

CALPINE CORP

FORM 8-K (Current report filing)

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

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of The Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): **February 28, 2013**



CALPINE CORPORATION

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

1-12079
(Commission
File Number)

77-0212977
(IRS Employer
Identification No.)

717 Texas Avenue, Suite 1000, Houston, Texas 77002
(Addresses of principal executive offices and zip codes)

Registrant's telephone number, including area code: **(713) 830-2000**

Not applicable
(Former name or former address if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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ITEM 5.02 — DEPARTURE OF DIRECTORS OR CERTAIN OFFICERS; ELECTION OF DIRECTORS; APPOINTMENT OF CERTAIN OFFICERS; COMPENSATORY ARRANGEMENTS OF CERTAIN OFFICERS

Amendments to the Executive Employment Agreements with Jack A. Fusco and W. Thaddeus Miller

On February 28, 2013, the Board of Directors (the “Board”) of Calpine Corporation (the “Company”) approved an amendment, effective February 28, 2013 (the “Fusco Amendment”), to the executive employment agreement, dated August 10, 2008, and amended December 21, 2012, by and between the Company and Jack A. Fusco. On the same day, the Board also approved an amendment, effective February 28, 2013 (the “Miller Amendment,” together with the Fusco Amendment, the “Amendments”), to the executive employment agreement, dated August 11, 2008, and amended December 21, 2012, by and between the Company and W. Thaddeus Miller.

Pursuant to the Amendments, Messrs. Fusco and Miller are entitled to receive the following equity-based awards under the Company's 2008 Amended and Restated Equity Incentive Plan (the “Plan”) no later than each of February 28, 2013, February 28, 2014 and, solely in the case of Mr. Miller, February 28, 2015: (i) performance shares equal to \$2,500,000 divided by the fair market value of a share of the Company's common stock as of the grant date in the case of Mr. Fusco, and in a number to be determined by the Compensation Committee of the Board in the case of Mr. Miller, which awards will vest on the third anniversary of the grant date and be settled within ten days of the applicable vesting date in cash equal to the product of the fair market value of shares of the Company's common stock on the vesting date multiplied by 0% to 200% of the number of performance shares granted, based on actual performance against predetermined threshold, target and maximum performance goals, as set forth in the applicable award agreements; and (ii) shares of restricted stock equal to \$2,500,000 divided by the fair market value of a share of the Company's common stock as of the grant date in the case of Mr. Fusco, and in a number to be determined by the Compensation Committee of the Board in the case of Mr. Miller, which awards will vest ratably on each of the first three anniversaries of the grant date. The Amendments provide that any grant or vesting of the foregoing awards is conditioned upon the applicable executive remaining employed by the Company on such grant or vesting date, respectively, except as described below.

In the event of a Change in Control (as defined in the Plan), the performance shares and the restricted stock will immediately become fully vested, and the performance shares will be settled in accordance with the applicable award agreement, as further described below under “Restricted Stock Awards and Performance Share Unit Awards.” In the event that the executive's employment is terminated by the Company without Cause or by him for Good Reason (as such terms are defined in each executive's respective employment agreement), the restricted stock will immediately become fully vested, and the performance shares will no longer be subject to continued service conditions and will be settled on their original payment dates in cash based on actual performance, subject to the executive's compliance with the restrictive covenants in Sections 11 and 12 of his employment agreement through the original payment dates. If the executive's employment terminates by reason of disability or death, the performance shares and the restricted stock will immediately become fully vested, and the performance shares will be settled within ten days of the termination date in cash based on performance at 100% target level. If the executive remains employed until the expiration of the Transition Term (in the case of Mr. Fusco) or the Extended Term (in the case of Mr. Miller) (as such terms are defined in each executive's respective employment agreement), the restricted stock will immediately become fully vested, and the performance shares will no longer be subject to continued service conditions and will be settled on their original payment dates in cash based on actual performance, subject to the executive's compliance with the restrictive covenants in Sections 11 and 12 of his employment agreement through the original payment dates. In the event that the executive's employment is terminated by the Company for Cause or by the executive without Good Reason, all of such executive's unvested performance shares and restricted stock will be forfeited.

There were no other changes to Messrs. Fusco's or Miller's compensation arrangements.

The foregoing description is not complete and is qualified in its entirety by reference to the full text of the Fusco Amendment, filed herewith as Exhibit 10.1, and the Miller Amendment, filed herewith as Exhibit 10.2, each of which is incorporated herein by reference.

Restricted Stock Awards and Performance Share Unit Awards

On February 27, 2013, the Compensation Committee of the Board approved, and recommended that the Board approve, and on February 28, 2013, the Board approved, annual grants of (i) restricted stock under the Plan and (ii) a new type of long-term incentive compensation award under the Plan known as performance share units, as described below. The following table sets forth restricted stock awards and performance share unit awards granted on February 28, 2013 to Messrs. Fusco, Hill, Rauf, Miller and Deidiker:

Name	Title	Shares of Restricted Stock	Performance Share Units
Jack A. Fusco	Chief Executive Officer	135,869	135,869
John B. (Thad) Hill	President and Chief Operating Officer	37,386	37,386
Zamir Rauf	Executive Vice President and Chief Financial Officer	31,271	31,271
W. Thaddeus Miller	Executive Vice President, Chief Legal Officer and Secretary	42,563	42,563
Jim D. Deidiker	Senior Vice President and Chief Accounting Officer	12,734	8,489

The terms of the restricted stock awards to Messrs. Fusco and Miller reflect the terms set forth in their respective Amendments, as described above in “Amendments to the Executive Employment Agreements with Jack A. Fusco and W. Thaddeus Miller.” The terms of the restricted stock awards to Messrs. Hill, Deidiker and Rauf are materially consistent with the previously disclosed terms of prior restricted stock awards to such executives.

Each performance share unit award is denominated in units, each of which corresponds to up to two shares of common stock of the Company. At the end of the three-year performance cycle, which runs from January 1, 2013 through December 31, 2015, the number of performance share units that are earned will depend on the percentile ranking of the Company's total shareholder return (inclusive of dividends paid) (“TSR”) in comparison to the TSRs for the companies comprising the Standard & Poor's 500 index during the performance cycle. The number of performance share units earned will be a percentage of the number of performance share units granted, based on the Company's TSR percentile ranking, as follows:

TSR Percentile Ranking	Earned Percentage
90 th percentile	200%
80 th percentile	175%
70 th percentile	150%
60 th percentile	125%
50 th percentile	100%
40 th percentile	75%
30 th percentile	50%
Less than 30 th percentile	—%

As soon as practicable after completion of the performance cycle, the Compensation Committee of the Board will determine and certify in writing the TSR percentile ranking that is attained by the Company and the number of performance share units earned, based on the terms described above. The earned performance share units will be paid as soon as administratively practicable after completion of the performance cycle, but no later than March 15, 2016 in cash in an amount equal to the product of the number of earned performance share units multiplied by the fair market value of a share of the Company's common stock as of the last trading day of the performance cycle. Any unearned performance share units will be forfeited. At the end of the performance cycle, dividend equivalents will be paid with respect to the performance share units earned in an amount equal to the dividends declared per share of common stock during the performance cycle.

