender, Administrative Agent, Issuing Bank or Collateral Agent relating to such Taxes or Other Taxes as promptly as is practicable after being notified of such assertion, and in no event later than 180 days after the principal officer of such Lender, Administrative Agent, Issuing Bank or Collateral Agent responsible for administering this Agreement obtains knowledge thereof; provided that any Lender's, Administrative Agent's, Issuing Bank's or Collateral Agent's failure to notify Borrower of such assertion within such 180 day period shall not relieve Borrower of its obligation under this Section 2.3.4 with respect to Taxes or Other Taxes, penalties, interest or expenses arising prior to the end of such period, but shall relieve Borrower of its obligations under this Section 2.3.4 with respect to Taxes or Other Taxes, penalties, interest or expenses between the end of such period and such time as Borrower receives notice from such Lender, Administrative Agent, Issuing Bank or Collateral Agent as

provided herein. Payment under this indemnification shall be made within 30 days from the date any Lender, Administrative Agent, Issuing Bank or Collateral Agent makes written demand therefor. A certificate setting forth in reasonable detail the amount of such indemnification payment and the basis for determining such indemnification payment, shall be submitted by such Person to Borrower and shall, in the absence of manifest error, be conclusive and binding on Borrower for purposes of this Agreement.

(e) Evidence of Exemption From U.S. Withholding Tax. Administrative Agent, Collateral Agent, Issuing Bank and each Lender that is not a United States Person (as such term is defined in Section 7701(a)(30) of the Code) for U.S. federal income tax purposes (a "Non-U.S. Lender") shall deliver to the Administrative Agent for transmission to Borrower, on or prior to the Closing Date (in the case of each Lender listed on the signature pages hereof on the Closing Date) or on or prior to the date of the Assignment and Acceptance pursuant to which it becomes a Lender (in the case of each other Lender), and at such other times as may be necessary in the determination of Borrower or the Administrative Agent (each in the reasonable exercise of its discretion):

(i) two original copies of Internal Revenue Service Form W-8BEN or W-8ECI (or any successor forms), properly completed and duly executed by such Administrative Agent, Collateral Agent, Issuing Bank or Lender, and such other documentation required under the Code and reasonably requested by Borrower to establish that such Administrative Agent, Collateral Agent, Issuing Bank or Lender is not subject to deduction or withholding of United States federal income tax with respect to any payments to such Administrative Agent, Collateral Agent, Issuing Bank or Lender of principal, interest, fees or other amounts payable under any of the Credit Documents or is subject to such deduction or withholding at a reduced rate; or

(ii) if such Administrative Agent, Collateral Agent, Issuing Bank or Lender is not a "bank" or other Person described in Section 881(c)(3) of the Code and is claiming exemption from U.S. federal withholding tax under Section 871(h) or 881(c) of the Code with respect to payments of "portfolio interest", a Certificate Re Non-Bank Status in the form of Exhibit J hereto, together with two original copies of Internal Revenue Service Form W-8 (or any successor form), properly completed and duly executed by such Administrative Agent, Collateral Agent, Issuing Bank or Lender, and such other documentation required under the Code and reasonably requested by Borrower to establish that such Administrative Agent, Collateral Agent, Issuing Bank or Lender is not subject to deduction or withholding of United States federal income tax with respect to any payments to such Administrative Agent, Collateral Agent, Issuing Bank or Lender of interest payable under any of the Credit Documents.

Each Person required to deliver any forms, certificates or other evidence with respect to United States federal income tax withholding matters pursuant to this Section 2.3.4 hereby agrees, from time to time after the initial delivery by such Person of such forms, certificates or other evidence, whenever a lapse in time or change in circumstances renders such forms, certificates or other evidence obsolete or inaccurate in any material respect, that such Person shall promptly deliver to Administrative Agent for transmission to Borrower two new original copies of Internal Revenue Service Form W-8BEN or W-8ECI, or a Certificate re Non-Bank Status and two original copies of Internal Revenue Service Form W-8, as the case may be, properly completed and duly executed by such Person, and such other documentation required under the Code and

reasonably requested by Borrower to confirm or establish that such Person is not subject to deduction or withholding of United States federal income tax with respect to payments to such Person under the Credit Documents or is subject to such deduction or withholding at a reduced rate, or notify Administrative Agent and Borrower of its inability to deliver any such forms, certificates or other evidence. Borrower shall not be required to pay any additional amount to Administrative Agent, Collateral Agent, Issuing Bank or any Non-U.S. Lender under this Section 2.3.4 or to indemnify Administrative Agent, Collateral Agent, Issuing Bank or any Non-U.S. Lender under this Section 2.3.4 if such Person shall have failed (1) to deliver the forms, certificates or other evidence referred to in the second sentence of this Section 2.3.4(e), or (2) to notify Administrative Agent and Borrower of its inability to deliver any such forms, certificates or other evidence, as the case may be; provided, if such Person shall have satisfied the requirements of the first sentence of this Section 2.3.4(e) on the Closing Date or on the date of the Assignment and Acceptance pursuant to which it became a Lender, as applicable, nothing in this last sentence of this Section 2.3.4(e) shall relieve Borrower of its obligation to pay any additional amounts pursuant to Section 2.3.4(b) or to indemnify such Non-U.S. Lender under Section 2.3.4(d) in the event that, as a result of any change in any applicable Legal Requirement, or any change in the interpretation, administration or application thereof, such Person is no longer properly entitled to deliver forms, certificates or other evidence at a subsequent date establishing the fact that such Person is not subject to withholding as described herein. For the avoidance of doubt, to the extent the form provided by Administrative Agent, Collateral Agent, Issuing Bank or a Lender at the time such Administrative Agent, Collateral Agent, Issuing Bank or Lender first becomes a party to this Agreement indicates a U.S. withholding tax rate in excess of zero, withholding tax at such rate shall be considered excluded from Taxes.

2.3.5 Application of Payments. Except as otherwise expressly provided herein or in the other Credit Documents, payments made under this Agreement or the other Credit Documents and other amounts received by Administrative Agent, Collateral Agent, Depository Agent, Issuing Bank or the Lenders under this Agreement or the other Credit Documents shall first be applied to any fees, costs, charges or expenses payable to Administrative Agent, Collateral Agent, Depository Agent, Issuing Bank or the Lenders hereunder or under the other Credit Documents, next to any accrued but unpaid interest then due and owing, and then to outstanding principal then due and owing or otherwise to be prepaid (in each case, such application to be made on a pro rata basis among such applicable Persons).

## 2.4 PRO RATA TREATMENT.

2.4.1 Borrowings, Commitment Reductions, Etc. Except as otherwise provided herein, (a) the Closing Date Borrowing of Term Loans and any reduction of Total Term Loan Commitment and the Closing Date funding of the Total Funded LC Credit-Linked Deposits shall be made or allocated among the Lenders pro rata according to their respective Proportionate Shares of the Total Term Loan Commitment or Total Funded LC Credit-Linked Deposits, as the case may be, (b) except in the case of a Mandatory Repayment Offer pursuant to Section 2.1.10(d) whereby payments shall be allocated to each accepting Lender's Term Loans, Funded LC Disbursements and Funded LC Credit-Linked Deposits (and not to all Lenders based on Proportionate Shares) and subject to Section 2.1.10(a)(iv), each payment of principal of and interest on Term Loans or Funded LC Disbursements (as the case may be) or return of Funded LC Credit-Linked Deposits shall be made or shared among the Lenders holding such Term

Loans or Funded LC Disbursements or Funded LC Credit-Linked Deposits (as the case may be) pro rata according to their respective unpaid principal amounts of such Term Loans or Funded LC Disbursements or amounts of Funded LC Credit-Linked Deposits (as the case may be) held by such Lenders, and (c) each payment of any fees payable to all Lenders shall be shared among the Lenders pro rata according to (i) their respective Proportionate Shares of such fees, and (ii) in the case of each Lender which becomes a party to this Agreement hereunder after the Closing Date, the date upon which such Lender so became a party hereunder.

2.4.2 Sharing of Payments, Etc. Except in the case of a Mandatory Repayment Offer pursuant to Section 2.1.10(d) whereby payments shall be allocated to each accepting Lender's Term Loans, Funded LC Disbursements and Funded LC Credit-Linked Deposits (and not to all Lenders based on Proportionate Shares), if any Lender shall obtain any payment (whether voluntary, involuntary, through the exercise of any right of setoff, or otherwise) on account of Term Loans or Funded LC Disbursements owed to it or Funded LC Credit-Linked Deposits to be returned to it, in excess of its Proportionate Share of payments on account of such Term Loans or Funded LC Disbursements or Funded LC Credit-Linked Deposits obtained by all Lenders entitled to such payments, such Lender shall forthwith purchase from the other Lenders such participation in the Term Loans or Funded LC Disbursements or Funded LC Credit-Linked Deposits, as the case may be, as shall be necessary to cause such purchasing Lender to share the excess payment ratably with each of them; provided, however, that if all or any portion of such excess payment is thereafter recovered from such purchasing Lender, such purchase from such Lender shall be rescinded and each other Lender shall repay to the purchasing Lender the purchase price to the extent of such recovery together with an amount equal to such other Lender's Proportionate Share (according to the proportion of (a) the amount of such other Lender's required repayment to (b) the total amount so recovered from the purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered. Borrower agrees that any Lender so purchasing a participation from another Lender pursuant to this Section 2.4.2 may, to the fullest extent permitted by law, exercise all its rights of payment (including the right of setoff) with respect to such participation as fully as if such Lender were the direct creditor of Borrower in the amount of such participation.

## 2.5 CHANGE OF CIRCUMSTANCES.

2.5.1 Inability to Determine Rates. If, on or before the first day of any Interest Period for any LIBOR Term Loans, Funded LC Disbursements or Funded LC Credit-Linked Deposits, (a) Administrative Agent determines that the LIBO Rate for such Interest Period cannot be adequately and reasonably determined due to the unavailability of funds in or other circumstances affecting the London interbank market, or (b) Lenders holding aggregate Proportionate Shares of 33-1/3% or more of the outstanding Term Loans, Funded LC Disbursements or Total Funded LC Credit-Linked Deposits shall advise Administrative Agent that (i) the rates of interest for such LIBOR Term Loans, Funded LC Disbursements or Funded LC Credit-Linked Deposits do not adequately and fairly reflect the cost to such Lenders of making or maintaining such Term Loans, Funded LC Disbursements or Funded LC Credit-Linked Deposit or (ii) deposits in Dollars in the London interbank market are not available to such Lenders (as conclusively certified by each such Lender in good faith in writing to Administrative Agent and to Borrower) in the ordinary course of business in sufficient amounts to make and/or maintain their LIBOR Term Loans, Funded LC Disbursements or Funded LC

Credit-Linked Deposit, then Administrative Agent shall immediately give notice of such condition to Borrower. After the giving of any such notice and until Administrative Agent shall otherwise notify Borrower that the circumstances giving rise to such condition no longer exist, (x) Borrower's right to request the making of or conversion to, and the Lenders' obligations to make or convert to, LIBOR Term Loans shall be suspended, (y) any LIBOR Term Loans outstanding at the commencement of any such suspension shall be converted at the end of the then current Interest Period for such Term Loans into Base Rate Term Loans unless such suspension has then ended and (z) the Funded LC Credit-Linked Deposits shall be invested so as to earn a return equal to the greater of the Federal Funds Rate and a rate determined by Administrative Agent in accordance with banking industry rules on interbank compensation.

2.5.2 Illegality. If, after the date of this Agreement, the adoption of any Governmental Rule, any change in any Governmental Rule or the application or requirements thereof (whether such change occurs in accordance with the terms of such Governmental Rule as enacted, as a result of amendment, or otherwise), any change in the interpretation or administration of any Governmental Rule by any Governmental Authority, or compliance by any Lender or Borrower with any request or directive (whether or not having the force of law, but if not having the force of law, being of a type with which a Lender customarily complies) of any Governmental Authority (a "Change of Law") shall make it unlawful or impossible for any Lender to make or maintain any LIBOR Term Loan, then such Lender shall immediately notify Administrative Agent and Borrower of such Change of Law. Upon receipt of such notice, (a) Borrower's right to request the making of or conversion to, and the Lender's obligations to make or convert to, LIBOR Term Loans shall be suspended for so long as such condition shall exist, and (b) Borrower shall, at the request of such Lender, either (i) pursuant to Section 2.1.9, convert any then outstanding LIBOR Term Loans into Base Rate Term Loans at the end of the current Interest Periods for such Term Loans, or (ii) immediately repay, to the extent otherwise permitted under this Agreement, pursuant to Section 2.1.10 or convert LIBOR Term Loans of the affected Type into Base Rate Term Loans if such Lender shall notify Borrower that such Lender may not lawfully continue to fund and maintain such Term Loans. Any conversion or prepayment of LIBOR Term Loans made pursuant to the preceding sentence prior to the last day of an Interest Period for such Term Loans shall be deemed a prepayment thereof for purposes of Section 2.6.

2.5.3 Increased Costs. If, after the date of this Agreement, any Change of Law:

(a) shall subject any Lender to any tax, duty or other charge with respect to any LIBOR Term Loan or Term Loan Commitment in respect thereof, or shall change the basis of taxation of payments by Borrower to any Lender on such a Term Loan or with respect to any such Term Loan Commitment (except for Taxes, Other Taxes or the imposition of or changes in the rate of taxation on the overall net income of any Lender); or

(b) shall impose, modify or hold applicable any reserve, special deposit or similar requirement (without duplication of any reserve requirement included within the applicable Interest Rate through the definition of "Reserve Requirement") against assets held by, deposits or other liabilities in or for the account of, advances or loans by, or any other acquisition of funds by any Lender for any LIBOR Term Loan; or

(c) shall impose on any Lender any other condition directly related to any LIBOR Term Loan or Term Loan Commitment in respect thereof;

and the effect of any of the foregoing is to increase the cost to such Lender of making, issuing, creating, renewing, participating in (subject to the limitations in Section 9.12) or maintaining any such LIBOR Term Loan or Term Loan Commitment in respect thereof or to reduce any amount receivable by such Lender hereunder, then Borrower shall from time to time, within ten days after demand by such Lender, pay to such Lender additional amounts sufficient to reimburse such Lender for such increased costs or to compensate such Lender for such reduced amounts. A certificate setting forth in reasonable detail the amount of such increased costs or reduced amounts and the basis for determination of such amount, submitted by such Lender to Borrower, shall, in the absence of manifest error, be conclusive and binding on Borrower for purposes of this Agreement.

2.5.4 Capital Requirements. If any Lender determines that (a) any Change of Law after the date of this Agreement increases the amount of capital required or expected to be maintained by such Lender, or the Lending Office of such Lender or any Person controlling such Lender (a "Capital Adequacy Requirement"), and (b) the amount of capital maintained by such Lender or such Person which is attributable to or based upon the Term Loans, the Term Loan Commitment or this Agreement must be increased as a result of such Capital Adequacy Requirement (taking into account such Lender's or such Person's policies with respect to capital adequacy), then Borrower shall pay to such Lender or such Person, within ten days after delivery of demand by such Lender or such Person, such amounts as such Lender or such Person shall reasonably determine are necessary to compensate such Lender or such Person for the increased costs to such Lender or such Person of such increased capital. A certificate of such Lender or such Person, setting forth in reasonable detail the computation of any such increased costs, delivered to Borrower by such Lender or such Person shall, in the absence of manifest error, be conclusive and binding on Borrower for purposes of this Agreement.

2.5.5 Notice; Lenders' Rights. Issuing Bank, Administrative Agent and each Lender shall notify Borrower of any event occurring after the date of this Agreement that will entitle Issuing Bank, Administrative Agent or such Lender to compensation pursuant to this Section 2.5, as promptly as practicable, and in no event later than 180 days after the principal officer of Issuing Bank or such Lender responsible for administering this Agreement obtains knowledge thereof; provided that Issuing Bank's, Administrative Agent's or any Lender's failure to notify Borrower within such 180 day period shall not relieve Borrower of its obligation under this Section 2.5 with respect to claims arising prior to the end of such period, but shall relieve Borrower of its obligations under this Section 2.5 with respect to the time between the end of such period and such time as Borrower receives notice from the indemnitee as provided herein. No Person purchasing from a Lender a participation or assignment in any Term Loan, Term Loan Commitment, Funded LC Disbursement or Funded LC Credit-Linked Deposit shall be entitled to any payment from or on behalf of Borrower pursuant to Section 2.5.3 or Section 2.5.4 which would be in excess of the applicable proportionate amount (based on the portion of the Term Loan, Total Term Loan Commitment, Funded LC Disbursement or Funded LC Credit-Linked Deposit in which such Person is participating) which would then be payable to such Lender if such Lender had not sold a participation or assignment in that portion of the Term Loan, Term Loan Commitment, Funded LC Disbursement or Funded LC Credit-Linked Deposit.

## 2.6 FUNDING LOSSES.

If (x) Borrower shall (a) repay or prepay any LIBOR Term Loans or Funded LC Disbursement or reduce any Funded LC Credit-Linked Deposit (other than in connection with the funding of a Funded LC Disbursement) on any day other than the last day of an Interest Period for such Term Loans, Funded LC Disbursement or Funded LC Credit-Linked Deposit (whether an optional prepayment or a Mandatory Prepayment), (b) fail to borrow any LIBOR Term Loans in accordance with the Notice of Borrowing and LC Activity delivered to Administrative Agent (whether as a result of the failure to satisfy any applicable conditions or otherwise) after such Notice of Borrowing and LC Activity has become irrevocable, (c) fail to convert any Term Loans into LIBOR Term Loans in accordance with a Notice of Conversion of Loan Type delivered to Administrative Agent (whether as a result of the failure to satisfy any applicable conditions or otherwise) after such Notice of Conversion of Loan Type has become irrevocable, (d) fail to continue a LIBOR Term Loan in accordance with a Confirmation of Interest Period Selection delivered to Administrative Agent, or (e) fail to make any prepayment in accordance with any notice of prepayment delivered to Administrative Agent, or (y) Issuing Bank makes a Funded LC Disbursement from amounts on deposit in the Credit-Linked Deposit Account on any day other than the last day of an Interest Period for such Funded LC Credit-Linked Deposits, then Borrower shall, within ten days after demand by Administrative Agent or any Lender, reimburse Administrative Agent or such Lender for all reasonable costs and losses incurred by Administrative Agent or such Lender as a result of such repayment, prepayment or failure or making of a Funded LC Disbursement ("Liquidation Costs"). Borrower understands that such costs and losses may include losses incurred by Administrative Agent or a Lender as a result of funding and other contracts entered into by Administrative Agent or such Lender to fund LIBOR Term Loans (other than non-receipt of the margin applicable to such LIBOR Term Loans). In the case of a Funded LC Disbursement bearing interest by reference to the LIBO Rate or a Funded LC Credit-Linked Deposit, such loss, cost or expense to any applicable Lender or Administrative Agent shall be deemed to include an amount determined by such Lender or Administrative Agent, as the case may be, to be the excess, if any, of (x) the amount of interest which would have accrued on the principal amount of such Funded LC Disbursement or on the Funded LC Credit-Linked Deposit had such event not occurred, at the LIBO Rate that would have been applicable to such Funded LC Disbursement or Funded LC Credit-Linked Deposit, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Funded LC Disbursement or Funded LC Credit-Linked Deposit), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for dollar deposits of a comparable amount and period from other banks in the London interbank market. Administrative Agent or a Lender demanding payment under this Section 2.6 shall deliver to Borrower a certificate setting forth in reasonable detail the basis for and the amount of costs and losses for which demand is made. Such a certificate so delivered to Borrower shall, in the absence of manifest error, be conclusive and binding as to the amount of such loss for purposes of this Agreement.

## 2.7 ALTERNATE OFFICE; MINIMIZATION OF COSTS.

2.7.1 To the extent reasonably possible, each Lender shall designate an alternative Lending Office with respect to its LIBOR Term Loans, Funded LC Disbursement and Funded LC Credit-Linked Deposit and otherwise take any reasonable actions to reduce any liability of Borrower to any Lender under

Section 2.3.4, 2.5.3, 2.5.4 or 2.6, or to avoid the unavailability of any Type of Term Loans, Funded LC Disbursement or Funded LC Credit-Linked Deposit under

Section 2.5.2 so long as (in the case of the designation of an alternative Lending Office) such Lender, in its sole discretion, determines that (a) such designation is not disadvantageous to such Lender and (b) such actions would eliminate or reduce liability to such Lender. Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or actions within ten Banking Days of demand thereof to Borrower.

2.7.2 Notwithstanding anything to the contrary herein, in the event that:

(a) any Lender (an "Increased-Cost Lender") shall give notice to Borrower that such Lender is a Lender is entitled to receive payments under Sections 2.3.4 or 2.5, (ii) the circumstances which have caused such Lender to be an Increased-Cost Lender or which entitle such Lender to receive such payments shall remain in effect, and (iii) such Lender shall fail to withdraw such notice within five Business Days after Borrower's request for such withdrawal; or

(b) in connection with any proposed amendment, modification, termination, waiver or consent with respect to any of the provisions hereof as contemplated by Section 9.8, the consent of Majority Lenders, Supermajority Lenders or all necessary Lenders, as the case may be, shall have been obtained, except for one or more of such other Lenders (each a "Non-Consenting Lender") whose consent is required shall not have been obtained;

then, with respect to each such Increased-Cost Lender or Non-Consenting Lender (the "Terminated Lender"), Borrower may, by giving written notice to Administrative Agent and any Terminated Lender of its election to do so, elect to cause such Terminated Lender (and such Terminated Lender hereby irrevocably agrees) to assign its outstanding Term Loans, Funded LC Disbursements and Funded LC Credit Linked Deposit in full to one or more Eligible Assignees who are reasonably acceptable to Administrative Agent (each a "Replacement Lender") in accordance with the provisions of Section 9.12 (including the requirement that the Terminated Lender assign its outstanding Riverside Term Loans to such Replacement Lender in accordance with the Riverside Credit Agreement) and Borrower shall pay any fees payable thereunder in connection with such assignment; provided:

(i) on the date of such assignment, the Replacement Lender and/or Borrower shall pay to such Terminated Lender an amount equal to the sum of (A) an amount equal to the principal of, and all accrued interest on, all outstanding Term Loans and Funded LC Disbursements of the Terminated Lender, and (B) an amount equal to all accrued, but theretofore unpaid, fees owing to such Terminated Lender pursuant to Section 2.2;

(ii) on the date of such assignment, the Borrower shall pay any amounts payable to such Terminated Lender pursuant to Section 2.3.4 or 2.5; provided that no premium on such amounts shall be required to be paid;

(iii) in the event such Terminated Lender is a Non-Consenting Lender, each Replacement Lender shall consent, at the time of such assignment, to each matter in respect of which such Terminated Lender was a Non-Consenting Lender; and

(iv) no Event of Default shall have occurred and be continuing at the time of such termination and replacement (other than, in the case of a replacement predicated upon clause (b) above, the Event of Default that is the subject of the vote referred to in clause (b) above).

Upon the prepayment of all amounts owing to any Terminated Lender, such Terminated Lender shall no longer constitute a "Lender" under any of the Credit Documents; provided, any rights of such Terminated Lender to indemnification hereunder shall survive as to such Terminated Lender.

2.7.3 Upon written notice to Administrative Agent, any Lender may designate a Lending Office other than the Lending Office most recently designated to Administrative Agent and may assign all of its interests under the Credit Documents and its Notes (if any) to such Lending Office; provided that such designation and assignment do not at the time of such designation and assignment increase the reasonably foreseeable liability of Borrower under Section 2.3.4, 2.5.3 or 2.5.4 or make an Interest Rate option unavailable pursuant to Section 2.5.2.

## 2.8 CREDIT-LINKED DEPOSIT ACCOUNT; PSCO LETTER OF CREDIT.

### 2.8.1 Credit-Linked Deposit Account.

(a) The Funded LC Credit-Linked Deposits shall be held by Issuing Bank in the Credit-Linked Deposit Account, and no party other than Issuing Bank shall have a right of withdrawal from the Credit-Linked Deposit Account or any other right or power with respect to the Funded LC Credit-Linked Deposits. Notwithstanding anything herein to the contrary, the funding obligation of each Lender in respect of its participation in the PSCO Letter of Credit shall be satisfied in full upon the funding of its Funded LC Credit-Linked Deposit.

(b) Each of Administrative Agent, Issuing Bank and each Lender hereby acknowledges and agrees that each Lender is funding its Funded LC Credit-Linked Deposit to Issuing Bank for application in the manner contemplated by Section 2.8.2(c) and that Issuing Bank shall invest the Funded LC Credit-Linked Deposits in LIBO Rate investments so as to earn a return (except during periods when such Funded LC Credit-Linked Deposits, or funds advanced by Issuing Bank against such Funded LC Credit-Linked Deposits, are used to cover unreimbursed Funded LC Disbursements, and subject to Sections 2.4, 2.5 and 2.6) for the Lenders equal at any time to (i) the LIBO Rate for the Interest Period in effect for the Funded LC Credit-Linked Deposits at such time minus (ii) 0.10%. Such earned amount minus 0.10% will be

paid to the Lenders by Issuing Bank, who shall accomplish the same by paying such amounts to Administrative Agent in arrears on each Interest Payment Date. Upon Administrative Agent's receipt of such amounts from Issuing Bank, Administrative Agent shall promptly pay all amounts it receives from Issuing Bank to the Lenders.

(c) Borrower shall have no right, title or interest in or to the Funded LC Credit-Linked Deposits and no obligations with respect thereto (except to refund portions thereof used to fund Funded LC Disbursements as provided in Section 2.8.2(d) and pay other amounts provided herein related thereto), it being acknowledged and agreed by the parties hereto that the making of the Funded LC Credit-Linked Deposits by the Lenders, the provisions of this Section 2.8.1 and the application of the Funded LC Credit-Linked Deposits in the manner contemplated by Section 2.8.2(c) constitute agreements among Administrative Agent, Issuing Bank and each Lender with respect to the funding obligations of each Lender in respect of its participation in PSCo Letter of Credit and do not constitute any loan or extension of credit to Borrower.

(d) Issuing Bank shall promptly provide to Administrative Agent such information as Administrative Agent may require to provide such information to Borrower and/or the Lenders as is required hereunder.

#### 2.8.2 PSCo Letter of Credit.

(a) Request for Issuance. Subject to the terms and conditions hereof, on or before the date which is three Banking Days prior to the Closing Date, Borrower shall deliver to Administrative Agent the Notice of Borrowing and LC Activity referred to in Section 2.1.3(a) requesting that Issuing Bank issue the PSCo Letter of Credit as of the Closing Date. The PSCo Letter of Credit shall be issued to PSCo in accordance with the terms of the Power Purchase Agreement, shall have an expiration date of June 24, 2011 and shall have an aggregate stated amount on the Closing Date equal to \$28,100,000.

(b) Reduction of Stated Amount of PSCo Letter of Credit; Immaterial Changes.

(i) Upon at least three Banking Days' prior written notice to Administrative Agent and Issuing Bank delivered in accordance with Section 11.1, Borrower may permanently reduce the stated amount of the PSCo Letter of Credit; provided, however, that (A) such notice shall include a statement executed by each of Borrower and PSCo confirming that the aggregate amount of the PSCo Security Fund has been permanently reduced by an amount equal to such reduction in the stated amount and that Borrower shall have no further obligation to increase the stated amount of such PSCo Letter of Credit at any time following any such reduction, and (B) after giving effect to such reduction, Funded LC Credit-Linked Deposits on deposit in or credited to the Credit-Linked Deposit Account (together with any other amounts on deposit in or credited to the Credit-Linked Deposit Account in replacement thereof) shall equal the then-current stated amount of the PSCo Letter of Credit. In the event the stated amount of the PSCo Letter of Credit shall be reduced as provided in the immediately preceding sentence, Issuing Bank shall return, in accordance with Section 2.1.10(c), all such amounts on deposit in or credited to the Credit-Linked Deposit Account in excess of the stated amount of the PSCo Letter

of Credit (as so reduced) to Administrative Agent who shall promptly return the same to the Lenders ratably in accordance with their Proportionate Share of the Total Funded LC Credit-Linked Deposit Commitment.

(ii) Borrower may request immaterial amendments to or modifications of the PSCo Letter of Credit by delivering to Administrative Agent and Issuing Bank in accordance with Section 11.1, (A) a written notice describing the terms of the PSCo Letter of Credit to be amended or modified and such other information as shall be necessary to prepare such amended PSCo Letter of Credit and (B) a certificate from a Responsible Officer of Borrower stating that such amendment or modification is required by the terms of the Power Purchase Agreement. Issuing Bank shall have the right, but shall have no obligation, to make such immaterial modifications to the PSCo Letter of Credit as Borrower may from time to time request in writing as provided above. Issuing Bank shall promptly provide Administrative Agent with a copy of any such amendment or modification to the PSCo Letter of Credit.

(c) Participation. On the Closing Date, without any further action on the part of Issuing Bank or the Lenders, Issuing Bank hereby grants to each Lender, and each Lender hereby acquires from Issuing Bank, a participation in the PSCo Letter of Credit equal to such Lender's Proportionate Share of the aggregate amount available to be drawn under such PSCo Letter of Credit. The aggregate purchase price for the participations of each Lender in the PSCo Letter of Credit shall equal the amount of the Funded LC Credit-Linked Deposit of such Lender. Each Lender shall pay to Administrative Agent its Funded LC Credit-Linked Deposit in full on the Closing Date. Administrative Agent shall promptly pay the same to Issuing Bank. The Funded LC Credit-Linked Deposit made by such Lender on the Closing Date pursuant to this Section 2.8.2 (as such deposit may be reduced from time to time pursuant to the Credit Documents and reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 9.12) is set forth on Exhibit H, or in the Assignment and Acceptance pursuant to which such Lender shall have acquired its Funded LC Credit-Linked Deposit, as applicable. The aggregate amount of the Funded LC Credit-Linked Deposits on the Closing Date is \$28,100,000. Each Lender hereby absolutely and unconditionally agrees that if Issuing Bank makes a Funded LC Disbursement which is not reimbursed by Borrower as provided in Section 2.8.2(d), or is required to refund any reimbursement payment in respect of a Funded LC Disbursement to Borrower for any reason, Issuing Bank may withdraw an amount from the Credit-Linked Deposit Account equal to the amount of such Funded LC Disbursement, ratably as among the Lenders in accordance with their Proportionate Share of the Total Funded LC Credit-Linked Deposit, from such Lender's Funded LC Credit-Linked Deposit on deposit in the Credit-Linked Deposit Account. In the event the Credit-Linked Deposit Account is charged by Issuing Bank to reimburse itself for an unreimbursed Funded LC Disbursement, Borrower shall have the right, at any time prior to the Maturity Date, to pay over to Administrative Agent in reimbursement thereof an amount equal to the amount so charged for deposit in the Credit-Linked Deposit Account, and in such event Administrative Agent shall promptly pay the same to Issuing Bank. In the event that any reimbursement shall be due to Issuing Bank under the preceding provisions of this Section on a day other than the last day of an Interest Period in effect for the Funded LC Credit-Linked Deposits, Issuing Bank shall have the right, but not the obligation, to advance its own funds to cover the amount due to Issuing Bank, in which case (i) title to an amount of each Lender's Funded LC Credit-Linked Deposit equal to its Proportionate Share of the amount so advanced by Issuing Bank (together with the interest accruing thereon)

shall automatically be transferred to Issuing Bank, which shall reimburse itself for the amount advanced by it through the liquidation of such amounts of the Funded LC Credit-Linked Deposits at the end of the applicable Interest Period, and (ii) Borrower shall pay to Administrative Agent for the benefit of Issuing Bank, upon Administrative Agent's or Issuing Bank's request therefor, the amount, if any, by which Issuing Bank's cost of funds for the period from the date of such reimbursement of Issuing Bank through the end of the applicable Interest Period shall exceed the interest accrued on a like amount of the Funded LC Credit-Linked Deposits at the LIBO Rate for such Interest Period. A certificate setting forth in reasonable detail the amount of such costs and the basis for determination of such amount, submitted by Issuing Bank to Borrower, shall, in the absence of manifest error, be conclusive and binding on Borrower for purposes of this Agreement. In the event Borrower shall fail to pay any amount due under clause (ii) of the preceding sentence, the interest payable by Issuing Bank to the Lenders on their Funded LC Credit-Linked Deposits under

Section 2.8.1(b) shall be correspondingly reduced and the Lenders shall without further act succeed, ratably in accordance with their Proportionate Share, to the rights of Issuing Bank with respect to such amount. Each Lender acknowledges and agrees that its obligation to acquire and fund participations in respect of the PSCo Letter of Credit pursuant to this clause (ii) is absolute, unconditional and irrevocable and shall not be affected by any circumstance whatsoever, including any amendment or extension of the PSCo Letter of Credit or the occurrence and continuance of an Inchoate Default or Event of Default or the return of the Funded LC Credit-Linked Deposits, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Without limiting the foregoing, each Lender irrevocably authorizes Issuing Bank to apply the Funded LC Credit-Linked Deposits as provided in this Section 2.8.2. In addition, each Lender hereby grants to Issuing Bank a security interest in such Lender's Funded LC Credit-Linked Deposit to secure its obligations under this Section 2.8.2.

(d) Reimbursement.

(i) If Issuing Bank shall make any Funded LC Disbursement, Borrower shall pay or cause to be paid to Administrative Agent an amount equal to the entire amount of such Funded LC Disbursements on the Maturity Date. If Borrower does not so reimburse Issuing Bank for any such Funded LC Disbursement, without limiting any other right or remedy of any Lender hereunder, reimbursement of Issuing Bank shall be made in accordance with the provisions of this Section 2.8.2(d).

(ii) Except in connection with any repayment of Funded LC Disbursements prior to the Maturity Date pursuant to Section 2.1.10, if any Funded LC Disbursement that shall have been funded from the Funded LC Credit-Linked Deposits shall be reimbursed other than on the last day of an Interest Period applicable to the Funded LC Credit-Linked Deposits, Issuing Bank shall invest the amount so reimbursed in overnight or short-term cash equivalent investments until the end of the Interest Period at the time in effect and Borrower shall pay to Administrative Agent for the benefit of Issuing Bank upon Administrative Agent's or Issuing Bank's request therefor, the amount, if any, by which the interest accrued on a like amount of the Funded LC Credit-Linked Deposits at the LIBO Rate for the Interest Period in effect therefor shall exceed the interest earned through the investment of the amount so reimbursed for the period from the date of such reimbursement through the end of the applicable Interest Period. A certificate setting forth in reasonable detail the amount of such costs and the

basis for determination of such amount, submitted by Issuing Bank to Borrower, shall, in the absence of manifest error, be conclusive and binding on Borrower for purposes of this Agreement. In the event Borrower shall fail to pay any amount due under this Section, the interest payable by Issuing Bank to the Lenders on their Funded LC Credit-Linked Deposits under Section 2.8.2(b) shall be correspondingly reduced and the Lenders shall without further act succeed, ratably in accordance with their Proportionate Shares, to the rights of Issuing Bank with respect to such amount.

(iii) If Issuing Bank shall make any Funded LC Disbursement, and Borrower has not reimbursed Issuing Bank for such Funded LC Disbursement by 1:00 p.m. on the date that is two Banking Days after the date such Funded LC Disbursement is made (it being acknowledged and agreed that Borrower is obligated to make such reimbursement only on the Maturity Date), on such date, Administrative Agent shall notify each Lender of the applicable unreimbursed Funded LC Disbursement and such Lender's Proportionate Share thereof, and Issuing Bank shall promptly withdraw amounts from the Credit-Linked Deposit Account to reimburse itself each Lender's Proportionate Share of such Funded LC Disbursement from such Lender's Funded LC Credit-Linked Deposit (or from funds of Issuing Bank as contemplated by the sixth sentence of Section 2.8.2(c)(ii)). Promptly following receipt by Administrative Agent of any payment pursuant to Sections 2.8.2(d) (i) or (ii) in respect of any Funded LC Disbursement, Administrative Agent shall distribute such payment to Issuing Bank or, to the extent payments have been made from the Funded LC Credit-Linked Deposits or from funds of Issuing Bank to reimburse itself in connection with an unreimbursed Funded LC Disbursement, to the Credit-Linked Deposit Account to be added to the Funded LC Credit-Linked Deposits of the Lenders in accordance with their respective Proportionate Share or to reimburse Issuing Bank, as the case may be. Any payment made from the Credit-Linked Deposit Account, or from funds of Issuing Bank, pursuant to this Section to reimburse Issuing Bank for any Funded LC Disbursement shall not constitute a Term Loan and shall not relieve Borrower of its obligation, if any, to reimburse such Funded LC Disbursement.

(e) Obligations Absolute. Borrower's obligation to reimburse Funded LC Disbursements as provided in Section 2.8.2(d) shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of the Power Purchase Agreement, the PSCo Letter of Credit or this Agreement, or any term or provision therein, (ii) any draft or other document presented under the PSCo Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by Issuing Bank under the PSCo Letter of Credit against presentation of a draft or other document that does not comply with the terms of such PSCo Letter of Credit, or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section 2.8.2(e), constitute a legal or equitable discharge of, or provide a right of setoff against, Borrower's obligations hereunder. None of Administrative Agent, the Lenders, Issuing Bank or any of their Related Parties shall have any liability or responsibility by reason of or in connection with the issuance or transfer of the PSCo Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to the PSCo Letter of Credit (including any document required

to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of Issuing Bank; provided that the foregoing shall not be construed to excuse Issuing Bank from liability to Borrower to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by applicable law) suffered by Borrower that are caused by Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under the PSCo Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or wilful misconduct on the part of Issuing Bank (as finally determined by a court of competent jurisdiction), Issuing Bank shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of the PSCo Letter of Credit, Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such PSCo Letter of Credit.

(f) Disbursement Procedures. Issuing Bank shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under the PSCo Letter of Credit. Issuing Bank shall promptly notify, in accordance with Section 11.1, Administrative Agent and Borrower by telephone (confirmed by telecopy) of such demand for payment and whether Issuing Bank has made or will make a Funded LC Disbursement thereunder; provided that any failure to give or delay in giving such notice shall not relieve Borrower of its obligation to reimburse Issuing Bank and the Lenders with respect to any such Funded LC Disbursement.

(g) Interim Interest. If Issuing Bank shall make any Funded LC Disbursement, then, unless Borrower shall reimburse such Funded LC Disbursement in full on the date such Funded LC Disbursement is made, in each case the unpaid amount thereof shall bear interest, for each day from and including the date such Funded LC Disbursement is made to but excluding the date that Borrower reimburses such Funded LC Disbursement or Issuing Bank reimburses such Funded LC Disbursement with funds held in the Credit-Linked Deposit Account, at the LIBO Rate for the Interest Period at the time in effect for the Funded LC Credit-Linked Deposits plus 4.25% per annum; provided that, if Borrower fails to reimburse such Funded LC Disbursement when due pursuant to Section 2.8.2(d), then Section 2.3.3 shall apply. Interest accrued pursuant to this Section 2.8.2(g) shall be for the account of Issuing Bank, except that interest accrued on and after the date of payment from the Funded LC Credit-Linked Deposit of any Lender (or with funds of Administrative Agent pending the application of such Funded LC Credit-Linked Deposit) to reimburse Issuing Bank shall be for the account of such Lender or Administrative Agent, as applicable, to the extent of such payment.

### **ARTICLE 3 CONDITIONS PRECEDENT**

#### **3.1 CONDITIONS PRECEDENT TO THE CLOSING DATE.**

The obligation of each Lender to make its Term Loans and to fund its Funded LC Credit-Linked Deposits under this Agreement, and the obligation of Issuing Bank to issue the PSCo Letter of Credit, is subject to the prior satisfaction of each of the following conditions (unless waived in writing by Administrative Agent with the consent of the Lenders) (the date such conditions precedent are so satisfied or waived and the date the Term Loans and Funded LC Credit-Linked Deposits are made hereunder and the PSCo Letter of Credit is issued by Issuing Bank herewith being referred to as the "Closing Date"):

3.1.1 Resolutions. Delivery to Administrative Agent of a copy of one or more resolutions or other authorizations, in form and substance reasonably satisfactory to Administrative Agent, of Borrower, Riverside Borrower and Operator (the "Calpine Entities") as of the Closing Date certified by a Responsible Officer of each such Calpine Entity as being in full force and effect on the Closing Date, authorizing, as applicable and among other things, the Borrowing herein provided for, the granting of the Liens under the Collateral Documents and the execution, delivery and performance of this Agreement and the other Operative Documents and any instruments or agreements required hereunder or thereunder to which such Calpine Entity is a party.

3.1.2 Incumbency. Delivery to Administrative Agent of a certificate, in form and substance reasonably satisfactory to Administrative Agent, from each Calpine Entity signed by the appropriate authorized officer or manager of each such Calpine Entity and dated as of the Closing Date, as to the incumbency of the natural Persons authorized to execute and deliver this Agreement and the other Operative Documents and any instruments or agreements required hereunder or thereunder to which such Calpine Entity is a party.

3.1.3 Formation Documents. Delivery to Administrative Agent of:

(a) copies of the articles of incorporation, certificate of incorporation, charter or other state certified constituent documents of each Calpine Entity, certified by the secretary of state of such Calpine Entity's state of incorporation or formation, as applicable; and

(b) copies of the bylaws, limited liability company operating agreement or other comparable constituent documents, if applicable, of each Calpine Entity, certified by a Responsible Officer of such Calpine Entity as being true, correct and complete on the Closing Date.

3.1.4 Good Standing Certificates. Delivery to Administrative Agent of certificates issued by (a) the secretary of state of the state in which each Calpine Entity is formed or incorporated, as applicable, and (b) in the case of Borrower and Operator, the Secretary of State of Colorado, in each case (i) dated a date reasonably close to the Closing Date and (ii) certifying that such Calpine Entity is in good standing and is qualified to do business in, and has paid all franchise taxes or similar taxes due to, such states.

3.1.5 Third Party Approvals. Administrative Agent shall have received all information and copies of all documents and copies of any approval by any Person (including any Governmental Authority) reasonably required in connection with any transaction herein

contemplated or contemplated in any other Credit Document, which Administrative Agent may reasonably have requested in connection herewith.

3.1.6 Credit Documents and Project Documents. Delivery to Administrative Agent of (a) executed originals of this Agreement and each other Credit Document to be executed on the Closing Date (including the Notes (if any), the Security Agreement, the Pledge Agreement, the Intercreditor Agreement, the Mortgage, the Depositary Agreement, the Assignment of Rents, the Assignment of Water Lease, the PSCo Acknowledgment of Subordination, the Subordination Agreements, but excluding the Consents, the delivery of which is provided for under Section 3.1.31), any supplements or amendments thereto and a copy of the issued PSCo Letter of Credit, all of which shall be in form and substance reasonably satisfactory to the Lenders, and (b) a certified list of, and true, correct and complete copies of, each Major Project Document executed on or prior to the Closing Date, each in form and substance reasonably satisfactory to the Lenders, and, in each case, all of which shall have been duly authorized, executed and delivered by the parties thereto, and all of which Major Project Documents shall be certified by a Responsible Officer of Borrower as being true, complete and correct and in full force and effect on the Closing Date pursuant to the certificate delivered pursuant to Section 3.1.7 below.

3.1.7 Certificate of Borrower. Delivery to Administrative Agent of a certificate, dated as of the Closing Date, duly executed by a Responsible Officer of Borrower, in substantially the form of Exhibit F-1, which certificate shall, among other things, (a) state that neither Borrower nor, to Borrower's knowledge, any other party to any Major Project Document is or, but for the passage of time or giving of notice or both will be, in breach of any material obligation thereunder, (b) state that all conditions precedent to the performance of Borrower, and, to Borrower's knowledge, all conditions precedent to the performance of the other parties under such Major Project Documents then required to have been performed shall have been satisfied, (c) state that the representations and warranties of Borrower in this Agreement and the other Credit Documents are true and correct as of the Closing Date (except to the extent such representation or warranty relates to an earlier date), (d) state that Borrower has complied with all agreements and satisfied all conditions (or such conditions have been waived) on its part to be performed or satisfied hereunder at or prior to the Closing Date, (e) state that, subsequent to December 31, 2003, no Material Adverse Effect has occurred and is continuing except as set forth in or contemplated by the Bank Book or otherwise disclosed in writing to Administrative Agent prior to the Closing Date, (f) state that Borrower is Solvent and (g) contain each other certification required to be made by a Responsible Officer of Borrower on the Closing Date pursuant to Sections 3.1.6(b), 3.1.18 and 3.1.36.

3.1.8 Legal Opinions. Delivery to Administrative Agent of legal opinions of counsel to the Calpine Entities and, unless otherwise consented to by Administrative Agent, each Major Project Participant, in each case in form and substance reasonably satisfactory to the Lenders.

3.1.9 Certificate and Report of Insurance Consultant. Delivery to Administrative Agent of the Insurance Consultant's certificate, dated as of the Closing Date and in substantially the form of Exhibit F-2, together with the Insurance Consultant's report, in form and substance reasonably satisfactory to the Lenders, attached thereto.

3.1.10 Insurance. Insurance complying with terms and conditions set forth in Exhibit K shall be in full force and effect and Administrative Agent and the Insurance Consultant shall have received a certificate from Borrower's insurance broker(s), dated as of the Closing Date and in form and substance reasonably satisfactory to Administrative Agent, (a) identifying underwriters, type of insurance, insurance limits and policy terms, (b) listing the special provisions required as set forth in Exhibit K, (c) describing the insurance obtained and (d) stating that such insurance is in full force and effect and that all premiums then due thereon have been paid and that, in the opinion of such broker(s), such insurance complies with the terms and conditions set forth in Exhibit K.

3.1.11 Certificate and Report of the Independent Engineer. Delivery to Administrative Agent of the Independent Engineer's certificate, dated as of the Closing Date and in substantially the form of Exhibit F-3, together with the Independent Engineer's report, in form and substance reasonably satisfactory to the Lenders, attached thereto.

3.1.12 Reports of Borrower's Environmental Consultant. Delivery to Administrative Agent of the Environmental Reports along with the corresponding reliance letters, each in form and substance reasonably satisfactory to the Lenders.

3.1.13 Certificate and Report of Power Market Consultant. Delivery to Administrative Agent of the Power Market Consultant's certificate, dated as of the Closing Date and in substantially the form of Exhibit F-4, together with the Power Market Consultant's report, in form and substance reasonably satisfactory to the Lenders, attached thereto.

3.1.14 Schedule of Applicable Permits and Applicable Third Party Permits.

(a) Delivery to Administrative Agent of Exhibit G-1, the schedule of

(i) Permits required by Borrower to lease, own and operate the Project and (ii) all Permits that to Borrower's knowledge are required to be obtained by any Person (other than Borrower) that is party to any Major Project Document or Credit Document in order to perform such Person's obligations thereunder (other than Permits necessary to conduct its business generally and to maintain its existence and good standing), in form and substance reasonably satisfactory to Administrative Agent. Borrower shall also deliver to Administrative Agent copies of each Permit listed in Part I(A) of Exhibit G-1 in form and substance reasonably satisfactory to the Administrative Agent. Except as disclosed in Exhibit G-1, each Applicable Permit listed in Part I(A) of Exhibit G-1 shall (A) constitute in Administrative Agent's reasonable opinion all of the Applicable Permits as of the Closing Date, (B) have been duly obtained or been assigned in Borrower's name, (C) be in full force and effect, (D) not be subject to any current legal proceeding and (E) not be subject to any Unsatisfied Condition that could reasonably be expected to result in material modification or revocation of such Applicable Permit, and all applicable appeal periods with respect to each such Applicable Permit shall have expired.

(b) Each Major Project Participant shall have duly obtained or have been assigned in the name of such Major Project Participant each Permit listed in Part I(B) of Exhibit G-1. Each Applicable Third Party Permit listed in Part I(B) of Exhibit G-1 shall (i) be in full force and effect, (ii) not be subject to any current legal proceeding and (iii) not be subject to any Unsatisfied Condition that could reasonably be expected to result in material modification or

revocation of such Applicable Third Party Permit, and all applicable appeal periods with respect to each such Applicable Third Party Permit shall have expired.

(c) Part II(A) of Exhibit G-1 shall list all other Permits that are not Applicable Permits (as of the Closing Date) required by Borrower to lease, own and operate the Project as contemplated by the Operative Documents. Part II(B) of Exhibit G-1 shall list all other material Permits that to Borrower's knowledge are required to be obtained by any other Person (other than Borrower) that is a party to any Major Project Document or Credit Document (other than Permits necessary to conduct its business generally and maintain its existence and good standing) to perform its obligations under the Major Project Documents or Credit Documents to which it is a party. The Permits listed in Part II of Exhibit G-1 shall, in the Administrative Agent's reasonable opinion, be timely obtainable (i) on or before the date Borrower or the applicable other Person (as identified in Exhibit G-1) requires such Permit, and (ii) without expense materially in excess of the amounts provided therefor in the Base Case Project Projections by Borrower or such other Person.

(d) Except as disclosed in Exhibit G-1, the Permits listed in Part I of Exhibit G-1 shall not be subject to any restriction, condition, limitation or other provision which could reasonably be expected to have a Material Adverse Effect or result in the Project being operated in a manner substantially inconsistent with the assumptions underlying the Base Case Project Projections.

3.1.15 No Change in Tax Laws. No change shall have occurred, since the date upon which this Agreement was executed and delivered, in any law or regulation or interpretation thereof that would subject any Lender to any material unreimbursed Tax or Other Tax.

3.1.16 Absence of Litigation. No action, suit, proceeding or investigation shall have been instituted or threatened in writing against Borrower. No action, suit, proceeding or investigation shall have been instituted or threatened in writing against any other Major Project Participant that (for purposes of this Section 3.1.16, in Administrative Agent's sole discretion) could reasonably be expected to have a Material Adverse Effect.

3.1.17 Payment of Fees. All taxes, fees and other costs payable in connection with the execution, delivery, recordation and filing of the documents and instruments referred to in this Section 3.1 and due on the Closing Date shall have been paid in full or, as approved by the Lenders, provided for. Borrower shall have paid (or caused to be paid) all outstanding amounts due, as of the Closing Date, and owing to (a) the Lenders, Administrative Agent, Issuing Bank, Collateral Agent, or Lead Arranger under any fee or other letter or pursuant to Section 2.2, (b) the Lenders' attorneys and consultants (including the Independent Consultants) and the Title Insurer for all services rendered and billed prior to the Closing Date, (c) the Depositary Agent under the Depositary Agreement, and (d) Administrative Agent for any other amounts required to be paid or deposited by Borrower on the Closing Date.

3.1.18 Financial Statements. Delivery to Administrative Agent of accurate and complete copies of the most recent (a) audited annual financial statements or Form 10-K of the Sponsor for the year ended December 31, 2003, (b) unaudited quarterly financial statements or

Form 10-Q of Borrower and the Sponsor for the fiscal quarter ended on March 31, 2004, and (c) unaudited pro forma balance sheet of Borrower, together with, in the case of Borrower, a certificate from the appropriate Responsible Officer thereof, dated as of the Closing Date and in substantially the form of Exhibit F-1, stating that no material adverse change in the consolidated assets, liabilities, operations or financial condition of such Person has occurred from those set forth in the most recent financial statements provided to Administrative Agent.

3.1.19 Release; Security; UCC Filings.

(a) Release. Collateral Agent shall have received:

(i) certified copies of Uniform Commercial Code Requests for Information or Copies (Form UCC-11), or a similar search report certified by a party acceptable to Collateral Agent, dated a date reasonably near to the Closing Date, listing all effective Financing Statements which name Borrower, Pledgor or Riverside Borrower (under its present names or any previous name) as the debtor, together with copies of such Financing Statements (none of which shall cover any Collateral, other than Financing Statements that evidence (A) Liens granted in connection with the Existing Rocky Mountain Credit Facility or (B) Liens permitted to exist hereunder after the Closing Date);

(ii) appropriately completed copies, which have been duly authorized for filing by the appropriate Person, of each UCC Financing Statement Amendment (Form UCC-3) termination statement, if any, necessary to release all Liens of any Person in any Collateral previously granted by Borrower, Pledgor or Riverside Borrower to the extent not permitted under the Credit Documents after the Closing Date (including (A) Liens granted in connection with the Existing Rocky Mountain Credit Facility and (B) other existing Liens which are not permitted hereunder after the Closing Date);

(iii) such releases, reconveyances, satisfactions or other instruments as it may reasonably request to confirm the release, satisfaction and discharge in full of all mortgages and deeds of trust at any time delivered by Borrower, Pledgor or Riverside Borrower to secure any Obligations in respect of the Existing Rocky Mountain Credit Facility, duly executed, delivered and acknowledged in recordable form by the grantee named therein or its of record successors or assigns; and

(iv) a letter or letters (in form and substance reasonably satisfactory to Administrative Agent) addressed to Collateral Agent and Administrative Agent executed and delivered by the Existing Rocky Mountain Administrative Agent, stating the aggregate amount (the "Payout Amount") required to pay in full in cash on the Closing Date all outstanding Obligations under or in respect of the Existing Rocky Mountain Credit Facility.

(b) Security. Collateral Agent shall have received:

(i) appropriately completed copies, which have been duly authorized for filing by the appropriate Person, of Uniform Commercial Code Financing Statements or fixture filings naming, as applicable, Borrower or Riverside Borrower as a debtor and Collateral Agent as the secured party, or other similar instruments or documents to be filed under the UCC of all jurisdictions as may be necessary or, in the reasonable opinion of Collateral Agent and its

counsel, desirable to perfect the security interests of the Secured Parties pursuant to the Collateral Documents;

(ii) (A) certificates from Riverside Borrower (which certificates shall be accompanied by irrevocable undated stock powers or transfer documents, duly endorsed in blank and otherwise satisfactory in form and substance to Collateral Agent) representing all limited liability company membership interests pledged to the Secured Parties by Riverside Borrower pursuant to the Collateral Documents and (B) all promissory notes or other instruments (duly endorsed, where appropriate, in a manner reasonably satisfactory to Collateral Agent) evidencing any Collateral; and

(iii) such other documents and instruments as Collateral Agent may reasonably request in order to grant and, subject to the Intercreditor Agreement, perfect the security interests contemplated by the Collateral Documents

(c) Filing. All Uniform Commercial Code Financing Statements (Forms UCC-1) or other similar Financing Statements and UCC Financing Statement Amendments (Forms UCC-3) required pursuant to clauses (a) and (b) above (collectively, the "Financing Statements") shall have been filed or recorded or delivered to Collateral Agent for filing or recording.

3.1.20 Annual Operating Budget. Delivery to Administrative Agent of a budget in substantially the form of Exhibit G-2 (the "Initial Operating Budget") for all anticipated O&M Costs and Project Revenues for the period from the Closing Date through December 31, 2004, which Initial Operating Budget shall be satisfactory to the Lenders.

3.1.21 Base Case Project Projections. Delivery to Administrative Agent of the Base Case Project Projections of operating expenses and cash flow for the Project for the period commencing on the Closing Date and ending on December 31, 2023, which Base Case Project Projections shall be in substantially the form of Exhibit G-3 and otherwise in form and substance satisfactory to the Lenders.

3.1.22 No Material Adverse Change. Since December 31, 2003, no Material Adverse Effect has occurred and is continuing.

3.1.23 A.L.T.A. Surveys. Administrative Agent shall have received:

(a) as-built A.L.T.A. surveys of the Site and, subject to Section 3.1.23(b), the Easements, in each case in form and substance reasonably satisfactory to Administrative Agent and the Title Insurer, certified to Borrower, Administrative Agent and the Title Insurer as to completeness and accuracy as of a date that is not more than 30 days prior to the Closing Date by a licensed Colorado surveyor reasonably satisfactory to Administrative Agent, showing, among other things, (i) the location and dimensions of the Site and, subject to Section 3.1.23(b), the Easements, including the location of all means of access thereof and all easements and encumbrances relating thereto; (ii) the location and dimensions of all improvements and encroachments located in or on the Site and, subject to Section 3.1.23(b), the Easements; (iii) the existing utility facilities which service the Project and are necessary to its operation (including, as applicable, water, electricity, fuel, telephone, sanitary sewer and storm water distribution and detention facilities); (iv) that the location of the Project and any improvements relating thereto do

not encroach on or interfere in any manner that may be unpermitted or may violate the rights of third parties with adjacent property or existing easements, encumbrances or other rights of third parties (whether on, above or below ground), and that there are no gaps, gores, projections, protrusions or other survey defects affecting the Site or, subject to Section 3.1.23(b), the Easements; (v) whether the Site and, subject to Section 3.1.23(b), the Easements, or any portion thereof, are located in a special earthquake or flood hazard zone; and (vii) that no other matters constituting a defect in title exist other than relevant Title Exceptions; and

(b) in lieu of providing as-built A.L.T.A. surveys of the Easements (or any portion thereof) and at Borrower's election, one or more certificates satisfactory to Administrative Agent dated as of a date that is not more than 30 days prior to the Closing Date, from a licensed third party engineering firm or surveyor satisfactory to Administrative Agent, confirming that the applicable Easements provide contiguous real property interests sufficient for the operation and maintenance of all lateral facilities constructed or installed within such Easements and that all such lateral facilities have been constructed or installed within the boundaries of such Easements.

3.1.24 A.L.T.A. Title Policy. Delivery to Administrative Agent of a lender's A.L.T.A. extended coverage policy of title insurance (with, in the case of the Easements, which were not included in the A.L.T.A. survey, standard coverage exceptions reasonably acceptable to Administrative Agent) but without a creditors' rights or mechanics' lien exception included therein (except where applicable Governmental Rules prevent the deletion of the mechanics' lien exception, in which case the Sponsor shall provide the Title Insurer with any affidavits or indemnities (with respect to which Borrower shall have no reimbursement obligations) necessary to cause the Title Insurer to issue affirmative coverage with respect to any risk arising due to mechanics' liens in form and substance reasonably satisfactory to Administrative Agent), together with such endorsements thereto as are reasonably required by Administrative Agent, or the unconditional and irrevocable commitment of the Title Insurer to issue such a policy, dated as of the Closing Date, in an amount equal to \$200,000,000 (with such reinsurance arrangements as are reasonably satisfactory to Administrative Agent) issued by the Title Insurer in form and substance satisfactory to Administrative Agent, insuring (or agreeing to insure) that:

(a) Borrower has a good, marketable and insurable (i) fee simple interest in the Site and (ii) easement or other applicable real property interests in the Easements (except that title to certain of the Easements that are licenses may not be insurable), in each case free and clear of Liens, encumbrances or other exceptions to title, other than (A) the Title Exceptions and (B) such Liens, encumbrances or other exceptions to title as are reasonably satisfactory to Administrative Agent; and

(b) the Mortgage is (or will be when recorded) a valid first lien on Borrower's interest in the Mortgaged Property, free and clear of all Liens, encumbrances and exceptions to title whatsoever, other than (i) the Title Exceptions and (ii) such Liens, encumbrances or other exceptions to title as are reasonably satisfactory to Administrative Agent.

3.1.25 Real Estate Rights. Borrower and each other Major Project Participant shall have obtained and shall hold all easements or other possessory rights in real estate, together with necessary real property permits and crossing rights (collectively, "Rights of Way")

necessary for (a) performance in full of each such Person's obligations under the Operative Documents to which such Person is a party and each Permit to which such Person or its assets is bound by, and (b) the leasing, operation and maintenance of the Project in accordance with the Base Case Project Projections. The use of such Rights of Way shall not encroach on or interfere in any manner that may be unpermitted or may violate the rights of third parties with property adjacent to such Rights of Way or existing easements or other rights (whether on, above or below ground) and the full length of the Rights of Way shall be continuous, without break, gap or interruption.

3.1.26 Regulatory Status. Delivery to Administrative Agent of (a) an order issued by FERC confirming that the Project is an Eligible Facility and that Borrower is an EWG, (b) an order issued by FERC authorizing Borrower to sell electricity at market-based rates and (c) all necessary approvals from any Governmental Authority in respect of the PSCo Interconnection Agreement and the Power Purchase Agreement, to the extent applicable, and as to Riverside Borrower's acquisition of 100% of the ownership interests of Borrower.

3.1.27 Establishment of Accounts; Initial Funding. The Accounts required to be established as of the Closing Date for the Project under the Depositary Agreement shall have been established to the satisfaction of Administrative Agent, Administrative Agent shall have established the Credit-Linked Deposit Account and, on the Closing Date, (a) Borrower shall deposit or cause to be deposited (i) \$1,304,000 in the O&M Account, which amount shall be applied from time to time after the Closing Date in accordance with Section 3.3.2 of the Depositary Agreement, (ii) \$17,511,000 in the Pre-Funded Punchlist Expense Account, which amount shall be applied from time to time after the Closing Date in accordance with Section 3.1.2 of the Depositary Agreement and (b) the Lenders shall have deposited with Administrative Agent \$28,100,000 in the Credit-Linked Deposit Account for application in accordance with Section 2.8.2.

3.1.28 Representations and Warranties. Each representation and warranty of Borrower and each other Calpine Entity under the Credit Documents shall be true and correct as of the Closing Date.

3.1.29 No Default. No Event of Default or Inchoate Default shall have occurred and be continuing as of the Closing Date.

3.1.30 Utilities. Delivery to Administrative Agent of reasonably satisfactory evidence that all potable water, sewer, telephone, electric and all other utility services necessary for the ownership, operation and maintenance of the Project are either contracted for, or readily available on commercially reasonable terms, at the Project.

3.1.31 Consents. Delivery to Administrative Agent of executed Consents from each of the Major Project Participants as set forth on Exhibit E-2, which Consents shall be reasonably satisfactory to Administrative Agent.

3.1.32 Process Agents. Delivery to Administrative Agent of evidence reasonably acceptable to Administrative Agent that each Calpine Entity has appointed Corporation Service Company as its respective agent for service of process in the State of New

York in respect of each Credit Document to which such Person is a party which is governed by the laws of the State of New York.

3.1.33 Ratings. The credit facilities set forth herein shall have received ratings by S&P and Moody's.

3.1.34 Notice of Borrowing and LC Activity. Administrative Agent shall have received a fully executed and delivered Notice of Borrowing and LC Activity from Borrower at least three Banking Days prior to the Closing Date.

3.1.35 Anti-Terrorism Compliance. At least two Banking Days prior to the Closing Date, Administrative Agent shall have received all documentation and other information requested by Administrative Agent, which is required by bank regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the U.S.A. Patriot Act.

3.1.36 Achievement of Commercial Operation. (a) The Project is able to operate and produce electrical energy for commercial sale in accordance with Prudent Utility Practices, applicable Legal Requirements and consistent with the Base Case Project Projections, and (b) the "Commercial Operation Date" (as defined in the Power Purchase Agreement) has occurred.

3.1.37 Conditions Precedent to Closing - Riverside Project. Riverside Borrower shall have concurrently satisfied each of the conditions set forth in Section 3.1 of the Riverside Credit Agreement and the Lenders thereunder shall, concurrent with the funding of the Term Loan hereunder, fund the "Term Loans" under the Riverside Credit Agreement.

3.1.38 Disbursement Authorization Letter. Borrower and Administrative Agent shall have executed and delivered a disbursement authorization letter, in form and substance reasonably satisfactory to Administrative Agent, pursuant to which, among other things, (a) Borrower shall have authorized the disbursement of the proceeds of the Term Loans in a manner consistent with Section 2.1.5 and Exhibit G-2, (b) Borrower shall have authorized Administrative Agent to disburse the Payout Amount directly to the Existing Rocky Mountain Administrative Agent, (c) Borrower shall have authorized Administrative Agent to deposit the amounts specified in Section 3.1.27 directly into the applicable Accounts referred to therein and (d) Borrower shall have authorized Administrative Agent to disburse amounts owing to Administrative Agent, Collateral Agent, Lead Arranger and each other applicable Person pursuant to Section 3.1.17.

3.1.39 PSCo Security Fund. The PSCo Security Fund shall have been provided to PSCo in compliance with all applicable requirements under the Power Purchase Agreement and shall be in full force and effect.

3.1.40 Colorado Recordation. In addition to the filings and recordings contemplated by Exhibit D-6, the PSCo Acknowledgement of Subordination shall have been recorded with the recording office of Weld County, Colorado to the satisfaction of Administrative Agent.

**ARTICLE 4**  
**REPRESENTATIONS AND WARRANTIES**

Borrower makes the following representations and warranties to and in favor of Administrative Agent, Collateral Agent, Issuing Bank, Lead Arranger and the Lenders as of the Closing Date (unless such representation and warranty expressly relates solely to another time), all of which shall survive the Closing Date and the making of the Term Loans, the funding of the Funded LC Credit-Linked Deposits and the issuance of the PSCo Letter of Credit:

**4.1 ORGANIZATION.**

Borrower is (a) a limited liability company duly formed, validly existing and in good standing under the laws of the State of Delaware and (b) is duly qualified as a foreign limited liability company, and is in good standing, in each jurisdiction in which such qualification is required by law. Borrower has all requisite limited liability company power and authority to (i) own or hold under lease and operate the property it purports to own or hold under lease, (ii) carry on its business as now being conducted and as now proposed to be conducted in respect of the Project, (iii) execute, deliver and perform each Operative Document to which it is a party and (iv) take each action as may be necessary to consummate the transactions contemplated thereunder. As of the Closing Date, the Riverside Borrower is the sole member of Borrower.

**4.2 AUTHORIZATION; NO CONFLICT.**

Borrower has duly authorized, executed and delivered each Operative Document to which Borrower is a party (or such Operative Documents have been duly and validly assigned to Borrower and Borrower has authorized the assumption thereof, and has assumed the obligations of the assignor thereunder) and neither Borrower's execution and delivery thereof nor its consummation of the transactions contemplated thereby nor its compliance with the terms thereof (a) does or will contravene the Governing Documents or any other Legal Requirement applicable to or binding on Borrower or any of its properties which, in the case of such Legal Requirements, could reasonably be expected to have a Material Adverse Effect, (b) does or will contravene or result in any breach of or constitute any default under, or result in or require the creation of any Lien (other than Permitted Liens) upon any of its property under, any material agreement or instrument to which it is a party or by which it or any of its properties may be bound or affected or (c) does or will require the material consent or approval of any Person, and with respect to any Governmental Authority, does or will require any material registration with, or notice to, or any other action of, with or by any applicable Governmental Authority, in each case which has not already been obtained and disclosed in writing to Administrative Agent (except as set forth on Exhibit G-1 or otherwise provided in Sections 4.9.1 and 4.9.2).

**4.3 ENFORCEABILITY.**

Each of the Operative Documents to which Borrower is a party is a legal, valid and binding obligation of Borrower, enforceable against Borrower in accordance with its terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency,

moratorium, reorganization or other similar laws affecting the enforcement of creditors' rights or by the effect of general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law).

#### 4.4 COMPLIANCE WITH LAW.

There are no material violations by Borrower or, to Borrower's knowledge, any Calpine Entity, of any Legal Requirement (including any Hazardous Substance Laws). No notices of any material violation of any Legal Requirement (including any Hazardous Substance Laws) relating to the Project or the Site have been issued, entered or received by Borrower or, to Borrower's knowledge, any Calpine Entity.

#### 4.5 BUSINESS, DEBT, CONTRACTS, JOINT VENTURES ETC.

4.5.1 Borrower has not conducted any business other than the business contemplated by the Operative Documents and, through the Closing Date, the Existing Rocky Mountain Credit Agreement, does not have any outstanding Debt or other material liabilities other than pursuant to or allowed by the Operative Documents, and Borrower is not a party to or bound by any material contract other than the Credit Documents and the Major Project Documents to which it is a party.

4.5.2 Borrower is not a general partner or a limited partner in any general or limited partnership or a joint venturer in any joint venture.

4.5.3 Borrower does not have any Subsidiaries.

#### 4.6 ANTI-TERRORISM LAWS.

4.6.1 To the best of its knowledge, neither Borrower nor any of its Affiliates is in violation of (a) any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto, (b) Executive Order No. 13,224, 66 Fed Reg 49,079 (2001), issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit or Support Terrorism) (the "Executive Order") or (c) the anti-money laundering provisions of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, Public Law 107-56 (October 26, 2001) amending the Bank Secrecy Act, 31 U.S.C. Section 5311 et seq (collectively, "Anti-Terrorism Laws").

4.6.2 To the best of its knowledge, neither Borrower nor any of its Affiliates is any of the following:

(a) a Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(b) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed on the Annex to, or is otherwise subject to the provisions of, the Executive Order;

(c) a Person with whom Borrower is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;

(d) a Person who commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order; or

(e) a Person that is named as a "specially designated national or blocked person" on the most current list published by the U.S. Treasury Department Office of Foreign Asst Control at its official website or any replacement website or other replacement official publication of such list.

4.6.3 To the best of its knowledge, neither Borrower nor any of its Affiliates (a) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Person described in clause (a), (b), (c) or (d) of Section 4.6.2 or clause (d) of Section 4.6.2; (b) deals in, or otherwise engages in any transaction relating to, any property or interest in property blocked pursuant to the Executive Order, or (c) engages in or conspires to engage in any transaction that evades or avoids, or has the purposes of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

4.6.4 No broker or other similar agent (other than the Lead Arranger) is acting for the benefit of Borrower or any of its Affiliates, or benefiting in any capacity, in each case in connection with the Credit Documents.

#### 4.7 INVESTMENT COMPANY ACT.

Neither Borrower nor any other Calpine Entity is an investment company or a company controlled by an investment company, within the meaning of the Investment Company Act of 1940, as amended.

#### 4.8 ERISA.

Either (a) there are no ERISA Plans or Multiemployer Plans for any Calpine Entity or any ERISA Affiliate or (b) (i) each Calpine Entity and each ERISA Affiliate have fulfilled their obligations (if any) under the minimum funding standards of ERISA and the Code for each ERISA Plan, (ii) each such ERISA Plan is in compliance in all material respects with the currently applicable provisions of ERISA and the Code and (iii) neither any Calpine Entity nor any ERISA Affiliate has incurred any liability to the PBGC or an ERISA Plan or Multiemployer Plan under Title IV of ERISA (other than liability for premiums due in the ordinary course). None of any Calpine Entity's assets constitute assets of an employee benefit plan within the meaning of 29 C.F.R. Section 2510.3-101. Borrower does not maintain or contribute to, and is not obligated to contribute to, nor has it at any point of its existence maintained or contributed to, or been obligated to contribute to, any employee-benefit plan subject to ERISA.

#### 4.9 PERMITS.

4.9.1 There are no material Permits under existing Legal Requirements as the Project is currently designed that are or will become Applicable Permits other than the Permits

listed in Exhibit G-1 hereto. Except as disclosed in Exhibit G-1 (as so supplemented), each Permit listed in Part I(A) of Exhibit G-1 is in full force and effect and is not subject to any current legal proceeding or to any Unsatisfied Condition that could reasonably be expected to have a Material Adverse Effect, and all applicable appeal periods with respect thereto have expired. Each Permit listed in Part II(A) of Exhibit G-1 is of a type that is routinely granted upon submission of a timely application and demonstration that the Project complies with applicable standards and Legal Requirements. No Permit listed in Part II(A) is required under applicable Legal Requirement or Project Documents to be obtained before the time contemplated to be obtained by Borrower. No fact or circumstance exists, to Borrower's knowledge, which makes it likely that any Permit identified in Part II(A) of Exhibit G-1 shall not be timely obtainable by Borrower before it becomes an Applicable Permit without expense materially in excess of amounts provided therefor in the Base Case Project Projections. Borrower is in compliance in all material respects with all Applicable Permits.

4.9.2 To Borrower's knowledge, there are no Permits under existing Legal Requirements as the Project is currently designed that are or will become Applicable Third Party Permits other than the Permits listed in Exhibit G-1 hereto other than those, the failure of which to obtain could not reasonably be expected to have a Material Adverse Effect. To Borrower's knowledge, except as disclosed in Exhibit G-1, each Permit listed in Part I(B) of Exhibit G-1 is in full force and effect and is not subject to current legal proceeding or to any Unsatisfied Condition that could reasonably be expected to have a Material Adverse Effect, and all applicable appeal periods with respect thereto have expired. No fact or circumstance exists, to Borrower's knowledge, which makes it likely that any Permit identified in Part II(B) of Exhibit G-1 shall not be timely obtainable by the applicable Person as identified in Exhibit G-1 at a cost consistent with the Base Case Project Projections before it becomes an Applicable Third Party Permit. Except as disclosed in Exhibit G-1, to Borrower's knowledge, each Person as identified in Exhibit G-1 possesses and is in compliance in all material respects with its respective Applicable Third Party Permits.

#### 4.10 HAZARDOUS SUBSTANCES.

4.10.1 Except as set forth in Exhibit G-6: (a) Borrower, with respect to the Site, Improvements or other Mortgaged Property, is not or has not in the past been in violation of any Hazardous Substance Law which violation could reasonably be expected to result in a material liability to Borrower or its properties and assets or in an inability of Borrower to perform its obligations under the Operative Documents; (b) neither Borrower nor, to Borrower's knowledge, any other Person has used, Released, generated, manufactured, produced or stored in, on, under, or about the Site, Improvements or other Mortgaged Property, or transported thereto or therefrom, any Hazardous Substances that could reasonably be expected to subject any Secured Party to liability, or Borrower to material liability, under any Hazardous Substance Law; (c) to Borrower's knowledge, there are no underground tanks, whether operative or temporarily or permanently closed, located on the Site, Improvements or other Mortgaged Property that could reasonably be expected to subject any Secured Party to liability, or Borrower to material liability, under any Hazardous Substance Law; (d) there are no Hazardous Substances used, stored or present at or on the Site, Improvements or other Mortgaged Property, except in compliance with Hazardous Substance Laws and other Legal Requirements or as disclosed in the Environmental Reports; (e) to Borrower's knowledge, there are no Hazardous Substances that

could reasonably be expected to migrate onto the Site, Improvements or other Mortgaged Property that could reasonably be expected to impose on Borrower a material liability, except as disclosed in the Environmental Reports; and (f) to Borrower's knowledge there neither is nor has been any condition, circumstance, action, activity or event that could reasonably be expected to be, or result in, a material violation by Borrower of any Hazardous Substance Law, or to result in liability to any Secured Party or material liability to Borrower under any Hazardous Substance Law.

4.10.2 Except as set forth on Exhibit G-5 or Exhibit G-6, there is no pending or, to Borrower's knowledge, threatened in writing, action or proceeding by any Governmental Authority (including the Colorado Public Utilities Commission, Colorado Department of Natural Resources, Colorado Department of Public Health and Environment, County of Weld, U.S. Army Corps of Engineers and U.S. Environmental Protection Agency) or any other Person which is not a Governmental Authority with respect to the presence or Release of Hazardous Substances in, on, from or to the Site, Improvements or other Mortgaged Property.

4.10.3 Except as set forth in the Environmental Reports, to Borrower's knowledge, there are no past violations that have not been finally resolved or existing violations of any Hazardous Substances Laws by any Person affecting the Site, Improvements or other Mortgaged Property, which violations could reasonably be expected to result in a material liability to Borrower.

#### 4.11 LITIGATION.

(a) No action, suit, proceeding or investigation has been instituted or, to Borrower's knowledge, threatened in writing against Borrower.

(b) Borrower has no knowledge of (i) any action, suit, proceeding or investigation that has been instituted or threatened in writing against, the Riverside Borrower, the Sponsor or any other Major Project Participant, or by which any of them or their properties are bound, which could reasonably be expected to have a Material Adverse Effect, or (ii) any order, judgment or decree that has been issued or proposed to be issued by any Governmental Authority that, as a result of the ownership or operation of the Project by Borrower, the sale of electricity therefrom by Borrower or the entering into of any Operative Document or any transaction contemplated hereby or thereby, could reasonably be expected to cause or deem the Lenders, Administrative Agent, Collateral Agent, Issuing Bank, the Lead Arranger or Borrower or any Affiliate of any of them to be subject to, or not exempted from, regulation under PUHCA, or treated as a public utility under the laws of the State of Colorado as presently constituted and as construed by the courts of Colorado, respecting the rates or the financial or organizational regulation of electric utilities. No action, suit or proceeding before or by any court, arbitrator or other Governmental Authority is pending to which any Calpine Entity is a party or to which its business, assets or property is subject and, to Borrower's knowledge, no such action, suit or proceeding is threatened to which any such Calpine Entity or its business, assets or property would be subject that, in either case, questions the validity of any of the Operative Documents.

#### 4.12 LABOR DISPUTES AND ACTS OF GOD.

Neither the business nor the properties of Borrower or, to Borrower's knowledge, any other Major Project Participant are currently affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy, or other casualty (whether or not covered by insurance), which could reasonably be expected to have a Material Adverse Effect.

#### 4.13 DISCLOSURE.

None of this Agreement, the Bank Book nor any certificate or other documentation (other than the Initial Operating Budget or the Base Case Project Projections or other "forward-looking" statements) furnished to the Lead Arranger, Administrative Agent, Collateral Agent, Issuing Bank, or the Lenders, or to any consultant submitting a report to Administrative Agent, the Lead Arranger or the Lenders, by or, to Borrower's knowledge, on behalf of Borrower with respect to the Project, the Sponsor, the Pledgor, Borrower or any other Calpine Entity or in connection with the transactions contemplated by this Agreement, the other Credit Documents or the description or operation of the Project, taken as a whole, contained (at the time of delivery thereof) any untrue statement of a material fact or omitted (at the time of delivery thereof) to state a material fact necessary in order to make the statements contained herein or therein not misleading in any material respect under the circumstances in which they were made at the time such statements were made (other than any information that was corrected or updated in writing by Borrower or its Affiliates or representatives to the Lead Arranger prior to the Closing Date). There is no fact known to Borrower which has had or could reasonably be expected to have a Material Adverse Effect which has not been disclosed in writing to Administrative Agent, the Lead Arranger, Collateral Agent, Issuing Bank or the Lenders by or on behalf of Borrower on or prior to the Closing Date in connection with the transactions contemplated hereby.

#### 4.14 FLOOD ZONE DISCLOSURE.

No material portion of the Site includes Improvements that are or will be located in an area that has been identified by the Federal Emergency Management Agency as an area having special flood or mudslide hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968, as amended.

#### 4.15 TAXES.

(a) Borrower has timely filed, or caused to be filed, all federal, state and local tax returns and reports that it is required to file, has paid all material taxes, assessments, utility charges, fees and other governmental charges it is required to pay to the extent due (other than those taxes that it is contesting in good faith and by appropriate proceedings in accordance with the requirements of Section 5.18). Borrower knows of no proposed tax assessment against the Riverside Borrower, or Borrower which could reasonably be expected to have a Material Adverse Effect (other than those proposed tax assessments that Borrower is contesting in good faith and by appropriate proceedings in accordance with the requirements of Section 5.18). In either case, to the extent such taxes, assessments, charges and fees are not due, Borrower or the applicable Calpine Entity has established reserves that are adequate for the payment thereof in conformity with GAAP.

(b) At all times since its formation, Borrower has been an entity with a single owner that is disregarded as separate from its owner for federal income tax purposes. No Form 8832 has ever been filed with respect to Borrower as other than a disregarded entity and no such election shall have been made.

(c) Borrower has no liability for the taxes of any Person (other than Borrower) (i) under Treasury Regulations Section 1.1502-6 (or any similar provision of state, local or foreign law), (ii) as a transferee or successor, (iii) by contract, or (iv) otherwise.

(d) Borrower does not intend to treat the Term Loans (including the incurrence thereof) as being a "reportable transaction" (within the meaning of Treasury Regulation Section 1.6011-4).

#### 4.16 GOVERNMENTAL REGULATION.

4.16.1 Borrower is not, and after giving effect to the borrowing of any Term Loans or the issuance of the PSCo Letter of Credit will not be, subject to regulation (a) under any provision of PUHCA except Section 32 thereof; or (b) under any state law or regulation with respect to rates or the financial or organizational regulation of electric utilities. Borrower is subject to regulation as a "public utility" under the Federal Power Act, as amended ("FPA").

4.16.2 The Project is an Eligible Facility within the meaning of Section 32 of PUHCA, and Borrower has received a determination from the FERC (not subject to any pending challenge, investigation, or proceeding) that it is an "exempt wholesale generator" ("EWG"), within the meaning of Section 32 of PUHCA. Borrower has validly issued orders from the FERC under the FPA, not subject to any pending challenge, investigation, or proceeding, (a) authorizing Borrower to engage in wholesale sales of electricity, ancillary services and, to the extent permitted under its market-based rate tariff, other services at market-based rates, and (b) granting such waivers and blanket authorizations (including blanket authorization to issue securities and to assume liabilities under Section 204 of the FPA and 18 C.F.R. Pt. 34), as are customarily granted to entities with market-based rate authority. With respect to Borrower, the FERC has not imposed any rate caps or mitigation measures other than rate caps and mitigation measures generally applicable to similarly situated marketers or generators selling electricity, ancillary services or other services at wholesale in the geographic market where Borrower conducts its business.

4.16.3 There are no pending complaints filed with the FERC seeking abrogation or modification of a contract for the sale of power by the Borrower.

#### 4.17 REGULATION U, ETC.

Borrower is not engaged principally, or as one of its principal activities, in the business of extending credit for the purpose of "buying", "carrying" or "purchasing" margin stock (each as defined in Regulations T, U or X of the Federal Reserve Board), and no part of the proceeds of the Term Loans, the PSCo Letter of Credit or the Project Revenues will be used by Borrower for the purpose of "buying", "carrying" or "purchasing" any such margin stock or for any other purpose which violates the provisions of the regulations of the Federal Reserve Board.

#### 4.18 INITIAL OPERATING BUDGET; PROJECTIONS.

Borrower has prepared the Initial Operating Budget and the Base Case Project Projections and is responsible for developing the assumptions on which such Initial Operating Budget and the Base Case Project Projections are based; and such Initial Operating Budget and the Base Case Project Projections (a) as of the date delivered, updated or supplemented are based on Borrower's good faith reasonable assumptions (including as to all legal and factual matters material to the estimates set forth therein) and (b) as of the date delivered, updated or supplemented are consistent in all material respects with the provisions of the Project Documents executed on or prior to such date.

#### 4.19 FINANCIAL STATEMENTS.

In the case of the financial statements of Borrower delivered pursuant to Section 3.1.18 (other than the financial statements of Borrower delivered pursuant to Section 3.1.18(c)), each such financial statement and information has been prepared in conformity with GAAP and fairly presents, in all material respects, the financial position (on a consolidated and, where applicable, consolidating basis) of Borrower described in such financial statements as at the respective dates thereof and the results of operations and cash flows (on a consolidated and, where applicable, consolidating basis) of Borrower described therein for each of the periods then ended, subject, in the case of any such unaudited financial statements, to changes resulting from audit and normal year-end adjustments and the absence of footnote disclosure. Except for obligations under the Operative Documents to which it is a party, Borrower does not (and will not following the funding of the initial Loans) have any contingent obligations, unmatured liabilities, contingent liability or liability for taxes, long-term lease or forward or long-term commitment required to be shown under GAAP that is not reflected in the foregoing financial statements or the notes thereto and which in any such case is material in relation to the business, results of operations, properties, financial condition or prospects of Borrower.

#### 4.20 NO DEFAULT.

No Event of Default or Inchoate Default which has not been disclosed to Administrative Agent in writing has occurred and is continuing.

#### 4.21 ORGANIZATIONAL ID NUMBER; LOCATION OF COLLATERAL.

4.21.1 Borrower's organizational identification number is 3309088.

4.21.2 All of the Collateral (other than the Accounts, the membership interests in Borrower and general intangibles) is located on the Site or the Easements or at Borrower's address set forth in Section 11.1; provided that certain equipment may be temporarily removed from the Site and/or Easements from time to time in the ordinary course of business.

#### 4.22 TITLE AND LIENS.

Borrower has (a) good, marketable and insurable (i) fee simple interest in the Site and (ii) easement interest in the Easements (except that title to certain of the Easements

which are licenses may not be insurable), and (b) good, legal and valid title to all other Collateral, in each case free and clear of all Liens other than Permitted Liens.

#### 4.23 INTELLECTUAL PROPERTY.

Except as disclosed in Exhibit G-5:

(a) Borrower owns or possesses all licenses, permits, franchises, authorizations, patents, copyrights, service marks, trademarks and trade names, or rights thereto, that are necessary for the operation of its business, without known conflict with the rights of others;

(b) to the knowledge of Borrower, no product of Borrower infringes in any material respect any license, permit, franchise, authorization, patent, copyright, service mark, trademark, trade name or other right owned by any other Person;

(c) to the knowledge of Borrower, there is no violation by any Person of any right of Borrower with respect to any patent, copyright, service mark, trademark, trade name or other right owned or used by Borrower; and

(d) to the knowledge of Borrower, there exists no pending or threatened claim or litigation against or affecting Borrower contesting its right to sell or use any such product, process, method, substance, part or other material.

#### 4.24 COLLATERAL.

The respective liens and security interests granted to Collateral Agent (for the benefit of the Secured Parties) pursuant to the Collateral Documents (a) constitute as to personal property included in the Collateral a valid security interest and (b) constitute as to the Mortgaged Property included in the Collateral a valid lien and security interest in the Mortgaged Property, in each case to the extent contemplated by the Collateral Documents. The security interest granted to Collateral Agent (for the benefit of the Secured Parties) pursuant to the Collateral Documents in the Collateral consisting of personal property will be perfected (i) with respect to any property that can be perfected by filing, upon the filing of financing statements in the filing offices identified in Exhibit D-6, (ii) with respect to any property that can be perfected by control, upon execution of the Control Agreement and the Depositary Agreement, and (iii) with respect to any property (if any) that can be perfected by possession, upon Collateral Agent receiving possession thereof, and in each case such security interest will be, as to Collateral perfected under the UCC or otherwise as aforesaid, superior and prior to the rights of all third Persons now existing or hereafter arising whether by way of mortgage, lien, security interests, encumbrance, assignment or otherwise, except (i) Title Exceptions and Permitted Liens described in clauses (a) and (e) of the definition of "Permitted Liens," and (ii) to the extent required by Governmental Rule, those matters described in clauses (b), (c) and (g) of the definition of "Permitted Liens." Except to the extent possession of portions of the Collateral is required for perfection, all such action as is necessary has been taken (or will be taken immediately after the Closing Date) to establish and perfect Collateral Agent's rights in and to the Collateral in existence on such date to the extent Collateral Agent's security interest can be perfected by filing, including any recording, filing, registration, giving of notice or other similar action. No filing, recordation, re-filing or re-recording other than those listed on Exhibit D-6 hereto is necessary to perfect and maintain the

perfection of the interest, title or Liens of the Collateral Documents, and on the Closing Date all such filings or recordings will have been made to the extent Collateral Agent's security interest can be perfected by filing. Borrower has properly delivered or caused to be delivered, or provided control, to Collateral Agent or Depositary Agent all Collateral that permits perfection of the Lien and security interest described above by possession or control to the extent contemplated by the Collateral Documents.

#### 4.25 SUFFICIENCY OF PROJECT DOCUMENTS.

4.25.1 Other than those that can be reasonably expected to be commercially available when and as required, the services to be performed, the materials to be supplied and the real property interests, the Easements and other rights granted, or to be granted, pursuant to the Project Documents in effect as of the Closing Date:

(a) comprise all of the property interests necessary to secure any right material to the leasing, operation and maintenance of the Project in accordance with all Legal Requirements, all without reference to any proprietary information not owned by or available to Borrower;

(b) are sufficient to enable the Project to be located and operated on the Site and the Easements; and

(c) provide adequate ingress and egress from the Site for any reasonable purpose in connection with the operation of the Project.

4.25.2 There are no services, materials or rights required for operation and maintenance of the Project in accordance with the Major Project Documents and the assumptions that form the basis of Base Case Project Projections, other than those (a) to be provided under the Project Documents or

(b) that can reasonably be expected to be commercially available at or for delivery to the Site on commercially reasonable terms consistent with Base Case Project Projections.

#### 4.26 UTILITIES.

All utility services necessary for the operation of the Project consistent with the Base Case Project Projections are available at the Project or can reasonably be expected to be so available as and when required upon commercially reasonable terms consistent with the Base Case Project Projections.

#### 4.27 OTHER FACILITIES.

4.27.1 All roads necessary for the full utilization of the Project for its intended purposes have either been completed or Borrower possesses the necessary rights of way therefor, other than rights of way that can reasonably be expected to be available on commercially reasonable terms as and when needed.

4.27.2 Borrower possesses, or the counterparties to the Major Project Documents (including the Power Purchase Agreement) pursuant to which interconnection facilities will be operated for the benefit of the Project, possess and are obligated to provide or

make available to Borrower, all necessary easements, rights of way, licenses, agreements and other rights for the construction, interconnection and utilization of the interconnection facilities (including fuel, water, wastewater and electrical).

#### 4.28 PROPER SUBDIVISION.

The Site has been subdivided or entitled to exception therefrom, and for all purposes the Site may be mortgaged, conveyed and otherwise dealt with as separate legal lots or parcels.

### **ARTICLE 5 AFFIRMATIVE COVENANTS**

Borrower covenants and agrees that until the Termination Date, Borrower shall:

#### 5.1 USE OF PROCEEDS AND PROJECT REVENUES.

##### 5.1.1 Proceeds.

(a) Unless otherwise applied by Administrative Agent pursuant to this Agreement and the other Credit Documents, apply the proceeds of the Term Loans as provided in Section 2.1.5 and use the PSCo Letter of Credit solely for the purpose of supporting its obligations under and as contemplated by the Power Purchase Agreement.

5.1.2 Revenues. Unless otherwise applied by Administrative Agent or Collateral Agent pursuant to the terms of this Agreement or the other Credit Documents, apply any Project Revenues, net payments received by Borrower under the Interest Rate Agreements (including any Hedge Transaction thereunder), Insurance Proceeds, Eminent Domain Proceeds and damage payments solely for the purpose, and in the order and manner, provided for in Article 3 of the Depositary Agreement.

#### 5.2 PAYMENT.

5.2.1 Credit Documents. Pay all sums due under this Agreement and the other Credit Documents to which it is a party according to the terms hereof and thereof.

5.2.2 Project Documents. Pay all obligations of Borrower due under the Project Documents, howsoever arising, as and when due and payable, except

(a) such as may be contested in good faith or as to which a bona fide dispute may exist; provided that adequate cash reserves have been established in conformity with GAAP, (b) as could not reasonably be expected to have a Material Adverse Effect and (c) Borrower's trade payables which shall be paid in the ordinary course of business.

#### 5.3 WARRANTY OF TITLE.

Maintain (a) good, marketable and insurable (i) fee simple interest in the Site and (ii) easement interest in the Easements (except that title to certain of the Easements which are licenses may not be insurable), and (b) good, legal and valid title to all of its other respective

material properties and assets (other than properties and assets disposed of in the ordinary course of business or otherwise disposed of in accordance with Section 6.4), in each case free and clear of all Liens other than Permitted Liens.

#### 5.4 NOTICES.

Promptly, upon acquiring notice or giving notice (except as otherwise specified below), as the case may be, or obtaining knowledge thereof, give written notice to Administrative Agent of:

5.4.1 promptly, but in no event later than five Banking Days after Borrower has knowledge of the occurrence of any Inchoate Default or Event of Default, a statement of a Responsible Officer of Borrower setting forth details of such Inchoate Default or Event of Default and the action which Borrower has taken and proposes to take with respect thereto (other than litigation strategy and related documentation subject to the attorney-client privilege);

5.4.2 promptly, but in no event later than five Banking Days after Borrower has knowledge or receives notice of (a) any material litigation or governmental proceeding pending or threatened in writing against Borrower or to Borrower's knowledge, any Major Project Participant, provided that in the case of any threatened litigation or governmental proceeding against Borrower, or any litigation or governmental proceeding pending or threatened in writing against any Major Project Participant, such threatened litigation or governmental proceeding or, in the case of a Major Project Participant, actual or threatened litigation or governmental proceeding could reasonably be expected to have a Material Adverse Effect, or (b) any other event, act or condition which could reasonably be expected to result in a Material Adverse Effect;

5.4.3 copies of all notices of material breach or violation given or received by Borrower pursuant to any of the Major Project Documents other than routine correspondences, given or received in the ordinary course of business relating to routine aspects of financing, operating, maintaining or using the Project;

5.4.4 promptly, but in no event later than ten Banking Days after the existence of any of the following conditions, a duly executed certificate of a Responsible Officer of Borrower specifying in detail the nature of such condition and Borrower's proposed response thereto: (a) the receipt by Borrower of any written communication from a Governmental Authority that alleges that Borrower is not in compliance in any material respect with applicable Hazardous Substance Laws or Applicable Permits; or (b) Borrower shall obtain knowledge of any Release of any Hazardous Substance that could form the basis of an Environmental Claim against Borrower which could reasonably be expected to have a Material Adverse Effect;

5.4.5 copies of any Applicable Permit or Applicable Third Party Permit obtained by Borrower or any other Person after the Closing Date;

5.4.6 the existence of a PSCo Security Fund Shortfall (as defined in the Depository Agreement) and the amount thereof;

5.4.7 promptly, but in no event later than ten Banking Days after the execution thereof, copies of any Project Document Modifications to any Major Project Documents;

5.4.8 the occurrence of any ERISA event described in Section 7.1.5 that would result in aggregate liability to all Calpine Entities and all ERISA Affiliates in excess of \$5,000,000; and

5.4.9 any other information related to Borrower, the Project or the notices provided above reasonably requested by Administrative Agent.

## 5.5 FINANCIAL STATEMENTS.

5.5.1 Deliver or cause to be delivered to Administrative Agent, in form and detail reasonably satisfactory to Administrative Agent (except where GAAP is specifically required):

(a) as soon as practicable and in any event within 60 days after the end of the first, second and third quarterly accounting periods of its fiscal year (commencing with the fiscal quarter ending June 30, 2004), unaudited quarterly financial statements of Borrower as of the last day of such quarterly period and the related statements of income, cash flow, and shareholders' or members' equity (as applicable) for such quarterly period and (in the case of second and third quarterly periods) for the portion of the fiscal year ending with the last day of such quarterly period, setting forth in each case in comparative form corresponding unaudited figures from the preceding fiscal year, all prepared in accordance with GAAP (subject to changes resulting from audit and normal year-end adjustments and the absence of footnote disclosure); and

(b) as soon as practicable and in any event within 120 days after the close of each applicable fiscal year, audited financial statements of Borrower. Such financial statements shall include a statement of equity, a balance sheet as of the close of such year, an income and expense statement, reconciliation of capital accounts (where applicable), a statement of cash flow and summary results of hedging and trading activities, all prepared in accordance with GAAP and certified by an independent certified public accountant selected by the Person whose financial statements are being prepared. Such certificate shall not be qualified or limited because of restricted or limited examination by such accountant of any material portion of the records of Borrower.