The terms of the performance share units granted to Messrs. Fusco and Miller are described above in “Amendments to the Executive Employment Agreements with Jack A. Fusco and W. Thaddeus Miller.” Payment of the performance share units granted to Messrs. Hill, Deidiker and Rauf is generally conditioned on the grantee remaining employed by the Company through the date on which the performance share units are otherwise scheduled to be paid out, as described above, except as follows: (1) if the grantee's employment terminates due to death, then 100% of his or her performance share units granted is deemed to be earned and those earned performance share units are paid within 60 days after termination of employment in cash in an amount equal to the product of the number of earned performance share units multiplied by the fair market value of a share of the Company's common stock as of the date of termination of employment; and (2) in the event that the grantee is, or becomes, eligible to retire (as defined in the Plan), then, effective on the later to occur of (a) the date on which the grantee initially becomes eligible to retire and (b) the one-year anniversary of the performance share unit grant date, he will retain his or her performance share units, which may be earned and paid, or forfeited, as described above at the end of the performance cycle, whether or not he or she continues to be employed through the payout date.

In the event of a Change in Control (as defined in the Plan): (a) the Company's TSR percentile ranking, determined as described above, for the portion of the performance cycle that ends on the last trading day that is on or prior to the fifth day prior to the date of the Change in Control will be determined, and (b) the number of earned performance share units will be equal to the product of (1) the greater of (A) the earned percentage, determined using the table set forth above based on the Company's TSR percentile ranking as described in clause (a) of this sentence, and (B) 100% (i.e., target), multiplied by (2) the number of performance share units granted. These earned performance share units will be paid in cash, generally within 5 business days after the date of the Change in Control, in an amount equal to the product of the number of performance share units so earned multiplied by the closing price of a share of the common stock on the last trading day prior to the date of the Change in Control.

The foregoing description is not complete and is qualified in its entirety by reference to the full text of the form of Restricted Stock Agreement for Messrs. Fusco and Miller, filed herewith as Exhibit 10.3, the form of Restricted Stock Agreement for Messrs. Hill, Deidiker and Rauf, filed herewith as Exhibit 10.4, the form of Performance Share Unit Award Agreement for Messrs. Fusco and Miller, filed herewith as Exhibit 10.5, and the form of Performance Share Unit Award Agreement for Messrs. Hill, Deidiker and Rauf, filed herewith as Exhibit 10.6, each of which is incorporated herein by reference.

ITEM 9.01 — FINANCIAL STATEMENTS AND EXHIBITS(d) *Exhibits*

<u>Exhibit No.</u>	<u>Description</u>
10.1	Amendment to the Executive Employment Agreement between the Company and Jack A. Fusco, dated February 28, 2013.*†
10.2	Amendment to the Executive Employment Agreement between the Company and W. Thaddeus Miller, dated February 28, 2013.*†
10.3	Form of Restricted Stock Award Agreement between the Company and Jack A. Fusco and W. Thaddeus Miller, dated February 28, 2013.*†
10.4	Form of Restricted Stock Award Agreement between the Company and John B. (Thad) Hill, Zamir Rauf and Jim D. Deidiker, dated February 28, 2013.*†
10.5	Form of Performance Share Unit Award Agreement between the Company and Jack A. Fusco and W. Thaddeus Miller, dated February 28, 2013.*†
10.6	Form of Performance Share Unit Award Agreement between the Company and John B. (Thad) Hill, Zamir Rauf and Jim D. Deidiker, dated February 28, 2013.*†

* Filed herewith.

† Management contract or compensatory plan or arrangement.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

CALPINE CORPORATION

By: /s/ ZAMIR RAUF
Zamir Rauf
Executive Vice President and
Chief Financial Officer

Date: March 4, 2013

EXHIBIT INDEX

<u>Exhibit No.</u>	<u>Description</u>
10.1	Amendment to the Executive Employment Agreement between the Company and Jack A. Fusco, dated February 28, 2013.*†
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10.4	Form of Restricted Stock Award Agreement between the Company and John B. (Thad) Hill, Zamir Rauf and Jim D. Deidiker, dated February 28, 2013.*†
10.5	Form of Performance Share Unit Award Agreement between the Company and Jack A. Fusco and W. Thaddeus Miller, dated February 28, 2013.*†
10.6	Form of Performance Share Unit Award Agreement between the Company and John B. (Thad) Hill, Zamir Rauf and Jim D. Deidiker, dated February 28, 2013.*†

* Filed herewith.

† Management contract or compensatory plan or arrangement.

CALPINE CORPORATION**AMENDMENT TO THE
AMENDMENT TO EXECUTIVE EMPLOYMENT AGREEMENT**

This AMENDMENT TO THE AMENDMENT TO EXECUTIVE EMPLOYMENT AGREEMENT (this "Amendment") is entered into as of February 28, 2013 by and between Calpine Corporation (the "Company") and Jack Fusco ("Executive") (hereinafter collectively referred to as "the parties"). Capitalized terms not otherwise defined in this Amendment shall have the meaning ascribed to them in the Amendment to the Executive Employment Agreement by and between the parties, dated as of December 21, 2012, (the "Amendment to Executive Employment Agreement").

WHEREAS, the parties mutually desire to amend the Amendment to Executive Employment Agreement as set forth herein.

NOW, THEREFORE, in consideration of the respective agreements of the parties contained herein, it is agreed as follows:

1. Section 5(a) shall be amended, effective as of the date hereof, to read, in its entirety, as follows:

"December 2012 Grant. No later than December 31, 2012, the Company shall grant Executive restricted stock under the Plan. The number of shares of restricted stock shall equal \$5,000,000 divided by the Fair Market Value (as defined in the Plan) of a share of Common Stock as of the date of grant. Except to the extent provided in Sections 7 and 8 hereof, the restricted stock shall vest ratably on each of the first three anniversaries of the date of grant, provided Executive is employed at such date by the Company."

2. The first sentence of Section 5(b) through the colon shall be amended, effective as of the date hereof, to read, in its entirety, as follows:

"February 2013 and 2014 Grants. No later than each of February 28, 2013, and February 28, 2014, the Company shall grant Executive performance shares and restricted stock under the Plan as follows:"

3. Section 5(b)(i) shall be amended, effective as of the date hereof, to read, in its entirety, as follows:

"Performance Shares. The number of performance shares shall equal \$2,500,000 divided by the Fair Market Value of a share of Common Stock as of the date of grant. Except to the extent provided in Sections 7 and 8 hereof, the performance

shares shall vest on the third (3rd) anniversary of the grant date, provided (subject to Section 7(b)(iv)(II) hereof) Executive is employed at such date by the Company, and shall be settled within ten (10) days of the applicable vesting date in cash equal to the product of (x) the Fair Market Value on the vesting date of a share of Common Stock multiplied by (y) 0% to 200% of the number of performance shares granted, based on actual performance against predetermined threshold, target and maximum performance goals, as set forth in the applicable award agreements."

4. Section 5(b)(ii) shall be amended, effective as of the date hereof, to read, in its entirety, as follows:

"Restricted Stock. The number of shares of restricted stock shall equal \$2,500,000 divided by the Fair Market Value of a share of Common Stock as of the date of grant. Except to the extent provided in Sections 7 and 8 hereof, the restricted stock shall vest ratably on each of the first three anniversaries of the date of grant, provided (subject to Section 7(b)(iv)(I) hereof) Executive is employed at such date by the Company."