5.5.2 Cause to be delivered, along with such financial statements of Borrower, a certificate signed by a Responsible Officer of Borrower, certifying that (a) such Responsible Officer has made or caused to be made a review of the transactions and financial condition of such Person during the relevant fiscal period and that such review has not, to such Responsible Officer's knowledge, disclosed the existence of any event or condition which constitutes an Event of Default or Inchoate Default, or if any such event or condition existed or exists, the nature thereof and the corrective actions that such Person has taken or proposes to take with respect thereto, (b) such Person is in compliance in all material respects with the provisions of each Credit Document to which such Person is a party or, if such is not the case, stating the nature of such non-compliance and the corrective actions which such Person has taken or proposes to take with respect thereto, and (c) such financial statements are true and correct in all

material respects and that no material adverse change in the consolidated assets, liabilities, operations, or financial condition of such Person has occurred since the date of the immediately preceding financial statements provided to Administrative Agent or, if a material adverse change has occurred, the nature of such change. Such certificate shall also include information demonstrating compliance with Section 5.22.

#### 5.6 BOOKS, RECORDS, ACCESS.

(a) Maintain, or cause to be maintained, adequate books, accounts and records with respect to Borrower and the Project; and (b) subject to requirements of Governmental Rules, safety requirements and existing confidentiality restrictions imposed upon Borrower by any other Person, permit employees or agents of Administrative Agent and the Independent Consultants at any reasonable times and upon reasonable prior notice to Borrower or Operator, as applicable, to inspect all of Borrower's properties, including the Site, to examine or audit all of Borrower's books, accounts and records and make copies and memoranda thereof, to communicate with Borrower's auditors (with a representative of Borrower present, if Borrower so requests).

#### 5.7 COMPLIANCE WITH LAWS, INSTRUMENTS, APPLICABLE PERMITS, ETC.

Comply, or cause compliance (except where noncompliance could not reasonably be expected to have a Material Adverse Effect) with all Legal Requirements (including Legal Requirements and Applicable Permits relating to pollution control, environmental protection, equal employment opportunity or employee benefit plans, ERISA Plans and employee safety, with respect to Borrower or the Project), and make such alterations to the Project and the Site as may be required for such compliance.

#### 5.8 REPORTS.

5.8.1 Deliver to Administrative Agent within 30 days of the end of each fiscal quarter after the Closing Date, a summary operating report with respect to the Project, which shall include, with respect to the period most recently ended, (a) a monthly and year-to-date numerical and narrative assessment of (i) the Project's compliance with each material category in the then-current Annual Operating Budget, (ii) electrical production and delivery, (iii) fuel deliveries and use, including heat rate, and (iv) plant and unit availability, including trips and scheduled and unscheduled outages; and (b) to the extent applicable, a comparison of year-to-date figures to corresponding figures provided in the prior year.

5.8.2 Within 30 days after each annual policy renewal date, deliver to Administrative Agent a certificate, substantially in the form of Exhibit L hereto, and otherwise in form and substance reasonably satisfactory to Administrative Agent in consultation with the Insurance Consultant, certifying that the insurance requirements of Exhibit K have been implemented and are being complied with in all material respects.

#### 5.9 EXISTENCE, CONDUCT OF BUSINESS, PROPERTIES, ETC.

Except as otherwise expressly permitted under this Agreement, (a) maintain and preserve its existence as a Delaware limited liability company, (b) maintain and preserve all its

material rights, privileges and franchises necessary in the normal conduct of its business, (c) subject to Section 5.2.2, perform (to the extent not excused by force majeure events or the nonperformance of the other party and not subject to a good faith dispute) all of its contractual obligations under the Major Project Documents to which it is party or by which it is bound, except to the extent that any such failure to perform could not reasonably be expected to have a Material Adverse Effect, (d) maintain all Applicable Permits and use reasonable efforts to cause all Major Project Participants to maintain all Applicable Third Party Permits, except to the extent that any such failure to maintain could not reasonably be expected to have a Material Adverse Effect, and (e) at or before the time that any Permit becomes an Applicable Permit, obtain such Permit.

#### 5.10 DEBT SERVICE COVERAGE RATIO.

In no event later than fifteen (15) Banking Days after each Principal Repayment Date, calculate and deliver to Administrative Agent the Debt Service Coverage Ratio for the Calculation Period for such Principal Repayment Date. The calculations of Debt Service Coverage Ratios hereunder shall be used in determining the application and distribution of funds pursuant to Section 6.6 of this Agreement and Section 3.7 of the Depository Agreement.

#### 5.11 EXEMPTION FROM REGULATION.

Take or cause to be taken all necessary or appropriate actions so that (a) (i) Borrower will be an EWG and (ii) the Project will be an Eligible Facility at all times hereunder or (b) Borrower and the Project shall not be subject to, or shall be exempt from, financial or organizational regulation as a "public utility company" or "public utility holding company" under PUHCA or financial, organizational or rate regulation as a public utility under the laws of the State of Colorado as presently constituted and as construed by the courts of Colorado, and (c) Borrower will be authorized to sell electricity at market-based rates, with all waivers of regulations and blanket authorizations as are customarily granted by the FERC to entities with market-based rate authority.

#### 5.12 PUNCHLIST ITEMS.

Work diligently to complete the Punchlist Items and, upon completion of all the Punchlist Items, deliver to Administrative Agent a certificate (verified by the Independent Engineer) certifying that the Punchlist Items have been completed.

#### 5.13 OFFER TO PREPAY UPON CHANGE OF CONTROL.

If a Change of Control occurs, make a Mandatory Repayment Offer on the terms set forth herein and in Section 2.1.10(d). In such Mandatory Repayment Offer, Borrower shall offer to (a) prepay each Lender's Term Loans and Funded LC Disbursements in an amount equal to at least 101% of the aggregate principal amount of Term Loans and Funded LC Disbursements then outstanding, plus (b) pay at least 1% of the Funded LC Credit-Linked Deposits, plus (c) in each case, accrued and unpaid interest thereon, to but excluding the date of repayment, plus (d) in each case, any other amount then required to be paid hereunder. Notwithstanding anything in this Agreement to the contrary, Borrower shall not be required to make a Mandatory Repayment Offer upon a Change of Control if a third party makes the

Mandatory Repayment Offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Agreement applicable to a Mandatory Repayment Offer required upon a Change of Control and repays all Term Loans and Funded LC Disbursements (and the other amounts required to be paid pursuant to clause (a) above) required to be repaid pursuant thereto (including the reimbursement of all Funded LC Credit-Linked Deposits).

#### 5.14 OPERATION AND MAINTENANCE OF PROJECT; ANNUAL OPERATING BUDGET.

5.14.1 Keep the Project, or cause the same to be kept, in good operating condition consistent in all material respects with the standard of care set forth in the O&M Agreement, all Applicable Permits (and, if applicable, Applicable Third Party Permits), Legal Requirements and the Operative Documents, and make or cause to be made all repairs (structural and non-structural, extraordinary or ordinary) necessary to keep the Project in such condition.

5.14.2 Operate and maintain the Project, or cause the same to be operated and maintained, in a manner consistent in all material respects with Prudent Utility Practices and in compliance with the terms of the Power Purchase Agreement.

5.14.3 On the Closing Date and thereafter 60 days prior to the beginning of each subsequent calendar year, submit an operating plan and a budget, detailed by month, of anticipated revenues and anticipated expenditures under all Waterfall Levels, and anticipated expenditures from the Major Maintenance Reserve Account, such budget to include Debt Service, proposed dividend distributions, Major Maintenance, reserves and all anticipated O&M Costs (including reasonable allowance for contingencies) applicable to the Project for the ensuing calendar year (or, in the case of the Initial Operating Budget, partial calendar year) (each such annual operating plan and budget, including the Initial Operating Budget, an "Annual Operating Budget"). Each Annual Operating Budget (other than the Initial Operating Budget) shall be deemed approved so long as the aggregate amount of anticipated O&M Costs remains within 125% of the amount proposed to be expended by Borrower for all such items during the applicable calendar year (as determined by reference to the then-current Annual Operating Budget); it being acknowledged that the 125% limitation shall not apply to any anticipated Variable O&M Costs to the extent that such anticipated Variable O&M Costs result from the anticipated dispatch of the Project at levels in excess of the levels contemplated by such Annual Operating Budget. In the event that such Annual Operating Budget shall not be deemed approved as provided in the preceding sentence, such Annual Operating Budget shall be subject to the reasonable approval of Administrative Agent acting in consultation with the Independent Engineer, such approval not to be unreasonably withheld. Failure by Administrative Agent to approve or disapprove such draft Annual Operating Budget within 30 days after receipt thereof shall be deemed to be an approval by Administrative Agent of such draft as the final Annual Operating Budget. Borrower shall consider in good faith Administrative Agent's suggestions in preparation of a final Annual Operating Budget (if not deemed approved as provided above). Borrower shall prepare a final Annual Operating Budget no less than 30 days in advance of the anticipated date of commencement of each subsequent calendar year following the Closing Date. The O&M Costs in each Annual Operating Budget which are subject to escalation limitations in the Project Documents shall not, absent extraordinary circumstances, be increased by more than the amounts provided in such Project Documents.

5.14.4 Borrower shall operate and maintain the Project, or cause the Project to be operated and maintained, within amounts for all Operating Budget Categories not to exceed 125% (on a year-to-date basis), in each case of the amounts budgeted therefor as set forth in the then-current Annual Operating Budget as approved or deemed approved by Administrative Agent; provided, however, that (a) subject to Section 6.12, Borrower may propose an amendment to the Annual Operating Budget for Administrative Agent's approval if at any time Borrower cannot comply with the provisions of this Section 5.14.4 (and Administrative Agent shall consider each such amendment in good faith and shall not unreasonably withhold its consent to the approval of any such amendment), (b) the 125% limitation shall not apply to Variable O&M Costs to the extent that such Variable O&M Costs result from the dispatch of the Project at levels in excess of the levels contemplated by the then-current Annual Operating Budget, and (c) the 125% limitation shall not apply to Emergency Operating Costs to the extent that, after deducting such Emergency Operating Costs from the applicable calculation, Borrower otherwise remains in compliance with such 125% limitation. Pending approval of any Annual Operating Budget or amendment thereto in accordance with the terms of this Section 5.14.4, Borrower shall use its best efforts to operate and maintain the Project, or cause the Project to be operated and maintained, within the then-current Annual Operating Budget (it being acknowledged that if a particular calendar year's Annual Operating Budget has not been approved by the time periods provided in Section 5.14.3, then the then-current Annual Operating Budget shall be deemed to be the Annual Operating Budget in effect prior to the delivery of the proposed final Annual Operating Budget pursuant to Section 5.14.3); provided that the amounts specified therein shall be increased to the extent specified in the Project Documents.

#### 5.15 PRESERVATION OF RIGHTS; FURTHER ASSURANCES.

5.15.1 Maintain in full force and effect, perform in all material respects (subject to Section 5.2) the obligations of Borrower under, preserve, protect and defend the material rights of Borrower under and, take all reasonable action necessary to prevent termination (except by expiration in accordance with its terms) of each and every Major Project Document, including (where Borrower in the exercise of its business judgment deems it proper) prosecution of suits to enforce any material right of Borrower thereunder and enforcement of any material claims with respect thereto; provided, however, that upon the occurrence and during the continuance of an Event of Default if Administrative Agent requests that certain actions be taken and Borrower fails to take the requested actions within five Banking Days, Administrative Agent or Collateral Agent (as applicable) may enforce in its own name or in Borrower's name, such rights of Borrower, all as more particularly provided in the Security Agreement and the other Credit Documents.

5.15.2 From time to time, execute, acknowledge, record, register, deliver and/or file all such notices, statements, instruments and other documents (including any memorandum of lease or other agreement, financing statement, continuation statement, certificate of title or estoppel certificate), relating to the Term Loans stating the interest and charges then due and any known Events of Default or Inchoate Defaults, and take such other steps as may be necessary or advisable to render fully valid and enforceable under all applicable laws the rights, liens and priorities of the Secured Parties with respect to all Collateral and other security from time to time furnished under this Agreement and the other Credit Documents or intended to be so furnished, in each case in such form and at such times as shall be reasonably requested by Collateral Agent,

and pay all reasonable fees and expenses (including reasonable attorneys' fees) incident to compliance with this Section 5.15.2.

5.15.3 If Borrower shall at any time acquire any real property or leasehold or other interest in real property not covered by the Mortgage, then promptly upon such acquisition, execute, deliver and record a supplement to the Mortgage, reasonably satisfactory in form and substance to Administrative Agent, subjecting the real property or leasehold or other interests to the Lien and security interest created by the Mortgage. If reasonably requested by Administrative Agent, Borrower shall obtain an appropriate endorsement or supplement to the Title Policy insuring the Lien of the Secured Parties in such additional property, subject only to Permitted Liens and other exceptions to title approved by Administrative Agent.

5.15.4 Upon the request of Administrative Agent or Collateral Agent, execute and deliver all documents as shall be necessary or that Administrative Agent or Collateral Agent (as the case may be) shall reasonably request in connection with the rights and remedies of Administrative Agent or Collateral Agent (as the case may be) and the Lenders under the Operative Documents, and perform, such other reasonable acts as may be necessary to carry out the intent of this Agreement and the other Credit Documents (including any such acts necessary to implement a Required HoldCo Transfer).

5.15.5 Take such action, including the execution and filing of all such documents and instruments, as may be necessary to effect and continue the appointment of Corporation Service Company as its agent for service of process in full force and effect, or if necessary by reason of any fact or condition relating to such agent, to replace such agent (but only after having given notice and evidence thereof to Administrative Agent).

#### 5.16 ADDITIONAL CONSENTS.

With respect to (a) any Major Project Document (including any Additional Project Document) entered into after the Closing Date and (b) any Major Project Document entered into by a Replacement Obligor pursuant to Section 6.15 or Article 7, in each case cause the applicable counterparty or Replacement Obligor, as applicable, to execute and deliver to Administrative Agent a Consent in substantially the form of Exhibit E-1, with such changes as are reasonably acceptable to Administrative Agent.

#### 5.17 MAINTENANCE OF INSURANCE.

Without cost to the Secured Parties, maintain or cause to be maintained on its behalf in effect at all times the types of insurance required pursuant to Exhibit K, in the amounts and on the terms and conditions specified therein, from the quality of insurers specified in such Exhibit or other insurance companies of recognized responsibility reasonably satisfactory to Administrative Agent.

#### 5.18 TAXES, OTHER GOVERNMENT CHARGES AND UTILITY CHARGES.

Subject to the second sentence of this Section 5.18, timely file all material tax returns and pay, or cause to be paid, as and when due and prior to delinquency, all material taxes, assessments and governmental charges of any kind that may at any time be lawfully assessed or

levied against or with respect to Borrower or the Project, including sales and use taxes and real estate taxes, all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Project, and all assessments and charges lawfully made by any Governmental Authority for public improvements that may be secured by a Lien on the Project. Borrower may contest in good faith any such taxes, assessments and other charges and, in such event, may permit the taxes, assessments or other charges so contested to remain unpaid during any period, including appeals, when Borrower is in good faith contesting the same, so long as (a) reserves to the extent required by GAAP have been established in an amount sufficient to pay any such taxes, assessments or other charges, accrued interest thereon and potential penalties or other costs relating thereto, or other adequate provision for the payment thereof shall have been made and maintained at all times during such contest, (b) enforcement of the contested tax, assessment or other charge is effectively stayed for the entire duration of such contest, and (c) any tax, assessment or other charge determined to be due, together with any interest or penalties thereon, is promptly paid after resolution of such contest.

#### 5.19 EVENT OF EMINENT DOMAIN.

If an Event of Eminent Domain shall occur with respect to any Collateral, (a) diligently pursue all its rights to compensation against the relevant Governmental Authority in respect of such Event of Eminent Domain, (b) not, without the written consent of Administrative Agent (which consent shall not be unreasonably withheld or delayed), compromise or settle any claim against such Governmental Authority if such compromise or settlement could reasonably be expected to have a Material Adverse Effect, and (c) pay or apply all Eminent Domain Proceeds in accordance with Section 3.5 of the Depositary Agreement. Borrower consents to, and agrees not to object to or otherwise impede or impair, the participation of Administrative Agent in any eminent domain proceedings, and Borrower shall from time to time deliver to Administrative Agent all documents and instruments requested by it to permit such participation.

#### 5.20 INTEREST RATE PROTECTION.

5.20.1 Compliance With Interest Rate Agreements. Within 45 days after the Closing Date, enter into one or more Interest Rate Agreements with one or more banks or financial institutions for a period commencing on such date and ending on or after June 24, 2009 in a notional amount equal to at least seventy-five percent (75%) of the anticipated amount of Term Loans projected to be outstanding during such period (which anticipated amount (a) shall be determined by reference to the Base Case Project Projections, and (b) shall take into account any scheduled or projected repayments or prepayments of Term Loans contemplated thereunder. Furthermore, Borrower shall at all times comply with and maintain in full force and effect through the end of such period such Interest Rate Agreements. All such Interest Rate Agreements shall be on terms and conditions reasonably satisfactory to Administrative Agent.

5.20.2 Hedge Breaking Fees. To the extent required pursuant to the terms of the Hedge Transactions, pay all costs, fees and expenses incurred by Borrower in connection with any unwinding, breach or termination of such Hedge Transactions ("Hedge Breaking Fees"), all to the extent provided in and as calculated pursuant to the applicable Interest Rate Agreements.

5.20.3 Security. Each Interest Rate Agreement provided by a Lender (or an Affiliate thereof) hereunder, including all Hedge Transactions thereunder, entered into in accordance with the terms of this Agreement, and all Hedge Breaking Fees shall be and are hereby secured by any Collateral Documents, pari passu with the Term Loans. The parties hereto agree that, for purposes of any sharing of Collateral under the Collateral Documents, any Hedge Lender, in its capacity as a counterparty or intermediary to the Interest Rate Agreements, shall be deemed to have made a Term Loan to Borrower in an amount equal to the unpaid amount of any Hedge Breaking Fees owed by Borrower to such Hedge Lender, under any such Hedge Transaction on the date that an Early Termination Date (as defined in the applicable Interest Rate Agreement) occurs. For purposes of any such Collateral sharing, and for purposes of voting on matters under this Agreement to the extent specified in the definition of "Proportionate Share," such Hedge Lender shall be deemed a Lender under the Collateral Documents to the extent of such Term Loan.

5.20.4 Lender Participation. At the election of the counterparty to any Interest Rate Agreement, the Lenders may participate in such Interest Rate Agreements and Hedge Transactions thereunder in proportion to their respective Proportionate Shares by means of a risk sharing agreement in form and substance satisfactory to such Lenders, provided, that if any such Lender's Lending Office is in the State of New York, such Lender may designate another branch to enter into such risk sharing agreement.

## 5.21 DISTRIBUTIONS.

5.21.1 From and after the Closing Date and until the Satisfaction Date, distribute to Riverside Borrower all amounts on deposit in the Revenue Account following application of Waterfall Levels 1 through 9 pursuant to Section 3.2.2(b) of the Depositary Agreement.

5.21.2 From and after the Satisfaction Date, distribute to Riverside Borrower all amounts on deposit in the Revenue Account following application of Waterfall Levels 1 through 3 pursuant to Section 3.2.2(d) of the Depositary Agreement.

## 5.22 FINANCIAL COVENANTS.

5.22.1 As of December 31, 2004, cause the Consolidated Debt Service Coverage Ratio for the period commencing on the Closing Date and ending on December 31, 2004 to be equal to or greater than 1.20 to 1.

5.22.2 As of June 30, 2005, cause the Consolidated Debt Service Coverage Ratio for the period commencing on the Closing Date and ending on June 30, 2005 to be equal to or greater than 1.20 to 1.

5.22.3 As of the last day of each fiscal quarter of Borrower (commencing on September 30, 2005), cause the Consolidated Debt Service Coverage Ratio for the period of four consecutive fiscal quarters most recently ended on or prior to such date to be equal to or greater than 1.20 to 1.

5.22.4 As of December 31, 2004, cause the ratio of (a) the product of (i) the then aggregate outstanding principal amount of Term Loans and Riverside Term Loans and (ii) 0.50

to (b) Consolidated EBITDA for the period commencing on the Closing Date and ending on December 31, 2004, taken as one accounting period, to be equal to or less than 9.0 to 1.

5.22.5 As of the last day of each fiscal quarter of Borrower (commencing on June 30, 2005), cause the ratio of (a) the then aggregate outstanding principal amount of Term Loans and Riverside Term Loans to (b) Consolidated EBITDA for the period of four consecutive fiscal quarters most recently ended on or prior to such date, taken as one accounting period, to be equal to or less than 9.0 to 1.

#### 5.23 REQUIRED HOLDCO TRANSFER.

At any time on or after the date on which there has been a default or breach claimed by any third party under a Major Project Document that could be cured by the Required HoldCo Transfer, Borrower shall promptly implement the Required HoldCo Transfer and all related transactions required thereby, unless the failure to do so could not reasonably be expected to have a Material Adverse Effect.

#### 5.24 MAINTENANCE OF RATINGS.

Promptly, perform all reasonable acts necessary to maintain a rating with each of S&P and Moody's.

### **ARTICLE 6 NEGATIVE COVENANTS**

Borrower covenants and agrees that until the Termination Date, Borrower shall not:

#### 6.1 CONTINGENT LIABILITIES.

Except as provided in this Agreement and the other Credit Documents, become liable as a surety, guarantor, accommodation endorser or otherwise, for or upon the obligation of any other Person; provided, however, that this Section 6.1 shall not be deemed to prohibit or otherwise limit the occurrence of (a) Permitted Debt or (b) other contingent liabilities incident to the ordinary course of business that are not incurred in connection with the obtaining or guaranteeing of any Debt and that do not in the aggregate materially impair the use of the property or assets of Borrower or the value of such property or assets for the purpose of Borrower's business.

#### 6.2 LIMITATIONS ON LIENS.

Create, assume or suffer to exist any Lien, securing a charge or obligation on the Project or on any of the Collateral, real or personal, whether now owned or hereafter acquired, except Permitted Liens.

#### 6.3 INDEBTEDNESS.

Incur, create, assume or permit to exist any Debt except Permitted Debt.

#### 6.4 SALE OR LEASE OF ASSETS.

Sell, lease, assign, transfer or otherwise dispose of assets, whether now owned or hereafter acquired, except (a) in the ordinary course of its business and as contemplated by the Operative Documents, at fair market value, (b) to the extent that such asset is unnecessary, worn out or no longer useful or usable in connection with the operation or maintenance of the Project, at fair market value, (c) in the case of spare parts, to the extent that such spare part is sold or transferred for one or more spare parts of equivalent fair market value, such sold or transferred spare part is otherwise available to Borrower when and as needed at a cost consistent with the then applicable Annual Operating Budget and the spare part or parts received by Borrower are free and clear of all liens and encumbrances, (d) upon any equipment failure, the replacement of such failed equipment with comparable equipment, (e) the sale, transfer or release, with or without consideration, of real property or interests in real property related to the Project to the extent that such real property or interests in real property is only incidental to the leasing, ownership or operation of the Project, or (f) the granting of easements or other interests in real property related to the Project to other Persons if such granting could not reasonably be expected to have a Material Adverse Effect. Upon any such sale, lease, assignment, transfer or other disposition of any such assets, all Liens in favor of any Secured Party relating to such asset shall be automatically released (and Collateral Agent shall execute any document reasonably requested by Borrower evidencing such release).

#### 6.5 CHANGES.

Change the nature of its business or expand its business beyond the business contemplated in the Operative Documents.

#### 6.6 DISTRIBUTIONS.

From and after the first Principal Repayment Date following Riverside Borrower's indefeasible satisfaction in full of all Riverside Obligations to the Riverside Secured Parties (other than those contingent Riverside Obligations that are intended to survive the termination of the Riverside Credit Documents), directly or indirectly, make or declare any dividend or other distribution (in cash, property or obligation) on, or other payment on account of, any interest in Borrower, unless the following conditions have been satisfied (the "Restricted Payment Conditions"):

- (a) such dividend or distribution is on a date occurring within 45 days after the immediately preceding Principal Repayment Date.
- (b) no Event of Default or Inchoate Default has occurred and is continuing as of the date of such applicable dividend or distribution, and such dividend or distribution would not cause an Event of Default or Inchoate Default;
- (c) the Debt Service Coverage Ratio for the Calculation Period relating to the Principal Repayment Date immediately preceding the proposed date of such dividend or distribution is greater than or equal to 1.40 to 1;

(d) the funds necessary to make any such dividend or distribution are on deposit in the Revenue Account as of the Principal Repayment Date to which the applicable dividend or distribution relates and are otherwise available to be withdrawn from the Revenue Account or the Distribution Suspense Account on such date or a later date in accordance with the terms and conditions of the Depositary Agreement; and

(e) (i) the amounts on deposit in, or credited to, the Major Maintenance Reserve Account as of the date of the applicable dividend or distribution (taking into account the stated amount of the Major Maintenance Reserve Letter of Credit payable to Administrative Agent on demand for disbursement to the Major Maintenance Reserve Account) equal or exceed the amount necessary to fund in full the then-required Major Maintenance Reserve Requirement, and (ii) the amounts on deposit or credited to the PSCo Security Fund as of the date of the applicable dividend or distribution equal or exceed the then-required PSCo Security Reserve Requirement.

Notwithstanding anything to the contrary contained in this Agreement, nothing in this Section 6.6 shall prohibit, or otherwise limit (1) any Riverside Closing Date Distribution or any Rocky Mountain Closing Date Distribution made to, or for the account of, the Sponsor or the Pledgor in accordance with Section 2.1.5 of this Agreement or Section 2.1.5 of the Riverside Credit Agreement, (2) the payment of O&M Costs in accordance with Section 3.3 of the Depositary Agreement, (3) the payment of Subordinated Payments in accordance with Section 3.2.2(b) of the Depositary Agreement, or (4) the distribution of amounts on deposit in the Revenue Account to Riverside Borrower in accordance with Section 3.2.2(b) or (d) of the Depositary Agreement.

#### 6.7 INVESTMENTS.

Make any investments (whether by purchase of stocks, bonds, notes or other securities, loan, extension of credit, advance or otherwise) other than Permitted Investments.

#### 6.8 TRANSACTIONS WITH AFFILIATES.

Borrower shall not directly or indirectly enter into any transaction or series of transactions relating to the Project with or for the benefit of an Affiliate without the prior written approval of Administrative Agent, except for

(a) the Project Documents in effect on the Closing Date, and the transactions permitted thereby, (b) transactions that contain terms no less favorable to Borrower than would be included in an arm's-length transaction entered into by a prudent Person with a non-Affiliated third party, (c) any employment, noncompetition or confidentiality agreement entered into by Borrower with any of its employees, officers or directors in the ordinary course of business, and (d) as otherwise expressly permitted or contemplated by this Agreement and the other Credit Documents.

#### 6.9 REGULATIONS.

Directly or indirectly apply any part of the proceeds of any Term Loan, any cash equity contributions received by Borrower or other funds or revenues to the "buying", "carrying" or "purchasing" of any margin stock within the meaning of Regulations T, U or X of the Federal Reserve Board, or any regulations, interpretations or rulings thereunder.

## 6.10 PARTNERSHIPS, ETC.

Other than as expressly permitted or contemplated by this Agreement and the other Credit Documents, become a general or limited partner in any partnership or a joint venturer in any joint venture or create and hold stock in any subsidiary.

## 6.11 DISSOLUTION; MERGER.

Except as provided in this Agreement in connection with a Required HoldCo Transfer, liquidate or dissolve, or combine, merge or consolidate with or into any other entity, or change its legal form, or purchase or otherwise acquire all or substantially all of the assets of any Person.

## 6.12 AMENDMENTS; CHANGE ORDERS.

6.12.1 Without the prior written consent of (a) in the case of the Power Purchase Agreement, the Supermajority Lenders or (b) in the case of any other Major Project Document, the Majority Lenders (in each case, acting in consultation with the Independent Engineer), directly or indirectly, amend, modify, supplement or waive, accept, or permit or consent to the termination, amendment, modification, supplement or waiver (including any waiver (or refund) of damages (liquidated or otherwise) payable by any contractor under any Major Project Document) of, any of the material provisions of, or give any material consent (each such termination, amendment, modification, supplement, waiver or consent, inclusive of any applicable change orders, being referred to herein as a "Project Document Modification") under any of the Major Project Documents unless such termination, amendment, modification, supplement or waiver could not reasonably be expected to have a Material Adverse Effect (as certified to Administrative Agent and Lenders by Borrower); provided, that the extension of the term of a Major Project Document on substantially the same terms and conditions then in effect shall not require the consent or approval of the Supermajority Lenders or the Majority Lenders.

6.12.2 Construct, install, or permit the construction or installation of, shared or joint facilities between the Project and any plants, facilities, generating stations or other improvements which are not located on the Site or the Easements (including any such plants, facilities, generating stations or other improvements owned by PSCo).

If applicable, the Supermajority Lenders or Majority Lenders (as the case may be) shall use good faith efforts to respond to each request for a Project Document Modification pursuant to this Section 6.12 as soon as possible and in all events within 30 days of its receipt of written notification thereof. No Project Document Modification requiring approval by the Supermajority Lenders or Majority Lenders (as the case may be) hereunder shall be deemed approved by the Supermajority Lenders or Majority Lenders (as the case may be) until expressly approved.

## 6.13 NAME AND LOCATION; FISCAL YEAR.

Unless consented to in writing by Administrative Agent, change its name, its jurisdiction of formation, the location of its principal place of business, its organization identification number or its fiscal year.

#### 6.14 USE OF SITE.

Use, or permit to be used, the Site for any purpose (a) which could reasonably be expected to constitute a public or private nuisance that could reasonably be expected to have a Material Adverse Effect, or (b) other than for the operation and maintenance of the Project as contemplated by the Operative Documents.

#### 6.15 ASSIGNMENT.

Assign its rights hereunder, under the other Credit Documents or under any Major Project Document to any Person, except as set forth in this Agreement and the other Credit Documents.

#### 6.16 ACCOUNTS.

Maintain, establish or use any account (other than the Accounts) without the prior written consent of Administrative Agent.

#### 6.17 HAZARDOUS SUBSTANCES.

Release into the environment any Hazardous Substances in violation of any Hazardous Substance Laws, Legal Requirements or Applicable Permits, except for any Release that could not reasonably be expected to materially impair the value of the Site and the Collateral, taken as a whole, and could not otherwise reasonably be expected to have a Material Adverse Effect.

#### 6.18 ADDITIONAL PROJECT DOCUMENTS.

Without the consent of the Majority Lenders (which consent shall not be unreasonably withheld), enter into, or become a party to any Project Document not in existence on the Closing Date (any such Project Document not subject to exception as follows, an "Additional Project Document"), except contracts entered into on an arm's length basis for the purchase by Borrower of goods or services which:

- (a) provide for the payment by Borrower of, or the provision to Borrower of such goods and services with a value of, \$2,000,000 or less;
- (b) provide for payment of Emergency Operating Costs; or
- (c) replace a Major Project Document as contemplated by the definition of "Replacement Obligor".

provided that in no event shall Borrower enter into any contract or agreement without the consent of the Majority Lenders other than those related to Borrower's owning, leasing, operating, maintaining or using the Project. Notwithstanding anything contained in this Agreement to the contrary, Borrower shall not enter into any Project Document with an Affiliate of Borrower unless Borrower, such Affiliate and Administrative Agent shall have entered into a Subordination Agreement with respect to such Project Document.

#### 6.19 ASSIGNMENT BY THIRD PARTIES.

Without prior written consent of (a) in the case of the Power Purchase Agreement, the Supermajority Lenders or (b) in the case of any other Major Project Document, the Majority Lenders, consent to the assignment of any obligations under any Major Project Document by any counterparty thereto other than to a Replacement Obligor.

#### 6.20 ACQUISITION OF REAL PROPERTY.

Acquire or lease any real property or other interest in real property (excluding the acquisition of any easements or the acquisition (but not the exercise) of any options to acquire any such interests in real property) other than the Site, Easements and other interests in real property acquired on or prior to the Closing Date, unless Borrower shall have delivered to Administrative Agent a "Phase I" environmental report with respect to such real property and, if a "Phase II" environmental review is warranted (as reasonably determined by the Administrative Agent upon its review of such "Phase I" environmental report), a "Phase II" environmental report, in each case, along with a corresponding reliance letter from the consultant issuing such report(s), confirming, in form and substance reasonably satisfactory to Administrative Agent, either that (a) no Hazardous Substances were found in, on or under such real property of a nature or concentrations that could reasonably be expected to impose on Borrower or Riverside Borrower a material environmental liability or (b) the conditions and risks associated with such Hazardous Substances were otherwise being addressed in a manner satisfactory to Administrative Agent.

#### 6.21 EMPLOYEE BENEFIT PLANS.

Maintain any employee benefit plans subject to ERISA.

#### 6.22 POWER SALES.

6.22.1 Consent to, or permit, the provision of electrical products to any Person other than PSCo under the Power Purchase Agreement, without the prior written consent of Administrative Agent (acting at the direction of the Majority Lenders).

6.22.2 (a) Provide information or notification to PSCo relating to any Long-Term Excess Capacity (as such term is defined in the Power Purchase Agreement), or (b) exercise the Put Option (as such term is defined in the Power Purchase Agreement) pursuant to Section 7.3(B) of the Power Purchase Agreement, in each case, unless (i) Borrower has notified Administrative Agent of its intention to provide such information or notification or exercise such option (as the case may be) and (ii) Administrative Agent (acting at the direction of the Majority Lenders) has not delivered a notice to Borrower objecting to the provision of such information or notification or the exercise of such option (as the case may be) within 30 days after the receipt of the notice referred to in clause (b)(i) above.

#### 6.23 GOVERNING DOCUMENT CHANGES.

Consent to, or permit, (a) the termination or cancellation of the Governing Documents of Borrower or (b) any material amendment, supplement or modification of the Governing Documents of Borrower.

## **ARTICLE 7 EVENTS OF DEFAULT; REMEDIES**

### **7.1 EVENTS OF DEFAULT.**

Until the Termination Date, the occurrence of any of the following events shall constitute an event of default (each, an "Event of Default") hereunder:

7.1.1 Failure to Make Payments. Borrower shall fail to pay in accordance with the terms of this Agreement (a) any principal on any Term Loan or any reimbursement obligation in respect of any Funded LC Disbursement on the date that such sum is due, (b) any interest on any Term Loan within five days after the date such sum is due, (c) any scheduled fee, cost, charge or sum due hereunder or under any other Credit Documents within five days of the date that such sum is due, or (d) any other fee, cost, charge or other sum due under this Agreement or the other Credit Documents within 30 days after written notice that such sum is due.

7.1.2 Bankruptcy; Insolvency. The Pledgor, Borrower or any other Major Project Participant (so long as such Major Project Participant shall have outstanding or unperformed obligations under the Operative Document to which it is a party) shall become subject to a Bankruptcy Event; provided that, solely with respect to a Bankruptcy Event with respect to a Person other than Borrower or the Pledgor, no Event of Default shall occur as a result of such Bankruptcy Event if (a) Borrower obtains a Replacement Obligor for the affected party within 90 days thereafter and such Bankruptcy Event has not had and does not have, prior to so obtaining such Replacement Obligor, a Borrower Material Adverse Effect or (b) the applicable Major Project Participant is substantially performing its remaining obligations with respect to the Project Documents to which it is a party and has affirmed, within 90 days thereafter, the Operative Document(s) to which it is a party.

7.1.3 Defaults Under Other Indebtedness. Borrower shall default for a period beyond any applicable grace period (a) in the payment of any principal, interest or other amount due under any agreement involving Debt and the outstanding amount or amounts payable under any such agreement equals or exceeds \$1,000,000 in the aggregate or (b) in the performance of any obligation due under any agreement involving Debt if in the case of this clause (b), pursuant to such default, the holder of the obligation concerned has accelerated the maturity of any indebtedness evidenced thereby which equals or exceeds \$1,000,000 in the aggregate.

7.1.4 Judgments. A final judgment or judgments shall be entered against Borrower in the amount of \$1,000,000 or more individually or in the aggregate, other than, in each case, (a) a judgment which is fully covered by insurance or discharged within 60 days after its entry, or (b) a judgment, the execution of which is effectively stayed within 60 days after its entry but only for 60 days after the date on which such stay is terminated or expires.

7.1.5 ERISA. If any Calpine Entity or any ERISA Affiliate should establish, maintain, contribute to or become obligated to contribute to any ERISA Plan and (a) a Reportable Event (under Section 4043(b) or (c) of ERISA for which notice to the PBGC is not waived) shall have occurred with respect to any ERISA Plan and, within 30 days after the reporting of such Reportable Event to Administrative Agent by Borrower (or Administrative Agent otherwise obtaining knowledge of such event) and the furnishing of such information as Administrative Agent may reasonably request with respect thereto, Administrative Agent shall have notified Borrower in writing that (i) Administrative Agent or the Majority Lenders has made a determination that, on the basis of such Reportable Event, there are reasonable grounds for the termination of such ERISA Plan by the PBGC or for the appointment by the appropriate United States District Court of a trustee to administer such ERISA Plan and (ii) as a result thereof, an Event of Default exists hereunder; or (b) a trustee shall be appointed by a United States District Court to administer any ERISA Plan; or (c) the PBGC shall institute proceedings to terminate any ERISA Plan; or (d) a complete or partial withdrawal by Borrower or any ERISA Affiliate from any Multiemployer Plan shall have occurred and, within 30 days after the reporting of any such occurrence to Administrative Agent by Borrower (or Administrative Agent otherwise obtaining knowledge of such event) and the furnishing of such information as Administrative Agent or Majority Lenders may reasonably request with respect thereto, Administrative Agent shall have notified Borrower in writing that Administrative Agent has made a determination that, on the basis of such occurrence, an Event of Default exists hereunder; or (e) any Calpine Entity or any ERISA Affiliate shall have failed to fulfill its obligations under the minimum funding standards of ERISA or the Code with respect to any ERISA Plan; provided that any of the events described in this Section 7.1.5 shall result in aggregate liability to all Calpine Entities and all ERISA Affiliates in excess of \$5,000,000.

#### 7.1.6 Breach of Terms of Agreement.

(a) Defaults Without Cure Periods. Borrower shall fail to perform or observe any of the covenants set forth in Section 5.1.1, 5.9(a), 5.17 (with respect to the maintenance of the insurance policies required to be in effect on the Closing Date (or any replacement policies therefor obtained in compliance herewith)) or 5.23, or Article 6 (other than Sections 6.1, 6.2, 6.7, 6.8, 6.13, 6.14, 6.16 and 6.17) of this Agreement.

(b) Defaults With 30 Day Cure Periods. Borrower shall fail to perform or observe any of the covenants set forth in Section 5.1.2, 5.13, 5.17 (with respect to all matters other than as specifically provided for in clause (a) of this Section 7.1.6), 5.19, 5.21, 5.22, 5.24, 6.1, 6.2, 6.7, 6.8, 6.13, 6.14, 6.16 or 6.17, and such failure shall continue unremedied for a period of 30 days after Borrower becomes aware that the failure thereof could result in an Inchoate Default or receives written notice thereof from Administrative Agent.

(c) Other Defaults. Borrower, Riverside Borrower or any other Calpine Entity shall fail to perform or observe any of the covenants set forth hereunder or any other Credit Document not otherwise specifically provided for in Section 7.1.6(a), Section 7.1.6(b) or elsewhere in this Article 7, and such failure shall continue unremedied for a period of 30 days after Borrower becomes aware that the failure thereof could result in an Inchoate Default or receives written notice thereof from Administrative Agent; provided, however, that, if (i) such failure cannot be cured within such 30 day period, (ii) such failure is susceptible of cure within

90 days, (iii) Borrower, Riverside Borrower or such other Calpine Entity, as applicable, is proceeding with diligence and in good faith to cure such failure,

(iv) the existence of such failure has not had and could not, after considering the nature of the cure, be reasonably expected to have a Material Adverse Effect, and (v) Administrative Agent shall have received an officer's certificate signed by a Responsible Officer to the effect of clauses (i), (ii),

(iii) and (iv) above and stating what action Borrower, Riverside Borrower or such other Calpine Entity, as applicable, is taking to cure such failure, then such 30 day cure period shall be extended to such date, not to exceed a total of 90 days, as shall be necessary for Borrower, Riverside Borrower or such other Calpine Entity, as applicable, diligently to cure such failure.

7.1.7 Loss of Collateral. Any substantial portion of the Collateral is damaged, seized or appropriated without appropriate insurance proceeds (subject to the underlying deductible) or without fair value being paid therefor so as to allow replacement of such Collateral and/or prepayment of Term Loans and to allow Borrower to continue satisfying its obligations hereunder and under the other Operative Documents.

7.1.8 Riverside Credit Agreement Event of Default. An "Event of Default" under, and as defined in, the Riverside Credit Agreement shall have occurred and be continuing.

7.1.9 Regulatory Status.

(a) If loss of EWG status for Borrower or loss of Eligible Facility status for the Project could reasonably be expected to have a Material Adverse Effect, (i) Borrower shall have tendered notice to FERC that Borrower has ceased to be an EWG or (ii) FERC shall have issued an order determining that Borrower no longer meets the criteria of an EWG or takes other action revoking such EWG status.

(b) Borrower shall suffer an Adverse PUHCA Event or shall otherwise become subject to, or not exempt from financial, organizational or rate regulation as an "electric utility company", "public-utility company" or "holding company" under PUHCA or as a public utility under the laws of the State of Colorado as presently constituted and as construed by the courts of Colorado.

7.1.10 Abandonment. Borrower shall announce that (a) it is abandoning the Project or (b) the Project shall be abandoned or operation thereof shall be suspended for a period of more than 30 consecutive days for any reason (other than force majeure); provided that none of (i) scheduled maintenance of the Project, (ii) repairs to the Project, whether or not scheduled, or (iii) a forced outage or scheduled outage of the Project, shall constitute abandonment or suspension of the Project, so long as Borrower is diligently attempting to end such suspension.

7.1.11 Security. Except as the result of the acts or omissions of Administrative Agent, Depositary Agent, Collateral Agent or the Secured Parties, any of the Collateral Documents, once executed and delivered, shall, other than with respect to an immaterial portion of the Collateral, fail to provide to Collateral Agent, for the benefit of the Secured Parties, the Liens, first priority security interest (subject to Permitted Liens in clauses (a) and (e) of the definition thereof and, to the extent required by Governmental Rule, clauses

(b), (c) and (g) of the definition thereof), rights, titles, interest, remedies permitted by law, powers or privileges

intended to be created thereby or, except in accordance with its terms, cease to be in full force and effect, or the first priority or validity thereof or the applicability thereof to the Term Loans, the Notes (if any) or any other obligations purported to be secured or guaranteed thereby or any part thereof shall be disaffirmed by or on behalf of Borrower.

#### 7.1.12 Loss of or Failure to Obtain Applicable Permits.

(a) Borrower shall fail to obtain any Permit on or before the date that such Permit becomes an Applicable Permit with respect to the Project, and such failure could reasonably be expected to have a Material Adverse Effect.

(b) Any Applicable Permit necessary for operation of the Project and for Borrower's performance of its obligations under the Project Documents shall be materially modified (other than modifications contemplated in a Project Document requested by Borrower and approved in writing in advance of such modification by Administrative Agent acting at the direction of the Majority Lenders, which approval shall not be unreasonably withheld), revoked, canceled or not renewed by the issuing agency or other Governmental Authority having jurisdiction (or otherwise ceases to be in full force and effect) other than any such modification of, revocation of, cancellation of, failure to renew, or failure to maintain in full force and effect such Permit that could not reasonably be expected to have a Material Adverse Effect.

7.1.13 Unenforceability of Credit Documents. At any time after the execution and delivery thereof and until the Termination Date, any material provision of any material Credit Document shall cease to be in full force and effect (other than following the Termination Date by reason of the satisfaction in full of the Borrower's Obligations or any other termination of a Credit Document in accordance with the terms hereof or thereof) or any material Credit Document shall be declared null and void by a Governmental Authority of competent jurisdiction.

7.1.14 Misstatements; Omissions. Any representation or warranty made or deemed made by any Calpine Entity in this Agreement, or in any other Credit Document to which such Person is a party, or in any separate statement, certificate or document delivered to Lead Arranger, Administrative Agent, Depositary Agent, Collateral Agent, Issuing Bank or any Lender hereunder or under any other Credit Document to which such Person is a party, shall be untrue or misleading in any material respect as of the time made and such representation or warranty has not been corrected within 30 days after Borrower becomes aware that such misstatement or omission could result in an Inchoate Default or receives notice thereof from Administrative Agent.

#### 7.1.15 Project Document Defaults.

(a) Borrower. Borrower shall be in breach of, or in default under, a Major Project Document which breach or default if not cured could reasonably be expected to have a Material Adverse Effect and such breach or default shall not be remediable or, if remediable, shall continue unremedied for the lesser of (i) the greater of (A) a period of 30 days; provided that if (1) such breach cannot be cured within such 30 day period (or such lesser period of time, as the case may be), (2) such breach is susceptible of cure within 90 days after such breach or

default, and (3) Borrower is proceeding with diligence and in good faith to cure such breach, then such 30 day cure period (or such lesser period of time, as the case may be) shall be extended to such date, not to exceed a total of 90 days, as shall be necessary for Borrower diligently to cure such breach and (B) the date that is 30 days prior to the date that Collateral Agent's cure period under any applicable Consent relating to such Major Project Document expires, or (ii) such period of time (without giving effect to any extension given to Collateral Agent under any applicable Consent with respect thereto) under such Major Project Document which Borrower has available to it in which to remedy such breach or default.

(b) Third Party. Any Person other than Borrower shall be in breach of, or in default under, a Major Project Document which breach or default if not cured could reasonably be expected to have a Material Adverse Effect and such breach or default shall not be remediable or, if remediable, shall continue unremedied for a period of 30 days from the time Borrower obtains knowledge of such breach; provided that if (i) such breach cannot be cured within such 30 day period, (ii) such breach or default is susceptible of cure within 90 days, and (iii) the breaching Person or Borrower is proceeding with diligence and in good faith to cure such breach, then such 30 day cure period shall be extended to such date, not to exceed a total of 90 days, as shall be necessary for such breaching Person diligently to cure such breach; provided, further, that no Event of Default shall occur as a result of any such action if Borrower obtains a Replacement Obligor for the affected party within the 90 day cure period referred to in this paragraph (or within the 30 day cure period, if no extension is given) and such action does not have prior to so obtaining such Replacement Obligor a Borrower Material Adverse Effect.

(c) Third Party Consents. (i) Any Person other than Borrower shall disaffirm or repudiate in writing its material obligations under any Consent and such disaffirmation or repudiation is not rescinded and revoked in writing by such Person within 60 days thereof, (ii) any representation or warranty made by any Person other than Borrower in a Consent shall be untrue or misleading in any material respect as of the time made and such untrue or misleading representation or warranty could reasonably be expected to materially adversely affect the rights of the Collateral Agent or the Secured Parties thereunder or to otherwise result in a Material Adverse Effect, or (iii) a Person other than Borrower shall breach any material covenant of a Consent and such breach or default shall not be remediable or, if remediable, shall continue unremedied for a period of 30 days from the time Borrower obtains knowledge of such breach; provided that if (A) such breach cannot be cured within such 30 day period, (B) such breach is susceptible of cure within 90 days, (C) the breaching party or Borrower is proceeding with diligence and in good faith to cure such breach, and (D) the existence of such breach has not had and could not after considering the nature of the cure, be reasonably expected to have a Material Adverse Effect, then such 30 day cure period shall be extended to such date, not to exceed a total of 90 days, as shall be necessary for such third party diligently to cure such breach; provided, further, that no Event of Default shall occur as a result of any such action if Borrower obtains a Replacement Obligor for the affected party with respect to the contract or contracts to which such Consent relates, within the 90 day cure period referred to in this paragraph (or within the 30 day cure period, if no extension is given) and such action does not have prior to so obtaining such Replacement Obligor a Material Adverse Effect.

(d) Termination. A Major Project Document shall terminate on or before its scheduled expiration date except upon fulfillment of such party's obligations thereunder, or shall

be declared null and void; provided that no Event of Default shall occur as a result of such breach or default if Borrower obtains a Replacement Obligor for the affected party within 90 days thereafter and such breach or default has not had and does not have prior to so obtaining such Replacement Obligor, a Material Adverse Effect.

7.1.16 Power Purchase Agreement. (a) PSCo shall have validly exercised its "step-in" rights pursuant to Section 12.5 of the Power Purchase Agreement, or (b) the Sponsor shall have failed in any material respects to perform any of its obligations under the PSCo Calpine Guaranty.

## 7.2 REMEDIES.

Upon the occurrence and during the continuation of an Event of Default, Administrative Agent, Collateral Agent, and the Lenders may, at the election of the Majority Lenders, without further notice of default, presentment or demand for payment, protest or notice of non-payment or dishonor, or other notices or demands of any kind, all such notices and demands (other than notices required by the Credit Documents) being waived, exercise any or all of the following rights and remedies, in any combination or order that the Majority Lenders may elect, in addition to such other rights or remedies as the Secured Parties may have hereunder, under the Collateral Documents or at law or in equity:

7.2.1 No Further Term Loans. Cancel the Total Term Loan Commitment, refuse, and Administrative Agent, and the Lenders shall not be obligated, to continue any Term Loans, or make any payments, or permit the making of payments, from any Account or any Loss Proceeds or other funds held by Administrative Agent or Collateral Agent under the Credit Documents or on behalf of Borrower; provided that in the case of an Event of Default occurring under Section 7.1.2 with respect to Borrower, the Total Term Loan Commitment shall be cancelled and terminated without further act of Administrative Agent, Collateral Agent, or any Secured Party.

7.2.2 Cure by Agents. Without any obligation to do so, make disbursements to or on behalf of Borrower or disburse amounts from the Accounts to cure (a) any Event of Default or Inchoate Default hereunder and (b) any default and render any performance under any Project Document as the Majority Lenders in their sole discretion may consider necessary or appropriate, whether to preserve and protect the Collateral or the Secured Parties' interests therein or for any other reason. All sums so expended, together with interest on such total amount at the Default Rate (but in no event shall the rate exceed the maximum lawful rate), shall be repaid by Borrower to Administrative Agent or Collateral Agent, as the case may be, on demand and shall be secured by the Credit Documents, notwithstanding that such expenditures may, together with amounts advanced under this Agreement, exceed the aggregate amount of the Total Term Loan Commitment.

7.2.3 Acceleration. Declare and make all or a portion of the sums of accrued and outstanding principal and accrued but unpaid interest remaining under this Agreement, together with all unpaid fees, costs (including Liquidation Costs and Hedge Breaking Fees) and charges due hereunder or under any other Credit Document, immediately due and payable and require Borrower immediately, without presentment, demand, protest or other notice of any kind, all of

which Borrower hereby expressly waives, to pay Administrative Agent or the Secured Parties an amount in immediately available funds equal to the aggregate amount of any outstanding Obligations; provided that, in the event of an Event of Default occurring under Section 7.1.2 with respect to Borrower, all such amounts shall become immediately due and payable without further act of Administrative Agent, Collateral Agent, or the Secured Parties.

7.2.4 Cash Collateral. Apply or execute upon any amounts on deposit in any Account or any Loss Proceeds or any other moneys of Borrower on deposit with Administrative Agent, Collateral Agent, Depositary Agent or any Secured Party in the manner provided in the UCC and other relevant statutes and decisions and interpretations thereunder with respect to cash collateral. Without limiting the foregoing, each of Administrative Agent, Collateral Agent and Depositary Agent shall have all rights and powers with respect to Loss Proceeds, the Accounts and the contents of the Accounts as it has with respect to any other Collateral and may apply, or cause the application of, such amounts to the payment of interest, principal, fees, costs, charges or other amounts due or payable to Administrative Agent, Collateral Agent, Issuing Bank, Depositary Agent or the Secured Parties with respect to the Term Loans or as otherwise provided in the Depositary Agreement in such order as the Majority Lenders may elect in their sole discretion. Until such time as the Majority Lenders so elect to exercise such rights and powers, amounts in the Revenue Account shall be applied as provided in the Depositary Agreement. Borrower shall not have any rights or powers with respect to such amounts except as expressly provided in this Section 7.2.4.

7.2.5 Possession of Project. Enter into possession of the Project and perform any and all work and labor necessary to operate and maintain the Project, and all sums expended by Administrative Agent, Collateral Agent or Depositary Agent in so doing, together with interest on such total amount at the Default Rate, shall be repaid by Borrower to Administrative Agent, Collateral Agent or Depositary Agent, as the case may be, upon demand and shall be secured by the Credit Documents, notwithstanding that such expenditures may, together with amounts advanced under this Agreement, exceed the aggregate amount of the Total Term Loan Commitment.

7.2.6 Remedies Under Credit Documents. Exercise, and direct Administrative Agent, Depositary Agent or Collateral Agent (as the case may be) to exercise, any and all rights and remedies available to it under any of the Credit Documents, including judicial or non-judicial foreclosure or public or private sale of any of the Collateral pursuant to the Collateral Documents.

7.2.7 Cash Collateralization of PSCo Letter of Credit. Maintain in an account under the exclusive dominion and control of Administrative Agent for the payment of any Funded LC Disbursement and interest thereon and fees related thereto an amount of cash equal to the greater of such amount and 110% of the stated amount of the PSCo Letter of Credit. If and to the extent the PSCo Letter of Credit is cash collateralized to the extent provided in this Section 7.2.7, Issuing Bank shall release from the Credit-Linked Deposit Account, and return to each Lender such Lender's Proportionate Share of, Funded LC Credit-Linked Deposits in an aggregate amount equal to the amount of the PSCo Letter of Credit so cash collateralized.

**ARTICLE 8**  
**SCOPE OF LIABILITY**

Except as set forth in this Article 8, notwithstanding anything in this Agreement or the other Credit Documents to the contrary, the Lenders shall have no claims with respect to the transactions contemplated by the Operative Documents against the Sponsor or any of its Affiliates (other than Borrower and Riverside Borrower), shareholders, officers, directors or employees (collectively, the "Nonrecourse Persons") and the Lenders' recourse against Borrower and Riverside Borrower and the Nonrecourse Persons shall be limited to the Collateral, the Project, all Project Revenues, all Term Loan proceeds, Insurance Proceeds, Eminent Domain Proceeds, and all income or revenues of the foregoing as and to the extent provided herein and in the Collateral Documents; provided that the foregoing provision of this Article 8 shall not (a) constitute a waiver, release or discharge of any of the indebtedness, or of any of the terms, covenants, conditions, or provisions of this Agreement or any other Credit Document and the same shall continue (but without personal liability to the Nonrecourse Persons) until fully paid, discharged, observed, or performed;

(b) limit or restrict the right of Administrative Agent, Collateral Agent, Issuing Bank or any Secured Party (or any assignee, beneficiary or successor to any of them) to name Borrower, Riverside Borrower or any other Person as a defendant in any action or suit for a judicial foreclosure or for the exercise of any other remedy under or with respect to this Agreement or any other Collateral Document or Credit Document, or for injunction or specific performance, so long as no judgment in the nature of a deficiency judgment shall be enforced against any Nonrecourse Person, except as set forth in this Article 8; (c) in any way limit or restrict any right or remedy of Administrative Agent, Collateral Agent, Issuing Bank or any Secured Party (or any assignee or beneficiary thereof or successor thereto) with respect to, and each of the Nonrecourse Persons shall remain fully liable to the extent that it would otherwise be liable for its own actions with respect to, any fraud, willful misrepresentation (which shall not include innocent or negligent misrepresentation), or misappropriation of Project Revenues, Term Loan proceeds, Insurance Proceeds, Eminent Domain Proceeds or any other earnings, revenues, rents, issues, profits or proceeds from or of the Collateral, that should or would have been paid as provided herein or paid or delivered to Administrative Agent, Collateral Agent, Issuing Bank or any Secured Party (or any assignee or beneficiary thereof or successor thereto) towards any payment required under this Agreement or any other Credit Document; (d) affect or diminish or constitute a waiver, release or discharge of any specific written obligation, covenant, or agreement in respect of the transactions contemplated by the Operative Documents made by any of the Nonrecourse Persons or any security granted by the Nonrecourse Persons in support of the obligations of such Persons under any Collateral Document (or as security for the obligations of Borrower) or the Pledge Agreement; and (e) limit the liability of (i) any Person who is a party to any Project Document or has issued any certificate or other statement in connection therewith with respect to such liability as may arise by reason of the terms and conditions of such Project Document (but subject to any limitation of liability in such Project Document), certificate or statement, or (ii) any Person rendering a legal opinion pursuant to this Agreement (including Section 3.1.8 or the definition of Required HoldCo Transfer), in each case under this clause (e) relating solely to such liability of such Person as may arise under such referenced agreement, instrument or opinion. The limitations on recourse set forth in this Article 8 shall survive the Termination Date.

**ARTICLE 9**  
**AGENTS; SUBSTITUTION**

9.1 APPOINTMENT, POWERS AND IMMUNITIES.

9.1.1 Each Lender hereby appoints and authorizes (a) Administrative Agent to act as its agent hereunder and under the other Credit Documents, (b) Collateral Agent to act as its collateral agent hereunder and under the other Credit Documents, and (c) Issuing Bank to act as issuer of the PSCo Letter of Credit, in each case with such powers as are expressly delegated to Administrative Agent, Collateral Agent or Issuing Bank (as the case may be) by the terms of this Agreement and the other Credit Documents, together with such other powers as are reasonably incidental thereto. None of Administrative Agent, Collateral Agent or Issuing Bank shall have any duties or responsibilities except those expressly set forth in this Agreement or in any other Credit Document, or be a trustee or a fiduciary for any Secured Party. Notwithstanding anything to the contrary contained herein, none of Administrative Agent, Collateral Agent or Issuing Bank shall be required to take any action which is contrary to this Agreement or any other Credit Documents or any Legal Requirement or exposes Administrative Agent, Collateral Agent or Issuing Bank (as the case may be) to any liability. Each of Lead Arranger, Collateral Agent, Administrative Agent, Issuing Bank, the Lenders and any of their respective Affiliates shall not be responsible to any other Secured Party for (i) any recitals, statements, representations or warranties made by Borrower or its Affiliates contained in this Agreement, the other Credit Documents or in any certificate or other document referred to or provided for in, or received by Lead Arranger, Administrative Agent, Collateral Agent, Issuing Bank or any Secured Party under this Agreement or any other Credit Document, (ii) the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement, the other Credit Documents, any Notes or any other document referred to or provided for herein, or (iii) any failure by Borrower or its Affiliates to perform their respective obligations hereunder or thereunder. Each of Administrative Agent, Collateral Agent and Issuing Bank may employ agents and attorneys-in-fact, and neither shall be responsible for the negligence or misconduct of any such agents or attorneys-in-fact selected by it with reasonable care.

9.1.2 None of Collateral Agent, Administrative Agent, Issuing Bank, Lead Arranger and their respective directors, officers, employees or agents shall be responsible for any action taken or omitted to be taken by it or them hereunder or under any other Credit Document or in connection herewith or therewith, except for its or their own gross negligence or willful misconduct. Without limiting the generality of the foregoing, (a) Administrative Agent may treat the payee of any Note as the holder thereof until Administrative Agent receives written notice of the assignment or transfer thereof signed by such payee and in form satisfactory to Administrative Agent; (b) each of Administrative Agent, Collateral Agent and Issuing Bank may consult with legal counsel, independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken in good faith by them in accordance with the advice of such counsel, accountants or experts; (c) none of Collateral Agent, Administrative Agent, Issuing Bank and Lead Arranger makes any warranty or representation to any Secured Party for any statements, warranties or representations made in or in connection with any Operative Document; (d) none of Collateral Agent, Administrative Agent, Issuing Bank and Lead Arranger shall have any duty to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions of any Operative Document on the part

of any party thereto, to inspect the property (including the books and records) of Borrower or any other Person or to ascertain or determine whether a Material Adverse Effect exists or is continuing; and (e) none of Collateral Agent, Administrative Agent, Issuing Bank and Lead Arranger shall be responsible to any Secured Party for the due execution, legality, validity, enforceability, genuineness, sufficiency or value of any Operative Document or any other instrument or document furnished pursuant hereto. Except as otherwise provided under this Agreement and the other Credit Documents, each of Administrative Agent, Collateral Agent and Issuing Bank shall take such action with respect to the Credit Documents as shall be directed by the Majority Lenders.

9.1.3 The Book Runner shall have no right, power, obligation, liability, responsibility or duty under this Agreement, other than those applicable to all Secured Parties and those set forth in this Article 9. The Syndication Agent shall have no right, power, obligation, liability, responsibility or duty under this Agreement, other than those applicable to all Secured Parties and those set forth in this Article 9. Lead Arranger shall only have those rights, powers, obligations, liabilities, responsibilities and duties set forth in Section 3.1 and this Article 9. Without limiting the foregoing, none of Lead Arranger, Syndication Agent and the Book Runner shall have or be deemed to have a fiduciary relationship with any Secured Party. Each Secured Party hereby makes the same acknowledgments with respect to Lead Arranger, Syndication Agent and the Book Runner as it makes with respect to the Administrative Agent or the Collateral Agent in this Article 9. Notwithstanding the foregoing, the parties hereto acknowledge that the Book Runner and the Syndication Agent hold such titles in name only, and that such titles confer no additional rights or obligations relative to those conferred on any Secured Party hereunder.

## 9.2 RELIANCE.

Each of Administrative Agent, Collateral Agent and Issuing Bank shall be entitled to rely upon any certificate, notice or other document (including any cable, telegram, facsimile, electronic mail or telex) believed by it to be genuine and correct and to have been signed or sent by or on behalf of the proper Person or Persons, and upon advice and statements of legal counsel, independent accountants and other experts selected by it. As to any other matters not expressly provided for by this Agreement, none of Collateral Agent, Administrative Agent or Issuing Bank shall be required to take any action or exercise any discretion, but shall be required to act or to refrain from acting upon instructions of the Majority Lenders or, where expressly provided, the Supermajority Lenders or all Lenders (except that none of Collateral Agent, Administrative Agent or Issuing Bank shall be required to take any action which exposes Collateral Agent, Administrative Agent or Issuing Bank (as the case may be) to personal liability or which is contrary to this Agreement, any other Credit Document or any Legal Requirement). Each of Collateral Agent, Administrative Agent and Issuing Bank shall in all cases (including when any action by Collateral Agent, Administrative Agent or Issuing Bank (as the case may be) alone is authorized hereunder, if Collateral Agent, Administrative Agent or Issuing Bank (as the case may be) elects in its sole discretion to obtain instructions from the Majority Lenders) be fully protected in acting, or in refraining from acting, hereunder or under any other Credit Document in accordance with the instructions of the Majority Lenders (or, where so expressly stated, the Supermajority Lenders or all Lenders), and such instructions of the Majority Lenders (or Supermajority Lenders or all Lenders, where applicable) and any action taken or failure to act

pursuant thereto shall be binding on all of the Secured Parties. In addition, for purposes of determining compliance with the conditions specified in Section 3.1, each Lender that has executed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter either sent by Administrative Agent to such Lender for consent, approval, acceptance or satisfaction, or required thereunder to be consented to or approved by or acceptable or satisfactory to Lender.

### 9.3 NON-RELIANCE.

Each Lender represents that it has, independently and without reliance on Lead Arranger, Collateral Agent, Administrative Agent, Issuing Bank or any other Lender, and based on such documents and information as it has deemed appropriate, made its own appraisal of the financial condition and affairs of the Calpine Entities and its own decision to enter into this Agreement and agrees that it will, independently and without reliance upon Lead Arranger, Collateral Agent, Administrative Agent, Issuing Bank or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own appraisals and decisions in taking or not taking action under this Agreement. Each of Administrative Agent, Lead Arranger, Collateral Agent, Issuing Bank and any Lender shall not be required to keep informed as to the performance or observance by any Calpine Entity or its Affiliates under this Agreement or any other document referred to or provided for herein or to make inquiry of, or to inspect the properties or books of any Calpine Entity or its Affiliates.

### 9.4 DEFAULTS; MATERIAL ADVERSE EFFECT.

None of Lead Arranger, Collateral Agent, Issuing Bank and Administrative Agent shall be deemed to have knowledge or notice of the occurrence of any Inchoate Default, Event of Default or Material Adverse Effect, unless such Person has received a notice from a Lender or Borrower, referring to this Agreement, describing such Inchoate Default, Event of Default or Material Adverse Effect and indicating that such notice is a notice of the occurrence of such default or Material Adverse Effect (as the case may be). If Administrative Agent receives such a notice of the occurrence of an Inchoate Default, Event of Default or Material Adverse Effect, Administrative Agent shall give notice thereof to the Lenders. Each of Collateral Agent and Administrative Agent shall take such action with respect to such Inchoate Default, Event of Default or Material Adverse Effect as is provided in Article 3, Article 7 or the terms of the Credit Documents, or if not provided for in Article 3, Article 7 or such Credit Documents, as Administrative Agent or Collateral Agent shall be reasonably directed by the Majority Lenders; provided, however, that unless and until Administrative Agent or Collateral Agent shall have received such directions, each of Administrative Agent and Collateral Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Inchoate Default, Event of Default or Material Adverse Effect as it shall deem advisable in the best interest of the Lenders.

### 9.5 SUCCESSOR AGENT & ISSUING BANK.

Each of Collateral Agent, Administrative Agent and Issuing Bank may resign at any time by giving fifteen days' written notice thereof to the Secured Parties and Borrower; provided that the resigning Administrative Agent or Collateral Agent may only resign hereunder if such Person

also resigns in such capacity under the Riverside Credit Agreement. Each of Collateral Agent, Administrative Agent and Issuing Bank may be removed involuntarily only for a material breach of its respective duties and obligations hereunder and under the other Credit Documents or for gross negligence or willful misconduct in connection with the performance of its respective duties hereunder or under the other Credit Documents and then only upon the affirmative vote of the Majority Lenders (excluding Administrative Agent, Collateral Agent and Issuing Bank (as the case may be) from such vote and Administrative Agent's, Collateral Agent's and Issuing Bank's (as the case may be) Proportionate Share (if any) of the Total Term Loan Commitment and Term Loans from the amounts used to determine the portion of the Total Term Loan Commitment and Term Loans necessary to constitute the required Proportionate Share of the remaining Lenders); provided that the removed Administrative Agent or Collateral Agent may only be removed hereunder if such Person also is removed in such capacity under the Riverside Credit Agreement. Upon any such resignation or removal of Administrative Agent, Collateral Agent or Issuing Bank, the Majority Lenders shall have the right, with the consent of Borrower (such consent not to be unreasonably withheld or delayed) to appoint a successor Administrative Agent, Collateral Agent or Issuing Bank (as the case may be) under this Agreement and, with respect to Administrative Agent or Collateral Agent, under the Riverside Credit Agreement. If no successor Administrative Agent, Collateral Agent or Issuing Bank (as the case may be) shall have been so appointed by the Majority Lenders and shall have accepted such appointment, within 30 days after the retiring Administrative Agent's, Collateral Agent's or Issuing Bank's (as the case may be) giving of notice of resignation or the Lenders' removal of the retiring Administrative Agent, Collateral Agent or Issuing Bank (as the case may be), the retiring Administrative Agent, Collateral Agent or Issuing Bank (as the case may be) may, on behalf of the Secured Parties, with the consent of Borrower (such consent not to be unreasonably withheld or delayed), appoint a successor Administrative Agent, Collateral Agent or Issuing Bank (as the case may be) hereunder and, with respect to Administrative Agent or Collateral Agent, under the Riverside Credit Agreement. Such successor Administrative Agent or Collateral Agent (as the case may be) shall be a Lender, if any Lender shall be willing to serve, and otherwise shall be a commercial bank having a combined capital and surplus of at least \$500,000,000. Such successor Issuing Bank shall be a commercial bank having a combined capital and surplus of at least \$500,000,000 and a rating by S&P on its long-term senior unsecured indebtedness of at least A-. Upon the acceptance of any appointment as Administrative Agent, Collateral Agent or Issuing Bank (as the case may be) under the Operative Documents and, with respect to Administrative Agent or Collateral Agent, the Riverside Operative Documents by a successor Administrative Agent, Collateral Agent or Issuing Bank (as the case may be), such successor Administrative Agent, Collateral Agent or Issuing Bank (as the case may be) shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent, Collateral Agent or Issuing Bank (as the case may be), and the retiring Administrative Agent, Collateral Agent or Issuing Bank (as the case may be) shall be discharged from its duties and obligations as Administrative Agent, Collateral Agent or Issuing Bank (as the case may be) only under the Credit Documents and, with respect to Administrative Agent or Collateral Agent, the Riverside Credit Documents. After any retiring Administrative Agent's, Collateral Agent's or Issuing Bank's resignation or removal hereunder as Administrative Agent, Collateral Agent or Issuing Bank (as the case may be), the provisions of this Article 9 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent or Collateral Agent (as the case may be) under the Operative Documents.

Notwithstanding the foregoing, Issuing Bank's resignation or removal under this Agreement shall not be effective until a successor financial institution becomes the "Issuing Bank" hereunder. On the date any successor financial institution becomes "Issuing Bank" hereunder, such successor Issuing Bank shall issue to PSCo a replacement PSCo Letter of Credit. On the date any successor financial institution becomes "Administrative Agent" hereunder, the Funded LC Credit-Linked Deposits will be transferred to the successor Administrative Agent.

#### 9.6 AUTHORIZATION.

Each of Administrative Agent, Collateral Agent and Issuing Bank is hereby authorized by the Secured Parties to execute, deliver and perform each of the Credit Documents to which Administrative Agent, Collateral Agent or Issuing Bank (as the case may be) is or is intended to be a party, and each Lender agrees to be bound by all of the agreements of Administrative Agent, Collateral Agent and Issuing Bank contained in the Credit Documents. Each of Administrative Agent, Collateral Agent and Issuing Bank (as the case may be) is further authorized by the Secured Parties to (a) release Liens on property that Borrower is permitted to sell, transfer or otherwise release pursuant to the terms of this Agreement or the other Credit Documents, (b) to enter into on behalf of such Secured Parties any and all amendments to, or other modifications of, this Agreement and the other Credit Documents necessary to effectuate any Required HoldCo Transfer, (c) perform all of its obligations under the Intercreditor Agreement and (d) to enter into agreements supplemental hereto for the purpose of curing any formal defect, inconsistency, omission or ambiguity in this Agreement or any Credit Document to which it is a party.

#### 9.7 OTHER ROLES.

With respect to its Total Term Loan Commitment, the Term Loans made by it and any Note issued to it, each of Lead Arranger, Collateral Agent, Issuing Bank and Administrative Agent in its individual capacity shall have the same rights and powers under the Operative Documents as any other Lender and may exercise the same as though it were not Lead Arranger, Collateral Agent or Administrative Agent. The term "Lender" or "Lenders" shall, unless otherwise expressly indicated, include each of Lead Arranger, Collateral Agent, Issuing Bank and Administrative Agent in its individual capacity. Each of Lead Arranger, Collateral Agent, Issuing Bank and Administrative Agent and their respective Affiliates may accept deposits from, lend money to, act as trustee under indentures of, and generally engage in any kind of business with Borrower or any other Person, without any duty to account therefor to the Lenders. For the avoidance of doubt, Credit Suisse First Boston, acting through its Cayman Islands Branch (or any permitted successor or assign) may act as Administrative Agent, Riverside Administrative Agent, Collateral Agent, Issuing Bank, Riverside Collateral Agent, Lead Arranger, Book Runner and Riverside Lead Arranger notwithstanding any potential or actual conflict of interest presented by the foregoing and Borrower and each of the Lenders hereby waives any claim against each of Lead Arranger, Book Runner, Collateral Agent, Issuing Bank and Administrative Agent and any of their respective Affiliates based upon any conflict of interest that such Person may have with regard to acting as an agent or arranger hereunder and acting in such other roles.

## 9.8 AMENDMENTS AND WAIVERS.

9.8.1 Majority Lenders' Consent. Subject to Section 9.8.5 below, no amendment, modification, termination or waiver of any provision of the Credit Documents, or consent to any departure by any Calpine Entity therefrom, shall in any event be effective without the written concurrence of the Majority Lenders and any additional consents required by this Section 9.8.

9.8.2 Affected Lenders' Consent. No amendment, modification, termination, or consent shall be effective if the effect thereof would:

- (a) extend the scheduled final maturity of the PSCo Letter of Credit or any Funded LC Disbursement or any Term Loan or Note outstanding to any Lender without the prior written consent of that Lender;
- (b) waive, reduce or postpone any scheduled repayment (but not prepayment) due to any Lender without the prior written consent of that Lender;
- (c) reduce the rate of interest on any Term Loan or Funded LC Disbursement (other than any waiver of any increase in the interest rate applicable to any Term Loan or Funded LC Disbursement pursuant to Section 2.3.3) payable to any Lender or reduce or extend any fee payable hereunder to any Lender without the prior written consent of that Lender;
- (d) reduce the principal amount of any Term Loan or Funded LC Disbursement outstanding to any Lender without the prior written consent of that Lender;
- (e) amend, modify, terminate or waive any provision of this Section 9.8.2, as it applies to any Lender without the prior written consent of that Lender;
- (f) amend the definition of "Majority Lenders", "Supermajority Lenders" or "Proportionate Share" without the prior written consent of all Lenders;
- (g) release any Collateral (other than immaterial portions thereof) from the Liens created by the Collateral Documents, except as specifically provided for in this Agreement and the Collateral Documents, without the prior written consent of all Lenders; or
- (h) amend or modify any provision which requires pro rata payments among and as between the Lenders without the prior written consent of all Lenders.

9.8.3 Other Consents. No amendment, modification, termination or waiver of any provision of the Credit Documents, or consent to any departure by any Calpine Entity therefrom, shall amend, modify, terminate or waive any provision of Article IX as the same applies to Administrative Agent, Collateral Agent or Issuing Bank, or any other provision hereof as the same applies to the rights or obligations of Administrative Agent, Collateral Agent or Issuing Bank, in each case without the consent of Administrative Agent, Collateral Agent or Issuing Bank (as the case may be).

9.8.4 Execution of Amendments, etc. Administrative Agent may, but shall have no obligation to, with the concurrence of any Lender, execute amendments, modifications, waivers or consents on behalf of such Lender. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on any Calpine Entity in any case shall entitle any Calpine Entity to any other or further notice or demand in similar or other circumstances. Any amendment, modification, termination, waiver or consent effected in accordance with this Section shall be binding upon each Lender at the time outstanding, each future Lender and, if signed by a Calpine Entity, on such Calpine Entity.

9.8.5 Certain Amendments. Notwithstanding the preceding provisions of this Section 9.8, Borrower and Administrative Agent may amend or supplement the Credit Documents without the consent of any Lender:

(a) to cure any ambiguity, defect or inconsistency;

(b) to make any change that would provide any additional rights or benefits to the Lenders or that does not adversely affect the legal rights hereunder of any Lender; or

(c) to make, complete or confirm any grant of Collateral permitted or required by this Agreement or any of the Collateral Documents or any release of Collateral that becomes effective as set forth in this Agreement or any of the Collateral Documents.

9.8.6 Related Funds. For the purposes of this Section 9.8, each of the Related Funds of a Lender shall exercise its rights in a manner consistent and collectively with such Lender and each other Related Fund of such Lender.

## 9.9 WITHHOLDING TAX.

If the forms or other documentation required by Section 2.3.4(e) are not delivered to Administrative Agent, then Administrative Agent may withhold from any interest payment to any Lender not providing such forms or other documentation, an amount equivalent to the applicable withholding tax.

9.9.1 If the Internal Revenue Service or any authority of the United States or other jurisdiction asserts a claim that Administrative Agent did not properly withhold tax from amounts paid to or for the account of any Lender (because the appropriate form was not delivered, was not properly executed, or because such Lender failed to notify Administrative Agent of a change in circumstances which rendered the exemption from, or reduction of, withholding tax ineffective, or for any other reason), then such Lender shall indemnify Administrative Agent fully for all amounts paid, directly or indirectly, by Administrative Agent as tax or otherwise, including penalties and interest, together with all expenses incurred, including legal expenses, allocated staff costs, and any out of pocket expenses. Borrower shall not be responsible for any amounts paid or required to be paid by a Lender under this Section 9.9.1.

9.9.2 If any Lender sells, assigns, grants participation in, or otherwise transfers its rights under this Agreement, the purchaser, assignee, participant or transferee, as applicable,

shall comply and be bound by the terms of Section 2.3.4 and this Section 9.9 as though it were such Lender.

#### 9.10 GENERAL PROVISIONS AS TO PAYMENTS.

Administrative Agent shall promptly distribute to each Lender, subject to Section 2.1.10(d) and any accepted Mandatory Repayment Offer whereby payments shall be allocated to each accepting Lender's Term Loans (and not to all Lenders based on Proportionate Shares) and the terms of any separate agreement between Administrative Agent and such Lender, its pro rata share of each payment of principal and interest payable to the Lenders on the Term Loans and of fees hereunder received by Administrative Agent for the account of the Lenders and of any other amounts owing under the Term Loans. The payments made for the account of each Lender shall be made, and distributed to it, for the account of (a) its domestic lending office in the case of payments of principal of, and interest on, its Base Rate Term Loans, (b) its domestic or foreign lending office, as each Lender may designate in writing to Administrative Agent, in the case of LIBOR Term Loans, and (c) its domestic lending office, or such other lending office as it may designate for the purpose from time to time, in the case of payments of fees and other amounts payable hereunder. Lenders shall have the right to alter designated lending offices upon five Banking Days prior written notice to Administrative Agent and Borrower.

#### 9.11 EXPENSES; INDEMNITY; DAMAGE WAIVER.

##### 9.11.1 Borrower shall pay:

(a) all reasonable out-of-pocket expenses incurred by Administrative Agent, Collateral Agent, Issuing Bank, Lead Arranger and their Affiliates (including due diligence expenses and the reasonable fees, charges and disbursements of Latham & Watkins LLP, together with a single local counsel retained by Administrative Agent or Collateral Agent in the State of Colorado) in connection with the arrangement and syndication of the credit facilities provided for herein, the preparation, execution, delivery and administration of the Credit Documents or any amendments, modifications or waivers of the provisions thereof (whether or not the transactions contemplated hereby or thereby shall be consummated);

(b) all reasonable out-of-pocket expenses and charges of Administrative Agent, Collateral Agent, Issuing Bank or their Affiliates incurred in connection with any evaluations of Collateral conducted by them;

(c) all reasonable out of pocket expenses incurred by Issuing Bank in connection with the issuance or amendment of the PSCo Letter of Credit or any demand for payment thereunder;

(d) during the continuation of any Inchoate Default or Event of Default and provided that Borrower has delivered notice to Administrative Agent of the occurrence thereof or Borrower has received notice from Administrative Agent of the occurrence thereof, all reasonable out-of-pocket costs and expenses (including fees and out-of-pocket expenses of counsel) incurred by Administrative Agent, Collateral Agent, Lead Arranger, Issuing Bank and each Lender in connection with the enforcement or protection of any of their rights in connection

with this Agreement and the other Credit Documents, including any of their rights under this Section 9.1.11 and including the negotiation of any restructuring or work-out, whether or not consummated, of any Obligations of Borrower; and

(e) all reasonable out-of-pocket costs and expenses (including fees and out-of-pocket costs and expenses of counsel) incurred by Administrative Agent, Collateral Agent, Lead Arranger, Issuing Bank and each Lender in connection with the enforcement of any Obligations of Borrower after an Event of Default or in connection with any insolvency proceedings.

9.11.2 Borrower shall indemnify each of Administrative Agent, Collateral Agent, Lead Arranger, Issuing Bank and each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all third party losses, claims, damages, liabilities and related expenses, including the reasonable fees, charges and disbursements of any counsel for any Indemnitee, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (a) the execution or delivery of any Credit Document or any agreement or instrument contemplated hereby, the performance by the parties to the Credit Documents of their respective obligations thereunder or the consummation of the Term Loans or any other transactions contemplated thereby or, with respect to Lead Arranger or any Related Party of Lead Arranger, in connection with the arrangement and syndication of the credit facilities provided for herein, (b) any Term Loan or PSCo Letter of Credit or the use of the proceeds therefrom (including any refusal by Issuing Bank to honor a demand for payment under the PSCo Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such PSCo Letter of Credit), (c) any actual or alleged presence or release of Hazardous Substances on or from any property owned or operated by Borrower or any of its Subsidiaries, or any Environmental Claim related in any way to Borrower or any of its Subsidiaries, or (d) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted primarily from the gross negligence, willful misconduct or bad faith of such Indemnitee.

9.11.3 To the extent that Borrower fails to pay any amount required to be paid by it to Administrative Agent, Collateral Agent, Issuing Bank or Lead Arranger under Section 9.11.1 or 9.11.2, each Lender severally agrees to pay to such Administrative Agent, Collateral Agent, Issuing Bank or Lead Arranger, as the case may be, such Lender's Proportionate Share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against such Administrative Agent, Collateral Agent, Issuing Bank or Lead Arranger in its capacity as such.

9.11.4 All amounts due under this Section shall be payable promptly after written demand therefor.

## 9.12 SUCCESSORS AND ASSIGNS.

9.12.1 The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby (including any Affiliate of Issuing Bank that issues the PSCo Letter of Credit), except that Borrower may not assign or otherwise transfer any of its rights or obligations hereunder other than in accordance with Section 6.15 without the prior written consent of each Lender (and any attempted assignment or transfer by Borrower without such consent shall be null and void). Nothing in this Agreement, expressed or implied; shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby (including any Affiliate of Issuing Bank that issues the PSCo Letter of Credit) and, to the extent expressly contemplated hereby, the Related Parties of each of Administrative Agent, Collateral Agent, Lead Arranger, Issuing Bank and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

9.12.2 Any Lender may assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Term Loan Commitment, Term Loans at the time owing to it and Funded LC Credit-Linked Deposits); provided that: (a) Administrative Agent must give its prior written consent to such assignment (which consent shall not be unreasonably withheld); (b) except in the case of an assignment to a Lender or an Eligible Assignee, Borrower must provide its prior written consent to such assignment (which consent shall not be unreasonably withheld); (c) such Lender shall at the same time assign a pro rata portion of its "Total Term Commitment" and "Term Loans" under the Riverside Credit Agreement to the same assignee; (d) except in the case of an assignment to a Lender or an Eligible Assignee or an assignment of the entire remaining amount of the assigning Lender's "Total Term Commitment," "Term Loans," "Funded LC Disbursements" and "Funded LC Credit-Linked Deposit" under this Agreement and, to the extent applicable, the Riverside Credit Agreement, the aggregate amount of the Term Loan Commitments, Term Loans, Funded LC Disbursements and Funded LC Credit-Linked Deposit of the assigning Lender under this Agreement subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to Administrative Agent) shall be in an aggregate amount of not less than \$1,000,000 unless each of Borrower and Administrative Agent otherwise consent; (e) each partial assignment by a Lender of its Commitments, Term Loans, Funded LC Disbursements and Funded LC Credit-Linked Deposit shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement in respect of its Commitment, Term Loans, Funded LC Disbursements and Funded LC Credit-Linked Deposit; (f) the parties to each assignment shall execute and deliver to Administrative Agent an Assignment and Acceptance (such Assignment and Acceptance to be (i) electronically executed and delivered to Administrative Agent via an electronic settlement system then acceptable to Administrative Agent, which shall initially be the settlement system of ClearPar, LLC, or (ii) manually executed and delivered with a processing and recordation fee of \$3,500); and (g) the assignee, if it shall not be a Lender, shall deliver to Administrative Agent an Administrative Questionnaire; and provided further that any consent of Borrower otherwise required under this paragraph shall not be required (x) if an Event of Default under this Agreement shall have occurred and is continuing or (y) in connection with the initial syndication of the Commitments, Term Loans and Funded LC Credit-Linked Deposit. Subject to acceptance and recording thereof pursuant to Section 9.12.4, from and after the effective date specified in

each Assignment and Acceptance the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender under this Agreement other than as set forth in Section 2.5.5, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.3.4, 2.5, 2.6 and 9.12). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 9.12.2 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 9.12.5. Without the consent of Administrative Agent and Issuing Bank, the Funded LC Credit-Linked Deposit of any Lender shall not be released in connection with any assignment by such Lender, but shall instead be purchased by the relevant assignee and continue to be held for application (to the extent not already applied) in accordance with Section 2.8.2 to satisfy such assignee's obligations in respect of Funded LC Disbursements.

9.12.3 Administrative Agent, acting for this purpose as an agent of Borrower, shall maintain at one of its offices in New York, New York a copy of each Assignment and Acceptance delivered to it and a register (the "Register") setting forth: (a) the Commitments and the Term Loans and Funded LC Disbursements from time to time of each Lender; (b) the interest rates applicable to all Term Loans and the effective dates of all changes thereto; (c) the Interest Period for each LIBOR Term Loan; (d) the date and amount of any principal or interest due and payable or to become due and payable from Borrower to each Lender hereunder; (e) each repayment or prepayment in respect of the principal amount of the Term Loans of each Lender; (f) the amount of any sum received by Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof; (g) the names and addresses of the Lenders, and (h) such other information as Administrative Agent may determine is necessary for the administering of the Term Loans, the Funded LC Credit-Linked Deposits and this Agreement. The entries in the Register shall be conclusive, and Borrower, Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by Borrower and any Lender at any reasonable time and from time to time upon reasonable prior notice.

9.12.4 Upon its receipt of a duly completed Assignment and Acceptance executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee, if any, referred to in Section 9.12.2 and any written consent to such assignment required by such Section 9.12.2, Administrative Agent shall accept such Assignment and Acceptance and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this Section 9.12.4. Upon any transfer by a Lender of all or part of its Term Loan Commitment or Term Loans, Exhibit H shall be automatically updated without any further act by any Person to reflect the Lenders' Proportionate Shares after giving effect to such transfer.

9.12.5 Any Lender may, without the consent of Borrower or Administrative Agent, sell participations to one or more banks or other entities (a "Participant") in all or a

portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitments and Term Loans owing to it and its Funded LC Credit-Linked Deposit); provided that (a) such Lender's obligations under this Agreement shall remain unchanged, (b) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, (c) Borrower, Administrative Agent, Collateral Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and (d) such Lender shall at the same time sell a participation in a pro rata portion of its "Total Term Commitment" and "Term Loans" under the Riverside Credit Agreement to the same Participant. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Credit Documents and to approve any amendment, modification or waiver of any provision of this Agreement or the other Credit Documents; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in clause (a), (b), (c), (d) or (g) of Section 9.8.2. Subject to Section 9.12.6, Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.3.4, 2.5 and 2.6 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 9.12.2. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 11.2 as though it were a Lender, provided such Participant agrees to be subject to Section 2.4.1 as though it were a Lender.

9.12.6 A Participant shall not be entitled to receive any greater payment under Section 2.3.4, 2.5 or 2.6 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant. A Participant that would be a non-United States "Lender" under Section 2.3.4(e) if it were a Lender shall not be entitled to the benefits of Section 2.3 unless Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of Borrower, to comply with Section 2.3.4(e) as though it were a Lender.

9.12.7 Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Lender, and this Section shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto; provided, further, that the pledgor shall retain the sole right to enforce this Agreement and the other Credit Documents and to approve any amendment, modification or waiver of any provision of this Agreement or the other Credit Documents. In the case of any Lender that is a fund that invests in bank loans, such Lender may, without the consent of Borrower or Administrative Agent, assign or pledge all or any portion of its rights under this Agreement, including the Term Loans and Notes or any other instrument evidencing its rights as a Lender under this Agreement, to any holder of, trustee for, or any other representative of holders of, obligations owed or securities issued, by such fund, as security for such obligations or securities; provided that any foreclosure or similar action by such trustee or representative shall be subject to the provisions of Section 9.12.2 concerning assignments.

9.12.8 Notwithstanding anything to the contrary contained herein, any Lender (a "Granting Lender") may grant to a special purpose funding vehicle (an "SPC"), identified as such in writing from time to time by the Granting Lender to Administrative Agent and Borrower, the option to provide to Borrower all or any part of any Term Loans or Funded LC Credit-Linked Deposit that such Granting Lender would otherwise be obligated to make to Borrower pursuant to this Agreement; provided that (a) nothing herein shall constitute a commitment by any SPC to make any Term Loan or Funded LC Credit-Linked Deposit and (b) if an SPC elects not to exercise such option or otherwise fails to provide all or any part of such Term Loan or Funded LC Credit-Linked Deposit, the Granting Lender shall be obligated to make such Term Loan or Funded LC Credit-Linked Deposit pursuant to the terms of this Agreement. The making of a Term Loan or Funded LC Credit-Linked Deposit by an SPC shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Term Loan or Funded LC Credit-Linked Deposit were made by such Granting Lender. Each party hereto hereby agrees that no SPC shall be liable for any indemnity or similar payment obligation under this Agreement (all liability for which shall remain with the Granting Lender). In furtherance of the foregoing, each party hereto hereby agrees (which agreement shall survive the termination of this Agreement ) that, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper or other senior indebtedness of any SPC, it will not institute against, or join any other person in instituting against, such SPC in connection with its activities as an SPC hereunder any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings under the laws of the United States or any State thereof. In addition, notwithstanding anything to the contrary in this Section 9.12, any SPC may with notice to, but without the prior written consent of, Borrower and Administrative Agent and without paying any processing fee therefor, assign all or a portion of its interests in any Term Loans or Funded LC Credit-Linked Deposit to the Granting Lender or to any financial institutions (consented to by Borrower and Administrative Agent) providing liquidity and/or credit support to or for the account of such SPC to support the funding or maintenance of Term Loans or Funded LC Credit-Linked Deposit. The provisions of this Section 9.12.8 relating any SPC may not be amended without the written consent of such SPC.

#### 9.13 LAWS.

Notwithstanding the foregoing provisions of this Article 9, no sale, assignment, transfer, negotiation or other disposition of the interests of any Lender hereunder or under the other Credit Documents shall be allowed if it would require registration under the federal Securities Act of 1933, as then amended, any other federal securities laws or regulations or the securities laws or regulations of any applicable jurisdiction. Borrower shall, from time to time at the request and expense of Administrative Agent, execute and deliver to Administrative Agent, or to such party or parties as Administrative Agent may designate, any and all further instruments as may in the opinion of Administrative Agent be reasonably necessary or advisable to give full force and effect to such sale, assignment, transfer, negotiation or disposition which would not require any such registration.

### **ARTICLE 10 INDEPENDENT CONSULTANTS**

#### 10.1 REMOVAL AND FEES.

Administrative Agent (acting at the direction of the Majority Lenders) may remove from time to time, any one or more of the Independent Consultants and, after consulting with Borrower as to an appropriate Person, appoint replacements as Administrative Agent may choose. Notice of any replacement Independent Consultant shall be given by Administrative Agent to Borrower, the Lenders and to the Independent Consultant being replaced. All reasonable fees and expenses of the Independent Consultants (whether the original ones or replacements) shall be paid by Borrower pursuant to agreements reasonably acceptable to Borrower; provided that no such acceptance shall be required at any time an Event of Default shall have occurred and be continuing.

## 10.2 DUTIES.

Each Independent Consultant shall be contractually obligated to Administrative Agent (on behalf of the Lenders) to carry out the activities required of it in this Agreement and as otherwise requested by Administrative Agent and shall be responsible solely to Administrative Agent. Borrower acknowledges that it will not have any cause of action or claim against any Independent Consultant resulting from any decision made or not made, any action taken or not taken or any advice given by such Independent Consultant in the due performance in good faith of its duties to Administrative Agent, except to the extent arising from such Independent Consultant's gross negligence or willful misconduct.

## 10.3 INDEPENDENT CONSULTANTS' CERTIFICATES.

Up to and following the Closing Date, Borrower shall provide such documents and information to the Independent Consultants as they may reasonably consider necessary in order for the Independent Consultants to deliver to Administrative Agent the following certificates or information:

- (a) certificates of the Insurance Consultant, Independent Engineer and Power Market Consultant delivered on and dated as of the Closing Date as described in Sections 3.1.9, 3.1.11 and 3.1.13, respectively, and containing the matters set out therein;
- (b) after the Closing Date, all certificates to be delivered thereafter pursuant to this Agreement and the other Credit Documents;
- (c) annually, a certificate setting forth a full report on the status of the Project and such other information; and
- (d) such other information and certifications as Administrative Agent may reasonably require from the Independent Consultants from time to time.

## 10.4 CERTIFICATION OF DATES.

Administrative Agent will request that the Independent Consultants act diligently in the issuance of all certificates required to be delivered by the Independent Consultants hereunder, if their issuance is appropriate. Borrower shall provide the Independent Consultants with reasonable notice of the expected occurrence of any such dates or events.

**ARTICLE 11  
MISCELLANEOUS**

11.1 ADDRESSES.

Any communications between the parties hereto or notices provided herein to be given may be given to the following addresses:

If to Administrative Agent or Collateral Agent:	Credit Suisse First Boston 11 Madison Avenue, OMA-2 New York, NY 10010 Attention: Cindy Eng Tel: (212) 325-7110 Fax: (212) 325-8304 E-mail: As may be designated by Administrative Agent
If to Issuing Bank:	Union Bank of California, N.A. 601 Potrero Grande Dr. Monterey Park, CA 91754 Attention: Commercial Loan Operations Tel: (323) 720-2679/7055 Fax: (323) 724-6198 E-mail: As may be designated by Issuing Bank
If to Borrower:	Rocky Mountain Energy Center, LLC 50 West San Fernando Street, Suite 627 San Jose, CA 95113 Telephone: (408) 794-2572 Fax: (408) 794-2573 Attention: President E-mail: As may be designated by Borrower
With a copy to:	Rocky Mountain Energy Center, LLC 4160 Dublin Boulevard Dublin California 94568 Telephone: (925) 479-6600 Fax: (925) 479-7310 Attention: Project Manager - Rocky Mountain E-mail: As may be designated by Borrower

All such notices or other communications required or permitted to be given hereunder shall be in writing and shall be considered as properly given

(a) if delivered in person, (b) if sent by overnight delivery service (including Federal Express, UPS, ETA, Emery, DHL, AirBorne and other similar overnight delivery services), (c) if mailed by first class United States Mail, postage prepaid, registered or certified with return receipt requested, (d) if sent by facsimile or (e) other electronic means (including electronic mail) confirmed by facsimile or telephone as agreed by Administrative Agent from time to time. Notice so given shall be

effective upon receipt by the addressee, except that communication or notice so transmitted by facsimile or other direct written electronic means shall be deemed to have been validly and effectively given on the day (if a Banking Day and, if not, on the next following Banking Day) on which it is transmitted if transmitted before 4:00 p.m., recipient's time, and if transmitted after that time, on the next following Banking Day; provided, however, that if any notice is tendered to an addressee and the delivery thereof is refused by such addressee, such notice shall be effective upon such tender. Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by giving of 30 days' notice to the other parties in the manner set forth above.

#### 11.2 ADDITIONAL SECURITY; RIGHT TO SET-OFF.

Any deposits or other sums at any time credited or due from Lenders and any Project Revenues, securities or other property of Borrower in the possession of any Secured Party may at all times be treated as collateral security for the payment of the Term Loans, any Notes and any Funded LC Disbursements and all other obligations of Borrower to the Lenders under this Agreement and the other Credit Documents, and Borrower hereby pledges to Collateral Agent for the benefit of the Secured Parties and grants Collateral Agent for the benefit of the Secured Parties a security interest in and to all such deposits, sums, securities or other property. Subject to Section 2.4.2, regardless of the adequacy of any other collateral, any Secured Party with the prior written consent of the Collateral Agent may execute or realize on its or the Collateral Agent's security interest in any such deposits or other sums credited by or due from Lenders to Borrower, and may apply any such deposits or other sums to or set them off against Borrower's obligations to Lenders under any Notes and this Agreement at any time after the occurrence and during the continuance of any Event of Default.

#### 11.3 DELAY AND WAIVER.

No delay or omission to exercise any right, power or remedy accruing to the Secured Parties upon the occurrence of any Event of Default, Inchoate Default, Material Adverse Effect or any breach or default of Borrower or any other Calpine Entity or unsatisfied condition precedent under this Agreement or any other Credit Document shall impair any such right, power or remedy of the Secured Parties, nor shall it be construed to be a waiver of any such breach or default or unsatisfied condition precedent, or an acquiescence therein, or of or in any similar breach or default or unsatisfied condition precedent thereafter occurring, nor shall any waiver of any single Event of Default, Inchoate Default, Material Adverse Effect or other breach or default or unsatisfied condition precedent be deemed a waiver of any other Event of Default, Inchoate Default, Material Adverse Effect or other breach or default or unsatisfied condition precedent theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of Administrative Agent, Collateral Agent, Issuing Bank or the Secured Parties of any Event of Default, Inchoate Default, Material Adverse Effect or other breach or default or unsatisfied condition precedent under this Agreement or any other Credit Document, or any waiver on the part of Administrative Agent, Collateral Agent, Issuing Bank or the Secured Parties of any provision or condition of this Agreement or any other Credit Document, must be in writing and shall be effective only to the extent in such writing specifically set forth. All remedies, either under this Agreement or any other Credit Document or by law or otherwise

afforded to Administrative Agent, Collateral Agent, Issuing Bank and the Secured Parties, shall be cumulative and not alternative.

#### 11.4 ENTIRE AGREEMENT.

This Agreement and any agreement, document or instrument attached hereto or referred to herein integrate all the terms and conditions mentioned herein or incidental hereto and supersede all oral negotiations and prior writings in respect to the subject matter hereof. In the event of any conflict between the terms, conditions and provisions of this Agreement and any such agreement, document or instrument, the terms, conditions and provisions of this Agreement shall prevail.

#### 11.5 GOVERNING LAW.

THIS AGREEMENT AND ANY OTHER CREDIT DOCUMENT (UNLESS OTHERWISE EXPRESSLY PROVIDED FOR THEREIN), SHALL BE GOVERNED BY, AND CONSTRUED UNDER, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO CONFLICTS OF LAWS (OTHER THAN SECTION 5-1401 AND SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW).

#### 11.6 SEVERABILITY.

In case any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

#### 11.7 HEADINGS.

Article, Section and Paragraph headings have been inserted in this Agreement as a matter of convenience for reference only and it is agreed that such headings are not a part of this Agreement and shall not be used in the interpretation of any provision of this Agreement.

#### 11.8 ACCOUNTING TERMS.

All accounting terms not specifically defined herein shall be construed in accordance with GAAP and practices consistent with those applied in the preparation of the financial statements submitted by Borrower to Administrative Agent, and all financial data submitted pursuant to this Agreement shall be prepared in accordance with such principles and practices.

#### 11.9 ADDITIONAL FINANCING.

The parties hereto acknowledge that as of the Closing Date the Lenders have made no agreement or commitment to provide any financing or refinancing to Borrower except as set forth herein.

#### 11.10 NO PARTNERSHIP, ETC.

The Lenders and Borrower intend that the relationship between them shall be solely that of creditor and debtor. Nothing contained in this Agreement, the Notes or in any of the other Credit Documents shall be deemed or construed to create a partnership, tenancy-in-common, joint tenancy, joint venture or co-ownership by or between the Lenders and Borrower or any other Person. None of Lead Arranger, Administrative Agent, Collateral Agent, Issuing Bank or the Lenders shall be in any way responsible or liable for the debts, losses, obligations or duties of Borrower or any other Person with respect to the Project or otherwise. All obligations to pay real property or other taxes, assessments, insurance premiums, and all other fees and charges arising from the ownership, operation or occupancy of the Project (if any) and to perform all obligations and other agreements and contracts relating to the Project shall be the sole responsibility of Borrower.

#### 11.11 MORTGAGE/COLLATERAL DOCUMENTS.

The Obligations of Borrower hereunder are secured in part by the Mortgage encumbering certain properties in the State of Colorado. Reference is hereby made to the Mortgage and the other Collateral Documents for the provisions, among others, relating to the nature and extent of the security provided thereunder, the rights, duties and obligations of Borrower and the rights of Administrative Agent, Collateral Agent and the other Secured Parties with respect to such security.

#### 11.12 LIMITATION ON LIABILITY.

No claim shall be made by Borrower against Lead Arranger, Administrative Agent, Collateral Agent, Issuing Bank, the Lenders or any of their respective Affiliates, directors, employees, attorneys or agents for any loss of profits, business or anticipated savings, special or punitive damages or any indirect or consequential loss whatsoever in respect of any breach or wrongful conduct (whether or not the claim therefor is based on contract, tort or duty imposed by law), in connection with, arising out of or in any way related to the transactions contemplated by this Agreement or the other Operative Documents or any act or omission or event occurring in connection therewith, and Borrower hereby waives, releases and agrees not to sue upon any such claim for any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

#### 11.13 WAIVER OF JURY TRIAL.

ADMINISTRATIVE AGENT, COLLATERAL AGENT, ISSUING BANK, THE LENDERS AND BORROWER HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR ACTIONS OF ADMINISTRATIVE AGENT, COLLATERAL AGENT, ISSUING BANK, THE LENDERS OR BORROWER. THIS PROVISION IS A MATERIAL INDUCEMENT FOR BORROWER, ADMINISTRATIVE AGENT, COLLATERAL AGENT, ISSUING BANK AND THE LENDERS TO ENTER INTO THIS AGREEMENT.

#### 11.14 CONSENT TO JURISDICTION.

Administrative Agent, Collateral Agent, Issuing Bank, the Lenders and Borrower agree that any legal action or proceeding by or against Borrower or with respect to or arising out of this Agreement, the Notes, or any other Credit Document may be brought in or removed to the courts of the State of New York, in and for the County of New York, or of the United States of America for the Southern District of New York, as Administrative Agent may elect. By execution and delivery of this Agreement, the Lenders, Administrative Agent, Collateral Agent, Issuing Bank and Borrower accept, for themselves and in respect of their property, generally and unconditionally, the jurisdiction of the aforesaid courts. Administrative Agent, Collateral Agent, Issuing Bank, the Lenders and Borrower irrevocably consent to the service of process out of any of the aforementioned courts in any manner permitted by law. Nothing herein shall affect the right of Administrative Agent to bring legal action or proceedings in any other competent jurisdiction, including judicial or non-judicial foreclosure of the Mortgage. Administrative Agent, Collateral Agent, Issuing Bank, the Lenders and Borrower further agree that the aforesaid courts of the State of New York and of the United States of America shall have exclusive jurisdiction with respect to any claim or counterclaim of Borrower based upon the assertion that the rate of interest charged by the Lenders on or under this Agreement, the Term Loans or the other Credit Documents is usurious. Administrative Agent, Collateral Agent, the Lenders, Issuing Bank, and Borrower hereby waive any right to stay or dismiss any action or proceeding under or in connection with any or all of the Project, this Agreement or any other Credit Document brought before the foregoing courts on the basis of forum non-conveniens.

#### 11.15 KNOWLEDGE AND ATTRIBUTION.

References in this Agreement and the other Credit Documents to the "knowledge," "best knowledge" or facts and circumstances "known to" Borrower, and all like references, mean facts or circumstances of which a Responsible Officer of the applicable Calpine Entity has actual knowledge.

#### 11.16 COUNTERPARTS.

This Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in one or more duplicate counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document.

#### 11.17 USURY.

Nothing contained in this Agreement or the Notes shall be deemed to require the payment of interest or other charges by Borrower or any other Person in excess of the amount which the holders of the Notes may lawfully charge under applicable usury laws. In the event that the Lenders shall collect moneys which are deemed to constitute interest which would

increase the effective interest rate to a rate in excess of that permitted to be charged by applicable Legal Requirements, all such sums deemed to constitute interest in excess of the legal rate shall, upon such determination, at the option of the Lenders, be returned to Borrower or credited against the principal balance then outstanding.

#### 11.18 SURVIVAL.

All representations, warranties, covenants and agreements made herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement and the other Credit Documents shall be considered to have been relied upon by the parties hereto and shall survive the execution and delivery of this Agreement, the other Credit Documents and the making of the Term Loans and the issuance of the PSCo Letter of Credit. Notwithstanding anything in this Agreement or implied by law to the contrary, the agreements and covenants of Borrower set forth in Articles 5, 6 and 7 shall survive through the Termination Date, the agreements of Borrower set forth in Sections 2.1.4(b), 2.1.6, 2.1.10, 2.2, 2.3.4, 2.5.3, 2.5.4, 2.6, 2.8.2, 9.1, 9.7, 9.11 and 9.12, and the agreements of the Lenders set forth in Sections 2.8.2, 9.1, 9.5 and 9.9 shall survive the payment and performance of the Term Loans, the expiration or termination of the PSCo Letter of Credit and the other Obligations and the reimbursement of any amounts drawn hereunder, and the Termination Date.

#### 11.19 INTERCREDITOR AGREEMENT.

EACH LENDER AND EACH OF ADMINISTRATIVE AGENT, COLLATERAL AGENT AND ISSUING BANK HEREBY ACKNOWLEDGES AND AGREES THAT THEIR RESPECTIVE LIEN PRIORITIES AND OTHER MATTERS RELATED TO THE CREDIT DOCUMENTS AND THE COLLATERAL ARE SUBJECT TO AND GOVERNED BY THE INTERCREDITOR AGREEMENT. Each Lender and each of Administrative Agent, Collateral Agent and Issuing Bank, by delivering its signature page hereto, funding its Term Loan on the Closing Date and/or executing an Assignment and Acceptance (as the case may be), shall be deemed to have (a) acknowledged receipt of, consented to and approved the Intercreditor Agreement and (b) authorized Administrative Agent and Collateral Agent to perform their respective obligations thereunder.

#### 11.20 CONFIDENTIALITY.

Each Lender shall hold all non-public information regarding Borrower and its business identified as such by Borrower and obtained by such Lender pursuant to the requirements hereof in accordance with such Lender's customary procedures for handling confidential information of such nature, it being understood and agreed by Borrower that, in any event, a Lender may make:

(a) disclosures of such information to Affiliates of such Lender and to their agents and advisors (and to other Persons authorized by a Lender or Administrative Agent to organize, present or disseminate such information in connection with disclosures otherwise made in accordance with this Section 11.20); provided that such Affiliates, agents, advisors and Persons agree to keep such information confidential in accordance with the requirements of this Section 11.20;

(b) disclosures of such information reasonably required by any bona fide or potential assignee, transferee or participant in connection with the contemplated assignment, transfer or participation by such Lender of any its interests herein (including any of its Term Loans) or any participations therein; provided that such assignees, transferees or participants agree to keep such information confidential in accordance with the requirements of this Section 11.20;

(c) disclosure to any rating agency when required by it; provided that, prior to any disclosure, such rating agency shall undertake in writing to preserve the confidentiality of any confidential information relating to Borrower received by it from Administrative Agent or any Lender, and

(d) disclosures required or requested by any Governmental Authority or representative thereof or by the National Association of Insurance Commissioners or pursuant to legal or judicial process; provided, unless specifically prohibited by applicable law or court order, each Lender shall make reasonable efforts to notify Borrower of any request by any Governmental Authority or representative thereof (other than any such request in connection with any examination of the financial condition or other routine examination of such Lender by such Governmental Authority) for disclosure of any such non-public information prior to disclosure of such information.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the parties hereto, by their officers duly authorized, intending to be legally bound, have caused this Credit Agreement to be duly executed and delivered as of the day and year first above written.

**ROCKY MOUNTAIN ENERGY CENTER, LLC,**  
a Delaware limited liability company

By:                   /s/ Brian Harenza

Name: *Brian Harenza*  
Title: *Vice President*

**CREDIT SUISSE FIRST BOSTON,**  
acting through its Cayman Islands Branch,  
as Lead Arranger, Book Runner, Lender,  
Administrative Agent and Collateral Agent

By:                   /s/ S. William Fox

Name: *S. William Fox*  
Title: *Director*

By:                   /s/ David J. Dodd

Name: *David J. Dodd*  
Title: *Associate*

**COBANK, ACB,**  
as Syndication Agent and Lender

By:                   /s/ David Boyce

Name: *David Boyce*  
Title: *Vice President*

**UNION BANK OF CALIFORNIA, N.A.,**  
as Issuing Bank

By:                   /s/ Carmelo Restifo

Name: *Carmelo Restifo*  
Title: *Vice President*

S-1

**[ROCKY MOUNTAIN CREDIT AGREEMENT SIGNATURE PAGE]**

**EXHIBIT A**  
**to Credit Agreement**

**DEFINITIONS**

"Accounts" means the Revenue Account, the Distribution Suspense Account, the O&M Account, the Major Maintenance Reserve Account, the Loss Proceeds Account, the Pre-Funded Punchlist Expense Account, the Checking Account, the P&I Payment Account, the PSCo Security Reserve Account and each cash collateral account (other than the Credit-Linked Deposit Account) referred to in the Credit Documents, including any sub-accounts within such accounts.

"Additional Project Documents" has the meaning given in Section 6.18 of the Credit Agreement.

"Administrative Agent" means Credit Suisse First Boston, acting through its Cayman Islands Branch, acting in its capacity as administrative agent for the Secured Parties under the Credit Documents.

"Administrative Questionnaire" means an administrative questionnaire in a form supplied from time to time by Administrative Agent.

"Adverse PUHCA Event" means that Borrower or any of its "affiliates" (within the meaning of Section 2(a)(11)(B) of PUHCA) becomes an "electric utility company", "public utility company", or "holding company" required to register as such within the meaning of PUHCA at a time at which applicable provisions of PUHCA, or any successor statute thereof, and the rules and regulations thereunder are in effect and such event or occurrence has, or with the passage of time will have, a Material Adverse Effect or a material and adverse effect on Administrative Agent, Collateral Agent or the Lenders.

"Affiliate" of a specified Person means any other Person that (a) directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the Person specified, or (b) only with respect to matters relating to PUHCA, holds or beneficially owns 10% or more of the equity interest in the Person specified or 10% or more of any class of voting securities of the Person specified. When used with respect to Borrower, "Affiliate" shall include the Sponsor, the Pledgor, Riverside Borrower, Operator and any Affiliate thereof (other than Borrower).

"Amortization Schedule" means the schedule for repayment of the principal of the Term Loans as set forth on Exhibit I to the Credit Agreement.

"Annual Operating Budget" has the meaning given in Section 5.14.3 of the Credit Agreement.

"Anti-Terrorism Laws" has the meaning given in Section 4.6.1 of the Credit Agreement.

"Applicable Permit" means, at any time, any Permit, including any zoning, land use, environmental protection, pollution (including air, water or noise), sanitation, FERC, Colorado Public Utilities Commission, Colorado Department of Natural Resources, Colorado Department of Public Health and Environment, import, export, safety, siting or building Permit (a) that is necessary under applicable Legal Requirements or any of the Operative Documents to be obtained by or on behalf of Borrower at such time in light of the stage of ownership or operation of the Project to operate, maintain, repair, lease, own or use the Project as contemplated by the Operative Documents, to sell electricity from the Project or deliver fuel to the Project, or for Borrower to enter into any Operative Document or to consummate any transaction contemplated thereby, in each case in accordance with all applicable Legal Requirements, or (b) that is necessary so that none of Borrower, Administrative Agent, Collateral Agent, the Lead Arranger or the Secured Parties nor any Affiliate of any of them may be deemed by any Governmental Authority to be subject to regulation under the FPA (except as Borrower may be subject to regulation as a public utility) or PUHCA (except as Borrower may be subject to compliance requirements under Section 32 of PUHCA applicable to it being an EWG) or treated as a public utility under the Constitution and the laws of the State of Colorado as presently constituted and as construed by the courts of Colorado with respect to the regulation of the rates of, or the financial or organizational regulation of, electric utilities as a result of the development and construction or operation of the Project or the sale of electricity therefrom.

"Applicable Third Party Permit" means, at any time, any Permit, including any zoning, environmental protection, pollution, sanitation, FERC, Colorado Public Utilities Commission, Colorado Department of Natural Resources, Colorado Department of Public Health and Environment, export, safety, siting or building Permit or that is necessary to be obtained by such time by any Person (other than Borrower) that is a party to a Major Project Document or a Credit Document in order to perform such Person's obligations thereunder (other than Permits necessary to conduct its business generally and maintain its existence and good standing), or in order to consummate any transaction contemplated thereby, in each case in accordance with all applicable Legal Requirements.

"Assignment and Acceptance" means an assignment and acceptance agreement, substantially in the form of Exhibit M to the Credit Agreement, entered into by a Lender and an assignee (with the consent of any applicable Person as required by Section 9.12), and accepted by Administrative Agent.

"Assignment of Rents" means the Assignment of Leases and Rents and Other Income, dated on or about the Closing Date, in substantially the form of Exhibit D-8 to the Credit Agreement, by Borrower in favor of Collateral Agent.

"Assignment of Water Lease" means the Collateral Assignment of Lease, dated on or about the Closing Date, in substantially the form of Exhibit D-9 to the Credit Agreement, by Borrower in favor of Collateral Agent.

"Bank Book" means that certain confidential Bank Book titled "Riverside and Rocky Mountain Project Funding" dated May 2004.

"Banking Day" means any day other than a Saturday, Sunday or other day on which banks are or Administrative Agent is authorized or required to be closed in the State of Colorado or the State of New York and, where such term is used in any respect relating to a LIBOR Term Loan, which is also a day on which dealings in Dollar deposits are carried out in the London interbank market.

"Bankruptcy Event" shall be deemed to occur, with respect to any Person, if that Person shall institute a voluntary case seeking liquidation or reorganization under the Bankruptcy Law, or shall consent to the institution of an involuntary case thereunder against it; or such Person shall file a similar petition or consent or shall otherwise institute any similar proceeding under any Bankruptcy Law, or shall consent thereto; or such Person shall apply for, or consent or acquiesce to, the appointment of, a receiver, administrator, administrative receiver, liquidator, sequestrator or trustee for itself or any substantial part of its assets under any Bankruptcy Law; or such Person shall make a general assignment for the benefit of its creditors; or such Person shall admit in writing its inability to pay its debts generally as they become due; or if an involuntary case seeking liquidation or reorganization of such Person under the Bankruptcy Law shall be commenced against such Person and (a) the petition commencing the involuntary case is not timely controverted, (b) the petition commencing the involuntary case is not dismissed within 60 days of its filing, (c) an interim trustee is appointed to take possession of all or a portion of the property, and/or to operate all or any part of the business of such Person and such appointment is not vacated within 60 days, or (d) an order for relief shall have been issued or entered therein; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, administrator, administrative receiver, liquidator, sequestrator or trustee shall have been entered; or any other similar relief shall be granted against such Person under the Bankruptcy Law.

"Bankruptcy Law" means Title 11, United States Code, and any other state or federal insolvency, reorganization, moratorium or similar law for the relief of debtors, or any successor statute to the aforementioned.

"Base Case Project Projections" means a projection of operating results for the Project over a period commencing on the Closing Date and ending on December 31, 2023, showing at a minimum Borrower's reasonable good faith estimates, as of the Closing Date, of revenues, operating expenses, the Debt Service Coverage Ratio (which Debt Service Coverage Ratio shall be calculated on an annual basis, with the first Principal Repayment Date occurring on July 30, 2004, each other Principal Repayment Date occurring semi-annually thereafter and the final Principal Repayment Date occurring on the Maturity Date), and sources and uses of revenues over the forecast period, which projection is attached as Exhibit G-3 to the Credit Agreement.

"Base Rate" means the greater of (a) the prime commercial lending rate established from time to time by Administrative Agent at its New York office or (b) the Federal Funds Rate plus 0.50%. The Base Rate may not necessarily be the highest or lowest rate of interest charged by Administrative Agent to its commercial borrowers.

"Base Rate Term Loan" means a Term Loan accruing interest at the Base Rate.

"Book Runner" means Credit Suisse First Boston, acting through its Cayman Islands Branch, acting in its capacity as book runner under the Credit Documents.

"Borrower" means Rocky Mountain Energy Center, LLC, a Delaware limited liability company.

"Borrower Material Adverse Effect" means (a) a material adverse change in the current or reasonably anticipated business, property, results of operation or financial condition of Borrower, (b) any event or occurrence of whatever nature which could reasonably be expected to materially and adversely affect Borrower's ability to perform its material obligations under the Credit Documents (taken as a whole), and (c) any event or occurrence of whatever nature which could reasonably be expected to materially and adversely affect the value, validity or priority of the Secured Parties' security interests in the Collateral, taken as a whole.

"Borrowing" means a borrowing by Borrower of the Term Loans.

"Calculation Period" means, as to a particular date, the 12 month period (or, during the initial 12 months following the Closing Date, the actual number of calendar months or partial calendar months following the Closing Date) immediately preceding such date.

"Calpine Entity(ies)" has the meaning given in Section 3.1.1 of the Credit Agreement.

"Capital Adequacy Requirement" has the meaning given in Section 2.5.4 of the Credit Agreement.

"Change of Control" means:

(a) with respect to Sponsor, other than in connection with a Permitted Sponsor Transfer, the Sponsor shall cease to directly or indirectly own and control at any time more than 50% of (i) the economic interests in Borrower, and (b) the voting interests (whether by committee, contract or otherwise) in Borrower; or

(b) with respect to Borrower, Riverside Borrower shall cease to directly (or, from and after any Required Holdco Transfer, indirectly) own and control at any time less than 100% of (i) the economic interests in Borrower, and (b) the voting interests (whether by committee, contract or otherwise) in Borrower;

provided, that in connection with any disposition by Pledgor of any of its ownership interests in Riverside Borrower, such disposition shall be deemed to be a Change of Control unless (i) such disposition is made pursuant to clause

(a) above, (ii) the applicable transferee is a corporation, limited liability company or limited partnership organized or formed in the United States or a state or commonwealth therein, (iii) on or before the date of any such disposition, the applicable transferee enters into a pledge agreement in substantially the form of Exhibit D-3, pursuant to which such transferee shall pledge all of its ownership interests in Riverside Borrower to Collateral Agent, for the benefit of the Secured Parties, and executes and delivers all other applicable Credit Documents necessary to create and perfect a Lien on such membership interests in a manner consistent with Section 5.15 of the Riverside Credit Agreement and the

Intercreditor Agreement, and (iv) on or before the date of any such disposition, the applicable transferee delivers to Administrative Agent opinions of counsel with respect to such transferee, such transfer and such pledge agreement substantially similar to those opinions delivered pursuant to Section 3.1.8 on the Closing Date.

"Change of Law" has the meaning given in Section 2.5.2 of the Credit Agreement.

"Checking Account" means that certain checking account established by Borrower pursuant to Section 3.6.1 of the Depositary Agreement.

"Checking Account Bank" has the meaning given in Section 3.6.1 of the Depositary Agreement.

"City of Aurora" means the City of Aurora, Colorado, a home rule municipal corporation of the State of Colorado, acting by and through its Utility Enterprise.

"Closing Date" has the meaning given in Section 3.1 of the Credit Agreement.

"CoBank Fee Letter" means that certain letter agreement regarding fees, dated as of June 24, 2004, by and between Borrower and CoBank, ACB.

"Code" means the Internal Revenue Code of 1986, as amended.

"Collateral" means all property which is subject or is intended to become subject to the security interests or liens granted by any of the Collateral Documents.

"Collateral Agent" means Credit Suisse First Boston, acting through its Cayman Islands Branch, acting in its capacity as collateral agent for the Secured Parties under the Credit Documents.

"Collateral Documents" means the Mortgage, the Pledge Agreement, the Security Agreement, the Intercreditor Agreement, the Depositary Agreement, any Control Agreement, the Assignment of Rents, the Assignment of Water Lease, the PSCo Acknowledgment of Subordination, each Consent, and any fixture filings, financing statements, or other similar documents filed, recorded or delivered in connection with the foregoing.

"Commitments" means, with respect to each Lender, each of such Lender's Term Loan Commitment and Funded LC Credit-Linked Deposit, and with respect to all Lenders, the Total Term Loan Commitment and the Total Funded LC Credit-Linked Deposits.

"Confirmation of Interest Period Selection" has the meaning given in Section 2.1.7(d)(ii) of the Credit Agreement.

"Consents" means the consents specified on Exhibit E-2 to the Credit Agreement and any other third party consents to the assignments contemplated by the Credit Documents.

"Consolidated Debt Service" means, for any period, the sum of (a) all fees (other than fees paid on the Closing Date) payable during such period to any of the Secured Parties under the Credit Agreement and to any of the Riverside Secured Parties under the Riverside Credit Agreement, (b) interest on the Term Loans and Riverside Term Loans less net payments, if any, received during such period pursuant to Hedge Transactions and Riverside Hedge Transactions, (c) scheduled Term Loan and Riverside Term Loan principal payments (as reduced to reflect actual prepayments through the date of such calculation) payable during such period, (d) net payments, if any, payable during such period pursuant to Hedge Transactions and Riverside Hedge Transactions, and (e) amounts payable by Borrower to any of the Secured Parties under the Credit Agreement in respect of Funded LC Disbursements and Funded LC Credit-Linked Deposits.

"Consolidated Debt Service Coverage Ratio" means, for any period, the ratio of (a) Consolidated Operating Cash Available for Debt Service for such period to (b) Consolidated Debt Service for such period.

"Consolidated EBITDA" means, with respect to any period, Consolidated Net Income for such period plus (a) without duplication and to the extent deducted in determining such Consolidated Net Income, the sum of (i) any and all interest expense for such period, (ii) all amounts attributable to depreciation and amortization for such period, (iii) any extraordinary or non-recurring non-cash charges (other than the write-down of current assets) for such period (including any such non-cash charges for such period relating to the application of fresh start accounting principals), (iv) any non-cash goodwill or other intangible asset impairment charges incurred after the date hereof resulting from the application of Statement Number 142 of the Financial Accounting Standards Board, and (v) any non-recurring expenses incurred in connection with the transactions contemplated by the Credit Documents and the Riverside Credit Documents, plus (b) without duplication, the cash amount of prepayments received by Borrower under any Major Project Document or Riverside Borrower under any Riverside Major Project Document during such period, and minus (c) without duplication (i) all cash payments made during such period on account of reserves, restructuring charges and other non-cash charges added to Consolidated Net Income pursuant to clause (a) above in a previous period and (ii) to the extent included in determining such Consolidated Net Income, any extraordinary gains and all non-cash items of income for such period, all determined on a consolidated basis in accordance with GAAP.

"Consolidated Net Income" means, with respect to any period and without duplication, the consolidated net income of Borrower and Riverside Borrower for such period, determined in accordance with GAAP; provided, that the cumulative effect of a change in accounting principles will be excluded.

"Consolidated Operating Cash Available for Debt Service" means, for any period, the sum of (a) Operating Cash Available for Debt Service for such period and (b) the positive difference (if any) between (i) Riverside Operating Cash Available for Debt Service for such period and (ii) amounts distributed or dividended to Riverside Borrower by Borrower constituting Riverside Project Revenues during such period.

"Control Agreement" means that certain control agreement to be entered into among Borrower, Collateral Agent and Checking Account Bank regarding the perfection of Collateral Agent's Lien on the Checking Account.

"Credit Agreement" means the Credit Agreement, dated as of June 24, 2004, by and among Borrower, Administrative Agent, Collateral Agent, Issuing Bank, Book Runner, Lead Arranger, the other agents and arrangers listed on the signature pages thereto and the Lenders.

"Credit Documents" means the Credit Agreement, the Notes, the Collateral Documents, the Interest Rate Agreements (including all Hedge Transactions thereunder), the Fee Letters, the Subordination Agreement, the PSCo Letter of Credit and any other loan intercreditor or security agreements or letter agreement or similar document, entered into by Administrative Agent, Collateral Agent, Depositary Agent, Lead Arranger or any Secured Party, on the one hand, and the Borrower or one or more Affiliates of Borrower, on the other hand, in connection with the transactions contemplated by the Credit Documents.

"Credit-Linked Deposit Account" means, collectively, one or more operating and/or investment accounts of, and established by, Issuing Bank under its sole and exclusive control and maintained at the office of Issuing Bank located at 445 S. Figueroa Street, 15th Floor, Los Angeles, CA 90071 (or such other office as Issuing Bank shall from time to time designate to Borrower and Administrative Agent), in each case that shall be used for the purposes set forth in Section 2.8 of the Credit Agreement.

"CSFB Fee Letter" means that certain letter agreement regarding fees, dated as of June 24, 2004, by and among Lead Arranger, Administrative Agent, Collateral Agent and Borrower.

"Debt" of any Person at any date means, without duplication, (a) all obligations (including contingent obligations) of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable and other accrued expenses arising in the ordinary course of business which in accordance with GAAP would be shown on the liability side of the balance sheet of such Person, (d) all obligations of such Person under leases which are or should be, in accordance with GAAP, recorded as capital leases in respect of which such Person is liable, (e) all obligations of such Person to purchase securities (or other property) which arise out of or in connection with the sale of the same or substantially similar securities (or property), (f) all deferred obligations of such Person to reimburse any bank or other Person in respect of amounts paid or advanced under a letter of credit or other instrument, (g) all Debt of others secured by a Lien on any asset of such Person, whether or not such Debt is assumed by such Person, (h) all Debt of others guaranteed directly or indirectly by such Person or as to which such Person has an obligation substantially the economic equivalent of a guarantee, (i) all monetary obligations of such Person under a so-called synthetic, off-balance sheet or tax retention lease and (j) obligations in respect of Hedge Transactions.

"Debt Service" means, for any period, the sum of (a) all fees (other than fees paid on the Closing Date) payable during such period to Administrative Agent, Collateral Agent,

Depository Agent and the Lenders, (b) interest on the Term Loans less (for purposes of calculating the Debt Service Coverage Ratio) net payments, if any, received during such period pursuant to Hedge Transactions, (c) scheduled Term Loan principal payments (as reduced to reflect actual prepayments through the date of such calculation) payable during such period, (d) net payments, if any, payable during such period pursuant to Hedge Transactions and (e) amounts payable to any of the Secured Parties under the Credit Agreement in respect of Funded LC Disbursements and Funded LC Credit-Linked Deposits.

"Debt Service Coverage Ratio" means, for any period, the ratio of (a) Operating Cash Available for Debt Service for such period to (b) Debt Service for such period.

"Default Rate" has the meaning given in Section 2.3.3 of the Credit Agreement.

"Depository Agent" means The Bank of New York, not in its individual capacity but solely as depository agent, bank and securities intermediary under the Depository Agreement.

"Depository Agreement" means the Depository Agreement, dated as of the Closing Date, in substantially the form of Exhibit D-4 to the Credit Agreement, among Borrower, Administrative Agent, Collateral Agent and Depository Agent.

"Distribution Suspense Account" has the meaning given in Section 1.1 of the Depository Agreement.

"Dollars" and "\$" means United States dollars or such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts in the United States of America.

"Easements" shall have the meaning given in the Mortgage.

"Eligible Assignee" means (a) any Lender, any Affiliate of any Lender and any Related Fund (any two or more Related Funds being treated as a single Eligible Assignee for all purposes hereof), and (b) any commercial bank, insurance company, investment or mutual fund or other entity that is an "accredited investor" (as defined in Regulation D under the Securities Act) and which extends credit or buys loans as one of its businesses.

"Eligible Facility" means an "eligible facility" within the meaning of PUHCA and FERC's implementing regulations pertaining thereto.

"Emergency Operating Costs" means those amounts required to be expended for the purchase of goods and services in order to prevent or mitigate an unforeseeable event or circumstances that, in the good faith judgment of Borrower or Operator, necessitates the taking of immediate measures to prevent or mitigate injury to Persons or injury to or loss of property.

"Eminent Domain Proceeds" has the meaning given in Section 3.5.1 of the Depository Agreement.

"Environmental Claim" means any and all liabilities, losses, administrative, regulatory or judicial actions, suits, demands, decrees, claims, liens, judgments, warning notices,

notices of noncompliance or violation, investigations, proceedings, removal or remedial actions or orders, or damages (foreseeable and unforeseeable, including consequential and punitive damages), penalties, fees, out-of-pocket costs, expenses, disbursements or attorneys' or consultants' fees, relating in any way to (a) a violation or alleged violation of any Hazardous Substance Law or Permit issued under any Hazardous Substance Law, (b) a Release or threatened Release of Hazardous Substances, or (c) any legal or administrative proceedings relating to any of the above.

"Environmental Reports" means that certain R.W. Beck, Inc., Phase I Environmental Site Assessment Update Letter Report, Rocky Mountain Energy Center, 6211 County Road 51, Keenesburg, Colorado, 80643, dated as of June 22, 2004.

"Equipment" has the meaning given in the Mortgage.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"ERISA Affiliate" means any trade or business (whether or not incorporated) that is treated as a single employer together with Borrower under Section 414 of the Code.

"ERISA Plan" means any employee benefit plan (a) maintained by Borrower or any ERISA Affiliate, or to which any of them contributes or is obligated to contribute, for its employees and (b) covered by Title IV of ERISA or to which Section 412 of the Code applies.

"Event of Default" has the meaning given in Article 7 of the Credit Agreement.

"Event of Eminent Domain" means any compulsory transfer or taking by condemnation, eminent domain or exercise of a similar power, or transfer under threat of such compulsory transfer or taking, of any part of the Collateral or any of the Mortgaged Property, by any agency, department, authority, commission, board, instrumentality or political subdivision of the State of Colorado, the United States or another Governmental Authority having jurisdiction.

"EWG" has the meaning given in Section 4.16.1 of the Credit Agreement.

"Executive Order" has the meaning given in Section 4.6.1 of the Credit Agreement.

"Existing Rocky Mountain Administrative Agent" means DZ BANK AG, Deutsche Zentral-Genossenschaftsbank, Frankfurt am Main, New York Branch, in its capacity as administrative agent under the Existing Rocky Mountain Credit Facility.

"Existing Rocky Mountain Credit Facility" means the Credit Agreement, dated as of February 20, 2004, by and among Borrower, Existing Rocky Mountain Administrative Agent, the financial institutions party thereto from time to time as lenders and the other agents and arrangers party thereto.

"Federal Funds Rate" means, for any day, the weighted average of the per annum rates on overnight Federal funds transactions with member banks of the Federal Reserve System

arranged by Federal funds brokers as published by the Federal Reserve Bank of New York for such day (or, if such rate is not so published for any day, the average rate charged by Administrative Agent on such day on such transactions as determined by Administrative Agent).

"Federal Reserve Board" means the Board of Governors of the Federal Reserve System.

"Fee Letters" means, collectively, the CSFB Fee Letter, the Issuing Bank Fee Letter and the CoBank Fee Letter.

"FERC" means the Federal Energy Regulatory Commission and its successors.

"Financing Statements" has the meaning given in Section 3.1.19(c) of the Credit Agreement.

"FPA" has the meaning given in Section 4.16.1 of the Credit Agreement.

"Funded LC Credit-Linked Deposit" means, with respect to each Lender, such Lender's Proportionate Share of the Total Funded LC Credit-Linked Deposit, and with respect to all Lenders, the Total Funded LC Credit Linked Deposit.

"Funded LC Disbursement" means a payment or disbursement made by Issuing Bank pursuant to the PSCo Letter of Credit.

"GAAP" means generally accepted accounting principles in the United States of America.

"Governing Documents" means, with respect to any Person, the certificate or articles of incorporation, bylaws, operating agreement or other organizational or governing documents of such Person.

"Governmental Authority" means any national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, bureau or entity, (including any zoning authority, FERC, the Securities Exchange Commission, the Comptroller of the Currency or the Federal Reserve Board, the Colorado Public Utilities Commission, any central bank or any comparable authority) or any arbitrator with authority to bind a party at law.

"Governmental Rule" means any law, rule, regulation, ordinance, order, code interpretation, treaty, judgment, decree, directive, guidelines, policy or similar form of decision of any Governmental Authority.

"Granting Lender" has the meaning given in Section 9.12.8 of the Credit Agreement.

"Hazardous Substances" means (statutory acronyms and abbreviations having the meaning given them in the definition of "Hazardous Substances Laws") substances defined as

"hazardous substances," "pollutants" or "contaminants" in Section 101 of the CERCLA; those substances defined as "hazardous waste," "hazardous materials" or "regulated substances" by the RCRA; those substances designated as a "hazardous substance" pursuant to Section 311 of the CWA; those substances defined as "hazardous materials" in Section 103 of the HMTA; those substances regulated as a hazardous chemical substance or mixture or as an imminently hazardous chemical substance or mixture pursuant to Section 6 or 7 of the TSCA; those substances defined as "contaminants" by Section 1401 of the SDWA, if present in excess of permissible levels; those substances regulated by the Oil Pollution Act; those substances defined as a pesticide pursuant to Section 2(u) of the FIFRA; those substances defined as a source, special nuclear or by-product material by Section 11 of the AEA; those substances defined as "toxic materials" or "harmful physical agents" pursuant to Section 6 of the OSHA); those substances defined as hazardous wastes in 40 C.F.R. Part 261.3; those substances defined as hazardous waste constituents in 40 C.F.R. Part 260.10, specifically including Appendix VII and VIII of Subpart D of 40 C.F.R. Part 261; those substances designated as hazardous substances in 40 C.F.R. Parts 116.4 and 302.4; those substances defined as hazardous substances or hazardous materials in 49 C.F.R. Part 171.8; those substances regulated as hazardous materials, hazardous substances, or toxic substances in 40 C.F.R. Part 1910; those substances regulated as hazardous materials, hazardous substances, or toxic substances in any other Hazardous Substances Laws; and those substances regulated as hazardous materials, hazardous substances, or toxic substances in the regulations adopted and publications promulgated pursuant to said laws, whether or not such regulations or publications are specifically referenced herein.

"Hazardous Substances Law" means any of:

- (i) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Section 9601 et seq.) ("CERCLA");
- (ii) the Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.) ("Clean Water Act" or "CWA");
- (iii) the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.) ("RCRA");
- (iv) the Atomic Energy Act of 1954 (42 U.S.C. Section 2011 et seq.) ("AEA");
- (v) the Clean Air Act (42 U.S.C. Section 7401 et seq.) ("CAA");
- (vi) the Emergency Planning and Community Right to Know Act (42 U.S.C. Section 11001 et seq.) ("EPCRA");
- (vii) the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Section 136 et seq.) ("FIFRA");
- (viii) the Oil Pollution Act of 1990 (P.L. 101-380, 104 Stat. 486);
- (ix) the Safe Drinking Water Act (42 U.S.C. Section 300f et seq.) ("SDWA");

(x) the Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.) ("TSCA");

(xi) the Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq.) ("HMTA");

(xii) the Occupational Safety and Health Act (29 U.S.C. Section 651 et seq.) ("OSHA");

(xiii) the Colorado Water Quality Control Act, Colo. Rev. Stat Section 25-8-101 et seq., the Colorado Hazardous Waste Management Act, Colo. Rev. Stat. Section 25-15-101 et seq., the Colorado Air Pollution Prevention and Control Act, Colo. Rev. Stat. Section 25-7-101 et seq., the Colorado Individual Sewage Disposal Systems Act, Colo. Rev. Stat. Section 25-10-101 et seq., the Petroleum Storage Tanks Act, Colo. Rev. Stat. Section 8-20.5-101 et seq. and all related or similar Colorado State and local Governmental Rules relating to the protection of human health or the environment; and

(xiv) all other Federal, state and local Governmental Rules relating to the protection of human health or the environment or which otherwise govern Hazardous Substances, and the regulations adopted and publications promulgated pursuant to all such foregoing laws.

"Hedge Breaking Fees" has the meaning given in Section 5.20.2 of the Credit Agreement.

"Hedge Lender" means a Lender, or any Affiliate thereof which, in any case, is party to an Interest Rate Agreement with Borrower, in its capacity as counterparty to such Interest Rate Agreement.

"Hedge Transaction" means any "Transaction" (such as swaps, caps, collars or floors) entered into under an Interest Rate Agreement.

"HoldCo" means a wholly owned subsidiary of Riverside Borrower which is a limited liability company (and a disregarded entity for federal tax purposes) formed as of the date required by Section 5.23 of the Credit Agreement and solely for the purpose of owning the ownership interests of Borrower.

"Improvements" has the meaning given in the Mortgage.

"Inchoate Default" or "Default" means any occurrence, circumstance or event, or any combination thereof, which, with the lapse of time or the giving of notice or both, would constitute an Event of Default.

"Increased-Cost Lender" has the meaning given in Section 2.7.2(a) of the Credit Agreement.

"Indemnitee" has the meaning given in Section 9.11.2 of the Credit Agreement.

"Independent Consultants" means, collectively, the Insurance Consultant, the Power Market Consultant and the Independent Engineer.

"Independent Engineer" means R.W. Beck, Inc.

"Initial Operating Budget" has the meaning given in Section 3.1.20 of the Credit Agreement.

"Insurance Consultant" means Marsh USA, Inc.

"Insurance Proceeds" has the meaning given in Section 3.5.1 of the Depositary Agreement.

"Intercreditor Agreement" means that certain Intercreditor Agreement, dated as of the Closing Date, in substantially the form of Exhibit D-7 to the Credit Agreement, among Borrower, Riverside Borrower, Administrative Agent, Riverside Administrative Agent, Collateral Agent and Riverside Collateral Agent.

"Interest Payment Dates" means (a) October 29, 2004, (b) the last Banking Day of each January, April, July and October of each calendar year thereafter until the Maturity Date and (c) the Maturity Date.

"Interest Period" means, (a) with respect to any LIBOR Term Loan, the time period selected by Borrower or provided for pursuant to the Credit Agreement which commences on and includes the first day of such Term Loan, or the effective date of any conversion (as the case may be) and ends on and excludes the last day of such time period and (b) with respect to the Funded LC Credit-Linked Deposits, each period commencing on the Closing Date and ending on July 30, 2004 and, thereafter, commencing on the last day of the preceding Interest Period applicable thereto, as the case may be, and ending on the next following Interest Payment Date thereafter; provided, that (i) a single Interest Period shall at all times apply to all the Funded LC Credit-Linked Deposits, (ii) if any Interest Period would end on a day other than a Banking Day, such Interest Period shall be extended to the next succeeding Banking Day unless such next succeeding Banking Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Banking Day and (iii) any Interest Period that commences on the last Banking Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Banking Day of the last calendar month of such Interest Period.

"Interest Rate" means the Base Rate or the LIBO Rate, as the case may be.

"Interest Rate Agreements" means one or more interest rate swap agreements, caps, collars, or other master interest rate hedging mechanisms, in each case having a term that does not extend beyond the Maturity Date and otherwise in form and substance reasonably satisfactory to Administrative Agent.

"Interest Rate Determination Date" means, with respect to any Interest Period, two Banking Days prior to the first day of such Interest Period.

"Issuing Bank" means Union Bank of California, N.A., in its capacity as issuer of the PSCo Letter of Credit.

"Issuing Bank Fee Letter" means that certain letter agreement regarding fees, dated as of June 24, 2004, by and between Borrower and Issuing Bank.

"Lead Arranger" means Credit Suisse First Boston, acting through its Cayman Islands Branch, in its capacity as lead arranger under the Credit Agreement.

"Legal Requirements" means, as to any Person, the Governing Documents of such Person, any requirement under a Permit, and any Governmental Rule in each case applicable to or binding upon such Person or any of its properties or to which such Person or any of its property is subject.

"Lender" or "Lenders" means each financial institution listed on the signature pages hereto as a Lender, and any other Person that becomes a party hereto pursuant to an Assignment and Acceptance. For purposes of determining Obligations secured by the Collateral, each Hedge Lender shall be deemed a "Lender" party to the Credit Agreement and Credit Documents to the extent so specified in Section 5.20.3 of the Credit Agreement.

"Lending Office" means, with respect to any Lender, the office designated in writing as such to Administrative Agent and Borrower from time to time.

"LIBO Rate" means, with respect to any LIBOR Term Loan or the Funded LC Credit-Linked Deposits for any Interest Period, the rate per annum determined by Administrative Agent at approximately 11:00 a.m. (London time) on the Interest Rate Determination Date by reference to the British Bankers' Association Interest Settlement Rates for deposits in Dollars (as set forth by any service selected by Administrative Agent which has been nominated by the British Bankers' Association as an authorized information vendor for the purpose of displaying such rates) for a period equal to such Interest Period; provided that, to the extent that an interest rate is not ascertainable pursuant to the foregoing provisions of this definition, the "LIBO Rate" shall be the interest rate per annum determined by Administrative Agent to be the average of the rates per annum at which deposits in Dollars are offered for such Interest Period to major banks in the London interbank market in London, England by Administrative Agent at approximately 11:00 a.m. (London time) on the Interest Rate Determination Date. Each determination by Administrative Agent pursuant to this definition shall be conclusive in the absence of manifest error.

"LIBOR Term Loan" means a Term Loan accruing interest at the LIBO Rate.

"Lien" means, with respect to any property or asset, any mortgage, deed of trust, lien, pledge, charge, security interest, or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected or effective under applicable law, as well as the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such asset.

"Liquidation Costs" has the meaning given in Section 2.6 of the Credit Agreement.

"Loss Proceeds" has the meaning given in Section 3.5.1 of the Depositary Agreement.

"Loss Proceeds Account" has the meaning given in Section 1.1 of the Depositary Agreement.

"Major Casualty Event" has the meaning given in Section 3.5.2 of the Depositary Agreement.

"Major Maintenance" means labor, materials and other direct expenses for any overhaul of, or major maintenance procedure for, the Project which requires significant disassembly or shutdown of the Project, (a) in accordance with Prudent Utility Practices, (b) pursuant to manufacturers' requirements to avoid voiding any such manufacturer's warranty or (c) pursuant to any applicable Legal Requirement.

"Major Maintenance Reserve Account" has the meaning given in Section 1.1 of the Depositary Agreement.

"Major Maintenance Reserve Letter of Credit" has the meaning given in Section 1.1 of the Depositary Agreement.

"Major Maintenance Reserve Requirement" has the meaning given in Section 1.1 of the Depositary Agreement.

"Major Project Documents" means the Power Purchase Agreement, the PSCo Interconnection Agreement, the Water Lease and the O&M Agreement, any guaranty agreements (other than the Sponsor O&M Agreement Guaranty), related to the foregoing executed by Persons in favor of Borrower and, unless otherwise agreed by Administrative Agent prior to its execution and delivery, any Additional Project Documents.

"Major Project Participants" means, without duplication, Borrower, Operator, PSCo, the City of Aurora and any other Person which provides any guaranty agreement which is a Major Project Document, and any counterparty to any Additional Project Document which is a Major Project Document.

"Majority Lenders" means, at any time, Lenders having Proportionate Shares which in the aggregate exceed 50%.

"Mandatory Prepayment" has the meaning given in Section 2.1.10(c) of the Credit Agreement.

"Mandatory Repayment Date" has the meaning given in Section 2.1.10(d)(iii) of the Credit Agreement.

"Mandatory Repayment Offer" has the meaning given in Section 2.1.10(d) of the Credit Agreement.

"Material Adverse Effect" means (a) a material adverse change in the current or reasonably anticipated business, property, results of operation or financial condition of Borrower, (b) any event or occurrence of whatever nature which could reasonably be expected to materially and adversely affect Borrower or any other Major Project Participant's ability to perform its material obligations under the Credit Documents (taken as a whole) or Major Project Documents, as the case may be, and (c) any event or occurrence of whatever nature which could reasonably be expected to materially and adversely affect the value, validity or priority of the Secured Parties' security interests in the Collateral, taken as a whole.

"Maturity" or "maturity" means, with respect to any Term Loan, Funded LC Disbursement, Borrowing, interest, fee or other amount payable by Borrower under the Credit Agreement or the other Credit Documents, the date such Term Loan, Funded LC Disbursement, Borrowing, interest, fee or other amount becomes due, whether upon the stated maturity or due date, upon acceleration or otherwise.

"Maturity Date" means the earlier of (a) the seventh anniversary of the Closing Date and (b) the date on which the entire outstanding principal balance of the Term Loans or Funded LC Disbursements, together with all unpaid interest, fees, charges and costs, becomes due and payable under the Credit Agreement.

"Minimum Notice Period" means (a) at least three Banking Days before the Closing Date or any continuation or conversion of a Type of Term Loan resulting in whole or in part in one or more LIBOR Term Loans, and (b) at least one Banking Day before any conversion of a Type of Term Loan resulting in whole or in part in one or more Base Rate Term Loans.

"MMBtu" means one million British Thermal Units.

"Moody's" means Moody's Investors Service, Inc.

"Mortgage" means the Deed of Trust, Security Agreement and Fixture Filing, dated as of the Closing Date, in substantially the form of Exhibit D-1 to the Credit Agreement, by Borrower in favor of Collateral Agent (for the benefit of the Secured Parties).

"Mortgaged Property" has the meaning given in the Mortgage.

"Multiemployer Plan" means any ERISA Plan that is a "multiemployer plan" (as such term is defined in Section 3(37) of ERISA).

"Non-Consenting Lender" has the meaning given in Section 2.7.2(b) of the Credit Agreement.

"Nonrecourse Persons" has the meaning given in Article 8 of the Credit Agreement.

"Non-U.S. Lender" has the meaning given in Section 2.3.4(e) of the Credit Agreement.

"Notes" has the meaning given in Section 2.1.8 of the Credit Agreement.

"Notice of Borrowing and LC Activity" has the meaning given in Section 2.1.3(a) of the Credit Agreement.

"Notice of Conversion of Loan Type" has the meaning given in Section 2.1.9 of the Credit Agreement.

"O&M Account" has the meaning given in Section 1.1 of the Depositary Agreement.

"O&M Agreement" means the Operating and Maintenance Agreement, dated as of February 20, 2004, between Borrower and Operator.

"O&M Costs" means, for any period, cash amounts incurred and paid by Borrower for the operation and maintenance of the Project or any portion thereof (other than as funded from the Major Maintenance Reserve Account) and for the purchase of goods and services in connection therewith, including (a) premiums for insurance policies, (b) consumables (other than fuel supply and related fuel transportation costs), (c) costs of obtaining any other materials, supplies, utilities or services for the Project, (d) costs of maintaining, renewing and amending Permits, (e) franchise, licensing, property, real estate, sales and excise taxes, (f) general and administrative expenses, (g) employee salaries, wages and other employment-related costs, (h) business management and administrative service fees, (i) costs required to be paid by the Project under any Project Document or Credit Document (other than scheduled Debt Service) or to satisfy any Legal Requirement or obtain or maintain any Permit, (j) legal, accounting and consulting fees and other transaction costs and all other fees payable to the Lenders (other than amounts constituting scheduled Debt Service),

(k) necessary capital expenditures (other than capital expenditures made in connection with the repair or restoration of any casualty suffered by the Project to the extent funded with insurance or similar proceeds applied pursuant to Section 3.5 of the Depositary Agreement or infusions of equity), (l) all other fees and expenses necessary for the continued operation and maintenance of the Project and the conduct of the business of the Project, and (m) Emergency Operating Costs (except for Emergency Operating Costs in connection with the repair or restoration of any casualty suffered by the Project to the extent funded with insurance or similar proceeds applied pursuant to Section 3.5 of the Depositary Agreement or infusions of equity), but exclusive in all cases of non-cash charges, including depreciation or obsolescence charges or reserves therefor, amortization of intangibles or other bookkeeping entries of a similar nature, and also exclusive of all interest charges and charges for the payment or amortization of principal of indebtedness of Borrower. O&M Costs shall not include (i) costs of Major Maintenance to the extent paid with funds on deposit in the Major Maintenance Reserve Account, (ii) Subordinated Payments, (iii) depreciation, (iv) payments for restoration or repair of the Project from the Loss Proceeds Account in accordance with the terms of the Depositary Agreement or (v) amounts to be paid in respect of any federal or state income tax.

"Obligations" means and includes, with respect to any Person (and, if not specified and the context so requires, Borrower or any applicable Calpine Entity), all loans, advances, debts, liabilities, and obligations, howsoever arising, owed by such Person to Lead Arranger, Administrative Agent, Depositary Agent, Issuing Bank, Collateral Agent, the Hedge Lenders or the Lenders of every kind and description (whether or not evidenced by any note or

instrument and whether or not for the payment of money), direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, pursuant to the terms of the Credit Agreement or any of the other Credit Documents, including all interest, fees, charges, expenses, attorneys' fees and accountants fees chargeable to such Person and payable by such Person hereunder or thereunder.

"Offer Amount" has the meaning given in Section 2.1.10(d)(ii)(B) of the Credit Agreement.

"Offer Period" has the meaning given in Section 2.1.10(d)(i) of the Credit Agreement.

"Operating Cash Available for Debt Service" means, for any period, Project Revenues during such period minus (a) O&M Costs during such period and (b) deposits into the Major Maintenance Reserve Account during such period.

"Operative Documents" means, collectively, the Credit Documents and the Project Documents.

"Operator" means Calpine Operating Services Company, Inc., a Delaware corporation.

"Other Taxes" means any and all present and future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made under any of the Credit Documents other than the Interest Rate Agreements (including all Hedge Transactions thereunder) or from the execution, delivery or enforcement of, or otherwise with respect to, any of the Credit Documents other than the Interest Rate Agreements (including all Hedge Transactions thereunder).

"P&I Payment Account" has the meaning given in Section 1.1 of the Depositary Agreement.

"Participant" has the meaning given in Section 9.12.5 of the Credit Agreement.

"Parts" means any part, appliance, instrument, appurtenance, accessory or other property of any nature necessary or useful to the operation, maintenance, service or repair of the Project.

"Payout Amount" has the meaning given in Section 3.1.19(a)(iv) of the Credit Agreement.

"PBGC" means the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA.

"Permit" means any action, approval, consent, waiver, exemption, variance, franchise, order, permit, authorization, right or license of or from a Governmental Authority.

"Permitted Debt" means (a) Debt incurred under the Credit Documents, (b) Debt pursuant to the terms of a Project Document (but not for borrowed money), either not more than 90 days past due or being contested in good faith, (c) trade or other similar Debt incurred in the ordinary course of business (but not for borrowed money), either not more than 90 days past due or being contested in good faith, (d) contingent liabilities, to the extent otherwise constituting Debt, including those relating to (i) the acquisition of goods, supplies or merchandise in the normal course of business or normal trade credit, (ii) the endorsement of negotiable instruments received in the normal course of its business, and (iii) contingent liabilities incurred with respect to any Applicable Permit or Operative Document, (e) purchase money obligations incurred to finance the purchase price of discrete items of equipment not comprising an integral part of the Project that extend only to the equipment being financed in an aggregate amount of secured principal and capital lease obligations not exceeding \$3,000,000 at any one time outstanding, and (f) obligations in respect of surety bonds or similar instruments in an aggregate amount not exceeding \$3,000,000 at any one time outstanding.

"Permitted Investments" means (a) securities issued or directly and fully guaranteed or insured by the United States of America or any agency or instrumentality thereof (provided that the full faith and credit of the United States of America is pledged in support thereof) having a maturity not exceeding one year from the date of issuance, (b) interest-bearing deposit accounts, including time deposits and certificates of deposit, of any Lender or any domestic or foreign commercial bank whose outstanding long-term debt is rated at least A-1 or the equivalent thereof by S&P or at least P-1 or the equivalent thereof by Moody's having capital and surplus in excess of \$500,000,000 having a maturity not exceeding 90 days from the date of acquisition, (c) commercial paper issued by any domestic corporation rated at least A-1 or the equivalent thereof by S&P or at least P-1 or the equivalent thereof by Moody's and, in each case, having a maturity not exceeding 90 days from the date of acquisition, (d) fully secured repurchase obligations with a term of not more than seven days for underlying securities of the types described in clause (a) above entered into with any bank meeting the qualifications established in clause (b) above, (e) high-grade corporate bonds rated at least AA or the equivalent thereof by S&P or at least Aa2 or the equivalent thereof by Moody's having a maturity not exceeding 90 days from the date of acquisition, (f) banker's acceptances drawn on and accepted by any domestic or foreign commercial bank whose long-term senior unsecured debt is rated at least A or the equivalent thereof by S&P or at least A2 or the equivalent thereof by Moody's, (g) money market mutual funds whose investment criteria are substantially similar to items (a) through (f) of this definition, (h) instruments issued by an investment company rated at least A or the equivalent thereof by S&P or at least A2 or the equivalent thereof by Moody's having a portfolio consisting of 95% or more of the securities described in items (a) through (g) of this definition, and (i) investment contracts pursuant to which moneys are deposited (to bear interest at an agreed rate) with a bank, insurance company or other financial institution whose long-term senior unsecured debt is rated at least A or the equivalent thereof by S&P or at least A2 or the equivalent thereof by Moody's.

"Permitted Liens" means (a) the rights and interests of Collateral Agent and any other Secured Party as provided in the Credit Documents; (b) Liens for any tax, assessment or other governmental charge, either secured by a bond or other security reasonably acceptable to Administrative Agent or not yet due or being contested in good faith and by appropriate proceedings, so long as (i) such proceedings shall not involve any substantial danger of the sale,

forfeiture or loss of the Project, the Site or any Easements, as the case may be, title thereto or any interest therein and shall not interfere in any material respect with the use or disposition of the Project, the Site or any Easements, (ii) a bond or other security reasonably acceptable to Administrative Agent has been posted or provided in such manner and amount as to assure Administrative Agent that any taxes, assessments or other charges determined to be due will be promptly paid in full when such contest is determined, or (iii) adequate cash reserves have been provided therefor; (c) materialmen's, mechanics', workers', repairmen's, employees' or other like Liens, arising in the ordinary course of business, either for amounts not yet due or for amounts being contested in good faith and by appropriate proceedings, so long as (i) such proceedings shall not involve any substantial danger of the sale, forfeiture or loss of the Project, the Site or any Easements, as the case may be, title thereto or any interest therein and shall not interfere in any material respect with the use or disposition of the Project, the Site or any Easements, (ii) a bond or other security reasonably acceptable to Administrative Agent has been posted or provided in such manner and amount as to assure Administrative Agent that any amounts determined to be due will be promptly paid in full when such contest is determined, or (iii) adequate cash reserves have been provided therefor; (d) Liens arising out of judgments or awards so long as an appeal or proceeding for review is being prosecuted in good faith and for the payment of which adequate reserves, bonds or other security reasonably acceptable to Administrative Agent have been provided or are fully covered by insurance; (e) Title Exceptions; (f) Liens, deposits or pledges to secure statutory obligations or performance of bids, tenders, contracts (other than for the repayment of borrowed money) or leases, or for purposes of like general nature in the ordinary course of its business, not to exceed \$1,500,000 in the aggregate at any time, and with any such Lien to be released as promptly as practicable; (g) other Liens incident to the ordinary course of business that are not incurred in connection with the obtaining of any loan, advance or credit and that do not in the aggregate materially impair the use of the property or assets of Borrower or the value of such property or assets for the purposes of such business; (h) involuntary Liens as contemplated by the Operative Documents (including a lien of an attachment, judgment or execution) securing a charge or obligation, on any of Borrower's property, either real or personal, whether now or hereafter owned in the aggregate sum of less than \$1,500,000; (i) subject to the Intercreditor Agreement, the rights and interests of the Riverside Collateral Agent and the other Riverside Secured Parties in Riverside Borrower's ownership interests in Borrower; and (j) the rights and interests of PSCo as provided under the PSCo Subordinated Mortgage (as supplemented by the PSCo Acknowledgement of Subordination).

"Permitted Sponsor Transfer" means a transfer by the Sponsor of greater than 50% of its economic and voting interests in Borrower where (a) the electric energy generation business is the principal line of business of the applicable transferee; and (b) immediately after giving effect to the direct or indirect transfer by the Sponsor, the ratings given to the Term Loans and the Riverside Term Loans by S&P and Moody's shall be at least equal to the higher of (i) the ratings given to the Term Loans and the Riverside Term Loans by S&P and Moody's as of the Closing Date and (ii) the ratings given to the Term Loans and the Riverside Term Loans by S&P and Moody's immediately preceding such transfer by the Sponsor.

"Person" means any natural person, corporation, partnership, limited liability company, firm, association, Governmental Authority or any other entity whether acting in an individual, fiduciary or other capacity.

"Pledge Agreement" means, the Pledge and Security Agreement, dated as of the Closing Date, in substantially the form of Exhibit D-3 to the Credit Agreement, among the Borrower, Riverside Borrower and Collateral Agent.

"Pledgor" means Calpine Riverside Holdings, LLC, a Delaware limited liability company and, from and after any permitted disposition of Calpine Riverside Holdings, LLC's ownership interests in Riverside Borrower, the applicable transferee(s).

"Power Market Consultant" means Henwood Energy Services, Inc.

"Power Purchase Agreement" means the Power Purchase Agreement, dated as of March 9, 2001, between PSCo and Borrower, as amended by the First Amendment to Power Purchase Agreement, dated as of April 3, 2001, the Second Amendment to Power Purchase Agreement, dated as of January 22, 2003 and the Third Amendment to Power Purchase Agreement, dated as of November 20, 2003.

"Pre-Funded Punchlist Expense Account" has the meaning given in Section 1.1 of the Depositary Agreement.

"Principal Repayment Dates" means (a) with respect to the Term Loans, January 31, 2005, July 29, 2005 and the last Banking Day of each January and July of each calendar year thereafter until the Maturity Date, and (b) with respect to the Term Loans and Funded LC Disbursements, the Maturity Date.

"Project" means the approximately 601 MW natural gas fired combined cycle power generation plant located on the Site and the Easements.

"Project Documents" means, without duplication, the Major Project Documents, the Easements, the PSCo Subordinated Mortgage and any other agreement or document relating to the construction, leasing, ownership or operation of the Project to which Borrower is a party.

"Project Revenues" means, without duplication, all income and cash receipts of Borrower derived from the ownership or operation of the Project, including payments received by Borrower under the Power Purchase Agreement, the O&M Agreement and the other Project Documents (including damages, liquidated damages and any other payments, reimbursements or refunds received by Borrower under a Project Document), proceeds of any business interruption or liability insurance (to the extent such liability insurance proceeds represent reimbursement of third party claims previously paid by Borrower), income derived from the sale or use of electric capacity or energy transmitted or distributed or ancillary services produced by the Project, payments for remarketing of fuel or transportation rights relating thereto and investment income on amounts in the Accounts (solely to the extent deposited in the applicable Account) but excluding (a) net payments, if any, received by Borrower under Hedge Transactions, as determined in conformity with cash accounting principles, (b) any receipts derived from the sale of any property pertaining to the Project or incidental to the operation of the Project, as determined in conformity with cash accounting principles (other than sales of electricity, gas and related services or commodities), (c) proceeds of casualty insurance, (d) the proceeds of any condemnation awards relating to the Project, (e) proceeds from the Collateral Documents and (f) the proceeds of any Permitted Debt.

"Proportionate Share" means:

(a) in the context of voting in matters requiring the vote of all or a percentage of the Lenders, with respect to each Lender at any time, a percentage equal to the quotient of (i) the sum of (A) the percentage interest of such Lender in the Total Term Loan Commitment, as set forth on Exhibit H to the Credit Agreement (as updated to reflect any permitted assignments) multiplied by the Total Term Loan Commitment plus (B) the percentage interest of such Lender in the sum of (i) the Total Funded LC Credit-Linked Deposits, as set forth on Exhibit H to the Credit Agreement (as updated to reflect any permitted assignments) and (ii) any unreimbursed Funded LC Disbursements multiplied by the sum of the Total Funded LC Credit-Linked Deposits, as set forth on Exhibit H to the Credit Agreement (as updated to reflect any permitted assignments) and (iii) any unreimbursed Funded LC Disbursements plus (C) the percentage interest of such Lender in the Interest Rate Agreements, as set forth on Exhibit H to the Credit Agreement (as updated to reflect any permitted assignments) multiplied by the Hedge Breaking Fees actually payable (and not on a "marked to market" basis) at such time (determined upon the close of the applicable voting period) or, if no Hedge Breaking Fees are outstanding at such time, 5% of the aggregate notional amount of those Hedge Transactions which could result in Hedge Breaking Fees if they were terminated at such time, divided by (ii) the sum of (A) the Total Term Loan Commitment plus (B) the sum of (i) the Total Funded LC Credit-Linked Deposits, as set forth on Exhibit H to the Credit Agreement (as updated to reflect any permitted assignments) and (ii) any unreimbursed Funded LC Disbursements plus (C) the Hedge Breaking Fees actually payable (and not on a "marked to market" basis) at such time (determined upon the close of the applicable voting period) or, if no Hedge Breaking Fees are outstanding at such time, 5% of the aggregate notional amount of those Hedge Transactions which could result in Hedge Breaking Fees if they were terminated at such time;

(b) with respect to each Lender in the context of funding Term Loans on the Closing Date, the percentage participation of such Lender in the Total Term Loan Commitment as set forth on Exhibit H to the Credit Agreement and in the context of funding Funded LC Credit-Linked Deposits on the Closing Date, the percentage participation of such Lender in the Total Funded LC Credit-Linked Deposits as set forth on Exhibit H to the Credit Agreement (in each case, as updated to reflect any permitted assignments); and

(c) with respect to each Hedge Lender at any time, the percentage participation of such Hedge Lender in the credit exposure under the Hedge Transactions, as set forth on Exhibit H to the Credit Agreement (as updated to reflect any permitted assignments).

"Prudent Utility Practices" means those practices, methods, equipment, specifications and standards of safety and performance, as the same may change from time to time, as are commonly used by natural gas fired electric generation stations in the Western Systems Coordinating Council of a type and size similar to the Project as good, safe and prudent engineering practices in connection with the operation, maintenance, repair and use of electrical and other equipment, facilities and improvements of such electrical station, with commensurate standards of safety, performance, dependability, efficiency and economy. "Prudent Utility Practices" does not necessarily mean one particular practice, method, equipment specification or standard in all cases, but is instead intended to encompass a broad range of acceptable practices, methods, equipment specifications and standards.

"PSCo" means Public Service Company of Colorado, a Colorado corporation.

"PSCo Acknowledgment of Subordination" means the Acknowledgement of Subordination, dated as of a date on or prior to the Closing Date, in substantially the form of Exhibit D-11 to the Credit Agreement, by PSCo in favor of Collateral Agent and Borrower.

"PSCo Calpine Guaranty" has the meaning given in Section 1.1 of the Depositary Agreement.

"PSCo Interconnection Agreement" means the Agreement for Interconnection Services, dated as of May 11, 2001, between the Borrower and PSCo.

"PSCo Letter of Credit" means that certain letter of credit, in substantially the form of Exhibit N to the Credit Agreement, issued to PSCo by Issuing Bank on the Closing Date pursuant to Section 2.8.2(a) of the Credit Agreement.

"PSCo Security Fund" has the meaning given in the Power Purchase Agreement.

"PSCo Security Reserve Account" has the meaning given in Section 1.1 of the Depositary Agreement.

"PSCo Security Reserve Requirement" has the meaning given in Section 1.1 of the Depositary Agreement.

"PSCo Subordinated Mortgage" means the Subordinated Mortgage, Security Agreement and Financing Statement dated February 14, 2003 by Borrower in favor of PSCo, as supplemented by the PSCo Acknowledgement of Subordination.

"PUHCA" means the Public Utility Holding Company Act of 1935, as amended.

"Punchlist Items" means those items under the Project's construction, engineering and equipment procurement contracts which have not been completed as of the Closing Date.

"Qualified Letter of Credit" means one or more unconditional, irrevocable letters of credit on terms and conditions, and in form and substance, reasonably satisfactory to Administrative Agent and shall (a) name Administrative Agent on behalf of the Secured Parties as the beneficiary thereof, (b) have an aggregate amount available to be drawn at all times greater than or equal to the amount being secured by such letter of credit, (c) be issued from a bank, banks, trust company or trust companies not a party to the Credit Agreement (and otherwise reasonably acceptable to Administrative Agent) which bank, banks, trust company or trust companies shall have a combined capital and surplus of at least \$1,000,000,000 and whose long-term senior unsecured indebtedness is rated at least A by S&P and A2 by Moody's, (d) not be secured by any of the Collateral, and (e) not impose on Borrower any obligation to reimburse drawing payments thereunder; provided that such letter of credit shall provide that it shall (i) automatically renew upon the expiration thereof unless, at least 60 days prior to such expiration, the issuer thereof shall provide Administrative Agent with a notice of non-renewal of such letter of credit, (ii) have an initial expiration date of at least one year after issuance, and

(iii) have a stated amount equal from time to time to (or, to the extent of cash deposited, less than) amounts required to be issued as set forth in the Credit Documents.

"Register" has the meaning given in Section 9.12.3 of the Credit Agreement.

"Regulation D" means Regulation D of the Board of Governors of the Federal Reserve System (or any successor).

"Regulatory Change" means any change after the Closing Date in federal, state, local or foreign laws, regulations, Legal Requirements or requirements under Applicable Permits, or the adoption or making after such date of any interpretations, directives or requests of or under any federal, state, local or foreign laws, regulations, Legal Requirements or requirements under Applicable Permits (whether or not having the force of law) by any Governmental Authority charged with the interpretation or administration thereof.

"Related Fund" means, with respect to any Lender that is an investment fund, any other investment fund that invests in commercial loans similar to the Term Loans and that is managed or advised by the same investment advisor as such Lender or by an Affiliate of such investment advisor.

"Related Parties" means, with respect to any specified Person, such Person's Affiliates and the respective directors, trustees, officers, employees, agents and advisors of such Person and such Person's Affiliates.

"Release" means disposing, discharging, injecting, spilling, leaking, leaching, dumping, pumping, pouring, emitting, escaping, emptying, seeping, placing or the like, into or upon any land or water or air, or otherwise entering into the environment.

"Repayment Period" means the sixth month period commencing on a Principal Repayment Date and ending on the next Principal Repayment Date.

"Replacement Lender" has the meaning given in Section 2.7.2(c) of the Credit Agreement.

"Replacement Obligor" means either (a) a Person (including any guarantor of such Person's obligations) (i) having, on the date of such replacement, credit, or acceptable credit support, and experience equal to or greater than that of the party to the Major Project Document (including any guaranty thereof) being replaced and (ii) entering into a contract with Borrower with economic terms no less favorable to Borrower than those in the Major Project Document (including any guaranty thereof) being replaced and other terms and conditions no less favorable to Borrower in any material respect than those in the Major Project Document (including any guaranty thereof) being replaced (provided that if such Replacement Obligor is for an Affiliate of Borrower, such replacement Major Project Document may be on market terms rather than on terms and conditions no less favorable to Borrower and a replacement O&M Agreement need not provide that the fee payable thereunder be subordinated) or (b) a Person acceptable to (i) if the affected Major Project Document is the Tolling Agreement or the Power Purchase Agreement, the Supermajority Lenders or (ii) if the affected Major Project Document is any other Major Project Document, the Majority Lenders, in either case which Person enters into

a contract with Borrower on terms and conditions acceptable to the Supermajority Lenders or the Majority Lenders (as the case may be) (which acceptance shall not be unreasonably withheld in the case of the replacement of a Major Project Participant that is an Affiliate of Borrower); provided that in each case, such Person enters into a Consent, in substantially the form of Exhibit E-1 to the Credit Agreement, on the date such replacement contract is entered into.

"Reportable Event" means any of the events set forth in Section 4043(b) or (c) of ERISA for which notice to the PBGC has not been waived.

"Required HoldCo Transfer" means any transfer to HoldCo (including by way of equity contribution) of Riverside Borrower's ownership interests in Borrower; provided that (a) Riverside Borrower shall have granted to Collateral Agent, for the benefit of the Secured Parties, a first priority Lien on its ownership interests in HoldCo (to the same extent provided by Riverside Borrower in the Pledge Agreement entered into on the Closing Date), (b) Riverside Borrower shall have granted to Collateral Agent, for the benefit of the Riverside Secured Parties, a second priority Lien on its ownership interests in HoldCo, (c) the pledge agreement pursuant to which such Liens will be created shall (i) provide that HoldCo is a special purpose vehicle established solely to own the ownership interests of Borrower, and (ii) include covenants customary for such a special purpose vehicle (including, negative covenants prohibiting HoldCo from incurring any indebtedness, any obligations and the granting by HoldCo of any Liens (other than those expressly contemplated hereby), (d) Collateral Agent, on behalf of the Secured Parties, shall take such actions as are necessary (and is hereby authorized by the Lenders) to release the Secured Parties interests in and to the Riverside Borrower's ownership interests in Borrower and to enter into an amendment and restatement or other replacement of the Pledge Agreement to effectuate the foregoing, and (e) Administrative Agent shall have received documentation and evidence (reasonably satisfactory to Administrative Agent) that the conditions set forth in Sections 3.1.1 through 3.1.5 of the Credit Agreement have been satisfied in respect of HoldCo, together with legal opinions of counsel to the Calpine Entities (including, as applicable for purposes of this definition, HoldCo) involved in such transfer, which opinions shall cover or confirm, with respect to such transfer, (i) the due formation or incorporation, as applicable, of each such Calpine Entities, (ii) the due authorization and enforceability of each Operative Document to which any such Calpine Entities is a party as of the date of such transfer, (iii) permitting, and federal and state energy regulatory matters, (iv) the continued validity, perfection and priority of the Liens under the Collateral Documents (including any new Liens granted in connection with any such transfer), (v) Investment Company Act of 1940 matters, (vi) no violations of law and no conflicts with certain agreements, court orders and Governing Documents, (vii) receipt of all necessary consents and governmental approvals and (viii) such other matters as Administrative Agent may reasonably request.

"Reserve Requirement" means, for LIBOR Term Loans, the maximum rate (expressed as a percentage) at which reserves (including any marginal, supplemental or emergency reserves) are required to be maintained during the Interest Period therefor under Regulation D by member banks of the Federal Reserve System in New York City with deposits exceeding \$1,000,000,000 against "Eurocurrency liabilities" (as such term is used in Regulation D). Without limiting the effect of the foregoing, the Reserve Requirement shall reflect any other reserves required to be maintained by such member banks by reason of any Regulatory Change against (a) any category of liabilities which includes deposits by reference to

which the LIBO Rate or LIBOR Term Loans is to be determined, (b) any category of liabilities or extensions of credit or other assets which include LIBOR Term Loans or (c) any category of liabilities or extensions of credit which are considered irrevocable commitments to lend.

"Responsible Officer" means, as to any Person, its president, chief executive officer, any vice president, treasurer, or secretary or any natural Person who is a managing general partner or manager or managing member of a limited liability company (or any of the preceding with regard to any such managing general partner, manager or managing member).

"Restricted Payment Conditions" has the meaning given in Section 6.6 of the Credit Agreement.

"Revenue Account" has the meaning given in Section 1.1 of the Depositary Agreement.

"Rights of Way" has the meaning given in Section 3.1.25 of the Credit Agreement.

"Riverside Accounts" has the meaning given to the term "Accounts" in Exhibit A to the Riverside Credit Agreement.

"Riverside Administrative Agent" has the meaning given to the term "Administrative Agent" in Exhibit A to the Riverside Credit Agreement.

"Riverside Applicable Permits" has the meaning given to the term "Applicable Permits" in Exhibit A to the Riverside Credit Agreement.

"Riverside Borrower" means Riverside Energy Center, LLC, a Wisconsin limited liability company.

"Riverside Closing Date Distribution" has the meaning given in Section 2.1.5 of the Riverside Credit Agreement.

"Riverside Collateral Agent" has the meaning given to the term "Collateral Agent" in Exhibit A to the Riverside Credit Agreement.

"Riverside Collateral Documents" has the meaning given to the term "Collateral Documents" in Exhibit A to the Riverside Credit Agreement.

"Riverside Credit Agreement" means that certain Credit Agreement, dated as of June 24, 2004, by and among Riverside Borrower, Riverside Administrative Agent, Riverside Collateral Agent, the Riverside Lenders and the other agents and arrangers party thereto.

"Riverside Credit Documents" has the meaning given to the term "Credit Documents" in Exhibit A to the Riverside Credit Agreement.

"Riverside Depositary Agreement" has the meaning given to the term "Depositary Agreement" in Exhibit A to the Riverside Credit Agreement.

"Riverside Hedge Lenders" has the meaning given to the term "Hedge Lenders" in Exhibit A to the Riverside Credit Agreement.

"Riverside Hedge Breaking Fees" has the meaning given to the term "Hedge Breaking Fees" in Exhibit A to the Riverside Credit Agreement.

"Riverside Hedge Transactions" has the meaning given to the term "Hedge Transactions" in Exhibit A to the Riverside Credit Agreement.

"Riverside Interest Rate Agreements" has the meaning given to the term "Interest Rate Agreements" in Exhibit A to the Riverside Credit Agreement.

"Riverside Lead Arranger" has the meaning given to the term "Lead Arranger" in Exhibit A to the Riverside Credit Agreement.

"Riverside Lenders" has the meaning given to the term "Lenders" in Exhibit A to the Riverside Credit Agreement.

"Riverside Major Project Document" has the meaning given to the term "Major Project Document" in Exhibit A to the Riverside Credit Agreement.

"Riverside Obligations" means the "Obligations" of Riverside Borrower under the Riverside Credit Documents.

"Riverside Operating Cash Available for Debt Service" has the meaning given to the term "Operating Cash Available for Debt Service" in Exhibit A to the Riverside Credit Agreement.

"Riverside Operative Documents" has the meaning given to the term "Operative Documents" in Exhibit A to the Riverside Credit Agreement.

"Riverside Power Purchase Agreement" has the meaning given to the term "Power Purchase Agreement" in Exhibit A to the Riverside Credit Agreement.

"Riverside Project Revenues" has the meaning given to the term "Project Revenues" in Exhibit A to the Riverside Credit Agreement.

"Riverside Revenue Account" has the meaning given to the term "Revenue Account" in Exhibit A to the Riverside Credit Agreement.

"Riverside Secured Parties" has the meaning given to the term "Secured Parties" in Exhibit A to the Riverside Credit Agreement.

"Riverside Term Loans" has the meaning given to the term "Term Loans" in Exhibit A to the Riverside Credit Agreement.

"Riverside Total Term Loan Commitment" has the meaning given to the term "Total Term Loan Commitment" in Exhibit A to the Riverside Credit Agreement.

"Riverside Waterfall Level" has the meaning given to the term "Waterfall Level" in Exhibit A to the Riverside Credit Agreement.

"Rocky Mountain Closing Date Distribution" has the meaning given in Section 2.1.5 of the Credit Agreement.

"S&P" means Standard & Poor's Corporation and its successors and assigns.

"Satisfaction Date" means the date on which all Obligations of Borrower (other than such Obligations which, by their terms, survive the termination of the Credit Agreement) to the Secured Parties shall have been paid in full in cash, each of the Interest Rate Agreements to which any Secured Party is a party shall have terminated and all obligations of the Secured Parties under the Credit Documents have terminated (other than such obligations which, by their terms, survive the termination of the Credit Documents).

"Secured Obligations" has the meaning given in the Mortgage.

"Secured Parties" means Administrative Agent, the Lead Arranger, the Collateral Agent, Issuing Bank, the Depositary Agent, Syndication Agent, any Lender (or Affiliate of any Lender) which is a counterparty to an Interest Rate Agreement entered into by Borrower in accordance with the Credit Agreement, each Lender and each of their respective successors, transferees and assigns; provided, that no Affiliate of Sponsor shall be a "Secured Party" hereunder or under any other Credit Document.

"Security Agreement" means the Security Agreement, dated as of the Closing Date, in substantially the form of Exhibit D-2 to the Credit Agreement, between Borrower and Collateral Agent.

"Site" has the meaning given in the Mortgage.

"Solvent" means (a) the present fair saleable value of the assets of Borrower exceeds the amount required to pay the probable liability on its existing debts, respectively (whether matured or unmatured, liquidated or unliquidated, absolute, fixed or contingent), as they become absolute and matured, and as a result of the consummation of the transactions contemplated herein and in the Bank Book, will continue to exceed such amount; (b) Borrower does not, and, as a result of the consummation of the transactions contemplated in the Credit Agreement, the other Credit Documents and the Bank Book, will not, have unreasonably small capital for it to carry on its business as proposed to be conducted; and (c) Borrower is not incurring obligations or making transfers under any evidence of indebtedness (including indebtedness under the Credit Agreement) with the intent to hinder, delay or defraud any entity to which it is or will become indebted.

"SPC" has the meaning given in Section 9.12.8 of the Credit Agreement.

"Sponsor" means Calpine Corporation, a Delaware corporation.

"Sponsor O&M Agreement Guaranty" means that certain Sponsor O&M Agreement Guaranty, dated as of the Closing Date, by the Sponsor for the benefit of Borrower.

"Subordinated Payments" means any fees, bonuses, profits and any other amounts which are not in the nature of reimbursable costs or expenses, payable by Borrower to any Affiliate under any Project Document and which are subject to the Subordination Agreement applicable to such Project Document.

"Subordination Agreement" means a subordination agreement substantially in the form of Exhibit D-5 to the Credit Agreement.

"Subsidiary" means, as to any Person, a corporation, partnership, limited liability company or other entity of which such Person: (a) owns 10% or more of the shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, partnership or other entity and/or (b) controls the management, directly or indirectly through one or more intermediaries. Unless otherwise qualified, all references to a "Subsidiary" or to "Subsidiaries" in this Agreement shall refer to a Subsidiary or Subsidiaries of a Person.

"Supermajority Lenders" means, at any time, Lenders having Proportionate Shares which in the aggregate exceed 66.67%.

"Syndication Agent" means CoBank, ACB, in its capacity as syndication agent under the Credit Agreement.

"Tax" means any present or future tax, levy, impost, charge, deduction or withholding of any nature and whatever called, by whomsoever, on whomsoever and wherever imposed, levied, collected, withheld or assessed by a taxing authority other than a "Tax on the overall net income" of any Person. A "Tax on the overall net income" of a Person shall be construed as a reference to a tax (including U.S. backup withholding taxes and branch profit taxes) imposed by the jurisdiction in which that Person is organized or in which that Person's applicable principal office (and/or, in the case of a Lender, its Lending Office) is located or in which that Person (and/or, in the case of a Lender, its Lending Office) is deemed to be doing business on all or part of the net income, profits, capital or gains (whether worldwide, or only insofar as such income, profits, capital or gains are considered to arise in or to relate to a particular jurisdiction, or otherwise) of that Person (and/or, in the case of a Lender, its applicable Lending Office).

"Term" means the entire period that any Term Loans shall be outstanding.

"Term Loan" has the meaning given in Section 2.1.2 of the Credit Agreement.

"Term Loan Commitment" means, at any time with respect to each Lender, such Bank's Proportionate Share of the Total Term Loan Commitment at such time.

"Terminated Lender" has the meaning given in Section 2.7.2(c) of the Credit Agreement.

"Termination Date" means the date on which both (a) all Obligations of Borrower (other than such Obligations which, by their terms, survive the termination of the Credit

Agreement) to the Secured Parties shall have been paid in full in cash, each of the Interest Rate Agreements to which any Secured Party is a party shall have terminated and all obligations of the Secured Parties under the Credit Documents have terminated (other than such obligations which, by their terms, survive the termination of the Credit Documents), and (b) all Riverside Obligations (other than such Riverside Obligations which, by their terms, survive the termination of the Riverside Credit Agreement) to the Riverside Secured Parties shall have been paid in full in cash, each of the Riverside Interest Rate Agreements to which any Riverside Secured Party is a party shall have terminated and all obligations of the Riverside Secured Parties under the Riverside Credit Documents have terminated (other than such obligations which, by their terms, survive the termination of the Riverside Credit Documents).

"Title Exception" means those exceptions to coverage listed on Schedule B of the Title Policy, other than the standard printed exceptions contained therein.

"Title Insurer" means Stewart Title Guaranty Company.

"Title Policy" means that certain policy of the title insurance issued by the Title Insurer dated as of the Closing Date, as provided in Section 3.1.24 of the Credit Agreement, including all amendments thereto, endorsements thereof and substitutions or replacements therefor.

"Total Funded LC Credit-Linked Deposits" means, at any time, the sum of all the Lenders' Funded LC Credit-Linked Deposits, as the same may be reduced from time to time pursuant to the Credit Agreement.

"Total Term Loan Commitment" has the meaning given in Section 2.1.1 of the Credit Agreement.

"Type" means the type of Term Loan, whether a Base Rate Term Loan or LIBOR Term Loan.

"UCC" means the Uniform Commercial Code as the same may, from time to

time, be in effect in the State of New York; provided, however, in the event that, by reason of mandatory provisions of law, any or all of the perfection or priority of the security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York the term "UCC" shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof and of the other Credit Documents relating to such perfection or priority and for purposes of definitions related to such provisions.

"Unsatisfied Condition" means a condition in a Permit that has not been satisfied and that either (a) must be satisfied before such Permit can be come effective, (b) must be satisfied as of the date on which a representation is made or a condition precedent must be satisfied under the Credit Agreement, or (c) must be satisfied as of a future date but with respect to which facts or circumstances exist which, to Borrower's knowledge, could reasonably be expected to result in a failure to satisfy such Permit condition.

"Variable O&M Costs" means those O&M Costs described in the line-items of the Base Case Project Projections entitled "Reverse Osmosis - Water Treatment",

"Demineralizer/EDI/Polishing - Water Treatment", "Boiler/Steam Chemicals - Water Treatment", "Cooling Tower - Water Treatment", "Gas Turbine Gasses/Chemicals", "Waste Water Disposal", "Ammonia (SCR)" and "Electricity Usage Cost".

"Water Lease" means the Agreement for Lease of Reclaimed Wastewater, dated April 23, 2001 between the City of Aurora and Borrower, as successor to Sponsor, and as amended by the First Amendment to Agreement for Lease of Reclaimed Wastewater, dated October 28, 2002.

"Waterfall Level" has the meaning given in Section 1.1 of the Depositary Agreement.

## RULES OF INTERPRETATION

1. The singular includes the plural and the plural includes the singular.
2. "or" is not exclusive.
3. A reference to a Governmental Rule includes any amendment or modification to such Governmental Rule, and all regulations, rulings and other Governmental Rules promulgated under such Governmental Rule.
4. A reference to a Person includes its permitted successors, permitted replacements and permitted assigns.
5. Accounting terms have the meanings assigned to them by GAAP, as applied by the accounting entity to which they refer.
6. The words "include", "includes" and "including" are not limiting.
7. A reference in a document to an Article, Section, Exhibit, Schedule, Annex or Appendix is to the Article, Section, Exhibit, Schedule, Annex or Appendix of such document unless otherwise indicated. Exhibits, Schedules, Annexes or Appendices to any document shall be deemed incorporated by reference in such document. In the event of any conflict between the provisions of the Credit Agreement (exclusive of the Exhibits, Schedules, Annexes and Appendices thereto) and any Exhibit, Schedule, Annex or Appendix thereto, the provisions of the Credit Agreement shall control.
8. References to any document, instrument or agreement (a) shall include all exhibits, schedules and other attachments thereto, (b) shall include all documents, instruments or agreements issued or executed in replacement thereof, and (c) shall mean such document, instrument or agreement, or replacement or predecessor thereto, as amended, amended and restated, modified and supplemented from time to time and in effect at any given time.
9. The words "hereof", "herein" and "hereunder" and words of similar import when used in any document shall refer to such document as a whole and not to any particular provision of such document.
10. References to "days" shall mean calendar days, unless the term "Banking Days" shall be used. References to a time of day shall mean such time in New York, New York, unless otherwise specified.
11. If, at any time after the Closing Date, Moody's or S&P shall change its respective system of classifications, then any Moody's or S&P "rating" referred to herein shall be considered to be at or above a specified level if it is at or above the new rating which most closely corresponds to the specified level under the old rating system.
12. The Credit Documents are the result of negotiations between, and have been reviewed by Borrower, each Affiliate of Borrower party thereto, Administrative Agent, the Lead Arranger, Issuing Bank, each Lender and their respective counsel. Accordingly, the Credit

Documents shall be deemed to be the product of all parties thereto, and no ambiguity shall be construed in favor of or against Borrower, any Affiliate of Borrower party thereto, Administrative Agent, Issuing Bank or any Lender solely as a result of any such party having drafted or proposed the ambiguous provision.