5. Section 7(b)(ii)(II) shall be removed in its entirety, effective as of the date hereof, and Section 7(b)(ii)(III) shall be renumbered as 7(b)(ii)(II).

6. Section 7(b)(ii)(II) shall be amended, effective as of the date hereof, to read, in its entirety, as follows:

"Performance shares shall vest immediately and shall be settled within ten (10) days of the date of termination in cash, based on performance at 100% of target level."

7. The first sentence of Section 7(b)(iii) through the colon shall be amended, effective as of the date hereof, to read, in its entirety, as follows:

"Termination by the Company Without Cause or by Executive for Good Reason. If Executive's employment is terminated by the Company without Cause or by Executive for Good Reason:"

8. Section 7(b)(iii)(II) shall be removed in its entirety, effective as of the date hereof, and Section 7(b)(iii)(III) shall be renumbered as 7(b)(iii)(II).

9. Section 7(b)(iii)(II) shall be amended, effective as of the date hereof, to read, in its entirety, as follows:

"Performance awards shall no longer be subject to continued service conditions and shall be settled on their original payment dates in cash, based on actual performance during the relevant performance period and subject to Executive's

compliance with Sections 11 and 12 of the Employment Agreement through the original payment dates."

10. Section 7(b)(iv) shall be removed in its entirety, effective as of the date hereof, and Section 7(b)(v) shall be renumbered as Section 7(b)(iv).

11. Section 7(b)(iv)(I) shall be amended, effective as of the date hereof, to read, in its entirety, as follows:

"Restricted stock awards shall immediately vest as of the expiration of the Transition Term; and"

12. Section 7(b)(iv)(II) shall be amended, effective as of the date hereof, to read, in its entirety, as follows:

"Performance awards shall no longer be subject to continued service conditions and shall be settled on their original payment dates in cash, based on actual performance during the relevant performance period and subject to Executive's compliance with Sections 11 and 12 of the Employment Agreement through the original payment dates."

13. Sections 8-12 shall be renumbered as Sections 9-13, respectively, and a new Section 8 shall be added, effective as of the date hereof, to read, in its entirety, as follows:

"Change in Control. Upon a Change in Control:

(a) Restricted stock awards shall immediately vest; and

(b) Performance shares shall vest immediately as of the date of the Change in Control and shall be settled in accordance with Section 6 of the Executive's Performance Share Unit Award Agreement dated as of February 28, 2013."

14. This Amendment may be executed in counterparts, each of which shall be an original and all of which shall constitute the same document.

15. Except as expressly modified herein, the Amendment to Executive Employment Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Company has caused this Amendment to be executed by its duly authorized officer and Executive has executed this Amendment as of the day and year first above written.

CALPINE CORPORATION

J. STUART RYAN

By: /s/ J. STUART RYAN

Title: Chairman of the Board

JACK FUSCO

By: /s/ JACK FUSCO

Name: Jack Fusco

CALPINE CORPORATION**AMENDMENT TO THE
AMENDMENT TO EXECUTIVE EMPLOYMENT AGREEMENT**

This AMENDMENT TO THE AMENDMENT TO EXECUTIVE EMPLOYMENT AGREEMENT (this "Amendment") is entered into as of February 28, 2013 by and between Calpine Corporation (the "Company") and Thaddeus Miller ("Executive") (hereinafter collectively referred to as "the parties"). Capitalized terms not otherwise defined in this Amendment shall have the meaning ascribed to them in the Amendment to the Executive Employment Agreement by and between the parties, dated as of December 21, 2012, (the "Amendment to Executive Employment Agreement").

WHEREAS, the parties mutually desire to amend the Amendment to Executive Employment Agreement as set forth herein.

NOW, THEREFORE, in consideration of the respective agreements of the parties contained herein, it is agreed as follows:

1. Section 3(a) shall be amended, effective as of the date hereof, to read, in its entirety, as follows:

"December 2012 Grant. No later than December 31, 2012, the Company shall grant Executive restricted stock under the Plan. The number of shares of restricted stock shall equal 200% of Executive's Base Salary on the date of grant divided by the Fair Market Value (as defined in the Plan) of a share of Common Stock as of the date of grant. Except to the extent provided in Sections 5 and 6 hereof, the restricted stock shall vest ratably on each of the first three anniversaries of the date of grant, provided Executive is employed at such date by the Company."

2. The first sentence of Section 3(b) through the colon shall be amended, effective as of the date hereof, to read, in its entirety, as follows:

"February 2013, 2014 and 2015 Grants. No later than February 28 of each of 2013, 2014 and 2015, the Company shall grant Executive performance shares and restricted stock under the Plan as follows:"

3. Section 3(b)(i) shall be amended, effective as of the date hereof, to read, in its entirety, as follows:

"Performance Shares. The number of performance shares shall be determined by the Committee prior to the date of grant, in accordance with its general policies

relating to grants of equity awards to executives at such time. Except to the extent provided in Sections 5 and 6 hereof, the performance shares shall vest on the third (3rd) anniversary of the grant date, provided (subject to Section 5(b)(iv)(II) hereof) Executive is employed at such date by the Company, and shall be settled within ten (10) days of the applicable vesting date in cash equal to the product of (x) the Fair Market Value on the vesting date of a share of Common Stock multiplied by (y) 0% to 200% of the number of performance shares granted, based on actual performance against predetermined threshold, target and maximum performance goals, as set forth in the applicable award agreements."

4. Section 3(b)(ii) shall be amended, effective as of the date hereof, to read, in its entirety, as follows:

"Restricted Stock. The number of shares of restricted stock shall be determined by the Committee prior to the date of grant, in accordance with its general policies relating to grants of equity awards to executives at such time. Except to the extent provided in Sections 5 and 6 hereof, the restricted stock shall vest ratably on each of the first three anniversaries of the date of grant, provided (subject to Section 5(b)(iv)(I) hereof) Executive is employed at such date by the Company."

5. Section 5(b)(ii)(II) shall be removed in its entirety, effective as of the date hereof, and Section 5(b)(ii)(III) shall be renumbered as 5(b)(ii)(II).

6. Section 5(b)(ii)(II) shall be amended, effective as of the date hereof, to read, in its entirety, as follows:

"Performance shares shall vest immediately and shall be settled within ten (10) days of the date of termination in cash, based on performance at 100% of target level."

7. The first sentence of Section 5(b)(iii) through the colon shall be amended, effective as of the date hereof, to read, in its entirety, as follows:

"Termination by the Company Without Cause or by Executive for Good Reason. If Executive's employment is terminated by the Company without Cause or by Executive for Good Reason:"

8. Section 5(b)(iii)(II) shall be removed in its entirety, effective as of the date hereof, and Section 5(b)(iii)(III) shall be renumbered as 5(b)(iii)(II).

9. Section 5(b)(iii)(II) shall be amended, effective as of the date hereof, to read, in its entirety, as follows:

"Performance awards shall no longer be subject to continued service conditions and shall be settled on their original payment dates in cash, based on actual

performance during the relevant performance period and subject to Executive's compliance with Sections 11 and 12 of the Employment Agreement through the original payment dates."

10. Section 5(b)(iv) shall be removed in its entirety, effective as of the date hereof, and Section 5(b)(v) shall be renumbered as Section 5(b)(iv).