**EXHIBIT 10.1.11**

**EXECUTION VERSION**

---

**CREDIT AGREEMENT**

dated as of February 25, 2005

among

**CALPINE STEAMBOAT HOLDINGS, LLC**  
(Borrower)

**COBANK, ACB**  
(Lead Arranger, Co-Syndication Agent, Underwriter and Co-Book Runner)

**CALYON NEW YORK BRANCH**  
(Lead Arranger, Underwriter, Collateral Agent, Administrative Agent, LC Issuer and Co-Book Runner)

**UFJ BANK LIMITED**  
(Lead Arranger, Co-Documentation Agent and Underwriter)

**HSH NORDBANK AG**  
(Lead Arranger, Co-Documentation Agent and Underwriter)

**BAYERISCHE HYPO- UND VEREINSBANK AG, NEW YORK BRANCH**  
(Lead Arranger, Co-Syndication Agent and Underwriter)

and

**THE FINANCIAL INSTITUTIONS PARTIES HERETO**  
(Lenders)

---

Freeport Energy Center 250 MW Cogeneration Facility Freeport, Texas

Mankato Energy Center 375 MW Combined Cycle Electricity Generation Facility Blue Earth County, Minnesota

---

# TABLE OF CONTENTS

	PAGE ----
ARTICLE 1 DEFINITIONS.....	2
1.1    Definitions.....	2
1.2    Rules of Interpretation.....	2
ARTICLE 2 THE CREDIT FACILITIES.....	2
2.1    Loan Facilities.....	2
2.2    Security Fund LC Facility.....	12
2.3    Total Commitments.....	14
2.4    Fees.....	15
2.5    Security Fund LC Fees.....	15
2.6    Other Payment Terms.....	16
2.7    Pro Rata Treatment.....	20
2.8    Change of Circumstances.....	20
2.9    Funding Losses.....	23
2.10   Alternate Office; Minimization of Costs.....	23
ARTICLE 3 CONDITIONS PRECEDENT.....	24
3.1    Conditions Precedent to the Closing Date.....	24
3.2    Conditions Precedent to Each Credit Event.....	33
3.3    Conditions Precedent to Term-Conversion.....	37
3.4    Conditions Precedent to Use of Proceeds Outside of Initial Allocated Portions.....	39
3.5    No Approval of Work.....	40
3.6    Adjustment of Drawdown Requests.....	40
ARTICLE 4 REPRESENTATIONS AND WARRANTIES.....	40
4.1    Organization.....	40
4.2    Authorization; No Conflict.....	42
4.3    Enforceability.....	43
4.4    Compliance with Law.....	44
4.5    Business, Debt, Contracts, Joint Ventures Etc.....	45
4.6    Adverse Change.....	46
4.7    Investment Company Act.....	46
4.8    ERISA.....	47
4.9    Permits.....	47
4.10   Hazardous Substances.....	48
4.11   Litigation.....	49
4.12   Labor Disputes and Acts of God.....	50
4.13   Project Documents.....	50

4.14	Disclosure.....	50
4.15	Private Offering by Borrower.....	51
4.16	Taxes.....	51
4.17	Governmental Regulation.....	51
4.18	Regulation U, Etc.....	52
4.19	Budgets; Projections.....	52
4.20	Financial Statements.....	53
4.21	No Default.....	53
4.22	Organizational ID Number; Location of Collateral.....	53
4.23	Title and Liens.....	53
4.24	Intellectual Property.....	54
4.25	Collateral.....	54
4.26	Sufficiency of Project Documents.....	55
4.27	Utilities.....	56
4.28	Other Facilities.....	56
4.29	Proper Subdivision.....	56
4.30	Flood Zone Disclosure.....	56
4.31	Tax Shelter Regulations.....	56
ARTICLE 5 AFFIRMATIVE COVENANTS.....		57
5.1	Use of Proceeds, Equity Contributions and Project Revenues.....	57
5.2	Payment.....	58
5.3	Warranty of Title.....	58
5.4	Notices.....	58
5.5	Financial Statements.....	61
5.6	Books, Records, Access.....	62
5.7	Compliance with Laws, Instruments, Applicable Permits, Etc.....	63
5.8	Reports.....	63
5.9	Existence, Conduct of Business, Properties, Etc.....	64
5.10	Debt Service Coverage Ratio; Debt to Equity Ratio.....	64
5.11	Indemnification.....	65
5.12	Exemption from Regulation.....	68
5.13	Construction of the Projects.....	68
5.14	Operation and Maintenance of Projects; Annual Operating Budget.....	69
5.15	Preservation of Rights; Further Assurances.....	70
5.16	Additional Consents.....	72
5.17	Drawstop Funds.....	72
5.18	Maintenance of Insurance.....	72
5.19	Taxes, Other Government Charges and Utility Charges.....	72
5.20	Event of Eminent Domain.....	73
5.21	Interest Rate Protection.....	73
5.22	Additional Permits.....	74
5.23	Special Purpose Entity.....	74

5.24	The Patriot Act.....	75
5.25	Certain Rights Under Dow Agreements.....	75
5.26	Project Representative.....	75
5.27	Alternate Waterline Easements.....	75
ARTICLE 6 NEGATIVE COVENANTS.....		76
6.1	Contingent Liabilities.....	76
6.2	Limitations on Liens.....	76
6.3	Indebtedness.....	76
6.4	Sale or Lease of Assets.....	76
6.5	Changes.....	77
6.6	Distributions.....	77
6.7	Investments.....	80
6.8	Transactions With Affiliates; Subordination Agreements.....	80
6.9	Regulations.....	80
6.10	Partnerships, etc.....	80
6.11	Dissolution; Merger.....	80
6.12	Amendments; Change Orders; Completion.....	81
6.13	Name and Location; Fiscal Year.....	84
6.14	Use of Sites.....	84
6.15	Assignment.....	84
6.16	Accounts.....	84
6.17	Hazardous Substances.....	84
6.18	Additional Project Documents.....	84
6.19	Project Budget Amendments.....	85
6.20	Assignment By Third Parties.....	85
6.21	Acquisition of Real Property.....	85
6.22	Employee Benefit Plans.....	86
6.23	No Merchant Sales.....	86
6.24	Flow of Funds.....	86
6.25	Tax Election.....	86
6.26	Tax Sharing Agreements.....	86
ARTICLE 7 EVENTS OF DEFAULT; REMEDIES.....		87
7.1	Events of Default.....	87
7.2	Remedies.....	95
ARTICLE 8 SCOPE OF LIABILITY.....		97
ARTICLE 9 AGENTS; SUBSTITUTION.....		98
9.1	Appointment, Powers and Immunities.....	98
9.2	Reliance.....	100

9.3	Non-Reliance.....	100
9.4	Defaults; Material Adverse Change.....	100
9.5	Indemnification.....	101
9.6	Successor Agent.....	101
9.7	Authorization.....	102
9.8	Other Roles.....	103
9.9	Amendments; Waivers.....	103
9.10	Withholding Tax.....	104
9.11	General Provisions as to Payments.....	104
9.12	Substitution of Lender.....	105
9.13	Participation.....	105
9.14	Transfer of Commitment.....	106
9.15	Laws.....	107
9.16	Assignability as Collateral.....	107
9.17	Notices to Lenders.....	108
9.18	Collateral Agent.....	108
ARTICLE 10 INDEPENDENT CONSULTANTS.....		108
10.1	Removal and Fees.....	108
10.2	Duties.....	109
10.3	Independent Consultants' Certificates.....	109
10.4	Certification of Dates.....	110
ARTICLE 11 MISCELLANEOUS.....		110
11.1	Addresses.....	110
11.2	Additional Security; Right to Set-Off.....	111
11.3	Delay and Waiver.....	112
11.4	Costs, Expenses and Attorneys' Fees; Syndication.....	112
11.5	Entire Agreement.....	113
11.6	Governing Law.....	113
11.7	Severability.....	113
11.8	Headings.....	113
11.9	Accounting Terms.....	114
11.10	Additional Financing.....	114
11.11	No Partnership, Etc.....	114
11.12	Deed of Trust/Collateral Documents.....	114
11.13	Limitation on Liability.....	114
11.14	Waiver of Jury Trial.....	115
11.15	Consent to Jurisdiction.....	115
11.16	Knowledge and Attribution.....	116
11.17	Successors and Assigns.....	116
11.18	Counterparts.....	116
11.19	Usury.....	116

11.20	Survival.....	116
11.21	Patriot Act Notice.....	117
11.22	Treatment of Certain Information; Confidentiality.....	117
11.23	Release of Project.....	118
11.24	Project Expansion.....	119

## INDEX OF EXHIBITS

Exhibit A	Definitions and Rules of Interpretation
	NOTES
Exhibit B-1	Form of Construction Note
Exhibit B-2	Form of Term Note
Exhibit B-3	Form of FEC Note
Exhibit B-4	Form of MEC Note
Exhibit B-5	Form of Security Fund Letter of Credit
Exhibit B-6	Form of Security Fund LC Loan Note
	LOAN DISBURSEMENT PROCEDURES
Exhibit C-1	Form of Notice of Construction Loan Borrowing
Exhibit C-2	Form of Notice of Term-Conversion
Exhibit C-3	Form of Confirmation of Interest Period Selection
Exhibit C-4	Form of Notice of Conversion of Loan Type
Exhibit C-5	Form of Drawdown Certificate
Exhibit C-6(a)	Form of Independent Engineer's Drawdown Certificate (Mankato)
Exhibit C-6(b)	Form of Independent Engineer's Drawdown Certificate (Freeport)
Exhibit C-7	Form of Notice of Security Fund LC Loan
	CREDIT AND SECURITY-RELATED DOCUMENTS
Exhibit D-1	Form of FEC Deed of Trust
Exhibit D-2	Form of MEC Mortgage
Exhibit D-3	Form of Security Agreement
Exhibit D-4	Form of Borrower Depositary Agreement
Exhibit D-5	Form of FEC Depositary Agreement
Exhibit D-6	Form of MEC Depositary Agreement
Exhibit D-7	Form of Subordination Agreement
Exhibit D-8	Form of NSP Acknowledgment of Subordination
Exhibit D-9	Schedule of Security Filings
Exhibit D-10	Form of Group Pledge and Security Agreement
Exhibit D-11	Intentionally Deleted
Exhibit D-12	Form of Interest Rate Agreement
Exhibit D-13	Form of FEC Guaranty
Exhibit D-14	Form of MEC Secured Guaranty
Exhibit D-15	Form of MEC Security Agreement
Exhibit D-16	Form of FEC Security Agreement
Exhibit D-17	Form of FEC-GP Guaranty
Exhibit D-18	Form of FEC-LP Guaranty
Exhibit D-19	Form of MEC Unsecured Guaranty

## CONSENTS

Exhibit E-1	Form of Consent for Contracting Party
CLOSING CERTIFICATES	
Exhibit F-1	Form of Borrower's Closing Certificate
Exhibit F-2	Form of FEC's Closing Certificate
Exhibit F-3	Form of MEC's Closing Certificate
Exhibit F-4	Intentionally Deleted
Exhibit F-5	Form of Insurance Consultant's Certificate
Exhibit F-6	Form of Independent Engineer's Certificate
Exhibit F-7	Form of Power Market Consultant's Certificate
PROJECT DESCRIPTION EXHIBITS	
Exhibit G-1	Schedule of Applicable Permits
Exhibit G-2	Project Budget
Exhibit G-3	Base Case Project Projections
Exhibit G-4	Project Schedule
Exhibit G-5	Pending Litigation
Exhibit G-6	Hazardous Substances Disclosure
Exhibit G-7	Pending Change Orders
Exhibit G-8	Template Operating Report
Exhibit G-9	Real Estate Rights
OTHER	
Exhibit H	Lenders Proportionate Shares
Exhibit I	Amortization Schedule
Exhibit J	Form of Non-Bank Certificate
Exhibit K	Insurance Requirements
Exhibit L	Form of Annual Insurance Certificate
Exhibit M	Form of Confidentiality Agreement

This CREDIT AGREEMENT, dated as of February 25, 2005 (this "Agreement"), is entered into among CALPINE STEAMBOAT HOLDINGS, LLC, a Delaware limited liability company, as borrower ("Borrower"), the financial institutions listed on Exhibit H or who later become a party hereto, as Lenders (the financial institutions party to this Agreement being collectively referred to as the "Lenders"), CALYON NEW YORK BRANCH, as a Lead Arranger, underwriter, co-book runner and administrative agent for the Lenders (in such capacity, "Administrative Agent"), as collateral agent for the Secured Parties (in such capacity, "Collateral Agent") and as issuer of the Security Fund LC (in such capacity, "LC Issuer"), COBANK, ACB, as a Lead Arranger, underwriter, co-syndication agent and co-book runner, HSH NORDBANK AG, as a Lead Arranger, underwriter and co-documentation agent, UFJ BANK LIMITED, as a Lead Arranger, underwriter and co-documentation agent, and BAYERISCHE HYPO- UND VEREINSBANK AG, NEW YORK BRANCH, as a Lead Arranger, underwriter and co-syndication agent.

### RECITALS

- A. Borrower is the direct, 100% owner of Mankato Energy Center, LLC ("MEC"), the owner of a combined cycle electric generating facility, capable of generating approximately 375 MW of electric power, to be located in Blue Earth County, Minnesota (the "Mankato Project").
- B. Borrower is also the direct 100% owner of both FEC-GP and FEC-LP. FEC-GP is the sole 1%-owning general partner of Freeport Energy Center, LP ("FEC" and together with MEC, the "Project Companies"), and FEC-LP is the sole 99%-owning limited partner of FEC, the owner of a 250 MW cogeneration facility to be located on an 8-acre site inside the Plant B industrial complex owned by The Dow Chemical Company in Freeport, Texas (the "Freeport Project").
- C. Borrower has requested that the Lenders provide a portion of the construction and term financing for the Mankato Project and the Freeport Project (together, the "Projects"), which proceeds Borrower shall on-lend to the Project Companies for the development and construction of the Projects.
- D. The Lenders are willing to provide such financing upon the terms and subject to the conditions set forth herein and in the other Credit Documents.
- E. The credit facilities provided hereunder will be secured by, among other things, the Freeport Project and the Mankato Project and guaranteed by the Project Companies; and the Lenders would not be willing to extend such credit facilities to Borrower, and allow Borrower to on-lend the proceeds thereof to the Project Companies, without being provided such security and such guaranties.

### AGREEMENT

In consideration of the agreements herein and in the other Credit Documents and in reliance upon the representations and warranties set forth herein and therein, the parties hereto agree as follows:

**ARTICLE 1  
DEFINITIONS**

1.1 DEFINITIONS.

Except as otherwise expressly provided, capitalized terms used in this Agreement (including its exhibits and schedules) shall have the meanings given to such terms in Exhibit A.

1.2 RULES OF INTERPRETATION.

Except as otherwise expressly provided, the rules of interpretation set forth in Exhibit A shall apply to this Agreement and the other Credit Documents.

**ARTICLE 2  
THE CREDIT FACILITIES**

2.1 LOAN FACILITIES.

2.1.1 Construction Loan Facility.

(a) Availability. Subject to the terms and conditions set forth in this Agreement and in reliance upon the representations and warranties of Borrower set forth herein and of the Project Companies set forth in the Project Company Guaranties, each Lender severally agrees to advance to Borrower from time to time during the Construction Loan Availability Period such loans as Borrower may request pursuant to this Section 2.1.1 (individually, a "Construction Loan" and, collectively, the "Construction Loans"), in an aggregate principal amount which, when added to such Lender's Proportionate Share of the aggregate principal amount of all prior Construction Loans made under this Agreement, does not exceed such Lender's Construction Loan Commitment. Unless the conditions under Section 3.4 are satisfied, no more of the Construction Loans than \$215,000,000 (the "Initial MEC Allocated Portion") may be applied toward Project Costs of the Mankato Project, and no more than \$251,500,000 (the "Initial FEC Allocated Portion") may be applied toward Project Costs of the Freeport Project.

(b) Notice of Construction Loan Borrowing. Borrower shall request Construction Loans by delivering to Administrative Agent a written notice in the form of Exhibit C-1, appropriately completed (a "Notice of Construction Loan Borrowing"), which contains or specifies, among other things:

(i) the portion of the requested Construction Loan which shall bear interest as is provided in (A) Section 2.1.1(c)(i) (individually, a "Base Rate Construction Loan" and, collectively, the "Base Rate Construction Loans") or (B) Section 2.1.1(c)(ii) (individually, a "LIBOR Construction Loan" and, collectively, the "LIBOR Construction Loans");

(ii) the aggregate principal amount of the requested Construction Loan, which shall be in the minimum amount of \$1,000,000 or an integral multiple of \$100,000 in excess thereof; provided that such minimum amount shall not apply to the Punchlist Drawing, Dow Change Order Drawing, Dow Performance Test Drawing or the True-Up Drawing (if any);

(iii) the proposed date of the requested Construction Loan (which shall be a Banking Day);

(iv) in the case of any requested Construction Loan to be made as a LIBOR Construction Loan, the initial Interest Period requested therefor (which shall be an Interest Period contemplated by Section 2.1.3(c));

(v) a certification by Borrower that, as of the date such requested Construction Loan is proposed to be made, the Construction Loan proposed to be made on such date, when added together with all other Construction Loans made under this Agreement, does not either (A) exceed the Total Construction Loan Commitment or (B) cause Construction Loans applied to Project Costs of MEC to exceed the Initial MEC Allocated Portion or Construction Loans applied to Project Costs of FEC to exceed the Initial FEC Allocated Portion; and

(vi) the amount of the requested Construction Loan that shall be designated to constitute part of the MEC Allocated Portion and the FEC Allocated Portion.

Borrower shall request no more than one Construction Loan per month. Borrower shall give each Notice of Construction Loan Borrowing to Administrative Agent so as to provide not less than the Minimum Notice Period applicable to Construction Loans of the Type requested. Any Notice of Construction Loan Borrowing may be modified or revoked by Borrower through the Banking Day prior to the Minimum Notice Period, and shall thereafter be irrevocable. Each Notice of Construction Loan Borrowing shall be delivered in the manner provided in Section 11.1.

(c) Construction Loan Interest. Subject to Section 2.6.3, Borrower shall pay interest on the unpaid principal amount of each Construction Loan from the date of Borrowing of such Construction Loan until the maturity or prepayment thereof at the following rates per annum:

(i) With respect to the principal portion of such Construction Loan which is, and during such periods as such Construction Loan is, a Base Rate Construction Loan, at a rate per annum equal to the Base Rate (such rate to change from time to time as the Base Rate shall change) plus the applicable Rate Margin minus 0.75%.

(ii) With respect to the principal portion of such Construction Loan which is, and during such periods as such Construction Loan is, a LIBOR Construction Loan, at a rate per annum, at all times during each Interest Period for such LIBOR Construction Loan, equal to the LIBO Rate for such Interest Period plus the applicable Rate Margin.

(d) Construction Loan Principal Payments. Borrower shall repay to Administrative Agent, for the account of each Lender, in full on the Construction Loan Maturity Date the unpaid principal amount of all Construction Loans made by such Lender which will not be Term-Converted to Term Loans at such time as is provided in Section 2.1.2(a). Borrower may not re-borrow the principal amount of any Construction Loan so repaid.

(e) Cancellation and Return of Construction Notes. Upon payment in full or Term-Conversion in full of the aggregate principal amount of the Construction Loans and all accrued and unpaid interest thereon, each Lender shall promptly mark as canceled any Construction Notes issued to it under Section 2.1.4 or 9.14 then outstanding and return such canceled Construction Notes to Borrower.

#### 2.1.2 Term Loan Facility.

(a) Availability. Subject to the terms and conditions set forth in this Agreement and in reliance upon the representations and warranties of Borrower set forth herein, each Lender severally agrees to make to Borrower on the Term Period Commencement Date, at the request of Borrower, a term loan under this Section 2.1.2 (individually a "Term Loan" and, collectively, the "Term Loans") in an aggregate principal amount equal to the aggregate principal amount of outstanding Construction Loans made by such Lender. Each Lender shall make its Term Loan by converting the principal amount of outstanding Construction Loans made by such Lender to a Term Loan.

(b) Notice of Term-Conversion. Borrower shall request Term-Conversion by delivering to Administrative Agent a written notice in the form of Exhibit C-2, appropriately completed (the "Notice of Term-Conversion"), which specifies, among other things:

(i) the principal portion of the requested Term Loans which shall bear interest as provided in (A) Section 2.1.2(c)(i) (individually, a "Base Rate Term Loan" and, collectively, the "Base Rate Term Loans") or (B) Section 2.1.2(c)(ii) (individually, a "LIBOR Term Loan" and, collectively, the "LIBOR Term Loans");

(ii) the aggregate principal amount of the requested Term Loans, which shall not exceed the aggregate principal amount of all Construction Loans outstanding on the Term Period Commencement Date (which amount shall be calculated immediately prior to Term-Conversion, after giving effect to the Punchlist Drawing (if any), the Dow Change Order Drawing (if any), the Dow Performance Test Drawing (if any), the True-Up Drawing (if any), and the application of all liquidated damages and other amounts required to be applied to the prepayment of Construction Loans pursuant to the Depositary Agreements);

(iii) the proposed date of Term-Conversion (which shall be a Banking Day on or before the Construction Loan Maturity Date); and

(iv) in the case of any requested Term Loan to be made as a LIBOR Term Loan, the initial Interest Period requested therefor (which shall be an Interest Period contemplated by Section 2.1.3(c)).

Borrower shall deliver the Notice of Term-Conversion to Administrative Agent so as to provide at least the Minimum Notice Period applicable to Loans of the Type requested upon Term-Conversion; provided that not later than 10 Banking Days prior to delivery of the Notice of Term-Conversion, Borrower shall deliver to Administrative Agent a draft of such Notice of Term-Conversion and evidence documenting that the conditions to Term-Conversion set forth in Section 3.3 will be satisfied by the proposed date of Term-Conversion. The Notice of Term-Conversion may be modified or revoked by Borrower through the Banking Day prior to the Minimum Notice Period, and shall thereafter be irrevocable. The Notice of Term-Conversion shall be delivered in the manner provided in Section 11.1.

(c) Term Loan Interest. Subject to Section 2.6.3, Borrower shall pay interest on the unpaid principal amount of each Term Loan from the date of Borrowing of such Term Loan until the maturity or prepayment thereof at one of the following rates per annum:

(i) With respect to the principal portion of such Term Loan which is, and during such periods as such Term Loan is, a Base Rate Term Loan, at a rate per annum equal to the Base Rate (such rate to change from time to time as the Base Rate shall change) plus the applicable Rate Margin minus 0.75%.

(ii) With respect to the principal portion of such Term Loan which is, and during such periods as such Term Loan is, a LIBOR Term Loan, at a rate per annum during each Interest Period for such LIBOR Term Loan equal to the LIBO Rate for such Interest Period plus the applicable Rate Margin.

(d) Term Loan Principal Payment. Beginning on the Initial Principal Repayment Date and on each Principal Repayment Date thereafter, Borrower shall repay to Administrative Agent, for the account of each Lender, the aggregate unpaid principal amount of the Term Loan made by such Lender in installments in accordance with the repayment schedule set forth on Exhibit I, with any remaining unpaid principal, interest, fees and costs due and payable on the Term Loan Maturity Date. Borrower may not re-borrow the principal amount of any Term Loan so repaid. Upon scheduled repayment of the principal of Term Loans, the Allocated Portions shall be reduced in accordance with the scheduled amortization thereof as set forth in the Base Case Project Projections.

(e) Initial Principal Repayment Date Prior to Term Period Commencement Date. If the Initial Principal Repayment Date occurs prior to the Term Period Commencement Date, then Construction Loans in the required amount shall be repaid first from any funds in the Borrower Revenue Account. After application of all such funds, if there remains any required payment, then to the extent that Administrative Agent reasonably concludes that reducing the Total Construction Loan Commitment would not cause a failure to satisfy the condition set forth in Section 3.2.16, then the Total Construction Loan Commitment shall be reduced by up to such required amount, and to the extent of such reduction, the payment will be deemed made.

### 2.1.3 Interest Provisions Relating to All Loans.

(a) **Applicable Interest Rate.** Subject to Section 2.6.3, the applicable basis for determining the rate of interest with respect to any Construction Loan or Term Loan shall be selected by Borrower initially at the time a Notice of Construction Loan Borrowing or Notice of Term-Conversion is given pursuant to Section 2.1.1 or 2.1.2, as the case may be, and with respect to a Security Fund LC Loan, by delivery to the Administrative Agent of a notice in the form of Exhibit C-7, appropriately completed to notify the Lenders of the Interest Period. The basis for determining the interest rate with respect to any Loan may be changed from time to time as specified in a Notice of Conversion of Loan Type delivered pursuant to Section 2.1.6. If on any day a Loan is outstanding with respect to which notice has not been delivered to Administrative Agent in accordance with the terms of this Agreement specifying the applicable basis for determining the rate of interest, then for that day such Loan shall bear interest determined by reference to the Base Rate. Borrower shall not request, and the Lenders shall not be obligated to make, LIBOR Loans at any time an Event of Default exists.

(b) **Interest Payment Dates.** Borrower shall pay accrued interest on the unpaid principal amount of each Loan (i) in the case of each Base Rate Loan, on the last Banking Day of each calendar quarter, (ii) in the case of each LIBOR Loan, on the last day of each Interest Period related to such LIBOR Loan and, with respect to Interest Periods longer than three months, the last Banking Day of each third month in which such LIBOR Loan is outstanding, and (iii) in all cases, upon repayment or prepayment (to the extent thereof and including any optional prepayments or Mandatory Prepayments), upon conversion from one Type of Loan to another Type of Loan and at maturity (whether by acceleration or otherwise).

(c) **LIBOR Loan Interest Periods.**

(i) The initial and subsequent Interest Periods for LIBOR Loans shall be a maximum of one month until the date which falls four months after the Closing Date (or such earlier date as may otherwise be agreed to by Administrative Agent and Borrower). Thereafter, each subsequent Interest Period selected by Borrower for all LIBOR Loans shall be one, three or six months. Notwithstanding anything to the contrary in either of the two preceding sentences, (A) any Interest Period which would otherwise end on a day which is not a Banking Day shall be extended to the next succeeding Banking Day unless such next Banking Day falls in another calendar month, in which case such Interest Period shall end on the immediately preceding Banking Day, (B) any Interest Period which begins on the last Banking Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Banking Day of a calendar month, (C) Borrower may not select Interest Periods which would leave a greater principal amount of Loans subject to Interest Periods ending after a date upon which Loans are or may be required to be repaid (including the Construction Loan Maturity Date, the Term Loan Maturity Date and each Principal Repayment Date) than the principal amount of Loans scheduled to be outstanding after such date and for purposes of this clause, Borrower shall assume that all Security Fund LC Loans will be repaid on the next Principal Repayment Date, (D) unless Term-Conversion has occurred, any Interest Period for a Construction Loan which would otherwise end after the

Construction Loan Maturity Date shall end on the Construction Loan Maturity Date, (E) any Interest Period for a Term Loan which would otherwise end after the Term Loan Maturity Date shall end on the Term Loan Maturity Date, (F) LIBOR Loans for each Interest Period shall be in the minimum amount of \$500,000 or an integral multiple of \$100,000 in excess thereof, (G) Borrower may not at any time have outstanding more than six different Interest Periods relating to LIBOR Loans, and (H) Borrower shall select Types and Interest Periods for Construction Loans and Term Loans corresponding to the "types" and "interest periods" used for floating rate payments in the Interest Rate Agreements so as to create, to the greatest extent possible, a complete hedge.

(ii) Borrower may contact Administrative Agent at any time prior to the end of an Interest Period for a quotation of Interest Rates in effect at such time for given Interest Periods and Administrative Agent shall promptly provide such quotation. Borrower may select an Interest Period telephonically or by electronic mail within the time periods specified in

Section 2.1.6, which selection shall be irrevocable on and after commencement of the applicable Minimum Notice Period. Borrower shall confirm such telephonic or electronic mail notice to Administrative Agent by facsimile on the day such notice is given by delivery to Administrative Agent of a written notice in substantially the form of Exhibit C-3, appropriately completed (a "Confirmation of Interest Period Selection"). Borrower shall promptly deliver to Administrative Agent the original of the Confirmation of Interest Period Selection initially delivered by facsimile. If Borrower fails to notify Administrative Agent of the next Interest Period for any LIBOR Loans in accordance with this Section 2.1.3(c)(ii), such Loans shall automatically convert to Base Rate Loans on the last day of the current Interest Period therefor. Administrative Agent shall as soon as practicable (and, in any case, within two Banking Days after delivery of the Confirmation of Interest Period Selection) notify Borrower of each determination of the Interest Rate applicable to each Loan.

(d) Interest Computations. All computations of interest on Base Rate Loans shall be based upon a year of 365 days or, in the case of a leap year, 366 days, shall be payable for the actual days elapsed (including the first day but excluding the last day), and shall be adjusted in accordance with any changes in the Base Rate to take effect on the beginning of the day of such change in the Base Rate. All computations of interest on LIBOR Loans shall be based upon a year of 360 days and shall be payable for the actual days elapsed (including the first day but excluding the last day). Borrower agrees that all computations by Administrative Agent of interest shall be conclusive and binding in the absence of manifest error.

2.1.4 Promissory Notes. The obligation of Borrower to repay the Loans made by a Lender and to pay interest thereon at the rates provided herein shall, upon the written request of such Lender, be evidenced by promissory notes in the form of Exhibit B-1 (individually, a "Construction Note" and, collectively, the "Construction Notes"), Exhibit B-2 (individually, a "Term Note" and, collectively, the "Term Notes") and Exhibit B-6 (individually, a "Security Fund LC Loan Note" and, collectively, the "Security Fund LC Loan Notes"), each payable to the order of such requesting Lender and in the principal amount of such Lender's Construction Loan Commitment, Term Loan Commitment and Security Fund LC Commitment, respectively. Borrower authorizes each such requesting Lender to record on the schedule annexed to such

Lender's Note or Notes, the date and amount of each Loan made by such requesting Lender, and each payment or prepayment of principal thereunder and agrees that all such notations shall constitute prima facie evidence of the matters noted; provided that in the event of any inconsistency between the records or books of Administrative Agent and any Lender's records or Notes, the records of Administrative Agent shall be conclusive and binding in the absence of manifest error. Borrower further authorizes each such requesting Lender to attach to and make a part of such requesting Lender's Note or Notes continuations of the schedule attached thereto as necessary. No failure to make any such notations, nor any errors in making any such notations, shall affect the validity of Borrower's obligations to repay the full unpaid principal amount of the Loans or the duties of Borrower hereunder or thereunder. Upon the payment in full in cash of the aggregate principal amount of, and all accrued and unpaid interest on, the Loans, or in the case of Construction Notes, upon Term-Conversion, the Lenders holding such Notes shall promptly mark the applicable Notes cancelled and return such cancelled Notes to Borrower.

#### 2.1.5 Loan Funding.

(a) Notice. Each Notice of Construction Loan Borrowing, Notice of Term-Conversion and Notice of Conversion of Loan Type shall be delivered to Administrative Agent in accordance with Sections 2.1.1(b), 2.1.2(b) and 2.1.6, respectively. Administrative Agent shall promptly notify each Lender of the contents of each Notice of Construction Loan Borrowing, Notice of Term-Conversion and Notice of Conversion of Loan Type.

(b) Pro Rata Loans. All Loans shall be made on a pro rata basis by the Lenders in accordance with their respective Proportionate Shares of such Loans, with each Borrowing to consist of a Loan by each Lender equal to such Lender's Proportionate Share of such Loan.

(c) Lender Funding. Each Lender shall, before 1:00 p.m. on the date of each Borrowing of a Construction Loan or Term Loan, make available to Administrative Agent by wire transfer of immediately available funds in Dollars to the account of Administrative Agent most recently designated by it for such purpose, such Lender's Proportionate Share of the Construction Loan or Term Loan (as the case may be) to be made on such date. The failure of any Lender to make the Construction Loan or Term Loan (as the case may be) to be made by it as part of any Borrowing shall not relieve any other Lender of its obligation hereunder to make its Construction Loan or Term Loan (as the case may be) on the date of such Loan. No Lender shall be responsible for the failure of any other Lender to make the Construction Loan or Term Loan (as the case may be) to be made by such other Lender on the date of any Borrowing.

(d) Failure of Lender to Fund. Unless Administrative Agent shall have been notified by any Lender prior to the applicable date of a Borrowing of a Construction Loan or Term Loan that such Lender does not intend to make available to Administrative Agent the amount of such Lender's Proportionate Share of the Construction Loan or Term Loan (as the case may be) requested on such date, Administrative Agent may assume that such Lender has made such amount available to Administrative Agent on such date in accordance with the prior paragraph and Administrative Agent may, in its sole discretion and in reliance upon such assumption, make available to Borrower a corresponding amount on such date. If such

corresponding amount is not in fact made available to Administrative Agent by such Lender, Administrative Agent shall be entitled to recover such corresponding amount on demand (and, in any event, within two Banking Days from the applicable date of such Borrowing) from such Lender together with interest thereon, for each day from the applicable date of such Borrowing until the date such amount is paid to Administrative Agent, at the Federal Funds Rate for the first two Banking Days after such date. If such Lender pays such amount to Administrative Agent, then such amount (excluding any interest paid to Administrative Agent thereon) shall constitute such Lender's Proportionate Share of such Construction Loan or Term Loan (as the case may be) included in such Construction Loan or Term Loan (as the case may be). If such Lender does not pay such corresponding amount forthwith upon Administrative Agent's demand therefor or within two Banking Days from the applicable date of such Borrowing of a Construction Loan or Term Loan (as the case may be), Administrative Agent shall promptly notify Borrower and Borrower shall immediately pay such corresponding amount to Administrative Agent together with interest thereon, for each day from the applicable date of such Borrowing until the date such amount is paid to Administrative Agent, at the rate then payable under this Agreement for Base Rate Loans. Nothing in this Section 2.1.5(d) shall be deemed to relieve any Lender from its obligation to fulfill its obligations hereunder or to prejudice any rights that Borrower may have against any Lender as a result of any default by such Lender hereunder.

(e) Construction Accounts. No later than 2:00 p.m. on the date specified in each Notice of Construction Loan Borrowing, if the applicable conditions precedent listed in Article 3 have been satisfied or waived in accordance with the terms thereof and, subject to Section 2.1.5(d), to the extent Administrative Agent shall have received the appropriate funds from the Lenders, Administrative Agent shall make available the Construction Loans requested in such Notice of Construction Loan Borrowing (as may be adjusted pursuant to Section 3.6) in Dollars and in immediately available funds, at Administrative Agent's New York Branch, and shall deposit or cause to be deposited the proceeds of such Construction Loans into the Construction Accounts.

2.1.6 Conversion of Loans. Borrower may convert Loans from one Type of Loan to another Type of Loan; provided, however, that (a) any conversion of LIBOR Loans into Base Rate Loans shall be effective on, and only on, the first day after expiration of an Interest Period for such LIBOR Loans, and (b) Loans shall be converted only in amounts of \$500,000 and increments of \$100,000 in excess thereof. Borrower shall request such a conversion by delivering to Administrative Agent a written notice in the form of Exhibit C-4, appropriately completed (a "Notice of Conversion of Loan Type"), which contains or specifies, among other things:

- (i) the Loans, or portion thereof, which are to be converted;
- (ii) the Type of Loans into which such Loans, or portion thereof, are to be converted;
- (iii) if such Loans are to be converted into LIBOR Loans, the initial

Interest Period selected by Borrower for such Loans (which Interest Period shall be selected in accordance with Section 2.1.3(c));

(iv) the proposed date of the requested conversion (which shall be a Banking Day and otherwise in accordance with this Section 2.1.6); and

(v) a certification by Borrower that no Event of Default has occurred and is continuing.

Borrower shall so deliver each Notice of Conversion of Loan Type so as to provide at least the applicable Minimum Notice Period. Any Notice of Conversion of Loan Type may be modified or revoked by Borrower through the Banking Day prior to the Minimum Notice Period, and shall thereafter be irrevocable. Each Notice of Conversion of Loan Type shall be delivered in the manner provided in Section 11.1. Administrative Agent shall promptly notify each Lender of the contents of each Notice of Conversion of Loan Type.

#### 2.1.7 Prepayments.

(a) Terms of All Prepayments.

(i) Upon the prepayment of any Loan (whether such prepayment is an optional prepayment under Section 2.1.7(b) or a Mandatory Prepayment), Borrower shall pay to Administrative Agent for the account of the Lender which made such Loan and/or Hedge Bank, as applicable, (A) all accrued interest to the date of such prepayment on the amount of such Loan prepaid, (B) all accrued fees to the date of such prepayment relating to the amount of such Loan being prepaid, (C) to the extent required by the terms of the applicable Interest Rate Agreement, all Hedge Breaking Fees owed by Borrower to such Hedge Bank as a result of such prepayment, and (D) if such prepayment is the prepayment of a LIBOR Loan on a day other than the last day of an Interest Period for such LIBOR Loan, all Liquidation Costs incurred by such Lender as a result of such prepayment (pursuant to the terms of Section 2.9).

(ii) Notwithstanding the foregoing, but only in respect of any Mandatory Prepayment, Borrower shall have the right, by giving five Banking Days' notice to Administrative Agent, in lieu of prepaying a LIBOR Loan on a day other than the last day of an Interest Period for such LIBOR Loan, to deposit or cause Administrative Agent to deposit into an account to be held by Depositary Agent (which account shall be subjected to the Lien of the Collateral Documents in a manner reasonably satisfactory to Collateral Agent) an amount equal to the LIBOR Loans to be prepaid. Such funds shall be held in such account until the expiration of the Interest Period applicable to the LIBOR Loan to be prepaid at which time the amount deposited in such account shall be used to prepay such LIBOR Loan and any interest accrued on such amount shall be deposited into the Borrower Revenue Account. The deposit of amounts into such account shall not constitute a prepayment of Loans and all Loans to be prepaid using the proceeds from such account shall continue to accrue interest at the then applicable interest rate for such Loans until actually prepaid. All amounts in such account shall only be invested in Permitted Investments as directed by and at the expense and risk of Borrower.

(iii) Except as otherwise specifically set forth herein, all prepayments of Term Loans shall be applied to reduce the remaining payments required under Section 2.1.2(d) in inverse order of maturity. Prepayment of Term Loans with proceeds of the Purchase Option or Put Option pursuant to Section 3.6 of the Borrower Depositary Agreement shall be applied as described in such section. Any prepayments made pursuant to Sections 3.5.4(f) and 3.7.1 of the applicable Project Company Depositary Agreement shall be applied to reduce the Allocated Portion for the Project with respect to which such prepayments have been received. Prepayment of Term Loans with proceeds of Construction Contractor Performance LDs pursuant to Section 3.7 of the applicable Project Company Depositary Agreement and Section 3.8 of the Borrower Depositary Agreement shall be applied to all maturities of the Term Loans ratably. Borrower may not re-borrow the principal amount of any Construction Loan or Term Loan which is prepaid. In connection with any prepayment of loans made pursuant to Section 3.4.2(c) of the Borrower Depositary Agreement, the Allocated Portions shall be reduced in proportion to their size relative to the aggregate Term Loan.

(b) Optional Prepayments. Subject to Section 2.1.7(a), Borrower may, at its option and without premium or penalty, upon five Banking Days' notice to Administrative Agent, prepay (i) any Construction Loans in whole or from time to time in part in minimum amounts of \$1,000,000 or an incremental multiple of \$100,000 in excess thereof (provided that such minimum amounts shall not apply to a prepayment of all outstanding Construction Loans), (ii) any Term Loans in whole or from time to time in part in minimum amounts of \$1,000,000 or an incremental multiple of \$100,000 in excess thereof (provided that such minimum amounts shall not apply to a prepayment of all outstanding Term Loans), or (iii) any Security Fund LC Loans in whole or from time to time in part in minimum amounts of \$1,000,000 or an incremental multiple of \$100,000 in excess thereof (provided that such minimum amounts shall not apply to a prepayment of all outstanding Security Fund LC Loans); provided, however, that as a condition to Borrower's right to make any prepayment of Construction Loans, Borrower shall reduce the Total Construction Loan Commitment in accordance with Section 2.3.3 of this Agreement by such amount that the Available Construction Loan Commitment equals zero after giving effect to such prepayment. In connection with any optional prepayments, Borrower shall terminate or partially terminate Hedge Transactions such that the notional amount under all of the Hedge Transactions does not exceed, in the aggregate, the principal amount of Loans outstanding immediately after giving effect to such prepayment. In connection with any optional prepayments, Borrower may at the time of such prepayment specify the portions by which Allocated Portions shall be reduced thereby, and absent such specification, the Allocated Portions shall be reduced in proportion to their size relative to the aggregate Term Loan.

(c) Mandatory Prepayments. Borrower shall prepay (or cause to be prepaid) Loans to the extent required by Section 11.23, Sections 3.2.2(d), 3.4.2(c) (second sentence), 3.4.2(e), 3.6 or 3.8 of the Borrower Depositary Agreement, Sections 2.2(b), 3.5.4(e), 3.5.4(f) or 3.7.1(b) of the Project Company Depositary Agreements (by virtue of requiring transfer of funds to the Mandatory Prepayment Account), Section 3.1.6(b) of the FEC Depositary Agreement, or any other provision of any Credit Document which expressly requires such prepayment (such prepayment, a "Mandatory Prepayment").

2.1.8 Register. Administrative Agent shall maintain, at its address referred to in Section 11.1, a register for the recordation of the names and addresses of the Lenders, the Commitments and Loans of each Lender from time to time and the name of each Lender which holds a Note, as well as a record of which payments or prepayments have been applied to which Allocated Portions from time to time (the "Register"). The Register shall be available for inspection by Borrower or any Lender at any reasonable time and from time to time upon reasonable prior notice. Administrative Agent shall record in the Register (a) the Commitments and the Loans from time to time of each Lender, (b) the interest rates applicable to all Loans and the effective dates of all changes thereto, (c) the Interest Period for each LIBOR Loan, (d) the date and amount of any principal or interest due and payable or to become due and payable from Borrower to each Lender hereunder, (e) each repayment or prepayment in respect of the principal amount of the Loans of each Lender, (f) the amount of any sum received by Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof, (g) on each Principal Repayment Date or any other time any principal of the Loans is paid or prepaid, the Allocated Portion to which any such principal payment or prepayment is being applied, as well as the resulting revised Allocated Portions, and (h) such other information as Administrative Agent may determine is necessary for the administering of the Loans and this Agreement. Any such recording shall be conclusive and binding in the absence of manifest error; provided that neither the failure to make any such recordation, nor any error in such recordation, shall affect any Lender's Commitment or Borrower's Obligations in respect of any applicable Loans or otherwise; and provided further that in the event of any inconsistency between the Register and any Lender's records, the Register shall govern absent manifest error.

## 2.2 SECURITY FUND LC FACILITY.

2.2.1 Issuance of the Security Fund LC. Subject to the terms and conditions set forth in this Agreement, on the Closing Date the LC Issuer shall issue a letter of credit in the form of Exhibit B-5 (the "Security Fund LC") for the account of Borrower and for the benefit of NSP, in the initial stated amount of \$18,250,000. The Security Fund LC shall be made available solely in lieu of the "HGC" portion of the Security Fund pursuant to Section 11.1 of the Power Purchase Agreement. If such section requires or permits that the stated amount of the Security Fund LC be modified, based on the Sponsor's Credit Rating (as defined in the Power Purchase Agreement) changing, Borrower shall request of LC Issuer (and, if a reduction, NSP) to effect such change, and LC Issuer shall effect such change, it being understood that the stated amount of the Security Fund LC shall never be increased to exceed \$23,500,000 (if prior to the Facility Acceptance Date for the Mankato Project), or \$19,200,000 (if following the Facility Acceptance Date for the Mankato Project).

2.2.2 Security Fund LC Loans. To the extent provided in Section 2.2.5, each Lender severally agrees to advance to LC Issuer, for the account of Borrower, such Lender's Proportionate Share of the full amount of any Drawing Payment under the Security Fund LC. Upon such advance, the Drawing Payment shall be deemed to constitute a loan made by such Lender to Borrower in the amount advanced (a "Security Fund LC Loan"). All Security Fund

LC Loans shall be repaid in accordance with Section 3.2.2 of the Borrower Depositary Agreement, with any remaining unpaid principal, interest, fees and costs due and payable on the Term Loan Maturity Date. Borrower may not re-borrow the principal amount of any Security Fund LC Loan so repaid.

2.2.3 Security Fund LC Loan Interest. Borrower shall pay interest on the unpaid principal amount of each Security Fund LC Loan from the date of the applicable Drawing Payment until the maturity or repayment thereof at the following rates per annum:

(a) with respect to the principal portion of such Security Fund LC Loan which is, and during such periods as such Security Fund LC Loan is, a Base Rate Security Fund LC Loan, at a rate per annum equal to the Base Rate (such rate to change from time to time as the Base Rate shall change) plus the applicable Rate Margin minus 0.75%; and

(b) with respect to the principal portion of such Security Fund LC Loan which is, and during such periods as such Security Fund LC Loan is, a LIBOR Security Fund LC Loan, at a rate per annum during each Interest Period for such LIBOR Security Fund LC Loan equal to the LIBO Rate for such Interest Period plus the applicable Rate Margin.

2.2.4 Reduction and Reinstatement of Stated Amount. The Stated Amount of the Security Fund LC shall be reduced by the amount of Drawing Payments made in respect thereof. After a draw upon the Security Fund LC, where the terms of Section 11.1(E) of the Power Purchase Agreement (as in effect on the Closing Date) require the Stated Amount to thereafter be increased, without further condition or consent of the Lenders, the Stated Amount of the Security Fund LC shall be increased in the required amount by the LC Issuer issuing to NSP an amendment in the form attached to the Security Fund LC, any such increases not to exceed the Unutilized Security Fund LC Commitment.

2.2.5 Lender Participation. Each Lender severally agrees to participate with LC Issuer in the extension of credit arising from the issuance of the Security Fund LC in an amount equal to such Lender's Proportionate Share of the Total Security Fund LC Commitment, and the issuance of the Security Fund LC shall be deemed a confirmation to LC Issuer of such participation in such amount. LC Issuer may request the Lenders to pay to LC Issuer their respective Proportionate Shares of all or any portion of any Drawing Payment made or to be made by LC Issuer under the Security Fund LC by contacting each Lender and Administrative Agent telephonically (promptly confirmed in writing) at any time after LC Issuer has received notice of or request for such Drawing Payment, and specifying the amount of such Drawing Payment, such Lender's Proportionate Share thereof, and the date on which such Drawing Payment is to be made or was made. Upon receipt of any such request for payment from LC Issuer, each Lender shall pay to LC Issuer such Lender's Proportionate Share of the unreimbursed portion of such Drawing Payment, together with interest thereon at a per annum rate equal to the Federal Funds Rate, as in effect from time to time, from the date of such Drawing Payment to the date on which such Lender makes payment. Each Lender's obligation to make each such payment to LC Issuer shall be absolute, unconditional and irrevocable and shall not be affected by any circumstance whatsoever, including the occurrence or continuance of

any Inchoate Default or Event of Default, or the failure of any other Lender to make any payment under this Section 2.2.5, and each Lender further agrees that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Nothing in this Section 2.2.5 shall limit or affect the obligation of the LC Issuer to make any Drawing Payment pursuant to the Security Fund LC.

### 2.3 TOTAL COMMITMENTS.

2.3.1 Security Fund Letter of Credit. The initial stated amount of the Security Fund LC shall be as set forth in Section 2.2.1, and any increases in the stated amount thereof shall not exceed at any time the Unutilized Security Fund LC Commitment.

#### 2.3.2 Loan Commitment Amounts.

(a) Total Construction Loan Commitment. Notwithstanding anything that may be construed to the contrary in this Agreement, the aggregate principal amount of all Construction Loans made by the Lenders shall not exceed the lesser of (i) \$466,500,000 and (ii) if such total amount is reduced by Borrower pursuant to Section 2.3.3, such lower amount (such amount, so reduced from time to time, the "Total Construction Loan Commitment").

(b) Total Term Loan Commitment. Notwithstanding anything that may be construed to the contrary in this Agreement, the aggregate principal amount of all Term Loans outstanding at any time shall not exceed the aggregate amount of Construction Loans outstanding on the Term-Period Commencement Date after giving effect to any Punchlist Drawing, any Dow Change Order Drawing, any Dow Performance Test Drawing and any True-Up Drawing (such amount, as reduced from time to time, the "Total Term Loan Commitment").

2.3.3 Reductions and Cancellations. Borrower may, from time to time upon five Banking Days written notice to Administrative Agent, permanently reduce (without premium or penalty), by an amount of \$1,000,000 or an integral multiple of \$100,000 in excess thereof or cancel in its entirety the Total Construction Loan Commitment, subject to the provisions of this Section 2.3.3. Borrower may not reduce the Total Security Fund LC Commitment or the Unutilized Security Fund LC Commitment. Borrower may not reduce or cancel the Total Construction Loan Commitment if, after giving effect to such reduction or cancellation, (a) the aggregate principal amount of all Construction Loans then outstanding would exceed the Total Construction Loan Commitment, (b) the Available Construction Funds would not, in the reasonable judgment of Administrative Agent and the Independent Engineer, exceed remaining Project Costs (including budgeted contingency (or the appropriate part thereof) and anticipated Liquidation Costs and anticipated Hedge Breaking Fees arising from any prepayment related to such reduction or cancellation), or (c) such reduction or cancellation would cause an Inchoate Default, Event of Default or have a Material Adverse Effect. Borrower shall pay to Administrative Agent any Commitment Fees then due in respect of the canceled portion of the applicable Commitment upon any cancellation and, from the effective date of any cancellation or reduction, the Commitment Fees shall be computed on the basis of the Available Construction

Loan Commitment as so canceled or reduced. Once reduced or canceled, the Total Construction Loan Commitment may not be increased or reinstated. Any reductions pursuant to this Section 2.3.3 shall be applied ratably to each Lender's respective Commitments in accordance with Section 2.7.1.

## 2.4 FEES.

2.4.1 Administrative Agent's Fees. Borrower shall pay to Administrative Agent solely for Administrative Agent's account the fees and other amounts described in the Administrative Agent Fee Letter.

### 2.4.2 Commitment Fees.

(a) Construction Loan Commitment Fees. On each Quarterly Payment Date on and until the Construction Loan Maturity Date (or, if the Total Construction Loan Commitment is canceled prior to such date, on the date of such cancellation), Borrower shall pay to Administrative Agent, for the benefit of the Lenders, accruing from the Closing Date or the first day of such quarter, as the case may be, a commitment fee (the "Commitment Fee") for such quarter (or portion thereof) then ending equal to the product of (i) the daily average unutilized Construction Loan Commitment for such quarter (or portion thereof) multiplied by (ii) a fraction, the numerator of which is the number of days in that calendar quarter and the denominator of which is 360 multiplied by (iii) 0.50%, payable quarterly in arrears through Term-Conversion.

(b) Unutilized Security Fund LC Commitment Fee. On each Quarterly Payment Date, Borrower shall pay to Administrative Agent, for the benefit of the Lenders, accruing from the Closing Date or the first day of the Payment Period, as the case may be, a commitment fee for such quarter (or portion thereof) then ending equal to the product of (i) the daily average Unutilized Security Fund LC Commitment for such quarter (or portion thereof) multiplied by (ii) a fraction, the numerator of which is the number of days in that calendar quarter and the denominator of which is 360 multiplied by (iii) 0.50%, payable quarterly in arrears.

## 2.5 SECURITY FUND LC FEES.

2.5.1 Security Fund LC Fee. On each Quarterly Payment Date, Borrower shall pay to Administrative Agent for the benefit of the Lenders, a Security Fund LC fee (the "Security Fund LC Fee") for each Payment Period (or portion thereof) then ending, equal to the product of (a) the daily average Stated Amount of the Security Fund LC for such Payment Period (or portion thereof) multiplied by (b) a fraction, the numerator of which is the number of days in such Payment Period (or portion thereof) and the denominator of which is 360, multiplied by (c) the applicable Rate Margin.

2.5.2 Fronting Fee. On each Quarterly Payment Date, Borrower shall pay to Administrative Agent, solely for LC Issuer's account, a letter of credit fronting fee for the corresponding Payment Period (or portion thereof) equal to the product of (a) the daily average Stated Amount of the Security Fund LC multiplied by (b) 0.20% multiplied by (c) a fraction, the numerator of which is the number of days in that calendar quarter and the denominator of which is 360.

## 2.6 OTHER PAYMENT TERMS.

2.6.1 Place and Manner. Except as otherwise provided in the Arrangement Fee Letter, the Administrative Agent Fee Letter or any other provision contained in any of the Credit Documents, Borrower shall make all payments due to any Lender, Collateral Agent or Administrative Agent hereunder to Administrative Agent, for the account of such Lender, Collateral Agent or Administrative Agent (as the case may be), to the account in the name of Loan Servicing, Account No. 01-88179-2145-00, ABA No. 026-008-073, Reference: Calpine Steamboat Holdings, LLC, or such other account as Administrative Agent shall notify Borrower from time to time, in Dollars and in immediately available funds not later than 12:00 noon on the date on which such payment is due. Any payment made after such time on any day shall be deemed received on the Banking Day after such payment is received. Administrative Agent shall disburse to each Lender or Collateral Agent (as the case may be) each such payment received by Administrative Agent for such Lender or Collateral Agent (as the case may be), such disbursement to occur on the day such payment is received if received by 12:00 noon or if otherwise reasonably possible, or otherwise on the next Banking Day.

2.6.2 Date. Whenever any payment due hereunder shall fall due on a day other than a Banking Day, such payment shall be made on the next succeeding Banking Day, and such extension of time shall be included in the computation of interest or fees, as the case may be, without duplication of any interest or fees so paid in the next subsequent calculation of interest or fees payable.

2.6.3 Default Interest. Notwithstanding anything to the contrary herein, upon the occurrence and during the continuation of any Event of Default, the outstanding principal amount of all Loans and, to the extent permitted by applicable Legal Requirements, any accrued but unpaid interest payments thereon and any accrued but unpaid fees, and other amounts hereunder, shall thereafter bear interest (including post-petition interest in any proceeding under applicable Bankruptcy Laws) payable upon demand, and the Security Fund LC Fees shall be increased, at a rate that is (a) 2% per annum in excess of the interest rate and Security Fund LC Fees then otherwise payable under this Agreement with respect to the applicable Loans and Security Fund LC, or (b) in the case of any such fees and other amounts, at a rate that is 2% per annum in excess of the interest rate then otherwise payable under this Agreement for Base Rate Loans (the "Default Rate"); provided that, in the case of LIBOR Loans, upon the expiration of the Interest Period in effect at the time any such increase in interest rate is effective, such LIBOR Loans shall thereupon become Base Rate Loans and shall thereafter bear interest payable upon

demand at a rate that is 2% per annum in excess of the interest rate then otherwise payable under this Agreement for Base Rate Loans.

#### 2.6.4 Net of Taxes, Etc.

(a) Taxes. Any and all payments to or for the benefit of Administrative Agent or any Lender by Borrower hereunder or under any other Credit Document shall be made free and clear of and without deduction or withholding, setoff or counterclaim of any kind whatsoever and in such amounts as may be necessary in order that all such payments, after deduction for or on account of any present or future taxes, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto (excluding net income and franchise taxes, which include taxes imposed on or measured by the net income, net profits or capital of Administrative Agent or such Lender by any jurisdiction or any political subdivision or taxing authority thereof or therein as a result of a connection between such Lender and such jurisdiction or political subdivision, unless such connection results solely from such Lender's executing, delivering or performing its obligations or receiving a payment under, or enforcing, this Agreement or any Note) (all such non-excluded taxes, levies, imposts, deductions, charges, withholdings and liabilities being hereinafter referred to as "Taxes"), shall be equal to the amounts otherwise specified to be paid under this Agreement and the other Credit Documents. If any Taxes are required to be deducted or withheld from or in respect of any sum payable hereunder or under any other Credit Document to Administrative Agent or any Lender, (i) the sum payable shall be increased as may be necessary so that after all required deductions or withholdings (including deductions or withholdings applicable to additional sums payable under this Section 2.6.4), Administrative Agent or such Lender receives an amount equal to the sum it would have received had no such deductions been made, (ii) Borrower shall make (or cause to be made) such deductions, and (iii) Borrower shall pay (or cause to be paid) the full amount deducted to the relevant taxation authority or other authority in accordance with applicable Legal Requirements. In addition, Borrower agrees to pay any present or future stamp, recording or documentary taxes and any other excise or property taxes, charges or similar levies (not including income or franchise taxes) that arise under the laws of the United States of America, the State of New York, the State of Texas or the State of Minnesota from any payment made hereunder or under any other Credit Document or from the execution or delivery or otherwise with respect to this Agreement or any other Credit Document (hereinafter referred to as "Other Taxes").

(b) Tax Indemnity. Borrower shall indemnify each Lender for and hold it harmless against the full amount of Taxes and Other Taxes (including any Taxes or Other Taxes imposed by any jurisdiction on amounts payable under this Section 2.6.4) paid by any Lender, or any liability (including penalties, interest and expenses) arising therefrom or with respect thereto, whether or not such Taxes or Other Taxes were correctly or legally asserted; provided that Borrower shall not be obligated to indemnify any Lender for any penalties, interest or expenses relating to Taxes or Other Taxes arising from such Lender's gross negligence or willful misconduct. Each Lender agrees to give written notice to Borrower of the assertion of any claim against such Lender relating to such Taxes or Other Taxes as promptly as is practicable after being notified of such assertion, and in no event later than 180 days after the

principal officer of such Lender responsible for administering this Agreement obtains knowledge thereof; provided that any Lender's failure to notify Borrower of such assertion within such 180 day period shall not relieve Borrower of its obligation under this Section 2.6.4 with respect to Taxes or Other Taxes, penalties, interest or expenses arising prior to the end of such period, but shall relieve Borrower of its obligations under this Section 2.6.4 with respect to Taxes or Other Taxes, penalties, interest or expenses between the end of such period and such time as Borrower receives notice from such Lender as provided herein. Payments by Borrower pursuant to this indemnification shall be made within 30 days from the date such Lender makes written demand therefor (submitted through Administrative Agent), which demand shall be accompanied by a certificate describing in reasonable detail the basis thereof.

(c) Notice. Within 30 days after the date of any payment of Taxes by Borrower, Borrower shall furnish to Administrative Agent, at its address referred to in Section 11.1, the original or a certified copy of a receipt evidencing payment thereof or, if such receipt is not obtainable, other evidence of such payment by Borrower reasonably satisfactory to Administrative Agent. Borrower shall compensate each Lender for all reasonable losses and expenses sustained by such Lender as a result of any failure by Borrower to so furnish such copy of such receipt.

(d) Conduit Financing. Notwithstanding anything to the contrary contained in this Section 2.6.4, if a Lender is a conduit entity participating in a conduit financing arrangement (as defined in Section 7701(l) of the Code and the Treasury Regulations issued thereunder) with respect to any payments made by Borrower under this Agreement and under any Note, Borrower shall not be obligated to pay additional amounts to such Lender pursuant to this Section 2.6.4 to the extent that the amount of Taxes exceeds the amount that would have otherwise been payable were such Lender not a conduit entity participating in a conduit financing arrangement.

(e) Reimbursement by Lenders. If any Lender receives an indemnification payment pursuant to Section 2.6.4(b) and if such Lender is able, in its sole opinion, to apply or otherwise take advantage of any refund or tax credit arising out of or in conjunction with any Taxes or Other Taxes which give rise to such indemnification, such Lender shall, to the extent that in its sole opinion it can do so without prejudice to the retention of the amount of such refund or credit and without any other adverse tax consequences for such Lender, reimburse to Borrower at such time as such tax refund or credit shall have actually been received by such Lender such amount as the Lender shall, in its sole opinion, have determined to be attributable to the relevant Taxes or Other Taxes and as will leave such Lender in no better or worse position than it would have been in if the payment of such Taxes or Other Taxes had not been required. Nothing in this Section 2.6.4(e) shall oblige any Lender to disclose to Borrower or any other Person any information regarding its tax affairs or tax computations, or shall interfere with Lender's absolute discretion to arrange its tax affairs in whatever manner it thinks fit. In particular, no Lender shall be under any obligation to claim relief from its corporate profits or similar tax liability in credits or deductions available to it and, if it does claim, the extent, order and manner in which it does so shall be at its absolute discretion.

(f) Survival of Obligations. The obligations of Borrower under this Section 2.6.4 shall survive the termination of this Agreement and the repayment of Borrower's Obligations.

2.6.5 Application of Payments. Except as otherwise expressly provided herein or in the other Credit Documents, payments made under this Agreement or the other Credit Documents and other amounts received by Administrative Agent, Collateral Agent, Depositary Agent or the Lenders under this Agreement or the other Credit Documents shall first be applied to any fees, costs, charges or expenses payable to Administrative Agent, Collateral Agent, Depositary Agent or the Lenders hereunder or under the other Credit Documents, next to any accrued but unpaid interest then due and owing, and then to outstanding principal then due and owing or otherwise to be prepaid (in each case, such application to be made on a pro rata basis among such applicable Persons).

2.6.6 Withholding Exemption Certificates. Administrative Agent on the Closing Date, each Lender upon becoming a Lender and each Person to which any Lender grants a participation (or otherwise transfers its interest in this Agreement) agree that they will deliver to Administrative Agent and Borrower either (a) if such Lender or Person is a United States person (other than a corporation established under the laws of the United States or any political subdivision thereof), an executed copy of a United States Internal Revenue Service Form W-9, or (b) if such Lender or Person is not a corporation established under the laws of the United States or any political subdivision thereof, two duly completed copies of United States Internal Revenue Service Form W-8BEN or W-8ECI or successor applicable form, as the case may be (certifying therein an entitlement to an exemption from, United States withholding taxes) plus, in the case of a Lender or a Person using the so-called "portfolio interest exemption," a duly completed and executed non-bank certificate in the form of Exhibit J, if applicable. Each Lender which delivers to Borrower and Administrative Agent a Form W-8BEN or W-8ECI pursuant to the preceding sentence further undertakes to deliver to Borrower and Administrative Agent further copies of the Form W-8BEN or W-8ECI, or successor applicable forms, or other manner of certification or procedure, as the case may be, on or before the date that any such form expires or becomes obsolete or within a reasonable time after gaining knowledge of the occurrence of any event requiring a change in the most recent forms previously delivered by it to Borrower, and such extensions or renewals thereof as may reasonably be requested by Borrower, certifying in the case of a Form W-8BEN or W-8ECI that such Lender is entitled to receive payments under this Agreement without deduction or withholding of any United States federal income taxes, unless in any such cases an event (including any change in treaty, law or regulation) has occurred prior to the date on which any such delivery would otherwise be required which renders all such forms inapplicable or which would prevent a Lender from duly completing and delivering any such form with respect to it and such Lender advises Borrower that it is not capable of receiving payments without any deduction or withholding of United States federal income tax. Borrower shall not be obligated, however, to pay any additional amounts in respect of United States federal income tax pursuant to

Section 2.6.4 (or make an indemnification payment pursuant to Section 2.6.4) to any Lender (including any entity to which any Lender sells, assigns, grants a participation in, or otherwise transfers its rights under this Agreement) if

the obligation to pay such additional amounts (or such indemnification) would not have arisen but for a failure of such Lender to comply with its obligations under this Section 2.6.6.

## 2.7 PRO RATA TREATMENT.

2.7.1 Borrowings, Commitment Reductions, Etc. Except as otherwise provided herein, (a) each Borrowing consisting of Construction Loans, Term Loans, Security Fund LC Loans or each Drawing Payment under the Security Fund LC and each reduction of the Total Construction Loan Commitment, Total Term Loan Commitment or Total Security Fund LC Commitment shall be made or allocated among the Lenders pro rata according to their respective Proportionate Shares of such Loans or Commitments, as the case may be, (b) each payment of principal of and interest on Construction Loans, Term Loans or Security Fund LC Loans shall be made or shared among the Lenders holding such Loans or Commitments pro rata according to their respective unpaid principal amounts of such Loans or Commitments held by such Lenders, and (c) each payment of Commitment Fees shall be shared among the Lenders pro rata according to (i) their respective Proportionate Shares of the Commitments to which such fees apply, and (ii) in the case of each Lender which becomes a party to this Agreement hereunder after the Closing Date, the date upon which such Lender so became a party hereunder.

2.7.2 Sharing of Payments, Etc. If any Lender shall obtain any payment (whether voluntary, involuntary, through the exercise of any right of setoff, or otherwise) on account of Loans owed to it, in excess of its Proportionate Share of payments on account of such Loans obtained by all Lenders entitled to such payments, such Lender shall forthwith purchase from the other Lenders such participation in the Loans, as the case may be, as shall be necessary to cause such purchasing Lender to share the excess payment ratably with each of them; provided, however, that if all or any portion of such excess payment is thereafter recovered from such purchasing Lender, such purchase from such Lender shall be rescinded and each other Lender shall repay to the purchasing Lender the purchase price to the extent of such recovery together with an amount equal to such other Lender's Proportionate Share (according to the proportion of (a) the amount of such other Lender's required repayment to (b) the total amount so recovered from the purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered. Borrower agrees that any Lender so purchasing a participation from another Lender pursuant to this Section 2.7.2 may, to the fullest extent permitted by law, exercise all its rights of payment (including the right of setoff) with respect to such participation as fully as if such Lender were the direct creditor of Borrower in the amount of such participation.

## 2.8 CHANGE OF CIRCUMSTANCES.

2.8.1 Inability to Determine Rates. If, on or before the first day of any Interest Period for any LIBOR Loans, (a) Administrative Agent determines that the LIBO Rate for such Interest Period cannot be adequately and reasonably determined due to the unavailability of

funds in or other circumstances affecting the London interbank market, or (b) Lenders holding aggregate Proportionate Shares of 33-1/3% or more of the Commitments shall advise Administrative Agent that (i) the rates of interest for such LIBOR Loans do not adequately and fairly reflect the cost to such Lenders of making or maintaining such Loans, or (ii) deposits in Dollars in the London interbank market are not available to such Lenders (as conclusively certified by each such Lender in good faith in writing to Administrative Agent and to Borrower) in the ordinary course of business in sufficient amounts to make and/or maintain their LIBOR Loans, then Administrative Agent shall immediately give notice of such condition to Borrower. After the giving of any such notice and until Administrative Agent shall otherwise notify Borrower that the circumstances giving rise to such condition no longer exist, Borrower's right to request the making of or conversion to, and the Lenders' obligations to make or convert to, LIBOR Loans shall be suspended. Any LIBOR Loans outstanding at the commencement of any such suspension shall be converted at the end of the then current Interest Period for such Loans into Base Rate Loans unless such suspension has then ended.

2.8.2 Illegality. If, after the date of this Agreement, the adoption of any Governmental Rule, any change in any Governmental Rule or the application or requirements thereof (whether such change occurs in accordance with the terms of such Governmental Rule as enacted, as a result of amendment, or otherwise), any change in the interpretation or administration of any Governmental Rule by any Governmental Authority, or compliance by any Lender or Borrower with any request or directive (whether or not having the force of law, but if not having the force of law, being of a type with which a Lender customarily complies) of any Governmental Authority (a "Change of Law") shall make it unlawful or impossible for any Lender to make or maintain any LIBOR Loan, then such Lender shall immediately notify Administrative Agent and Borrower of such Change of Law. Upon receipt of such notice, (a) Borrower's right to request the making of or conversion to, and the Lender's obligations to make or convert to, LIBOR Loans shall be suspended for so long as such condition shall exist, and (b) Borrower shall, at the request of such Lender, either (i) pursuant to Section 2.1.6, convert any then outstanding LIBOR Loans into Base Rate Loans at the end of the current Interest Periods for such Loans, or (ii) immediately repay LIBOR Loans pursuant to Section 2.1.7 or convert LIBOR Loans into Base Rate Loans if such Lender shall notify Borrower that such Lender may not lawfully continue to fund and maintain such Loans. Any conversion or prepayment of LIBOR Loans made pursuant to the preceding sentence prior to the last day of an Interest Period for such Loans shall be deemed a prepayment thereof for purposes of Section 2.9.

2.8.3 Increased Costs. If, after the date of this Agreement, any Change of Law:

(a) shall subject any Lender or LC Issuer (the term "Lender" as used below in this Section to include LC Issuer) to any tax, duty or other charge with respect to any LIBOR Loan or Commitment in respect thereof, or shall change the basis of taxation of payments by Borrower to any Lender on such a Loan or with respect to any such Commitment (except for Taxes, Other Taxes or changes in the rate of taxation on the overall net income of any Lender); or

(b) shall impose, modify or hold applicable any reserve, special deposit or similar requirement (without duplication of any reserve requirement included within the applicable Interest Rate through the definition of "Reserve Requirement") against assets held by, deposits or other liabilities in or for the account of, advances or loans by, or any other acquisition of funds by any Lender for any LIBOR Loan; or

(c) shall impose on any Lender any other condition directly related to any LIBOR Loan or Commitment in respect thereof;

and the effect of any of the foregoing is to increase the cost to such Lender of making, issuing, creating, renewing, participating in (subject to the limitations in Section 9.13) or maintaining any such LIBOR Loan or Commitment in respect thereof or to reduce any amount receivable by such Lender hereunder, then Borrower shall from time to time, within 10 days after demand by such Lender, pay to such Lender additional amounts sufficient to reimburse such Lender for such increased costs or to compensate such Lender for such reduced amounts. A certificate setting forth in reasonable detail the amount of such increased costs or reduced amounts and the basis for determination of such amount, submitted by such Lender to Borrower, shall, in the absence of manifest error, be conclusive and binding on Borrower for purposes of this Agreement.

2.8.4 Capital Requirements. If any Lender determines that (a) any Change of Law after the date of this Agreement increases the amount of capital required or expected to be maintained by such Lender, or the Lending Office of such Lender or any Person controlling such Lender (a "Capital Adequacy Requirement"), and (b) the amount of capital maintained by such Lender or such Person which is attributable to or based upon the Loans, the Commitments or this Agreement must be increased as a result of such Capital Adequacy Requirement (taking into account such Lender's or such Person's policies with respect to capital adequacy), then Borrower shall pay to such Lender or such Person, within 10 days after delivery of demand by such Lender or such Person, such amounts as such Lender or such Person shall reasonably determine are necessary to compensate such Lender or such Person for the increased costs to such Lender or such Person of such increased capital. A certificate of such Lender or such Person, setting forth in reasonable detail the computation of any such increased costs, delivered to Borrower by such Lender or such Person shall, in the absence of manifest error, be conclusive and binding on Borrower for purposes of this Agreement.

2.8.5 Notice; Participating Lenders' Rights. Each Lender shall notify Borrower of any event occurring after the date of this Agreement that will entitle such Lender to compensation pursuant to this Section 2.8, as promptly as practicable, and in no event later than 180 days after the principal officer of such Lender responsible for administering this Agreement obtains knowledge thereof; provided that any Lender's failure to notify Borrower within such 180 day period shall not relieve Borrower of its obligation under this Section 2.8 with respect to claims arising prior to the end of such period, but shall relieve Borrower of its obligations under this Section 2.8 with respect to the time between the end of such period and such time as Borrower receives notice from the indemnitee as provided herein. No Person purchasing from a Lender a participation in any Commitment (as opposed to an assignment) shall be entitled to any payment from or on behalf of Borrower pursuant to Section 2.8.3 or Section 2.8.4 which would

be in excess of the applicable proportionate amount (based on the portion of the Commitment in which such Person is participating) which would then be payable to such Lender if such Lender had not sold a participation in that portion of the Commitment.

## 2.9 FUNDING LOSSES.

If Borrower shall (a) repay or prepay any LIBOR Loans on any day other than the last day of an Interest Period for such Loans (whether an optional prepayment or a Mandatory Prepayment), (b) fail to borrow any LIBOR Loans in accordance with a Notice of Construction Loan Borrowing delivered to Administrative Agent (whether as a result of the failure to satisfy any applicable conditions or otherwise) after such Notice of Construction Loan Borrowing has become irrevocable, (c) fail to convert any Loans into LIBOR Loans in accordance with a Notice of Conversion of Loan Type delivered to Administrative Agent (whether as a result of the failure to satisfy any applicable conditions or otherwise) after such Notice of Conversion of Loan Type has become irrevocable, (d) fail to continue a LIBOR Loan in accordance with a Confirmation of Interest Period Selection delivered to Administrative Agent, (e) fail to convert any Construction Loans into Term Loans in accordance with a Notice of Term Conversion delivered to Administrative Agent (whether as a result of a failure to satisfy any applicable conditions or otherwise), or (f) fail to make any prepayment in accordance with any notice of prepayment delivered to Administrative Agent, then Borrower shall, within 10 days after demand by any Lender, reimburse such Lender for all reasonable costs and losses incurred by such Lender as a result of such repayment, prepayment or failure ("Liquidation Costs"). Borrower understands that such costs and losses may include losses incurred by a Lender as a result of funding and other contracts entered into by such Lender to fund LIBOR Loans (other than non-receipt of the margin applicable to such LIBOR Loans). Each Lender demanding payment under this Section 2.9 shall deliver to Borrower a certificate setting forth in reasonable detail the basis for and the amount of costs and losses for which demand is made. Such a certificate so delivered to Borrower shall, in the absence of manifest error, be conclusive and binding as to the amount of such loss for purposes of this Agreement.

## 2.10 ALTERNATE OFFICE; MINIMIZATION OF COSTS.

2.10.1 To the extent reasonably possible, each Lender shall designate an alternative Lending Office with respect to its LIBOR Loans and otherwise take any reasonable actions to reduce any liability of Borrower to any Lender under Section 2.6.4, 2.8.3, 2.8.4 or 2.9, or to avoid the unavailability of any Type of Loans under Section 2.8.2 so long as (in the case of the designation of an alternative Lending Office) such Lender, in its sole discretion, determines that (a) such designation is not disadvantageous to such Lender and (b) such actions would eliminate or reduce liability to such Lender. Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or actions within 10 Banking Days of demand thereof to Borrower.

2.10.2 If and with respect to each occasion that a Lender either makes a demand for compensation pursuant to Section 2.6.4, 2.8.3 or 2.8.4 or is unable for a period of three consecutive months to fund LIBOR Loans pursuant to Section 2.8.2 or such Lender wrongfully fails to fund a Loan, then Borrower may, upon at least five Banking Days' prior irrevocable written notice to each of such Lender and Administrative Agent, in whole permanently replace the Loans and Commitments of such Lender; provided that Borrower shall replace such Loans and Commitments with the Loans and Commitments of a commercial bank reasonably satisfactory to Administrative Agent, and with respect to the Security Fund LC Commitment, reasonably satisfactory to the LC Issuer. Such replacement Lender shall upon the effective date of replacement purchase the Borrower's Obligations hereunder owed to such replaced Lender for the aggregate amount thereof and shall thereupon for all purposes become a "Lender" hereunder. Such notice from Borrower shall specify an effective date for the replacement of such Lender's Loans and Commitments, which date shall not be later than the fourteenth day after the day such notice is given. On the effective date of any replacement of such Lender's Loans and Commitments pursuant to this Section 2.10.2, Borrower shall pay to Administrative Agent for the account of such Lender (a) any fees due to such Lender to the date of such replacement, (b) the principal of and accrued interest on the principal amount of outstanding Loans held by such Lender to the date of such replacement (such amount to be represented by the purchase of the Borrower's Obligations hereunder of such replaced Lender by the replacing Lender and not as a prepayment of such Loans), and (c) the amount or amounts due to such Lender pursuant to each of Sections 2.6.4, 2.8.3 and 2.8.4, as applicable, and any other amount then payable hereunder to such Lender. Borrower will remain liable to such replaced Lender for any Liquidation Costs that such Lender sustains or incurs as a consequence of the purchase of such Lender's Loans (unless such Lender has defaulted on its obligation to fund a Loan hereunder). Upon the effective date of the purchase of any Lender's Loans owed to such Lender and termination of such Lender's Commitments pursuant to this Section 2.10.2, such Lender shall cease to be a Lender hereunder. No such termination of any such Lender's Commitments and the purchase of such Lender's Loans pursuant to this Section 2.10.2 shall affect (i) any liability or obligation of Borrower or any other Lender to such terminated Lender, or any liability or obligation of such terminated Lender to Borrower or any other Lender, which accrued on or prior to the date of such termination, or (ii) such terminated Lender's rights hereunder in respect of any such liability or obligation.

2.10.3 Upon written notice to Administrative Agent, any Lender may designate a Lending Office other than the Lending Office most recently designated to Administrative Agent and may assign all of its interests under the Credit Documents and its Notes (if any) to such Lending Office; provided that such designation and assignment do not at the time of such designation and assignment increase the reasonably foreseeable liability of Borrower under Section 2.6.4, 2.8.3 or 2.8.4 or make an Interest Rate option unavailable pursuant to Section 2.8.2.

### **ARTICLE 3 CONDITIONS PRECEDENT**

3.1 CONDITIONS PRECEDENT TO THE CLOSING DATE.

The obligation of each Lender to enter into this Agreement and to make the initial Construction Loans under this Agreement and of the LC Issuer to issue the Security Fund LC is subject to the prior satisfaction of each of the following conditions (unless waived in writing by Administrative Agent with the consent of the Lenders) (the date such conditions precedent are so satisfied or waived being referred to as the "Closing Date"):

3.1.1 Resolutions. Delivery to the Lead Arrangers of a copy of one or more resolutions or other authorizations, in form and substance reasonably satisfactory to the Lenders, of each Borrower Party, each other Affiliate of Borrower that is a party to an Operative Document as of the Closing Date (each such Affiliate, an "Affiliated Major Project Participant" and, together with each Borrower Party, the "Calpine Entities") certified by a Responsible Officer of each such Calpine Entity as being in full force and effect on the Closing Date, authorizing, as applicable and among other things, the Borrowings herein provided for, the granting of the Liens under the Collateral Documents, the contribution of equity to the Project Companies and the execution, delivery and performance of this Agreement and the other Operative Documents and any instruments or agreements required hereunder or thereunder to which such Calpine Entity is a party.

3.1.2 Incumbency. Delivery to the Lead Arrangers of a certificate, in form and substance reasonably satisfactory to the Lenders, from each Calpine Entity signed by the appropriate authorized officer or manager of each such Calpine Entity and dated as of the Closing Date, as to the incumbency of the natural Persons authorized to execute and deliver this Agreement and the other Operative Documents and any instruments or agreements required hereunder or thereunder to which such Calpine Entity is a party.

3.1.3 Formation Documents. Delivery to the Lead Arrangers of (a) copies of the articles of incorporation, certificate of incorporation, charter or other state certified constituent documents of each Calpine Entity, certified by the secretary of state of such Calpine Entity's state of incorporation or formation, as applicable, and (b) copies of the bylaws, limited liability company operating agreement or other comparable constituent documents, if applicable, of each Calpine Entity, certified by a Responsible Officer of such Calpine Entity as being true, correct and complete on the Closing Date.

3.1.4 Good Standing Certificates. Delivery to the Lead Arrangers of certificates issued by (a) the secretary of state of the state in which each Calpine Entity is formed or incorporated, as applicable, (b) in the case of each Affiliated Major Project Participant (other than Calpine and FEC-LP) which is a party to a FEC Major Project Document, the Secretary of the State of Texas or the Comptroller of the State of Texas, as the case may be, and (c) in the case of each Affiliated Major Project Participant (other than Calpine) which is a party to a MEC Major Project Document, the Secretary of State of the State of Minnesota, in each case (i) dated a date reasonably close prior to the Closing Date and (ii) certifying that such Calpine Entity is in good standing and, if necessary in connection with performance of its obligations under the applicable Major Project Document, is qualified to do business in, and has paid all franchise taxes or similar taxes due to, such states.

3.1.5 Third Party Approvals. The Lead Arrangers shall have received all information and copies of all documents and copies of any approval by any Person (including any Governmental Authority) reasonably required in connection with any transaction herein contemplated or contemplated in any other Credit Document, which the Lead Arrangers may reasonably have requested in connection herewith.

3.1.6 Credit Documents and Project Documents. Delivery to the Lead Arrangers of (a) executed originals of this Agreement and each other Credit Document to be executed on the Closing Date and any supplements or amendments thereto, all of which shall be in form and substance reasonably satisfactory to the Lenders, (b) a certified list of, and true, correct and complete copies of, each FEC Project Document (other than any FEC Project Document which is only incidental to the development, construction, leasing, ownership or operation of the Freeport Project) executed on or prior to the Closing Date (together with any supplements or amendments thereto), all of which shall be in form and substance reasonably satisfactory to the Lenders, and all of which shall have been duly authorized, executed and delivered by the parties thereto, and all of which FEC Project Documents shall be certified by a Responsible Officer of FEC as being true, complete and correct and in full force and effect on the Closing Date pursuant to the certificate delivered pursuant to Section 3.1.7, and (c) a certified list of, and true, correct and complete copies of, each MEC Project Document (other than any MEC Project Document which is only incidental to the development, construction, leasing, ownership or operation of the Mankato Project) executed on or prior to the Closing Date (together with any supplements or amendments thereto, all of which shall be in form and substance reasonably satisfactory to the Lenders, and all of which shall have been duly authorized, executed and delivered by the parties thereto, and all of which MEC Project Documents shall be certified by a Responsible Officer of MEC as being true, complete and correct and in full force and effect on the Closing Date pursuant to the certificate delivered pursuant to Section 3.1.7.

3.1.7 Closing Certificates.

(a) Certificate of Borrower. Delivery to the Lead Arrangers of a certificate, dated as of the Closing Date, duly executed by a Responsible Officer of Borrower, in substantially the form of Exhibit F-1.

(b) Certificate of FEC. Borrower shall cause FEC to deliver to the Lead Arrangers a certificate, dated as of the Closing Date, duly executed by a Responsible Officer of FEC, in substantially the form of Exhibit F-2, which certificate shall, among other things, (a) state that neither FEC nor, to FEC's knowledge, any other party to any FEC Project Document (other than any FEC Project Document which is only incidental to the development, construction, leasing, ownership or operation of the Freeport Project) is or, but for the passage of time or giving of notice or both will be, in breach of any material obligation thereunder, except as otherwise set forth in the Dow Consent, (b) state that all conditions precedent to the performance of FEC, and, to FEC's knowledge, all conditions precedent to the performance of the other parties under such FEC Project Documents then required to have been performed shall have been satisfied, except as disclosed in writing by FEC prior to the Closing Date, and

(c) contain each other certification required to be made by a Responsible Officer of FEC on the Closing Date pursuant to Sections 3.1.6 and 3.1.16.

(c) Certificate of MEC. Borrower shall cause MEC to deliver to the Lead Arrangers a certificate, dated as of the Closing Date, duly executed by a Responsible Officer of MEC, in substantially the form of Exhibit F-3, which certificate shall, among other things, (a) state that neither MEC nor, to MEC's knowledge, any other party to any MEC Project Document (other than any MEC Project Document which is only incidental to the development, construction, leasing, ownership or operation of the Mankato Project) is or, but for the passage of time or giving of notice or both will be, in breach of any material obligation thereunder, (b) state that all conditions precedent to the performance of MEC, and, to MEC's knowledge, all conditions precedent to the performance of the other parties under such MEC Project Documents then required to have been performed shall have been satisfied, except as otherwise disclosed in writing by MEC prior to the Closing Date, and (c) contain each other certification required to be made by a Responsible Officer of MEC on the Closing Date pursuant to Sections 3.1.6 and 3.1.16.

(d) Certificates of FEC-GP and FEC-LP. Borrower shall cause each of FEC-GP and FEC-LP to deliver to the Lead Arrangers a certificate, dated as of the Closing Date, duly executed by a Responsible Officer of FEC-GP and FEC-LP, respectively, in substantially the form of Exhibit F-8, which certificate shall contain each certification required to be made by a Responsible Officer of FEC-GP and FEC-LP on the Closing Date pursuant to Section 3.1.16.

3.1.8 Legal Opinions. Delivery to the Lead Arrangers of legal opinions of counsel to the Calpine Entities and each Major Project Participant (other than NSP (with respect to the MEC Interconnection Agreement) and NNG), in each case in form and substance reasonably satisfactory to the Lenders.

3.1.9 Certificate of Insurance Consultant. Delivery to the Lead Arrangers of the Insurance Consultant's certificate, dated as of the Closing Date and in substantially the form of Exhibit F-5, together with the Insurance Consultant's report, in form and substance reasonably satisfactory to the Lenders, attached thereto.

3.1.10 Insurance. Insurance complying with terms and conditions set forth in Exhibit K shall be in full force and effect and the Lead Arrangers and the Insurance Consultant shall have received (a) a certificate from FEC and MEC's insurance broker(s), dated as of the Closing Date and in form and substance reasonably satisfactory to the Lenders, (i) identifying underwriters, type of insurance, insurance limits and policy terms, (ii) listing the special provisions required as set forth in Exhibit K, (iii) describing the insurance obtained and (iv) stating that such insurance is in full force and effect and that all premiums then due thereon have been paid and that, in the opinion of such broker(s), such insurance complies with the terms and conditions set forth in Exhibit K, and (b) certified copies of all policies evidencing such insurance (or a binder, commitment or certificates signed by the insurer or a broker authorized to bind the insurer), each in form and substance reasonably satisfactory to the Lenders.

3.1.11 Certificate of the Independent Engineer. Delivery to the Lead Arrangers of the Independent Engineer's certificate, dated as of the Closing Date and in substantially the form of Exhibit F-6, together with the Independent Engineer's report, in form and substance reasonably satisfactory to the Lenders, attached thereto.

3.1.12 Certificate of Power Market Consultant. Delivery to the Lead Arrangers of the Power Market Consultant's certificate, dated as of the Closing Date and in substantially the form of Exhibit F-7, together with the Power Market Consultant's report, in form and substance reasonably satisfactory to the Lenders, attached thereto.

3.1.13 Schedule of Applicable Permits.

(a) Delivery to the Lead Arrangers of Exhibit G-1, the schedule of Permits required by any Borrower Party or Dow to develop, construct, lease, own and operate the Projects, in form and substance reasonably satisfactory to the Lenders. Borrower shall also deliver and cause FEC and MEC to deliver to the Lead Arrangers copies of each Permit listed in Part I of Exhibit G-1 in form and substance reasonably satisfactory to the Lenders. Except as disclosed in Exhibit G-1, each Applicable Permit listed in Part I of Exhibit G-1 shall (A) constitute in the Lead Arrangers' reasonable opinion all of the Applicable Permits as of the Closing Date, (B) have been duly obtained or been assigned in Dow, FEC or MEC's name as applicable, (C) be in full force and effect, (D) not be subject to any current legal proceeding, and (E) not be subject to any Unsatisfied Condition that could reasonably be expected to result in material modification or revocation of such Applicable Permit, and all applicable appeal periods with respect to each such Applicable Permit shall have expired.

(b) Part II of Exhibit G-1 shall list all other Permits that are not Applicable Permits (as of the Closing Date) required by any Borrower Party or Dow to develop, construct, lease, own and operate the Projects as contemplated by the Operative Documents. The Permits listed in Part II of Exhibit G-1 shall, in the Lead Arrangers' reasonable opinion, be timely obtainable (i) on or before the date any Borrower Party or Dow requires such Permit, (ii) without delay materially in excess of the time provided therefor in the Project Schedule (if applicable), and (iii) without expense materially in excess of the amounts provided therefor in the Project Budget by FEC or MEC as applicable.

(c) Except as disclosed in Exhibit G-1, the Permits listed in Part I of Exhibit G-1 shall not be subject to any restriction, condition, limitation or other provision which could reasonably be expected to have a Material Adverse Effect or result in the Projects being operated in a manner substantially inconsistent with the assumptions underlying the Base Case Project Projections.

3.1.14 Absence of Litigation. Except as disclosed on Exhibit G-5, no action, suit, proceeding or investigation shall have been instituted or threatened in writing against any Borrower Party. No action, suit, proceeding or investigation shall have been instituted or, to Borrower's knowledge, threatened in writing against any other Major Project Participant that (for purposes of this Section 3.1.14, in the Lead Arrangers' sole discretion) could reasonably be

expected to (a) have a Material Adverse Effect, or (b) cause or deem the Lenders, Administrative Agent, Collateral Agent, the Lead Arrangers or any Borrower Party or any Affiliate of any of them to be subject to, or not exempted from, regulation under PUHCA, or treated as a public utility under the laws of the State of Minnesota (in the case of the Mankato Project) or of Texas (in the case of the Freeport Project), as constituted and construed by the courts of Minnesota or Texas as applicable, respecting the rates or the financial or organizational regulation of electric utilities.

3.1.15 Payment of Fees. All taxes, fees and other costs payable in connection with the execution, delivery, recordation and filing of the documents and instruments referred to in this Section 3.1 and due on the Closing Date shall have been paid in full or, as approved by the Lenders, provided for. Borrower shall have paid (or caused to be paid) all outstanding amounts due, as of the Closing Date, and owing to (a) the Lenders, Administrative Agent or the Lead Arrangers under any fee or other letter, including without limitation the Arrangement Fee Letter and the Upfront Fee Letter, or pursuant to Section 2.4.1, (b) the Lenders' attorneys and consultants (including the Independent Consultants) and the Title Insurers for all services rendered and billed prior to the Closing Date, (c) the Depository Agent under the Depository Agreements, and (d) Administrative Agent for any other amounts required to be paid or deposited by Borrower on the Closing Date.

3.1.16 Financial Statements. Delivery to the Lead Arrangers of accurate and complete copies of the most recent (a) unaudited annual financial statements of each Borrower Party (other than Borrower) for the year ended December 31, 2004, (b) audited annual financial statements or Form 10-K of Sponsor, Dow and NSP, for the year ended December 31, 2003, (c) unaudited quarterly financial statements or Form 10-Q of Sponsor for the fiscal quarter ended on September 30, 2004, (d) unaudited profit and loss statement and balance sheet for CCMCI, Operator and CES for the fiscal quarter ended September 30, 2004 and (e) for each Borrower Party, unaudited pro forma income statement, balance sheet, cash flow statement (other than Borrower, FEC-GP and FEC-LP) and reconciliation of net worth of each such Borrower Party as of the Closing Date, together with, in the case of each such Borrower Party, a certificate from the appropriate Responsible Officer thereof, dated as of the Closing Date and in substantially the form of Exhibit F-2 (in the case of FEC), Exhibit F-3 (in the case of MEC) or Exhibit F-8 (in the case of FEC-GP and FEC-LP), stating that no Material Adverse Change in the consolidated assets, liabilities, operations or financial condition of such Person has occurred from those set forth in the most recent financial statements provided to the Lead Arrangers.

3.1.17 UCC Reports. Delivery to the Lead Arrangers of a UCC report of a date no less recent than 30 days before the Closing Date for each of the jurisdictions in which the UCC-1 financing statements and the fixture filings are intended to be filed in respect of the Collateral, showing that upon due filing or recordation (assuming such filing or recordation occurred on the date of such respective reports), as the case may be, the security interests created under the Collateral Documents, with respect to such Collateral, will be prior to all other financing statements, future filings or other security documents wherein the security interest is perfected by filing or recording in respect of the Collateral.

3.1.18 Project Budget. Delivery to the Lead Arrangers of a budget in the form of Exhibit G-2 (the "Project Budget") for all anticipated costs to be incurred in connection with the development, construction, installation, start-up and testing of each Project, which Project Budget shall be satisfactory to the Lenders.

3.1.19 Base Case Project Projections. Delivery to the Lead Arrangers of the Base Case Project Projections of operating expenses and cash flow for each Project in the form of Exhibit G-3, which Base Case Project Projections shall be in form and substance satisfactory to the Lenders.

3.1.20 No Material Adverse Change. Since December 31, 2003, no Material Adverse Change has occurred and is continuing.

3.1.21 A.L.T.A. Surveys. Administrative Agent shall have received

A.L.T.A. surveys of the Sites (which surveys shall be reasonably current and in form and substance reasonably satisfactory to the Lenders and the Title Insurer), certified to FEC or MEC, as applicable, Administrative Agent and the Title Insurer by a licensed Texas surveyor (in the case of the Freeport Project) or a licensed Minnesota surveyor (in the case of the Mankato Project) reasonably satisfactory to the Lenders, showing, among other things, (a) as to the Sites, the location and dimensions thereof (including (i) the location of all means of access thereto and all easements or encumbrances relating thereto, and (ii) the perimeter within which all improvements are to be located), (b) the existing utility facilities servicing the Projects (including water, electricity, fuel, telephone, sanitary sewer and storm water distribution and detention facilities), (c) other than Permitted Liens, no existing or contemplated improvements encroach or interfere with adjacent property or existing easements or other rights (whether on, above or below ground), and that there are no gaps, gores, projections, protrusions or other survey defects, (d) whether the MEC Site or any portion thereof is located in a special flood hazard zone, and (e) no other matters constituting a defect in title other than Title Exceptions; provided, however, that the matters described in clauses (a)(ii) and (d) above may be shown by separate maps, surveys or other information reasonably satisfactory to the Lenders, and the surveyor shall not be required to certify as to the location of any easements, improvements, encroachments utilities or other matters which do not exist as of the Closing Date.

3.1.22 Title Policies. Delivery to the Lead Arrangers of a lender's

A.L.T.A. extended coverage policy of title insurance with respect to the Mankato Project and a Mortgagee Policy of Title Insurance with respect to the Freeport Project (collectively, the "Title Policies") (with any standard coverage exception reasonably acceptable to the Lead Arrangers but without a mechanics' and materialmen's exception included therein (except where applicable Governmental Rules prevent the deletion of such exception) necessary to cause the Title Insurer to issue affirmative coverage for mechanics' and materialmen's liens in form and substance reasonably satisfactory to the Lenders), together with such endorsements thereto as are reasonably required by the Lead Arrangers and otherwise available in the applicable state, or the unconditional and irrevocable commitment of the Title Insurer to issue such policies, dated as of the Closing Date, in an amount equal to 50% of Project Costs for the Freeport Project and 50% of Project Costs for the Mankato Project (with such reinsurance as is reasonably satisfactory to

the Lenders) issued by the applicable Title Insurer in form and substance satisfactory to the Lead Arrangers, insuring (or agreeing to insure) that:

(a) FEC has good and indefeasible right to occupy and use the FEC Site and the FEC Easements as lessee and easement holder, in each case free and clear of all Liens and exceptions to title whatsoever, other than (i) the Title Exceptions, and (ii) such Liens or other exceptions to title as are reasonably satisfactory to the Lenders;

(b) MEC has a good, marketable and insurable (i) fee simple interest in the MEC Site, and (ii) easement interest in the MEC Easements, in each case free and clear of Liens or other exceptions to title, other than (A) the Title Exceptions, and (B) such Liens or other exceptions to title as are reasonably satisfactory to the Lenders;

(c) the FEC Deed of Trust is (or will be when recorded) a valid first lien on FEC's leasehold interest in the FEC Mortgaged Property, free and clear of all Liens and exceptions to title whatsoever, other than (i) the Title Exceptions, and (ii) such Liens or other exceptions to title as are reasonably satisfactory to the Lenders; and

(d) the MEC Mortgage is (or will be when recorded, so long as the NSP Acknowledgement of Subordination is recorded prior thereto) a valid first lien on MEC's interest in the MEC Mortgaged Property, free and clear of all Liens and exceptions to title whatsoever, other than (i) the Title Exceptions, and (ii) such Liens or other exceptions to title as are reasonably satisfactory to the Lenders.

3.1.23 Real Estate Rights. Except as disclosed on Exhibit G-9, each Borrower Party and each other Major Project Participant shall have obtained and shall hold all fee interests, leasehold interests, easements or other possessory rights in real estate, together with necessary real property permits and crossing rights (collectively, "Rights of Way") necessary for (a) performance in full of each such Person's obligations under the Operative Documents to which such Person is a party and each Permit to which such Person or its assets is bound by, and (b) the development, leasing, construction and operation of the Projects in accordance with the Base Case Project Projections. The use of such Rights of Way shall not encroach on or interfere with property adjacent to such Rights of Way or existing easements or other rights (whether on, above or below ground), except for Permitted Liens, and the full length of the Rights of Way shall be continuous, without break, gap or interruption.

3.1.24 Regulatory Status. Delivery to the Lead Arrangers of (a) an order issued by FERC confirming that MEC is an Exempt Wholesale Generator, (b) an order issued by FERC authorizing MEC to sell electricity at market-based rates and granting MEC all waivers of regulations and blanket authorizations as are customarily granted by FERC to entities with market-based rate authority,

(c) evidence reasonably satisfactory to the Lead Arrangers confirming that the Freeport Project is a Qualifying Facility, and (d) all necessary approvals from any Governmental Authority in respect of the MEC Interconnection Agreement, the Power Purchase Agreement and the Capacity Sales Agreement, to the extent applicable.

- 3.1.25 Notice to Proceed. The Construction Contractor shall have been given (or shall be given simultaneously with the Closing Date) an unconditional notice to proceed or otherwise been unconditionally directed (or shall be directed simultaneously with the Closing Date) to begin performance under the Project Documents to which such Person is a party and the Lead Arrangers shall have received reasonably satisfactory evidence thereof.
- 3.1.26 Establishment of Accounts. The Accounts required to be established as of the Closing Date for the Projects under the Control Agreements and the Depositary Agreements shall have been established to the satisfaction of the Lead Arrangers.
- 3.1.27 Representations and Warranties. Each representation and warranty of each Borrower Party and each other Calpine Entity under the Credit Documents shall be true and correct as of the Closing Date.
- 3.1.28 No Default. No Event of Default or Inchoate Default shall have occurred and be continuing as of the Closing Date.
- 3.1.29 Utilities. Delivery to the Lead Arrangers of reasonably satisfactory evidence that all potable water, sewer, telephone, electric and all other utility services necessary for the development, construction, ownership and operation of the Projects are either contracted for, or are readily available on commercially reasonable terms, at the Projects.
- 3.1.30 Project Schedule. Delivery to the Lead Arrangers of the Project Schedule in the form of Exhibit G-4, which Project Schedule shall be reasonably satisfactory to the Lenders.
- 3.1.31 Consents. Delivery to the Lead Arrangers of executed Consents from each of the Major Project Participants, which Consents shall be in substantially the form of Exhibit E-1 or such other form agreed to by Borrower and the Lead Arrangers, and otherwise reasonably satisfactory to the Lenders.
- 3.1.32 Process Agents. Delivery to the Lead Arrangers of evidence reasonably acceptable to the Lead Arrangers that each Calpine Entity has appointed Corporation Service Company as its respective agent for service of process in the State of New York in respect of each Credit Document to which such Person is a party which is governed by the laws of the State of New York.
- 3.1.33 PPA Security Fund. The Security Fund shall have been provided to NSP in compliance with all applicable requirements under the Power Purchase Agreement and shall be in full force and effect.
- 3.1.34 Undertaking Support LCs. Collateral Agent shall have been absolutely assigned, and shall be in possession of, the Undertaking Support LCs, subject to Collateral Agent's continuing obligations with respect to such Undertaking Support LCs as set forth in Section 3.7 of the Borrower Depositary Agreement.

3.1.35 Use of Equity. Borrower shall have certified to the Lead Arrangers (in form and substance reasonably satisfactory to the Lenders) and the Lead Arrangers and the Independent Engineer shall have confirmed, that FEC and MEC have applied the proceeds of cash equity contributions made by Sponsor to the payment of Project Costs in an aggregate amount not less than the Base Equity Requirement.

### 3.2 CONDITIONS PRECEDENT TO EACH CREDIT EVENT.

The obligation of the Lenders to make each Construction Loan (including the first Construction Loan, and any Punchlist Drawing, Dow Change Order Drawing, Dow Performance Test Drawing or True-Up Drawing), of the LC Issuer to issue the Security Fund LC, and of Collateral Agent to authorize release of Project Revenues from the Construction Account for application to Project Costs (each such loan and issuance, a "Credit Event"), is subject to the prior satisfaction (or written waiver by Administrative Agent with the consent of the Majority Lenders) of each of the following conditions:

3.2.1 Representations and Warranties. Each representation and warranty made by or on behalf of Borrower and each Benefiting Project Company in any of the Credit Documents (other than representations and warranties relating solely to a Project Company which is not a Benefiting Project Company) shall be true and correct in all material respects as if made on the date of such Credit Event, unless such representation or warranty expressly relates solely to an earlier date. Each representation and warranty of each Major Project Participant (other than any Person which is a Major Project Participant solely by virtue of its relationship with a Project Company which is not a Benefiting Project Company) contained in the Operative Documents (other than this Agreement) shall be true and correct in all material respects as if made on the date of such Credit Event, unless such representation and warranty expressly relates solely to an earlier date, and except where the untruth of such representation and warranty could not reasonably be expected to have a Material Adverse Effect.

3.2.2 No Default. No Event of Default or Inchoate Default shall have occurred and be continuing or will result from such Credit Event.

3.2.3 Operative Documents in Effect. Each Credit Document and Major Project Document relating to the Benefiting Project Company shall remain in full force and effect in accordance with its terms (except for any Major Project Document that has expired or been terminated in accordance with the terms thereof and, if applicable, the relevant Consent).