11. Section 5(b)(iv)(I) shall be amended, effective as of the date hereof, to read, in its entirety, as follows:

"Restricted stock awards shall immediately vest as of the expiration of the Extended Term; and"

12. Section 5(b)(iv)(II) shall be amended, effective as of the date hereof, to read, in its entirety, as follows:

"Performance awards shall no longer be subject to continued service conditions and shall be settled on their original payment dates in cash, based on actual performance during the relevant performance period and subject to Executive's compliance with Sections 11 and 12 of the Employment Agreement through the original payment dates."

13. Sections 6-10 shall be renumbered as Sections 7-11, respectively, and a new Section 6 shall be added, effective as of the date hereof, to read, in its entirety, as follows:

"Change in Control. Upon a Change in Control:

(a) Restricted stock awards shall immediately vest; and

(b) Performance shares shall vest immediately as of the date of the Change in Control and shall be settled in accordance with Section 6 of the Executive's Performance Share Unit Award Agreement dated as of February 28, 2013."

14. This Amendment may be executed in counterparts, each of which shall be an original and all of which shall constitute the same document.

15. Except as expressly modified herein, the Amendment to Executive Employment Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Company has caused this Amendment to be executed by its duly authorized officer and Executive has executed this Amendment as of the day and year first above written.

CALPINE CORPORATION

J. STUART RYAN

By: /s/ J. STUART RYAN

Title: Chairman of the Board

THADDEUS MILLER

By: /s/ W. THADDEUS MILLER

Name: Thaddeus Miller

CALPINE CORPORATION

RESTRICTED STOCK AGREEMENT
Pursuant to the Amended and Restated 2008 Equity Incentive Plan

This **Restricted Stock Agreement** ("Agreement"), entered into on February [●], 2013 (the "Grant Date"), which is the date on which the Grant described below was approved by the Compensation Committee (the "Committee") of the Board of Directors of Calpine Corporation, a Delaware corporation (the "Corporation"), and [Jack A. Fusco] [W. Thaddeus Miller] (the "Employee"). Except as otherwise provided herein, or unless the context clearly indicates otherwise, capitalized terms not otherwise defined herein shall have the same definitions as provided in the Plan.

WHEREAS, to carry out the purposes of the Calpine Corporation 2008 Amended and Restated Equity Incentive Plan (the "Plan"), shares of restricted Common Stock (as defined below) are hereby granted to the Employee in accordance with this Agreement; and

WHEREAS, the Corporation and Employee agree as follows:

1. Award of Common Stock. The Corporation hereby grants (the "Grant") to Employee [●] shares (the "Shares") of common stock, \$.001 par value, of the Corporation ("Common Stock"), which shall be subject to the Restricted Period and the restrictions on transferability and risk of forfeiture set forth in Section 2 herein (collectively, the "Restrictions") and to the other provisions of this Agreement.

2. Restricted Period.

(a) For a period of three (3) years commencing on the Grant Date (the "Restricted Period"), the Shares shall be subject to the Restrictions and any other restrictions as set forth herein. Except as otherwise provided herein, the Restrictions shall lapse and expire as to the Shares in accordance with the following schedule provided the Employee has been continuously employed by the Corporation from the Grant Date through the lapse date:

<u>Lapse Date</u>	<u>Cumulative Percentage of Total Number of Shares as to Which Forfeiture Restrictions Lapse</u>
First Anniversary of the Grant Date	33-1/3%
Second Anniversary of the Grant Date	66-2/3%
Third Anniversary of the Grant Date	100%

Continuous employment includes any paid leave of absence and any unpaid leave of absence up to 30 days, but does not include any unpaid leave of absence after 30 days.

The Shares which are subject to the Restrictions shall hereinafter be referred to as "Restricted Shares." The Shares which are no longer subject to the Restrictions as set forth above and in paragraphs (f), (g) and (h) below shall hereinafter be referred to as "Transferable Shares."

(b) The Corporation shall effect the issuance of the Shares out of authorized but unissued shares of Common Stock or out of treasury shares of Common Stock. The Employee's ownership of the Restricted Shares shall be evidenced solely by a computerized book entry in the records of the Corporation's stock transfer agent for the benefit of the Employee until such Restricted Shares become Transferable Shares as set forth in paragraph (a) above or paragraphs (f), (g) and (h) below. The Corporation shall place appropriate stop transfer instructions with respect to the Restricted Shares with the transfer agent for the Common Stock consistent with the Restrictions. Upon Restricted Shares becoming Transferable Shares, the Corporation shall effect the issuance and delivery of a certificate or certificates for such Transferable Shares to the Employee free of any legend reflecting the Restrictions, provided that the issuance and delivery of such Transferable Shares may be effected on a noncertificated basis, to the extent not prohibited by any applicable law or the rules of any stock exchange.

(c) The Employee shall, during the Restricted Period, have all of the other rights of a stockholder with respect to the Shares including, but not limited to, the right to receive dividends, if any, as may be declared on such Restricted Shares from time to time, and the right to vote (in person or by proxy) such Restricted Shares at any meeting of stockholders of the Corporation. Any shares of Common Stock received as a dividend on or in connection with a stock split of the Shares shall be subject to the same restrictions as the Shares underlying such shares of Common Stock received on account of such stock dividend or split.

(d) The Restricted Shares and the right to vote the Restricted Shares and to receive dividends thereon, may not be sold, assigned, transferred, exchanged, pledged, hypothecated, or otherwise encumbered and no such sale, assignment, transfer, exchange, pledge, hypothecation, or encumbrance, whether made or created by voluntary act of Employee or any agent of Employee or by operation of law, shall be recognized by, or be binding upon, or shall in any manner affect the rights of, the Corporation or any agent or any custodian holding certificates for the Restricted Shares during the Restricted Period, unless the Restrictions have then expired pursuant to the provisions of paragraph (a) above or paragraphs (f), (g) and (h) below. This provision shall not prohibit Employee from granting revocable proxies in customary form to vote the Shares.

(e) Except as otherwise provided pursuant to this Agreement or the Plan, if the status of employment (hereinafter referred to as "employment") of Employee with the Corporation or its Affiliates shall terminate (including by reason of such an Affiliate ceasing to be an Affiliate of the Corporation), prior to the expiration of the Restricted Period for any reason, then, in that event, any Restricted Shares outstanding shall thereupon be forfeited by Employee to the Corporation, without payment of any consideration or further consideration by the Corporation, and neither the Employee nor any successors, heirs, assigns or legal representatives of Employee

shall thereafter have any further rights or interest in the Restricted Shares, and Employee's name shall thereupon be deleted from the list of the Corporation's stockholders with respect to the Restricted Shares.

(f) In the event the Employee's employment with the Corporation is terminated by the Corporation for Disability (as defined in the Executive Employment Agreement between the Corporation and the Employee, dated as of August 10, 2008, as amended (the "Employment Agreement")) or is terminated by reason of the death of the Employee at any time during the Restricted Period, all Restrictions imposed on the Restricted Shares in accordance with the terms of the Plan and this Agreement shall lapse and the Restricted Shares shall thereby be Transferable Shares.

(g) In the event the Employee's employment with the Corporation is terminated by the Corporation without Cause or by the Employee for Good Reason (each as defined in the Employment Agreement) at any time during the Restricted Period, all Restrictions imposed on the Restricted Shares in accordance with the terms of the Plan and this Agreement shall lapse and the Restricted Shares shall thereby be Transferable Shares.

(h) Upon expiration of the [Transition Term [JF]][Extended Term [TM]] (as defined in the Employment Agreement), provided that the Employee is employed by the Corporation until the expiration of the [Transition Term][Extended Term], all Restrictions imposed on the Restricted Shares in accordance with the terms of the Plan and this Agreement shall lapse and the Restricted Shares shall thereby be Transferable Shares.

(i) Upon the occurrence of a Change in Control (as defined in the Plan), any Restrictions on the Restricted Shares set forth in this Agreement shall be deemed to have expired, and the Restricted Shares shall thereby be Transferable Shares.

(j) If the employment of Employee with the Corporation shall terminate prior to the expiration of the Restricted Period, and there exists a dispute between Employee and the Corporation as to the satisfaction of the conditions to the release of the Shares from the Restrictions hereunder or the terms and conditions of the Grant, the Shares shall remain subject to the Restrictions until the resolution of such dispute, regardless of any intervening expiration of the Restricted Period, except that any dividends that may be payable to the holders of record of Common Stock as of a date during the period from termination of Employee's employment to the resolution of such dispute shall:

(i) to the extent to which such dividends would have been payable to Employee on the Shares, be held by the Corporation as part of its general funds (unless such action would detrimentally affect Employee under Section 409A of the Code) and shall be paid to or for the account of Employee only upon, and in the event of, a resolution of such dispute in a manner favorable to Employee, and

(ii) be canceled upon, and in the event of, a resolution of such dispute in a manner unfavorable to Employee.

3. Taxes.

(a) To the extent that the receipt of the Restricted Shares, Transferable Shares, or the lapse of any Restrictions results in income to Employee for federal, state or local income or other tax or social security purposes (or results in any taxes of any kind), Employee shall deliver to the Corporation at the time of such receipt or lapse, as the case may be, such amount of money or, if the Corporation so determines, shares of unrestricted Common Stock (or shall make other arrangements in accordance with Section 21 of the Plan) as the Corporation may require to meet its obligation under applicable tax and other laws or regulations, and, if Employee fails to do so, the Corporation is authorized to withhold from any cash or Common Stock remuneration then or thereafter payable to Employee any tax or other amount required to be withheld by reason of such receipt, lapse or resulting income.

(b) Employee understands that Employee may elect to be taxed at the Grant Date rather than at the time the Restrictions lapse with respect to the Shares by filing an election under Section 83(b) of the Code with the Internal Revenue Service and by providing a copy of the election to the Corporation. EMPLOYEE ACKNOWLEDGES THAT HE OR SHE HAS BEEN INFORMED OF THE AVAILABILITY OF MAKING AN ELECTION IN ACCORDANCE WITH SECTION 83(b) OF THE CODE; THAT SUCH ELECTION MUST BE FILED WITH THE INTERNAL REVENUE SERVICE (AND A COPY OF THE ELECTION GIVEN TO THE CORPORATION) WITHIN 30 DAYS OF THE GRANT OF AWARDED SHARES TO EMPLOYEE; AND THAT EMPLOYEE IS SOLELY RESPONSIBLE FOR MAKING SUCH ELECTION. Employee agrees to notify the Corporation promptly of any tax election made by Employee with respect to the Shares.

4. Adjustments/Changes in Capitalization. This award is subject to the adjustment provisions set forth in Section 17 of the Plan.

5. Compliance with Securities Laws. The Corporation shall make reasonable efforts to comply with all applicable federal and state securities laws; provided, however, notwithstanding any other provision of this Agreement, the Corporation shall not be obligated to issue any restricted or unrestricted common stock or other securities pursuant to this Agreement if the issuance thereof would result in a violation of any such law. It is intended that Transferable Shares shall be registered under the Securities Act of 1933 (the “1933 Act”). If Employee is an “affiliate” of the Corporation, as that term is defined in Rule 144 under the 1933 Act (“Rule 144”), such Employee may not sell the Transferable Shares except in compliance with Rule 144. Any certificates representing Transferable Shares issued to an “affiliate” of the Corporation may bear a legend setting forth such restrictions on the disposition or transfer of the Transferable Shares as the Corporation deems appropriate to comply with federal and state securities laws (and if the Transferable Shares are evidenced on a noncertificated basis, the Transferable Shares shall be subject to similar stop transfer instructions). The Employee acknowledges and understands that the Corporation may not be satisfying the current public information requirement of Rule 144 at the time the Employee wishes to sell the Transferable Shares or other conditions under Rule 144 which are required of the Corporation. If so, the Employee understands that Employee will be precluded from selling the securities under Rule 144 even if the one-year holding period (or any modification thereof under

the Rule) of said Rule has been satisfied. Prior to the Employee's acquisition of the Transferable Shares, the Employee acquired sufficient information about the Corporation to reach an informed knowledgeable decision to acquire such securities. The Employee has such knowledge and experience in financial and business matters as to make the Employee capable of utilizing said information to evaluate the risks of the prospective investment and to make an informed investment decision. The Employee is able to bear the economic risk of his or her investment in the Shares. The Employee agrees not to make, without the prior written consent of the Corporation, any public offering or sale of the Shares although permitted to do so pursuant to Rule 144(k) promulgated under the 1933 Act, until all applicable conditions and requirements of Rule 144 (or registration of the shares of common stock issued pursuant to this Agreement under the 1933 Act) and this Agreement have been satisfied.

6. Employment Relationship. Any questions as to whether and when there has been a termination of Employee's employment with the Corporation or any Affiliate, and the cause of such termination, shall be determined by the Committee, with the advice of the employing corporation (if an Affiliate), and the Committee's determination shall be final. Nothing in the Plan or this Agreement shall confer upon the Employee any right to continue to serve the Corporation or an Affiliate in the capacity in effect at the Grant Date (or otherwise) or at any particular rate of compensation or shall affect the right of the Corporation or an Affiliate (which right is hereby expressly reserved) to modify or terminate the employment of the Employee at any time with or without notice and with or without Cause. The Employee acknowledges and agrees that any right to lapse of the Restrictions is earned only by continuing as an employee of the Corporation or an Affiliate at the will of the Corporation or such Affiliate, or satisfaction of any other applicable terms and conditions contained in the Plan and this Agreement, and not through the act of being hired or receiving the Grant.

7. Binding Effect. The terms and conditions hereof shall, in accordance with their terms, be binding upon, and inure to the benefit of, all successors of Employee, including, without limitation, Employee's estate and the executors, administrators, or trustees thereof, heirs and legatees, and any receiver, trustee in bankruptcy, or representative of creditors of Employee. This Agreement shall be binding upon and inure to the benefit of any successors to the Corporation.

8. Notice. All notices required to be given under this Agreement or the Plan shall be in writing and delivered in person or by registered or certified mail, postage prepaid, to the other party, in the case of the Corporation, at the address of its principal place of business (or such other address as the Corporation may from time to time specify), or, in the case of the Employee, at the Employee's address set forth in the Corporation's records; provided, however, any such notice to the Employee may be delivered electronically to the Employee's email address set forth in the Corporation's records. Each party to this Agreement agrees to inform the other party immediately upon a change of address. All notices shall be deemed delivered when received.