3.2.4 No Material Adverse Change. Since the Closing Date, no Material Adverse Change shall have occurred and be continuing.

3.2.5 Notice of Construction Loan Borrowing; Calculations. Borrower shall have delivered a Notice of Construction Loan Borrowing to Administrative Agent in accordance with the procedures specified in Section 2.1.1, provided that no Notice of Construction Loan Borrowing shall be required if the sole Credit Event occurring is release of Project Revenues toward payment of Project Costs. To the extent that the proceeds of the requested Construction Loan are intended to be used to reimburse Sponsor for certain equity contributions made by it as

contemplated by Section 5.1.1, then Borrower shall have delivered the calculations and other information described in Section 5.10 as and when required thereby.

### 3.2.6 Drawdown Certificate and Independent Engineer's Certificate.

(a) At least six Banking Days prior to each Credit Event, Borrower shall have provided Administrative Agent and the Independent Engineer with a duly executed copy of the Drawdown Certificate, dated the date of delivery of such certificate, setting forth the date of the proposed occurrence of such Credit Event and signed by a Responsible Officer of Borrower, substantially in the form of Exhibit C-5.

(b) At least four Banking Days prior to each Credit Event, the Independent Engineer shall have provided Administrative Agent with a certificate of the Independent Engineer, dated the date of delivery of such certificate, setting forth the date of the proposed occurrence of such Credit Event and signed by an authorized representative of the Independent Engineer, substantially in the form of Exhibit C-6 (the "Independent Engineer's Drawdown Certificate").

(c) Borrower shall use reasonable efforts to provide Administrative Agent and the Independent Engineer with drafts of any certificates and other materials to be delivered pursuant to this Section 3.2.6 in advance of the time frames listed above as reasonably requested in writing by Administrative Agent.

3.2.7 Amount. Construction Loans made on any single date of Borrowing shall not exceed an aggregate amount equal to the lesser of (a) the Available Construction Loan Commitment determined as of such date, and (b) such amounts as shall ensure that uncommitted funds remaining in the Construction Accounts other than the subaccounts thereof shall be disbursed to the greatest extent possible, subject to the requirements of Section 2.1.1(b)(ii).

3.2.8 Title Policy Endorsements. Borrower shall provide, or Administrative Agent shall be adequately assured, that (A) at the time of each Credit Event where MEC is the Benefiting Project Company, the Title Insurer is committed to issue to Administrative Agent a date-down endorsement of the Title Policy insuring the MEC Mortgage, dated as of the date of such Credit Event, insuring the continuing first priority of the MEC Mortgage (subject only to (a) the exceptions to title contained in the title policy delivered pursuant to Section 3.1.22, (b) Permitted Liens described in clause (b) of the definition thereof (to the extent the same are afforded priority over the Lien of the MEC Mortgage by operation of law), and (c) any other exceptions to title as are reasonably acceptable to Administrative Agent), and otherwise in form and substance reasonably satisfactory to Administrative Agent, and (B) at the time of each Credit Event where FEC is the Benefiting Project Company, that the Title Insurer is committed to issue to Administrative Agent a letter addressed to Administrative Agent addressing matters of record which may have arisen since the last Credit Event, provided that no such commitment, endorsement or letter shall be required if the sole Credit Event occurring is release of Project Revenues toward payment of Project Costs.

3.2.9 Lien Releases. If requested by Administrative Agent and subject to the Benefiting Project Company's right to contest liens as described in the definition of "Permitted Liens," the Benefiting Project Company shall have delivered to Administrative Agent duly executed acknowledgments of payments and releases of mechanics' and materialmen's liens, in the form attached to the relevant Project Document or otherwise in form and substance reasonably acceptable to Administrative Agent and the Title Insurer, from each contractor or vendor that is a Major Project Participant of the Benefiting Project Company for all work, services and materials (including equipment and fixtures of all kinds, done, previously performed or furnished for the construction of such Project), for which the disbursement of Construction Loan or non-Loan funds (as the case may be) is being requested; provided, however, that such releases may be conditioned upon receipt of payment with respect to work, services and materials to be paid for with the proceeds of the requested Construction Loan or disbursement of non-Loan proceeds, as applicable.

### 3.2.10 Applicable Permits.

(a) All Applicable Permits, required to have been obtained by the Benefiting Project Company and, if the Benefiting Project Company is FEC, Dow by the date of such Credit Event from any Governmental Authority shall have been issued and be in full force and effect and not subject to current legal proceedings or to any Unsatisfied Conditions that could reasonably be expected to result in material modification or revocation, and all applicable appeal periods with respect thereto shall have expired.

(b) With respect to any of the Permits not yet obtained and listed in Part II of Exhibit G-1, to Borrower's knowledge, no fact or circumstance shall exist which makes it likely that any such Permit will not be timely obtainable by the Benefiting Project Company and, if the Benefiting Project Company is FEC, Dow (i) prior to the time that it becomes an Applicable Permit, as applicable, (ii) without delay materially in excess of the time periods thereof in the Project Schedule (if applicable), and (iii) without expense materially in excess of the amounts provided therefor in the then-current Project Budget by FEC or MEC as applicable.

(c) Except as disclosed in Exhibit G-1, the Permits listed in Exhibit G-1 which have been obtained by the Benefiting Project Company and, if the Benefiting Project Company is FEC, Dow, shall not be subject to any restriction, condition, limitation or other provision that could reasonably be expected to have a Material Adverse Effect.

3.2.11 Additional Documentation. With respect to Additional Project Documents entered into or obtained, transferred or required (whether because of the status of the development, construction or operation of the Projects or otherwise) since the date of the most recent Credit Event by the Benefiting Project Company, there shall be (a) redelivery of such matters as are described in Section 3.1.6(b) to the extent applicable to such Additional Project Documents, and (b) if reasonably requested by Administrative Agent, delivery of such matters as are described in Sections 3.1.1 and 3.1.8 from the applicable Borrower Party, and Sections 3.1.8 and, to the extent required by Section 5.16, Section 3.1.31, from the counterparty to such Additional Project Document; provided that references to such matters being satisfactory to the

Lead Arrangers shall, for purposes of this Section 3.2.11, be deemed to be references to such matters being reasonably satisfactory to Administrative Agent.

3.2.12 Acceptable Work; No Liens. All work that has been done on the Project owned by the Benefiting Project Company has been done in a good and workmanlike manner and in accordance with the applicable Construction Contract, and in accordance with the standard of care set forth in the applicable Construction Contract, and there shall not have been filed against any of the Collateral relating to the Benefiting Project Company or otherwise filed with or served upon Borrower or the Benefiting Project Company with respect to the applicable Project or any part thereof, notice of any Lien, claim of Lien or attachment upon or claim affecting the right to receive payment of any of the moneys payable to any of the Persons named on such request which has not been released by payment or bonding or otherwise or which will not be released with the payment of such obligation out of such Construction Loan or non-Loan proceeds, other than Permitted Liens.

3.2.13 Casualty. If at the time of any Credit Event any Benefiting Project Company shall have suffered a Major Casualty Event, Depositary Agent shall have received funds (including applicable Loss Proceeds or equity funds irrevocably committed on terms and conditions reasonably satisfactory to Administrative Agent and, if in excess of \$5,000,000, supported by a Qualified Letter of Credit) sufficient in the reasonable judgment of Administrative Agent and the Independent Engineer to assure (i) restoration of such Project to substantially the same operating and performance parameters (including applicable O&M Costs required to operate such Project) as were in effect immediately prior to such Major Casualty Event, and (ii) Completion of such Project prior to the Construction Loan Maturity Date.

3.2.14 Absence of Litigation. Except as set forth on Exhibit G-5, no action, suit, proceeding or investigation shall have been instituted or threatened in writing against Borrower, the Benefiting Project Company, the applicable Major Project Participants or the applicable Project which could reasonably be expected to (a) have a Material Adverse Effect, or (b) cause or deem the Lenders, Administrative Agent, Collateral Agent, the Lead Arrangers or, except to the extent provided in the first sentence of Section 4.17, any Borrower Party or any Affiliate of any of them to be subject to, or not exempted from, regulation under PUHCA, or treated as a public utility under the laws of the State of Texas (in the case of the Freeport Project), or Minnesota (in the case of the Mankato Project), as constituted and construed by the courts of Texas or Minnesota, as applicable, respecting the rates or the financial or organizational regulation of electric utilities.

3.2.15 Insurance. Insurance complying with the requirements of Section 5.18 shall be in effect for the Borrower and the Benefiting Project Company, and, upon the reasonable written request of Administrative Agent, evidence thereof shall have been provided to Administrative Agent.

3.2.16 Available Construction Funds. After taking into consideration the making of the applicable Credit Event, Administrative Agent (based on consultation with the Independent Engineer) shall have reasonably determined that Available Construction Funds

allocable to the Benefiting Project Company shall not be less than the aggregate unpaid amount required to cause the Completion Date for such Project to occur in accordance with all Legal Requirements, the applicable Construction Contract, each other applicable Project Document pursuant to which construction work with respect to the applicable Project is being performed, and the Credit Documents, prior to the Construction Loan Maturity Date and to pay or provide for all anticipated non-construction Project Costs of the Benefiting Project Company, all as set forth in the then-current Project Budget with respect to such Benefiting Project Company.

3.2.17 Delivery of First Amendment to PPA. Where MEC is the Benefiting Project Company, for any Credit Events to occur more than seven months following the Closing Date, delivery to the Lead Arrangers of the First Amendment to PPA, fully executed and approved by all necessary Governmental Authorities.

### 3.3 CONDITIONS PRECEDENT TO TERM-CONVERSION.

No Construction Loans shall Term-Convert unless the following conditions shall have been satisfied or waived in writing by Administrative Agent with consent of the Majority Lenders (the date such conditions are so satisfied or waived being referred to as the "Term Period Commencement Date"):

3.3.1 Credit Event Conditions. The conditions set forth in Section 3.2, with the exception of Sections 3.2.5-3.2.9 and 3.2.16, shall have been satisfied as of the date of Term-Conversion.

3.3.2 Payment of Obligations. Borrower shall have paid to Administrative Agent the principal amount of the Construction Loans outstanding which will not be Term-Converted to Term Loans as provided in Section 2.1.2, plus all interest due and owing through such date on such Construction Loans and all other Obligations of Borrower due and owing through such date to Administrative Agent, Collateral Agent and the Lenders hereunder or under any other Credit Document.

3.3.3 Punchlist Drawing; Dow Change Order Drawing; Dow Performance Test Drawing; True-Up Drawing.

(a) Punchlist Drawing. Prior to Term-Conversion, Borrower shall have made a drawing up to any then-remaining Available Construction Loan Commitment (the "Punchlist Drawing") in an amount equal to, when aggregated with any amounts then on deposit (or being simultaneously deposited) in the respective Construction Accounts immediately prior to such Punchlist Drawing, the amount necessary to fund in full the payments set forth in Section 3.1.3 of the Project Company Depositary Agreements for Punchlist and other items necessary to achieve Final Completion of both Projects. The amounts drawn for Punchlist items pursuant to this Section 3.3.3(a) shall be deposited into the applicable Project Company Construction Account.

(b) Dow Change Order Drawing. If, after giving effect to the making of the Punchlist Drawing (if any), (i) there remains any Available Construction Loan Commitment on

the Term Period Commencement Date and (ii) Dow has elected less than \$5,000,000 of changes pursuant to Section 2.3.2 of the Capacity Sales Agreement, then Borrower, at its election, may draw additional Construction Loans at or prior to Term-Conversion (the "Dow Change Order Drawing"), in an amount up to the lesser of (A) \$5,000,000 minus the cost of changes which Dow did elect pursuant to such section, and (B) \$4,000,000. Such amount shall be deposited into Borrower's Revenue Account.

(c) Dow Performance Test Drawing. Solely in the event that any performance tests at the Freeport Project have been deferred pursuant to Sections 4.3.2 and 4.3.3 of the Capacity Sales Agreement (a "Dow Test Deferral"), then if, after giving effect to the making of the Punchlist Drawing (if any) and Dow Change Order Drawing (if any), there remains any Available Construction Loan Commitment, then Borrower shall draw additional Construction Loans on the Term Period Commencement Date in an amount equal to the lesser of (i) the Available Construction Loan Commitment and (ii) the Dow Performance Test Exposure. The amount of such drawing (the "Dow Performance Test Drawing Amount") shall be deposited into the First Step Construction Sub-Account pursuant to Section 3.1.1(h) of the FEC Depository Agreement.

(d) True-Up Drawing. If, after giving effect to the making of the Punchlist Drawing (if any), the Dow Change Order Drawing (if any), and the Dow Performance Test Drawing (if any), (i) there remains any Available Construction Loan Commitment and (ii) the Debt to Equity Ratio (as determined in accordance with Section 5.10(b)) is less than the Target Debt to Equity Ratio, then Borrower, at its election, may draw additional Construction Loans on the Term Period Commencement Date (the "True-Up Drawing") in an amount up to the lesser of (i) the amount of the then-remaining Available Construction Loan Commitment, and (ii) an amount which, after giving effect to the making of the Punchlist Drawing (if any), the Dow Change Order Drawing (if any), and the Dow Performance Test Drawing (if any), yields the Target Debt to Equity Ratio. Such amount shall be deposited into the Borrower Revenue Account. After the True-Up Drawing, any remaining Construction Loan Commitment shall be cancelled.

3.3.4 Completion. Completion with respect to each Project shall have occurred and Borrower shall have delivered to Administrative Agent, in form and substance reasonably satisfactory to Administrative Agent, a certification that Completion with respect to each Project has occurred.

3.3.5 Annual Budget. Administrative Agent shall have received the Annual Operating Budget for each Project as required under Section 5.14.3 for the period from the Term Period Commencement Date through the end of the calendar year in which Term-Conversion is to occur; provided that if such period is less than three months, Administrative Agent shall have also received the Annual Operating Budget for each Project for the first full calendar year thereafter. In the event that either such Annual Operating Budget does not, in Administrative Agent's reasonable opinion acting in consultation with the Independent Engineer, properly reflect the operation of the applicable Project during such calendar year as a result of the actual date of Term-Conversion being different from the date anticipated therefor and set forth in such

Annual Operating Budget, Administrative Agent shall have received an amendment to such Annual Operating Budget properly reflecting the actual date of Term-Conversion upon written request to Borrower for the same.

3.3.6 Debt Service Reserve Account. On the Term Period Commencement Date, the amount on deposit in or credited to the Debt Service Reserve Account, together with the stated amount of any Qualified Letter of Credit available for payment to Administrative Agent for disbursement to the Debt Service Reserve Account, shall be not less than 50% of the DSR Required Balance, and each Project Company has available to it in its O&M Account or in use as working capital the amount of working capital required under the applicable Depositary Agreement.

3.3.7 Term Notes. Borrower shall have delivered duly executed Term Notes to each Lender, if any Lender shall have requested such Term Notes in writing pursuant to Section 2.1.4 or 9.14.

3.3.8 Delivery of Documents. Administrative Agent shall have received, in form and substance reasonably satisfactory to Administrative Agent, such date-down opinions, resolutions, certificates and other evidence as Administrative Agent may reasonably request in writing to ensure Administrative Agent's reasonable satisfaction with the matters covered in Sections 3.1.8 (with respect solely to Borrower Parties), 3.1.6 (with respect to any Credit Document or Project Document not previously delivered) and 3.1.10.

3.3.9 Sufficient Funds for Initial Principal Repayment Date. In the event that Term-Conversion takes place less than three months prior to the Initial Principal Repayment Date, Borrower shall have demonstrated to Administrative Agent's reasonable satisfaction that amounts retained in the Revenue Accounts after Term-Conversion plus anticipated Project Revenues prior to the Initial Principal Repayment Date will be sufficient to make the payments of principal and interest due on the Initial Principal Repayment Date.

#### 3.4 CONDITIONS PRECEDENT TO USE OF PROCEEDS OUTSIDE OF INITIAL ALLOCATED PORTIONS.

Prior to "Substantial Completion" under the MEC Construction Contract and funding of the Punchlist Drawing for the Mankato Project, Borrower may not draw any Construction Loan in an amount which would cause a violation of the Initial Allocated Portion requirements set forth in Section 2.1.1(a), unless the following conditions shall have been satisfied or waived in writing by Administrative Agent with consent of the Majority Lenders:

3.4.1 The Initial Allocated Portion of the Project Company requiring additional funds shall have been fully expended.

3.4.2 The Independent Engineer shall have certified that the remaining Commitments are sufficient for Completion of both Projects, and the Administrative Agent shall have provided consent for the additional draw based upon the Independent Engineer's certification.

### 3.5 NO APPROVAL OF WORK.

The making of any Loan hereunder shall in no event be deemed an approval or acceptance by Administrative Agent, Collateral Agent, the Lenders or any other Secured Party of any work, labor, supplies, materials or equipment furnished or supplied with respect to the Projects.

### 3.6 ADJUSTMENT OF DRAWDOWN REQUESTS.

In the event Administrative Agent determines that any item listed in a Drawdown Certificate as a Project Cost is not properly included in such Drawdown Certificate, Administrative Agent may in its reasonable discretion cause to be made a Loan or Loans in the amount requested in such Drawdown Certificate less the amount of such item or may reduce the amount of Loans made pursuant to any subsequent Drawdown Certificate. In the event that Borrower prevails in any dispute as to whether such Project Costs were properly included in such Drawdown Certificate, Loans in the amount requested but not initially made shall forthwith be made.

## **ARTICLE 4 REPRESENTATIONS AND WARRANTIES**

Borrower makes the following representations and warranties on behalf of each Borrower Party to and in favor of the Secured Parties as of the Closing Date (unless such representation and warranty expressly relates solely to another time) and, to the extent set forth in Article 3, as of the date of each Credit Event, all of which shall survive the Closing Date and the making of the Loans:

### 4.1 ORGANIZATION.

4.1.1 Borrower is (a) a limited liability company duly formed, validly existing and in good standing under the laws of the State of Delaware, and (b) is duly qualified as a foreign limited liability company, and is in good standing, in each other jurisdiction in which such qualification is required by law. Borrower has all requisite limited liability company power and authority to (i) own or hold under lease and operate the property it purports to own or hold under lease, (ii) carry on its business as now being conducted and as now proposed to be conducted in respect of the Projects, (iii) execute, deliver and perform each Operative Document to which it is a party, and (iv) take each action as may be necessary to consummate the transactions contemplated thereunder.

4.1.2 (a) The capital of Borrower is adequate for the business and undertakings of Borrower; (b) Borrower's funds and assets are not, and will not be, commingled with those of any other entity; (c) the Governing Documents of Borrower require it to maintain proper books of account and minutes of meetings and other proceedings of its directors; and (d) Borrower has

not entered into any transactions or conducted any business unrelated to the transactions contemplated by this Agreement.

4.1.3 FEC is (a) a limited partnership duly formed, validly existing and in good standing under the laws of the State of Delaware, and (b) is duly qualified as a foreign limited partnership, and is in good standing, in each jurisdiction in which such qualification is required by law. FEC has all requisite limited partnership power and authority to (i) own or hold under lease and operate the property it purports to own or hold under lease, (ii) carry on its business as now being conducted and as now proposed to be conducted in respect of the Freeport Project, (iii) execute, deliver and perform each Operative Document to which it is a party, and (iv) take each action as may be necessary to consummate the transactions contemplated thereunder. As of the Closing Date, Borrower is the 100% owner of FEC-LP, the 100% owner of FEC-GP, and the 100% indirect owner of FEC.

4.1.4 FEC-GP is (a) a limited liability company duly formed, validly existing and in good standing under the laws of the State of Delaware, and (b) is duly qualified as a foreign limited liability company, and is in good standing, in each jurisdiction in which such qualification is required by law. FEC-GP has all requisite limited liability company power and authority to (i) own or hold under lease and operate the property it purports to own or hold under lease, (ii) carry on its business as now being conducted and as now proposed to be conducted in respect of the Freeport Project, (iii) execute, deliver and perform each Operative Document to which it is a party, and (iv) take each action as may be necessary to consummate the transactions contemplated thereunder. As of the Closing Date, FEC-GP is the 1%-owning general partner of FEC.

4.1.5 FEC-LP is (a) a limited liability company duly formed, validly existing and in good standing under the laws of the State of Delaware, and (b) is duly qualified as a foreign limited liability company, and is in good standing, in each jurisdiction in which such qualification is required by law. FEC-LP has all requisite limited liability company power and authority to (i) own or hold under lease and operate the property it purports to own or hold under lease, (ii) carry on its business as now being conducted and as now proposed to be conducted in respect of the Freeport Project, (iii) execute, deliver and perform each Operative Document to which it is a party, and (iv) take each action as may be necessary to consummate the transactions contemplated thereunder. As of the Closing Date, FEC-LP is the 99%-owning limited partner of FEC.

4.1.6 MEC is (a) a limited liability company duly formed, validly existing and in good standing under the laws of the State of Delaware, and (b) is duly qualified as a foreign limited liability company, and is in good standing, in each jurisdiction in which such qualification is required by law. MEC has all requisite limited liability company power and authority to (i) own or hold under lease and operate the property it purports to own or hold under lease, (ii) carry on its business as now being conducted and as now proposed to be conducted in respect of the Mankato Project, (iii) execute, deliver and perform each Operative Document to which it is a party, and (iv) take each action as may be necessary to consummate the transactions contemplated thereunder. As of the Closing Date, MEC is directly wholly-owned by Borrower.

## 4.2 AUTHORIZATION; NO CONFLICT.

4.2.1 Borrower has duly authorized, executed and delivered each Operative Document to which Borrower is a party (or such Operative Documents have been duly and validly assigned to Borrower and Borrower has authorized the assumption thereof, and has assumed the obligations of the assignor thereunder) and neither Borrower's execution and delivery thereof nor its consummation of the transactions contemplated thereby nor its compliance with the terms thereof

(a) does or will contravene the Governing Documents or any other Legal Requirement applicable to or binding on Borrower or any of its properties which, in the case of such Legal Requirements, could reasonably be expected to have a Material Adverse Effect, (b) does or will contravene or result in any breach of or constitute any default under, or result in or require the creation of any Lien (other than Permitted Liens) upon any of its property under, any agreement or instrument to which it is a party or by which it or any of its properties may be bound or affected, or (c) does or will require the consent or approval of any Person, and with respect to any Governmental Authority, does or will require any registration with, or notice to, or any other action of, with or by any applicable Governmental Authority, in each case which has not already been obtained and disclosed in writing to Administrative Agent (except as set forth on Exhibit G-1 or otherwise provided in Section 4.9).

4.2.2 FEC has duly authorized, executed and delivered each Operative Document to which FEC is a party and neither FEC's execution and delivery thereof nor its consummation of the transactions contemplated thereby nor its compliance with the terms thereof (a) does or will contravene the Governing Documents or any other Legal Requirement applicable to or binding on FEC or any of its properties which, in the case of such Legal Requirements, could reasonably be expected to have a Material Adverse Effect, (b) does or will contravene or result in any breach of or constitute any default under, or result in or require the creation of any Lien (other than Permitted Liens) upon any of its property under, any agreement or instrument to which it is a party or by which it or any of its properties may be bound or affected, or (c) does or will require the consent or approval of any Person, and with respect to any Governmental Authority, does or will require any registration with, or notice to, or any other action of, with or by any applicable Governmental Authority, in each case which has not already been obtained and disclosed in writing to Administrative Agent (except as set forth on Exhibit G-1 or otherwise provided in Section 4.9).

4.2.3 FEC-GP has duly authorized, executed and delivered each Operative Document to which FEC-GP is a party and neither FEC-GP's execution and delivery thereof nor its consummation of the transactions contemplated thereby nor its compliance with the terms thereof (a) does or will contravene the Governing Documents or any other Legal Requirement applicable to or binding on FEC-GP or any of its properties which, in the case of such Legal Requirements, could reasonably be expected to have a Material Adverse Effect, (b) does or will contravene or result in any breach of or constitute any default under, or result in or require the creation of any Lien (other than Permitted Liens) upon any of its property under, any agreement or instrument to which it is a party or by which it or any of its properties may be bound or

affected, or (c) does or will require the consent or approval of any Person, and with respect to any Governmental Authority, does or will require any registration with, or notice to, or any other action of, with or by any applicable Governmental Authority, in each case which has not already been obtained and disclosed in writing to Administrative Agent (except as set forth on Exhibit G-1 or otherwise provided in Section 4.9).

4.2.4 FEC-LP has duly authorized, executed and delivered each Operative Document to which FEC-LP is a party and neither FEC-LP's execution and delivery thereof nor its consummation of the transactions contemplated thereby nor its compliance with the terms thereof (a) does or will contravene the Governing Documents or any other Legal Requirement applicable to or binding on FEC-LP or any of its properties which, in the case of such Legal Requirements, could reasonably be expected to have a Material Adverse Effect, (b) does or will contravene or result in any breach of or constitute any default under, or result in or require the creation of any Lien (other than Permitted Liens) upon any of its property under, any agreement or instrument to which it is a party or by which it or any of its properties may be bound or affected, or (c) does or will require the consent or approval of any Person, and with respect to any Governmental Authority, does or will require any registration with, or notice to, or any other action of, with or by any applicable Governmental Authority, in each case which has not already been obtained and disclosed in writing to Administrative Agent (except as set forth on Exhibit G-1 or otherwise provided in Section 4.9).

4.2.5 MEC has duly authorized, executed and delivered each Operative Document to which MEC is a party (or such Operative Documents have been duly and validly assigned to MEC and MEC has authorized the assumption thereof, and has assumed the obligations of the assignor thereunder) and neither MEC's execution and delivery thereof nor its consummation of the transactions contemplated thereby nor its compliance with the terms thereof (a) does or will contravene the Governing Documents or any other Legal Requirement applicable to or binding on MEC or any of its properties which, in the case of such Legal Requirements, could reasonably be expected to have a Material Adverse Effect, (b) does or will contravene or result in any breach of or constitute any default under, or result in or require the creation of any Lien (other than Permitted Liens) upon any of its property under, any agreement or instrument to which it is a party or by which it or any of its properties may be bound or affected, or (c) does or will require the consent or approval of any Person, and with respect to any Governmental Authority, does or will require any registration with, or notice to, or any other action of, with or by any applicable Governmental Authority, in each case which has not already been obtained and disclosed in writing to Administrative Agent (except as set forth on Exhibit G-1 or otherwise provided in Section 4.9).

#### 4.3 ENFORCEABILITY.

4.3.1 Each of the Operative Documents to which Borrower is a party is a legal, valid and binding obligation of Borrower, enforceable against Borrower in accordance with its terms, except to the extent that enforceability may be limited by applicable bankruptcy,

insolvency, moratorium, reorganization or other similar laws affecting the enforcement of creditors' rights or by the effect of general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law). None of the Operative Documents to which Borrower is a party has been amended or modified after the Closing Date except in accordance with this Agreement.

4.3.2 Each of the Operative Documents to which FEC is a party is a legal, valid and binding obligation of FEC, enforceable against FEC in accordance with its terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting the enforcement of creditors' rights or by the effect of general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law). None of the Operative Documents to which FEC is a party has been amended or modified after the Closing Date except in accordance with this Agreement.

4.3.3 Each of the Operative Documents to which FEC-GP is a party is a legal, valid and binding obligation of FEC-GP, enforceable against FEC-GP in accordance with its terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting the enforcement of creditors' rights or by the effect of general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law). None of the Operative Documents to which FEC-GP is a party has been amended or modified after the Closing Date except in accordance with this Agreement.

4.3.4 Each of the Operative Documents to which FEC-LP is a party is a legal, valid and binding obligation of FEC-LP, enforceable against FEC-LP in accordance with its terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting the enforcement of creditors' rights or by the effect of general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law). None of the Operative Documents to which FEC-LP is a party has been amended or modified after the Closing Date except in accordance with this Agreement.

4.3.5 Each of the Operative Documents to which MEC is a party is a legal, valid and binding obligation of MEC, enforceable against MEC in accordance with its terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting the enforcement of creditors' rights or by the effect of general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law). None of the Operative Documents to which MEC is a party has been amended or modified after the Closing Date except in accordance with this Agreement.

#### 4.4 COMPLIANCE WITH LAW.

4.4.1 There are no material violations by Borrower or, to Borrower's knowledge, any Calpine Entity, of any Legal Requirement (including any Hazardous Substance Laws).

Except as otherwise have been delivered to Administrative Agent, no notices of any material violation of any Legal Requirement (including any Hazardous Substance Laws) relating to the Projects or the Sites have been issued, entered or received by Borrower or, to Borrower's knowledge, any Calpine Entity.

4.4.2 There are no material violations by FEC of any Legal Requirement (including any Hazardous Substance Laws). Except as otherwise have been delivered to Administrative Agent or set forth on Exhibit G-6, no notices of any material violation of any Legal Requirement (including any Hazardous Substance Laws) relating to the Freeport Project or the FEC Site have been issued, entered or received by FEC or, to Borrower's knowledge, any Calpine Entity.

4.4.3 There are no material violations by FEC-GP of any Legal Requirement (including any Hazardous Substance Laws). Except as otherwise have been delivered to Administrative Agent or set forth on Exhibit G-6, no notices of any material violation of any Legal Requirement (including any Hazardous Substance Laws) relating to the Freeport Project or the FEC Site have been issued, entered or received by FEC-GP or, to Borrower's knowledge, any Calpine Entity.

4.4.4 There are no material violations by FEC-LP of any Legal Requirement (including any Hazardous Substance Laws). Except as otherwise have been delivered to Administrative Agent or set forth on Exhibit G-6, no notices of any material violation of any Legal Requirement (including any Hazardous Substance Laws) relating to the Freeport Project or the FEC Site have been issued, entered or received by FEC-LP or, to Borrower's knowledge, any Calpine Entity.

4.4.5 There are no material violations by MEC of any Legal Requirement (including any Hazardous Substance Laws). Except as otherwise have been delivered to Administrative Agent, no notices of any material violation of any Legal Requirement (including any Hazardous Substance Laws) relating to the Mankato Project or the MEC Site have been issued, entered or received by MEC or, to Borrower's knowledge, any Calpine Entity.

#### 4.5 BUSINESS, DEBT, CONTRACTS, JOINT VENTURES ETC.

4.5.1 Borrower has not conducted any business other than the business contemplated by the Operative Documents, does not have any outstanding Debt or other material liabilities other than pursuant to or allowed by the Operative Documents, and Borrower is not a party to or bound by any material contract other than the Operative Documents.

4.5.2 Borrower is not a general partner or a limited partner in any general or limited partnership or a joint venturer in any joint venture other than the sole member of MEC, FEC-LP and FEC-GP.

4.5.3 Borrower does not have any Subsidiaries other than FEC-LP, FEC-GP, FEC and MEC.

4.5.4 FEC has not conducted any business other than the business contemplated by the Operative Documents, does not have any outstanding Debt other than pursuant to or allowed by the Credit Documents or other material liabilities other than pursuant to the Operative Documents to which it is a party, and FEC is not a party to or bound by any material contract other than the Operative Documents.

4.5.5 FEC does not have any Subsidiaries.

4.5.6 FEC-GP has not conducted any business other than the business contemplated by the Operative Documents, does not have any outstanding Debt or other material liabilities, and FEC-GP is not a party to or bound by any material contract other than the Credit Documents, the FEC Partnership Agreement, or the Operative Documents to which FEC is a party by reason of FEC-GP being the general partner of FEC.

4.5.7 FEC-GP does not have any Subsidiaries other than FEC.

4.5.8 FEC-LP has not conducted any business other than the business contemplated by the Operative Documents, does not have any outstanding Debt or other material liabilities, and FEC-LP is not a party to or bound by any material contract other than the Credit Documents, the FEC Partnership Agreement and the Operative Documents to which FEC is a party by reason of FEC-LP being the limited partner of FEC.

4.5.9 FEC-LP does not have any Subsidiaries other than FEC.

4.5.10 MEC has not conducted any business other than the business contemplated by the Operative Documents, does not have any outstanding Debt other than pursuant to or allowed by the Credit Documents or other material liabilities other than pursuant to the Operative Documents to which it is a party, and MEC is not a party to or bound by any material contract other than the Operative Documents.

4.5.11 MEC is not a general partner or a limited partner in any general or limited partnership or a joint venturer in any joint venture.

4.5.12 MEC does not have any Subsidiaries.

4.5.13 No Borrower Party has any deposit or other accounts other than as created under the Depositary Agreements, the MEC Checking Account and the FEC Checking Account.

#### 4.6 ADVERSE CHANGE.

To Borrower's knowledge, since the Closing Date there has occurred no event or circumstance which could reasonably be expected to have a Material Adverse Effect, except as disclosed to Administrative Agent in writing at or prior to the time the representation in this Section 4.6 is being made.

#### 4.7 INVESTMENT COMPANY ACT.

None of the Borrower Parties or any other Calpine Entity is an investment company or a company controlled by an investment company, within the meaning of the Investment Company Act of 1940, as amended.

#### 4.8 ERISA.

Either (a) there are no ERISA Plans or Multiemployer Plans for any Calpine Entity or any ERISA Affiliate, or (b) (i) each Calpine Entity and each ERISA Affiliate have fulfilled their obligations (if any) under the minimum funding standards of ERISA and the Code for each ERISA Plan, (ii) each such Plan is in compliance in all material respects with the currently applicable provisions of ERISA and the Code, and (iii) neither any Calpine Entity nor any ERISA Affiliate has incurred any liability to the PBGC or an ERISA Plan or Multiemployer Plan under Title IV of ERISA (other than liability for premiums due in the ordinary course). None of any Calpine Entity's assets constitute assets of an employee benefit plan within the meaning of 29 C.F.R. Section 2510.3-101. No Borrower Party maintains or contributes to, and is obligated to contribute to, or has at any point of its existence maintained or contributed to, or been obligated to contribute to, any employee benefit plan subject to ERISA.

#### 4.9 PERMITS.

There are no Permits under existing Legal Requirements as the Projects are currently designed that are or will become Applicable Permits other than the Permits listed in Exhibit G-1 (as such Exhibit may be supplemented by Borrower Parties to reflect any Change of Law or the issuance or modification of any Permit after the Closing Date). Except as disclosed in Exhibit G-1 (as so supplemented), each Permit listed in Part I of Exhibit G-1 is in full force and effect and is not subject to any current legal proceeding or to any Unsatisfied Condition that could reasonably be expected to have a Material Adverse Effect, and all applicable appeal periods with respect thereto have expired. Each Permit listed in Part II of Exhibit G-1 is of a type that is routinely granted upon submission of a timely application and demonstration that the Projects comply with applicable standards and Legal Requirements. No Permit listed in Part II is required under applicable Legal Requirements or Project Documents to be obtained before the time contemplated to be obtained by the applicable Borrower Party or Dow. No fact or circumstance exists, to any Borrower Party's knowledge, which makes it likely that any Permit identified in Part II of Exhibit G-1 shall not be timely obtainable by the applicable Borrower Party or Dow before it becomes an Applicable Permit without expense in excess of amounts provided therefor in the then-current Project Budget or the then-current Annual Operating Budget, as the case may be, and without delay materially in excess of the time provided therefor in the Project Schedule (if applicable). Each Borrower Party and Dow is in compliance with all Applicable Permits except to the extent such noncompliance could not reasonably be expected to have a Material Adverse Effect.

#### 4.10 HAZARDOUS SUBSTANCES.

4.10.1 Except as set forth in Exhibit G-6: After giving effect to the environmental indemnity provided by Dow under Section 17.2.2 of the FEC Ground Lease and Dow's curative actions performed under Section 17.3.2 of the FEC Ground Lease, (a) each Project Company, with respect to the Sites, Improvements, other FEC Mortgaged Property or other MEC Mortgaged Property, is not and has not in the past been in violation of any Hazardous Substance Law which violation could reasonably be expected to result in a material liability to any Borrower Party or its properties and assets or in an inability of any Borrower Party to perform its obligations under the Operative Documents, (b) no Project Company or, to Borrower's knowledge, any other Person has used, Released, generated, manufactured, produced or stored in, on, under, or about the Sites, Improvements, other FEC Mortgaged Property or other MEC Mortgaged Property, or transported thereto or therefrom, any Hazardous Substances that could reasonably be expected to subject any Secured Party to liability or any Borrower Party to material liability under any Hazardous Substance Law, (c) to Borrower's knowledge, there are no underground tanks, whether operative or temporarily or permanently closed, located on the Sites, Improvements, other FEC Mortgaged Property or other MEC Mortgaged Property that could reasonably be expected to subject any Secured Party to liability, or Borrower to material liability under any Hazardous Substances Laws, (d) there are no Hazardous Substances used, stored or present at or on the Sites, Improvements, other FEC Mortgaged Property or other MEC Mortgaged Property, except in compliance with Hazardous Substance Laws and other Legal Requirements or, in the case of MEC, as disclosed in the Environmental Reports or, in the case of FEC, that could not reasonably be expected to have a Material Adverse Effect or to subject any Secured Party to liability or any Borrower Party to liability under any Hazardous Substance Laws, (e) to Borrower's knowledge, there are no Hazardous Substances that could reasonably be expected to migrate onto the Sites, Improvements, other FEC Mortgaged Property or other MEC Mortgaged Property that could reasonably be expected to impose on any Borrower Party a material liability, except, in the case of MEC, as disclosed in the Environmental Reports or, in the case of FEC, that could not reasonably be expected to have a Material Adverse Effect and (f) to Borrower's knowledge there neither is nor has been any condition, circumstance, action, activity or event that could reasonably be expected to be, or result in, a material violation by any Borrower Party of any Hazardous Substance Law, or to result in liability to any Secured Party or material liability to any Borrower Party under any Hazardous Substance Law.

4.10.2 Except as set forth on Exhibit G-5 or Exhibit G-6 and after giving effect to the environmental indemnity provided by Dow under Section 17.2.2 of the FEC Ground Lease and Dow's curative actions performed under Section 17.3.2 of the FEC Ground Lease, (a) as of the Closing Date, there is no pending or, to Borrower's knowledge, threatened in writing, action or proceeding by any Governmental Authority (including the Minnesota Public Utilities Commission, Blue Earth County, Minnesota, Brazoria County, Texas, U.S. Army Corps of Engineers and U.S. Environmental Protection Agency) or any other Person which is not a Governmental Authority with respect to the presence or Release of Hazardous Substances in, on, from or to the Sites, Improvements, other FEC Mortgaged Property or other MEC Mortgaged

Property and, (b) thereafter, there is no pending or, to Borrower's knowledge, threatened in writing, action or proceeding by any Governmental Authority (including the Minnesota Public Utilities Commission, Blue Earth County, Minnesota, Freeport County, Texas, U.S. Army Corps of Engineers and U.S. Environmental Protection Agency) or any non-governmental third party with respect to the presence or Release of Hazardous Substances in, on, from or to the Sites, Improvements, other FEC Mortgaged Property or other MEC Mortgaged Property which could reasonably be expected to have a Material Adverse Effect.

4.10.3 Except as set forth in the Environmental Report and after giving effect to the environmental indemnity provided by Dow under Section 17.2.2 of the FEC Ground Lease and Dow's curative actions performed under Section 17.3.2 of the FEC Ground Lease, to Borrower's knowledge, there are no past violations that have not been finally resolved or existing violations of any Hazardous Substances Laws by any Person affecting the Sites, Improvements, other FEC Mortgaged Property or other MEC Mortgaged Property, which violations could reasonably be expected to result in a material liability to any Borrower Party.

#### 4.11 LITIGATION.

(a) Except as set forth on Exhibit G-5, as of the Closing Date, no action, suit, proceeding or investigation has been instituted or, to Borrower's knowledge, threatened in writing against any Borrower Party.

(b) Except as set forth on Exhibit G-5, as of the Closing Date, Borrower has no knowledge of (i) any action, suit, proceeding or investigation that has been instituted or threatened in writing against, any Calpine Entity or any other Major Project Participant, or by which any of them or their properties are bound, which could reasonably be expected to have a Material Adverse Effect, or (ii) any order, judgment or decree that has been issued or proposed to be issued by any Governmental Authority that, as a result of the construction, development, ownership or operation of the Projects by any Borrower Party, the sale of electricity or steam therefrom by any Borrower Party or the entering into of any Operative Document or any transaction contemplated hereby or thereby, could reasonably be expected to cause or deem the Lenders, Administrative Agent, Collateral Agent, the Lead Arrangers or any Borrower Party or any Affiliate of any of them to be subject to, or not exempted from, regulation under PUHCA, or treated as a public utility under the laws of the State of Texas (in the case of the Freeport Project) or Minnesota (in the case of the Mankato Project) as presently constituted and as construed by the courts of Texas or Minnesota, as applicable, respecting the rates or the financial or organizational regulation of electric utilities.

(c) After the Closing Date, there are no pending or, to Borrower's knowledge, threatened actions or proceedings of any kind, including actions or proceedings of or before any Governmental Authority, to which each Borrower Party is a party or is subject, or by which any of them or any of their properties are bound, which could reasonably be expected to have a

Material Adverse Effect and which have not been disclosed by Borrower Parties to Administrative Agent in accordance with, and to the extent required by, Section 5.4.

#### 4.12 LABOR DISPUTES AND ACTS OF GOD.

Neither the business nor the properties of any Borrower Party or, to Borrower's knowledge, Dow or NSP are currently affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy, or other casualty (whether or not covered by insurance), which could reasonably be expected to have a Material Adverse Effect.

#### 4.13 PROJECT DOCUMENTS.

4.13.1 Copies of all of the Major Project Documents and Major Equipment Contracts executed on or prior to such date have been delivered to Administrative Agent. Since the Closing Date, except as has been disclosed to Administrative Agent in writing and as permitted hereunder, as of such date, none of such Major Project Documents has been amended, modified or terminated (other than expiration thereof in accordance with its terms and the Credit Documents).

4.13.2 To Borrower's knowledge, except as disclosed to Administrative Agent in writing at or prior to the time the representation and warranty in this Section 4.13.2 is being made, the representations and warranties of the Major Project Participants contained in the Operative Documents (other than this Agreement) are true and correct in all material respects except where the untruth of such representation and warranty could not reasonably be expected to have a Material Adverse Effect.

#### 4.14 DISCLOSURE.

Neither this Agreement nor any certificate or other documentation (other than the Project Budgets, the Annual Operating Budgets or the Base Case Project Projections) furnished or verified by a Borrower Party to the Lead Arrangers, Administrative Agent, Collateral Agent, or the Lenders, or to any consultant submitting a report to Administrative Agent, the Lead Arrangers or the Lenders, by or, to Borrower's knowledge, on behalf of any Borrower Party with respect to the Projects, the Borrower Parties or any other Calpine Entity or in connection with the transactions contemplated by this Agreement, the other Credit Documents or the design, construction, description or operation of the Projects, contained (at the time of delivery or verification thereof) any untrue statement of a material fact or omitted (at the time of delivery or verification thereof) to state a material fact necessary in order to make the statements contained herein or therein not misleading under the circumstances in which they were made at the time such statements were made (other than any information that was corrected or updated in writing to the Lead Arrangers prior to the Closing Date). As of the Closing Date, there is no fact known to Borrower which has had or could reasonably be expected to have a Material Adverse Effect which has not been disclosed in writing to Administrative Agent, the Lead Arrangers,

Collateral Agent, or the Lenders by or on behalf of any Borrower Party on or prior to the Closing Date in connection with the transactions contemplated hereby.

#### 4.15 PRIVATE OFFERING BY BORROWER.

Assuming that each Lender is acquiring its Notes for investment purposes only, and not for purposes of resale or distribution thereof except for assignments or participations as provided in Sections 9.13 and 9.14, no registration of such Notes under the Securities Act of 1933, as amended, or under the securities laws of the States of Texas, Minnesota or New York is required in connection with the offering, issuance and sale of such Notes hereunder. No Borrower Party or anyone acting on its behalf has taken, or will take, any action which would subject the issuance or sale of any Notes to Section 5 of the Securities Act of 1933, as amended.

#### 4.16 TAXES.

(a) Each Borrower Party has timely filed, or caused to be filed, all federal, state and local tax returns and reports that it is required to file, has paid all taxes, material assessments, utility charges, fees and other governmental charges it is required to pay to the extent due (other than those taxes that it is contesting in good faith and by appropriate proceedings in accordance with the requirements of Section 5.20). Borrower knows of no proposed tax assessment against any Borrower Party or any other Calpine Entity which could reasonably be expected to have a Material Adverse Effect (other than those proposed tax assessments that any Borrower Party is contesting in good faith and by appropriate proceedings in accordance with the requirements of Section 5.20). In either case, to the extent such taxes, assessments, charges and fees are not due, the applicable Calpine Entity has established reserves that are adequate for the payment thereof in conformity with GAAP.

(b) At all times since its formation, each Borrower Party has been an entity with a single owner (with the exception of FEC which has two owners) that is disregarded as separate from its owner for federal tax purposes. No Form 8832 has ever been filed with respect to any Borrower Party as other than a disregarded entity and no such election shall have been made.

(c) No Borrower Party has liability for the taxes of any Person (other than such Borrower Party) (i) under Treasury Regulations Section 1.1502-6 (or any similar provision of state, local or foreign law), (ii) as a transferee or successor, (iii) by contract, or (iv) otherwise.

(d) No Borrower Party intends to treat the Loans (including the incurrence thereof) as being a "reportable transaction" (within the meaning of Treasury Regulation Section 1.6011-4).

#### 4.17 GOVERNMENTAL REGULATION.

None of Borrower Parties, Administrative Agent, Collateral Agent, or any Lender, nor any Affiliate of any of them will, solely as a result of the construction, ownership, leasing or operation of the Projects, the sale of electricity, steam, capacity or ancillary services therefrom or the entering into any Operative Document in respect of the Projects or any transaction contemplated hereby or thereby, be subject to, or not exempt from, regulation under the FPA or PUHCA or under state laws and regulations respecting the rates or the financial or organizational regulation of electric utilities, except that

(a) MEC is subject to the compliance requirements under PUHCA applicable to an Exempt Wholesale Generator and an owner of an Eligible Facility, (b) each of MEC and CES is a "public utility" subject to FERC jurisdiction under the FPA with authority to sell wholesale electric power at market based rates, and with all waivers of regulations and blanket authorizations as are customarily granted by FERC to a "public utility" that sells wholesale electric power and ancillary services at market based rates, (c) FEC is subject to the requirements under PURPA and the regulations of FERC promulgated thereunder, as amended from time to time, necessary to be a Qualifying Facility, (d) FEC is subject to state laws and regulations respecting the rates or the financial or organizational regulation of electric utilities to the extent contemplated by 18 C.F.R. Section 292.602(c), and (e) the exercise of remedies, as provided for under the Collateral Documents, with respect to MEC and the Mankato Project may be subject to Section 32 of PUHCA and Section 203, 204 and/or 205 of the FPA. Except to the extent provided in the first sentence of this Section 4.17, no Borrower Party will be deemed by any Governmental Authority having jurisdiction to be subject to financial, organizational or rate regulation as an "electric utility", "electric corporation", "electrical company", "public utility", "holding company", or "public utility holding company" or any similar Person under any applicable Governmental Rule then in effect.

#### 4.18 REGULATION U, ETC.

No Borrower Party is engaged principally, or as one of its principal activities, in the business of extending credit for the purpose of "buying", "carrying" or "purchasing" margin stock (each as defined in Regulations T, U or X of the Federal Reserve Board), and no part of the proceeds of the Loans or the Project Revenues will be used by any Borrower Party for the purpose of "buying", "carrying" or "purchasing" any such margin stock or for any other purpose which violates the provisions of the regulations of the Federal Reserve Board.

#### 4.19 BUDGETS; PROJECTIONS.

Borrower has prepared the Project Budgets, the Annual Operating Budgets and the Base Case Project Projections and is responsible for developing the assumptions on which such Project Budgets, Annual Operating Budgets and the Base Case Project Projections are based; and such Project Budgets, Annual Operating Budgets and the Base Case Project Projections (a) as of the date delivered, updated or supplemented are based on reasonable assumptions (including as to all legal and factual matters material to the estimates set forth therein), (b) as of the date delivered, updated or supplemented are consistent in all material respects with the provisions of the Project Documents executed on or prior to such date, and (c) as of the date delivered, updated or supplemented indicate that the estimated aggregate Project Costs will not exceed Available Construction Funds.

#### 4.20 FINANCIAL STATEMENTS.

In the case of each financial statement of each Borrower Party (other than the financial statements delivered by any Borrower Party pursuant to Sections 3.1.16(a) and (e)) and accompanying information delivered by each Borrower Party under the Credit Documents (insofar as financial statements relate to each such Borrower Party), each such financial statement and information has been prepared in conformity with GAAP and fairly presents, in all material respects, the financial position (on a consolidated and, where applicable, consolidating basis) of each Borrower Party, as the case may be, described in such financial statements as at the respective dates thereof and the results of operations and cash flows (on a consolidated and, where applicable, consolidating basis) of each Borrower Party, as the case may be, described therein for each of the periods then ended, subject, in the case of any such unaudited financial statements, to changes resulting from audit and normal year-end adjustments and the absence of footnote disclosure. Except for obligations under the Operative Documents to which it is a party, each Borrower Party does not (and will not following the funding of the initial Loans) have any contingent obligations, unmatured liabilities, contingent liability or liability for taxes, long-term lease or forward or long-term commitment required to be shown under GAAP that is not reflected in the foregoing financial statements or the notes thereto and which in any such case is material in relation to the business, results of operations, properties, financial condition or prospects of each Borrower Party.

#### 4.21 NO DEFAULT.

No Event of Default or Inchoate Default which has not been disclosed to Administrative Agent in writing has occurred and is continuing.

#### 4.22 ORGANIZATIONAL ID NUMBER; LOCATION OF COLLATERAL.

4.22.1 (a) Borrower's organizational identification number is 3899075; (b) FEC's organizational identification number is 3754988; (c) FEC-GP's organizational identification number is 3754613; (d) FEC-LP's organization identification number is 3754610; and (e) MEC's organizational identification number is 3861873.

4.22.2 All of the Collateral (other than the Accounts, the membership interests in any Borrower Party, general intangibles and the Siemens Turbines) is, or when installed pursuant to the Project Documents will be, located on the Sites or the Easements or at the applicable Borrower Party's address set forth in Section 11.1; provided that certain equipment may be temporarily removed from the Sites and/or Easements from time to time in the ordinary course of business and equipment owned by Borrower may be located at other sites as indicated in writing to the Collateral Agent, who shall have the right to inspect such equipment from time to time.

#### 4.23 TITLE AND LIENS.

Borrower has good, legal and valid title to the Collateral in which it grants the Collateral Agent a Lien. FEC has good and indefeasible title to the Collateral in which it grants the Collateral Agent a Lien and a valid and enforceable leasehold interest in the FEC Site and its interest in the Easements, in each case free and clear of all Liens, encumbrances or other exceptions to title other than Permitted Liens. MEC has good, marketable and insurable fee simple interest in the Collateral in which it grants the Collateral Agent a Lien, in each case free and clear of all Liens, encumbrances or other exceptions to title other than Permitted Liens. The Lien of the Collateral Documents constitutes a valid and subsisting first priority lien of record on all the FEC Mortgaged Property described in the FEC Deed of Trust and MEC Mortgage described in the MEC Mortgage and a first priority perfected security interest in all the personal property described in the Collateral Documents, subject to no Liens except Permitted Liens.

#### 4.24 INTELLECTUAL PROPERTY.

Except as disclosed in Exhibit G-5:

(a) Each Borrower Party owns, possesses or has entered into contracts with others who possess all licenses, permits, franchises, authorizations, patents, copyrights, service marks, trademarks and trade names, or rights thereto, that are necessary for the operation of its business, without known conflict with the rights of others.

(b) No product of any Borrower Party infringes in any material respect any license, permit, franchise, authorization, patent, copyright, service mark, trademark, trade name or other right owned by any other Person.

(c) There is no violation by any Person of any right of any Borrower Party with respect to any patent, copyright, service mark, trademark, trade name or other right owned or used by any Borrower Party.

(d) There exists no pending or threatened claim or litigation against or affecting any Borrower Party contesting its right to sell or use any such product, process, method, substance, part or other material.

#### 4.25 COLLATERAL.

The respective liens and security interests granted to Collateral Agent (for the benefit of the Secured Parties) pursuant to the Collateral Documents (a) constitute as to personal property included in the Collateral a valid security interest, and (b) constitute as to the FEC Mortgaged Property and the MEC Mortgaged Property included in the Collateral a valid lien and security interest in the FEC Mortgaged Property and the MEC Mortgaged Property, respectively. The security interest granted to Collateral Agent (for the benefit of the Secured Parties) pursuant to the Collateral Documents in the Collateral consisting of personal property will be perfected (i) with respect to any property that can be perfected by filing, upon the filing of financing statements in the filing offices identified in Exhibit D-9, (ii) with respect to any property that can be perfected by control, upon execution of the Control Agreements and the Depositary Agreements, and (iii) with respect to any property (if any) that can be perfected by possession,

upon Collateral Agent receiving possession thereof, and in each case such security interest will be, as to Collateral perfected under the UCC or otherwise as aforesaid, superior and prior to the rights of all third Persons now existing or hereafter arising whether by way of mortgage, lien, security interests, encumbrance, assignment or otherwise, except (i) Title Exceptions and Permitted Liens described in clauses (a) and (e) of the definition of "Permitted Liens", and (ii) to the extent required by Governmental Rule, those matters described in clauses (b), (c) and (g) of the definition of "Permitted Liens". Except to the extent possession of portions of the Collateral is required for perfection, all such action as is necessary has been taken to establish and perfect Collateral Agent's rights in and to the Collateral in existence on such date to the extent Collateral Agent's security interest can be perfected by filing, including any recording, filing, registration, giving of notice or other similar action. As of the Closing Date, no filing, recordation, re-filing or re-recording other than those listed on Exhibit D-9 hereto is necessary to perfect and maintain the perfection of the interest, title or Liens of the Collateral Documents, and on the Closing Date all such filings or recordings will have been made to the extent Collateral Agent's security interest can be perfected by filing. Each Borrower Party has properly delivered or caused to be delivered, or provided control, to Collateral Agent or Depositary Agent with respect to all Collateral that permits perfection of the Lien and security interest described above by possession or control.

#### 4.26 SUFFICIENCY OF PROJECT DOCUMENTS.

4.26.1 Other than those that can be reasonably expected to be commercially available when and as required, the services to be performed, the materials to be supplied and the real property interests, the Easements and other rights granted, or to be granted, pursuant to the Project Documents in effect as of such date:

(a) comprise all of the property interests necessary to secure any right material to the acquisition, leasing, development, construction, installation, completion, operation and maintenance of the Projects in accordance with all Legal Requirements and in accordance with the Project Schedule, all without reference to any proprietary information not owned by or available to any Borrower Party;

(b) are sufficient to enable the Projects to be located, constructed and operated on the Sites and the Easements; and

(c) provide adequate ingress and egress from the Sites for any reasonable purpose in connection with the construction and operation of the Projects.

4.26.2 There are no services, materials or rights required for the construction or operation of the Projects in accordance with the Construction Contracts, the other Major Project Documents and the assumptions that form the basis of Base Case Project Projections, other than those (a) to be provided under the Project Documents, or (b) that can reasonably be expected to be commercially available at or for delivery to the Sites on commercially reasonable terms

consistent with the then-current Project Budget, the then-current Annual Operating Budget and the Base Case Project Projections.

#### 4.27 UTILITIES.

All utility services necessary for the construction and the operation of each Project for its intended purposes are available at each such Project or can reasonably be expected to be so available as and when required upon commercially reasonable terms consistent with the then-current Project Budget, Project Schedule, the then-current Annual Operating Budget and the Base Case Project Projections.

#### 4.28 OTHER FACILITIES.

4.28.1 All roads necessary for the construction and full utilization of each Project for its intended purposes have either been completed or the applicable Borrower Party possesses the necessary rights of way therefor, other than rights of way that can reasonably be expected to be available on commercially reasonable terms as and when needed.

4.28.2 Each Borrower Party possesses, or the counterparties to the Major Project Documents (including the Power Purchase Agreement and the Capacity Sales Agreement) pursuant to which interconnection facilities will be constructed if necessary and, if applicable, operated for the benefit of each Project, possess and are obligated to provide or make available to the applicable Project Company, all necessary equipment, easements, rights of way, licenses, agreements and/or other rights, as necessary, for the construction, interconnection and utilization of the interconnection facilities (including fuel, water, wastewater and electrical).

#### 4.29 PROPER SUBDIVISION.

The MEC Site has been subdivided or entitled to exception therefrom. For all purposes, the MEC Site may be mortgaged, conveyed and otherwise dealt with as separate legal lot or parcel. FEC's leasehold interest in the FEC Site may be mortgaged and conveyed.

#### 4.30 FLOOD ZONE DISCLOSURE.

No material portion of the Collateral includes Improvements that are or will be located in an area that has been identified by the Federal Emergency Management Agency as an area having special flood or mudslide hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968, as amended.

#### 4.31 TAX SHELTER REGULATIONS.

Borrower does not intend to treat the Loans and related transactions as being a "reportable transaction" (within the meaning of Treasury Regulation section 1.6011-4). If Borrower determines to take any action inconsistent with such intention, it will promptly notify

the Administrative Agent thereof. Borrower acknowledges that the Administrative Agent or one or more of the Lenders may treat the Loans as part of a transaction that is subject to Treasury Regulation section 1.6011-4 or section 301.6112 - 1 (or any successor sections), and the Administrative Agent and such Lender or Lenders, as applicable, may file such Internal Revenue Service forms or maintain such lists and other records as they may determine is required by such Treasury Regulations.

## **ARTICLE 5 AFFIRMATIVE COVENANTS**

Borrower covenants and agrees that until the repayment in full in cash of all of Borrower's Obligations (other than those contingent Obligations that are intended to survive the termination of this Agreement or the other applicable Credit Documents), return and cancellation of the Security Fund LC and the expiration or termination of all Commitments and Interest Rate Agreements to which any Secured Party is a party, Borrower shall, or as applicable shall cause (whether directly or through FEC-GP and FEC-LP) the applicable Project Company to:

### **5.1 USE OF PROCEEDS, EQUITY CONTRIBUTIONS AND PROJECT REVENUES.**

#### **5.1.1 Proceeds and Equity Contributions.**

(a) Unless otherwise applied by Administrative Agent pursuant to this Agreement and the other Credit Documents, (i) Borrower shall on-lend proceeds of the Construction Loans to the Project Companies in accordance with an approved drawdown request, (ii) each Project Company shall deposit the proceeds of the Construction Loans and any cash equity contributions (including Additional Borrower Equity) in its Construction Account, (iii) subject to Section 5.1.1(b), use them solely to pay Project Costs, and in accordance with the Credit Documents.

(b) Notwithstanding anything to the contrary herein, Borrower shall be permitted to use the proceeds of the initial Construction Loans, the Draw Change Order Drawing and the True-Up Drawing, to reimburse Sponsor for (i) Project Costs paid (A) by Sponsor, or (B) by a Project Company with the proceeds of cash or in-kind equity contributions made by Sponsor to such Project Company (in each case, as verified by the Independent Engineer) on or before the date of the initial Construction Loan, and (ii) Construction Loans made pursuant to Section 5.17 to reimburse Sponsor for Drawstop Funds in accordance with Section 5.17.

5.1.2 Revenues. Unless otherwise applied by Administrative Agent or Collateral Agent pursuant to the terms of this Agreement or the other Credit Documents, each Borrower Party shall apply any Project Revenues, equity contributions, Loan proceeds, Insurance Proceeds, Eminent Domain Proceeds and damage payments solely for the purpose, and in the order and manner, provided for in the Depositary Agreements.

## 5.2 PAYMENT.

5.2.1 Credit Documents. Borrower shall pay all sums due under this Agreement and the other Credit Documents to which it is a party according to the terms hereof and thereof. Each Project Company shall pay all sums due under the Intercompany Note to which it is a party, to the extent of funds available therefor at the applicable Waterfall Levels under the Project Company Depositary Agreements.

5.2.2 Project Documents. Each Project Company shall pay all of its obligations due under the Project Documents, howsoever arising, as and when due and payable, except (a) such as may be contested in good faith or as to which a bona fide dispute may exist; provided that adequate cash reserves have been established in conformity with GAAP, or Administrative Agent is satisfied in its reasonable discretion that non-payment of such obligation pending the resolution of such contest or dispute will not in any way endanger its Project or result in a Material Adverse Change or that provision is made to the satisfaction of Administrative Agent in its reasonable discretion for the posting of security (other than the Collateral) for or the bonding of such obligations or the prompt payment thereof in the event that such obligation is payable, (b) each Project Company's trade payables which shall be paid in the ordinary course of business and (c) such failures as could not reasonably be expected to have a Material Adverse Effect.

## 5.3 WARRANTY OF TITLE.

(a) MEC shall maintain good, marketable and insurable fee simple interest in the MEC Site, (b) FEC shall maintain good, indefeasible and insurable leasehold interest in the FEC Site, and (c) MEC shall maintain (i) good, marketable and insurable easement interest in the MEC Easements, and (ii) good, legal and valid title to all of its other respective material properties and assets (other than properties and assets disposed of in the ordinary course of business or otherwise disposed of in accordance with Section 6.4) and (d) FEC shall maintain (i) a good, indefeasible and insurable easement interest in the FEC Easements, and (ii) good, legal and valid title to all of its other respective material properties and assets (other than properties and assets disposed of in the ordinary course of business or otherwise disposed of in accordance with Section 6.4), in each case free and clear of all Liens other than Permitted Liens.

## 5.4 NOTICES.

Each Borrower Party shall promptly, upon acquiring notice or giving notice (except as otherwise specified below), as the case may be, or obtaining knowledge thereof, give written notice (with copies of any underlying notices, papers, files or related documentation) to Administrative Agent of:

5.4.1 any litigation pending or, to each Borrower Party's knowledge, threatened in writing against any Borrower Party involving claims against any Borrower Party or either Project in excess of \$500,000 individually or \$1,000,000 in the aggregate per calendar year or involving any injunctive, declaratory or other equitable relief, such notice to include, if requested

in writing by Administrative Agent, copies of all papers filed in such litigation and to be given monthly if any such papers have been filed since the last notice given;

5.4.2 any dispute or disputes for which written notice has been received by any Borrower Party which may exist between such Borrower Party and any Governmental Authority and which involve (a) claims against such Borrower Party which exceed \$500,000 individually or \$1,000,000 in the aggregate per calendar year, (b) injunctive or declaratory relief, or (c) revocation, modification, failure to renew or the like of any Applicable Permit;

**5.4.3 any Event of Default or Inchoate Default;**

5.4.4 any casualty, damage or loss, whether or not insured, through fire, theft, other hazard or casualty, or any act or omission of (a) any Borrower Party, its employees, agents, contractors, consultants or representatives in excess of \$500,000 for any one casualty or loss or \$1,000,000 in the aggregate in any calendar year, or (b) to each Borrower Party's knowledge, any other Person if such casualty, damage or loss could reasonably be expected to have a Material Adverse Effect;

5.4.5 any cancellation, suspension or material change in the terms, coverage or amounts of any insurance described in Exhibit K;

5.4.6 any contractual obligations incurred by any Borrower Party exceeding \$500,000 per year in the aggregate for the Projects, not including any obligations incurred pursuant to the Credit Documents or the Project Documents or any obligation contemplated in the then-current Project Budget or the then-current Annual Operating Budget;

5.4.7 any intentional withholding of compensation to, or any right to withhold compensation claimed by, any Major Project Participant or pursuant to any Major Project Document, other than (a) retention provided by the express terms of any such contracts and (b) any such withholding or right which exceeds \$500,000 individually or \$1,000,000 in the aggregate;

5.4.8 any (a) termination (other than expiration in accordance with its terms and any applicable Consent) or material default of which any Borrower Party has knowledge or written notice thereof under any Major Project Document, and (b) material Project Document Modification (with copies of all such Project Document Modifications whether or not requiring approval of Administrative Agent or the Majority Lenders pursuant to Section 6.12);

5.4.9 any written claim of events of force majeure, change orders in excess of \$500,000, or any Borrower Party caused delay under the Construction Contracts or any other Major Project Document (including claims therefor regardless of whether such Borrower Party believes such claim has merit) and, to the extent requested in writing by Administrative Agent, copies of invoices or statements which are reasonably available to such Borrower Party under the Construction Contracts or any other Major Project Document, certified by an authorized representative of such Borrower Party, together with a copy of any supporting documentation,

schedule, data or affidavit delivered under the Construction Contracts or such other Major Project Document;

5.4.10 within one Banking Day after any Borrower Party receives notice pursuant to any Major Project Document of the proposed conduct of Performance Tests for either Project or material portion thereof and promptly prior to the proposed conduct of any subsequent Performance Tests, written notice of such proposed Performance Tests;

5.4.11 after giving effect to the environmental indemnity provided by Dow under Section 17.2.2 of the FEC Ground Lease and Dow's curative actions performed under Section 17.3.2 of the FEC Ground Lease, any (a) material noncompliance with any Hazardous Substance Law or any material Release of Hazardous Substances on or from the Sites, Improvements, other FEC Mortgaged Property or other MEC Mortgaged Property that has resulted or could reasonably be expected to result in personal injury or material property damage or to have a Material Adverse Effect, (b) pending or, to each Borrower Party's knowledge, threatened in writing, Environmental Claim against any Borrower Party or, to each Borrower Party's knowledge, any of its Affiliates, contractors, lessees or any other Persons, arising in connection with their occupying or conducting operations on or at the Projects, the Sites, the Improvements, other FEC Mortgaged Property or other MEC Mortgaged Property which, if adversely determined, could reasonably be expected to have a Material Adverse Effect, or (c) underground tank, whether operative or temporarily or permanently closed, located on the Sites, Improvements, other FEC Mortgaged Property or other MEC Mortgaged Property;

5.4.12 promptly, but in no event later than 30 days prior to the time any Person will become a member of any of Borrower Parties or the occurrence of any other change in or transfer of ownership interests in any Borrower Party or the Projects, notice thereof, which notice shall identify such Person and such Person's interest in the Borrower Party or shall describe, in reasonable detail, such other change or transfer;

5.4.13 any material written notices, reports or information (including any notice that either Project has achieved any completion milestone under the Construction Contracts, the Power Purchase Agreement, or the Capacity Sales Agreement) delivered to or received by any Borrower Party or CCMCI from, the parties to the Major Project Documents;

5.4.14 initiation of any condemnation proceedings involving either Project or either Site or any material portion thereof;

5.4.15 promptly, but in no event later than 15 Banking Days after any Borrower Party has knowledge of the execution and delivery thereof, a copy of each Additional Project Document;

5.4.16 promptly, but in no event later than 30 days after the receipt thereof by any Borrower Party, copies of (a) all Applicable Permits obtained by such Borrower Party after the Closing Date, (b) any material amendment, supplement or other modification to any Applicable Permit received by any Borrower Party after the Closing Date, and (c) all material

notices relating to either Project received by any Borrower Party from, or delivered by such Borrower Party to, any Governmental Authority;

5.4.17 promptly, but in no event later than five days after occurrence thereof, notice of any forced outage with an anticipated duration in excess of five days;

5.4.18 within five Banking Days of receipt thereof, copies of any recovery plan ("Remedial Plan") proposed by the Construction Contractor pursuant to Section 3.3.3 of either Construction Contract for review by Administrative Agent and the Independent Engineer;

5.4.19 (a) within 10 days prior to the occurrence of a Reportable Event with respect to any ERISA Plan, (b) promptly, but in no event later than 15 days, after the withdrawal of any Calpine Entity or any ERISA Affiliate from a Multiemployer Plan, (c) promptly, but in no event later than five days, after the PBGC institutes any proceedings to terminate any ERISA Plan or takes action to appoint a trustee of any ERISA Plan under Section 4042 of ERISA, (d) promptly, but in no event later than 10 days, after the occurrence of any event which could give rise to a lien in favor of the IRS or the PBGC under any ERISA Plan, (e) promptly, but in no event later than 30 days, after any Calpine Entity or any ERISA Affiliate has knowledge that a Multiemployer Plan is in reorganization, is insolvent or intends to terminate under Section 4041A of ERISA, and (f) promptly, but in no event 10 days prior to the date, any Calpine Entity or any ERISA Affiliate shall fail to fulfill its obligations under the minimum funding standards of ERISA or the Code for any ERISA Plan; and

5.4.20 promptly, but in no event later than the time period specified in the Construction Contracts, notice of any Material Adverse Change in the Project Schedule or in the economics or feasibility of the Project Companies developing, constructing, owning or operating the Projects, or any other event or circumstance which could reasonably be expected to have a Material Adverse Effect.

## 5.5 FINANCIAL STATEMENTS.

5.5.1 Each Borrower Party shall deliver or cause to be delivered to Administrative Agent, in form and detail reasonably satisfactory to Administrative Agent (except where GAAP is specifically required), except that where a specified financial statement is publicly available due to the issuer's filings with the United States Securities and Exchange Commission, Borrower may so notify Administrative Agent and the specified financial statement will not be required to be delivered hereunder:

(a) as soon as practicable and in any event within 120 days after the close of each applicable fiscal year (commencing from fiscal year 2004 for each Borrower Party except for the Borrower, and commencing from fiscal year 2005 for Borrower), unaudited annual financial statements of, without duplication, each Borrower Party and the related statements of income, cash flow, and shareholders' or members' equity (as applicable) for such fiscal year, setting forth in each case in comparative form corresponding unaudited figures from the

preceding fiscal year, all prepared in accordance with GAAP (subject to changes resulting from audit and normal year-end adjustments and the absence of footnote disclosure);

(b) as soon as practicable and in any event within 60 days after the end of the first, second and third quarterly accounting periods of its fiscal year, unaudited quarterly financial statements of Sponsor. Such financial statements shall include the related statements of income, cash flow, and shareholders' equity for such quarterly period and (in the case of second and third quarterly periods) for the portion of fiscal year ending with the last day of such quarterly period, setting forth in each case in comparative form corresponding unaudited figures from the preceding fiscal year, all prepared in accordance with GAAP (subject to changes resulting from audit and normal year-end adjustments and the absence of footnote disclosure); and

(c) as soon as practicable and in any event within 120 days after the close of each applicable fiscal year (commencing from fiscal year 2005), unaudited pro forma income statement, balance sheet, cash flow statement and reconciliation of net worth of, without duplication, each Borrower Party and the related statements of income, cash flow, and shareholders' or members' equity (as applicable) for such fiscal year, setting forth in each case in comparative form corresponding unaudited figures from the preceding fiscal year, all prepared in accordance with GAAP (subject to changes resulting from audit and normal year-end adjustments and the absence of footnote disclosure).

5.5.2 Cause to be delivered, along with such financial statements of each Borrower Party, a certificate signed by a Responsible Officer of such Borrower Party, as applicable, certifying that (a) such Responsible Officer has made or caused to be made a review of the transactions and financial condition of such Person during the relevant fiscal period and that such review has not, to such Responsible Officer's knowledge, disclosed the existence of any event or condition which constitutes an Event of Default or Inchoate Default, or if any such event or condition existed or exists, the nature thereof and the corrective actions that such Person has taken or proposes to take with respect thereto, (b) such Person is in compliance with all applicable material provisions of each Credit Document to which such Person is a party or, if such is not the case, stating the nature of such non-compliance and the corrective actions which such Person has taken or proposes to take with respect thereto, and (c) such financial statements are true and correct in all material respects and that no material adverse change in the consolidated assets, liabilities, operations, or financial condition of such Person has occurred since the date of the immediately preceding financial statements provided to Administrative Agent or, if a material adverse change has occurred, the nature of such change.

#### 5.6 BOOKS, RECORDS, ACCESS.

Borrower and each Project Company shall maintain, or cause to be maintained, adequate books, accounts and records with respect to itself and its Project, as applicable, and prepare all financial statements required hereunder in accordance with GAAP (subject, in the case of unaudited financial statements, to changes resulting from audit and normal year-end adjustments and the absence of footnote disclosure) and in compliance with the regulations of

any Governmental Authority having jurisdiction thereof; and, subject to requirements of Governmental Rules, safety requirements and existing confidentiality restrictions imposed upon any Borrower Party by any other Person, permit employees or agents of Administrative Agent and Independent Engineer at any reasonable times and upon reasonable prior notice to Borrower, the applicable Project Company, Construction Contractor, Dow or Operator, as applicable, to inspect all of Borrower Parties' properties, including the Sites, to examine or audit all of Borrower Parties' books, accounts and records and make copies and memoranda thereof, to communicate with Borrower Parties' auditors outside the presence of such Borrower Party and to witness any Performance Tests.

#### 5.7 COMPLIANCE WITH LAWS, INSTRUMENTS, APPLICABLE PERMITS, ETC.

Borrower and each Project Company shall promptly comply, or cause compliance, in all material respects with all Legal Requirements (including Legal Requirements and Applicable Permits relating to pollution control, environmental protection, equal employment opportunity or employee benefit plans, ERISA Plans and employee safety) with respect to itself and its Project, as applicable, and make, or cause to be made, such alterations to its Project and its Site as may be required for such compliance.

#### 5.8 REPORTS.

5.8.1 Each Project Company shall promptly after receipt thereof, deliver to Administrative Agent copies of all progress reports of the construction of its Project issued by Construction Contractor and received by any Borrower Party, supplementing such reports in reasonable detail with material information not already included therein, detailing the progress of the development and construction of its Project since the last prior report hereunder (including any change orders then requested by any Borrower Party or Construction Contractor).

5.8.2 Each Project Company shall deliver to Administrative Agent within 30 days of the end of each calendar quarter after the Project Commercial Operation Date with respect to the Freeport Project and the Facility Acceptance Date with respect to the Mankato Project, a summary operating report with respect to each Project, which shall include, with respect to the period most recently ended, the information set forth on the Template Operating Report, as further described in the annotations thereto.

5.8.3 Each Project Company shall provide to Administrative Agent promptly upon request such reports, statements, lists of property, accounts, budgets, forecasts and other information concerning its Project and, to the extent reasonably available, the Major Project Participants and at such times as Administrative Agent shall reasonably require, including such reports and information as are reasonably required by the Independent Consultants.

5.8.4 Each Project Company shall within 30 days after each annual policy renewal date, deliver to Administrative Agent a certificate, substantially in the form of Exhibit L, and otherwise in form and substance reasonably satisfactory to Administrative Agent in

consultation with the Insurance Consultant, certifying that the insurance requirements of Exhibit K have been implemented and are being complied with in all material respects.

5.8.5 If in any year either Project Company's gross merchant revenues (defined as gross revenues deriving from merchant sales, minus the cost of fuel and other direct expenses) amount to less than 80% of the Project's gross merchant revenues set forth in the Base Case Project Projections, then at Borrower's expense, the Administrative Agent may commission the Power Market Consultant or any replacement thereto, to perform a market study for the market in which the Project is located.

#### 5.9 EXISTENCE, CONDUCT OF BUSINESS, PROPERTIES, ETC.

Except as otherwise expressly permitted under this Agreement, each Borrower Party shall (a) maintain and preserve its existence as a Delaware limited liability company in the case of Borrower, a Delaware limited partnership in the case of FEC, a Delaware limited liability company in the case of FEC-GP, a Delaware limited liability company in the case of FEC-LP, and a Delaware limited liability company in the case of MEC, and all material rights, privileges and franchises necessary in the normal conduct of its business, (b) subject to Section 5.2.2, perform (to the extent not excused by force majeure events or the nonperformance of the other party and not subject to a good faith dispute) all of its material contractual obligations under the Major Project Documents to which it is party or by which it is bound, (c) maintain and, in the case of FEC, cause Dow to maintain, all Applicable Permits, except to the extent that any such failure to maintain could not reasonably be expected to have a Material Adverse Effect, and (d) at or before the time that any Permit becomes an Applicable Permit, obtain such Permit.

#### 5.10 DEBT SERVICE COVERAGE RATIO; DEBT TO EQUITY RATIO.

(a) Following Term-Conversion, no later than 10 Banking Days after each Principal Repayment Date, Borrower shall calculate and deliver to Administrative Agent the Debt Service Coverage Ratio for the Calculation Period for such Principal Repayment Date. The calculations of Debt Service Coverage Ratios hereunder shall be used in determining the application and distribution of funds pursuant to Section 6.6, and Section 3.3 of the Borrower Depositary Agreement.

(b) No later than five Banking Days prior to the making of any True-Up Drawing pursuant to Section 3.3.3(d), or any distribution pursuant to Section 3.1.5 of the FEC Depositary Agreement, Borrower shall calculate and deliver to Administrative Agent the Debt to Equity Ratio (after giving effect to the making of the Punchlist Drawing (if any), the Dow Change Order Drawing, (if any) and the Dow Performance Test Drawing (if any)), together with such written information as is necessary for Administrative Agent to verify the Debt to Equity Ratio. Administrative Agent shall notify Borrower in writing of any suggested corrections, changes or adjustments to such calculations within three Banking Days after receipt. Borrower shall incorporate all such corrections, changes or adjustments as are required

to accurately reflect the Debt to Equity Ratio, and (if necessary) shall promptly recalculate and resubmit to Administrative Agent such calculations.

#### 5.11 INDEMNIFICATION.

5.11.1 Each Borrower Party shall indemnify, defend and hold harmless each Lead Arranger, Administrative Agent, Collateral Agent, LC Issuer, and each Lender, and in their capacities as such, their respective officers, directors, shareholders, controlling Persons, employees, agents and servants (collectively, the "Indemnitees") from and against and reimburse the Indemnitees for:

(a) any and all claims, obligations, liabilities, losses, damages, injuries (to Person, property, or natural resources), penalties, stamp or other similar taxes, actions, suits, judgments, costs and expenses (including reasonable attorney's fees) of whatever kind or nature, whether or not well founded, meritorious or unmeritorious, demanded, asserted or claimed against any such Indemnitee (collectively, "Subject Claims") in any way relating to, or arising out of or in connection with this Agreement or the other Operative Documents to which it is a party, except for claims by a Calpine Entity against an Indemnitee that are in whole or in part successful;

(b) any and all Subject Claims arising in connection with the Release or presence of any Hazardous Substances at either Project, whether foreseeable or unforeseeable, including all costs of removal, investigation, remediation and disposal of such Hazardous Substances, all reasonable costs required to be incurred in (i) determining whether such Project is in compliance, and (ii) causing such Project to be in compliance, with all applicable Legal Requirements, all reasonable costs associated with claims for damages to Persons or property, and reasonable attorneys' and consultants' fees and court costs; and

(c) any and all Subject Claims in any way relating to, or arising out of or in connection with any claims, suits or liabilities against any Borrower Party or any of its Affiliates to the extent related to the Projects or the transactions contemplated by the Operative Documents.

5.11.2 The foregoing indemnities shall not apply with respect to an Indemnitee, to the extent arising as a result of the gross negligence or willful misconduct of such Indemnitee, but shall continue to apply to other Indemnitees.

5.11.3 The provisions of this Section 5.11 shall survive foreclosure of the Collateral Documents and satisfaction or discharge of Borrower's obligations hereunder and under the other Credit Documents to which it is a party, and shall be in addition to any other rights and remedies of the Lead Arrangers, Administrative Agent, Collateral Agent and any Lender.

5.11.4 In case any action, suit or proceeding shall be brought against any Indemnitee, such Indemnitee shall notify the applicable Borrower Party of the commencement thereof, and such Borrower Party shall be entitled, at its expense, acting through counsel reasonably acceptable to such Indemnitee, to participate in, and, to the extent that such Borrower Party desires, to assume and control the defense thereof. Such Indemnitee shall be entitled, at its expense, to participate in any action, suit or proceeding the defense of which has been assumed by such Borrower Party. Notwithstanding the foregoing, each Borrower Party shall not be entitled to assume and control the defenses of any such action, suit or proceedings if and to the extent that, in the reasonable opinion of such Indemnitee and its counsel, such action, suit or proceeding involves the potential imposition of criminal liability upon such Indemnitee or a conflict of interest between such Indemnitee and such Borrower Party or between such Indemnitee and another Indemnitee (unless such conflict of interest is waived in writing by the affected Indemnitees), and in such event (other than with respect to disputes between such Indemnitee and another Indemnitee) such Borrower Party shall pay the reasonable expenses of such Indemnitee in such defense.

5.11.5 If a Borrower Party has assumed the defense of any action, suit or proceeding pursuant to Section 5.11.4, such Borrower Party shall promptly report to such Indemnitee on the status of such action, suit or proceeding as material developments shall occur and from time to time as requested by such Indemnitee (but not more frequently than every 60 days). Such Borrower Party shall deliver to such Indemnitee a copy of each document filed or served on any party in such action, suit or proceeding, and each material document which such Borrower Party possesses relating to such action, suit or proceeding.

5.11.6 Notwithstanding each Borrower Party's rights hereunder to control certain actions, suits or proceedings:

(a) if any Indemnitee reasonably determines that failure to compromise or settle any Subject Claim made against such Indemnitee is reasonably likely to subject such Indemnitee to civil, criminal or administrative penalties, to result in the loss, suspension or impairment of a license or Permit held by such Indemnitee or to cause material damage to such Indemnitee's reputation, such Indemnitee shall be entitled to compromise or settle such Subject Claim; and

(b) if the Majority Lenders reasonably determine that failure to compromise or settle any Subject Claim made against such Indemnitee is reasonably likely to have a Material Adverse Effect, Administrative Agent shall provide the applicable Borrower Party with written notice of a proposed compromise or settlement of such claim specifying in detail the nature and amount of such proposed settlement or compromise. Such Borrower (and any other relevant Calpine Entity) shall be deemed to have approved such proposed compromise or settlement unless, within 30 days after the date such Borrower receives such notice of intended compromise or settlement, such Borrower provides the Lenders with a written legal analysis from counsel reasonably acceptable to the Majority Lenders reasonably concluding that, based on the magnitude of the Subject Claim, the legal basis for such Subject Claim, or the cost of defending such Subject Claim, the amount of such proposed settlement or compromise is not

within a reasonable range of settlements or compromises for such Subject Claim, and indicating, based on such factors, such counsel's view as to the appropriate amount of a reasonable settlement or compromise for such Subject Claim (the "Settlement Amount"). If the Lenders receive such legal analysis required by this Section 5.11.6 within such 30-day period, then (i) the Majority Lenders may elect to settle or compromise such Subject Claim and such Borrower Party shall be responsible for the payment of all amounts of such compromise or settlement up to 125% of the Settlement Amount, (ii) such Indemnitee shall be responsible for payment of all amounts of such compromise or settlement in excess of such 125% limit, and (iii) such compromise or settlement shall be binding upon the Borrower Party. If the Borrower Party does not provide such legal analysis within such period, or if such legal analysis is not reasonable, in the reasonable determination of the Majority Lenders, then such Indemnitee may settle or compromise such Subject Claim (and such Borrower Party shall cause any other relevant Calpine Entity to agree to the same) and shall be fully indemnified by such Borrower Party therefor. The Lenders shall not otherwise settle or compromise any such Subject Claim other than at their own expense.

5.11.7 Upon payment of any Subject Claim by the applicable Borrower Party pursuant to this Section 5.11 or other similar indemnity provisions contained herein to or on behalf of an Indemnitee, such Borrower Party, without any further action, shall be subrogated to any and all claims that such Indemnitee may have relating thereto, and such Indemnitee shall cooperate with such Borrower Party and such Borrower Party's insurance carrier and give such further assurances as are necessary or advisable to enable such Borrower Party vigorously to pursue such claims.

5.11.8 Any amounts payable by a Borrower Party pursuant to this Section 5.11 shall be regularly payable within 30 days after such Borrower Party receives an invoice for such amounts from any applicable Indemnitee, and if not paid within such 30-day period shall bear interest at the Default Rate.

5.11.9 Notwithstanding anything to the contrary set forth herein, such Borrower Party shall not, in connection with any one legal proceeding or claim, or separate but related proceedings or claims arising out of the same general allegations or circumstances, in which the interests of the Indemnitees do not materially differ, be liable to the Indemnitees (or any of them) under any of the provisions set forth in this Section 5.11 for the fees and expenses of more than one separate firm of attorneys (which firm shall be selected by the affected Indemnitees, or upon failure to so select, by Administrative Agent).

5.11.10 If, for any reason whatsoever, the indemnification provided under this Section 5.11 is unavailable to any Indemnitee or is insufficient to hold it harmless to the extent provided in this Section 5.11, then provided such payment is not prohibited by or contrary to any applicable Governmental Rule, Legal Requirement or public policy, such Borrower Party shall contribute to the amount paid or payable by such Indemnitee as a result of the Subject Claim in such proportion as is appropriate to reflect the relative economic interests of such Borrower Party and its Affiliates on the one hand, and such Indemnitee on the other hand, in the matters contemplated by this Agreement as well as the relative fault of such Borrower Party (and its

Affiliates) and such Indemnitee with respect to such Subject Claim, and any other relevant equitable considerations.

5.11.11 Nothing in this Section 5.11 shall constitute a release by a Borrower Party of any claims that it has as a result of a breach or a default by any of the Secured Parties of their respective obligations under this Agreement or any other Credit Document.

#### 5.12 EXEMPTION FROM REGULATION.

Each applicable Project Company shall take or cause to be taken all necessary or appropriate actions so that (a) (i) MEC will be an Exempt Wholesale Generator and (ii) the Mankato Project will be an Eligible Facility at all times hereunder, (b) the Freeport Project will be a Qualifying Facility at all times hereunder, (c) except to the extent provided in the first sentence of Section 4.17, each Project shall not be subject to, or shall be exempt from, financial or organizational regulation as a "public utility company" or "public utility holding company" under PUHCA or financial, organizational or rate regulation as a public utility under the laws of the State of Minnesota in the case of MEC or Texas in the case of FEC, as presently constituted and as construed by the courts of Minnesota and Texas, respectively, (d) MEC will be authorized to sell electricity at market-based rates, with all waivers of regulations and blanket authorizations as are customarily granted by FERC to entities with market-based rate authority, and (e) FEC shall not be subject to regulation as a "public utility" under the FPA.

#### 5.13 CONSTRUCTION OF THE PROJECTS.

(a) Each Project Company shall cause its Project to be constructed and equipped substantially in accordance with the Plans and Specifications, the then-current Project Budget, the Construction Contracts and the other Major Project Documents, as any of the same may be amended from time to time pursuant to Section 6.12.

(b) Each Project Company shall terminate, as applicable, either the FEC Construction Contract or the MEC Construction Contract under the terms provided for therein or in the applicable Consent, upon receipt of notice from Administrative Agent upon direction of the Majority Lenders and after consultation with the applicable Project Company that (i) there has been an Event of Default (as defined in the applicable Construction Contract) by CCMCI in the performance of its obligations under such Construction Contract, or (ii) there has been a Bankruptcy Event of CCMCI or Sponsor and, as a result thereof, in the opinion of the Majority Lenders, there exists the reasonable possibility that CCMCI will not be able to perform all of its obligations under such Construction Contract in a manner consistent with the terms thereof and of the other Operative Documents (including Section 5.13(a) hereof). Upon any such termination of a Construction Contract, the applicable Project Company shall replace CCMCI as construction contractor with an entity approved by the Majority Lenders, under a construction contract approved by the Majority Lenders.

## 5.14 OPERATION AND MAINTENANCE OF PROJECTS; ANNUAL OPERATING BUDGET.

5.14.1 Each Project Company shall keep its Project, or cause the same to be kept, in an operating condition consistent with the standard of care set forth in the O&M Agreements, all Applicable Permits, Legal Requirements and the Operative Documents, and make or cause to be made all repairs (structural and non-structural, extraordinary or ordinary) necessary to keep the Projects in such condition.

5.14.2 Each Project Company shall operate its Project, or cause the same to be operated, in a manner consistent with Prudent Utility Practices and in compliance with the terms of the Power Purchase Agreement, including any MAPP requirements as defined and described therein, in the case of the Mankato Project and with the terms of the Dow Agreements, including any ERCOT requirements as described therein, in the case of the Freeport Project.

5.14.3 On or before the date that is 60 days prior to the later to occur of the anticipated Facility Acceptance Date and the anticipated Project Commercial Operation Date and thereafter 60 days prior to the beginning of each subsequent calendar year, each Project Company shall submit an operating plan and a budget, detailed by month, of anticipated revenues and anticipated expenditures under all applicable Waterfall Levels, and, with respect to the budget submitted for MEC, anticipated expenditures from the MEC Major Maintenance Reserve Account, each such budget to include Debt Service, the projected Debt Service Coverage Ratio, proposed dividend distributions, Major Maintenance, reserves and all anticipated O&M Costs (including reasonable allowance for contingencies) applicable to the applicable Project for the ensuing calendar year (or, in the case of the initial Annual Operating Budgets, partial calendar year) and, in the case of Major Maintenance in accordance with Section 5.14.5, to the conclusion of the second full calendar year thereafter (each such annual operating plan and budget, including the initial Annual Operating Budgets, an "Annual Operating Budget"). Each Annual Operating Budget for each Project shall be subject to the reasonable approval of Administrative Agent acting in consultation with the Independent Engineer, such approval not to be unreasonably withheld. Failure by Administrative Agent to approve or disapprove any such draft Annual Operating Budget within 30 days after receipt thereof shall be deemed to be an approval by Administrative Agent of such draft as the final Annual Operating Budget for such Project. Borrower and each Project Company shall consider in good faith Administrative Agent's suggestions in preparation of a final Annual Operating Budget for each Project. Borrower shall, or shall cause each Project Company to, prepare a final Annual Operating Budget for each Project no less than 30 days in advance of the later to occur of the anticipated Facility Acceptance Date and the Project Commercial Operation Date, and each subsequent calendar year. The O&M Costs in each Annual Operating Budget which are subject to escalation limitations in the Project Documents shall not, absent extraordinary circumstances, be increased by more than the amounts provided in such Project Documents.

5.14.4 Each Project Company shall operate, or cause to be operated, and maintain its Project, within amounts for (a) any Operating Budget Category not to exceed 110%

(on a year-to-date basis), and (b) for all Operating Budget Categories not to exceed 105% (on a year-to-date basis), in each case of the amounts budgeted therefor as set forth in the then-current Annual Operating Budget for the applicable Project as approved or deemed approved by Administrative Agent; provided, however, that (i) subject to Section 6.12, each Project Company may propose an amendment to the Annual Operating Budget for such Project for Administrative Agent's approval if at any time either Project Company cannot comply with clause (a) or (b) above (and Administrative Agent shall consider each such amendment in good faith and shall not unreasonably withhold its consent to the approval of any such amendment), and (ii) the 110% limitation shall not apply to Variable O&M Costs to the extent that such Variable O&M Costs result from the dispatch of the applicable Project at levels in excess of the levels contemplated by the then-current Annual Operating Budget for such Project. Pending approval of any Annual Operating Budget or amendment thereto in accordance with the terms of this Section 5.14.4, each Project Company shall use its best efforts to operate and maintain its Project, or cause such Project to be operated and maintained, within the then-current Annual Operating Budget for such Project (it being acknowledged that if a particular calendar year's Annual Operating Budget for such Project has not been approved by the time periods provided in Section 5.14.3, then the then-current Annual Operating Budget for such Project shall be deemed to be the Annual Operating Budget in effect for such Project prior to the delivery of the final Annual Operating Budget for such Project pursuant to Section 5.14.3); provided that the amounts specified therein shall be increased or decreased to the extent specified in the MEC O&M/Major Maintenance Agreement.

5.14.5 Borrower shall also include in each Annual Operating Budget a reassessment of (a) the Major Maintenance Reserve Requirement for the Mankato Project, determined as provided in the definition of "Major Maintenance Reserve Requirement" in the MEC Depositary Agreement, (b) the anticipated scheduling, probable cost and a reasonably detailed description of each anticipated item of Major Maintenance, through the next major turbine overhaul cycle for each Project (the "Major Maintenance Plan"), and (c) the anticipated amounts which will be on deposit in the MEC Major Maintenance Reserve Account and FEC Major Maintenance Reserve Account during each year of the Major Maintenance Plan. Borrower shall cause each Project Company to cause its Project to perform (or cause to be performed) all Major Maintenance on its respective Project substantially in accordance with the then-current Major Maintenance Plan and in all material respects in accordance with the provisions of the Operative Documents. The Major Maintenance Plan, including without limitation the assumptions made in connection with calculating the Mankato Project's Major Maintenance Reserve Requirement, shall be subject to approval by the Administrative Agent in consultation with the Independent Engineer, such approval not to be unreasonably withheld.

#### 5.15 PRESERVATION OF RIGHTS; FURTHER ASSURANCES.

5.15.1 Each Project Company shall cause its Project to maintain in full force and effect, perform (subject to Section 5.2) the obligations of the applicable Project Company under, preserve, protect and defend the material rights of such Project Company under and, subject to Section 5.13 (b), take all reasonable action necessary to prevent termination (except by expiration

in accordance with its terms) of each and every Major Project Document, including (where each such Project Company in the exercise of its business judgment deems it proper) prosecution of suits to enforce any material right of such Project Company thereunder and enforcement of any material claims with respect thereto. Without limiting the foregoing, Borrower shall enforce all of its rights under the Completion Undertaking Agreements and the Undertaking Support LCs (to the extent the Undertaking Support LCs are held by Borrower) and the Project Companies shall enforce all of their rights under the Construction Contract Guaranties.

5.15.2 From time to time, Borrower shall, and shall cause each Borrower Party to, execute, acknowledge, record, register, deliver and/or file all such notices, statements, instruments and other documents (including any memorandum of lease or other agreement, financing statement, continuation statement, certificate of title or estoppel certificate), relating to the Loans stating the interest and charges then due and any known Events of Default or Inchoate Defaults, and take such other steps as may be necessary or advisable to render fully valid and enforceable under all applicable laws the rights, liens and priorities of the Secured Parties with respect to all Collateral and other security from time to time furnished under this Agreement and the other Credit Documents or intended to be so furnished, in each case in such form and at such times as shall be reasonably requested by Collateral Agent, and pay all reasonable fees and expenses (including reasonable attorneys' fees) incident to compliance with this Section 5.15.2.

5.15.3 If any Borrower Party shall at any time acquire any real property or leasehold or other interest in real property not covered by the FEC Deed of Trust or the MEC Mortgage, then promptly upon such acquisition, execute, deliver and record a supplement to such Deed of Trust, reasonably satisfactory in form and substance to Collateral Agent, subjecting the real property or leasehold or other interests to the Lien and security interest created by such Deed of Trust. If reasonably requested by Collateral Agent, such Borrower Party shall obtain an appropriate endorsement or supplement to, as applicable, the Title Policy or the Term Title Policy insuring the Lien of the Secured Parties in such additional property, subject only to Permitted Liens and other exceptions to title approved by Collateral Agent.

5.15.4 Upon the request of Administrative Agent or Collateral Agent, the applicable Borrower Party shall execute and deliver all documents as shall be necessary or that Administrative Agent or Collateral Agent (as the case may be) shall reasonably request in connection with the rights and remedies of Administrative Agent or Collateral Agent (as the case may be) and the Lenders under the Operative Documents, and perform such other reasonable acts as may be necessary to carry out the intent of this Agreement and the other Credit Documents.