9. Arbitration. Any dispute or controversy arising under or in connection with this Agreement shall be settled by binding arbitration in Houston, Texas by one arbitrator appointed in the manner set forth by the American Arbitration Association. Any arbitration proceeding pursuant to this paragraph shall be conducted in accordance with the Employment Dispute Resolution Rules

of the American Arbitration Association. Judgment may be entered on the arbitrators' award in any court having jurisdiction.

10. Entire Agreement and Amendments. This Agreement and the Plan contain the entire agreement of the parties relating to the matters contained herein and supersede all prior agreements and understandings, oral or written, between the parties with respect to the subject matter hereof. This Agreement may be amended in accordance with Section 22 of the Plan.

11. Separability. If any provision of this Agreement is rendered or declared illegal or unenforceable by reason of any existing or subsequently enacted legislation or by the decision of any arbitrator or by decree of a court of last resort, the parties shall promptly meet and negotiate substitute provisions for those rendered or declared illegal or unenforceable to preserve the original intent of this Agreement to the extent legally possible, but all other provisions of this Agreement shall remain in full force and effect.

12. Interpretation of the Plan and the Grant. In the event there is any inconsistency or discrepancy between the provisions of this Agreement and the provisions of the Plan, the provisions of the Plan shall prevail.

13. Governing Law. The execution, validity, interpretation, and performance of this Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, applied without giving effect to any conflicts-of-law principles, except to the extent pre-empted by federal law.

14. Electronic Delivery And Signatures. The Corporation may, in its sole discretion, decide to deliver any documents related to the Grant or to participation in the Plan or to future grants that may be made under the Plan by electronic means or to request the Employee's consent to participate in the Plan by electronic means. Employee hereby consents to receive such documents by electronic delivery and, if requested, to agree to participate in the Plan through an on-line or electronic system established and maintained by the Corporation or another third party designated by the Corporation. If the Corporation establishes procedures of an electronic signature system for delivery and acceptance of Plan documents (including this Agreement or any Award Agreement like this Agreement), Employee hereby consents to such procedures and agrees that his or her electronic signature is the same as, and shall have the same force and effect as, his or her manual signature.

IN WITNESS WHEREOF, the Corporation has caused this Agreement to be duly executed by one of its officers thereunto duly authorized, and Employee has executed this Agreement, all as of the day and year first above written.

CALPINE CORPORATION

[W. Thaddeus Miller, Executive Vice President
Chief Legal Officer and Secretary]
[Jack A. Fusco, Chief Executive Officer]

[JACK A. FUSCO / W. THADDEUS MILLER]

CALPINE CORPORATION

RESTRICTED STOCK AGREEMENT Pursuant to the Amended and Restated 2008 Equity Incentive Plan

This **Restricted Stock Agreement** ("Agreement"), entered into on February [●], 2013 (the "Grant Date"), which is the date on which the Grant described below was approved by the Compensation Committee (the "Committee") of the Board of Directors of Calpine Corporation between Calpine Corporation, a Delaware corporation (the "Corporation"), and [●] (the "Employee"). Except as otherwise provided herein, or unless the context clearly indicates otherwise, capitalized terms not otherwise defined herein shall have the same definitions as provided in the Plan.

WHEREAS, to carry out the purposes of the Calpine Corporation 2008 Amended and Restated Equity Incentive Plan (the "Plan"), shares of restricted Common Stock (as defined below) are hereby granted to the Employee in accordance with this Agreement; and

WHEREAS, the Corporation and Employee agree as follows:

1. Award of Common Stock. The Corporation hereby grants (the "Grant") to Employee [NUMBER] shares (the "Shares") of common stock, \$.001 par value, of the Corporation ("Common Stock"), which shall be subject to the Restricted Period and the restrictions on transferability and risk of forfeiture set forth in Section 2 herein (collectively, the "Restrictions") and to the other provisions of this Agreement.

2. Restricted Period.

(a) For a period of three (3) years commencing on the Grant Date (the "Restricted Period"), the Shares shall be subject to the Restrictions and any other restrictions as set forth herein. Except as otherwise provided herein, the Restrictions shall lapse and expire as to the Shares in accordance with the following schedule provided the Employee has been continuously employed by the Company from the Grant Date through the lapse date:

<u>Lapse Date</u>	<u>Cumulative Percentage of Total Number of Shares as to Which Forfeiture Restrictions Lapse</u>
First Anniversary of the Grant Date	33-1/3%
Second Anniversary of the Grant Date	66-2/3%
Third Anniversary of the Grant Date	100%

Continuous employment includes any paid leave of absence and any unpaid leave of absence up to 30 days, but does not include any unpaid leave of absence after 30 days.

The Shares which are subject to the Restrictions shall hereinafter be referred to as "Restricted Shares." The Shares which are no longer subject to the Restrictions as set forth above and in paragraphs (f), (g) and (h) below shall hereinafter be referred to as "Transferable Shares."

(b) The Corporation shall effect the issuance of the Shares out of authorized but unissued shares of Common Stock or out of treasury shares of Common Stock. The Employee's ownership of the Restricted Shares shall be evidenced solely by a computerized book entry in the records of the Corporation's stock transfer agent for the benefit of the Employee until such Restricted Shares become Transferable Shares as set forth in paragraph (a) above or paragraphs (f), (g) and (h) below. The Corporation shall place appropriate stop transfer instructions with respect to the Restricted Shares with the transfer agent for the Common Stock consistent with the Restrictions. Upon Restricted Shares becoming Transferable Shares, the Corporation shall effect the issuance and delivery of a certificate or certificates for such Transferable Shares to the Employee free of any legend reflecting the Restrictions, provided that the issuance and delivery of such Transferable Shares may be effected on a noncertificated basis, to the extent not prohibited by any applicable law or the rules of any stock exchange.

(c) The Employee shall, during the Restricted Period, have all of the other rights of a stockholder with respect to the Shares including, but not limited to, the right to receive dividends, if any, as may be declared on such Restricted Shares from time to time, and the right to vote (in person or by proxy) such Restricted Shares at any meeting of stockholders of the Corporation. Any shares of Common Stock received as a dividend on or in connection with a stock split of the Shares shall be subject to the same restrictions as the Shares underlying such shares of Common Stock received on account of such stock dividend or split.

(d) The Restricted Shares and the right to vote the Restricted Shares and to receive dividends thereon, may not be sold, assigned, transferred, exchanged, pledged, hypothecated, or otherwise encumbered and no such sale, assignment, transfer, exchange, pledge, hypothecation, or encumbrance, whether made or created by voluntary act of Employee or any agent of Employee or by operation of law, shall be recognized by, or be binding upon, or shall in any manner affect the rights of, the Corporation or any agent or any custodian holding certificates for the Restricted Shares during the Restricted Period, unless the Restrictions have then expired pursuant to the provisions of paragraph (a) above or paragraphs (f), (g) and (h) below. This provision shall not prohibit Employee from granting revocable proxies in customary form to vote the Shares.

(e) Except as otherwise provided pursuant to this Agreement or the Plan, if the status of employment (hereinafter referred to as "employment") of Employee with the Corporation or its Affiliates shall terminate (including by reason of such an Affiliate ceasing to be an Affiliate of the Corporation), prior to the expiration of the Restricted Period for any reason, then, in that event, any Restricted Shares outstanding shall thereupon be forfeited by Employee to the Corporation, without payment of any consideration or further consideration by the Corporation, and neither the Employee nor any successors, heirs, assigns or legal representatives of Employee

shall thereafter have any further rights or interest in the Restricted Shares, and Employee's name shall thereupon be deleted from the list of the Corporation's stockholders with respect to the Restricted Shares.

(f) In the event the Employee's employment with the Corporation is terminated by reason of the death of the Employee at any time during the Restricted Period, all Restrictions imposed on the Restricted Shares in accordance with the terms of the Plan and this Agreement shall lapse and the Restricted Shares shall thereby be Transferable Shares.

(g) In the event the Employee is, or becomes, eligible to Retire, all Restrictions imposed on the Restricted Shares in accordance with the terms of the Plan and this Agreement shall lapse, and the Restricted Shares shall thereby be Transferable Shares, on the later to occur of: (i) the date the Employee initially becomes eligible to Retire and (ii) the one-year anniversary of the Grant Date.

(h) Upon the occurrence of a Change in Control (as defined in the Plan), any Restrictions on the Restricted Shares set forth in this Agreement shall be deemed to have expired, and the Restricted Shares shall thereby be Transferable Shares.

(i) If the employment of Employee with the Corporation shall terminate prior to the expiration of the Restricted Period, and there exists a dispute between Employee and the Corporation as to the satisfaction of the conditions to the release of the Shares from the Restrictions hereunder or the terms and conditions of the Grant, the Shares shall remain subject to the Restrictions until the resolution of such dispute, regardless of any intervening expiration of the Restricted Period, except that any dividends that may be payable to the holders of record of Common Stock as of a date during the period from termination of Employee's employment to the resolution of such dispute shall:

(i) to the extent to which such dividends would have been payable to Employee on the Shares, be held by the Corporation as part of its general funds (unless such action would detrimentally affect Employee under Section 409A of the Code) and shall be paid to or for the account of Employee only upon, and in the event of, a resolution of such dispute in a manner favorable to Employee, and

(ii) be canceled upon, and in the event of, a resolution of such dispute in a manner unfavorable to Employee.

3. Taxes.

(a) To the extent that the receipt of the Restricted Shares, Transferable Shares, or the lapse of any Restrictions results in income to Employee for federal, state or local income or other tax or social security purposes (or results in any taxes of any kind), Employee shall deliver to the Corporation at the time of such receipt or lapse, as the case may be, such amount of money or, if the Corporation so determines, shares of unrestricted Common Stock (or shall make other arrangements in accordance with Section 21 of the Plan) as the Corporation may require to meet its obligation under applicable tax and other laws or regulations, and, if Employee fails to do so,

the Corporation is authorized to withhold from any cash or Common Stock remuneration then or thereafter payable to Employee any tax or other amount required to be withheld by reason of such receipt, lapse or resulting income.

(b) Employee understands that Employee may elect to be taxed at the Grant Date rather than at the time the Restrictions lapse with respect to the Shares by filing an election under Section 83(b) of the Code with the Internal Revenue Service and by providing a copy of the election to the Corporation. EMPLOYEE ACKNOWLEDGES THAT HE OR SHE HAS BEEN INFORMED OF THE AVAILABILITY OF MAKING AN ELECTION IN ACCORDANCE WITH SECTION 83(b) OF THE CODE; THAT SUCH ELECTION MUST BE FILED WITH THE INTERNAL REVENUE SERVICE (AND A COPY OF THE ELECTION GIVEN TO THE COMPANY) WITHIN 30 DAYS OF THE GRANT OF AWARDED SHARES TO EMPLOYEE; AND THAT EMPLOYEE IS SOLELY RESPONSIBLE FOR MAKING SUCH ELECTION. Employee agrees to notify the Corporation promptly of any tax election made by Employee with respect to the Shares.

4. Adjustments/Changes in Capitalization. This award is subject to the adjustment provisions set forth in Section 17 of the Plan.

5. Compliance with Securities Laws. The Corporation shall make reasonable efforts to comply with all applicable federal and state securities laws; provided, however, notwithstanding any other provision of this Agreement, the Corporation shall not be obligated to issue any restricted or unrestricted common stock or other securities pursuant to this Agreement if the issuance thereof would result in a violation of any such law. It is intended that Transferable Shares shall be registered under the Securities Act of 1933 (the "1933 Act"). If Employee is an "affiliate" of the Corporation, as that term is defined in Rule 144 under the 1933 Act ("Rule 144"), such Employee may not sell the Transferable Shares except in compliance with Rule 144. Any certificates representing Transferable Shares issued to an "affiliate" of the Corporation may bear a legend setting forth such restrictions on the disposition or transfer of the Transferable Shares as the Corporation deems appropriate to comply with federal and state securities laws (and if the Transferable Shares are evidenced on a noncertificated basis, the Transferable Shares shall be subject to similar stop transfer instructions). The Employee acknowledges and understands that the Corporation may not be satisfying the current public information requirement of Rule 144 at the time the Employee wishes to sell the Transferable Shares or other conditions under Rule 144 which are required of the Corporation. If so, the Employee understands that Employee will be precluded from selling the securities under Rule 144 even if the one-year holding period (or any modification thereof under the Rule) of said Rule has been satisfied. Prior to the Employee's acquisition of the Transferable Shares, the Employee acquired sufficient information about the Corporation to reach an informed knowledgeable decision to acquire such securities. The Employee has such knowledge and experience in financial and business matters as to make the Employee capable of utilizing said information to evaluate the risks of the prospective investment and to make an informed investment decision. The Employee is able to bear the economic risk of his or her investment in the Shares. The Employee agrees not to make, without the prior written consent of the Corporation, any public offering or sale of the Shares although permitted to do so pursuant to Rule 144(k) promulgated under the 1933 Act, until all applicable conditions and requirements of Rule 144 (or registration of

the shares of common stock issued pursuant to this Agreement under the 1933 Act) and this Agreement have been satisfied.

6. Employment Relationship. Any questions as to whether and when there has been a termination of Employee's employment with the Corporation or any Affiliate, and the cause of such termination, shall be determined by the Committee, with the advice of the employing corporation (if an Affiliate), and the Committee's determination shall be final. Nothing in the Plan or this Agreement shall confer upon the Employee any right to continue to serve the Corporation or an Affiliate in the capacity in effect at the Grant Date (or otherwise) or at any particular rate of compensation or shall affect the right of the Corporation or an Affiliate (which right is hereby expressly reserved) to modify or terminate the employment of the Employee at any time with or without notice and with or without Cause. The Employee acknowledges and agrees that any right to lapse of the Restrictions is earned only by continuing as an employee of the Corporation or an Affiliate at the will of the Corporation or such Affiliate, or satisfaction of any other applicable terms and conditions contained in the Plan and this Agreement, and not through the act of being hired or receiving the Grant.

7. Binding Effect. The terms and conditions hereof shall, in accordance with their terms, be binding upon, and inure to the benefit of, all successors of Employee, including, without limitation, Employee's estate and the executors, administrators, or trustees thereof, heirs and legatees, and any receiver, trustee in bankruptcy, or representative of creditors of Employee. This Agreement shall be binding upon and inure to the benefit of any successors to the Corporation.