5.15.5 The applicable Borrower Party shall take such action, including the execution and filing of all such documents and instruments, as may be necessary to effect and continue the appointment of Corporation Service Company as its agent for service of process in full force and effect, or if necessary by reason of any fact or condition relating to such agent, to replace such agent (but only after having given notice and evidence thereof to Administrative Agent).

#### 5.16 ADDITIONAL CONSENTS.

Upon the reasonable request of Administrative Agent, with respect to

(a) any Major Project Document (including any Additional Project Document) entered into after the Closing Date and (b) any Major Project Document entered into by a Replacement Obligor pursuant to Article 7, in each case, the applicable Project Company shall cause the applicable counterparty or Replacement Obligor, as applicable, to execute and deliver to Administrative Agent a Consent in substantially the form of Exhibit E-1, with such changes as are reasonably acceptable to Administrative Agent.

#### 5.17 DRAWSTOP FUNDS.

Notwithstanding anything in this Agreement to the contrary, if, during any period when Loans are not available to Borrower as a result of a failure to meet any of the applicable conditions set forth in Article 3 hereof or Article 3 of the Borrower Depositary Agreement, Sponsor pays Project Costs through direct or indirect cash equity contributions provided to or on behalf of Borrower (such amounts used to pay such Project Costs, as certified by the Independent Engineer and confirmed by Administrative Agent, the "Drawstop Funds"), then, at such time as such conditions shall be met and Construction Loans shall become available to Borrower, Borrower shall be entitled to make a Borrowing of Construction Loans in the amount of the Drawstop Funds, but in no event in excess of the Available Construction Loan Commitment, and shall be permitted to reimburse Sponsor for such excess cash equity contributions.

#### 5.18 MAINTENANCE OF INSURANCE.

Borrower shall cause each Project Company to maintain or cause to be maintained on its behalf in effect at all times the types of insurance required pursuant to Exhibit K, in the amounts and on the terms and conditions specified therein, from the quality of insurers specified in such Exhibit or other insurance companies of recognized responsibility reasonably satisfactory to Administrative Agent.

#### 5.19 TAXES, OTHER GOVERNMENT CHARGES AND UTILITY CHARGES.

Subject to the second sentence of this Section 5.19 and except for Permitted Liens, each Borrower Party shall timely file all tax returns and pay, or cause to be paid, as and when due and prior to delinquency, all taxes, assessments and governmental charges of any kind that may at any time be lawfully assessed or levied against or with respect to any Borrower Party or either Project, including sales and use taxes and real estate taxes, all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of each Project, and all assessments and charges lawfully made by any Governmental Authority for public improvements that may be secured by a Lien on each Project. Borrower Parties may contest in good faith any such taxes, assessments and other charges and, in such event, may permit the taxes, assessments or other charges so contested to remain unpaid during any period, including appeals, when Borrower Parties are in good faith contesting the same, so long as (a) reserves to the extent required by GAAP have been established in an amount sufficient to pay any such

taxes, assessments or other charges, accrued interest thereon and potential penalties or other costs relating thereto, or other adequate provision for the payment thereof shall have been made and maintained at all times during such contest, (b) enforcement of the contested tax, assessment or other charge is effectively stayed for the entire duration of such contest, and (c) any tax, assessment or other charge determined to be due, together with any interest or penalties thereon, is promptly paid after resolution of such contest.

#### 5.20 EVENT OF EMINENT DOMAIN.

If an Event of Eminent Domain shall occur with respect to any Collateral, Borrower shall cause each Project Company (in the case of the Freeport Project, insofar as consistent with Dow's rights under the Dow Agreements), to (a) diligently pursue all its rights to compensation against the relevant Governmental Authority in respect of such Event of Eminent Domain, (b) not, without the written consent of the Administrative Agent (which consent shall not be unreasonably withheld or delayed), compromise or settle any claim against such Governmental Authority, and (c) pay or apply all Eminent Domain Proceeds in accordance with Section 3.5 of each of the FEC Depositary Agreement and the MEC Depositary Agreement. Each Borrower Party consents to, and agrees not to object to or otherwise impede or impair, the participation of Administrative Agent in any eminent domain proceedings, and each Borrower Party shall from time to time deliver to Administrative Agent all documents and instruments reasonably requested by it to permit such participation.

#### 5.21 INTEREST RATE PROTECTION.

5.21.1 Compliance With Interest Rate Agreements. Within 45 days after the initial Construction Loan, Borrower shall enter into one or more Interest Rate Agreements with one or more Lenders (or Affiliates thereof) for the period commencing on the date of such Interest Rate Agreements and ending on the Term Loan Maturity Date, in a notional amount equal to at least 50% of the anticipated amount of Loans projected to be outstanding during such period (which anticipated amount (a) shall be determined by reference to the Base Case Project Projections, (b) shall take into account any scheduled or projected repayments or prepayments of Loans contemplated thereunder, and (c) shall otherwise be determined in consultation with the Administrative Agent). Borrower shall at all times comply with and maintain in full force and effect through the end of such period such Interest Rate Agreements.

5.21.2 Hedge Breaking Fees. To the extent required pursuant to the terms of the Hedge Transactions, Borrower shall pay all costs, fees and expenses incurred by Borrower in connection with any unwinding, breach or termination of such Hedge Transactions ("Hedge Breaking Fees"), all to the extent provided in and as calculated pursuant to the applicable Interest Rate Agreements.

5.21.3 Security. Each Interest Rate Agreement provided by a Lender (or an Affiliate thereof) hereunder, including all Hedge Transactions thereunder, entered into in accordance with the terms of this Agreement, and all Hedge Breaking Fees shall be and are

hereby secured by any Collateral Documents, pari passu with the Loans. The parties hereto agree that, for purposes of any sharing of Collateral under the Collateral Documents, any Hedge Bank, in its capacity as a counterparty or intermediary to the Interest Rate Agreements, shall be deemed to have made a Loan to Borrower in an amount equal to the unpaid amount of any Hedge Breaking Fees owed by Borrower to such Hedge Bank, under any such Hedge Transaction on the date that an Early Termination Date (as defined in the applicable Interest Rate Agreement) occurs. For purposes of any such Collateral sharing such Hedge Bank shall be deemed a Lender under the Collateral Documents to the extent of such deemed Loan. For purposes of voting on matters under this Agreement, such Hedge Bank shall be deemed a Lender and hold votes to the extent specified in the definition of "Proportionate Share."

#### 5.22 ADDITIONAL PERMITS.

Promptly, but in no event later than 30 days after obtaining knowledge of any Applicable Permit relating to any Borrower Party or Dow (other than any such Permits set forth in Exhibit G-1 as of such time or otherwise theretofore disclosed in writing to Administrative Agent), Borrower shall provide written notice of such Applicable Permit to Administrative Agent.

#### 5.23 SPECIAL PURPOSE ENTITY.

5.23.1 Borrower shall conduct its business solely in its own name through its duly authorized directors, officers or agents so as not to mislead others as to the identity of the company with which those others are concerned, and particularly will avoid the appearance of conducting business on behalf of any other entity or that its assets or the assets of any other entity are available to pay the creditors of such other entity. Without limiting the generality of the foregoing, all oral and written communications of Borrower, including, without limitation, letters, invoices, purchase orders, contracts and statements, will be made solely in the name of Borrower.

5.23.2 Borrower shall maintain records and books of account separate from those of all other entities.

5.23.3 Borrower shall obtain proper authorization from its managers of all action requiring such authorization. Meetings of the managers of Borrower shall be held with such frequency as required by Delaware law or otherwise deemed appropriate by Borrower.

5.23.4 Operating expenses and liabilities of Borrower shall be paid from its own funds.

5.23.5 The resolutions, agreements and other instruments underlying the transactions contemplated by this Agreement shall be continuously maintained by Borrower as official records.

5.23.6 Other than as permitted pursuant to Section 6.8, Borrower shall maintain an arm's-length relationship with all other entities.

5.23.7 Borrower shall keep its assets and its liabilities wholly separate from those of all other entities.

5.24 THE PATRIOT ACT.

Borrower shall and shall cause Sponsor and each Borrower Party to comply with the disclosure requirements pursuant to Section 11.21.

5.25 CERTAIN RIGHTS UNDER DOW AGREEMENTS.

In the event that the circumstances arise that are described in Section 5.6 of the FEC Ground Lease, Borrower shall cause FEC to take such actions, and to fully exercise its rights under such section, as may be necessary to obtain adequate real estate rights, Permits, and contract rights so that if Dow were to fail, FEC would have exercised all reasonable efforts toward being able to operate the Freeport Project independently of Dow.

5.26 PROJECT REPRESENTATIVE.

Borrower shall cause each Project Company to designate one or more individuals who will be responsible for protecting the interests of such Project Company in all contract discussions and negotiations, with Affiliates of the Project Company and otherwise, and will for purposes of interactions with the Independent Engineer, be and in all respects act, as the representative of the owner of the applicable Project.

5.27 ALTERNATE WATERLINE EASEMENTS.

MEC and Borrower have advised the Lenders and each of the Lenders understands and agrees that the waterline path currently proposed for the Mankato Project may be relocated during the course of development and construction of the Mankato Project, and, notwithstanding anything in this Agreement or the MEC Mortgage to the contrary, the Lenders agree that MEC may, in accordance with MEC's business judgment, relocate the waterline provided that, in such event, MEC shall provide the Lenders with a survey of the new waterline easement(s) that complies with the requirements of Section 3.1.21 and endorsements to the lender's title policy as originally provided pursuant to Section 3.1.22 which will add the new waterline easement(s) as an insured easement(s), and, in connection with such relocation, MEC and the Lenders shall execute an agreement modifying the MEC Mortgage to extend the lien of the MEC Mortgage to the new waterline easement(s) and to release the lien of the MEC Mortgage from the former waterline easement(s).

**ARTICLE 6**  
**NEGATIVE COVENANTS**

Borrower covenants and agrees that until the repayment in full in cash of all of Borrower's Obligations (other than those contingent Obligations that are intended to survive the termination of this Agreement and the other applicable Credit Documents) and the expiration or termination of all Commitments and Interest Rate Agreements to which any Secured Party is a party, Borrower shall not and shall cause the applicable Borrower Party to not take the following actions:

**6.1 CONTINGENT LIABILITIES.**

Except as provided in this Agreement, Borrower and each other Borrower Party shall not become liable as a surety, guarantor, accommodation endorser or otherwise, for or upon the obligation of any other Person; provided, however, that this Section 6.1 shall not be deemed to prohibit or otherwise limit the occurrence of Permitted Debt.

**6.2 LIMITATIONS ON LIENS.**

Borrower and each other Borrower Party shall not create, assume or suffer to exist any Lien, securing a charge or obligation on the Projects or on any of the Collateral, real or personal, whether now owned or hereafter acquired, except Permitted Liens.

**6.3 INDEBTEDNESS.**

Borrower and each Project Company shall not incur, create, assume or permit to exist any Debt except Permitted Debt. FEC-GP and FEC-LP shall not incur any Debt except Debt incurred under the FEC-GP Guaranty by FEC-GP and under the FEC-LP Guaranty by FEC-LP.

**6.4 SALE OR LEASE OF ASSETS.**

6.4.1 Except as provided under Section 6.5(b) of the Security Agreement, Borrower, FEC-GP and FEC-LP shall not sell, lease, assign, transfer or otherwise dispose of assets, whether now owned or hereafter acquired, except assets used for the administration of their respective businesses and having a value of less than \$10,000.

6.4.2 Each Project Company shall not sell, lease, assign, transfer or otherwise dispose of assets, whether now owned or hereafter acquired, except  
(a) in the ordinary course of its business and as contemplated by the Operative Documents, (b) to the extent that such asset is unnecessary, worn out or no longer useful or usable in connection with the operation or maintenance of its Project, at fair market value, (c) the sale, transfer or release, with or without consideration, of real property or interests in real property related to its Project to the extent that such real property or interests in real property is only incidental to, or no longer useful in

connection with, the development, construction, leasing, ownership or operation of its Project, or (d) the granting of easements or other interests in real property related to its Project to other Persons if, with respect to clauses (c) and (d) only, the Administrative Agent has determined that such sale, transfer or release could not reasonably be expected to have a Material Adverse Effect. Upon any such sale, lease, assignment, transfer or other disposition of any such assets, all Liens in favor of any Secured Party relating to such asset shall be released.

## 6.5 CHANGES.

Borrower and each other Borrower Party shall not change the nature of its business or expand its business beyond the business contemplated in the Operative Documents; provided further that the representations with respect to ownership of the Borrower Parties set forth in Section 4.1 shall remain true at all times.

## 6.6 DISTRIBUTIONS.

6.6.1 Pre-Initial Principal Repayment Date. Except as provided in Section 6.6.4, prior to the first Principal Repayment Date after Term-Conversion, Borrower shall not directly or indirectly, make or declare any dividend or other distribution (in cash, property or obligation) on, or other payment on account of, any interest in any Borrower Party.

6.6.2 Post-Initial Principal Repayment Date. Except as provided in Section 6.6.4, from and after the first Principal Repayment Date after Term-Conversion, Borrower shall not directly or indirectly, make or declare any dividend or other distribution (in cash, property or obligation) on, or other payment on account of, any interest in any Borrower Party or make any payment of principal or interest due under any permitted subordinated note, unless the following conditions have been satisfied (the "Restricted Payment Conditions"):

- (a) such dividend or distribution is on a date occurring within 15 Banking days after the immediately preceding Principal Repayment Date;
- (b) no Event of Default or Inchoate Default has occurred and is continuing as of the date of such applicable dividend or distribution, and such dividend or distribution would not cause an Event of Default or Inchoate Default;
- (c) the Debt Service Coverage Ratio for the Calculation Period relating to the Principal Repayment Date immediately preceding the proposed date of such dividend or distribution is greater than or equal to 1.25 to 1;
- (d) no Material Adverse Change shall have occurred and be continuing as of the date of the applicable dividend or distribution or would result from the making of such dividend or distribution;

(e) the funds necessary to make any such dividend or distribution are on deposit in the Distribution Suspense Account as of the Principal Repayment Date to which the applicable dividend or distribution relates and are otherwise available to be withdrawn from the Distribution Suspense Account on such date in accordance with the terms and conditions of the Borrower Depository Agreement;

(f) all reserve accounts are funded in the amount required by the Depository Agreements;

(g) no Security Fund LC Loans are then outstanding; and

(h) for the first distribution pursuant to this Section 6.6.2 only, the following conditions have been satisfied: (i) Collateral Agent shall have received as-built A.L.T.A. surveys of the Sites, in form and substance reasonably satisfactory to Collateral Agent and the Title Insurer, certified to Borrower, Collateral Agent and the Title Insurer as to completeness and accuracy as of not more than 60 days prior to the first distribution under Section 6.6.2 by a licensed Texas surveyor (in the case of the Freeport Project) and a licensed Minnesota surveyor (in the case of the Mankato Project) reasonably satisfactory to Collateral Agent, showing, among other things, (A) as to the Sites, the location and dimensions thereof, including the location of all means of access thereto and all easements and encumbrances relating thereto and showing the perimeter within which all improvements are located, (B) the location and dimensions of all improvements, fences or encroachments located in or on the Sites, (C) the existing utility facilities servicing the Projects (including water, electricity, fuel, telephone, sanitary sewer and storm water distribution and detention facilities), (D) that the location of each Project does not encroach on or interfere with adjacent property or existing easements, encumbrances or other rights (whether on, above or below ground), other than Permitted Liens, and that there are no gaps, gores, projections, protrusions or other survey defects, (E) whether either Site or any portion thereof is located in a special flood hazard zone, and (F) no other matters constituting a defect in title other than relevant Title Exceptions; provided, however, that the matters described in clause (E) may be shown by separate maps, surveys or other information reasonably satisfactory to Collateral Agent, and (ii) Collateral Agent shall have received (A) endorsements to the Title Policies delivered to Collateral Agent pursuant to Section 3.1.22 reasonably satisfactory to Collateral Agent reflecting the items referred to in clause (B) below (such policy and endorsements being collectively referred to as the "Term Title Policies"), insuring the continued first priority Lien on the FEC Mortgaged Property evidenced by the FEC Deed of Trust and on the MEC Mortgaged Property evidenced by the MEC Mortgage (in each case without a mechanics' and materialmen's exception included in such title policy), and such other matters as Collateral Agent may reasonably request, and, if such endorsements are not available in Texas or Minnesota, then (B) a Mortgagee Policy of Title Insurance, together with such endorsements thereto as are reasonably required by Collateral Agent and are obtainable in the State of Texas with respect to the Freeport Project and an A.L.T.A. extended coverage lender's policy of title insurance, together with such endorsements as are available thereto in the State of Minnesota with respect to the Mankato Project, at reasonable costs, in an amount equal to the aggregate amount of Loans Term-Converted into Term Loans, issued by the Title Insurer, in form and substance and with such

reinsurance as is reasonably satisfactory to Collateral Agent, and insuring Collateral Agent as to all matters described in Section 3.1.22, the continued first priority of the Lien on the FEC Mortgaged Property evidenced by the FEC Deed of Trust and on the MEC Mortgaged Property evidenced by the MEC Mortgage (in each case without a mechanics' and materialmen's exception included therein, except where applicable Governmental Rules prevent the deletion of such exception, in which case, if permissible under applicable Governmental Rules, the Title Insurer shall be provided with any affidavits or indemnities (with respect to which Borrower shall have no reimbursement obligations) necessary to cause the Title Insurer to issue affirmative coverage for mechanics' and materialmen's liens in form and substance reasonably satisfactory to Collateral Agent) and as to such other matters as Collateral Agent may reasonably request, and containing only (1) any standard coverage exception reasonably acceptable to Collateral Agent, (2) Title Exceptions, and (3) Permitted Liens described in clauses (a) and (b) of the definition thereof (to the extent the same are afforded priority over the Lien of the FEC Deed of Trust and the MEC Mortgage by operation of law), such Permitted Liens as are junior and subordinate to the FEC Deed of Trust and the MEC Mortgage and any other exceptions to title as are reasonably acceptable to Collateral Agent.

6.6.3 No Borrower Party shall enter into any agreement, contract or arrangement (other than the Operative Documents) restricting its ability to pay or make dividends or distributions in cash or kind, to make loans, advances or other payments of any nature or to make transfers or distributions of all or any part of its assets to Borrower or, in the case of FEC, to FEC-GP and/or FEC-LP.

6.6.4 Notwithstanding anything to the contrary contained in this Agreement, nothing in this Section 6.6 shall prohibit, or otherwise limit (1) any payment made to, or for the account of, Sponsor in accordance with Section 5.1.1(b), 5.17 and 11.23, and Section 3.6 of the Borrower Depository Agreement,

(2) the payment of O&M Costs in accordance with the FEC Depository Agreement and the MEC Depository Agreement, (3) the payment of unsubordinated amounts due and payable to any Affiliated Major Project Participant pursuant to any Major Project Document, (4) any payment among the Borrower Parties expressly contemplated by any of the Depository Agreements, (5) any subordinated payments allowed at Borrower's Waterfall Level 9, (6) the special distributions to be made on the Term Period Commencement Date pursuant to Borrower's Waterfall Level 11, (7) the distributions described in Section 3.1.4 of each of the FEC Depository Agreement and the MEC Depository Agreement (relating to Undertaking Support LCs which have been drawn due to expiration or issuer credit quality), (8) the distribution described in Section 3.1.5 of the FEC Depository Agreement (relating to certain Project Revenues retained due to a Dow Test Deferral), (9) the distribution described in Section 3.1.6 of the FEC Depository Agreement (relating to the delayed true-up resulting from a Dow Test Deferral), (10) payment by NSP (or its escrow agent) to MEC (or at its direction) of any escrowed amounts release by NSP (or its escrow agent) which amounts constituted High Grade Collateral prior to the Closing Date, (11) the payment of any funds to CCMCI by Borrower as required pursuant to Section 2.6 of the Completion Undertaking Agreements, or (12) the transfer or sale of either Siemens Turbine (or any Collateral substituted therefor as contemplated by Section 6.5(b) of the Borrower Security Agreement) and the cancellation of the related Subordinated Note, in each case at any time after such Siemens Turbine (or substitute

collateral, as the case may be) is released from the Collateral pursuant to Section 11.23 and/or Section 6.5(b) of the Borrower Security Agreement.

#### 6.7 INVESTMENTS.

No Borrower Party shall make any investments (whether by purchase of stocks, bonds, notes or other securities, loan, extension of credit, advance or otherwise) other than Permitted Investments. FEC-GP and FEC-LP shall not make any investments, other than their ownership interests in FEC.

#### 6.8 TRANSACTIONS WITH AFFILIATES; SUBORDINATION AGREEMENTS.

No Borrower Party shall directly or indirectly enter into any transaction or series of transactions relating to the Projects with or for the benefit of an Affiliate without the prior written approval of Administrative Agent, except for (a) the Project Documents in effect on the Closing Date, and the transactions permitted thereby, (b) except insofar as a counterparty to such Project Document has entered into a Subordination Agreement, transactions that contain terms no less favorable to each Borrower Party than would be included in an arm's-length transaction entered into by a prudent Person with a non-Affiliated third party, (c) any employment, noncompetition or confidentiality agreement entered into by each Borrower Party with any of its employees, officers or directors in the ordinary course of business, and (d) as otherwise expressly permitted or contemplated by this Agreement and the other Credit Documents. Except for the COSCI Subordination Agreement, which has already been approved, no Borrower Party shall enter into any Subordination Agreement with any Affiliate or any other Person without approval by the Majority Lenders.

#### 6.9 REGULATIONS.

No Borrower Party shall directly or indirectly apply any part of the proceeds of any Loan, any cash equity contributions received by Borrower or other funds or revenues to the "buying", "carrying" or "purchasing" of any margin stock within the meaning of Regulations T, U or X of the Federal Reserve Board, or any regulations, interpretations or rulings thereunder.

#### 6.10 PARTNERSHIPS, ETC.

No Borrower Party shall become a general or limited partner in any partnership or a joint venturer in any joint venture or create and hold stock in any subsidiary, except as described in Section 4.1.

#### 6.11 DISSOLUTION; MERGER.

No Borrower Party shall liquidate or dissolve, or combine, merge or consolidate with or into any other entity, or change its legal form, or purchase or otherwise acquire all or substantially all of the assets of any Person.

## 6.12 AMENDMENTS; CHANGE ORDERS; COMPLETION.

6.12.1 No Project Company shall directly or indirectly amend, modify, supplement or waive, accept, or permit or consent to the termination, amendment, modification, supplement or waiver (including any waiver (or refund) of damages (liquidated or otherwise) payable by any contractor under any Major Project Document) of, any of the material provisions of, or give any material consent under any of the Major Project Documents which could reasonably be expected to have a Material Adverse Effect (each such termination, amendment, modification, supplement, waiver or consent, inclusive of any applicable change orders, being referred to herein as a "Project Document Modification"), except

(a) as otherwise permitted by this Section 6.12, or (b) as may otherwise be approved by the Majority Lenders; provided, that the extension of the term of a Major Project Document on substantially the same terms and conditions then in effect shall not require the consent or approval of Administrative Agent or the Majority Lenders; and provided, further, that the Lenders shall be deemed to have approved the First Amendment to Purchased Power Agreement between NSP and MEC, in the form delivered to the Lenders on the Closing Date.

6.12.2 Without the prior written consent of Administrative Agent (which consent shall not be unreasonably withheld or delayed), in consultation with the Independent Engineer and acting at the direction of the Majority Lenders, no Project Company shall direct or consent to any Project Document Modification (including, without limitation, modifications to the FEC Technical Requirements or the Dow/DEC Technical Requirements) unless:

(a) except for any Project Document Modification made by FEC as a result of a Dow Change pursuant to Section 2.3.2 of the Capacity Sales Agreement, such Project Document Modification is not, individually in an amount greater than \$250,000 or, together with all previous Project Document Modifications issued after the Closing Date, will not increase or decrease the Project Costs by more than \$1,000,000 in the aggregate, respectively (exclusive of increases reimbursed by insurance awards, condemnation awards or contractual damage awards);

(b) the applicable Project Company has certified in writing to Administrative Agent and the Lenders, as confirmed and countersigned by the Independent Engineer, that such Project Document Modification (i) is technically feasible in light of the Plans and Specifications and the overall design of the applicable Project, and (ii) will not materially delay Completion of the applicable Project, or in any event is not reasonably likely to delay Completion of the applicable Project beyond the Construction Loan Maturity Date;

(c) such Project Document Modification will not alter any guaranty, liquidated damages provision or the standards for any of the Performance Tests;

(d) such Project Document Modification is not reasonably likely to result in any adverse modification or impair the enforceability of any warranty under any Construction Contract, the O&M Agreements or any other Major Project Document;

(e) such Project Document Modification is not reasonably likely to materially impair or reduce the maximum capacity, efficiency, output, performance, reliability, durability or availability of the applicable Project, or materially increase O&M Costs or heat rate associated with the applicable Project, or materially decrease Project Revenues;

(f) such Project Document Modification is permitted by the applicable Project Document and could not reasonably be expected to (i) materially diminish any obligation of any Major Project Participant, or (ii) materially increase any obligation of any Borrower Party under any Major Project Document;

(g) such Project Document Modification is not reasonably likely to present a significant risk of the revocation or material modification of any Applicable Permit or jeopardize the MEC's status as an Exempt Wholesale Generator or the Freeport Project's status as a Qualifying Facility;

(h) such Project Document Modification will not eliminate, modify or impair any consent, verification or approval rights afforded to Administrative Agent, the Lenders or the Independent Engineer under any Major Project Document;

(i) such Project Document Modification could not reasonably be expected to cause either Project not to comply with Legal Requirements;

(j) except for any Project Document Modification made by FEC as a result of a Dow Change pursuant to Section 2.3.2 of the Capacity Sales Agreement, such Project Document Modification is not an amendment, modification, supplement, termination, waiver or consent thereto of the Power Purchase Agreement or any Dow Agreement; and

(k) such Project Document Modification will not obligate either Project Company to arrange or procure fuel supply or fuel transportation services or electrical transmission services.

6.12.3 Neither Project Company shall (a) declare, with respect to its Project or material portion thereof, Final Completion (as such term is defined in the Construction Contracts), (b) approve the successful completion of any Performance Test, (c) approve, modify or amend the testing protocols under the Construction Contracts, or (d) agree to accept any facilities being constructed under any other Major Project Document as "commercially operational", "mechanically complete", "substantially complete" or "complete" (however defined therein), in each case without the approval of Administrative Agent acting in consultation with the Independent Engineer, or use the proceeds of any Loan to make any payment under any Construction Contract all or any portion of which payment the Independent Engineer has given the applicable Project Company written notice (prior to the due date thereof) that it disputes is then due, without the written approval of Administrative Agent acting in consultation with the Independent Engineer, which approval, if given, shall not be unreasonably delayed or withheld, taking into account applicable time limitations imposed by the terms of the applicable Project Document.

6.12.4 Neither Project Company shall agree on any Remedial Plan or Punchlist with respect to any Project work without the written approval of Administrative Agent acting in consultation with the Independent Engineer, which approval, if given, shall not be unreasonably delayed or withheld, taking into account applicable time limitations imposed by the terms of any Construction Contract.

6.12.5 Neither Project Company shall consent, without Administrative Agent's prior written approval, to (a) any action taken by Construction Contractor to modify the equipment or services provided by Construction Contractor to conform to the intellectual property rights of others if such action could reasonably be expected to materially and adversely affect either Project Company's continued use of its Project or (b) the settlement by Construction Contractor of any claim or proceeding which could reasonably be expected to materially adversely affect either Project Company's rights.

6.12.6 Neither Project Company shall direct any party to a Construction Contract to suspend any construction activities being performed under any such Construction Contract without Administrative Agent's prior written consent, except to avoid immediate danger to Persons or property.

6.12.7 Neither Project Company shall except as expressly contemplated by the Project Documents, construct, install, or permit the construction or installation of, shared or joint facilities between its Project and any plants, facilities, generating stations or other improvements which are not located on its Project Site or the Easements (including any such plants, facilities, generating stations or other improvements owned by NSP or Dow).

6.12.8 Neither Project Company shall accept any letter of credit, bond or other form of credit support in lieu of retainage under any Project Document not in form and substance reasonably satisfactory to Administrative Agent.

6.12.9 Without the prior written consent of Administrative Agent, neither Project Company shall submit any notice or certificate to NSP or Dow declaring or acknowledging, in the case of the Mankato Project, the occurrence of the Facility Acceptance Date, or in the case of the Freeport Project, the date on which the Commercial Operation of each FEC Work Phase occurs or the Project Commercial Operation Date.

6.12.10 Without the prior written consent of Administrative Agent, neither Project Company shall approve the replacement of a major maintenance provider or operator.

6.12.11 Without the prior written consent of Administrative Agent (in consultation with the Independent Engineer), FEC shall not propose a reduction to the "Fixed Prices" schedule, as contemplated by Section 3.3 of the Major Maintenance Service Arrangement.

Administrative Agent shall use good faith efforts to respond to each request pursuant to this Section 6.12 as soon as possible and in all events within 30 days of its receipt of written notification thereof and shall not unreasonably withhold its approval of such request. No

request pursuant to this Section 6.12 requiring approval by Administrative Agent shall be deemed approved by Administrative Agent until expressly approved.

#### 6.13 NAME AND LOCATION; FISCAL YEAR.

No Borrower Party shall change its name, its jurisdiction of organization, the location of its principal place of business, its organization identification number or its fiscal year without providing 30 days prior written notice to Administrative Agent.

#### 6.14 USE OF SITES.

Neither Project Company shall use, or permit to be used, its Project Site for any purpose (a) which may constitute a public or private nuisance that could reasonably be expected to have a Material Adverse Effect, or (b) other than for the construction, operation and maintenance of its Project as contemplated by the Operative Documents.

#### 6.15 ASSIGNMENT.

No Borrower Party shall assign its rights hereunder, under the other Credit Documents or under any Major Project Document to any Person, except as set forth in this Agreement and the other Credit Documents.

#### 6.16 ACCOUNTS.

No Borrower Party shall maintain, establish or use any account (other than the Accounts) without the prior written consent of Administrative Agent.

#### 6.17 HAZARDOUS SUBSTANCES.

No Borrower Party shall release into the environment any Hazardous Substances in violation of any Hazardous Substance Laws, Legal Requirements or Applicable Permits, except for (a) temporary unplanned exceedances not allowed under either Project's Permits, which temporary unplanned exceedances could not reasonably be expected to have a Material Adverse Effect and which such applicable Borrower Party is diligently and in good faith attempting to correct (or, in the case of FEC, causing Dow to diligently attempt to correct), and (b) unintentional violations with respect to which (i) the Release is not continuing or reasonably likely to re-occur and is not reasonably susceptible to prevention or cure, (ii) there are no unsatisfied reporting and/or remediation requirements under applicable Hazardous Substance Laws, Legal Requirements or Applicable Permits, (iii) no non-monetary penalties or sanctions have been imposed or are reasonably likely to be imposed (except for the remediation of such violation) under applicable Hazardous Substance Laws, Legal Requirements or Applicable Permits, and (iv) the Release could not reasonably be expected to materially impair the value of either Site or any other Collateral, and could not otherwise reasonably be expected to have a Material Adverse Effect.

#### 6.18 ADDITIONAL PROJECT DOCUMENTS.

Without the consent of the Majority Lenders (which consent shall not be unreasonably withheld), no Borrower Party shall enter into, or become a party to any Project Document not in existence on the Closing Date, except any Project Document which (a) provides for the payment by Project Companies of, or the provision to Project Companies of such goods and services with a value of, \$250,000 per annum individually or less, which may be entered into with the prior written consent of Administrative Agent, (b) provides for the payment by Project Companies of, or the provision to Project Companies of such goods and services with a value of, less than \$1,000,000 in the aggregate, which may be entered into with the prior written consent of Administrative Agent, (c) provide for payment of Emergency Operating Costs, provided that prior to entering into or becoming a party to any such contract under this Section 6.18(c) that provides for the payment by Project Companies of, or the provision to Borrower Parties of such goods and services with a value of, more than \$1,000,000 per annum, such applicable Project Company shall have exercised reasonable efforts to obtain the consent of Administrative Agent; provided, further, that such applicable Borrower Party shall provide notice to Administrative Agent of contracts entered into under this Section 6.18(c) as soon as practicable, and in no event more than 15 Banking Days after such contract is entered into, or (d) are contracts by Borrower, FEC-GP or FEC-LP of an individual value less than \$25,000 and in the aggregate no greater than \$250,000, provided that such contracts are consistent with the requirements under Section 5.24.

#### 6.19 PROJECT BUDGET AMENDMENTS.

Without the prior consent of Administrative Agent, neither Project Company shall amend, allocate, re-allocate or modify its Project Budget to increase the aggregate amount payable thereunder, unless such amendment, allocation, re-allocation or modification is (a) a necessary conforming change related to an amendment to a Project Document permitted by Section 6.12, and (b) concurrent and consistent with cash equity contributions made available to the Project Companies which were not theretofore contemplated in the applicable Project Budget (including liquidated damages being applied to obligations hereunder and proceeds of insurance applied in accordance with the terms of this Agreement and the Depositary Agreements); provided that the foregoing shall not prevent the Project Companies from applying identified cost savings in a budget category (after completing each of the items to which such category relates), as confirmed by the Independent Engineer, to cost overruns in another budget category (as confirmed by the Independent Engineer) without increasing the aggregate amount payable under the applicable Project Budget; provided, however, that neither Project Company shall apply identified cost savings in any budget category to cost overruns in any budget category relating to management expenses or development fees payable to any Person or any other fees and costs payable to any Affiliate of Sponsor.

#### 6.20 ASSIGNMENT BY THIRD PARTIES.

Without prior written consent of the Required Lenders or unless provided in a Consent, neither Project Company shall consent to the assignment of any obligations under any Major Project Document by any counterparty thereto.

#### 6.21 ACQUISITION OF REAL PROPERTY.

No Borrower Party shall acquire or lease any real property or other interest in real property (excluding the acquisition of any easements, the acquisition (but not the exercise) of any options to acquire any such interests in real property or any expansions of the FEC Site in connection with the procurement of substitute services or in connection with Borrower and FEC's obligations under Section 5.25) other than the Sites, Easements and other interests in real property acquired on or prior to the Closing Date or as contemplated by Section 5.27.

#### 6.22 EMPLOYEE BENEFIT PLANS.

No Borrower Party shall maintain, contribute to, or become obligated to contribute to any employee benefit plans subject to ERISA.

#### 6.23 NO MERCHANT SALES.

Neither Project Company, as applicable, shall (a) sell or provide electrical products from either Project to any Person other than (i) by MEC, to NSP under the Power Purchase Agreement, and (ii) by FEC, to Dow under the Capacity Sales Agreement or to CES with respect to the Reserved Capacity under the Capacity Sales Agreement, or (b) exercise the Put Option (as such term is defined in the Capacity Sales Agreement) pursuant to Section 15.1 of the Capacity Sales Agreement, in each case without the prior written consent of the Required Lenders.

#### 6.24 FLOW OF FUNDS.

Neither Project Company nor Borrower shall agree to any amendment, modification or termination of either Intercompany Note without the prior written consent of the Majority Lenders; or apply, contribute or fund any amounts received in connection with any Loan to Borrower unless such amounts are loaned by Borrower to a Project Company and allocated between FEC and MEC in accordance with and pursuant to the terms of the Project Budget, or as otherwise permitted by Section 3.4.

#### 6.25 TAX ELECTION.

No Borrower Party shall make an election to be classified for federal income tax purposes as an association taxable as a corporation without the prior written consent of the Administrative Agent, which consent shall not be unreasonably withheld or delayed.

#### 6.26 TAX SHARING AGREEMENTS.

No Borrower Party shall enter into any tax sharing agreements with any other Calpine Entity other than to the extent taxes to be paid pursuant to any such agreement are paid only using funds, if any, that may from time to time be on deposit in the Distribution Suspense Account and are otherwise available for the making of distributions in strict accordance with the requirements of Section 6.6 and the Depositary Agreements.

**ARTICLE 7**  
**EVENTS OF DEFAULT; REMEDIES**

**7.1 EVENTS OF DEFAULT.**

The occurrence of any of the following events by any of the Borrower Parties shall constitute an event of default (each, an "Event of Default") hereunder:

7.1.1 Failure to Make Payments. Borrower shall fail to pay, in accordance with the terms of this Agreement (i) any principal on any Loan on the date that such sum is due, (ii) any interest on any Loan within five days after the date such sum is due, (iii) any scheduled fee, cost, charge or sum due hereunder or under any other Credit Documents within five days of the date that such sum is due, or (iv) any other fee, cost, charge or other sum due under this Agreement or the other Credit Documents within 10 days after written notice that such sum is due.

7.1.2 Bankruptcy; Insolvency. Any Borrower Party or any other Major Project Participant (so long as such Major Project Participant shall have outstanding or unperformed obligations under the Operative Document to which it is a party) shall become subject to a Bankruptcy Event; provided that, solely with respect to a Bankruptcy Event with respect to a Person other than any Borrower Party, Sponsor (for so long as CCMCI's obligations under the Construction Contracts remain outstanding), NSP or Dow, no Event of Default shall occur as a result of such Bankruptcy Event if (a) such applicable Borrower Party obtains a Replacement Obligor for the affected party within 90 days thereafter and such Bankruptcy Event has not had and does not have, prior to so obtaining such Replacement Obligor, a Material Adverse Effect or (b) the applicable Major Project Participant is substantially performing its remaining obligations with respect to the Project Documents to which it is a party and has affirmed, within 90 days thereafter, the Operative Document(s) to which it is a party.

7.1.3 Defaults Under Other Indebtedness.

(a) Any Borrower Party shall default for a period beyond any applicable grace period (i) in the payment of any principal, interest or other amount due under any agreement involving Debt and the outstanding amount or amounts payable under any such agreement equals or exceeds \$1,000,000 in the aggregate, or (ii) in the performance of any obligation due under any agreement involving Debt if pursuant to such default, the holder of the obligation concerned has the right to accelerate the maturity of any indebtedness evidenced thereby which equals or exceeds \$1,000,000 in the aggregate.

(b) So long as neither of the Projects has achieved Completion, or even if one of the Projects has achieved Completion, if the full original stated amounts of the Undertaking Support LCs are not available for draw, Sponsor shall default for a period beyond any applicable grace period (i) in the payment of any principal, interest or other amount due under any agreement involving Debt and the outstanding amount or amounts payable under any such agreement equals or exceeds \$10,000,000 in the aggregate, or (ii) in the performance of any obligation due under any agreement involving Debt if pursuant to such default, the holder of the

obligation concerned has the right to accelerate the maturity of any indebtedness evidenced thereby which equals or exceeds \$10,000,000 in the aggregate.

(c) From and after such time as one of the Projects has achieved Completion, if the full original stated amounts of the Undertaking Support LCs are available for draw, and so long as CCMCI's obligations under the Construction Contracts remain outstanding, Sponsor shall default under any agreement involving Debt which equal or exceed \$10,000,000 in the aggregate, and the holder thereof shall have accelerated Sponsor's obligations in at least such amount.

7.1.4 Judgments. A final judgment or judgments shall be entered against (a) Sponsor, so long as CCMCI's obligations under the Construction Contracts remain outstanding, in the amount of \$25,000,000 or more individually or in the aggregate or (b) any Borrower Party in the amount of \$500,000 or more individually or \$1,000,000 or more in the aggregate (other than, in each case,

(i) a judgment which is fully covered by insurance or discharged within 60 days after its entry, or (ii) a judgment, the execution of which is effectively stayed within 60 days after its entry but only for 60 days after the date on which such stay is terminated or expires).

7.1.5 ERISA. If any Calpine Entity or any ERISA Affiliate should establish, maintain, contribute to or become obligated to contribute to any ERISA Plan and (a) a Reportable Event (under Section 4043(b) or (c) of ERISA for which notice to the PBGC is not waived) shall have occurred with respect to any ERISA Plan and, within 30 days after the reporting of such Reportable Event to Administrative Agent by any Borrower Party (or Administrative Agent otherwise obtaining knowledge of such event) and the furnishing of such information as Administrative Agent may reasonably request with respect thereto, Administrative Agent shall have notified such applicable Borrower Party in writing that (i) Administrative Agent or Majority Lenders has made a determination that, on the basis of such Reportable Event, there are reasonable grounds for the termination of such ERISA Plan by the PBGC or for the appointment by the appropriate United States District Court of a trustee to administer such ERISA Plan and (ii) as a result thereof, an Event of Default exists hereunder, or (b) a trustee shall be appointed by a United States District Court to administer any ERISA Plan, or (c) the PBGC shall institute proceedings to terminate any ERISA Plan, (d) a complete or partial withdrawal by any Borrower Party or any ERISA Affiliate from any Multiemployer Plan shall have occurred and, within 30 days after the reporting of any such occurrence to Administrative Agent by such applicable Borrower Party (or Administrative Agent otherwise obtaining knowledge of such event) and the furnishing of such information as Administrative Agent or Majority Lenders may reasonably request with respect thereto, Administrative Agent shall have notified such applicable Borrower Party in writing that Administrative Agent has made a determination that, on the basis of such occurrence, an Event of Default exists hereunder, or (e) any Calpine Entity or any ERISA Affiliate shall have failed to fulfill its obligations under the minimum funding standards of ERISA or the Code with respect to any ERISA Plan; provided that any of the events described in this Section 7.1.5 shall result in aggregate liability to all Calpine Entities and all ERISA Affiliates in excess of \$5,000,000.

#### 7.1.6 Breach of Terms of Agreement.

(a) Defaults Without Cure Periods. (i) Any Borrower Party shall fail to perform or observe any of the covenants set forth in Sections 5.1, 5.3, 5.9 (a), 5.12, 5.18, or 5.20 or Article 6 (other than Sections 6.2, 6.7, 6.8, 6.14, 6.16 or 6.19), or (ii) Construction Contractor shall fail to provide either Undertaking Support LC under the applicable Completion Undertaking Agreement.

(b) Defaults With 30 Day Cure Periods. Any Borrower Party shall fail to perform or observe any of the covenants set forth in Sections 5.13(b), 5.15.1 (as to the last sentence thereof), 5.23, 5.24 or 6.16, and in each case such failure shall continue unremedied for a period of 30 days after such Borrower Party becomes aware thereof or receives written notice thereof from Administrative Agent.

(c) Other Defaults. Any Borrower Party, Sponsor or any other Calpine Entity shall fail to perform or observe any of the covenants set forth hereunder or any other Credit Document not otherwise specifically provided for in Section 7.1.6(a), Section 7.1.6(b) or elsewhere in this Article 7, and such failure shall continue unremedied for a period of 30 days after such Borrower Party becomes aware thereof or receives written notice thereof from Administrative Agent; provided, however, that, if (i) such failure cannot be cured within such 30 day period, (ii) such failure is susceptible of cure within 90 days, (iii) such Borrower Party, Sponsor or such other Calpine Entity, as applicable, is proceeding with diligence and in good faith to cure such failure, (iv) the existence of such failure has not had and could not, after considering the nature of the cure, be reasonably expected to have a Material Adverse Effect, and (v) Administrative Agent shall have received an officer's certificate signed by a Responsible Officer to the effect of clauses (i), (ii), (iii) and (iv) above and stating what action such Borrower Party, Sponsor or such other Calpine Entity, as applicable, is taking to cure such failure, then such 30 day cure period shall be extended to such date, not to exceed a total of 90 days, as shall be necessary for such Borrower Party, Sponsor or such other Calpine Entity, as applicable, diligently to cure such failure.

7.1.7 Loss of Collateral. Subject to Section 11.23, any substantial portion of the Collateral is damaged, seized or appropriated without appropriate insurance proceeds (subject to the underlying deductible) or without fair value being paid therefor so as to allow replacement of such Collateral and/or prepayment of Loans and to allow each Borrower Party to continue satisfying its obligations hereunder and under the other Operative Documents.

#### 7.1.8 Regulatory Status.

(a) If loss of Exempt Wholesale Generator status for MEC or loss of Eligible Facility status for the Mankato Project could reasonably be expected to have a Material Adverse Effect, (i) MEC shall have tendered notice to FERC that it has ceased to be an Exempt Wholesale Generator or that the Mankato Project has ceased to be an Eligible Facility, or (ii) FERC shall have issued an order determining that MEC no longer meets the criteria of an

Exempt Wholesale Generator or takes other action revoking such Exempt Wholesale Generator status.

(b) If loss of Qualifying Facility status for the Freeport Project could reasonably be expected to have a Material Adverse Effect, (i) FEC shall have tendered notice to FERC that the Freeport Project has ceased to be a Qualifying Facility, (ii) FERC shall have issued an order determining that the Freeport Project no longer meets the criteria of a Qualifying Facility or takes other action revoking the Freeport Project's Qualifying Facility status, or (iii) the Freeport Project ceases to satisfy the criteria for Qualifying Facility status.

(c) If loss of MEC's authorization to make sales of electric energy, capacity and ancillary services and/or waivers of regulations and blanket authorizations customarily granted by FERC to entities with market-based rate authority could reasonably be expected to have a Material Adverse Effect, (i) MEC shall have tendered notice to FERC that MEC has ceased to satisfy any conditions imposed by FERC necessary to maintain such market-based rate authorization and/or waivers and/or blanket authorizations, or (ii) FERC has issued an order determining that MEC is no longer entitled to make sales of electric energy, capacity and ancillary services at market-based rates and/or is no longer entitled to waivers of regulations and blanket authorizations customarily granted by FERC to entities with market-based rate authority.

(d) FEC shall become subject to regulation as a "public utility" under the FPA.

(e) Any Borrower Parties shall suffer an Adverse PUHCA Event or, except to the extent provided in the first sentence of Section 4.17, shall otherwise become subject to, or not exempt from financial, organizational or rate regulation as an "electric utility company", "public utility company" or "public utility holding company" under PUHCA or as a public utility under the laws of the State of Minnesota in the case of MEC or Texas in the case of FEC as presently constituted and as construed by the courts of Minnesota and Texas, respectively.

#### 7.1.9 Abandonment.

(a) At any time prior to Term-Conversion, either Project Company shall announce that it is abandoning its Project or the Projects shall be abandoned or work thereon shall cease for a period of more than 30 consecutive days for any reason (which period (i) shall be measured from the first occurrence of a work stoppage and continuing until work of a substantial nature is resumed and thereafter diligently continued, and (ii) shall not include delays caused by any event of force majeure, a Dow Delay Event, or default by a Major Project Participant (other than either Project Company or Affiliated Major Project Participant) under any Major Project Document pursuant to which material construction activities are being performed).

(b) At any time following Term-Conversion, either Project Company shall announce that (i) it is abandoning its Project, or (ii) the Projects shall be abandoned or operation thereof shall be suspended for a period of more than 30 consecutive days for any reason (other than force majeure or a Dow Delay Event (in the case of the Freeport Project)); provided that

none of (A) scheduled maintenance of the Projects, (B) repairs to the Projects, whether or not scheduled, or (C) a forced outage or scheduled outage of the Projects, shall constitute abandonment or suspension of the Projects, so long as such Project Company is diligently attempting to end such suspension; and provided further, that none of the foregoing circumstances in this Section 7.1.9(b) shall cause an Event of Default with respect to the Freeport Project so long as Capacity Payments (as defined in the Capacity Sales Agreement) continue to be paid under the Capacity Sales Agreement.

7.1.10 Security. Any of the Collateral Documents, shall, except as the result of the acts or omissions of Administrative Agent, Depositary Agent, Collateral Agent or the Secured Parties, fail to provide to Collateral Agent, for the benefit of the Secured Parties, the Liens, first priority security interest (subject to Permitted Liens in clauses (a) and (e) of the definition thereof and, to the extent required by Governmental Rule, clauses (b), (c) and (g) of the definition thereof), rights, titles, interest, remedies permitted by law, powers or privileges intended to be created thereby or, except in accordance with its terms, cease to be in full force and effect, or the first priority or validity thereof or the applicability thereof to the Loans, the Notes (if any) or any other obligations purported to be secured or guaranteed thereby or any part thereof shall be disaffirmed by or on behalf of any Borrower Party.

7.1.11 Change of Control. Subject to Section 11.23, Sponsor shall cease to directly or indirectly own and control (a) at any time prior to Term-Conversion, 100% of (i) the economic interests in any Borrower Party, and (ii) the voting interests (whether by committee, contract or otherwise) in any Borrower Party, and (b) at any time on or after Term-Conversion, more than 50% of (A) the economic interests in any Borrower Party, and (B) the voting interests (whether by committee, contract or otherwise) in any Borrower Party; provided that Sponsor may only dispose of any portion of such economic or voting interests in any Borrower Party on and after Term-Conversion if:

(a) the applicable transferee is a corporation, limited liability company or limited partnership organized or formed in the United States or a state or commonwealth therein;

(b) at the time of the proposed disposition, the applicable transferee's unsecured senior long-term debt has a rating of at least Baa3 by Moody's and BBB- by S&P;

(c) the electric energy generation business is a substantial part of the applicable transferee's business;

(d) on or before the date of any such disposition, the applicable transferee enters into a pledge agreement in substantially the form of Exhibit D-10, pursuant to which such transferee shall pledge all of its ownership interests in such Borrower Party to Collateral Agent, for the benefit of the Secured Parties, and executes and delivers all other applicable Credit Documents as requested by Administrative Agent, Collateral Agent or the Majority Lenders;

(e) on or before the date of any such disposition, the applicable transferee delivers to Administrative Agent such opinions, resolutions, certificates and other evidence as

Administrative Agent may reasonably request (all of which shall be in form and substance reasonably satisfactory to Administrative Agent) to insure Administrative Agent's reasonable satisfaction as of the date of any such disposition with the matters covered by Sections 3.1.1 through 3.1.6(a), 3.1.8 and 3.1.18 (with respect solely to the applicable transferee and, if reasonably requested by Administrative Agent, the applicable Borrower Party); and

(f) after giving effect to any such disposition, Sponsor retains economic and voting control of such Borrower Party.

#### 7.1.12 Loss of or Failure to Obtain Applicable Permits.

(a) Either Project Company or Dow shall fail to obtain any Permit on or before the date that such Permit becomes an Applicable Permit with respect to its Project, and such failure could reasonably be expected to have a Material Adverse Effect.

(b) Any Applicable Permit necessary for operation of the Projects and for each Project Company's performance of its obligations under the Project Documents shall be materially modified (other than modifications contemplated in a Project Document requested by a Project Company and approved in writing in advance of such modification by Administrative Agent acting at the direction of the Required Lenders, which approval shall not be unreasonably withheld), revoked, canceled or not renewed by the issuing agency or other Governmental Authority having jurisdiction (or otherwise ceases to be in full force and effect) and within 30 days thereafter such Project Company is not able to demonstrate to the reasonable satisfaction of the Required Lenders that such modification of, revocation of, cancellation of, failure to renew, or failure to maintain in full force and effect such Permit could not reasonably be expected to have a Material Adverse Effect.

7.1.13 Unenforceability of Credit Documents. At any time after the execution and delivery thereof, any material provision of any Credit Document shall cease to be in full force and effect (other than by reason of the satisfaction in full of the Borrower Parties' Obligations or any other termination of a Credit Document in accordance with the terms hereof or thereof) or any Credit Document shall be declared null and void by a Governmental Authority of competent jurisdiction.

7.1.14 Misstatements; Omissions. Any representation or warranty made or deemed made by any Borrower Party in any Credit Document to which such Person is a party or in any separate statement, certificate or document delivered to the Lead Arrangers, Administrative Agent, Depositary Agent, Collateral Agent, or any Lender hereunder or under any other Credit Document to which such Person is a party, shall be untrue or misleading in any material respect as of the time made; provided that, in respect of unintentional misrepresentations which are capable of being remedied and are made or deemed made after the Closing Date, and the untruth of which could not reasonably be expected to have a Material Adverse Effect, any such unintentional misrepresentation shall not be deemed to be an Event of Default if such misrepresentation is corrected within 90 days of the occurrence thereof.

#### 7.1.15 Project Document Defaults.

(a) Project Companies. Either Project Company shall be in breach of, or in default of, any material obligation under a Major Project Document and such breach or default shall reasonably be expected to have a Material Adverse Effect and shall not be remediable or, if remediable, shall continue unremedied for the lesser of (i) a period of 30 days, or (ii) such period of time (without giving effect to any extension given to Collateral Agent under any applicable Consent with respect thereto) under such Major Project Document which such Project Company has available to it in which to remedy such breach or default; provided that if (A) extending such cure period does not exacerbate such Material Adverse Effect, (B) such breach cannot be cured within such 30 day period (or such lesser period of time, as the case may be), (C) such breach is susceptible of cure within 90 days after such breach or default, (D) such Project Company is proceeding with diligence and in good faith to cure such breach, (E) the existence of such breach or default has not had and could not after considering the nature of the cure, be reasonably expected to give rise to termination by the counterparty to the Major Project Document which is subject to breach or to otherwise have exacerbated the Material Adverse Effect, and (F) Administrative Agent shall have received an officer's certificate signed by a Responsible Officer to the effect of clauses (A)-(E) above and stating what action such Project Company is taking to cure such breach, then such 30 day cure period (or such lesser period of time, as the case may be) shall be extended to such date, not to exceed a total of 90 days, as shall be necessary for such Project Company diligently to cure such breach.

(b) Third Party. Any Person other than either Project Company shall be in breach of, or in default under, a Major Project Document and such breach or default shall reasonably be expected to have a Material Adverse Effect and

(i) shall not be remediable or (ii) if remediable, shall continue unremedied for a period of 30 days from the time a Project Company obtains knowledge of such breach or default; provided that if (A) such breach cannot be cured within such 30 day period, (B) such breach or default is susceptible of cure within 90 days,

(C) the breaching Person or the applicable Project Company is proceeding with diligence and in good faith to cure such breach, and (D) extending the cure period would not exacerbate the Material Adverse Effect, then such 30 day cure period shall be extended to such date, not to exceed a total of 90 days, as shall be necessary for such breaching Person diligently to cure such breach; provided, further, that no Event of Default shall occur as a result of any such action if such Project Company obtains a Replacement Obligor for the affected party within the 90 day cure period referred to in this paragraph (or within the 30 day cure period, if no extension is given); provided, further, that no Inchoate Default or Event of Default shall occur as a result of an "Event of Default" under Section 16.2.2(a) of the MEC Construction Contract (relating to "inadequate progress") unless the MEC Construction Contract is terminated as a result thereof; and provided, further, in the case of any default or event of default under any Major Project Document which is the basis for the making of a drawing under either Contractor Undertaking LC pursuant to Section 2.2(c)(i)(C) or 2.2(c)(ii) of either Completion Undertaking Agreement (or application of proceeds of any Contractor Undertaking LC under similar circumstances as provided in Section 2.3 of either Completion Undertaking Agreement), such default or event of default under such Major Project Document shall be

deemed cured and any related Inchoate Default or Event of Default hereunder shall no longer exist following such drawing or application of funds.

(c) Third Party Consents. (i) Any Person other than any Borrower Party shall disaffirm or repudiate in writing its material obligations under any Consent, (ii) any representation or warranty made in any Consent by Dow, NSP, CCMCI, Operator or Sponsor (for so long as CCMCI's obligations under the Construction Contracts remain outstanding) shall be untrue or misleading in any material respect as of the time made and such untrue or misleading representation or warranty could reasonably be expected to materially adversely affect the rights of the Collateral Agent or the Secured Parties thereunder or to otherwise result in a Material Adverse Change, or (iii) Dow, NSP, CES, CCMCI, Operator or Sponsor (for so long as CCMCI's obligations under the Construction Contracts remain outstanding) shall breach any material covenant in a Consent and such breach or default shall not be remediable or, if remediable, shall continue unremedied for a period of 30 days from the time of such breach or default; provided that if (A) such breach cannot be cured within such 30 day period, (B) such breach is susceptible of cure within 90 days, (C) the breaching party is proceeding with diligence and in good faith to cure such breach, and (D) the existence of such breach has not had and could not after considering the nature of the cure, be reasonably expected to have a Material Adverse Effect, then such 30 day cure period shall be extended to such date, not to exceed a total of 90 days, as shall be necessary for such third party diligently to cure such breach; provided, further, that no Event of Default shall occur as a result of any such action if (1) the applicable Project Company obtains a Replacement Obligor for the affected party with respect to the contract or contracts to which such Consent relates, and (2) such Replacement Obligor executes a Consent reasonably satisfactory to Administrative Agent, each within the 90 day cure period referred to in this paragraph (or within the 30 day cure period, if no extension is given) and such action does not have prior to so obtaining such Replacement Obligor a Material Adverse Effect.

(d) Termination. Any material provision in any Major Project Document shall for any reason cease to be valid and binding on any party thereto (other than any Borrower Party) except upon fulfillment of such party's obligations thereunder, or shall be declared null and void; provided that no Event of Default shall occur as a result of such breach or default if (i) such provision is restored or replaced by a replacement provision in form and substance reasonably acceptable to Administrative Agent within a period of 90 days thereafter, or (ii) such applicable Borrower Party obtains a Replacement Obligor for the affected party within 90 days thereafter and, in either case, such breach or default has not had and does not have prior to so obtaining such replacement provision or Replacement Obligor, a Material Adverse Effect.

7.1.16 Power Purchase Agreement and Capacity Sales Agreement. (a) NSP shall have exercised its "step-in" rights pursuant to Section 12.7 of the Power Purchase Agreement, (b) Sponsor shall reject or disavow its obligations under the guaranty portion of the Security Fund, and (c) (i) any valid draw or claim on the guaranty portion of the Security Fund by NSP pursuant to Section 12.7 of the Power Purchase Agreement shall fail to be timely honored in full, and (ii) in the event that the Security Fund LC is increased as required under Section 11.1(E) of the Power Purchase Agreement and contemplated by Section 2.2.4, Borrower

has not provided cash collateral in the amount of any such increase. For purposes of the previous sentence, "cash collateral" includes amounts in the Borrower Revenue Account prior to Term-Conversion.

7.1.17 MEC Facility Acceptance. The Facility Acceptance Date is not achieved by three months after the Facility Acceptance Milestone, as such date may have been extended for force majeure or other reason under the Power Purchase Agreement.

7.1.18 FEC Commercial Operation. Commercial Operation is not achieved or deemed achieved by three months after the date of the FEC Milestone for achieving Commercial Operation of the FEC Phase 3 Work for the Freeport Project, as such date may have been extended for force majeure or other reason under the Capacity Sales Agreement.

7.1.19 Guaranties. The Borrower Party party thereto shall fail to perform any of its material obligations under Section 2 of each of the MEC Guaranties, the FEC Guaranty, the FEC-GP Guaranty or the FEC-LP Guaranty.

7.1.20 Shortfall of Proceeds of Purchase Option or Put Option. As further described in Section 3.6 of the Borrower Depositary Agreement, the proceeds of the Purchase Option or Put Option, when applied (together with any other amounts made available to prepay the FEC Allocated Portion, any amounts then on deposit in the Accounts established under the FEC Depositary Agreement and an amount equal to the FEC Allocated Portion Percentage of any amounts then on deposit in the Debt Service Reserve Account) to prepay Term Loans, are insufficient to reduce the outstanding principal of Term Loans by the amount of the FEC Allocated Portion.

## 7.2 REMEDIES.

Upon the occurrence and during the continuation of an Event of Default, Administrative Agent, Collateral Agent, and the Lenders may, at the election of the Majority Lenders, without further notice of default, presentment or demand for payment, protest or notice of non-payment or dishonor, or other notices or demands of any kind, all such notices and demands (other than notices expressly required by the Credit Documents) being waived, exercise any or all of the following rights and remedies, in any combination or order that the Majority Lenders may elect, in addition to such other rights or remedies as the Secured Parties may have hereunder, under the Collateral Documents or at law or in equity:

7.2.1 No Further Loans or Letter of Credit. Cancel all Commitments, refuse, and Administrative Agent, LC Issuer and the Lenders shall not be obligated, to continue any Loans, make any additional Loans (other than Security Fund LC Loans), issue, renew, or extend the Security Fund LC, or make any payments, or permit the making of payments, from any Account or any Loan proceeds or other funds held by Administrative Agent or Collateral Agent under the Credit Documents or on behalf of Borrower; provided that in the case of an Event of Default occurring under Section 7.1.2 with respect to Borrower, all such Commitments shall be cancelled and terminated without further act of Administrative Agent, Collateral Agent, or any Secured Party.

7.2.2 Cure by Agents. Without any obligation to do so, make disbursements or Loans to or on behalf of Borrower or disburse amounts from the Construction Account to cure (a) any Event of Default or Inchoate Default hereunder, and (b) any default and render any performance under any Project Document as the Majority Lenders in their sole discretion may consider necessary or appropriate, whether to preserve and protect the Collateral or the Secured Parties' interests therein or for any other reason. All sums so expended, together with interest on such total amount at the Default Rate (but in no event shall the rate exceed the maximum lawful rate), shall be repaid by Borrower to Administrative Agent or Collateral Agent, as the case may be, on demand and shall be secured by the Credit Documents, notwithstanding that such expenditures may, together with amounts advanced under this Agreement, exceed the aggregate amount of the Total Construction Loan Commitment.

7.2.3 Acceleration. Declare and make all or a portion of the sums of accrued and outstanding principal and accrued but unpaid interest remaining under this Agreement, together with all unpaid fees, costs (including Liquidation Costs and Hedge Breaking Fees) and charges due hereunder or under any other Credit Document, immediately due and payable and require Borrower immediately, without presentment, demand, protest or other notice of any kind, all of which Borrower hereby expressly waives, to pay Administrative Agent or the Secured Parties an amount in immediately available funds equal to the aggregate amount of any outstanding Obligations of Borrower; provided that, in the event of an Event of Default occurring under Section 7.1.2 with respect to Borrower, all such amounts shall become immediately due and payable without further act of Administrative Agent, LC Issuer, Collateral Agent, or the Secured Parties.

7.2.4 Cash Collateral; Letters of Credit. Apply or execute upon any amounts on deposit in any Account, other than the Construction Sub-Account under the MEC Depositary Agreement or the Third Step Construction Sub-Account under the FEC Depositary Agreement, or any proceeds or any other moneys of Borrower on deposit with Administrative Agent, Collateral Agent, Depositary Agent or any Secured Party in the manner provided in the UCC and other relevant statutes and decisions and interpretations thereunder with respect to cash collateral; or draw upon any Collateral Replacement LC held by Collateral Agent as security. Without limiting the foregoing, each of Administrative Agent, Collateral Agent and Depositary Agent shall have all rights and powers with respect to the Loan proceeds, draws upon any Collateral Replacement LC, the Accounts and the contents of the Accounts as it has with respect to any other Collateral and may apply, or cause the application of, such amounts to the payment of interest, principal, fees, costs, charges or other amounts due or payable to Administrative Agent, Collateral Agent, Depositary Agent or the Secured Parties with respect to the Loans in such order as the Majority Lenders may elect in their sole discretion. Borrower shall not have any rights or powers with respect to such amounts.

7.2.5 Possession of Projects. Enter into possession of either or both Projects and perform any and all work and labor necessary to complete the Projects substantially according to the Plans and Specifications or to operate and maintain the Projects, and all sums expended by Administrative Agent, Collateral Agent or Depositary Agent in so doing, together with interest on such total amount at the Default Rate, shall be repaid by Borrower to Administrative Agent,

Collateral Agent or Depositary Agent, as the case may be, upon demand and shall be secured by the Credit Documents, notwithstanding that such expenditures may, together with amounts advanced under this Agreement, exceed the aggregate amount of the Total Construction Loan Commitment.

7.2.6 Remedies Under Credit Documents. Exercise, and direct Administrative Agent, Depositary Agent, or Collateral Agent (as the case may be) to exercise, any and all rights and remedies available to it under any of the Credit Documents, including judicial or non-judicial foreclosure or public or private sale of any of the Collateral pursuant to the Collateral Documents. Furthermore, if Administrative Agent requests that certain actions be taken and a Project Company fails to take the requested actions within five Banking Days, Administrative Agent or Collateral Agent (as applicable) may enforce in its own name or in such Project Company's name, such rights of the Project Company, all as more particularly provided in the Security Agreement and the other Credit Documents.

## **ARTICLE 8 SCOPE OF LIABILITY**

Except as set forth in this Article 8, notwithstanding anything in this Agreement or the other Credit Documents to the contrary, the Lenders, the Hedge Banks and the LC Issuer shall have no claims with respect to the transactions contemplated by the Operative Documents against Sponsor or any of its Affiliates (other than Borrower Parties), shareholders, officers, directors or employees (collectively, the "Nonrecourse Persons") and the Lenders', the Hedge Banks' and the LC Issuer's recourse against Borrower Parties and the Nonrecourse Persons shall be limited to the Collateral, the Projects, all Project Revenues, all Loan proceeds, Insurance Proceeds, Eminent Domain Proceeds, and all income or revenues of the foregoing as and to the extent provided herein and in the Collateral Documents; provided that the foregoing provision of this Article 8 shall not (a) constitute a waiver, release or discharge of any of the indebtedness, or of any of the terms, covenants, conditions, or provisions of this Agreement or any other Credit Document and the same shall continue (but without personal liability to the Nonrecourse Persons) until fully paid, discharged, observed, or performed, (b) limit or restrict the right of Administrative Agent, Collateral Agent or any Secured Party (or any assignee, beneficiary or successor to any of them) to name any Borrower Party or any other Person as a defendant in any action or suit for a judicial foreclosure or for the exercise of any other remedy under or with respect to this Agreement or any other Collateral Document or Credit Document, or for injunction or specific performance, so long as no judgment in the nature of a deficiency judgment shall be enforced against any Nonrecourse Person, except as set forth in this Article 8, (c) in any way limit or restrict any right or remedy of Administrative Agent, Collateral Agent or any Secured Party (or any assignee or beneficiary thereof or successor thereto) with respect to, and each of the Nonrecourse Persons shall remain fully liable to the extent that it would otherwise be liable for its own actions with respect to, any fraud, willful misrepresentation (which shall not include innocent or negligent misrepresentation), or misappropriation of Project Revenues, Loan proceeds, Insurance Proceeds, Eminent Domain Proceeds or any other earnings, revenues, rents, issues, profits or proceeds from or of the Collateral, that should or would have been paid as provided herein or paid or delivered to Administrative Agent, Collateral Agent or

any Secured Party (or any assignee or beneficiary thereof or successor thereto) towards any payment required under this Agreement or any other Credit Document,

(d) affect or diminish or constitute a waiver, release or discharge of any specific written obligation, covenant, or agreement in respect of the transactions contemplated by the Operative Documents made by any of the Nonrecourse Persons or any security granted by the Nonrecourse Persons in support of the obligations of such Persons under any Collateral Document or Project Document (or as security for the obligations of Borrower Parties), or the Group Pledge and Security Agreement, or (e) limit the liability of (i) any Person who is a party to any Project Document or has issued any certificate or other statement in connection therewith with respect to such liability as may arise by reason of the terms and conditions of such Project Document (but subject to any limitation of liability in such Project Document), certificate or statement, or (ii) any Person rendering a legal opinion pursuant to this Agreement (including Section 3.1.8, 3.2.11, 3.3.8 or 7.1.11), in each case under this clause (e) relating solely to such liability of such Person as may arise under such referenced agreement, instrument or opinion. The limitations on recourse set forth in this Article 8 shall survive the termination of this Agreement, the termination of all Commitments and the Interest Rate Agreements to which any Secured Party is a party and the indefeasible payment in full in cash and performance in full of the Borrower's Obligations hereunder and under the other Operative Documents.

## **ARTICLE 9 AGENTS; SUBSTITUTION**

### **9.1 APPOINTMENT, POWERS AND IMMUNITIES.**

9.1.1 Each Lender hereby appoints and authorizes (a) Administrative Agent to act as its agent hereunder and under the other Credit Documents, and

(b) Collateral Agent to act as its collateral agent hereunder and under the other Credit Documents, in each case with such powers as are expressly delegated to Administrative Agent or Collateral Agent (as the case may be) by the terms of this Agreement and the other Credit Documents, together with such other powers as are reasonably incidental thereto. Neither Administrative Agent nor Collateral Agent shall have any duties or responsibilities except those expressly set forth in this Agreement or in any other Credit Document, or be a trustee or a fiduciary for any Secured Party. Notwithstanding anything to the contrary contained herein, neither Administrative Agent nor Collateral Agent shall be required to take any action which is contrary to this Agreement or any other Credit Documents or any Legal Requirement or exposes Administrative Agent or Collateral Agent (as the case may be) to any liability. Each of the Lead Arrangers, Collateral Agent, Administrative Agent, the Lenders and any of their respective Affiliates shall not be responsible to any other Secured Party for

(i) any recitals, statements, representations or warranties made by each Borrower Party or its Affiliates contained in this Agreement, the other Credit Documents or in any certificate or other document referred to or provided for in, or received by the Lead Arrangers, Administrative Agent, Collateral Agent, or any Secured Party under this Agreement or any other Credit Document, (ii) the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement, the other Credit Documents, any

Notes or any other document referred to or provided for herein, or (iii) any failure by any Borrower Party or its Affiliates to perform their respective obligations hereunder or thereunder. Each of Administrative Agent and Collateral Agent may employ agents and attorneys-in-fact, and neither shall be responsible for the negligence or misconduct of any such agents or attorneys-in-fact selected by it with reasonable care.

9.1.2 None of Collateral Agent, Administrative Agent, the Lead Arrangers and their respective directors, officers, employees or agents shall be responsible for any action taken or omitted to be taken by it or them hereunder or under any other Credit Document or in connection herewith or therewith, except for its or their own gross negligence or willful misconduct. Without limiting the generality of the foregoing, (a) Administrative Agent may treat the payee of any Note as the holder thereof until Administrative Agent receives written notice of the assignment or transfer thereof signed by such payee and in form satisfactory to Administrative Agent, (b) each of Administrative Agent and Collateral Agent may consult with legal counsel, independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken in good faith by them in accordance with the advice of such counsel, accountants or experts, (c) none of Collateral Agent, Administrative Agent and the Lead Arrangers makes any warranty or representation to any Secured Party for any statements, warranties or representations made in or in connection with any Operative Document, (d) none of Collateral Agent, Administrative Agent and the Lead Arrangers shall have any duty to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions of any Operative Document on the part of any party thereto, to inspect the property (including the books and records) of any Borrower Party or any other Person or to ascertain or determine whether a Material Adverse Effect exists or is continuing, and (e) none of Collateral Agent, Administrative Agent and the Lead Arrangers shall be responsible to any Secured Party for the due execution, legality, validity, enforceability, genuineness, sufficiency or value of any Operative Document or any other instrument or document furnished pursuant hereto. Except as otherwise provided under this Agreement and the other Credit Documents, each of Administrative Agent and Collateral Agent shall take such action with respect to the Credit Documents as shall be directed by the Majority Lenders or, if expressly so provided, the Required Lenders.

9.1.3 None of the Co-Syndication Agents, Underwriters, Co-Documentation Agents and Co-Book Runners shall have any right, power, obligation, liability, responsibility or duty under this Agreement, other than those applicable to all Secured Parties and those set forth in Section 5.11 and this Article 9. The Lead Arrangers shall only have those rights, powers, obligations, liabilities, responsibilities and duties set forth in Section 3.1, Section 5.11, this Article 9 and Section 11.1. Without limiting the foregoing, none of the Lead Arrangers, Underwriters, Co-Syndication Agents, Co-Documentation Agents and Co-Book Runners shall have or be deemed to have a fiduciary relationship with any Secured Party. Each Secured Party hereby makes the same acknowledgments with respect to the Lead Arrangers, Underwriters, Co-Syndication Agents, Co-Documentation Agents and Co-Book Runners as it makes with respect to the Administrative Agent or the Collateral Agent in this Article 9. Notwithstanding the foregoing, the parties hereto acknowledge that the Co-Syndication Agents, Underwriters, Co-Documentation Agents and Co-Book Runners hold such titles in name only, and that such

titles confer no additional rights or obligations relative to those conferred on any Secured Party hereunder.

## 9.2 RELIANCE.

Each of Administrative Agent and Collateral Agent shall be entitled to rely upon any certificate, notice or other document (including any cable, telegram, facsimile, electronic mail or telex) believed by it to be genuine and correct and to have been signed or sent by or on behalf of the proper Person or Persons, and upon advice and statements of legal counsel, independent accountants and other experts selected by it. As to any other matters not expressly provided for by this Agreement, neither Collateral Agent nor Administrative Agent shall be required to take any action or exercise any discretion, but shall be required to act or to refrain from acting upon instructions of the Majority Lenders or, where expressly provided, the Required Lenders or all Lenders (except that neither Collateral Agent nor Administrative Agent shall be required to take any action which exposes Collateral Agent or Administrative Agent (as the case may be) to personal liability or which is contrary to this Agreement, any other Credit Document or any Legal Requirement). Each of Collateral Agent and Administrative Agent shall in all cases (including when any action by Collateral Agent or Administrative Agent (as the case may be) alone is authorized hereunder, if Collateral Agent or Administrative Agent (as the case may be) elects in its sole discretion to obtain instructions from the Majority Lenders) be fully protected in acting, or in refraining from acting, hereunder or under any other Credit Document in accordance with the instructions of the Majority Lenders (or, where so expressly stated, the Required Lenders or all Lenders), and such instructions of the Majority Lenders (or Required Lenders or all Lenders, where applicable) and any action taken or failure to act pursuant thereto shall be binding on all of the Secured Parties.

## 9.3 NON-RELIANCE.

Each Lender represents that it has, independently and without reliance on the Lead Arrangers, Collateral Agent, Administrative Agent, or any other Lender, and based on such documents and information as it has deemed appropriate, made its own appraisal of the financial condition and affairs of the Calpine Entities and its own decision to enter into this Agreement and agrees that it will, independently and without reliance upon the Lead Arrangers, Collateral Agent, Administrative Agent, or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own appraisals and decisions in taking or not taking action under this Agreement. Each of Administrative Agent, the Lead Arrangers, Collateral Agent and any Lender shall not be required to keep informed as to the performance or observance by any Calpine Entity or its Affiliates under this Agreement or any other document referred to or provided for herein or to make inquiry of, or to inspect the properties or books of any Calpine Entity or its Affiliates.

## 9.4 DEFAULTS; MATERIAL ADVERSE CHANGE.

None of the Lead Arrangers, Collateral Agent and Administrative Agent shall be deemed to have knowledge or notice of the occurrence of any Inchoate Default, Event of

Default or Material Adverse Change, unless such Person has received a notice from a Lender or any Borrower Party, referring to this Agreement, describing such Inchoate Default, Event of Default or Material Adverse Change and indicating that such notice is a notice of the occurrence of such default or Material Adverse Change (as the case may be). If Administrative Agent receives such a notice of the occurrence of an Inchoate Default, Event of Default or Material Adverse Change, Administrative Agent shall give notice thereof to the Lenders. Each of Collateral Agent and Administrative Agent shall take such action with respect to such Inchoate Default, Event of Default or Material Adverse Change as is provided in Article 3, Article 7 or the terms of the Credit Documents, or if not provided for in Article 3, Article 7 or such Credit Documents, as Administrative Agent or Collateral Agent shall be reasonably directed by the Majority Lenders; provided, however, that unless and until Administrative Agent or Collateral Agent shall have received such directions, each of Administrative Agent and Collateral Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Inchoate Default, Event of Default or Material Adverse Change as it shall deem advisable in the best interest of the Lenders.

#### 9.5 INDEMNIFICATION.

Without limiting the Obligations of each Borrower Party hereunder, each Lender agrees to indemnify the Lead Arrangers, Collateral Agent and Administrative Agent and their respective officers, directors, shareholders, controlling Persons, employees, agents and servants, ratably in accordance with their Proportionate Shares for any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against Administrative Agent, the Lead Arrangers, Collateral Agent or such Person in any way relating to or arising out of this Agreement or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or the enforcement of any of the terms hereof or thereof or of any such other documents (to the extent Borrower has not paid any such amounts pursuant to Section 5.11); provided, however, that no Lender shall be liable for any of the foregoing to the extent they arise from Administrative Agent's, the Lead Arrangers', Collateral Agent's or any such Person's gross negligence or willful misconduct. Administrative Agent or any such Person shall be fully justified in refusing to take or to continue to take any action hereunder or under any other Credit Document unless it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. Without limitation of the foregoing, each Lender agrees to reimburse Administrative Agent, the Lead Arrangers, Collateral Agent or any such Person promptly upon demand for its Proportionate Share of any out-of-pocket expenses (including counsel fees) incurred by Administrative Agent, the Lead Arrangers, Collateral Agent or any such Person in connection with the preparation, execution, administration or enforcement of, or legal advice in respect of rights or responsibilities under, the Operative Documents, to the extent that Administrative Agent, the Lead Arrangers, Collateral Agent or any such Person is not reimbursed for such expenses by Borrower.

#### 9.6 SUCCESSOR AGENT.

Each of Collateral Agent and Administrative Agent may resign at any time by giving 15 days' written notice thereof to the Secured Parties and Borrower. Each of Collateral Agent and Administrative Agent may be removed involuntarily only for a material breach of its respective duties and obligations hereunder and under the other Credit Documents or for gross negligence or willful misconduct in connection with the performance of its respective duties hereunder or under the other Credit Documents and then only upon the affirmative vote of the Required Lenders (excluding Administrative Agent and Collateral Agent (as the case may be) from such vote and Administrative Agent's and Collateral Agent's (as the case may be) Proportionate Share (if any) of the Commitments from the amounts used to determine the portion of the Commitments necessary to constitute the required Proportionate Share of the remaining Lenders). Upon any such resignation or removal of either Administrative Agent or Collateral Agent, the Required Lenders shall have the right, with the consent of Borrower (such consent not to be unreasonably withheld or delayed) to appoint a successor Administrative Agent or Collateral Agent (as the case may be). If no successor Administrative Agent or Collateral Agent (as the case may be) shall have been so appointed by the Required Lenders and shall have accepted such appointment, within 30 days after the retiring Administrative Agent's or Collateral Agent's (as the case may be) giving of notice of resignation or the Lenders' removal of the retiring Administrative Agent or Collateral Agent (as the case may be), the retiring Administrative Agent and Collateral Agent (as the case may be) may, on behalf of the Secured Parties, with the consent of Borrower (such consent not to be unreasonably withheld or delayed), appoint a successor Administrative Agent or Collateral Agent (as the case may be) hereunder, which shall be a Lender, if any Lender shall be willing to serve, and otherwise shall be a commercial bank having a combined capital and surplus of at least \$500,000,000. Upon the acceptance of any appointment as Administrative Agent or Collateral Agent (as the case may be) under the Operative Documents by a successor Administrative Agent or Collateral Agent (as the case may be), such successor Administrative Agent or Collateral Agent (as the case may be) shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent or Collateral Agent (as the case may be), and the retiring Administrative Agent or Collateral Agent (as the case may be) shall be discharged from its duties and obligations as Administrative Agent or Collateral Agent (as the case may be) only under the Credit Documents. After any retiring Administrative Agent's or Collateral Agent's resignation or removal hereunder as Administrative Agent or Collateral Agent (as the case may be), the provisions of this Article 9 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent or Collateral Agent (as the case may be) under the Operative Documents.

#### 9.7 AUTHORIZATION.

Each of Administrative Agent and Collateral Agent is hereby authorized by the Secured Parties to execute, deliver and perform each of the Credit Documents to which Administrative Agent or Collateral Agent (as the case may be) is or is intended to be a party, and each Lender agrees to be bound by all of the agreements of Administrative Agent and Collateral Agent contained in the Credit Documents. Each of Administrative Agent and Collateral Agent is further authorized by the Secured Parties to release Liens on property that Borrower is permitted to sell or transfer pursuant to the terms of this Agreement or the other Credit Documents and to

enter into agreements supplemental hereto for the purpose of curing any formal defect, inconsistency, omission or ambiguity in this Agreement or any Credit Document to which it is a party.

#### 9.8 OTHER ROLES.

With respect to its Commitment, the Loans made by it and any Note issued to it, each of the Lead Arrangers, Collateral Agent, Administrative Agent and LC Issuer in its individual capacity shall have the same rights and powers under the Operative Documents as any other Lender and may exercise the same as though it were not a Lead Arranger, Collateral Agent, Administrative Agent or LC Issuer. The term "Lender" or "Lenders" shall, unless otherwise expressly indicated, include each of the Lead Arrangers, Collateral Agent, Administrative Agent and LC Issuer in its individual capacity. Each of the Lead Arrangers, Collateral Agent, Administrative Agent, LC Issuer and their respective Affiliates may accept deposits from, lend money to, act as trustee under indentures of, and generally engage in any kind of business with any Borrower Party or any other Person, without any duty to account therefor to the Lenders. For the avoidance of doubt Collateral Agent may act as Depositary Agent notwithstanding any potential or actual conflict of interest presented by the foregoing and any Borrower Party. Each of the Lenders hereby waives any claim against each of the Lead Arrangers, Collateral Agent, Administrative Agent, LC Issuer and any of their respective Affiliates based upon any conflict of interest that such Person may have with regard to acting as an agent, arranger or issuing bank hereunder and acting in such other roles.

#### 9.9 AMENDMENTS; WAIVERS.

Subject to the provisions of this Section 9.9, unless otherwise specified in this Agreement or another Credit Document, the Majority Lenders (or Administrative Agent or Collateral Agent upon written direction or consent of the Majority Lenders) and any Borrower Party may enter into agreements, waivers or supplements hereto for the purpose of adding, modifying or waiving any provisions to the Credit Documents or changing in any manner the rights of the Lenders or any Borrower Party hereunder or thereunder or waiving any Inchoate Default or Event of Default; provided, however, that no such supplemental agreement shall, without the consent of all of the Lenders:

- (a) increase the amount of the Commitment of any Lender hereunder; or
- (b) reduce the percentage specified in the definition of "Majority Lenders" or "Required Lenders"; or
- (c) amend this Section 9.9; or
- (d) release any Collateral (other than immaterial portions thereof or as expressly permitted pursuant to the Credit Documents) from the Lien of any of the Collateral Documents; or

(e) extend the Construction Loan Maturity Date or the Term Loan Maturity Date or reduce the principal amount of any outstanding Loans or Notes or reduce the rate or change the time of payment of interest due on any Loan; provided that only the consent of the Required Lenders shall be necessary to amend the definition of "Default Rate" contained in Section 2.6.3 or to waive any obligation of Borrower to pay interest at the Default Rate; or

(f) reduce the amount or extend the payment date for any amount due, whether principal or interest; or

(g) subordinate the Loans to any other Debt.

No amendment, modification, termination or waiver of any provision of this Agreement affecting the rights or obligations of Administrative Agent, Collateral Agent, LC Issuer or the Lead Arrangers shall be effective without the written consent of Administrative Agent, Collateral Agent, LC Issuer or the Lead Arrangers, as the case may be.

#### 9.10 WITHHOLDING TAX.

If the forms or other documentation required by Section 2.6.6 are not delivered to Administrative Agent, then Administrative Agent may withhold from any interest payment to any Lender not providing such forms or other documentation, an amount equivalent to the applicable withholding tax.

9.10.1 If the Internal Revenue Service or any authority of the United States or other jurisdiction asserts a claim that Administrative Agent did not properly withhold tax from amounts paid to or for the account of any Lender (because the appropriate form was not delivered, was not properly executed, or because such Lender failed to notify Administrative Agent of a change in circumstances which rendered the exemption from, or reduction of, withholding tax ineffective, or for any other reason), then such Lender shall indemnify Administrative Agent fully for all amounts paid, directly or indirectly, by Administrative Agent as tax or otherwise, including penalties and interest, together with all expenses incurred, including legal expenses, allocated staff costs, and any out of pocket expenses. Borrower shall not be responsible for any amounts paid or required to be paid by a Lender under this Section 9.10.1.

9.10.2 If any Lender sells, assigns, grants participation in, or otherwise transfers its rights under this Agreement, the purchaser, assignee, participant or transferee, as applicable, shall comply and be bound by the terms of Section 2.6.6 and this Section 9.10 as though it were such Lender.

#### 9.11 GENERAL PROVISIONS AS TO PAYMENTS.

Administrative Agent shall promptly distribute to each Lender, subject to the terms of any separate agreement between Administrative Agent and such Lender, its pro rata share of each payment of principal and interest payable to the Lenders on the Loans and of fees hereunder received by Administrative Agent for the account of the Lenders and of any other

amounts owing under the Loans. The payments made for the account of each Lender shall be made, and distributed to it, for the account of (a) its domestic lending office in the case of payments of principal of, and interest on, its Base Rate Loans, (b) its domestic or foreign lending office, as each Lender may designate in writing to Administrative Agent, in the case of LIBOR Loans, and (c) its domestic lending office, or such other lending office as it may designate for the purpose from time to time, in the case of payments of fees and other amounts payable hereunder. Lenders shall have the right to alter designated lending offices upon five Banking Days prior written notice to Administrative Agent and Borrower.

#### 9.12 SUBSTITUTION OF LENDER.

Should any Lender fail to make a Loan in violation of its obligations under this Agreement (a "Non-Advancing Bank"), Administrative Agent shall (a) in its sole discretion fund the Loan on behalf of the Non-Advancing Bank, or (b) cooperate and consult with Borrower or any other Lender to find another Person that shall be acceptable to Administrative Agent and that shall be willing to assume the Non-Advancing Bank's obligations under this Agreement (including the obligation to make the Loan which the Non-Advancing Bank failed to make but without assuming any liability for damages for failing to have made such Loan or any previously required Loan). Subject to the provisions of the next following sentence, such Person shall be substituted for the Non-Advancing Bank hereunder upon execution and delivery to Administrative Agent of an agreement acceptable to Administrative Agent by such Person assuming the Non-Advancing Bank's obligations (including its Commitments) under this Agreement, and all interest and fees which would otherwise have been payable to the Non-Advancing Bank shall thereafter be payable to such Person. Nothing in (and no action taken pursuant to) this Section 9.12 shall relieve the Non-Advancing Bank from any liability it might have to Borrower or to the other Lenders as a result of its failure to make any Loan.

#### 9.13 PARTICIPATION.

9.13.1 Sales of Participation. Nothing herein provided shall prevent any Lender from selling a participation in one or more of its Commitments (or Loans made hereunder); provided that (a) no such sale of a participation shall alter such Lender's or Borrower's obligations hereunder, and (b) any agreement pursuant to which any Lender may grant a participation in its rights with respect to its Commitment (or Loans made hereunder) shall provide that, with respect to such Commitment (or Loans made hereunder), subject to the following proviso, such Lender shall retain the sole right and responsibility to exercise the rights of such Lender, and enforce the obligations of Borrower relating to such Commitment (or Loans made hereunder), including the right to approve any amendment, modification or waiver of any provision of this Agreement or any other Credit Document and the right to take action to have the Obligations hereunder (or any portion thereof) declared due and payable pursuant to Article 7; provided, however, that such agreement may provide that the participant may have rights to approve or disapprove decreases in Commitments, interest rates or fees, lengthening of maturity of any Loans, extend the payment date for any amount due under Article 2 or release of

any material Collateral. No recipient of a participation in any Commitment or Loans of any Lender shall have any rights under this Agreement or shall be entitled to any reimbursement for Taxes, Other Taxes, increased costs or reserve requirements under Section 2.6 or 2.8 or any other indemnity or payment rights against Borrower (but shall be permitted to receive from the Lender granting such participation a proportionate amount which would have been payable to the Lender from whom such Person acquired its participation).

9.13.2 Special Purpose Funding Vehicles. Notwithstanding anything to the contrary contained herein, any Lender (a "Granting Bank") may grant to a special purpose funding vehicle (a "SPC"), identified as such in writing from time to time by the Granting Bank to Administrative Agent and Borrower, the option to provide to Borrower all or any part of any Loan that such Granting Bank would otherwise be obligated to make to Borrower pursuant to this Agreement; provided that (a) nothing herein shall constitute a commitment by any SPC to make any Loan, and (b) if a SPC elects not to exercise such option or otherwise fails to provide all or any part of such Loan, the Granting Bank shall be obligated to make such Loan pursuant to the terms hereof. The making of a Loan by a SPC hereunder shall utilize the Commitment of the Granting Bank to the same extent, and as if, such Loan were made by such Granting Bank. Each party hereto hereby agrees that no SPC shall be liable for any indemnity or similar payment obligation under this Agreement (all liability for which shall remain with the Granting Bank). In furtherance of the foregoing, each party hereto hereby agrees (which agreement shall survive the termination of this Agreement) that, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper or other senior indebtedness of any SPC, it will not institute against, or join any other Person in instituting against, such SPC any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings under the laws of the United States or any state thereof. In addition, notwithstanding anything to the contrary contained in this Section 9.13, any SPC may (i) with notice to, but without the prior written consent of, Borrower, Administrative Agent or and without paying any processing fee therefor, assign all or a portion of its interests in any Loans to the Granting Bank or to any financial institutions (consented to by Borrower and Administrative Agent) providing liquidity or credit support to or for the account of such SPC to support the funding or maintenance of Loans, and (ii) disclose on a confidential basis any non-public information relating to its Loans to any rating agency, commercial paper dealer or provider of any surety, guarantee or credit or liquidity enhancement to such SPC. This Section 9.13.2 may not be amended without the written consent of all SPCs having outstanding Loans or Commitments hereunder.

#### 9.14 TRANSFER OF COMMITMENT.

Notwithstanding anything else herein to the contrary (but subject to Section 9.13.2), any Lender, after receiving Administrative Agent's prior written consent (such consent not to be unreasonably withheld) and (so long as no Event of Default has occurred and is continuing), after consulting with Borrower as to the identity of the applicable assignee, may from time to time, at its option, sell, assign, transfer, negotiate or otherwise dispose of a portion of one or more of its Commitments (including, for purposes of this Section 9.14, Loans made hereunder) (including the Lender's interest in this Agreement and the other Credit Documents) to any Lender; provided, however, that no Lender (including any assignee of any Lender) may

assign any portion of its Commitment (including Loans) (a) in an amount less than \$5,000,000 (unless to another Lender), or (b) in an amount which leaves the assigning Lender with a Commitment (including Loans) of less than \$5,000,000 (in each case based on the original principal amount of the Commitment assigned) after giving effect to such assignment and all previous assignments (except that a Lender may be left with no Commitment or Loans if it assigns its entire Commitment); and provided, further, that any Lender may assign all or any portion of its Commitments to an Affiliate of such Lender without the consent of any Person. In the event of any such assignment, (i) the assigning Lender's Proportionate Share shall be reduced and its obligations hereunder released by the amount of the Proportionate Share assigned to the new Lender, (ii) the parties to such assignment shall execute and deliver an appropriate agreement evidencing such sale, assignment, transfer or other disposition, in form and substance reasonably satisfactory to Administrative Agent and Borrower, (iii) the parties to the sale, assignment, transfer or other disposition, excluding Borrower, shall collectively pay to Administrative Agent an administrative fee of \$3,500, (iv) at the assigning Lender's option, Borrower shall execute and deliver to such new Notes in the forms attached hereto as Exhibit B-1 or Exhibit B-2, as requested, in a principal amount equal to such new Lender's Commitment, but only if it shall also be executing and exchanging with the assigning Lender a replacement note for any Note in an amount equal to the Commitment retained by the assigning Lender, if any; provided that Borrower shall have received for cancellation the existing Note held by such assigning Lender, and (v) Administrative Agent shall amend Exhibit H to reflect the Proportionate Shares of the Lenders following such assignment. Thereafter, such new Lender shall be deemed to be a Lender and shall have all of the rights and duties of a Lender (except as otherwise provided in this Article 9), in accordance with its Proportionate Share, under each of the Credit Documents.

#### 9.15 LAWS.

Notwithstanding the foregoing provisions of this Article 9, no sale, assignment, transfer, negotiation or other disposition of the interests of any Lender hereunder or under the other Credit Documents shall be allowed if it would require registration under the federal Securities Act of 1933, as then amended, any other federal securities laws or regulations or the securities laws or regulations of any applicable jurisdiction. Borrower shall, from time to time at the request and expense of Administrative Agent, execute and deliver to Administrative Agent, or to such party or parties as Administrative Agent may designate, any and all further instruments as may in the opinion of Administrative Agent be reasonably necessary or advisable to give full force and effect to such sale, assignment, transfer, negotiation or disposition which would not require any such registration.

#### 9.16 ASSIGNABILITY AS COLLATERAL.

Notwithstanding any other provision contained in this Agreement or any other Credit Document to the contrary, any Lender may assign all or any portion of the Loans or Notes held by it to the Federal Reserve Bank and the United States Treasury as collateral security; provided that any payment in respect of such assigned Loans or Notes made by Borrower to or for the account of the assigning or pledging Lender in accordance with the terms of this

Agreement shall satisfy Borrower's obligations hereunder in respect of such assigned Loans or Notes to the extent of such payment. No such assignment shall release the assigning Lender from its obligations hereunder.

#### 9.17 NOTICES TO LENDERS.

The Administrative Agent promptly shall deliver all material documents, instruments and notices that it receives hereunder and under the other Operative Documents to each Lender. Except as expressly provided in this Agreement or the other Credit Documents, the Borrower shall not be required to deliver any documents, instruments or notices directly to the Lenders.

#### 9.18 COLLATERAL AGENT.

The Collateral Agent shall:

9.18.1 forward promptly to Administrative Agent any notice delivered to the Collateral Agent pursuant to any Consent;

9.18.2 have the right, but not the obligation, to (a) refuse any item for credit to any Account except as required by the terms of the Credit Documents, (b) refuse to honor any request for transfer in relation to any Account that is not consistent with the Credit Documents, (c) charge to any Account all applicable charges related to maintaining such Accounts, and (d) pay fees, interest and other charges owing by Borrower as provided herein and in the other Operative Documents;

9.18.3 except as otherwise provided herein and in the Depositary Agreements (including by the provision of standing instructions therein), take all actions and make all determinations with respect to the Collateral, the Security Documents (including as to the advisability of taking additional steps to perfect, or cause the perfection of, any security interest) and the other Credit Documents to which it is a party as directed in writing by Administrative Agent (acting in accordance with Section 9.9); and

9.18.4 have the right at any time to seek clarification and instructions concerning the administration of the Credit Documents from Administrative Agent, legal counsel selected by it in good faith with reasonable care or any court of competent jurisdiction and shall be fully protected in relying upon such instructions.

### **ARTICLE 10 INDEPENDENT CONSULTANTS**

#### 10.1 REMOVAL AND FEES.

Administrative Agent, in its reasonable discretion, may remove from time to time, any one or more of the Independent Consultants and, after consulting with Borrower as to an appropriate Person, appoint replacements as Administrative Agent may choose. Notice of any

replacement Independent Consultant shall be given by Administrative Agent to Borrower, the Lenders and to the Independent Consultant being replaced. All reasonable fees and expenses of the Independent Consultants (whether the original ones or replacements) shall be paid by Borrower pursuant to agreements reasonably acceptable to Borrower; provided that no such acceptance shall be required at any time an Event of Default shall have occurred and be continuing.

## 10.2 DUTIES.

Each Independent Consultant shall be contractually obligated to (a) on or before the Closing Date, the Lead Arrangers, and (b) thereafter, Administrative Agent to carry out the activities required of it in this Agreement and as otherwise requested by the Lead Arrangers or Administrative Agent (as the case may be) and shall be responsible solely to the Lead Arrangers or Administrative Agent (as the case may be). Borrower acknowledges that it will not have any cause of action or claim against any Independent Consultant resulting from any decision made or not made, any action taken or not taken or any advice given by such Independent Consultant in the due performance in good faith of its duties to the Lead Arrangers or Administrative Agent (as the case may be), except to the extent arising from such Independent Consultant's gross negligence or willful misconduct.

## 10.3 INDEPENDENT CONSULTANTS' CERTIFICATES.

(a) Until the receipt by Administrative Agent of certificates satisfactory to Administrative Agent from each Independent Consultant whom Administrative Agent considers necessary or appropriate certifying Completion of a Project or Final Completion, Borrower shall provide such documents and information to the Independent Consultants as any of the Independent Consultants may reasonably consider necessary in order for the Independent Consultants to deliver to Administrative Agent the following:

(i) certificates of the Insurance Consultant, Independent Engineer and Power Market Consultant delivered on and dated as of the Closing Date as described in Sections 3.1.9, 3.1.11 and 3.1.12, respectively, and containing the matters set out therein;

(ii) after the Closing Date, all certificates to be delivered thereafter pursuant to this Agreement; and

(iii) monthly after the Closing Date, a full report and status of the progress of each Project to that date, a complete assessment of Project Costs to Final Completion and such other information and certification as Administrative Agent may reasonably require from the Independent Engineer from time to time.

(b) Following Completion of each Project, Borrower shall provide such documents and information to the Independent Consultants as they may reasonably consider necessary in order for the Independent Consultants to deliver annually to Administrative Agent

a certificate setting forth a full report on the status of each Project and such other information and certification as Administrative Agent may reasonably require from time to time.

#### 10.4 CERTIFICATION OF DATES.

Administrative Agent will request that the Independent Consultants act diligently in the issuance of all certificates required to be delivered by the Independent Consultants hereunder, if their issuance is appropriate. Borrower shall provide the Independent Consultants with reasonable notice of the expected occurrence of any dates or events requiring the issuance of such certificates.

### ARTICLE 11 MISCELLANEOUS

#### 11.1 ADDRESSES.

Any communications between the parties hereto or notices provided herein to be given may be given to the following addresses:

If to Administrative Agent or

Collateral Agent:	Calyon New York Branch 1301 Avenue of the Americas New York, NY 10019-6022 Attn: Project Finance- Portfolio Management Telephone No.: (212) 261-7882 Telecopy No.: (212) 261-3421 E-mails: Robert.Colvin@us.calyon.com; Justine.Ventrelli@us.calyon.com
-------------------	---

If to Borrower:	Calpine Steamboat Holdings, LLC 50 West San Fernando St. Suite 642 San Jose, CA 95113 Telephone: (408) 794-2606 Fax: (408) 792-1162 Attn: Brian Harenza
-----------------	---

All such notices or other communications required or permitted to be given hereunder shall be in writing and shall be considered as properly given

(a) if delivered in person, (b) if sent by overnight delivery service (including Federal Express, UPS, ETA, Emery, DHL, AirBorne and other similar overnight delivery services), (c) if mailed by first class United States Mail, postage prepaid, registered or certified with return receipt requested, (d) if sent by facsimile with receipt confirmed by telephone, or (e) by Electronic Transmission (as defined below). Notice so given shall be effective upon receipt by the addressee, except that communication or notice so transmitted by facsimile or other direct written electronic means shall be deemed to have been validly and effectively given on the day (if a Banking Day and, if

not, on the next following Banking Day) on which it is transmitted if transmitted before 4:00 p.m., recipient's time, and if transmitted after that time, on the next following Banking Day; provided, however, that if any notice is tendered to an addressee and the delivery thereof is refused by such addressee, such notice shall be effective upon such tender. Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by giving of 30 days' notice to the other parties in the manner set forth above.

Any Borrower Party may deliver to Administrative Agent, Collateral Agent or Depositary Agent, as the case may be, any borrowing base certificate, collateral report or other material that such Borrower Party is required to deliver to Administrative Agent, Collateral Agent or Depositary Agent (as the case may be) hereunder or under the other Credit Documents, by e-mail or other electronic transmission (an "Electronic Transmission"), subject to the following terms:

(1) Each Electronic Transmission must be sent by the treasurer or chief financial officer of the applicable Borrower Party (or any other authorized representative), and must be addressed to the loan officer and the assistant loan officer of Administrative Agent or Collateral Agent or account officer of Depositary Agent (as the case may be) that handle Borrower's account, as designated by Administrative Agent or Collateral Agent (as the case may be) from time to time. If any Electronic Transmission is returned to the sender as undeliverable, the material included in such Electronic Transmission must be delivered to the intended recipient in the manner required by Section 11.1.

(2) Each certificate, collateral report or other material contained in an Electronic Transmission must be in a "pdf" or other imaging format. Any signature on a certificate, collateral report or other material contained in an Electronic Transmission shall constitute a valid signature for purposes hereof. Administrative Agent and Collateral Agent may rely upon, and assume the authenticity of, any such signature, and any material containing such signature shall constitute an "authenticated" record for purposes of the Uniform Commercial Code and shall satisfy the requirements of any applicable statute of frauds.

(3) The Borrower Parties shall maintain the original versions of all certificates, collateral reports and other materials delivered to Administrative Agent or Collateral Agent by means of an Electronic Transmission and shall furnish to Administrative Agent or Collateral Agent such original versions within five Banking Days of Administrative Agent or Collateral Agent's request for such materials, signed and certified (to the extent required hereunder) by the officer submitting the Electronic Transmission.

#### 11.2 ADDITIONAL SECURITY; RIGHT TO SET-OFF.

Any deposits or other sums at any time credited or due from Lenders and any Project Revenues, securities or other property of any Borrower Party in the possession of any Secured Party may at all times be treated as collateral security for the payment of the Loans and any Notes and all other obligations of each Borrower Party to the Lenders under this Agreement and the other Credit Documents, and each Borrower Party hereby pledges to Collateral Agent for

the benefit of the Secured Parties and grants Collateral Agent for the benefit of the Secured Parties a security interest in and to all such deposits, sums, securities or other property. Subject to Section 2.7.2, regardless of the adequacy of any other collateral, any Secured Party with the prior written consent of the Collateral Agent may execute or realize on its or the Collateral Agent's security interest in any such deposits or other sums credited by or due from Lenders to Borrower, and may apply any such deposits or other sums to or set them off against Borrower's obligations to Lenders under any Notes and this Agreement at any time after the occurrence and during the continuance of any Event of Default.

### 11.3 DELAY AND WAIVER.

No delay or omission to exercise any right, power or remedy accruing to the Secured Parties upon the occurrence of any Event of Default, Inchoate Default, Material Adverse Change or any breach or default of any Borrower Party or any other Calpine Entity or unsatisfied condition precedent under this Agreement or any other Credit Document shall impair any such right, power or remedy of the Secured Parties, nor shall it be construed to be a waiver of any such breach or default or unsatisfied condition precedent, or an acquiescence therein, or of or in any similar breach or default or unsatisfied condition precedent thereafter occurring, nor shall any waiver of any single Event of Default, Inchoate Default, Material Adverse Change or other breach or default or unsatisfied condition precedent be deemed a waiver of any other Event of Default, Inchoate Default, Material Adverse Change or other breach or default or unsatisfied condition precedent theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of Administrative Agent, Collateral Agent or the Secured Parties of any Event of Default, Inchoate Default, Material Adverse Effect or other breach or default or unsatisfied condition precedent under this Agreement or any other Credit Document, or any waiver on the part of Administrative Agent, Collateral Agent or the Secured Parties of any provision or condition of this Agreement or any other Credit Document, must be in writing and shall be effective only to the extent in such writing specifically set forth. All remedies, either under this Agreement or any other Credit Document or by law or otherwise afforded to Administrative Agent, Collateral Agent, LC Issuer and the Secured Parties, shall be cumulative and not alternative.

### 11.4 COSTS, EXPENSES AND ATTORNEYS' FEES; SYNDICATION.

11.4.1 Borrower will pay to each of Administrative Agent, Collateral Agent, and the Lead Arrangers all of their respective reasonable costs and expenses in connection with the preparation, negotiation, closing and administering of this Agreement and the documents contemplated hereby and any participation or syndication of the Loans or this Agreement, including the reasonable fees, expenses and disbursements of Latham & Watkins LLP, together with other legal counsel retained by Administrative Agent or Collateral Agent in the States of Minnesota and Texas in connection with the preparation of such documents and any amendments hereof; provided, however, that Borrower shall not be required to pay the fees of the other Lenders' attorneys. Borrower will reimburse (a) Administrative Agent and Collateral Agent for

all costs and expenses, including reasonable attorneys' fees, expended or incurred by Administrative Agent, Collateral Agent, and the Lenders for their reasonable internal out-of-pocket expenses (but not, in the case of the Lenders, for counsel fees), in enforcing this Agreement or the other Credit Documents in connection with an Event of Default or Inchoate Default, in actions for declaratory relief in any way related to this Agreement or in collecting any sum which becomes due on the Notes or under the Credit Documents and (b) Administrative Agent, Collateral Agent, and the Lenders for their reasonable out-of-pocket expenses, including reasonable attorney fees and reasonable expert, consultant and advisor fees and expenses, in the case of a restructuring of the Loans or otherwise relating to the occurrence of any Inchoate Default or Event of Default. Borrower shall not be responsible for any counsel fees of the Lead Arrangers, Administrative Agent, Collateral Agent or the Lenders other than as set forth above, in Section 5.11 or as otherwise set forth in a separate agreement.

11.4.2 In connection with syndication of the Loans and Commitments, an information package containing certain relevant information concerning each Borrower Party, the Projects and the other Project participants (including a computer model prepared by Borrower containing the Base Case Project Projections) will be prepared on behalf of Borrower and provided to potential Lenders and participants. Borrower agrees to cooperate and to cause each other Borrower Party and Sponsor to cooperate in the syndication of the Loans and Commitments in all respects reasonably requested by the Lead Arrangers, including participation of each Borrower Party and Sponsor in bank meetings held in connection with such syndication.

#### 11.5 ENTIRE AGREEMENT.

This Agreement and any agreement, document or instrument attached hereto or referred to herein integrate all the terms and conditions mentioned herein or incidental hereto and supersede all oral negotiations and prior writings in respect to the subject matter hereof. In the event of any conflict between the terms, conditions and provisions of this Agreement and any such agreement, document or instrument, the terms, conditions and provisions of this Agreement shall prevail.

#### 11.6 GOVERNING LAW.

THIS AGREEMENT AND ANY OTHER CREDIT DOCUMENT (UNLESS OTHERWISE EXPRESSLY PROVIDED FOR THEREIN), SHALL BE GOVERNED BY, AND CONSTRUED UNDER, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO CONFLICTS OF LAWS (OTHER THAN SECTION 5-1401 AND SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW).

#### 11.7 SEVERABILITY.

In case any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

#### 11.8 HEADINGS.

Article, Section and Paragraph headings have been inserted in this Agreement as a matter of convenience for reference only and it is agreed that such headings are not a part of this Agreement and shall not be used in the interpretation of any provision of this Agreement.

#### 11.9 ACCOUNTING TERMS.

All accounting terms not specifically defined herein shall be construed in accordance with GAAP and practices consistent with those applied in the preparation of the financial statements submitted by Borrower to Administrative Agent, and all financial data submitted pursuant to this Agreement shall be prepared in accordance with such principles and practices.

#### 11.10 ADDITIONAL FINANCING.

The parties hereto acknowledge that as of the Closing Date the Lenders have made no agreement or commitment to provide any financing except as set forth herein.

#### 11.11 NO PARTNERSHIP, ETC.

The Lenders and Borrower intend that the relationship between them shall be solely that of creditor and debtor. Nothing contained in this Agreement, the Notes or in any of the other Credit Documents shall be deemed or construed to create a partnership, tenancy-in-common, joint tenancy, joint venture or co-ownership by or between the Lenders and Borrower or any other Person. None of the Lead Arrangers, Administrative Agent, Collateral Agent or the Lenders shall be in any way responsible or liable for the debts, losses, obligations or duties of Borrower or any other Person with respect to the Projects or otherwise. All obligations to pay real property or other taxes, assessments, insurance premiums, and all other fees and charges arising from the ownership, operation or occupancy of the Projects (if any) and to perform all obligations and other agreements and contracts relating to the Projects shall be the sole responsibility of Borrower Parties.

#### 11.12 DEED OF TRUST/COLLATERAL DOCUMENTS.

Certain guaranties of the Loans are secured in part by the FEC Deed of Trust and the MEC Mortgage encumbering certain properties in the States of Texas and Minnesota, in each case, solely to the extent provided therein. Reference is hereby made to the FEC Deed of Trust and the MEC Mortgage and the other Collateral Documents for the provisions, among others, relating to the nature and extent of the security provided thereunder, the rights, duties and obligations of Borrower and the rights of Administrative Agent, Collateral Agent and the other Secured Parties with respect to such security.

#### 11.13 LIMITATION ON LIABILITY.

No claim shall be made by any Borrower Party against the Lead Arrangers, Administrative Agent, Collateral Agent, the Lenders or any of their respective Affiliates, directors, employees, attorneys or agents for any loss of profits, business or anticipated savings,

special or punitive damages or any indirect or consequential loss whatsoever in respect of any breach or wrongful conduct (whether or not the claim therefor is based on contract, tort or duty imposed by law), in connection with, arising out of or in any way related to the transactions contemplated by this Agreement or the other Operative Documents or any act or omission or event occurring in connection therewith, and each Borrower Party hereby waives, releases and agrees not to sue upon any such claim for any such damages, whether or not accrued and whether or not known or suspected to exist in its favor, in each case, except to the extent such claim is based on gross negligence or willful misconduct of such Person.

#### 11.14 WAIVER OF JURY TRIAL.

ADMINISTRATIVE AGENT, COLLATERAL AGENT, THE LENDERS, THE HEDGE BANKS, THE LC ISSUER AND BORROWER HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR ACTIONS OF ADMINISTRATIVE AGENT, COLLATERAL AGENT, THE LENDERS, THE HEDGE BANKS, THE LC ISSUER, OR BORROWER. THIS PROVISION IS A MATERIAL INDUCEMENT FOR BORROWER, ADMINISTRATIVE AGENT, COLLATERAL AGENT, THE LENDERS, THE HEDGE BANKS AND THE LC ISSUER TO ENTER INTO THIS AGREEMENT.

#### 11.15 CONSENT TO JURISDICTION.

Administrative Agent, Collateral Agent, the Lenders, the Hedge Banks, the LC Issuer and Borrower agree that any legal action or proceeding by or against Borrower or with respect to or arising out of this Agreement, the Notes, or any other Credit Document may be brought in or removed to the courts of the State of New York, in and for the County of New York, or of the United States of America for the Southern District of New York, as Administrative Agent may elect. By execution and delivery of this Agreement, the Lenders, the Hedge Banks, the LC Issuer, Administrative Agent, Collateral Agent and Borrower accept, for themselves and in respect of their property, generally and unconditionally, the jurisdiction of the aforesaid courts. Administrative Agent, Collateral Agent, the Lenders, the Hedge Banks, the LC Issuer and Borrower irrevocably consent to the service of process out of any of the aforementioned courts in any manner permitted by law. Nothing herein shall affect the right of Administrative Agent to bring legal action or proceedings in any other competent jurisdiction, including judicial or non-judicial foreclosure of the FEC Deed of Trust or the MEC Mortgage. Administrative Agent, Collateral Agent, the Lenders, the Hedge Banks, the LC Issuer and Borrower further agree that the aforesaid courts of the State of New York and of the United States of America shall have exclusive jurisdiction with respect to any claim or counterclaim of Borrower based upon the assertion that the rate of interest charged by the Lenders on or under this Agreement, the Loans or the other Credit Documents is usurious. Administrative Agent, Collateral Agent, the Lenders, the Hedge Banks, the LC Issuer and Borrower hereby waive any

right to stay or dismiss any action or proceeding under or in connection with any or all of the Projects, this Agreement or any other Credit Document brought before the foregoing courts on the basis of forum non-conveniens.

#### 11.16 KNOWLEDGE AND ATTRIBUTION.

References in this Agreement and the other Credit Documents to the "knowledge," "best knowledge" or facts and circumstances "known to" Borrower, and all like references, mean facts or circumstances of which a Responsible Officer of the applicable Calpine Entity has actual knowledge.

#### 11.17 SUCCESSORS AND ASSIGNS.

The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Borrower may not assign or otherwise transfer any of its rights under this Agreement except as provided in Section 6.15, and the Lenders may not assign or otherwise transfer any of their rights under this Agreement except as provided in Article 9.

#### 11.18 COUNTERPARTS.

This Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in one or more duplicate counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document.

#### 11.19 USURY.

Nothing contained in this Agreement or the Notes shall be deemed to require the payment of interest or other charges by Borrower or any other Person in excess of the amount which the holders of the Notes may lawfully charge under applicable usury laws. In the event that the Lenders shall collect moneys which are deemed to constitute interest which would increase the effective interest rate to a rate in excess of that permitted to be charged by applicable Legal Requirements, all such sums deemed to constitute interest in excess of the legal rate shall, upon such determination, at the option of the Lenders, be returned to Borrower or credited against the principal balance then outstanding.

#### 11.20 SURVIVAL.

All representations, warranties, covenants and agreements made herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement and the other Credit

Documents shall be considered to have been relied upon by the parties hereto and shall survive the execution and delivery of this Agreement, the other Credit Documents and the making of the Loans. Notwithstanding anything in this Agreement or implied by law to the contrary, the agreements of Borrower set forth in Sections 2.1.1(e), 2.1.4, 2.6.4, 2.8.3, 2.8.4, 5.11, 11.4, 11.22 and the agreements of the Lenders set forth in Sections 9.1, 9.5, 9.8, 9.10.1 and 11.22 shall survive the payment and performance of the Loans and the other Obligations and the reimbursement of any amounts drawn hereunder, and the termination of this Agreement.

#### 11.21 PATRIOT ACT NOTICE.

Each Lender, the Collateral Agent (for itself and not on behalf of any other Person, including any Lender), the Administrative Agent (for itself and not on behalf of any other Person, including any Lender) and LC Issuer (for itself and not on behalf of any other Person, including any Lender) hereby notifies Borrower, Sponsor and each other Borrower Party that, pursuant to the requirements of the USA Patriot Act (2001 H.R. 3162 (signed into law October 26, 2001)) (the "Act"), it is required to obtain, verify and record information that identifies Borrower, Sponsor and each other Borrower Party which information includes the name, address, the tax identification number and other identifying information that will allow such Lender, the Collateral Agent, the Administrative Agent or the LC Issuer, as applicable, to identify Borrower, Sponsor and each other Borrower Party in accordance with the Act.

#### 11.22 TREATMENT OF CERTAIN INFORMATION; CONFIDENTIALITY.

Each Lender and each Agent agrees (on behalf of itself and each of its Affiliates, directors, officers, employees and representatives) to keep confidential any nonpublic information supplied to it by Borrower or any other Calpine Entity; provided that nothing herein shall limit the disclosure of any such information: (a) to the extent such information is required to be disclosed by any Governmental Rule or judicial or administrative process, or to any Governmental Authority in connection with a tax audit or dispute or otherwise, (b) to counsel for any of the Lenders or any Agent, (c) to banking, securities exchange or other regulatory or supervisory authorities, auditors or accountants having proper jurisdiction and authority to require such disclosure, (d) to any Agent or any other Lender, (e) to any entity in connection with a securitization or proposed securitization of, among other things, all or a part of any amounts payable to or for the benefit of any Lender or its Affiliates under the Credit Documents so long as such entity first executes and delivers to Administrative Agent a confidentiality agreement substantially in the form of Exhibit M, (f) in connection with the exercise of any remedies hereunder or under any of the other Credit Documents, including without limitation upon the occurrence of any Event of Default and any enforcement or collection proceedings resulting therefrom or in connection with the negotiation of any restructuring or "work-out", whether or not consummated, of the obligations of Borrower under this Agreement or the obligations of any Borrower Party or Major Project Participant under any other Operative Document or any suit, action or proceeding relating to this Agreement or any other Credit Document or the enforcement of rights hereunder or thereunder, so long as such Borrower Party or Major Project Participant first executes and delivers to the respective Lender and Borrower a confidentiality agreement substantially in the form of Exhibit M, (g) to the Independent Engineer, the Power Marketing Consultant, the Insurance Consultant or to other experts engaged

by Administrative Agent or any Lender in accordance with the provisions of this Agreement and in connection with the transactions contemplated hereby so long as such expert first executes and delivers to Administrative Agent and Borrower a confidentiality agreement substantially in the form of Exhibit M, or (h) to any assignee or participant (or prospective assignee or participant) so long as such assignee or participant (or prospective assignee or participant) first executes and delivers to the respective Lender and Borrower a confidentiality agreement substantially in the form of Exhibit M. In no event shall any Lender, Administrative Agent or Collateral Agent be obligated or required to return any materials furnished by any Borrower Entity. Notwithstanding the foregoing provisions of this Section 11.22, the foregoing obligation of confidentiality shall not apply to any such information that (i) was known to any Lender or Agent prior to the time it received such confidential information from any Borrower Party or its respective Affiliates, or (ii) becomes part of the public domain independently of any act of any Lender or Agent not permitted hereunder (through publication or otherwise), or (iii) is received by any Lender or any Agent, as applicable, without restriction as to its disclosure or use, from a Person other than a Calpine Entity. Notwithstanding anything to the contrary set forth herein or in any other agreement to which the parties hereto are parties or by which they are bound, any obligations of confidentiality contained herein and therein, as they relate to the transactions contemplated by this Agreement (the "Loan Transactions"), shall not apply to the federal tax structure or federal tax treatment of the Loan Transactions, and each party hereto (and any employee, representative, or agent of any party hereto) may disclose to any and all Persons, without limitation of any kind, the federal tax structure and federal tax treatment of the Loan Transactions. The preceding sentence is intended to cause the Loan Transactions not to be treated as having been offered under conditions of confidentiality for purposes of Section 1.6011-4(b)(3) (or any successor provision) of the Treasury Regulations promulgated under Section 6011 of the Code and shall be construed in a manner consistent with such purpose. In addition, each party hereto acknowledges that it has no proprietary or exclusive rights to any tax concept, tax matter or tax idea related to the Loan Transactions. In addition, each party hereto acknowledges that it has no proprietary or exclusive rights to any tax concept, tax matter or tax idea related to the Loan Transactions. In addition, each Lender and each Agent acknowledges that the Dow Documents contain various provisions on confidentiality and each Lender and each Agent agree to be bound by the terms thereof, including Article XIX (Confidential and Proprietary Information) of the Capacity Sales Agreement to the extent applicable to the performance of its obligations under this Agreement; provided that in connection with exercise of remedies under the Credit Documents, each Lender and each Agent's obligations under this sentence as to potential transferees of the Collateral shall be limited to requiring the transferee to execute a confidentiality agreement.

#### 11.23 RELEASE OF PROJECT.

At Borrower's option upon notice to Administrative Agent, without the consent or approval of Administrative Agent, the Lenders or any other Person, the Collateral and the Undertaking Support LC corresponding to either Project will be released, one of the two Siemens Turbines or substitute cash and letter of credit pursuant to the Borrower Security Agreement will be released and related Subordinated Note deemed cancelled, the Guaranties corresponding to such Project shall terminate, the Intercompany Note corresponding to such Project shall be

deemed paid in full, and the financing continue in reliance on the single remaining Project, provided that (a) the Debt Service Coverage Ratio after giving effect to such Project release shall be a minimum of 1.60x and an average of 1.70x through the Term Loan Maturity Date; and (b) the Term Loan will be prepaid such that the Term Loan balance on the Term Loan Maturity Date will be no more than 90% of the loan balance at scheduled Term Loan maturity in the Pro Forma Project Projections. If the Purchase Option or Put Option is exercised, the proceeds, in an amount equal to the lesser of (i) all of such proceeds, and (ii) such amount as shall result in satisfaction of the criteria set forth in clause (a) and clause (b) above, shall be applied to prepay the Loans (other than the Security Fund LC Loans). The above tests will not be applied to a prepayment related to an exercise of the Put Option or Purchase Option. Upon exercise of either such option, the Collateral and Undertaking Support LC and such Siemens Turbine or substitute cash and letter of credit corresponding to the Freeport Project will be released and related Subordinated Note deemed cancelled. Any proceeds from an exercise of the Put Option or Purchase Option, in excess of the amounts required to be applied to a prepayment of the Loans (other than the Security Fund LC Loans) to the levels as set forth in clauses (a) and (b) will be released upon Term-Conversion, and until then held in the Borrower Revenue Account as security for the Obligations of Borrower, or to the extent received after Term-Conversion, released immediately to Sponsor without condition.

#### 11.24 PROJECT EXPANSION.

Notwithstanding any provision to the contrary contained herein or in any other Credit Document (including Section 9.9 hereof), upon approval (in their sole discretion) by Lenders holding at least 80% of Proportionate Shares, any Borrower Party at its option may obtain secured financing for an expansion of either or both Projects to accommodate an additional combustion turbine and related equipment. No Lender commits hereby or shall be construed by any other term of any Credit Document to have committed to finance any such expansion.

IN WITNESS WHEREOF, the parties hereto, by their officers duly authorized, intending to be legally bound, have caused this Credit Agreement to be duly executed and delivered as of the day and year first above written.

**CALPINE STEAMBOAT HOLDINGS, LLC,**  
a Delaware limited liability company

By:     /s/ *Brian J. Harenza*

---

*Brian J. Harenza*  
*Vice President*

**Signature page to Credit Agreement**

**COBANK, ACB,**  
as a Lead Arranger, Underwriter,  
Co-Syndication Agent,  
Co-Book Runner and a Lender

By: /s/ David Boyce

---

David Boyce  
Vice President

**Signature page to Credit Agreement**

**CALYON NEW YORK BRANCH,**  
as a Lead Arranger, Underwriter,  
Administrative Agent, Collateral  
Agent, Co-Book Runner, LC Issuer  
and a Lender

By: /s/ Martin C. Livingston

---

Martin C. Livingston  
Director

By: /s/ Robert G. Colvin

---

Robert G. Colvin  
Director

**Signature page to Credit Agreement**

**UFJ BANK LIMITED,**  
as a Lead Arranger, Co-Documentation  
Agent, Underwriter and a Lender

By: /s/ Junji Hasegawa

---

*Junji Hasegawa*  
*Vice President*

**Signature page to Credit Agreement**

**HSH NORDBANK AG,**  
as a Lead Arranger, Co-Documentation  
Agent, Underwriter and a Lender

By: /s/ Thomas Emmons

---

*Thomas Emmons*  
*Senior Vice President*

By: /s/ Rohan Singh

---

*Rohan Singh*  
*Assistant Vice President*

**Signature page to Credit Agreement**

**BAYERISCHE HYPO- UND VEREINSBANK AG,  
NEW YORK BRANCH,  
as a Lead Arranger,  
Co-Syndication Agent,  
Underwriter and a Lender**

By: /s/ Andrew G. Mathews

---

Name: Andrew G. Mathews  
Title: Managing Director

By: /s/ Paul J. Colatrella

---

Name: Paul J. Colatrella  
Title: Director

**Signature page to Credit Agreement**

**EXHIBIT A**  
**to Credit Agreement**

**DEFINITIONS**

"Accounts" means the FEC Construction Account, the MEC Construction Account, the Borrower Revenue Account, the FEC Revenue Account, the MEC Revenue Account, the Distribution Suspense Account, the Mandatory Prepayment Account, the FEC O&M Account, the MEC O&M Account, the MEC Major Maintenance Reserve Account, the FEC Major Maintenance Reserve Account, the Debt Service Reserve Account, the FEC Loss Proceeds Account, the MEC Loss Proceeds Account, the FEC Checking Account, the MEC Checking Account, the Security Fund LC Cash Collateral Account, and each cash collateral account referred to in the Credit Documents, including any sub-accounts within such accounts.

"Act" has the meaning given in Section 11.21 of the Credit Agreement.

"Additional Borrower Equity" means any cash equity deposit made by Borrower at its sole discretion, after the Closing Date, with Administrative Agent which cash equity is to be applied to the payment of Project Costs.

"Additional Project Documents" means MEC Additional Project Documents and FEC Additional Project Documents.

"Administrative Agent" means Calyon New York Branch, acting in its capacity as administrative agent for the Secured Parties under the Credit Documents.

"Administrative Agent Fee Letter" means that certain letter agreement regarding fees, dated as of the Closing Date, by and between Administrative Agent and Borrower.

"Adverse PUHCA Event" means that Borrower or any of its "affiliates" (within the meaning of Section 2(a)(11)(B) of PUHCA) becomes an "electric utility company", "public utility company", or "public utility holding company" required to register as such within the meaning of PUHCA at a time at which applicable provisions of PUHCA, or any successor statute thereof, and the rules and regulations thereunder are in effect and such event or occurrence has, or with the passage of time will have, a Material Adverse Effect or a material and adverse effect on Administrative Agent or the Lenders.

"Affiliate" of a specified Person means any other Person that (a) directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the Person specified, or (b) only with respect to matters relating to PUHCA, holds or beneficially owns 10% or more of the equity interest in the Person specified or 10% or more of any class of voting securities of the Person specified. When used with respect to Borrower, "Affiliate" shall include Sponsor, FEC-LP, FEC-GP, FEC, MEC, CCMCI, Operator, CES, and any Affiliate thereof (other than Borrower).

"Affiliated Major Project Participant" has the meaning given in Section 3.1.1 of the Credit Agreement.

"Agent" means the Collateral Agent or the Administrative Agent.

"Allocated Portion" means the FEC Allocated Portion or the MEC Allocated Portion.

"Amortization Schedule" means the schedule for repayment of the principal of the Term Loans as set forth on Exhibit I to the Credit Agreement.

"Annual Operating Budget" has the meaning given in Section 5.14.3 of the Credit Agreement.

"Applicable Permit" means, at any time, any Permit, including any zoning, land use, environmental protection, pollution (including air, water or noise), sanitation, FERC, Minnesota Public Utilities Commission, Minnesota Pollution Control Agency, City of Mankato, U.S. Environmental Protection Agency, Federal Aviation Administration, Department of Energy, Minnesota Environmental Quality Board, State Fire Marshall, import, export, safety, siting or building Permit (a) that is necessary under applicable Legal Requirements or any of the Operative Documents to be obtained by or on behalf of any Borrower Party and/or those permits required to be obtained by Dow under the Dow Agreements at such time in light of the stage of development, construction or operation of the Projects to construct, test, operate, maintain, repair, lease, own or use the Projects as contemplated by the Operative Documents, to sell electricity from the Projects or deliver fuel to the Projects, or for Borrower to enter into any Operative Document or to consummate any transaction contemplated thereby, in each case in accordance with all applicable Legal Requirements, or (b) that is necessary so that none of Borrower Parties, Administrative Agent, Collateral Agent, the Lead Arrangers or the Secured Parties nor any Affiliate of any of them may be deemed by any Governmental Authority to be subject to regulation under the FPA or PUHCA or treated as a public utility under the Constitution and the laws of the State of Minnesota or Texas as presently constituted and as construed by the courts of Minnesota or Texas, respectively, with respect to the regulation of the rates of, or the financial or organizational regulation of, electric utilities solely as a result of the development and construction or operation of the Projects or the sale of electricity therefrom, except that (i) MEC is subject to the compliance requirements under PUHCA applicable to an Exempt Wholesale Generator and an owner of an Eligible Facility, (ii) FEC is subject to the compliance requirements under PURPA applicable to a Qualifying Facility and will be subject to state law and regulation with respect to rates or the financial or organizational regulation of electric utilities to the extent contemplated by 18 C.F.R Section 292.602(c), and (iii) each of MEC and CES is a "public utility" under the FPA with authority to sell wholesale electric power at market based rates and with all waivers of regulations and blanket authorizations as are customarily granted by FERC to a "public utility" that sells wholesale electric power and ancillary services at market based rates.

"Arrangement Fee Letter" means that certain letter agreement regarding fees, dated as of the Closing Date, by and between Co-Book Runners and Borrower.

"Available Construction Funds" means, at any time and without duplication, the sum of (a) amounts in the Construction Accounts after giving effect to all permitted transfers therein on any given date, including from the Borrower Revenue Account, (b) the then-applicable Available Construction Loan Commitment, (c) undisbursed Insurance Proceeds or Eminent Domain Proceeds which are available for payment of Project Costs, (d) any delay liquidated damages which either Project Company has received under either Construction Contract and which are not required to be paid to Dow or Construction Contractor, and (e) any undisbursed amounts on deposit with Administrative Agent or Depository Agent constituting Additional Borrower Equity.

"Available Construction Loan Commitment" means (a) during the Construction Loan Availability Period, the total Construction Loan Commitment at such time minus the aggregate principal amount of all Construction Loans outstanding at such time, and (b) at any time after the Construction Loan Availability Period, zero.

"Banking Day" means any day other than a Saturday, Sunday or other day on which banks are or Administrative Agent is authorized or required to be closed in the State of Texas, the State of Minnesota or the State of New York and, where such term is used in any respect relating to a LIBOR Loan, which is also a day on which dealings in Dollar deposits are carried out in the London interbank market.

"Bankruptcy Event" shall be deemed to occur, with respect to any Person, if that Person shall institute a voluntary case seeking liquidation or reorganization under the Bankruptcy Law, or shall consent to the institution of an involuntary case thereunder against it; or such Person shall file a petition or consent or shall otherwise institute any similar proceeding under any other applicable Federal or state law, or shall consent thereto; or such Person shall apply for, or consent or acquiesce to, the appointment of, a receiver, administrator, administrative receiver, liquidator, sequestrator, trustee or other officer with similar powers for itself or any substantial part of its assets; or such Person shall make a general assignment for the benefit of its creditors; or such Person shall admit in writing its inability to pay its debts generally as they become due; or if an involuntary case shall be commenced seeking liquidation or reorganization of such Person under the Bankruptcy Law or any similar proceedings shall be commenced against such Person under any other applicable Federal or state law and (a) the petition commencing the involuntary case is not timely controverted, (b) the petition commencing the involuntary case is not dismissed within 60 days of its filing, (c) an interim trustee is appointed to take possession of all or a portion of the property, and/or to operate all or any part of the business of such Person and such appointment is not vacated within 60 days, or (d) an order for relief shall have been issued or entered therein; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, administrator, administrative receiver, liquidator, sequestrator, trustee or other officer having similar powers, over such Person or all or a part of its property shall have been entered; or any other similar relief shall be granted against such Person under any applicable Bankruptcy Law.

"Bankruptcy Law" means Title 11, United States Code, and any other state or federal insolvency, reorganization, moratorium or similar law for the relief of debtors, or any successor statute.

"Base Case Project Projections" means a projection of operating results for the Projects, showing at a minimum Borrower's reasonable good faith estimates, as of the Closing Date, of revenues, operating expenses, the Debt Service Coverage Ratio, and sources and uses of revenues over the forecast period, which projection is attached as Exhibit G-3 to the Credit Agreement.

"Base Equity Requirement" means cash equity funds equal to \$96,249,010.70.

"Base Rate" means the greater of (a) the prime commercial lending rate established from time to time by Administrative Agent at its New York office, or (b) the Federal Funds Rate plus 0.50%. The Base Rate may not necessarily be the highest or lowest rate of interest charged by Administrative Agent to its commercial borrowers.

"Base Rate Construction Loan" has the meaning given in Section 2.1.1(b)(i) of the Credit Agreement.

"Base Rate Loans" means, collectively, the Base Rate Construction Loans, the Base Rate Term Loans and the Base Rate Security Fund LC Loan.

"Base Rate Security Fund LC Loan" means a Security Fund LC Loan that shall bear interest at the rate set forth in Section 2.2.3(a) of the Credit Agreement.

"Base Rate Term Loan" has the meaning given in Section 2.1.2(b)(i)(A) of the Credit Agreement.

"Benefiting Project Company" means (a) with respect to each Credit Event consisting of Construction Loans, any Project Company receiving proceeds of such Construction Loan, (b) with respect to issuance of the Security Fund LC, MEC, and (c) with respect to all other Credit Events, both Project Companies.

"Borrower" means Calpine Steamboat Holdings, LLC, a Delaware limited liability company.

"Borrower Closing Letter Agreements" means the Arrangement Fee Letter, the Administrative Agent Fee Letter and the Upfront Fee Letter.

"Borrower Depositary Agreement" means the Depositary Agreement, dated as of the Closing Date, in substantially the form of Exhibit D-4 to the Credit Agreement, among Borrower, Administrative Agent, Collateral Agent and Depositary Agent.

"Borrower Parties" means Borrower, FEC, FEC-GP, FEC-LP and MEC.

"Borrower Revenue Account" means the "Revenue Account" as defined in the Borrower Depositary Agreement.

"Borrower Waterfall Level" means a "Waterfall Level" as defined in the Borrower Depositary Agreement.

"Borrowing" means a borrowing by Borrower of any Construction Loan or Term Loan.

"Calculation Period" means, as to a particular date, the 12 month period (or, during the initial 12 months following Term-Conversion, the actual number of calendar months or partial calendar months following Term-Conversion) immediately preceding such date.

"Calpine" means Calpine Corporation, a Delaware corporation.

"Calpine Entity(ies)" has the meaning given in Section 3.1.1 of the Credit Agreement.

"Capacity Sales Agreement" means the Amended and Restated Capacity Sales Agreement, dated May 27, 2004, between Dow and FEC.

"Capital Adequacy Requirement" has the meaning given in Section 2.8.4(a) of the Credit Agreement.

"CCMCI" means Calpine Construction Management Company, Inc., a Delaware corporation.

"CCMCI Subordination Agreement" means the Subordination Agreement, dated as of February 25, 2005, by Construction Contractor in favor of Administrative Agent, relating to the Subordinated Notes.

"CDHI" means Calpine Development Holdings, Inc., a Delaware corporation.

"CES" means Calpine Energy Services, L.P., a Delaware limited partnership.

"CES PPA (FEC)" means the Index Based Power Purchase Agreement, dated as of February 25, 2005, between FEC and CES.

"Change of Law" has the meaning given in Section 2.8.2 of the Credit Agreement.

"City of Mankato" means the City of Mankato, Minnesota.

"Closing Date" has the meaning given in Section 3.1 of the Credit Agreement.

"Co-Book Runners" means Calyon New York Branch and CoBank, ACB.

"Code" means the Internal Revenue Code of 1986, as amended.

"Co-Documentation Agents" means UFJ Bank Limited and HSH Nordbank AG, each acting in its capacity as co-documentation agent for the Lenders under the Credit Agreement..

"Collateral" means all property which is subject or is intended to become subject to the security interests or liens granted by any of the Collateral Documents.

"Collateral Agent" means Calyon New York Branch, acting in its capacity as collateral agent for the Secured Parties under the Credit Documents.

"Collateral Documents" means the Group Pledge and Security Agreement, the MEC Mortgage, the MEC Security Agreement, the FEC Deed of Trust, the FEC Security Agreement, the Depositary Agreements, the Control Agreements, each Consent, the NSP Acknowledgment of Subordination, and any fixture filings, financing statements, or other similar documents filed, recorded or delivered in connection with the foregoing.

"Collateral Replacement LC" means any Major Maintenance Reserve Letter of Credit and any DSR Letter of Credit.

"Commercial Operation" has the meaning given in the Capacity Sales Agreement.

"Commitment Fee" has the meaning given in Section 2.4.2(a) of the Credit Agreement.

"Commitments" means, with respect to each Lender, such Lender's Construction Loan Commitment, Term Loan Commitment and Security Fund LC Commitment and with respect to all Lenders, the Total Construction Loan Commitment, the Total Term Loan Commitment and the Total Security Fund LC Commitment.

"Completion" means:

(a) with respect to the Freeport Project, (i) all necessary facilities for the transportation and receipt of the appropriate fuels to and by the Freeport Project have been completed in accordance with the terms of the FEC Project Documents, (ii) "Substantial Completion" of all "Phases" as defined in the FEC Construction Contract shall have occurred, (iii) all facilities necessary for the procurement, transportation and discharge of water to the Freeport Project and wastewater from the Freeport Project have been obtained or completed in accordance with the applicable FEC Project Documents and Applicable Permits, (iv) necessary interconnection facilities sufficient to transmit all power generated by the Freeport Project have been completed in accordance with the Capacity Sales Agreement, (v) all real estate rights reasonably necessary for completion of the foregoing and continued operations of the Freeport Project have been obtained, (vi) all phases of the Freeport Project have achieved Commercial Operation as described in the Capacity Sales Agreement, (vii) all items listed on the Spare Parts Inventory (as such term is defined in the FEC O&M Agreement) and which are otherwise budgeted in the Project Budget shall have been purchased and be readily available, (viii) all Performance Tests under the Dow Agreements have been performed and any required liquidated damages thereunder have been paid, provided that as soon as the Capacity Payments described in Section 11.1(c) of the Capacity Sales Agreement begin, the Freeport Project will be deemed to have satisfied the requirements of this clause (viii) and clauses (ii) and (ix), even if further performance testing remains, so long as the Construction Contractor remains obligated to

perform and pass the tests, the Undertaking Support LCs remain outstanding in the respective amounts required by the Completion Undertaking Agreements, and the Completion Undertaking Agreements remain in full force and effect, and (ix) all Demonstration Tests (as defined in the Capacity Sales Agreement) have been performed; and

(b) with respect to the Mankato Project, (i) all necessary facilities for the transportation and receipt of the appropriate fuels to and by the Mankato Project have been completed in accordance with the terms of the MEC Project Documents, (ii) "Substantial Completion" as defined in the MEC Construction Contract shall have occurred, (iii) all facilities necessary for the procurement, transportation and discharge of water to the Mankato Project and wastewater from the Mankato Project have been obtained or completed in accordance with the applicable MEC Project Documents and Applicable Permits, (iv) necessary interconnection facilities sufficient to transmit all power generated by the Mankato Project have been completed in accordance with the MEC Interconnection Agreement and the Power Purchase Agreement, (v) all real estate rights reasonably necessary for completion of the foregoing and continued operations of the Mankato Project have been obtained, (vi) the Mankato Project has achieved its Facility Acceptance Date under the Power Purchase Agreement, and (vii) all items in the Spare Parts Inventory (as such term is defined in the MEC Construction Contract) and which are otherwise budgeted in the Project Budget shall have been purchased and be readily available.

"Completion Date" means, with respect to a Project, the date on which Completion occurs with respect to such Project.

"Completion Undertaking Agreements" means the FEC Completion Undertaking Agreement and the MEC Completion Undertaking Agreement.

"Confirmation of Interest Period Selection" has the meaning given in Section 2.1.3(c)(ii) of the Credit Agreement.

"Consents" means the consents required from each Major Project Participant under Section 3.1.31 of the Credit Agreement and any other third party consents to the assignments contemplated by the Collateral Documents.

"Construction Account" has the meaning given in Section 1.1 of the respective Project Company Depositary Agreements and does not include any sub-accounts therein unless otherwise indicated in each provision.

"Construction Contract Guaranties" means the FEC Construction Contract Guaranty and the MEC Construction Contract Guaranty.

"Construction Contractor" means CCMCI.

"Construction Contractor Performance LDs" has the meaning given in the FEC Depositary Agreement and the MEC Depositary Agreement, respectively.

"Construction Contracts" means the FEC Construction Contract and the MEC Construction Contract.

"Construction Loan" has the meaning given in Section 2.1.1(a) of the Credit Agreement.

"Construction Loan Availability Period" means the period from the Closing Date to the earlier to occur of (a) full utilization of the Total Construction Loan Commitment and (b) the Construction Loan Maturity Date.

"Construction Loan Commitment" means, at any time with respect to each Lender, such Lender's Proportionate Share of the Total Construction Loan Commitment at such time.

"Construction Loan Maturity Date" means the date that is the earliest to occur of (a) May 1, 2007, (b) Term-Conversion, or (c) an Event of Default and acceleration of the Construction Loans pursuant to Section 7.2.3 of the Credit Agreement.

"Construction Note" has the meaning given in Section 2.1.4 of the Credit Agreement.

"Control Agreements" means the FEC Control Agreement and the MEC Control Agreement.

"Co-Syndication Agents" means CoBank, ACB and Bayerische HYPO- UND Vereinsbank AG, New York Branch, each acting in its capacity as co-syndication agent for the Lenders under the Credit Agreement.

"COSCI Subordination Agreement" means the Subordination Agreement, dated as of February 25, 2005, by Operator in favor of Administrative Agent.

"Credit Agreement" means the Credit Agreement, dated as of February 25, 2005, by and among Borrower, Administrative Agent, Collateral Agent, the Lead Arrangers, the other agents and arrangers listed on the signature pages thereto and the Lenders.

"Credit Documents" means the Credit Agreement, the Notes, the Collateral Documents, the Interest Rate Agreements (including all Hedge Transactions thereunder), the Borrower Closing Letter Agreements, any Subordination Agreements, the Dow Payment Substitution Agreement, any Collateral Replacement LCs, the FEC Guaranty, the FEC-LP Guaranty, the FEC-GP Guaranty, the MEC Guaranties, and any other loan or security agreements or letter agreement or similar document, entered into by Administrative Agent, Collateral Agent, Depository Agent, the Lead Arrangers or any Secured Party, on the one hand, and the Borrower or one or more Borrower Parties, on the other hand, in connection with the transactions contemplated by the Credit Documents.

"Credit Event" has the meaning given in Section 3.2 of the Credit Agreement.

"Debt" of any Person at any date means, without duplication, (a) all obligations (including contingent obligations) of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services, and other accrued expenses arising in the ordinary course of business which in accordance with GAAP would be shown on the liability side of the balance sheet of such Person, but excluding trade accounts payable (d) all obligations of such Person under leases which are or should be, in accordance with GAAP, recorded as capital leases in respect of which such Person is liable, (e) all obligations of such Person to purchase securities (or other property) which arise out of or in connection with the sale of the same or substantially similar securities (or property), (f) all deferred obligations of such Person to reimburse any bank or other Person in respect of amounts paid or advanced under a letter of credit or other instrument, (g) all Debt of others secured by a Lien on any asset of such Person, whether or not such Debt is assumed by such Person, (h) all Debt of others guaranteed directly or indirectly by such Person or as to which such Person has an obligation substantially the economic equivalent of a guarantee, and (i) obligations in respect of Hedge Transactions.

"Debt Service" means, for any period, the sum of (a) all fees (other than fees paid on the Closing Date) payable by Borrower hereunder during such period to Administrative Agent, Collateral Agent, Depositary Agent and the Lenders, (b) interest payable by Borrower on Term Loans less (for purposes of calculating the Debt Service Coverage Ratio) net payments, if any, received by Borrower during such period pursuant to Hedge Transactions, (c) scheduled Term Loan principal payments payable by Borrower (as reduced to reflect actual prepayments through the date of such calculation) payable during such period, and (d) net payments, if any, payable during such period pursuant to Hedge Transactions.

"Debt Service Coverage Ratio" means, for any period, the ratio of (a) Operating Cash Available for Debt Service for such period to (b) Debt Service for such period.

"Debt Service Reserve Account" has the meaning given in Section 1.1 of the Borrower Depositary Agreement.

"Debt to Equity Ratio" means, as of any date of determination, the ratio of (a) the aggregate outstanding principal amount of all Construction Loans or Term Loans, as the case may be, to (b) all equity contributions made to Borrower (in cash or property) and applied to Project Costs (as verified by the Independent Engineer) as of such date of determination, to the extent such contributions have not been reimbursed with the proceeds of any Loans (including the Dow Change Order Drawing).

"DEC" means Dow Engineering Company, a Delaware corporation.

"Default Rate" has the meaning given in Section 2.6.3 of the Credit Agreement.

"Depositary Agent" means Wilmington Trust Company, not in its individual capacity but solely as depositary agent, bank and securities intermediary under the Depositary Agreements.

"Depositary Agreements" means the Borrower Depositary Agreement, the FEC Depositary Agreement and the MEC Depositary Agreement.

"Distribution Suspense Account" has the meaning given in Section 1.1 of the Borrower Depositary Agreement.

"Dollars" and "\$" means United States dollars or such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts in the United States of America.

"Dow" means The Dow Chemical Company, a Delaware corporation.

"Dow Agreements" means the Capacity Sales Agreement, the FEC Ground Lease, the FEC O&M Agreement and the Site Services Agreement.

"Dow Change" has the meaning given in the Capacity Sales Agreement.

"Dow Change Order Drawing" has the meaning given in Section 3.3.3(b) of the Credit Agreement.

"Dow Consent" means the Consent and Agreement, dated as of February 25, 2005, executed by Dow, FEC, and Administrative Agent.

"Dow/DEC Technical Requirements" has the meaning given in the Capacity Sales Agreement.

"Dow Delay Event" has the meaning given in the Capacity Sales Agreement.

"Dow Payment Substitution Agreement" means the Dow Payment Substitution Agreement, dated as of February 25, 2005, by and between Sponsor and Agent.

"Dow Performance Test Drawing" means a drawing of Construction Loans pursuant to Section 3.3.3(c) of the Credit Agreement.

"Dow Performance Test Drawing Amount" has the meaning given in Section 3.3.3(c) of the Credit Agreement.

"Dow Performance Test Exposure" means (a) if the Independent Engineer is able to estimate with a high degree of certainty the maximum possible amount that FEC would have to expend to perform the tests (beyond the already-budgeted testing costs) and to achieve the Performance Guarantees (under and as defined in the FEC Construction Contract), then the Dow Performance Test Exposure is such estimated amount, and (b) if the Independent Engineer is not able to make such estimate with a high degree of certainty, then the Dow Performance Test Exposure is infinity dollars

"Dow Performance Test Pre-Completion Revenues" has the meaning given in Waterfall Level 10 of the Borrower Depositary Agreement.

"Dow Test Deferral" has the meaning given in Section 3.3.3(c) of the Credit Agreement.

"Drawdown Certificate" means a certificate delivered to Administrative Agent substantially in the form of Exhibit C-5 to the Credit Agreement.

"Drawing Payment" means any payment by LC Issuer honoring a drawing under the Security Fund LC.

"Drawstop Funds" has the meaning given in Section 5.17 of the Credit Agreement.

"DSR Letter of Credit" has the meaning given in Section 1.1 of the Borrower Depositary Agreement.

"DSR Required Balance" means, as of any date, an amount equal to all principal and interest in respect of the Term Loans due or to become due within six months after such date.

"Easements" means the FEC Easements and the MEC Easements.

"Eligible Facility" means an "eligible facility" within the meaning of PUHCA and FERC's implementing regulations pertaining thereto.

"Emergency Operating Costs" means those amounts required to be expended for the purchase of goods and services in order to prevent or mitigate an unforeseeable event or circumstances that, in the good faith judgment of MEC or FEC (or Dow as its Operator) as the case may be, necessitates the taking of immediate measures to prevent or mitigate injury to Persons or injury to or loss of property.

"Eminent Domain Proceeds" has the meaning given in the applicable Depositary Agreement.

"Environmental Claim" means any and all liabilities, losses, administrative, regulatory or judicial actions, suits, demands, decrees, claims, liens, judgments, warning notices, notices of noncompliance or violation, investigations, proceedings, removal or remedial actions or orders, or damages (foreseeable and unforeseeable, including consequential and punitive damages), penalties, fees, out-of-pocket costs, expenses, disbursements or attorneys' or consultants' fees, relating in any way to (a) a violation or alleged violation of any Hazardous Substance Law or Permit issued under any Hazardous Substance Law, (b) a Release or threatened Release of Hazardous Substances, or (c) any legal or administrative proceedings relating to any of the above.

"Environmental Reports" means, collectively, with respect to the Mankato Project (a) the Phase I Environmental Site Assessment, Wenck Associates, dated September 2003, together with the update dated October 19, 2004, (b) the Limited Phase II Environmental Site Assessment, Wenck Associates, dated December 2003, (c) the Phase I Environmental Site

Assessment (Baker Property), Wenck Associates, dated July 2004, (d) Critical Environmental Issues Assessment, Wenck Associates, dated October 2003, (e) Preliminary Subsurface Exploration, Laboratory Testing and Geotechnical Engineering Analysis for Proposed Mankato Power Plant Site, STS Consultants, Ltd., dated October 2003, (f) Site Permit Application for Mankato Energy Center submitted by MEC to Minnesota Environmental Quality Board, dated March 2004, and (g) Environmental Assessment, Minnesota Environmental Quality Board, dated July 2004.

"ERCOT" has the meaning given in the Capacity Sales Agreement.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"ERISA Affiliate" means any corporation, trade or business (whether or not incorporated) that is treated as a single employer together with any Calpine Entity under Section 414 of the Code.

"ERISA Plan" means any employee benefit plan (a) maintained by Borrower or any ERISA Affiliate, or to which any of them contributes or has contributed, or is or was obligated to contribute, and (b) subject to Section 302 or Title IV of ERISA, or Section 412 of the Code.

"Event of Default" has the meaning given in Article 7 of the Credit Agreement.

"Event of Eminent Domain" means any compulsory transfer or taking by condemnation, eminent domain or exercise of a similar power, or transfer under threat of such compulsory transfer or taking, of any part of the Collateral or any of the Mortgaged Property, by any agency, department, authority, commission, board, instrumentality or political subdivision of the State of Minnesota, the State of Texas, the United States or another Governmental Authority having jurisdiction.

"Exempt Wholesale Generator" means an "exempt wholesale generator" within the meaning of PUHCA and FERC's implementing regulations pertaining thereto.

"Facility Acceptance Date" has the meaning given in Section 1.4 of the Power Purchase Agreement.

"Facility Acceptance Milestone" has the meaning given in Section 1.4 of the Power Purchase Agreement.

"FEC" has the meaning given in the Recitals in the Credit Agreement.

"FEC Additional Project Documents" means any material contracts or agreements related to the construction, testing, maintenance, repair, operation or use of the Freeport Project entered into by FEC and any other Person, or assigned to FEC, subsequent to the Closing Date; provided that all such contracts and agreements providing for the payment by FEC of less than \$500,000 per annum individually, or the provision to FEC of less than \$1,000,000 per annum

individually in value of goods or services, or providing for a maximum term of less than one year shall be deemed not to constitute a FEC Additional Project Document; and provided, further, that the FEC Additional Project Documents shall not include any Owner/Third Party Contracts (as defined in the FEC Construction Contract).

"FEC Allocated Portion" means the outstanding principal amount of the Loans from time to time, deemed to be allocable to the Freeport Project by virtue of having been initially designated as part of the FEC Allocated Portion pursuant to a Notice of Construction Loan Borrowing (including Loans meeting the conditions set forth in Section 3.4), and not deemed repaid pursuant to Sections 2.1.2(d), 2.1.7(a)(iii), 2.1.7(b), 11.23 or Section 3.6 of the Borrower Depositary Agreement.

"FEC Allocated Portion Percentage" has the meaning given in the FEC Depositary Agreement.

"FEC Checking Account" means the "Checking Account" as defined in the FEC Depositary Agreement.

"FEC Checking Account Bank" means the "Checking Account Bank" as defined in the FEC Depositary Agreement.

"FEC Completion Undertaking Agreement" means the Completion Undertaking Agreement dated as of the Closing Date, between CCMCI and Borrower.

"FEC Construction Account" means the "Construction Account" created pursuant to the FEC Depositary Agreement.

"FEC Construction Contract" means the Engineering, Procurement and Construction Agreement, dated as of February 25, 2005, between the Construction Contractor and FEC.

"FEC Construction Contract Guaranty" means the Guaranty, dated as of February 25, 2005, between Sponsor and FEC.

"FEC Control Agreement" means that certain control agreement to be entered into among FEC, Collateral Agent and FEC Checking Account Bank regarding the perfection of Collateral Agent's Lien on the FEC Checking Account.

"FEC Deed of Trust" means the Deed of Trust, Security Agreement and Fixture Filing, dated on or about the Closing Date, in substantially the form of Exhibit D-1 to the Credit Agreement, by FEC in favor of Collateral Agent.

"FEC Depositary Agreement" means the Depositary Agreement, dated as of the Closing Date, in substantially the form of Exhibit D-5 to the Credit Agreement, among FEC, Administrative Agent, Collateral Agent and Depositary Agent.

"FEC Easements" shall have the meaning given in the FEC Deed of Trust and shall include the Access Easement (as such term is defined in the FEC Ground Lease).

"FEC-GP" means Calpine Freeport GP, LLC a Delaware limited liability company.

"FEC-GP Guaranty" means the FEC-GP Guaranty, dated as of the Closing Date, in substantially the form of Exhibit D-17 to the Credit Agreement, by and between FEC-GP and Collateral Agent.

"FEC Ground Lease" means the Ground Lease, dated May 27, 2004 between Dow and FEC.

"FEC Guaranty" means the FEC Guaranty, dated as of the Closing Date, in substantially the form of Exhibit D-13 to the Credit Agreement, by and between FEC and Collateral Agent.

"FEC Interconnection Agreement" has the meaning given in the Capacity Sales Agreement.

"FEC Loss Proceeds Account" means the "Loss Proceeds Account" created pursuant to the FEC Depository Agreement.

"FEC-LP" means Calpine Freeport LP, LLC, a Delaware limited liability company.

"FEC-LP Guaranty" means the FEC-LP Guaranty, dated as of the Closing Date, in substantially the form of Exhibit D-18 to the Credit Agreement, by and between FEC-LP and Collateral Agent.

"FEC Major Maintenance Agreement" means the Major Maintenance Agreement, dated as of February 25, 2005, between FEC and Operator.

"FEC Major Maintenance Reserve Account" means the "Major Maintenance Reserve Account" created pursuant to the FEC Depository Agreement.

"FEC Major Project Documents" means the Dow Agreements, the FEC Construction Contract, the FEC Completion Undertaking Agreement, the CES PPA (FEC), the FEC Construction Contract Guaranty, the FEC Major Maintenance Agreement, any guaranty agreements related to the foregoing executed by Persons in favor of FEC and, unless otherwise agreed by Administrative Agent prior to its execution and delivery, any FEC Additional Project Documents.

"FEC Major Project Participants" means, without duplication, Borrower, FEC, FEC-LP, FEC-GP, Sponsor (until CCMCI's obligations under FEC's Construction Contract are fully performed), CCMCI (until CCMCI's obligations under FEC's Construction Contract are fully performed), Dow, CES, Operator and any Person other than those so listed which provides

any guaranty agreement with respect to a FEC Major Project Document, and any counterparty to any FEC Additional Project Document which is a FEC Major Project Document.

"FEC Milestone" has the meaning given in the Capacity Sales Agreement.

"FEC Mortgaged Property" means the "Trust Property" as defined in the FEC Deed of Trust.

"FEC Note" means the promissory note in the form of Exhibit B-3 to the Credit Agreement.

"FEC O&M Account" means the "O&M Account" created pursuant to the FEC Depositary Agreement.

"FEC O&M Agreement" means the Operation and Maintenance Agreement, dated as of May 27, 2004 between FEC and Dow.

"FEC Partnership Agreement" means the Amended and Restated Agreement of Partnership of Freeport Energy Center, LP, dated as of January 25, 2005.

"FEC Phase 3 Work" has the meaning given in the Capacity Sales Agreement.

"FEC Project Documents" means, without duplication, the FEC Major Project Documents, the FEC Easements, and any other agreement relating to the development, construction or operation of the Freeport Project to which FEC is a party, provided, that the FEC Project Documents shall not include any Owner/Third Party Contracts (as defined in the FEC Construction Contract).

"FEC Revenue Account" means the "Revenue Account" created pursuant to the FEC Depositary Agreement.

"FEC Security Agreement" means the Security Agreement, dated as of the Closing Date, in substantially the form of Exhibit D-16 to the Credit Agreement, between FEC and Borrower.

"FEC Site" has the meaning given to the term "Facility Site" in the FEC Ground Lease.

"FEC Technical Requirements" has the meaning given in the Capacity Sales Agreement.

"FEC Waterfall Level" means a "Waterfall Level" as defined in the FEC Depositary Agreement.

"FEC Work Phase" has the meaning given in the Capacity Sales Agreement.

"Federal Funds Rate" means, for any day, the weighted average of the per annum rates on overnight Federal funds transactions with member banks of the Federal Reserve System arranged by Federal funds brokers as published by the Federal Reserve Bank of New York for such day (or, if such rate is not so published for any day, the average rate charged by Administrative Agent on such day on such transactions as determined by Administrative Agent).

"Federal Reserve Board" means the Board of Governors of the Federal Reserve System.

"FERC" means the Federal Energy Regulatory Commission and its successors.

"Final Completion" means that Completion shall have occurred and the Independent Engineer shall have confirmed that (a) "Final Project Completion" (as such term is defined in the Construction Contracts) shall have occurred, and (b) all other work under the Construction Contracts shall have been completed (other than amounts in dispute with respect to Construction Contractor or any other Person, so long as amounts reasonably satisfactory to Administrative Agent (acting in consultation with the Independent Engineer) have been reserved in the applicable Construction Account for payment of such amounts (and as to which any associated Lien falls within the definition of clause (c) of Permitted Liens)).

"First Amendment to PPA" means the First Amendment to PPA substantially in the form of the draft provided to Administrative Agent on the Closing Date.

"FPA" means the Federal Power Act, as amended.

"Freeport Project" has the meaning in the Recitals of the Credit Agreement.

"GAAP" means generally accepted accounting principles in the United States of America.

"Governing Documents" means, with respect to any Person, the certificate or articles of incorporation, bylaws, operating agreement or other organizational or governing documents of such Person.

"Governmental Authority" means any national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, bureau or entity, (including, but not limited to, any zoning authority, FERC, the Securities Exchange Commission, the Minnesota Public Utilities Commission, the Public Utilities Commission of Texas, the Comptroller of the Currency or the Federal Reserve Board, any central bank or any comparable authority) or any arbitrator with authority to bind a party at law.

"Governmental Rule" means any law, rule, regulation, ordinance, order, code interpretation, treaty, judgment, decree, directive, guidelines, policy or similar form of decision of any Governmental Authority.

"Granting Bank" has the meaning given in Section 9.13.2 of the Credit Agreement.

"Group Pledge and Security Agreement" means the Pledge and Security Agreement, dated as of the Closing Date, in substantially the form of Exhibit D-10 to the Credit Agreement by and among Borrower, CDHI, FEC-LP, FEC-GP and the Collateral Agent.

"Hazardous Substances" means (statutory acronyms and abbreviations having the meaning given them in the definition of "Hazardous Substances Laws") substances defined as "hazardous substances," "pollutants" or "contaminants" in Section 101 of the CERCLA; those substances defined as "hazardous waste," "hazardous materials" or "regulated substances" by the RCRA; those substances designated as a "hazardous substance" pursuant to Section 311 of the CWA; those substances defined as "hazardous materials" in Section 103 of the HMTA; those substances regulated as a hazardous chemical substance or mixture or as an imminently hazardous chemical substance or mixture pursuant to Section 6 or 7 of the TSCA; those substances defined as "contaminants" by Section 1401 of the SDWA, if present in excess of permissible levels; those substances regulated by the Oil Pollution Act; those substances defined as a pesticide pursuant to Section 2(u) of the FIFRA; those substances defined as a source, special nuclear or by-product material by Section 11 of the AEA; those substances defined as "residual radioactive material" by Section 101 of the UMTRCA; those substances defined as "toxic materials" or "harmful physical agents" pursuant to Section 6 of the OSHA); those substances defined as hazardous wastes in 40 C.F.R. Part 261.3; those substances defined as hazardous waste constituents in 40 C.F.R. Part 260.10, specifically including Appendix VII and VIII of Subpart D of 40 C.F.R. Part 261; those substances designated as hazardous substances in 40 C.F.R. Parts 116.4 and 302.4; those substances defined as hazardous substances or hazardous materials in 49 C.F.R. Part 171.8; those substances regulated as hazardous materials, hazardous substances, or toxic substances in 40 C.F.R. Part 1910; those substances regulated as hazardous materials, hazardous substances, or toxic substances in any other Hazardous Substances Laws; and those substances regulated as hazardous materials, hazardous substances, or toxic substances in the regulations adopted and publications promulgated pursuant to said laws, whether or not such regulations or publications are specifically referenced herein.

"Hazardous Substances Law" means any of:

- (i) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Section 9601 et seq.) ("CERCLA");
- (ii) the Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.) ("Clean Water Act" or "CWA");
- (iii) the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.) ("RCRA");
- (iv) the Atomic Energy Act of 1954 (42 U.S.C. Section 2011 et seq.) ("AEA");
- (v) the Clean Air Act (42 U.S.C. Section 7401 et seq.) ("CAA");

- (vi) the Emergency Planning and Community Right to Know Act (42 U.S.C. Section 11001 et seq.) ("EPCRA");
- (vii) the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Section 136 et seq.) ("FIFRA");
- (viii) the Oil Pollution Act of 1990 (P.L. 101-380, 104 Stat. 486);
- (ix) the Safe Drinking Water Act (42 U.S.C. Section 300f et seq.) ("SDWA");
- (x) the Surface Mining Control and Reclamation Act of 1974 (30 U.S.C. Section 1201 et seq.) ("SMCRA");
- (xi) the Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.) ("TSCA");
- (xii) the Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq.) ("HMTA");
- (xiii) the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. Section 7901 et seq.) ("UMTRCA");
- (xiv) the Occupational Safety and Health Act (29 U.S.C. Section 651 et seq.) ("OSHA");
- (xv) the Texas Solid Waste Disposal Act (Tex. Health & Safety Code, Section 361.001 et seq.);
- (xvi) the Texas Clean Air Act (Tex. Health & Safety Code, Section 382.001 et seq.);
- (xvii) Subtitle D of the Texas Water Code (Tex. Water Code, Section 26.001 et seq.);
- (xviii) the Texas Oil Spill Prevention and Response Act (Tex. Nat. Res. Code, Section 40.001 et seq.);
- (xix) the Minnesota Environmental Response and Liability Act (Minn. Stat. Chap. 115B) ("MERLA");
- (xx) the Minnesota Petroleum Tank Release Cleanup Act (Minn. Stat. Chap. 115C);
- (xxi) the Minnesota Agricultural Chemical Liability Act (Minn. Stat. Chap. 18D);
- (xxii) the Minnesota Oil and Hazardous Substance Discharge Preparedness Act (Minn. Stat. Chap. 115E);

(xxiii) the Minnesota Pollution Control Agency Act (Minn. Stat. Chap. 116);

(xxiv) the Minnesota Water Pollution Control Act (Minn. Stat. Chap. 115); and

(xxv) all other Federal, state and local Governmental Rules relating to the protection of human health or the environment or which otherwise govern Hazardous Substances, and the regulations adopted and publications promulgated pursuant to all such foregoing laws.

"Hedge Bank" means a Lender, or any Affiliate thereof which, in any case, is party to an Interest Rate Agreement with Borrower, in its capacity as counterparty to such Interest Rate Agreement.

"Hedge Breaking Fees" has the meaning given in Section 5.21.2 of the Credit Agreement.

"Hedge Transaction" means any "Transaction" (such as swaps, caps, collars or floors) entered into under an Interest Rate Agreement.

"High-Grade Collateral" or "HGC" has the meaning given in Section 11.1(C) of the Power Purchase Agreement.

"HRSB Vendor" means Nooter/Eriksen, Inc., a Missouri corporation.

"Improvements" has the meaning given in the FEC Deed of Trust or MEC Mortgage.

"Inchoate Default" or "Default" means any occurrence, circumstance or event, or any combination thereof, which, with the lapse of time or the giving of notice or both, would constitute an Event of Default.

"Indemnitees" has the meaning given in Section 5.11.1 of the Credit Agreement.

"Independent Consultants" means, collectively, the Insurance Consultant, the Power Market Consultant and the Independent Engineer.

"Independent Engineer" means R.W. Beck, Inc.

"Independent Engineer's Drawdown Certificate" has the meaning given in Section 3.2.6(b) of the Credit Agreement.

"Initial Allocated Portion" means the Initial FEC Allocated Portion or the Initial MEC Allocated Portion.

"Initial FEC Allocated Portion" has the meaning given in Section 2.1.1(a) of the Credit Agreement.

"Initial MEC Allocated Portion" has the meaning given in Section 2.1.1(a) of the Credit Agreement.

"Initial Principal Repayment Date" means March 31, 2007.

"Insurance Consultant" means Moore-McNeil, LLC.

"Insurance Proceeds" has the meaning given in the applicable Depositary Agreement.

"Interest Period" means, with respect to any LIBOR Loan, the time period selected by Borrower or provided for pursuant to the Credit Agreement which commences on the first day of such Loan, or the effective date of any conversion (as the case may be) and ends on the last day of such time period.

"Interest Rate" means the Base Rate or the LIBO Rate, as the case may be.

"Interest Rate Agreements" means one or more interest rate swap agreements, caps, collars, or other master interest rate hedging mechanisms, each in substantially the form of Exhibit D-12 to the Credit Agreement, with such changes as are reasonably required by each Hedge Bank which do not materially change the substance thereof, and in each case having a term that does not extend beyond the Term Loan Maturity Date.

"Interest Rate Determination Date" means, with respect to any Interest Period, two Banking Days prior to the first day of such Interest Period.

"LC Issuer" has the meaning given in the Recitals of the Credit Agreement.

"Lead Arrangers" means CoBank, ACB, Calyon New York Branch, HSH Nordbank AG, UFJ Bank Limited, and Bayerische Hypo- und Vereinsbank AG, New York Branch.

"Legal Requirements" means, as to any Person, the Governing Documents of such Person, any requirement under a Permit, and any Governmental Rule in each case applicable to or binding upon such Person or any of its properties or to which such Person or any of its property is subject.

"Lender" or "Lenders" means the banks and other similar financial institutions (including any insurance company or other financial institution (whether a corporation, partnership, trust or other entity) that is (a) engaged in making, purchasing or otherwise investing in commercial loans in the ordinary course of business, (b) reasonably experienced in project finance transactions similar to the financing contemplated by the Credit Documents, and (c) capable of advancing Loans, and in each case having total assets in excess of \$100,000,000) that are or become parties to the Credit Agreement and their successors and assigns including each Lender. For purposes of determining Obligations secured by the Collateral, each Hedge Bank shall be deemed a "Lender" party to the Credit Agreement and Credit Documents to the extent so specified in Section 5.21.3 of the Credit Agreement.

"Lending Office" means, with respect to any Lender, the office designated in writing as such to Administrative Agent and Borrower from time to time.

"LIBO Rate" means, with respect to any LIBOR Loan for any Interest Period, the rate per annum determined by Administrative Agent at approximately 11:00 a.m. (London time) on the Interest Rate Determination Date by reference to the British Bankers' Association Interest Settlement Rates for deposits in Dollars (as set forth by any service selected by Administrative Agent which has been nominated by the British Bankers' Association as an authorized information vendor for the purpose of displaying such rates) for a period equal to such Interest Period; provided that, to the extent that an interest rate is not ascertainable pursuant to the foregoing provisions of this definition, the "LIBO Rate" shall be the interest rate per annum determined by Administrative Agent to be the average of the rates per annum at which deposits in Dollars are offered for such Interest Period to major banks in the London interbank market in London, England by Administrative Agent at approximately 11:00 a.m. (London time) on the Interest Rate Determination Date. Each determination by Administrative Agent pursuant to this definition shall be conclusive in the absence of manifest error.

"LIBOR Construction Loan" has the meaning given in Section 2.1.1(b)(i) of the Credit Agreement.

"LIBOR Loans" means, collectively, the LIBOR Construction Loans and the LIBOR Term Loans.

"LIBOR Security Fund LC Loan" means a Security Fund LC Loan that shall bear interest at the rate set forth in Section 2.2.3(b) of the Credit Agreement.

"LIBOR Term Loan" has the meaning given in Section 2.1.2(b)(i)(B) of the Credit Agreement.

"Lien" means, with respect to any property or asset, any mortgage, deed of trust, lien, pledge, charge, security interest, or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected or effective under applicable law, as well as the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such asset.

"Liquidation Costs" has the meaning given in Section 2.9(f) of the Credit Agreement.

"Loan Transactions" has the meaning given the Section 11.22 of the Credit Agreement.

"Loans" means, collectively, the Construction Loans, the Term Loans and the Security Fund LC Loan.

"Loss Proceeds" has the meaning given in of the applicable Depository Agreement.

"Loss Proceeds Account" means the "Loss Proceeds Account" as defined in the respective Project Company Depositary Agreements.

"Major Casualty Event" has the meaning given in the respective Project Company Depositary Agreements.

"Major Equipment Contracts" means, collectively, (a) the Purchase Contract for One Heat Recovery Steam Generator & Accessories, dated as of May 17, 2004, between HRSG Vendor and MEC, (b) the Purchase Contract for Steam Turbine Generator and Accessories, dated as of July 28, 2004, between Toshiba International Corporation and MEC, (c) the Purchase Contract for One Gas Turbine Generator & Accessories, dated as of August 30, 2004, between Siemens Westinghouse Power Corporation and MEC, (d) the Purchase Contract for Four Auxiliary Boilers and Accessories, dated as of December 8, 2003, between Rentech and FEC, and (e) the Purchase Contract for Steam Turbine Generator and Accessories, dated as of August 27, 2004, between Toshiba International Corporation and Construction Contractor.

"Major Maintenance" means labor, materials and other direct expenses for any overhaul of, or major maintenance procedure for, the Projects which require significant disassembly or shutdown of the Projects, (a) in accordance with Prudent Utility Practices, (b) pursuant to manufacturers' requirements to avoid voiding any such manufacturer's warranty, or (c) pursuant to any applicable Legal Requirement, not including any subordinated major maintenance fee.

"Major Maintenance Plan" has the meaning given in Section 5.14.5 of the Credit Agreement.

"Major Maintenance Reserve Letter of Credit" has the meaning given in Section 3.4.3(a) of the respective Project Company Depositary Agreements.

"Major Maintenance Reserve Requirement" means, for each Project, the "Major Maintenance Reserve Requirement" as defined in the applicable Project Company Depositary Agreement.

"Major Maintenance Service Arrangement" means Appendix E to the Capacity Sales Agreement.

"Major Project Documents" means FEC Major Project Documents and MEC Major Project Documents.

"Major Project Participants" means FEC Major Project Participants and MEC Major Project Participants.

"Majority Lenders" means, at any time, Lenders having Proportionate Shares which in the aggregate exceed 50%.

"Mandatory Prepayment" has the meaning given in Section 2.1.7(c) of the Credit Agreement.

"Mandatory Prepayment Account" has the meaning given in Section 1.1 of the Borrower Depositary Agreement.

"Mankato Project" has the meaning in the Recitals of the Credit Agreement.

"Material Adverse Effect" or "Material Adverse Change" means (a) a material adverse change in the business, property, prospects, results of operation or financial condition of Borrower (b) any event or occurrence of whatever nature which could reasonably be expected to materially and adversely affect Borrower's, Dow's, NSP's or CCMCI's ability to perform its material obligations under the Operative Documents, and (c) any event or occurrence of whatever nature which could reasonably be expected to materially and adversely affect the value, validity or priority of the Secured Parties' security interests in the Collateral.

"Maturity" or "maturity" means, with respect to any Loan, Borrowing, interest, fee or other amount payable by Borrower under the Credit Agreement or the other Credit Documents, the date such Loan, Borrowing, interest, fee or other amount becomes due, whether upon the stated maturity or due date, upon acceleration or otherwise.

"MEC" has the meaning given in the Recitals of the Credit Agreement.

"MEC Additional Project Documents" means any material contracts or agreements related to the construction, testing, maintenance, repair, operation or use of the Mankato Project entered into by MEC and any other Person, or assigned to MEC, subsequent to the Closing Date; provided that all such contracts and agreements providing for the payment by MEC of less than \$500,000 per annum individually, or the provision to MEC of less than \$1,000,000 per annum individually in value of goods or services, or providing for a maximum term of less than one year shall be deemed not to constitute a MEC Additional Project Document; and provided, further, that the MEC Additional Project Documents shall not include any Owner/Third Party Contracts (as defined in the MEC Construction Contract).

"MEC Allocated Portion" means the outstanding principal amount of the Loans from time to time, deemed to be allocable to the Mankato Project by virtue of having been initially designated as part of the MEC Allocated Portion pursuant to a Notice of Construction Loan Borrowing (including Loans meeting the conditions set forth in Section 3.4), and not deemed repaid pursuant to Sections 2.1.2(d), 2.1.7(a)(iii), 2.1.7(b) or 11.23 of the Credit Agreement.

"MEC Checking Account" means the "Checking Account" as defined in the MEC Depositary Agreement.

"MEC Checking Account Bank" means the "Checking Account Bank" as defined in the MEC Depositary Agreement.

"MEC Completion Undertaking Agreement" means the Completion Undertaking Agreement, dated as of the Closing Date between CCMCI and Borrower

"MEC Construction Account" means the "Construction Account" created pursuant to the MEC Depositary Agreement.

"MEC Construction Contract" means the Engineering, Procurement and Construction Agreement, dated as of February 25, 2005, between the Construction Contractor and MEC.

"MEC Construction Contract Guaranty" means the Guaranty, dated as of February 25, 2005, between Sponsor and MEC.

"MEC Control Agreement" means that certain control agreement to be entered into among MEC, Collateral Agent and MEC Checking Account Bank regarding the perfection of Collateral Agent's Lien on the MEC Checking Account.

"MEC Depositary Agreement" means the Depositary Agreement, dated as of the Closing Date, in substantially the form of Exhibit D-6 to the Credit Agreement, among MEC, Administrative Agent, Collateral Agent and Depositary Agent.

"MEC Easements" means shall have the meaning given in the MEC Mortgage.

"MEC Gas Interconnection Agreement" means the Facility Interconnect, Construction and Reimbursement Agreement, dated effective December 8, 2004, between MEC and Northern Natural Gas.

"MEC Guaranties" means the MEC Secured Guaranty and the MEC Unsecured Guaranty.

"MEC Interconnection Agreement" means the Interconnection and Operating Agreement, dated November 17, 2004, among MEC, Midwest Independent Transmission System Operator, Inc. and NSP, doing business as Xcel Energy.

"MEC Loss Proceeds Account" means the "Loss Proceeds Account" created pursuant to the MEC Depositary Agreement.

"MEC Major Maintenance Reserve Account" means the "Major Maintenance Reserve Account" created pursuant to the MEC Depositary Agreement.

"MEC Major Project Documents" means the Power Purchase Agreement, the MEC Interconnection Agreement, the MEC O&M/Major Maintenance Agreement, the MEC Construction Contract, the Water Services Agreement, the MEC Gas Interconnection Agreement, the MEC Completion Undertaking Agreement, the MEC Construction Contract Guaranty, any guaranty agreements related to the foregoing executed by Persons in favor of MEC and, unless otherwise agreed by Administrative Agent prior to its execution and delivery, any MEC Additional Project Documents.

"MEC Major Project Participants" means, without duplication, Borrower, MEC, Sponsor (until CCMCI's obligations under MEC's Construction Contract are fully performed),

CCMCI (until CCMCI's obligations under MEC's Construction Contract are fully performed), Operator, NSP, the City of Mankato, Northern Natural Gas, and any Person other than those so listed which provides any guaranty agreement with respect to a MEC Major Project Document, and any counterparty to any MEC Additional Project Document which is a MEC Major Project Document.

"MEC Mortgage" means the Mortgage, Security Agreement and Fixture Filing, dated on or about the Closing Date, in substantially the form of Exhibit D-2 to the Credit Agreement, by MEC in favor of Collateral Agent.

"MEC Mortgaged Property" means the "Premises" as defined in the MEC Mortgage.

"MEC Note" means the promissory note in the form of Exhibit B-4 to the Credit Agreement.

"MEC O&M Account" means the "O&M Account" created pursuant to the MEC Depository Agreement.

"MEC O&M/Major Maintenance Agreement" means the Operations and Maintenance Services and Major Maintenance Work Agreement, dated as of October 1, 2004, between MEC and Operator.

"MEC Project Documents" means, without duplication, the MEC Major Project Documents, the MEC Easements, the NSP Subordinated Mortgage and any other agreement relating to the development, construction or operation of the Mankato Project to which MEC is a party, provided, that the MEC Project Documents shall not include any Owner/Third Party Contracts (as defined in the MEC Construction Contract).

"MEC Revenue Account" means the "Revenue Account" created pursuant to the MEC Depository Agreement.

"MEC Secured Guaranty" means the Guaranty, dated as of the Closing Date, in substantially the form of Exhibit D-14 to the Credit Agreement between MEC and Collateral Agent.

"MEC Security Agreement" means the Security Agreement, dated as of the Closing Date, in substantially the form of Exhibit D-15 to the Credit Agreement between MEC and Borrower.

"MEC Site" means the Land, as defined in the MEC Mortgage.

"MEC Unsecured Guaranty" means the Guaranty, dated as of the Closing Date, in substantially the form of Exhibit D-19 to the Credit Agreement between MEC and Collateral Agent.

"MEC Waterfall Level" means the "Waterfall Level" as defined in the MEC Depositary Agreement.

"Minimum Notice Period" means (a) at least three Banking Days before the date of any Borrowing, Term-Conversion, continuation or conversion of a Type of Loan resulting in whole or in part in one or more LIBOR Construction Loans or LIBOR Term Loans, and (b) at least one Banking Day before any Borrowing, Term-Conversion or conversion of a Type of Loan resulting in whole or in part in one or more Base Rate Construction Loans or Base Rate Term Loans.

"Moody's" means Moody's Investors Service, Inc.

"Multiemployer Plan" means any Plan that is a "multiemployer plan" (as such term is defined in Section 3(37) or 4001(a)(3) of ERISA).

"Non-Advancing Bank" has the meaning given in Section 9.12 of the Credit Agreement.

"Nonrecourse Persons" has the meaning given in Article 8 of the Credit Agreement.

"NNG" means Northern Natural Gas Corporation, a Delaware corporation.

"Notes" means, collectively, any Construction Notes, any Term Notes and any Security Fund LC Loan Notes.

"Notice of Construction Loan Borrowing" has the meaning given in Section 2.1.1(b) of the Credit Agreement.

"Notice of Conversion of Loan Type" has the meaning given in Section 2.1.6 of the Credit Agreement.

"Notice of Term-Conversion" has the meaning in Section 2.1.2(b) of the Credit Agreement.

"NSP" means Northern States Power Company, a Minnesota corporation.

"NSP Acknowledgment of Subordination" means the Consent and Agreement Concerning Subordinated Mortgage, Security Agreement and Financing Statement, dated as of a date on or prior to the Closing Date, in substantially the form of Exhibit D-8 to the Credit Agreement, among NSP, MEC and Collateral Agent.

"NSP Subordinated Mortgage" means the Subordinated Mortgage, Assignment of Leases and Rents, Security Agreement and Financing Statement dated August 23, 2004, by MEC in favor of NSP, as supplemented by the NSP Acknowledgement of Subordination.

"O&M Agreements" means the FEC O&M Agreement and the MEC O&M Agreement.

"O&M Costs" means, for any period, cash amounts incurred and paid by FEC and/or MEC for the operation and maintenance of its respective Project or any portion thereof (other than as funded from the MEC Major Maintenance Reserve Account or the FEC Major Maintenance Reserve Account), in connection with MEC's use of any Alternate Generation Source (as such term is defined in the Power Purchase Agreement) and for the purchase of goods and services in connection therewith, including (a) premiums for insurance policies, (b) fuel supply and fuel transportation costs (to the extent incurred in connection with the sale of electrical products under the Capacity Sales Agreement (in the case of the Freeport Project) or the Power Purchase Agreement (in the case of the Mankato Project)) and the cost of other consumables, (c) costs of obtaining any other materials, supplies, utilities or services for the Projects, (d) costs of maintaining, renewing and amending Permits, (e) franchise, licensing, property, real estate, sales and excise taxes, (f) general and administrative expenses, (g) employee salaries, wages and other employment-related costs, (h) business management and administrative service fees, (i) costs required to be paid by each Project under any Project Document or Credit Document (other than scheduled Debt Service and Project Costs) or to satisfy any Legal Requirement or obtain or maintain any Permit, (j) legal, accounting and consulting fees and other transaction costs and all other fees payable to the Lenders allocable to FEC or MEC, as the case may be (other than amounts constituting scheduled Debt Service), (k) necessary capital expenditures (other than capital expenditures made in connection with the repair or restoration of any casualty suffered by the Projects to the extent funded with insurance or similar proceeds applied pursuant to Section 3.5 of the FEC Depositary Agreement or Section 3.5 of the MEC Depositary Agreement or infusions of equity pursuant to the Credit Documents), (l) all other fees and expenses necessary for the continued operation and maintenance of the Projects and the conduct of the business of the Projects, and (m) Emergency Operating Costs (except for Emergency Operating Costs in connection with the repair or restoration of any casualty suffered by the Projects to the extent funded with insurance or similar proceeds applied pursuant to Section 3.5 of the FEC Depositary Agreement or Section 3.5 of the MEC Depositary Agreement or infusions of equity pursuant to the Credit Documents), but exclusive in all cases of non-cash charges, including depreciation or obsolescence charges or reserves therefor, amortization of intangibles or other bookkeeping entries of a similar nature, and also exclusive of all interest charges and charges for the payment or amortization of principal of indebtedness of Borrower. O&M Costs shall not include (i) costs of Major Maintenance to the extent paid with funds on deposit in the MEC Major Maintenance Reserve Account or the Borrower Major Maintenance Account, (ii) Subordinated Payments, (iii) depreciation, (iv) payments for restoration or repair of the Projects from the Loss Proceeds Account in accordance with the terms of the applicable Depositary Agreement, or (v) costs and fees associated with the maintenance of the Undertaking Support LCs or any Collateral Replacement LCs.

"Obligations" means and includes, with respect to any Person, all loans, advances, debts, liabilities, and obligations, howsoever arising, owed by such Person to the Lead Arrangers, Administrative Agent, Depositary Agent, Collateral Agent, the Hedge Banks or the Lenders of

every kind and description (whether or not evidenced by any note or instrument and whether or not for the payment of money), direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, pursuant to the terms of the Credit Agreement or any of the other Credit Documents, including all interest, fees, charges, expenses, attorneys' fees and accountants fees chargeable to such Person and payable by such Person hereunder or thereunder.

"Operating Budget Category" means (a) individually, any line item category set forth in that portion of the then-current Annual Operating Budget for a Project showing sources and uses of Project funds, and (b) collectively, all line item categories set forth in that portion of the then-current Annual Operating Budget for a Project showing sources and uses of Project funds.

"Operating Cash Available for Debt Service" means, for any period, Project Revenues during such period minus (a) O&M Costs during such period, and (b) deposits into the MEC Major Maintenance Reserve Account or the FEC Major Maintenance Reserve Account during such period.

"Operative Documents" means, collectively, the Credit Documents and the Project Documents.

"Operator" means Calpine Operating Services Company, Inc., a Delaware corporation.

"Other Taxes" has the meaning given in Section 2.6.4(a) of the Credit Agreement.

"Payment Period" means the three-month period commencing on a Quarterly Payment Date and ending on the day prior to the next Quarterly Payment Date.

"PBGC" means the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA.

"Performance Tests" means the Performance Tests as defined and required under the Construction Contracts.

"Permit" means any action, approval, consent, waiver, exemption, variance, franchise, order, permit, authorization, right or license of or from a Governmental Authority.

"Permitted Debt" means (a) Debt incurred under the Credit Documents, (b) Debt incurred by a Project Company pursuant to the terms of a Project Document (but not for borrowed money), either not more than 90 days past due or being contested in good faith, (c) trade or other similar Debt incurred by a Project Company in the ordinary course of business (but not for borrowed money), either not more than 90 days past due or being contested in good faith, (d) contingent liabilities of Borrower and the Project Companies, to the extent otherwise constituting Debt, including those relating to (i) the acquisition of goods, supplies or merchandise in the normal course of business or normal trade credit, (ii) the endorsement of negotiable instruments received in the normal course of its business, and (iii) contingent

liabilities incurred with respect to any Applicable Permit or Operative Document, (e) purchase money obligations incurred by a Project Company to finance the purchase price of discrete items of equipment not comprising an integral part of a Project that extend only to the equipment being financed in an aggregate amount of secured principal and capital lease obligations not exceeding \$1,000,000 at any one time outstanding, (f) obligations of a Project Company in respect of surety bonds or similar instruments in an aggregate amount not exceeding \$1,000,000 at any one time outstanding, (g) Debt incurred to finance an expansion of either Project in accordance with Section 11.24 of the Credit Agreement and (h) Debt incurred by Borrower in connection with the purchase of two Siemens 501F combustion turbines from CCMCI, as evidenced by the Subordinated Note.

"Permitted Investments" means (a) securities issued or directly and fully guaranteed or insured by the United States of America or any agency or instrumentality thereof (provided that the full faith and credit of the United States of America is pledged in support thereof) having a maturity not exceeding one year from the date of issuance, (b) interest-bearing deposit accounts, including time deposits and certificates of deposit, of any Lender or any domestic or foreign commercial bank whose outstanding long-term debt is rated at least A-1 or the equivalent thereof by S&P or at least P-1 or the equivalent thereof by Moody's having capital and surplus in excess of \$500,000,000 having a maturity not exceeding 90 days from the date of acquisition, (c) commercial paper issued by any domestic corporation rated at least A-1 or the equivalent thereof by S&P or at least P-1 or the equivalent thereof by Moody's and, in each case, having a maturity not exceeding 90 days from the date of acquisition, (d) fully secured repurchase obligations with a term of not more than seven days for underlying securities of the types described in clause (a) above entered into with any bank meeting the qualifications established in clause (b) above, (e) high-grade corporate bonds rated at least AA or the equivalent thereof by S&P or at least Aa2 or the equivalent thereof by Moody's having a maturity not exceeding 90 days from the date of acquisition, (f) banker's acceptances drawn on and accepted by any domestic or foreign commercial bank whose long-term senior unsecured debt is rated at least A or the equivalent thereof by S&P or at least A2 or the equivalent thereof by Moody's, (g) money market mutual funds whose investment criteria are substantially similar to items (a) through (f) of this definition, (h) instruments issued by an investment company rated at least A or the equivalent thereof by S&P or at least A2 or the equivalent thereof by Moody's having a portfolio consisting of 95% or more of the securities described in items (a) through (g) of this definition, and (i) investment contracts pursuant to which moneys are deposited (to bear interest at an agreed rate) with a bank, insurance company or other financial institution whose long-term senior unsecured debt is rated at least A or the equivalent thereof by S&P or at least A2 or the equivalent thereof by Moody's.

"Permitted Liens" means (a) the rights and interests of Collateral Agent and any other Secured Party in Borrower, FEC-GP, FEC-LP, the Project Companies and their respective assets as provided in the Credit Documents, (b) Liens of Borrower and the Project Companies for any tax, assessment or other governmental charge, either secured by a bond or other security reasonably acceptable to Administrative Agent or not yet due or being contested in good faith and by appropriate proceedings, so long as (i) such proceedings shall not involve any substantial danger of the sale, forfeiture or loss of the Projects, the Sites or any Easements, or ownership

interest in either Project Company, as the case may be, title thereto or any interest therein and shall not interfere in any material respect with the use or disposition of the Projects, the Sites or any Easements, or ownership interest in either Project Company, (ii) a bond or other security reasonably acceptable to Administrative Agent has been posted or provided in such manner and amount as to assure Administrative Agent that any taxes, assessments or other charges determined to be due will be promptly paid in full when such contest is determined, or (iii) adequate cash reserves have been provided therefor, (c) materialmen's, mechanics', workers', repairmen's, employees' or other like Liens of the Project Companies, arising in the ordinary course of business or in connection with the construction of the Projects, either for amounts not yet due or for amounts being contested in good faith and by appropriate proceedings, so long as (i) such proceedings shall not involve any substantial danger of the sale, forfeiture or loss of the Projects, the Sites or any Easements, or ownership interest in either Project Company, as the case may be, title thereto or any interest therein and shall not interfere in any material respect with the use or disposition of the Projects, the Sites or any Easements, or ownership interest in either Project Company, (ii) a bond or other security reasonably acceptable to Administrative Agent has been posted or provided in such manner and amount as to assure Administrative Agent that any amounts determined to be due will be promptly paid in full when such contest is determined, or (iii) adequate cash reserves have been provided therefor, (d) Liens of Borrower and the Project Companies arising out of judgments or awards so long as an appeal or proceeding for review is being prosecuted in good faith and for the payment of which adequate reserves, bonds or other security reasonably acceptable to Administrative Agent have been provided or are fully covered by insurance, (e) Title Exceptions with respect to the Project Companies, (f) Liens, deposits or pledges of the Project Companies to secure statutory obligations or performance of bids, tenders, contracts (other than for the repayment of borrowed money) or leases, or for purposes of like general nature in the ordinary course of its business, not to exceed \$500,000 in the aggregate at any time, and with any such Lien to be released as promptly as practicable, (g) other Liens of the Project Companies incident to the ordinary course of business that are not incurred in connection with the obtaining of any loan, advance or credit and that do not in the aggregate materially impair the use of the property or assets of Borrower or the value of such property or assets for the purposes of such business, (h) involuntary Liens of Borrower or the Project Companies as contemplated by the Operative Documents (including a lien of an attachment, judgment or execution) securing a charge or obligation, on any of the applicable Borrower Party's property, either real or personal, whether now or hereafter owned in the aggregate sum of less than \$500,000, (i) the rights and interests of NSP in MEC as provided under the NSP Subordinated Mortgage (as supplemented by the NSP Acknowledgement of Subordination), and (j) Liens created to secure Debt incurred pursuant to clause (g) of the definition of Permitted Debt.

"Person" means any natural person, corporation, partnership, limited liability company, firm, association, Governmental Authority or any other entity whether acting in an individual, fiduciary or other capacity.

"Plans and Specifications" means the plans and specifications for the construction and design of each Project as set forth in the applicable Construction Contracts and, in the case

of FEC, the Dow Agreements, as updated from time to time, and any other similar design, engineering or technical documents referred to in such Construction Contracts.

"Power Market Consultant" means Pace Global Energy Services.

"Power Purchase Agreement" means the Purchased Power Agreement, dated as of March 11, 2004, between NSP and MEC.

"Principal Repayment Dates" means (a) the Initial Principal Repayment Date and each three month anniversary thereof until the Term Loan Maturity Date, and (b) the Term Loan Maturity Date.

"Project Budget" has the meaning given in Section 3.1.18 of the Credit Agreement.

"Project Commercial Operation Date" has the meaning given in the Capacity Sales Agreement.

"Project Companies" has the meaning given in the Recitals of the Credit Agreement.

"Project Company Guaranties" means the FEC Guaranty and the MEC Guaranties.

"Project Costs" means, other than as set forth in the proviso below, all costs associated with the development, design, engineering, construction, testing, installation, equipping, assembly, inspection, completion, and start-up of the Projects incurred prior to the Term Period Commencement Date, including:

(a) all amounts payable under the Construction Contracts, any state taxes on equipment, site acquisition and preparation costs, any interconnection costs payable by MEC pursuant to the Interconnection Agreement, any interconnection costs payable by FEC pursuant to, or in connection with the FEC Interconnection Agreement, all water and wastewater disposal interconnection and pumping station or water well costs by FEC or MEC, (b) financing, advisory, legal and other fees, (c) all other Project-related costs and other development costs, insurance costs, management services fees and expenses and expenses to complete the development, design, construction and financing of both Projects, (d) contingency funds, start-up costs and initial working capital costs, (e) O&M Costs due and payable prior to Term-Conversion, (f) interest and fees incurred on or in respect of any Construction Loan or the Construction Loan Commitment pursuant to the Credit Agreement prior to Term-Conversion, (g) payments and fees under the Interest Rate Agreements payable prior to Term-Conversion, (h) amounts necessary to fund the Debt Service Reserve Account up to 50% of the DSR Minimum Balance as of the Term Period Commencement Date (i) costs incurred with purchasing spare parts, and (j) amounts funded by each Project to its working capital reserve as required under the applicable Depositary Agreement; provided, that Project Costs shall not include (i) Subordinated Payments, and (ii) costs and fees associated with the maintenance of the Undertaking Support LCs and any Collateral Replacement LCs.

"Project Document Modification" has the meaning given in Section 6.12.1 of the Credit Agreement.

"Project Documents" means, without duplication, the FEC Project Documents and the MEC Project Documents.

"Project Revenues" means, without duplication, all income and cash receipts of Borrower Parties derived from the ownership or operation of the Projects, including payments received by Borrower under either Completion Undertaking Agreement, MEC under the Power Purchase Agreement, the MEC Construction Contract, the MEC Construction Contract Guaranty and the MEC O&M Agreement, and payments received by FEC under the Capacity Sales Agreement, the FEC Construction Contracts, the FEC Construction Contract Guaranty, the FEC O&M Agreement, proceeds of any delay in start up or business interruption or liability insurance (to the extent such liability insurance proceeds represent reimbursement of third party claims previously paid by Borrower Parties), income derived from the sale or use of electric capacity, energy or related products transmitted or distributed or ancillary services or other related products produced by the Projects, payments for remarketing of fuel or transportation rights relating thereto and investment income on amounts in the Accounts (solely to the extent deposited in the applicable Account), but excluding (a) net payments, if any, received by Borrower Parties under Hedge Transactions, as determined in conformity with cash accounting principles, (b) any receipts derived from the sale of any property pertaining to the Projects or incidental to the operation of the Projects, as determined in conformity with cash accounting principles, (c) proceeds of casualty insurance, (d) performance liquidated damages under the Construction Contracts or the Completion Undertaking Agreements, (e) the proceeds of any condemnation awards relating to the Projects, (f) proceeds from the Collateral Documents, and (g) any liquidated damages under the Major Equipment Contracts, to the extent applied as a setoff against amounts owed to the applicable Project Company by the Construction Contractor.

"Project Schedule" means the schedule for construction and completion of the Projects as set forth in the schedule attached as Exhibit G-4 to the Credit Agreement.

"Projects" has the meaning given in the Recitals of the Credit Agreement.

"Proportionate Share" means (a) in the context of voting in matters requiring the vote of all or a percentage of the Lenders and indemnification obligations of the Lenders under Section 9.5 of the Credit Agreement, with respect to each Lender (including without duplication, to the extent provided herein, each Hedge Bank in its capacity as a Lender under Section 5.21.3 of the Credit Agreement) at any time, a percentage equal to the quotient of (i) the sum of (A) the percentage interest of such Lender in the Total Construction Loan Commitment (or, after Term-Conversion, the Total Term Loan Commitment), as set forth on Exhibit H to the Credit Agreement (as may be amended pursuant to Article 9 of the Credit Agreement), multiplied by the Total Construction Loan Commitment (or, after Term-Conversion, the Total Term Loan Commitment) plus (B) the percentage interest of such Lender in the Interest Rate Agreements, as set forth on Exhibit H to the Credit Agreement, multiplied by the Hedge Breaking Fees actually payable (and not on a "marked to market" basis) at such time (determined upon the close of the applicable voting period), divided by (ii) the sum of (A) the Total Construction Loan

Commitment (or, after Term-Conversion, the Total Term Loan Commitment) plus (B) the Hedge Breaking Fees actually payable (and not on a "marked to market" basis) at such time (determined upon the close of the applicable voting period), and (b) with respect to each Lender at any time in the context of funding Construction Loans or Term Loans, the percentage participation of such Lender in the Total Construction Loan Commitment or Total Term Loan Commitment, respectively, as set forth on Exhibit H to the Credit Agreement (as may be amended pursuant to Article 9 of the Credit Agreement). Upon any transfer by a Lender of all or part of its Commitments, Administrative Agent shall revise Exhibit H to reflect the Lenders' Proportionate Shares after giving effect to such transfer.

"Prudent Utility Practices" means those practices, methods, equipment, specifications and standards of safety and performance, as the same may change from time to time, as are commonly used by electric generation stations in Texas (in the case of the Freeport Project) or Minnesota (in the case of the Mankato Project) of a type and size similar to the Projects as good, safe and prudent engineering practices in connection with the design, construction, operation, maintenance, repair and use of electrical and other equipment, facilities and improvements of such electrical station, with commensurate standards of safety, performance, dependability, efficiency and economy, provided however, that, so long as the FEC O&M Agreement remains in full force and effect, "Prudent Utility Practices" means, for FEC, the O&M Standards (as such term is defined in the FEC O&M Agreement). "Prudent Utility Practices" does not necessarily mean one particular practice, method, equipment specification or standard in all cases, but is instead intended to encompass a broad range of acceptable practices, methods, equipment specifications and standards.

"PUHCA" means the Public Utility Holding Company Act of 1935, as amended.

"Punchlist" means work under the applicable Construction Contracts, the failure of which to be completed does not, whether individually or in the aggregate, have, or otherwise cause, a Material Adverse Effect.

"Punchlist Drawing" has the meaning given in Section 3.3.3(a) of the Credit Agreement.

"Purchase Option" has the meaning given in the Capacity Sales Agreement.

"PURPA" means the Public Utility Regulatory Policies Act of 1978, as amended.

"Put Option" has the meaning given in the Capacity Sales Agreement.

"Qualified Letter of Credit" means one or more unconditional, irrevocable letters of credit on terms and conditions, and in form and substance, reasonably satisfactory to Administrative Agent and shall (a) name Administrative Agent on behalf of the Secured Parties as the beneficiary thereof, (b) have an aggregate amount available to be drawn at all times greater than or equal to the amount being secured by such letter of credit, (c) be issued from a bank, banks, trust company or trust companies not a party to the Credit Agreement (and otherwise reasonably acceptable to Administrative Agent) which bank, banks, trust company or

trust companies shall have a combined capital and surplus of at least \$1,000,000,000 and whose long-term senior unsecured indebtedness is rated at least A by S&P and A2 by Moody's, (d) not be secured by any of the Collateral, and (e) not impose on any Borrower Party any obligation to reimburse drawing payments thereunder; provided that such letter of credit shall provide that it shall (i) automatically renew upon the expiration thereof unless, at least 60 days prior to such expiration, the issuer thereof shall provide Administrative Agent with a notice of non-renewal of such letter of credit, (ii) have an initial expiration date of at least one year after issuance, and (iii) have a stated amount equal from time to time to (or, to the extent of cash deposited, less than) amounts required to be issued as set forth in the Credit Documents.

"Qualifying Facility" means a "qualifying facility" within the meaning of PURPA and FERC's implementing regulations pertaining thereto.

"Quarterly Payment Date" means the last Banking Day of each calendar quarter.

"Rate Margin" means, for Construction Loans, 1.75%, and for Term Loans, the applicable rate set forth below:

TERM PERIOD	RATE MARGIN
-----	-----
Years 1-2	1.750%
Years 3-4	1.875%
Year 5	2.000%

"Register" has the meaning given in Section 2.1.8 of the Credit Agreement.

"Regulation D" means Regulation D of the Board of Governors of the Federal Reserve System (or any successor).

"Regulatory Change" means any change after the Closing Date in federal, state, local or foreign laws, regulations, Legal Requirements or requirements under Applicable Permits, or the adoption or making after such date of any interpretations, directives or requests of or under any federal, state, local or foreign laws, regulations, Legal Requirements or requirements under Applicable Permits (whether or not having the force of law) by any Governmental Authority charged with the interpretation or administration thereof.

"Release" means disposing, discharging, injecting, spilling, leaking, leaching, dumping, pumping, pouring, emitting, escaping, emptying, seeping, placing or the like, into or upon any land or water or air, or otherwise entering into the environment.

"Remedial Plan" has the meaning given in Section 5.4.18 of the Credit Agreement.

"Rentech" means Rentech Boiler Systems, Inc, a state of Texas C corporation.

"Replacement Obligor" means (a) with respect to any Person party to a Major Project Document in effect on the Closing Date, any Person satisfactory to Administrative Agent acting at the direction of the Required Lenders, or (b) with respect to any Person party to an Additional Project Document, any Person satisfactory to Administrative Agent acting at the direction of the Required Lenders, as the case may be, applying the approval standards set forth in Section 6.18 of the Credit Agreement as would otherwise be applied to an Additional Project Document, and in each case, having credit, or acceptable credit support, equal to or greater than that of the replaced Person (or otherwise acceptable to Administrative Agent, or Administrative Agent acting at the direction of the Required Lenders, as the case may be, in its sole discretion) on the date that the applicable Major Project Document was entered into who, pursuant to any definitive agreement, definitive guarantee or definitive backup arrangement, in each case reasonably satisfactory to Administrative Agent or Administrative Agent acting at the direction of the Required Lenders, as the case may be, assumes the obligation of providing the services and products on terms and conditions no less favorable to such applicable Borrower Party than those which such Person is obligated to provide pursuant to the applicable Major Project Document.

"Reportable Event" means any of the events set forth in Section 4043(b) or (c) of ERISA for which notice to the PBGC has not been waived.

"Required Lenders" means, at any time, Lenders having Proportionate Shares which in the aggregate equal or exceed 66-2/3%.

"Reserve Requirement" means, for LIBOR Loans, the maximum rate (expressed as a percentage) at which reserves (including any marginal, supplemental or emergency reserves) are required to be maintained during the Interest Period therefor under Regulation D by member banks of the Federal Reserve System in New York City with deposits exceeding \$1,000,000,000 against "Eurocurrency liabilities" (as such term is used in Regulation D). Without limiting the effect of the foregoing, the Reserve Requirement shall reflect any other reserves required to be maintained by such member banks by reason of any Regulatory Change against (a) any category of liabilities which includes deposits by reference to which the LIBO Rate or LIBOR Loans is to be determined, (b) any category of liabilities or extensions of credit or other assets which include LIBOR Loans, or (c) any category of liabilities or extensions of credit which are considered irrevocable commitments to lend.

"Responsible Officer" means, as to any Person, its president, chief executive officer, any vice president, treasurer, or secretary or any natural Person who is a managing general partner or manager or managing member of a limited liability company (or any of the preceding with regard to any such managing general partner, manager or managing member).

"Restricted Payment Conditions" has the meaning given in Section 6.6.2 of the Credit Agreement.

"Revenue Accounts" means the Borrower Revenue Account, the FEC Revenue Account and the MEC Revenue Account.

"Rights of Way" has the meaning given in Section 3.1.23 of the Credit Agreement.

"S&P" means Standard & Poor's, a division of The McGraw-Hill Companies, Inc.

"Secured Parties" means Administrative Agent, the Lead Arrangers, the Collateral Agent, the Depositary Agent, any Lender (or Affiliate of any Lenders) which is a counterparty to an Interest Rate Agreement entered into by Borrower in accordance with the Credit Agreement, each Lender and each of their respective successors, transferees and assigns; provided, that no Affiliate of Sponsor shall be a "Secured Party" hereunder or under any other Credit Document.

"Security Agreement" means the Security Agreement, dated as of the Closing Date, in substantially the form of Exhibit D-3 to the Credit Agreement, between Borrower and Collateral Agent.

"Security Fund" has the meaning given in Section 11.1 of the Power Purchase Agreement.

"Security Fund LC" has the meaning given in Section 2.2.1 of the Credit Agreement.

"Security Fund LC Cash Collateral Account" has the meaning given in the Borrower Depositary Agreement.

"Security Fund LC Commitment" means, at any time with respect to each Lender, such Lender's Proportionate Share of the Total Security Fund LC Commitment at such time.

"Security Fund LC Fee" has the meaning given in Section 2.5.1 of the Credit Agreement.

"Security Fund LC Loan" has the meaning given in Section 2.2.2 of the Credit Agreement.

"Security Fund LC Loan Note" has the meaning given in Section 2.1.4 of the Credit Agreement.

"Settlement Amount" has the meaning given in Section 5.11.6(b) of the Credit Agreement.

"Siemens Turbines" has the meaning given in the Borrower Security Agreement.

"Site" means the FEC Site and the MEC Site.

"Site Services Agreement" means the Site Services Agreement, dated as of May 27, 2004 between FEC and Dow.

"SPC" has the meaning given in Section 9.13.2 of the Credit Agreement.

"Sponsor" means Calpine Corporation, a Delaware corporation.

"Stated Amount" means with respect to the Security Fund LC, the total amount available to be drawn thereunder at the time in question in accordance with the terms of the Security Fund LC.

"Subject Claims" has the meaning given in Section 5.11.1(a) of the Credit Agreement.

"Subordinated Notes" means each of the Subordinated Demand Promissory Notes, dated as of February 25, 2005, issued by Borrower to Construction Contractor in the original principal amount of \$44,070,758.00 and \$43,971,622.00, respectively.

"Subordinated Payments" means any fees, bonuses, profits and any other amounts payable by either Project Company to any Affiliate under any Project Document and which are subject to subordination under a Subordination Agreement.

"Subordination Agreements" means the COSCI Subordination Agreement, the CCMCI Subordination Agreement and any other subordination agreement substantially in the form of Exhibit D-7 to the Credit Agreement which is approved by the Majority Lenders pursuant to Section 6.8 of the Credit Agreement.

"Subsidiary" means, as to any Person, a corporation, partnership, limited liability company or other entity of which such Person: (a) owns 10% or more of the shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, partnership or other entity and/or (b) controls the management, directly or indirectly through one or more intermediaries. Unless otherwise qualified, all references to a "Subsidiary" or to "Subsidiaries" in this Agreement shall refer to a Subsidiary or Subsidiaries of a Person.

"Target Debt to Equity Ratio" means a Debt to Equity Ratio equal to (a) \$466,500,000 divided by (b) the sum of (i) \$96,249,010.70 and (ii) the Dow Change Order Drawing (the amount in this clause (ii) expressed as a negative number).

"Taxes" has the meaning, with respect to the Loans, given in Section 2.6.4(a) of the Credit Agreement.

"Template Operating Report" means an operating report required by Section 5.8.2 of the Credit Agreement, in substantially the form of Exhibit G-8 to the Credit Agreement.

"Term-Conversion" means satisfaction or waiver of the conditions set forth in Section 3.3 of the Credit Agreement, causing conversion of Construction Loans to Term Loans. "Term-Convert" is the verb form of "Term-Conversion."

"Term Loan" has the meaning given in Section 2.1.2(a) of the Credit Agreement.

"Term Loan Commitment" means, at any time with respect to each Lender, such Lender's Proportionate Share of the Total Term Loan Commitment at such time.

"Term Loan Maturity Date" means the earlier of (a) December 31, 2011, and (b) the date on which the entire outstanding principal balance of the Term Loans, together with all unpaid interest, fees, charges and costs, becomes due and payable under the Credit Agreement.

"Term Note" has the meaning given in Section 2.1.4 of the Credit Agreement.

"Term Period Commencement Date" has the meaning given in Section 3.3 of the Credit Agreement.

"Term Title Policy" has the meaning given in Section 6.6.2(h)(ii)(B).

"Title Exception" means those exceptions to coverage listed on Schedule B-II of the Title Policy, other than the standard printed exceptions contained therein.

"Title Insurer" means Stewart Title Guaranty Company.

"Title Policies" means those certain policies of title insurance issued by the Title Insurer dated as of the Closing Date, as provided in Section 3.1.22 of the Credit Agreement, including all amendments thereto, endorsements thereof and substitutions or replacements therefor.

"Total Construction Loan Commitment" has the meaning given in Section 2.3.2(a)(ii) of the Credit Agreement.

"Total Security Fund LC Commitment" means \$36,500,000.

"Total Term Loan Commitment" has the meaning given in Section 2.3.2(b) of the Credit Agreement.

"True-Up Drawing" has the meaning given in Section 3.3.3(d) of the Credit Agreement.

"Type" means the type of Loan, whether a Base Rate Loan or LIBOR Loan.

"UCC" means the Uniform Commercial Code as the same may, from time to time, be in effect in the State of New York; provided, however, in the event that, by reason of mandatory provisions of law, any or all of the perfection or priority of the security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York the term "UCC" shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof and of the other Credit Documents relating to such perfection or priority and for purposes of definitions related to such provisions.

"Undertaking Support LCs" means the letters of credit provided to Borrower pursuant to Section 2.2(a) of the respective Completion Undertaking Agreements.

"Underwriters" means CoBank, ACB, Calyon New York Branch, UFJ Bank Limited, HSH Nordbank AG and Bayerische HYPO- Und Verinsbank AG, New York Branch, each acting in its capacity as underwriters for the Lenders under the Credit Agreement.

"Unsatisfied Condition" means a condition in a Permit that has not been satisfied and that either (a) must be satisfied before such Permit can be come effective, (b) must be satisfied as of the date on which a representation is made or a condition precedent must be satisfied under the Credit Agreement, or (c) must be satisfied as of a future date but with respect to which facts or circumstances exist which, to Borrower's knowledge, could reasonably be expected to result in a failure to satisfy such Permit condition.

"Unutilized Security Fund LC Commitment" means \$18,250,000 minus any increases in the Stated Amount of the Security Fund LC pursuant to Sections 2.2.1 and/or 2.2.4 of the Credit Agreement.

"Upfront Fee Letter" means that certain letter agreement regarding fees, dated as of the Closing Date, by and between Lead Arrangers and Borrower.

"Variable O&M Costs" means, with respect to MEC, those O&M Costs described in the line-items of the Base Case Project Projections entitled "Reverse Osmosis - Water Treatment", "Demineralizer/EDI/Polishing - Water Treatment", "Boiler/Steam Chemicals - Water Treatment", "Cooling Tower - Water Treatment", "Gas Turbine Gases/Chemicals", "Waste Water Disposal", "Ammonia (SCR)" and "Electricity Usage Cost."

"Waterfall Levels" means the Borrower Waterfall Levels, the MEC Waterfall Levels and the FEC Waterfall Levels.

"Water Services Agreement" means the Water Services Agreement, dated November 10, 2004, between MEC and the City of Mankato, Minnesota.

## RULES OF INTERPRETATION

1. The singular includes the plural and the plural includes the singular.
2. "or" is not exclusive.
3. A reference to a Governmental Rule includes any amendment or modification to such Governmental Rule, and all regulations, rulings and other Governmental Rules promulgated under such Governmental Rule.
4. A reference to a Person includes its permitted successors, permitted replacements and permitted assigns.
5. Accounting terms have the meanings assigned to them by GAAP, as applied by the accounting entity to which they refer.
6. The words "include", "includes" and "including" are not limiting.
7. A reference in a document to an Article, Section, Exhibit, Schedule, Annex or Appendix is to the Article, Section, Exhibit, Schedule, Annex or Appendix of such document unless otherwise indicated. Exhibits, Schedules, Annexes or Appendices to any document shall be deemed incorporated by reference in such document. In the event of any conflict between the provisions of the Credit Agreement (exclusive of the Exhibits, Schedules, Annexes and Appendices thereto) and any Exhibit, Schedule, Annex or Appendix thereto, the provisions of the Credit Agreement shall control.
8. References to any document, instrument or agreement (a) shall include all exhibits, schedules and other attachments thereto, (b) shall include all documents, instruments or agreements issued or executed in replacement thereof, and (c) shall mean such document, instrument or agreement, or replacement or predecessor thereto, as amended, amended and restated, modified and supplemented from time to time and in effect at any given time.
9. The words "hereof", "herein" and "hereunder" and words of similar import when used in any document shall refer to such document as a whole and not to any particular provision of such document.
10. References to "days" shall mean calendar days, unless the term "Banking Days" shall be used. References to a time of day shall mean such time in New York, New York, unless otherwise specified.
11. If, at any time after the Closing Date, Moody's or S&P shall change its respective system of classifications, then any Moody's or S&P "rating" referred to herein shall be considered to be at or above a specified level if it is at or above the new rating which most closely corresponds to the specified level under the old rating system.
12. The Credit Documents are the result of negotiations between, and have been reviewed by Borrower, each Affiliate of Borrower party thereto, Administrative Agent, the Lead

Arrangers, each Lender and their respective counsel. Accordingly, the Credit Documents shall be deemed to be the product of all parties thereto, and no ambiguity shall be construed in favor of or against Borrower, any Affiliate of Borrower party thereto, Administrative Agent or any Lender solely as a result of any such party having drafted or proposed the ambiguous provision.

**Exhibit 10.3.6.1**

**CONSULTING CONTRACT**

**BETWEEN**

**CALPINE CORPORATION**

**AND**

**GEORGE J. STATHAKIS**

**CALENDAR YEAR - 2005**

## TABLE OF CONTENTS

	Page
1. SCOPE OF SERVICES	1
2. TERM	1
3. COMPENSATION	1
4. WARRANTY	2
5. INDEPENDENT CONTRACTOR	2
6. INSURANCE	2
7. INDEMNITY	2
8. ASSIGNMENT AND SUBCONTRACTING	2
9. CONFIDENTIALITY	3
10. JURISDICTION	3
11. PUBLICATION	3
12. SURVIVAL	3
13. ENTIRE CONTRACT AND AMENDMENTS	3
14. BINDING EFFECT	4

## CONSULTING CONTRACT

THIS CONSULTING CONTRACT ("Contract") is made and entered into effective as of January 1, 2005 (the "Effective Date") between Calpine Corporation, a Delaware corporation, of 50 West San Fernando Street, San Jose, California 95113 ("CALPINE") and GEORGE J. STATHAKIS, 120 Montgomery Street, 13th Floor, San Francisco, California 94104 ("CONSULTANT"), with reference to the following:

In consideration of the mutual agreements herein contained, it is agreed as follows:

### 1. SCOPE OF SERVICES

CONSULTANT agrees to provide advice and guidance on various management issues to the President and members of his senior staff.

### 2. TERM

2.0 This Contract shall be for a term lasting from the Effective Date until December 31, 2005, unless earlier terminated pursuant to this Contract or extended by mutual agreement of the parties.

2.1 Notwithstanding the above, either party may terminate this Contract at any time by giving thirty (30) days written notice to the other party, provided, however, that any payments due and payable upon termination shall be paid.

### 3. COMPENSATION

Compensation to CONSULTANT for services rendered shall be as follows:

(a) CALPINE will pay CONSULTANT a monthly retainer (the "Retainer") of Five Thousand Dollars (\$5,000.00), commencing January 1, 2005, which amount will be payable at the beginning of each month under the term hereof.

(b) In addition to the cash compensation stated in (a) above, CALPINE will grant to CONSULTANT stock options under the Discretionary Option Grant Program of the Calpine Corporation 1996 Stock Incentive Plan to purchase 10,000 shares. The grant will be effective on the first business day following January 1, 2005; the option price for this grant will be the fair market value of Calpine Corporation stock at the close of business on the effective date of the grant. The options will be vest in twelve monthly installments and have a ten-year term.

(c) In addition to the above, CALPINE agrees to reimburse CONSULTANT for all travel and other actual out-of-pocket expenses incurred in support of this Contract. Such expenses will not be incurred by CONSULTANT without prior approval of CALPINE. CONSULTANT shall furnish copies of all receipts with invoices for expenses incurred in support of this Contract.

### 4. WARRANTY

CONSULTANT assumes professional and technical responsibility for performance of Services to be provided hereunder in accordance with recognized professional standards. If within one year following completion of the Services, the Services fail to meet the aforesaid standards, and CALPINE promptly advises CONSULTANT in writing, CONSULTANT agrees to re-perform deficient Services without charge to CALPINE up to a maximum amount equivalent to the compensation received for the deficient Services rendered.

## 5. INDEPENDENT CONTRACTOR

5.1 CONSULTANT acknowledges and agrees that it enters into this Contract as an independent contractor. Under no circumstances shall CONSULTANT look to CALPINE as its employer, nor as a partner, agent or principal. CONSULTANT shall not be entitled to any benefits accorded to CALPINE's employees including, without limitation, workers compensation, disability insurance, and vacation or sick pay. CONSULTANT shall be responsible for providing, at its expense and in its name, disability, workers' compensation or other insurance as well as licenses and permits usual or necessary for conducting the Services hereunder.

5.2 CONSULTANT shall pay, when and as due, any and all taxes incurred as a result of CONSULTANT's compensation hereunder, including estimated taxes. CONSULTANT hereby indemnifies CALPINE for any claims, lost costs, fees, liabilities, damages or injuries suffered by CALPINE arising out of CONSULTANT's breach of this section.

5.3 CONSULTANT represents that he or she has the qualifications and ability to perform the Services in a professional manner, without the advice, control or supervision of CALPINE. CONSULTANT shall be solely responsible for the professional performance of the Services, and shall receive no assistance, direction or control from CALPINE. CONSULTANT shall have sole discretion and control of its work and the manner in which it is performed.

## 6. INSURANCE

6.1 CONSULTANT shall maintain in full force and effect during the term of this Contract, the insurance described below, as well as such other insurance as deemed reasonably necessary by CALPINE to insure the services performed hereunder.

6.1.1 Automobile liability insurance covering owned, non-owned and hired automobiles for a combined single limit of \$100,000/\$300,000 for bodily injury and property damage.

6.2 CONSULTANT shall, upon request, furnish certificates showing that the above insurance will be in effect during the term of this Contract and shall specify that CALPINE must be given, in writing, thirty (30) days notice of cancellation, termination, or alternation of the policies evidenced by certificates. It is acknowledged, understood and agreed that no payment shall be due from CALPINE under this Contract at any time when CONSULTANT is not in full compliance with this provision dealing with insurance.

## 7. INDEMNITY

7.1 CALPINE agrees to indemnify CONSULTANT and hold him harmless against any claim by any person that CONSULTANT's performance arising from or in connection with CONSULTANT's relationship with CALPINE renders CONSULTANT liable to such person, and against any losses or damages suffered by CALPINE and its affiliates as a result of any such claim (including legal fees and expenses); provided, however, that such indemnity will not extend to any action taken or omitted by CONSULTANT as a result of gross negligence or willful misconduct.

7.2 CONSULTANT shall not be liable for any consequential or indirect damages occurring as a result of any recommendation, opinion or advice given by CONSULTANT, or from any implementation of CONSULTANT's recommendations by CALPINE, or from any other services performed hereunder by CONSULTANT for CALPINE.

## 8. ASSIGNMENT AND SUBCONTRACTING

CONSULTANT shall not have the right to assign this Contract or subcontract any of the work without the prior written consent of CALPINE. CONSULTANT shall supervise all work subcontracted by CONSULTANT in performing the Services and shall be responsible for all work performed by a subcontractor as if

CONSULTANT itself had performed such work. The assignment or subcontracting of any work to subcontractors shall not relieve CONSULTANT from any of its obligations under this Contract with respect to the Services.

## 9. CONFIDENTIALITY

All data, information, work papers, technology and reports furnished or disclosed by CALPINE to CONSULTANT or its personnel in the course of performing the Services ("Information") are and shall remain the sole property of CALPINE and shall be kept confidential by CONSULTANT, and shall be delivered over to CALPINE at CALPINE's request. CONSULTANT agrees not to divulge all or any part of the Information to third parties, without the prior written consent of CALPINE, unless:

- (a) The Information is known to CONSULTANT prior to obtaining the same from CALPINE;
- (b) The Information is, at the time of disclosure by CONSULTANT, then in the public domain; or
- (c) The Information is obtained by CONSULTANT from a third party who did not receive same, directly or indirectly, from CALPINE and who has no obligation of secrecy with respect thereto.

CONSULTANT further agrees that it will not, without the prior written consent of CALPINE, disclose to any third party any of such Information developed or obtained by CONSULTANT in the performance of this Contract. If so requested by CALPINE, CONSULTANT further agrees to require its employees to execute a nondisclosure agreement prior to performing Services under this Contract.

## 10. JURISDICTION

This Contract shall be governed by and be construed in accordance with the laws of the State of California.

## 11. PUBLICATION

CONSULTANT shall not use CALPINE's name or trademarks, photographs or otherwise claim any affiliation with CALPINE in any publication or public forum without obtaining prior written approval from CALPINE.

## 12. SURVIVAL

The rights and obligations of the parties, which, by their nature, are normally intended to survive the termination or completion of this Contract shall remain in full force and effect following termination of this Contract for any reason.

## 13. ENTIRE CONTRACT AND AMENDMENTS

This Contract, together with Exhibits and Schedules, if any, attached hereto, all of which are incorporated herein as part of this Contract by this reference, and together with all purchase orders, contain the entire agreement between the parties hereto with respect to the subject matter hereof. No amendment to this Contract or to any purchase order shall be binding upon either party hereto, unless it is in writing and executed on behalf of each party hereto by a duly authorized representative and expressly specified as such.

## 14. BINDING EFFECT

This Contract shall be binding upon and inure to the benefit of the parties hereto, and to their successors and permitted assigns.

IN WITNESS WHEREOF, this Contract is executed effective as of the day and year first above written.

*CALPINE:*

*CALPINE CORPORATION*

*By: /s/ Ann B. Curtis*  
-----  
*Title: Executive Vice President*

*Date: January 20, 2005*

*CONSULTANT:*

*GEORGE J. STATHAKIS*

*By: /s/ George J. Stathakis*  
-----  
*Date: January 17, 2005*

## **EXHIBIT 10.3.13**

### **Calpine Corporation**

#### **2003 Management Incentive Plan**

April 18, 2003

##### **I. Purpose of the Plan**

The purpose of Calpine's ("Calpine" or the "Company") Management Incentive Plan ("MIP") is to reward and motivate Calpine employees for their contribution to the achievement of predetermined corporate business objectives, consistent with corporate values.

##### **II. Plan Eligibility**

All regular employees of the Company, except for Operations and Maintenance hourly employees, are eligible to participate in the Plan. Construction site employees who participate in the Construction Completion Bonus Program will be eligible for MIP program in years where no construction completion bonuses are payable.

##### **III. Administration**

Calpine's President and CEO, who may delegate certain elements of the program administration to other staff, will administer the Plan. The Office of the Chairman must approve any modifications, amendments, or adjustments to the plan or any of its key provisions and all award payments. The President and CEO shall have broad authority to interpret the Plan, subject to the following decisions reserved for the Compensation Committee of the Board of Directors of the Company (the "Committee"):

1. The approval of the Company's financial and non-financial goals discussed in Section V of this document
2. The approval of the funding of the MIP bonus pool
3. Interpretation of the Plan on any matters in which the President and CEO is not a disinterested party

Any decisions of the President and CEO in the interpretation of the Plan may be appealed in writing to the Committee. However, any decision of the majority of the Committee is final and binding on all parties.

##### **IV. Plan Effective Date**

The MIP is effective January 1, 2003.

#### V. The Bonus Pool Funding

The total Bonus Pool amount, which is approved by the Committee, is determined in four steps.

1. The sum of all participants' bonus targets as described in Section VI (2), establishes the target bonus pool.
2. At the beginning of each calendar year, the Company establishes financial and non-financial performance goals that are approved by the Committee.
3. The first quarter of the following year, the Committee reviews how the actual results compare to the performance goals and determines the MIP bonus pool, based on its judgment of the overall Company achievements and goal attainment. The intent is for the bonus pool funding to be consistent with the percentage of goal achievement. For example, 100% achievement of established goals will generally result in 100% funding of the bonus pool.
4. The percentage of goal achievement is applied to the target bonus pool, and may result in a final pool greater than, or less than, the sum of the participants' target bonus amounts.

#### VI. Individual Bonus Determination

Many factors are taken into consideration in determining an individual employee's bonus. Foremost are our overriding principles of ethical conduct and integrity. It is expected that each employee will conduct our business in an open and honest fashion and actions and decisions will represent the Company with honor and distinction in the face of public scrutiny. An employee's compliance with all applicable company policies, procedures and standards, including but not limited to the Code of Conduct, is an essential consideration in determining bonus eligibility and amount.

The bonus amount an employee actually receives is based on four factors:

1. The level of funding as approved by Committee as described in Section V (3).
2. Position - Each position is assigned a target bonus based on the level of responsibility and market practices for the position. The target bonus is expressed as a percentage of base salary, assuming 100% funding of the bonus pool, and will be communicated to each participant upon hire or placement in

any MIP eligible position. The target bonus award will be adjusted by the same percentage as the target bonus pool as described in Section V (4), above.

3. Company Performance - A portion of an employee's individual MIP bonus is in recognition of his/her contribution to corporate goal attainment, and is fixed at 30% of his/her "adjusted target" award.

4. Individual Job Performance - Seventy percent (70%) of an employee's individual MIP bonus is based on individual contribution, as determined through the Company's performance review system. An individual employee's bonus may be adjusted up or down based on an individual's contribution so long as the business unit does not exceed its total approved bonus pool.

#### VII. Business Unit Incentive Plans

Each year certain business units within the Company may establish business unit incentive plans to complement the overall objectives of the Company. The performance results within these business unit incentive plans will impact the overall success of corporate goals. Business unit incentive plans must be approved by the President and CEO of the Company and other members of senior management team.

The degree to which the MIP bonus comprises a portion of an employee's overall annual incentive bonus is dependent upon the employee's business unit. MIP funding is adjusted for those business units that have business-specific incentive plans, based on the desired weight the Company places on corporate goals compared with business specific goals. Weighting may vary from one business unit to another. For example, fifty percent (50%) of a business unit's funding may be derived from the corporate MIP and fifty percent (50%) from the business unit. In this example, the corporate MIP portion, of the employees' target bonuses will be adjusted by the same weighting, 50%.

Funding for business unit plans is independent of the corporate results and based on specific business unit performance measures. Employees who work in corporate functional departments - such as Legal, Information Services, Credit, Facilities Planning and Human Resources - but who support a business unit, are eligible to receive a supplemental incentive bonus out of the business unit pool on a discretionary basis, subject to joint approval by the business unit and corporate functional heads.

#### VIII. Bonus Checks

Bonus checks are calculated and distributed following the close of the calendar year and are usually paid in March of the following year. Employees are eligible to participate in this plan provided they are still employed on the day bonus checks are awarded (subject to earlier death, long term disability or retirement as described below). Bonus amounts will be subject to all applicable taxes and any applicable and appropriate deductions for garnishments, Employee Stock Purchase Plan, 401(k) Retirement Savings Plan, Non-Qualified Deferred Compensation Plan, and other deductions or withholdings.

For employees of Calpine's non-U.S. locations, MIP bonus checks are calculated and distributed following the close of the calendar year. Bonus amounts will be subject to all appropriate and applicable national taxes and deductions for Employee Stock Purchase Plan, Group Retirement Savings Plan or other deductions.

#### IX. Transfers and New Hires

In the event that a participant transfers from one position to another during the course of the year, or is a new hire, his/her award for the year will be calculated on a pro-rated basis to reflect the actual number of months spent in each position during the year.

#### X. Retirements And Terminations

In the event of a participant's retirement, long-term disability or death, his/her award will be pro-rated to reflect the actual number of months of service during the plan year. If a plan participant dies, retires or becomes subject to long-term disability after the conclusion of a plan year, but prior to the bonus pay-out for such year, the plan participant will still be eligible to participate in the plan for such year.

No payments will be made to employees who are terminated for cause.

#### XI. Company Discretion

Distribution and payout of all MIP bonus amounts are at the sole discretion of Company management. The Company reserves the right to revise or rescind the plan at any time.

#### XII. Employment Rights

The selection of an employee of the Company as a participant will in no way enhance the employee's right to continued employment with the Company nor limit the Company in its right to terminate or otherwise change the employment relationship with the employee.

### XIII. Governing Law

The Plan shall be administered in accordance with California law, unless a superseding Federal law is applicable or, in the case of Canada, unless a superseding law under Canadian jurisdiction is applicable.

**EXHIBIT 12.1**

**CALPINE CORPORATION**

**RATIO OF EARNINGS TO FIXED CHARGES**

**YTD 2004**

	YEAR ENDED DECEMBER 31,				
	2000	2001	2002	2003	2004
	(IN THOUSANDS)				
COMPUTATION OF EARNINGS:					
Pretax income (loss) before adjustment for minority interest in consolidated subsidiaries and income or loss from equity investees .....	486,841	799,707	23,722	46,131	(669,115)
Fixed Charges .....	351,576	785,279	1,077,762	1,234,857	1,552,155
Amortization of capitalized interest .....	447	1,382	10,693	19,539	27,121
Distributed income of equity investees ....	29,979	5,983	14,117	141,627	29,869
Interest capitalized .....	(206,973)	(498,723)	(575,446)	(444,584)	(376,058)
Distribution of HIGH TIDES .....	(45,076)	(62,412)	(62,632)	(46,610)	--
<b>Total Earnings .....</b>	<b>616,794</b>	<b>1,031,216</b>	<b>488,216</b>	<b>950,960</b>	<b>563,972</b>
COMPUTATION OF FIXED CHARGES:					
Interest expensed and capitalized .....	285,346	689,694	978,123	1,150,890	1,516,860
Estimate of interest within rental expense	21,154	33,173	37,007	37,357	35,295
Distribution on HIGH TIDES .....	45,076	62,412	62,632	46,610	--
<b>Total fixed charges .....</b>	<b>351,576</b>	<b>785,279</b>	<b>1,077,762</b>	<b>1,234,857</b>	<b>1,552,155</b>
<b>RATIO OF EARNINGS TO FIXED CHARGES .....</b>	<b>1.75x</b>	<b>1.31x</b>	<b>--</b>	<b>--</b>	<b>-- (i)</b>

(i) For the year ended December 31, 2004, the Company had an earnings- to-fixed-charges coverage deficiency of approximately \$988.2 million, primarily as a result of (1) a pre-tax charge to earnings of \$202.1 million for oil and gas asset, (2) increased interest costs due to recent debt financings to support our growth, and (3) a decrease in average spark spreads per megawatt-hour and higher fuel expense in 2004 as compared with the same period in 2003.

EXHIBIT 21.1

SUBSIDIARIES OF CALPINE CORPORATION  
AS OF DECEMBER 31, 2004,  
AT LEAST 50% OWNED BY CALPINE CORPORATION

	State of Incorporation -----
1066917 Ontario Inc.	Ontario
3094479 Nova Scotia Company	Nova Scotia
985365 Alberta Ltd.	Alberta
Acadia Partners Pipeline, LLC	Louisiana
Acadia Power Partners, LLC	Delaware
Amelia Energy Center, LP	Delaware
Anacapa Land Company, LLC	Delaware
Anderson Springs Energy Company	California
Androscoggin Energy, Inc.	Illinois
Auburndale GP, LLC	Delaware
Auburndale Holdings, LLC	Delaware
Auburndale LP, LLC	Delaware
Auburndale Peaker Energy Center, LLC	Delaware
Auburndale Power Partners, Limited Partnership	Delaware
Augusta Development Company, LLC	Delaware
Aviation Funding Corp.	Delaware
Basento Energia S.r.l	Italy
Baytown Energy Center, LP	Delaware
Baytown Power GP, LLC	Delaware
Baytown Power, LP	Delaware
Bellingham Cogen, Inc.	California
Berrien Energy Center, LLC	Delaware
Bethpage Energy Center 3, LLC	Delaware
Bethpage Fuel Management Inc.	Delaware
Blue Heron Energy Center, LLC	Delaware
Blue Spruce Energy Center, LLC	Delaware
Brazos Valley Energy LP	Delaware
Brazos Valley Technology LP	Delaware
Broad River Energy LLC	Delaware
Broad River Holdings, LLC	Delaware
CalGen Equipment Finance Company, LLC	Delaware
CalGen Equipment Finance Holdings, LLC	Delaware
CalGen Expansion Company, LLC	Delaware
CalGen Finance Corp.	Delaware

	State of Incorporation -----
CalGen Project Equipment Finance Company One, LLC	Delaware
CalGen Project Equipment Finance Company Three, LLC	Delaware
CalGen Project Equipment Finance Company Two, LLC	Delaware
Calpine (Jersey) Holdings Limited	Jersey Island
Calpine (Jersey) Limited	Jersey Island
Calpine Acadia Holdings, LLC	Delaware
Calpine Administrative Services Company, Inc.	Delaware
Calpine Agnews, Inc.	California
Calpine Amelia Energy Center GP, LLC	Delaware
Calpine Amelia Energy Center LP, LLC	Delaware
Calpine Auburndale Holdings, LLC	Delaware
Calpine Auburndale, LLC	Delaware
Calpine Baytown Energy Center GP, LLC	Delaware
Calpine Baytown Energy Center LP, LLC	Delaware
Calpine Bethpage 3 Pipeline Construction Company, Inc.	New York
Calpine Bethpage 3, LLC	Delaware
Calpine Brazos Valley Energy Center GP, LLC	Delaware
Calpine Brazos Valley Energy Center LP, LLC	Delaware
Calpine c*Power, Inc.	Delaware
Calpine CalGen Holdings, Inc.	Delaware
Calpine California Development Company, LLC	Delaware
Calpine California Energy Finance, LLC	Delaware
Calpine California Equipment Finance Company, LLC	Delaware
Calpine California Holdings, Inc.	Delaware
Calpine Calistoga Holdings, LLC	Delaware
Calpine Canada Energy Finance ULC	Nova Scotia
Calpine Canada Energy Finance II ULC	Nova Scotia
Calpine Canada Energy Ltd.	Nova Scotia
Calpine Canada Natural Gas Partnership	Alberta
Calpine Canada Power Ltd.	Alberta
Calpine Canada Resources Company	Nova Scotia
Calpine Canada TriGas, Ltd.	Alberta
Calpine Canada Whitby Holdings Company	Alberta
Calpine Canadian Saltend L.P.	Alberta
Calpine Capital Trust	Delaware
Calpine Capital Trust II	Delaware
Calpine Capital Trust III	Delaware
Calpine Capital Trust IV	Delaware

	State of Incorporation -----
Calpine Capital Trust V	Delaware
Calpine CCFC GP, Inc.	Delaware
Calpine CCFC Holdings, Inc.	Delaware
Calpine CCFC LP, Inc.	Delaware
Calpine Central Texas GP, Inc.	Delaware
Calpine Central, Inc.	Delaware
Calpine Central, L.P.	Delaware
Calpine Central-Texas, Inc.	Delaware
Calpine Channel Energy Center GP, LLC	Delaware
Calpine Channel Energy Center LP, LLC	Delaware
Calpine Clear Lake Energy GP, LLC	Delaware
Calpine Clear Lake Energy, LP	Delaware
Calpine Cogeneration Corporation	Delaware
Calpine Construction Finance Company, L.P.	Delaware
Calpine Construction Management Company, Inc.	Delaware
Calpine Corpus Christi Energy GP, LLC	Delaware
Calpine Corpus Christi Energy, LP	Delaware
Calpine Decatur Pipeline, Inc.	Delaware
Calpine Decatur Pipeline, L.P.	Delaware
Calpine Deer Park Partner LLC	Delaware
Calpine Deer Park, LLC	Delaware
Calpine Development Holdings, Inc.	Delaware
Calpine Dighton, Inc.	Delaware
Calpine DP LLC	Delaware
Calpine East Fuels, Inc.	Delaware
Calpine Eastern Corporation	Delaware
Calpine Edinburg, Inc.	Delaware
Calpine Energy Finance Luxembourg S.a.r.l.	Luxembourg
Calpine Energy Holdings Limited	Alberta
Calpine Energy Management, L.P.	Delaware
Calpine Energy Services Canada Ltd.	Alberta
Calpine Energy Services Canada Partnership	Alberta
Calpine Energy Services Holdings, Inc.	Delaware
Calpine Energy Services, L.P.	Delaware
Calpine European Finance LLC	Delaware
Calpine Finance Company	Delaware
Calpine Fox Holdings, LLC	Delaware
Calpine Fox LLC	Wisconsin
Calpine Freeport GP, LLC	Delaware
Calpine Freeport LP, LLC	Delaware

	State of Incorporation -----
Calpine Freestone Energy GP, LLC	Delaware
Calpine Freestone Energy, LP	Delaware
Calpine Freestone, LLC	Delaware
Calpine Fuels Corporation	California
Calpine Generating Company, LLC	Delaware
Calpine Geysers Company, L.P.	Delaware
Calpine Gilroy 1, Inc.	Delaware
Calpine Gilroy 2, Inc.	Delaware
Calpine Gilroy Cogen, L.P.	Delaware
Calpine Global Investments, S.L.	Spain
Calpine Global Services Company, Inc.	Delaware
Calpine Gordonsville GP Holdings, LLC	Delaware
Calpine Gordonsville LP Holdings, LLC	Delaware
Calpine Gordonsville, LLC	Delaware
Calpine Greenleaf Holdings, Inc.	Delaware
Calpine Greenleaf, Inc.	Delaware
Calpine Hermiston, LLC	Delaware
Calpine Hidalgo Design, L.P.	Delaware
Calpine Hidalgo Energy Center, L.P.	Texas
Calpine Hidalgo Holdings, Inc.	Delaware
Calpine Hidalgo Power GP, LLC	Delaware
Calpine Hidalgo Power, LP	Delaware
Calpine Hidalgo, Inc.	Delaware
Calpine International Holdings, Inc.	Delaware
Calpine International Indonesia B.V.	The Netherlands
Calpine International Investment B.V.	The Netherlands
Calpine International, LLC	Delaware
Calpine Investment Holdings, LLC	Delaware
Calpine Jersey Cogen, Inc.	Delaware
Calpine Kennedy Airport, Inc.	Delaware
Calpine Kennedy Operators Inc.	New York
Calpine KIA, Inc.	New York
Calpine King City 1, LLC	Delaware
Calpine King City 2, LLC	Delaware
Calpine Securities Company, L.P.	Delaware
Calpine King City Cogen, LLC	Delaware
Calpine King City Cogen Inc.	California
Calpine King City, Inc.	Delaware
Calpine King City, LLC	Delaware

	State of Incorporation -----
Calpine Leasing Inc.	Delaware
Calpine Long Island, Inc.	Delaware
Calpine Lost Pines Operations, Inc.	Delaware
Calpine Louisiana Pipeline Company	Delaware
Calpine Magic Valley Pipeline, Inc.	Delaware
Calpine Mankato, LLC	Delaware
Calpine Marketing LLC	Delaware
Calpine Monterey Cogeneration, Inc.	California
Calpine Morris, LLC	Delaware
Calpine MVP, Inc.	Delaware
Calpine Natural Gas GP, LLC	Delaware
Calpine Natural Gas Holdings, LLC	Delaware
Calpine Natural Gas L.P.	Delaware
Calpine Natural Gas Services Limited	Alberta
Calpine NCTP GP, LLC	Delaware
Calpine NCTP, LP	Delaware
Calpine Newark, LLC	Delaware
Calpine Northbrook Corporation of Maine, Inc.	Illinois
Calpine Northbrook Energy Holdings, LLC	Delaware
Calpine Northbrook Energy Marketing, LLC	Delaware
Calpine Northbrook Energy, LLC	Delaware
Calpine Northbrook Holdings Corporation	Delaware
Calpine Northbrook Investors, LLC	Delaware
Calpine Northbrook Project Holdings, LLC	Delaware
Calpine Northbrook Services, LLC	Delaware
Calpine Northbrook Southcoast Investors, LLC	Delaware
Calpine NTC, LP	Delaware
Calpine Oneta Power I, LLC	Delaware
Calpine Oneta Power II, LLC	Delaware
Calpine Oneta Power, L.P.	Delaware
Calpine Operating Services Company, Inc.	Delaware
Calpine Operations Management Company, Inc.	Delaware
Calpine Parlin, LLC	Delaware
Calpine Pasadena Cogeneration, Inc.	Delaware
Calpine Pasadena Energy GP, LLC	Delaware
Calpine Pasadena Energy, LP	Delaware
Calpine Pastoria Holdings, LLC	Delaware
Calpine Peaker Holdings 2, LLC	Delaware
Calpine Peaker Holdings, LLC	Delaware

	State of Incorporation -----
Calpine Philadelphia, Inc.	Delaware
Calpine Pittsburg, LLC	Delaware
Calpine Power Company	California
Calpine Power Equipment LP	Texas
Calpine Power Management, Inc.	Delaware
Calpine Power Management, LP	Texas
Calpine Power Services, Inc	Delaware
Calpine Power, Inc.	Virginia
Calpine PowerAmerica, Inc.	Delaware
Calpine PowerAmerica, LP	Texas
Calpine PowerAmerica-CA, LLC	Delaware
Calpine PowerAmerica-CT, LLC	Delaware
Calpine PowerAmerica-MA, LLC	Delaware
Calpine PowerAmerica-ME, LLC	Delaware
Calpine PowerAmerica-NH, LLC	Delaware
Calpine PowerAmerica-NY, LLC	Delaware
Calpine PowerAmerica-OR, LLC	Delaware
Calpine PowerAmerica-PA, LLC	Delaware
Calpine PowerAmerica-RI, LLC	Delaware
Calpine Producer Services, L.P.	Texas
Calpine Project Holdings, Inc.	Delaware
Calpine Pryor, Inc.	Delaware
Calpine Riverside Holdings, LLC	Delaware
Calpine Rumford I, Inc.	Delaware
Calpine Rumford, Inc.	Delaware
Calpine Schuylkill, Inc.	Delaware
Calpine Siskiyou Geothermal Partners, L.P.	California
Calpine Sonoran Pipeline LLC	Delaware
Calpine Steamboat Holdings, LLC	Delaware
Calpine Stony Brook Operators, Inc.	New York
Calpine Stony Brook Power Marketing, LLC	Delaware
Calpine Stony Brook, Inc.	New York
Calpine Sumas, Inc.	California
Calpine TCCL Holdings, Inc.	Delaware
Calpine Texas Cogeneration, Inc.	Delaware
Calpine Texas Pipeline GP, Inc.	Delaware
Calpine Texas Pipeline LP, Inc.	Delaware
Calpine Texas Pipeline, L.P.	Delaware
Calpine Tiverton I, Inc.	Delaware

	State of Incorporation -----
Calpine Tiverton, Inc.	Delaware
Calpine UK Holdings Limited	United Kingdom
Calpine UK Operations Limited	United Kingdom
Calpine ULC I Holding, LLC	Delaware
Calpine University Power, Inc.	Delaware
Calpine Unrestricted Funding, LLC	Delaware
Calpine Unrestricted Holdings, LLC	Delaware
Calpine Vapor, Inc.	California
Calpine Canada Power Services, Ltd.	Ontario
Carville Energy LLC	Delaware
CCFC Development Company, LLC	Delaware
CCFC Equipment Finance Company, LLC	Delaware
CCFC Finance Corp.	Delaware
CCFC Project Equipment Finance Company One, LLC	Delaware
Celtic Power Corporation	Delaware
CES GP, LLC	Delaware
CES Marketing V, L.P.	Delaware
CES Marketing VI, LLC	Delaware
CES Marketing VII, LLC	Delaware
CES Marketing VIII, LLC	Delaware
CES Marketing IX, LLC	Delaware
CES Marketing X, LLC	Delaware
CG Cogen, LLC	Delaware
CGC Dighton, LLC	Delaware
Channel Energy Center, LP	Delaware
Channel Power GP, LLC	Delaware
Channel Power, LP	Delaware
Clear Lake Cogeneration Limited Partnership	Texas
CNEM Holdings, LLC	Delaware
CogenAmerica Asia Inc.	Delaware
CogenAmerica Parlin Supply Corp.	Delaware
Columbia Energy LLC	Delaware
Corpus Christi Cogeneration L.P.	Delaware
CPN 3rd Turbine, Inc.	Delaware
CPN Acadia, Inc.	Delaware
CPN Berks Generation, Inc.	Delaware
CPN Berks, LLC	Delaware
CPN Bethpage 3rd Turbine, Inc.	Delaware
CPN Cascade, Inc.	Delaware

	State of Incorporation -----
CPN Clear Lake, Inc.	Delaware
CPN Decatur Pipeline, Inc.	Delaware
CPN East Fuels, LLC	Delaware
CPN Energy Services GP, Inc.	Delaware
CPN Energy Services LP, Inc.	Delaware
CPN Freestone, LLC	Delaware
CPN Funding, Inc.	Delaware
CPN Hermiston, LLC	Delaware
CPN Insurance Corporation	Hawaii
CPN Morris, Inc.	Delaware
CPN Oxford, Inc.	Delaware
CPN Pipeline Company	Delaware
CPN Pleasant Hill Operating, LLC	Delaware
CPN Pleasant Hill, LLC	Delaware
CPN Power Services GP, LLC	Delaware
CPN Power Services, LP	Delaware
CPN Pryor Funding Corporation	Delaware
CPN Telephone Flat, Inc.	Delaware
Creed Energy Center, LLC	Delaware
De Pere Energy L.L.C.	Wisconsin
Decatur Energy Center, LLC	Delaware
DEC-LMEC Pipeline, LLC	Delaware
Deer Park Energy Center Limited Partnership	Delaware
Deer Park Energy Center, LLC	Delaware
Deer Park Power GP, LLC	Delaware
Deer Park Power, LP	Delaware
Delta Energy Center, LLC	Delaware
Dighton Power Associates Limited Partnership	Massachusetts
East Altamont Energy Center, LLC	Delaware
EMI/Tiverton, Inc.	Delaware
Fergas S.r.L.	Italy
Fond du Lac Energy Center, LLC	Wisconsin
Freeport Energy Center, LP	Delaware
Freestone Power Generation, LP	Texas
GEC Bethpage Inc.	Delaware
GEC Holdings, LLC	Delaware
Geothermal Energy Partners LLC	California
Geysers Power Company II, LLC	Delaware
Geysers Power Company, LLC	Delaware

	State of Incorporation -----
Geysers Power I Company	Delaware
Gilroy Energy Center, LLC	Delaware
Goldendale Energy Center, LLC	Delaware
Goose Haven Energy Center, LLC	Delaware
Grays Ferry Cogeneration Partnership	Pennsylvania
Grays Ferry Services Partnership	Pennsylvania
Hammond Energy LLC	Delaware
Haywood Energy Center, LLC	Delaware
Healdsburg Energy Company, L.P.	California
Hermiston Power Partnership	Oregon
Hillabee Energy Center, LLC	Delaware
Idlewild Fuel Management Corp.	Delaware
Inland Empire Energy Center, LLC	Delaware
JMC Bethpage, Inc.	Delaware
KIAC Partners	New York
King City Holdings, LLC	Delaware
Lake Wales Energy Center, LLC	Delaware
Lawrence Energy Center, LLC	Delaware
Lone Oak Energy Center, LLC	Delaware
Los Esteros Critical Energy Facility, LLC	Delaware
Los Medanos Energy Center LLC	Delaware
Magic Valley Gas Pipeline GP, LLC	Delaware
Magic Valley Gas Pipeline, LP	Delaware
Magic Valley Pipeline, L.P.	Delaware
Mankato Energy Center, LLC	Delaware
MEP Pleasant Hill, LLC	Delaware
Metcalf Energy Center, LLC	Delaware
Moapa Energy Center, LLC	Delaware
Mobile Energy LLC	Delaware
Modoc Power, Inc.	California
Morgan Energy Center, LLC	Delaware
Mount Hoffman Geothermal Company, L.P.	California
Mt. Vernon Energy LLC	Delaware
NewSouth Energy LLC	Delaware
Nissequogue Cogen Partners	New York
Northwest Cogeneration, Inc.	California
NTC Five, Inc.	Delaware
NTC GP, LLC	Delaware
Nueces Bay Energy LLC	Delaware

	State of Incorporation -----
O.L.S. Energy-Agnews, Inc.	Delaware
O'Brien Fuels, Inc.	Delaware
Odyssey Land Acquisition Company	Delaware
Otay Mesa Energy Center, LLC	Delaware
Pajaro Energy Center, LLC	Delaware
Pasadena Cogeneration L.P.	Delaware
Pastoria Energy Facility, L.L.C.	Delaware
PCF2 Holdings, LLC	Delaware
PCF2, LLC	Delaware
Philadephia Biogas Supply, Inc.	Delaware
Phipps Bend Energy Center, LLC	Delaware
Pine Bluff Energy, LLC	Delaware
Polsky SCQ Services, Inc. aka "Les Services Polsky SCQ Inc."	Quebec
Power Contract Financing III, LLC	Delaware
Power Contract Financing, LLC	Delaware
Power Investors, L.L.C.	Wisconsin
Power Systems MFG., LLC	Delaware
Quintana Canada Holdings, LLC	Delaware
Riverside Energy Center, LLC	Wisconsin
RockGen Energy LLC	Wisconsin
Rocky Mountain Energy Center, LLC	Delaware
Rumford Power Associates Limited Partnership	Maine
Russell City Energy Center, LLC	Delaware
Saltend Cogeneration Company Limited	United Kingdom
San Joaquin Valley Energy Center, LLC	Delaware
Silverado Geothermal Resources, Inc.	California
Skipanon Natural Gas, LLC	Delaware
Sonoma Geothermal Partners, L.P.	California
South Point Energy Center, LLC	Delaware
South Point Holdings, LLC	Delaware
Stony Brook Cogeneration, Inc.	Delaware
Stony Brook Fuel Management Corp.	Delaware
Sutter Dryers, Inc.	California
Tahoma Energy Center, LLC	Delaware
TBG Cogen Partners	New York
Texas City Cogeneration, L.P.	Texas
Texas Cogeneration Company	Delaware
Texas Cogeneration Five, Inc.	Delaware
Texas Cogeneration One Company	Delaware



## EXHIBIT 23.1

### CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in Amendment No. 3 to Registration Statement No. 333-87427 on Form S-3, Amendment No. 2 to Registration Statement No. 333-72583, 333-59786, and 333-116510 on Form S-3, Post-Effective Amendment No. 2 to Registration Statement No. 333-40652 and 333-76880 on Form S-3, Amendment No. 1 to Registration Statement No. 333-71966 and 333-85654 on Form S-3, Registration Statement No. 333-16529, 333-37366, 333-59200, 333-106729, 333-106733, 333-115487, 333-117460, and 333-117461 on Form S-8, and Post-Effective Amendment No. 1 to Registration Statement No. 333-34002 on Form S-8 of Calpine Corporation of our report dated March 10, 2003 (October 21, 2003 as to paragraph two of Note 10, March 22, 2004 as to paragraphs six and thirteen of Note 10, and March 31, 2005 as to paragraphs seven and eight of Note 10), which report expresses an unqualified opinion and includes emphasis relating to the adoption of a new accounting standard in 2002 and divestitures, appearing in this Form 10-K of Calpine Corporation.

*/s/ DELOITTE & TOUCHE LLP*

*San Jose, California  
March 31, 2005*

**Exhibit 23.2**

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We hereby consent to the incorporation by reference in Registration Statements Nos. 333-72583, 333-87427, 333-40652, 333-59786, 333-71966, 333-76880, 333-116510 and 333-85654 on Form S-3; and Registration Statements Nos. 333-16529, 333-34002, 333-37366, 333-59200, 333-106729, 333-106733, 333-115487, 333-117460 and 333-117461 on Form S-8 of Calpine Corporation of our report dated March 31, 2005 relating to the financial statements, financial statement schedule, management's assessment of the effectiveness of internal control over financial reporting and the effectiveness of internal control over financial reporting, which appears in this Form 10-K.

*/s/ PricewaterhouseCoopers LLP*

*Los Angeles, California  
March 31, 2005*

**EXHIBIT 23.3**

**[NETHERLAND, SEWELL & ASSOCIATES, INC. LETTERHEAD]**

**CONSENT OF NETHERLAND, SEWELL & ASSOCIATES, INC.**

We hereby consent to the incorporation by reference on Form 10-K of Calpine Corporation (the "Company") and to the references to this firm for the Company's estimated domestic proved reserves contained on Form 10-K for the year ended December 31, 2004.

**NETHERLAND, SEWELL & ASSOCIATES, INC.**

*BY: \s\ Danny D. Simmons*

-----  
*Danny D. Simmons*  
*Executive Vice President*

*Houston, Texas*  
*March 31, 2005*

Please be advised that the digital document you are viewing is provided by Netherland, Sewell & Associates, Inc. (NSAI) as a convenience to our clients. The digital document is intended to be substantively the same as the original signed document maintained by NSAI. The digital document is subject to the parameter,s, limitations, and conditions stated in the original document. In the event of any difference between the digital document and the original document the original document shall control and supersede the digital document.

**EXHIBIT 23.4**

[Gilbert Laustsen Jung Letterhead]

**LETTER OF CONSENT**

We hereby consent to the incorporation by reference on Form 10-K of Calpine Corporation (the "Company") and to the said references to this firm for the Company's estimated Canadian proved reserves contained on form 10-K dated December 31, 2004.

Yours truly,

**GILBERT LAUSTSEN JUNG  
ASSOCIATES LTD.**

**ORIGINALLY SIGNED BY**

Myron J. Hladyshevsky, P. Eng.  
Vice-President

Calgary, Alberta  
March 31, 2005

**Exhibit 31.1**

**CERTIFICATIONS**

I, Peter Cartwright, certify that:

1. I have reviewed this annual report on Form 10-K of Calpine Corporation (the "registrant");
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

*Date: March 31, 2005*

*/s/ Peter Cartwright*

-----

*Peter Cartwright*

*Chairman, President and Chief Executive Officer  
Calpine Corporation*

**Exhibit 31.2**

**CERTIFICATIONS**

I, Robert D. Kelly, certify that:

1. I have reviewed this annual report on Form 10-K of Calpine Corporation (the "registrant");
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

*Date: March 31, 2005*

*/s/ Robert D. Kelly*

-----

*Robert D. Kelly*

*Executive Vice President and Chief Financial Officer  
Calpine Corporation*

**Exhibit 32.1**

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO**

**SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of Calpine Corporation (the "Company") on Form 10-K for the period ending December 31, 2004, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), each of the undersigned does hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of his knowledge, based upon a review of the Report:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operation of the Company.

*/s/ Peter Cartwright*

-----  
*Peter Cartwright  
Chairman, President and  
Chief Executive Officer  
Calpine Corporation*

*Dated: March 31, 2005*

*/s/ Robert D. Kelly*

-----  
*Robert D. Kelly  
Executive Vice President and  
Chief Financial Officer  
Calpine Corporation*

A signed original of this written statement required by Section 906 has been provided to Calpine Corporation and will be retained by Calpine Corporation and furnished to the Securities and Exchange Commission or its staff upon request.

**EXHIBIT 99.1**

**ACADIA POWER PARTNERS, LLC  
AND SUBSIDIARY  
CONSOLIDATED FINANCIAL STATEMENTS  
DECEMBER 31, 2004, 2003 AND 2002**

ACADIA POWER PARTNERS, LLC AND SUBSIDIARY  
INDEX  
DECEMBER 31, 2004, 2003 AND 2002

-----  
PAGE(S)

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM.....	1
CONSOLIDATED FINANCIAL STATEMENTS	
Consolidated Balance Sheets.....	2
Consolidated Statements of Operations.....	3
Consolidated Statements of Members' Capital.....	4
Consolidated Statements of Cash Flows.....	5
Notes to Consolidated Financial Statements.....	6-14

**PRICEWATERHOUSECOOPERS LLP**

1201 Louisiana  
Suite 2900  
Houston TX 77002-5678  
Telephone (713) 356 4000  
Facsimile (713) 356 4717

**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

To the Members of  
Acadia Power Partners, LLC and subsidiary:

In our opinion, the accompanying consolidated balance sheets and the related consolidated statements of operations, of members' capital and of cash flows present fairly, in all material respects, the financial position of Acadia Power Partners, LLC and subsidiary (the "Company") at December 31, 2004 and 2003, and the results of their operations and their cash flows for each of the two years in the period ended December 31, 2004 in conformity with accounting principles generally accepted in the United States of America. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits of these statements in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

As discussed in Notes 9 and 10, Calpine Energy Services ("CES") has asserted certain claims related to dispute resolution under provisions of two tolling agreements between CES and the Company. The ultimate resolution of this dispute may have a significant adverse effect on the Company's financial position, results of operations and cash flows in future periods.

As discussed in Note 5, the Company's revenues are received from transactions with CES, a related party and certain other transactions are executed with various entities of Calpine Corporation and Cleco Corporation, all of which are related parties.

*/s/PricewaterhouseCoopers LLP*

*Houston, Texas  
March 25, 2005*

**ACADIA POWER PARTNERS, LLC AND SUBSIDIARY  
CONSOLIDATED BALANCE SHEETS  
DECEMBER 31, 2004 AND 2003**

	2004	2003
	-----	-----
ASSETS		
Current assets		
Cash and cash equivalents	\$ 3,462,436	\$ 3,286,987
Accounts receivable -- related parties	6,450,902	6,187,895
Inventory	1,775,097	1,773,860
Other current assets	2,240,378	2,967,907
	-----	-----
Total current assets	13,928,813	14,216,649
Plant and equipment, net (Note 4)	462,653,850	474,560,519
Other noncurrent assets	7,631,952	4,167,438
	=====	=====
Total assets	\$484,214,615	\$492,944,606
	=====	=====
LIABILITIES AND MEMBERS' CAPITAL		
Current liabilities		
Accounts payable -- trade	\$ 547,310	\$ 2,600,697
Accounts payable -- related parties	389,770	324,978
Accrued liabilities	8,132,870	784,810
	-----	-----
Total current liabilities	9,069,950	3,710,485
Commitments and Contingencies (Note 9)		
Members' capital	475,144,665	489,234,121
	-----	-----
Total liabilities and members' capital	\$484,214,615	\$492,944,606
	=====	=====

The accompanying notes are an integral part of these consolidated financial statements.

**ACADIA POWER PARTNERS, LLC AND SUBSIDIARY  
CONSOLIDATED STATEMENTS OF OPERATIONS  
YEARS ENDED DECEMBER 31, 2004, 2003 AND 2002**

	2004	2003	2002
	-----	-----	-----
			(Unaudited)
REVENUES			
Nonaffiliated	\$-	\$ 16,053,598	\$ 23,784,443
Related parties	74,692,887	65,024,892	25,317,550
	-----	-----	-----
Total revenues	74,692,887	81,078,490	49,101,993
POWER, PLANT GENERATING AND MARKETING EXPENSE			
Plant operating expense	18,196,308	12,750,635	4,997,390
Depreciation expense	14,257,335	13,919,584	6,579,496
Purchased power expense -- related parties	951,041	149,961	7,839,121
	-----	-----	-----
Total power plant generating and marketing expense	33,404,684	26,820,180	19,416,007
	-----	-----	-----
Income from operations	41,288,203	54,258,310	29,685,986
OTHER INCOME AND EXPENSES			
Contract termination gain (Note 7)	-	105,500,000	-
Other income (expense)	13,367	(49,898)	3,139
	-----	-----	-----
Net income	\$ 41,301,570	\$ 159,708,412	\$ 29,689,125
	=====	=====	=====

The accompanying notes are an integral part of these consolidated financial statements.

ACADIA POWER PARTNERS, LLC AND SUBSIDIARY CONSOLIDATED STATEMENTS OF MEMBERS' CAPITAL YEARS ENDED DECEMBER 31, 2004, 2003 AND 2002

	CALPINE ACADIA HOLDINGS, LLC	ACADIA POWER HOLDINGS, LLC	TOTAL MEMBERS' CAPITAL
	-----	-----	-----
BALANCES AT DECEMBER 31, 2001 (UNAUDITED)	\$ 210,375,160	\$ 210,375,160	\$ 420,750,320
Cash contributions (unaudited)	40,284,962	40,284,962	80,569,924
Distributions (unaudited)	(11,969,341)	(11,969,341)	(23,938,682)
Net income (unaudited)	14,844,562	14,844,563	29,689,125
	-----	-----	-----
BALANCES AT DECEMBER 31, 2002 (UNAUDITED)	253,535,343	253,535,344	507,070,687
Distributions	(136,977,283)	(40,567,695)	(177,544,978)
Net income	79,854,206	79,854,206	159,708,412
Interest on distributions	(3,822,083)	3,822,083	--
	-----	-----	-----
BALANCES AT DECEMBER 31, 2003	192,590,183	296,643,938	489,234,121
Distributions	(20,695,513)	(34,695,513)	(55,391,026)
Net income	20,650,785	20,650,785	41,301,570
Interest on distributions	(5,739,330)	5,739,330	--
	-----	-----	-----
BALANCES AT DECEMBER 31, 2004	\$ 186,806,125	\$ 288,338,540	\$ 475,144,665
	=====	=====	=====

The accompanying notes are an integral part of these consolidated financial statements.

**ACADIA POWER PARTNERS, LLC AND SUBSIDIARY  
CONSOLIDATED STATEMENTS OF CASH FLOWS  
YEARS ENDED DECEMBER 31, 2004, 2003 AND 2002**

	2004	2003	2002
	-----	-----	-----
			(Unaudited)
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>			
Net income	\$ 41,301,570	\$ 159,708,412	\$ 29,689,125
Adjustments to reconcile net income to net cash provided by operating activities			
Depreciation	14,257,335	13,919,584	6,579,496
Changes in operating assets and liabilities			
Accounts receivable			
Trade	--	3,625,690	(3,625,690)
Related parties	(263,007)	(2,628,042)	1,785,637
Inventory	(1,237)	(491,252)	(1,282,608)
Other current assets	727,529	(86,487)	(2,881,420)
Noncurrent assets	(3,464,514)	(1,698,933)	(2,468,505)
Accounts payable and accrued liabilities			
Trade	(2,053,387)	(121,720)	(13,386,296)
Related parties	64,792	324,978	(5,345,490)
Accrued Liabilities	7,348,059	(700,543)	
Net cash provided by operating activities	57,917,140	171,851,687	9,064,249
	-----	-----	-----
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>			
Purchases of plant and equipment	(2,350,665)	(6,294,795)	(76,011,435)
Cash proceeds from sales and use tax refund	--	13,913,014	--
Net cash provided by (used for) investing activities	(2,350,665)	7,618,219	(76,011,435)
	-----	-----	-----
<b>CASH FLOWS FROM FINANCING ACTIVITIES</b>			
Contributions	--	--	80,569,924
Distributions	(55,391,026)	(177,544,978)	(23,938,682)
Net cash provided by (used for) investing activities	(55,391,026)	(177,544,978)	56,631,242
	-----	-----	-----
Net increase (decrease) in cash and cash equivalents	175,449	1,924,928	(10,315,944)
	-----	-----	-----
<b>CASH AND CASH EQUIVALENTS</b>			
Beginning	3,286,987	1,362,059	11,678,003
Ending	\$ 3,462,436	\$ 3,286,987	\$ 1,362,059
	=====	=====	=====

The accompanying notes are an integral part of these consolidated financial statements.

## 1. ORGANIZATION AND OPERATIONS OF THE COMPANY

These financial statements consolidate the accounts of Acadia Power Partners, LLC (the "Company"), a Delaware limited liability company, and its wholly owned subsidiary, Acadia Partners Pipeline, LLC (the "Subsidiary"). All intercompany balances have been eliminated. All information for the year ended December 31, 2002 included in these financial statements is unaudited.

The Company, an electric generation company, was formed on October 8, 1999, for the purpose of designing, developing, constructing, owning, and operating a power generation project located in Louisiana. At formation, Cleco Midstream Resources, LLC ("Cleco"), a Louisiana limited liability company, and IEP USA Holdings, LLC ("IEP"), a Delaware limited liability company, owned 70 percent and 30 percent interests in the Company, respectively. The Subsidiary was formed on June 26, 2000, with the Company as the sole member.

In February 2000 Cleco and IEP transferred their respective ownership interests in the Company to Acadia Power Holdings, LLC ("Acadia Holdings"), a Louisiana limited liability company, and Calpine Acadia Holdings, LLC ("CAH"), a Delaware limited liability company and subsidiary of Calpine Corporation ("Calpine"). CAH and Acadia Holdings (collectively, the "Members") entered into the Amended and Restated Limited Liability Company Agreement (the "Agreement") dated February 29, 2000. Under the Agreement, the Company constructed, owns and operates a 1,160-megawatt (MW) natural gas-fired electric generation plant (the "Facility") located in Acadia Parish, Louisiana. Each member holds a 50 percent interest in the Company as of December 31, 2004 and 2003. The Members share in profits and losses of the Company in proportion of their ownership interests. The Company is governed by an executive committee with two representatives from each Member.

Construction on the Facility began in mid 2000 and the dates of commercial operations for Phase I and Phase II were July 2002, and August 2002, respectively. The Agreement will continue 49 years after the date that commercial operations begin. The Company was in the development stage until July 2002, when commercial operations began.

## 2. BUSINESS RISKS

Several current issues in the power industry could have an effect on the Company's financial performance. Some of the business risks which could cause future results to differ from expectations include (1) legislative and regulatory initiatives regarding deregulation, regulation or restructuring of the electric utility industry; (2) the extent and timing of the entry of additional competition in the market in which the Company operates; (3) state, federal and other rate regulations in the areas in which the Company does business; (4) changes in or application of environmental and other laws and regulations to which the Company is subject to; (5) changes in market conditions, including developments in energy and commodity supply, volume and pricing; (6) weather and other natural phenomena; (7) and the direct or indirect effects on the business resulting from the financial difficulties of competitors of the Company, including but not limited to, their effects on liquidity in the trading and power industry, and its effects on the views of the capital markets regarding the energy or trading industry.

### 3. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

#### **USE OF ESTIMATES**

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from these estimates. The most significant estimates with regard to these financial statements relate to the useful lives and carrying value of the generation facility and related assets and depreciation. Additionally, the Company periodically reviews its assets for impairment requiring the Company to estimate future revenues and cash flows over the useful lives of the assets.

#### **OPERATIONAL DATA**

Operational data including, but not limited to, megawatt ("MW") and megawatt hours ("MWh") throughout these financial statements are unaudited.

#### **CASH AND CASH EQUIVALENTS**

The Company considers all highly liquid investments purchased with an original maturity of three months or less to be cash equivalents. The carrying amount of these instruments approximates fair value because of their short maturity.

#### **ACCOUNTS RECEIVABLE AND ACCOUNTS PAYABLE**

Accounts receivable and payable represent amounts due from customers and owed to vendors, respectively.

#### **INVENTORY**

The Company's inventories primarily include small parts. Inventory is valued at the lower of cost or market using the average cost method. Costs for large replacement parts estimated to be used within one year are determined using the specific identification method. For other replacement parts, costs are generally determined using the weighted average cost method.

#### **OTHER CURRENT ASSETS**

Other current assets include prepaid expenses for insurance and long-term service agreement (LTSA) payments (See Note 6 for further discussion of LTSA).

#### **MAJOR MAINTENANCE**

As major maintenance occurs, and as parts are replaced on the plants' steam and combustion turbines, the costs are either expensed or transferred to property, plant and equipment and depreciated over the parts' estimated useful lives, generally three to six years, depending on the nature of maintenance activity performed under the service agreement (See Note 8).

#### **LONG-LIVED ASSETS**

In accordance with Financial Accounting Standards Board ("FASB") Statement of Financial Accounting Standards ("SFAS") No. 144, Accounting for the Impairment or Disposal of Long-Lived Assets, the Company evaluates the impairment of long-lived assets, based on the projection of undiscounted pre-interest expense and pre-tax expense cash flows whenever events or changes in circumstances indicate that the carrying amounts of such assets may not be recoverable. In the

event such cash flows are not expected to be sufficient to recover the recorded value of the assets, the assets are written down to their estimated fair values. No impairment was identified in 2004 and 2003.

### **CONCENTRATION OF CREDIT RISK**

The financial instruments that potentially subject the Company to concentration of credit risk consist primarily of accounts receivable. The Company's revenues are primarily from sales to Calpine Energy Services, L.P. ("CES"), a subsidiary of Calpine (See Notes 5 and 9).

### **FAIR VALUE OF FINANCIAL INSTRUMENTS**

The carrying amounts of accounts receivable and accounts payable, approximate their respective fair value because of their short maturity.

### **INCOME TAXES**

The Company is a limited liability company and, for income tax purposes, is treated as a partnership. The Company's taxable income or loss is therefore passed through to its members and reported on the respective members' tax returns. Accordingly, there is no income tax provision or current or deferred taxes in these financial statements.

### **REVENUE RECOGNITION**

The Company has entered into tolling agreements that have been accounted for as operating leases. The Company recognizes revenue based on a rate that is straight-lined over the term of the lease (See Notes 5, 6 and 7).

### **RECLASSIFICATIONS**

We have made certain reclassifications in the consolidated financial statements for the prior year to conform to the current year's presentation.

### **NEW ACCOUNTING PRONOUNCEMENTS**

In November 2004, the Financial Accounting Standards Board ("FASB") issued Statement of Financial Accounting Standards No. 151 ("SFAS 151"), Inventory Costs, an amendment of ARB No. 43, Chapter 4. This Statement amends the guidance in ARB No. 43, Chapter 4, "Inventory Pricing," to clarify the accounting for abnormal amounts of idle facility expense, freight, handling costs, and wasted material (spoilage). Paragraph 5 of ARB 43, Chapter 4, previously stated that "under some circumstances, items such as idle facility expense, excessive spoilage, double freight, and rehandling costs may be so abnormal as to require treatment as current period charges". This Statement requires those items to be recognized as a current-period charge regardless of whether they meet the criterion of "so abnormal". In addition, this Statement requires that fixed production overhead costs to be allocated to the costs of conversion be based on the normal capacity of the production facilities. The provisions of SFAS 151 are applicable to inventory costs incurred during fiscal years beginning after June 15, 2005. Adoption of this statement is not expected to materially impact the Company's results of operations, financial position, or cash flows.

In December 2004, the Financial Accounting Standards Board ("FASB") issued Statement of Financial Accounting Standards No. 153 ("SFAS 153"), Exchanges of Nonmonetary Assets -Accounting Principles Board Opinion No. 29, Accounting for Nonmonetary Transactions ("APB No. 29"). This standard eliminates the exception in APB No. 29 for nonmonetary exchanges of similar productive assets and replaces it with a general exception for exchanges of nonmonetary assets that do not have commercial substance. It requires exchanges of productive assets to be

accounted for at fair value, rather than at carryover basis, unless (1) neither the asset received nor the asset surrendered has a fair value that is determinable within reasonable limits or (2) the transaction lacks commercial substance (as defined). A nonmonetary exchange has commercial substance if the future cash flows of the entity are expected to change significantly as a result of the exchange.

The new standard SFAS 153 will not apply to the transfers of interests in assets in exchange for an interest in a joint venture and amends FASB 66, Accounting for Sales of Real Estate, to clarify that exchanges of real estate for real estate should be accounted for under APB No. 29. It also amends FASB Statement No. 140, Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities (SFAS 140) to remove the existing scope exception relating to exchanges of equity method investments for similar productive assets to clarify that such exchanges are within the scope of SFAS 140 and not APB 29. SFAS 153 is effective for nonmonetary asset exchanges occurring in fiscal periods beginning after June 15, 2005. Adoption of this statement is not expected to materially impact the Company's results of operations, financial position, or cash flows.

#### 4. PLANT AND EQUIPMENT, NET

Plant and equipment, net is stated at cost less accumulated depreciation. Depreciation is computed on a straight-line basis over the estimated useful lives of the assets, generally 35 years for our power plant assets, including interconnect pipelines, with an estimated salvage value of 10 percent of the original cost. For all power plant assets with useful life of 5 years no salvage value is estimated. As of December 31, 2004 and 2003, the components of property, plant and equipment were as follows:

	2004	2003
	-----	-----
Power plant and related equipment		
Buildings, Machinery & Equipment	\$ 494,337,534	\$ 492,281,981
Land	2,777,618	2,777,618
Less: Accumulated depreciation	(34,461,302)	(20,499,080)
	-----	-----
Plant and equipment, net	\$ 462,653,850	\$ 474,560,519
	=====	=====

In 2002, the Company filed for refunds of sales and use taxes paid during construction, pursuant to Louisiana's Enterprise Zone Program. The sales and use taxes were paid over a period from January 2001 through December 2002 and capitalized as a part of the cost for plant and equipment acquired by the Company. Total refunds of \$13,913,014 were recorded as a reduction of plant and equipment in 2003.

#### 5. RELATED PARTIES

The Company entered into a tolling agreement dated July 27, 2001, with Calpine Energy Services ("CES"), which is effective for 20 years beginning July 1, 2002. Under the agreement, the Company has granted CES the right to receive the output of one train of the Facility consisting of

approximately one-half of the full capacity. In accordance with the terms of the contract, CES will supply all fuel necessary to generate the energy it takes and will pay the Company a capacity charge as well as an operation and maintenance fee. This arrangement is being accounted for as an operating lease. The rate established in this agreement varies in the future, and therefore the Company recognizes revenue based on a rate that is straight-lined over the life of the lease. The Company recognized revenues of \$44,726,537, \$44,166,692, and \$25,317,550 in 2004, 2003 and 2002, respectively, based on this agreement, of which \$7,631,952, and \$4,167,438 were recorded as other noncurrent asset as of December 31, 2004 and 2003, respectively.

On May 10, 2003, the Company entered into a second tolling agreement with CES effective through June 30, 2022. The agreement was completed concurrently with the termination of a previous tolling agreement dated October 9, 2000, with Aquila Energy Marketing Corporation ("Aquila"), which was effective for 20 years beginning July 1, 2002 (See Notes 6 and 7). This CES agreement is similar in nature to the agreement described above. Under this agreement, the Company has granted CES the right to receive the output of the second train of the Facility consisting of approximately one-half of the full capacity of the Facility. In accordance with the terms of the contract, CES will supply fuel necessary to generate the energy it takes and will pay the Company a capacity charge as well as an operation and maintenance fee. This agreement is being accounted for as an operating lease. The rate established in the agreement is fixed and therefore the lease revenues are recognized on a straight-line basis. The Company recorded revenues of \$29,966,350, \$20,858,200, and \$0 in 2004, 2003 and 2002, respectively, based on this agreement.

The Company's revenue from the agreements above includes \$870,041, \$149,961 and \$7,260,033 in 2004, 2003, and 2002, respectively, for the sale of purchased power to CES. The cost of this power was recorded as purchase power expense - related parties.

As a result of the two 20-year tolling agreements with CES, all of the output from the Acadia Power Plant is currently marketed by CES.

The Company's accounts receivable related to the agreements noted above were \$6,450,902 and \$6,187,895 as of December 31, 2004 and 2003, respectively.

The minimum lease rentals to be received by the Company in connection with the above tolling agreements are \$64 million, \$64 million, \$66 million, \$68 million and \$68 million for the years 2005 through 2009, respectively. Minimum lease rentals for 2010 and thereafter are \$848 million.

The Company has contracted with Calpine Central, LP ("CCLP"), a subsidiary of Calpine, to provide project management services, which have included the design, construction, and operation of the Facility. The project management agreement dated February 29, 2000, terminates at the fiftieth anniversary of the commercial operation date (See Note 1). The Company agrees to reimburse costs incurred by CCLP included in the approved operating budget and future operating budgets. Based on this agreement, the Company reimbursed CCLP for \$5,436,243, \$2,934,888, and \$1,575,505 in 2004, 2003 and 2002, respectively.

The Subsidiary has a Pipeline Operating Agreement with Cleco Energy, LLC, a subsidiary of Cleco, dated March 1, 2002. The agreement covers all operations, repair, improvements, alterations, inspections, testing, protection and other operations and activities that are necessary to maintain the facility in accordance with federal safety and maintenance standards promulgated

under CFR part 192 and the regulations of the Louisiana Office of Conservation, and to accomplish the business objectives of the Subsidiary. Based on this agreement, the Subsidiary was reimbursed for these services which totaled \$106,853, \$96,061, and \$209,819 in 2004, 2003 and 2002, respectively.

The Company has an Agreement for Electric Service with Cleco Power, LLC ("Cleco Power"), the successor to Cleco Utility Group, Inc., an affiliate of Cleco, dated December 15, 2001. The agreement covers electrical purchases of the Facility for a five-year period pursuant to Cleco Power's Louisiana Public Service Commission ("LPSC") Rate Schedule GS and its Rider Schedule for Long-Term Economic Development Services, subject to approval by the LPSC. Based on this agreement, the Company paid \$1,081,173, \$2,117,600, and \$7,839,121 for services received in 2004, 2003 and 2002, respectively from Cleco Power.

The Company has a Phase Shifting Transformer Funding Agreement with Cleco Power, dated January 4, 2001. The agreement covers the purchase and installation of a Phase Shifting Transformer. The installation of this project concluded in 2003. Based on this agreement, the Company paid \$0, \$1,052,238, and \$0 for the purchase and installation of the transformer in 2004, 2003 and 2002, respectively to Cleco Power.

The Company has an Interconnection and Operating Agreement with Cleco Power, dated February 25, 2000, pursuant to which the Company's generation facilities are interconnected to Cleco Power's adjacent transmission facilities and the transmission system of Entergy Services, Inc. The Company is obligated to construct, own, operate and maintain all the interconnection facilities and equipment on its side of the point of interconnections, and Cleco Power is obligated to construct, own, operate, and maintain the interconnection facilities and equipment on its side of the point of interconnection. Based on this agreement, the Company has reimbursed Cleco Power its construction costs and operating costs for these customer specific interconnection facilities. The Company reimbursed Cleco Power for those costs which totaled \$45,594, \$67,478, and \$68,584, in 2004, 2003 and 2002, respectively.

## 6. OTHER SIGNIFICANT AGREEMENTS

On October 9, 2000, the Company entered into a tolling agreement with Aquila that was effective for 20 years beginning July 1, 2002. Under the agreement, the Company granted Aquila the right to receive the output of one train of the facility. In accordance with the terms of the contract, Aquila supplied all fuel necessary to generate the energy it took and paid the Company a capacity charge as well as an operation and maintenance fee. Revenues recognized under this agreement were \$0, \$16,053,598, and \$23,784,443 in 2004, 2003 and 2002, respectively. Revenue includes \$0, \$0, and \$579,087 in 2004, 2003 and 2002, respectively, for sale of purchased power to Aquila. The cost of this purchased power was recorded as purchase power expense - related parties (See Note 5). On May 9, 2003, the Company terminated its tolling agreement with Aquila (See Note 7).

The Company entered into an interconnection and operating agreement with Entergy Gulf States, Inc. ("Entergy"), as amended and restated January 4, 2001. The agreement states that Entergy will reimburse the Company for costs incurred by the Company for transmission system upgrades, totaling approximately \$4,740,000. Entergy will reimburse the Company for these costs through future transmission credits or cash payments, as applicable. The Company received in a combination of cash and credit reimbursements of \$484,934, \$1,593,122, and \$1,538,727 in 2004,

2003 and 2002, respectively, based on this agreement. Total deferred transmission credit balances as of December 31, 2004 and 2003 were \$1,123,217, and \$1,608,151 respectively, which were included in Other Current Assets.

The Company entered into a Procurement and Marketing Agreement dated October 9, 2003 with ONEOK Energy Marketing and Trading Company, L.P. ("ONEOK"), pursuant to which ONEOK shall arrange for the provision of replacement power and test fuel, and the sale of test power and natural gas that is not used by the Company's generation facility, as requested by the Company from time to time. The Company shall pay ONEOK for all actual costs incurred for this service (as defined in the agreement) plus a service fee applicable to each MWh of replacement power and each MMBtu of test fuel procured and/or sold during such month and a fixed fee. No expenses were incurred by the Company in relation to this agreement in 2004, 2003 and 2002.

## 7. CONTRACT TERMINATION

The Company had previously entered into a tolling agreement dated October 9, 2000, with Aquila, which was effective for 20 years beginning July 1, 2002. Under the agreement, the Company had granted Aquila the right to receive the output of one train of the Facility, consisting of approximately one-half of the full capacity of the 1,160-MW Facility. On May 9, 2003, the Company terminated its 580-MW, 20-year tolling agreement with Aquila in return for a cash settlement of \$105.5 million, which was recognized as a gain in other income and expenses. CAH and Acadia Holdings agreed to allocate the distributions as follows: (i) CAH received \$105.5 million cash distribution in 2003; (ii) Acadia Holdings is entitled to receive an annual priority cash distribution of \$14.0 million starting from July 2003 through June 30, 2022; (iii) all distributions in excess of the first \$14.0 million are allocated between members in accordance with their respective interest; (iv) the priority distributions include imputed interest based on the rate of approximately 11.6%. Imputed interest for 2004 and 2003 of \$5.7 and \$3.8 million was recorded as an adjustment to the Members' capital balances.

## 8. SIGNIFICANT EVENTS

### UNSCHEDULED OUTAGES

On June 30, 2004, Combustion Gas Turbine CT-12 failed. This Siemens Westinghouse turbine was not under warranty at the time of failure. However, the replacement cost for the damaged components are described under the terms of the Long Term Service Agreement between the Company and Siemens Westinghouse, which will be escalated as a result of the forced outage. The cost of repairs performed by the third party contractors of \$5.5 million was included in plant operating expense for 2004.

On August 3, 2004, it was discovered that the exhaust cylinder for CT-12 had two cracked struts, requiring a second forced outage to replace the cracked cylinder. The cost of repairs performed by the third party contractors of \$2.7 million was included in plant operating expense for 2004.

## 9. COMMITMENTS AND CONTINGENCIES

The Company entered into a long-term service agreement for spare parts, maintenance and related technical services on May 3, 2002. The term of the agreement, with respect to each of the Company's four combustion turbines began upon the commercial operation date, and terminates on an individual combustion turbine basis, at the end of the scheduled maintenance following the second major inspection of each respective combustion turbine or sixteen years, whichever comes first. The maintenance and payment schedules are based on estimates of when maintenance will occur on the turbines based on the number of run hours. The actual timing of maintenance may vary based on actual hours run versus estimated hours run due to operational and performance considerations. The agreement is cancelable by the Company in whole or part at any time by providing written notice to the counterparty. Upon notice to cancel by the Company, the Company is subject to a declining cancellation fee. At December 31, 2004, the contingent cancellation fee was \$2,000,000.

### **CES DISPUTE**

IN a series of written notices commencing in May 2004, CES notified the Company that CES was invoking certain rights regarding dispute resolution under the two CES tolling agreements mentioned in Note 5 above and requested that the Company conduct a simultaneous capacity test of both Power Blocks of the Company's electric generation facility in the manner specified within the notices. CES notified the Company that it may withhold up to one-half of the monthly payments due to the Company under the two CES tolling agreements, and may take other action, including, without limitation, (i) unwinding Calpine's interest in the Company, (ii) terminating the two CES tolling agreements, (iii) asserting claims against Cleco Power for alleged flawed interconnection studies, and/or (iv) seeking reimbursement for the alleged overpayment of capacity fees from August 2003. CES has indicated that the dispute is primarily based upon transmission constraints that, according to CES' allegations, limit CES' ability to deliver the Company's capacity and energy to the wholesale market. On September 27, 2004, CES sent a letter to the Company claiming to be a notice of default under the two tolling agreements. In the letter, CES claimed that the Company's refusal to conduct the requested simultaneous capacity test was a default under the two CES tolling agreements. Although CES did not expressly so state, the Company believed that CES might attempt to use the test results as an alleged basis to reduce its monthly payments to the Company under the two CES tolling agreements. The Company performed the requested simultaneous test under protest on October 12, 2004, while reserving all of its rights to assert that such capacity test is not required by the testing provisions of the two CES tolling agreements and does not entitle CES to any reduction in its monthly capacity payments to the Company. Standard capacity test results were comparable to previous tests and were within the parameters of the two CES tolling agreements. Supplemental capacity testing was suspended due to a minor mechanical problem with one of the Power Blocks. Since the test, CES has sent a letter to the Company requesting that it maintain, preserve and in some instances, produce records specified in the letter relating to the test. The two CES tolling agreements allow CES and the Company the right, under current conditions, to require up to four capacity tests in any given contract year. The Company can give no assurance as to the results of any such testing in the future. Under the tolling agreements, binding arbitration is a means of resolving the alleged dispute, although neither party has invoked arbitration to date. The Company and CES are actively discussing resolution of the transmission constraints with the regional transmission providers. There is no assurance that these

discussions will resolve any of CES's allegations of transmission constraints. Through December 2004 and continuing in 2005, CES has remitted full payment of the monthly tolling fees to the Company.

At this point, the Company is not aware of any formal arbitration initiated by CES against the Company in connection with this dispute, but in the event that it cannot avoid arbitration, the Company intends to defend itself vigorously. In connection with any such arbitration (whether instigated by the Company or CES), or upon the development of additional material information, the Company expects to become able to estimate the range of potential losses related to this dispute. Currently, the Company is not able to develop such estimates. There is no assurance, however, that the Company will not be liable for all or a portion of CES' claims or any additional amount under the provisions of the two CES tolling agreements, and a final adverse arbitration decision awarding substantial monetary damages could have a material adverse impact on the Company's financial condition, cash flows and results of operations.

#### 10. SUBSEQUENT EVENT

On March 8, 2005, the Company received a letter from CES requesting a refund of approximately \$3.1 million less the \$0.8 million outstanding receivable from CES. CES claims errors in calculating the heat rate performance of the Company's facility from January 2003 through July 2004. The Company is reviewing the information supplied by CES and plans to resolve this issue, including a refund if necessary, in 2005. The Company's cost, and the timing of any accrual that the Company may be required to make in connection with this matter cannot be estimated at this time. As of December 31, 2004 the Company had reserved \$0.4 million for its receivable from CES. Based upon the limited information available, the loss is currently estimated at a range of \$0 to \$2.7 million.

**Exhibit 99.2**

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We hereby consent to the incorporation by reference in the Registration Statements on Form S-3 (Nos. 333-72583, 333-87427, 333-40652, 333-59786, 333-71966, 333-76880, 333-116510 and 333-85654) and Form S-8 (Nos. 333-16529, 333-34002, 333-37366, 333-59200, 333-106729, 333-106733, 333-115487, 333-117460 and 333-117461) of Calpine Corporation of our report dated March 25, 2005 relating to the consolidated financial statements of Acadia Power Partners, LLC and Subsidiary, which appears in this Form 10-K.

*/s/ PricewaterhouseCoopers LLP*

*Houston, Texas  
March 31, 2005*