8. Notice. All notices required to be given under this Agreement or the Plan shall be in writing and delivered in person or by registered or certified mail, postage prepaid, to the other party, in the case of the Corporation, at the address of its principal place of business (or such other address as the Corporation may from time to time specify), or, in the case of the Employee, at the Employee's address set forth in the Corporation's records; provided, however, any such notice to the Employee may be delivered electronically to the Employee's email address set forth in the Corporation's records. Each party to this Agreement agrees to inform the other party immediately upon a change of address. All notices shall be deemed delivered when received.

9. Arbitration. Any dispute or controversy arising under or in connection with this Agreement shall be settled by binding arbitration in [Houston, Texas] by one arbitrator appointed in the manner set forth by the American Arbitration Association. Any arbitration proceeding pursuant to this paragraph shall be conducted in accordance with the Employment Dispute Resolution Rules of the American Arbitration Association. Judgment may be entered on the arbitrators' award in any court having jurisdiction.

10. Entire Agreement and Amendments. This Agreement and the Plan contain the entire agreement of the parties relating to the matters contained herein and supersede all prior agreements and understandings, oral or written, between the parties with respect to the subject matter hereof. This Agreement may be amended in accordance with Section 22 of the Plan.

11. Separability. If any provision of this Agreement is rendered or declared illegal or unenforceable by reason of any existing or subsequently enacted legislation or by the decision of

any arbitrator or by decree of a court of last resort, the parties shall promptly meet and negotiate substitute provisions for those rendered or declared illegal or unenforceable to preserve the original intent of this Agreement to the extent legally possible, but all other provisions of this Agreement shall remain in full force and effect.

12. Interpretation of the Plan and the Grant. In the event there is any inconsistency or discrepancy between the provisions of this Agreement and the provisions of the Plan, the provisions of the Plan shall prevail.

13. Governing Law. The execution, validity, interpretation, and performance of this Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, applied without giving effect to any conflicts-of-law principles, except to the extent pre-empted by federal law.

14. Electronic Delivery And Signatures. The Corporation may, in its sole discretion, decide to deliver any documents related to the Grant or to participation in the Plan or to future grants that may be made under the Plan by electronic means or to request the Employee's consent to participate in the Plan by electronic means. Employee hereby consents to receive such documents by electronic delivery and, if requested, to agree to participate in the Plan through an on-line or electronic system established and maintained by the Corporation or another third party designated by the Corporation. If the Corporation establishes procedures of an electronic signature system for delivery and acceptance of Plan documents (including this Agreement or any Award Agreement like this Agreement), Employee hereby consents to such procedures and agrees that his or her electronic signature is the same as, and shall have the same force and effect as, his or her manual signature.

IN WITNESS WHEREOF, the Corporation has caused this Agreement to be duly executed by one of its officers thereunto duly authorized, and Employee has executed this Agreement, all as of the day and year first above written.

CALPINE CORPORATION

Name:

Title:

[EMPLOYEE NAME]

**AMENDED AND RESTATED
CALPINE CORPORATION
2008 EQUITY INCENTIVE PLAN**

Notice of Performance Share Unit Grant

Participant: [Jack A. Fusco / W. Thaddeus Miller]

Corporation: Calpine Corporation

Notice: You have been granted the following Performance Share Units in accordance with the terms of this notice, the Performance Share Unit Award Agreement attached hereto as Attachment A (such notice and agreement, collectively, this “Agreement”) and the Plan identified below.

Type of Award: Performance-based Restricted Stock Units, referred to herein as “Performance Share Units”. A Performance Share Unit is an unfunded and unsecured obligation of the Corporation to pay the cash equivalent of up to two (2) shares of Common Stock, as determined in accordance with this Agreement and subject to the terms and conditions of this Agreement and those of the Plan. This award of Performance Share Units is designated as a Performance Compensation Award for purposes of the Plan.

Plan: Amended and Restated Calpine Corporation 2008 Equity Incentive Plan.

Grant: Grant Date : February [●], 2013
Number of Performance Share Units : [●]

Acknowledgement and Agreement: The undersigned Participant acknowledges receipt of, and understands and agrees to, the terms and conditions of this Agreement and the Plan.

CALPINE CORPORATION

PARTICIPANT

By: _____
Name: _____
Title: _____

Date: _____

Date: _____

**AMENDED AND RESTATED
CALPINE CORPORATION
2008 EQUITY INCENTIVE PLAN**

Performance Share Unit Award Agreement

This Performance Share Unit Award Agreement, dated as of the Grant Date set forth in the Notice of Performance Share Unit Grant to which this Performance Share Unit Award Agreement is attached (the “Grant Notice”), is made between Calpine Corporation (the “Corporation”) and the Participant set forth in the Grant Notice. The Grant Notice is included in and made part of this Performance Share Unit Award Agreement.

1. Definitions. Capitalized terms used but not defined herein have the meanings set forth in the Plan.
2. Grant of Performance Share Units. Subject to the provisions of this Agreement and the provisions of the Plan, the Corporation hereby grants to the Participant, pursuant to the Plan, the number of Performance Share Units set forth in the Grant Notice.
3. Vesting Criteria Applicable to Performance Share Units.
 - (a) *Performance Cycle*. The Performance Cycle for the Performance Share Units shall commence on January 1, 2013, and shall end on December 31, 2015.
 - (b) *Performance Goal*. The performance goal for the Performance Cycle is the cumulative total return per share of Common Stock to the Corporation’s shareholders, inclusive of dividends paid, during the Performance Cycle in comparison to the cumulative total return per share of common stock, inclusive of dividends paid, during the Performance Cycle achieved by the companies (each, an “S&P 500 Company,” and collectively, the “S&P 500 Companies”) comprising the Standard & Poor’s 500 index on January 1, 2013, as set forth in this Section 3(b). For purposes of this Agreement, such cumulative total shareholder return (“TSR”) for the Corporation and each of the S&P 500 Companies shall be measured by dividing (A) the sum of (1) the dividends paid (regardless of whether paid in cash or property) on the common stock of such company during the Performance Cycle, assuming reinvestment of such dividends in such stock (based on the closing price of such stock on the date such dividend is paid), plus (2) the difference between the average closing price of a share of such company’s common stock on the principal United States exchange on which such stock trades for the twenty (20) trading days occurring immediately prior to the first day of the Performance Cycle (the “Beginning Average Value”) and the average closing price of a share of such stock on the principal United States exchange on which such stock trades for the twenty (20) trading days immediately prior to and including the last day of the Performance Cycle (appropriately adjusted for any stock dividend, stock split, spin-off, merger or other similar corporate events affecting such stock), by (B) the Beginning Average Value. For the avoidance of doubt, it is intended that the foregoing calculation of TSR shall take into account not only the reinvestment of dividends in a share of common stock of the Corporation or any S&P 500 Company, as applicable, but also capital appreciation or depreciation in the shares deemed acquired by such reinvestment. All determinations under this Section 3 shall be made by the Committee.
 - (c) *TSR Percentile Ranking*. Except as provided in Section 4 or Section 6 hereof, the Performance Share Units shall be earned based on the Corporation’s TSR percentile ranking in comparison to the TSRs of the S&P 500 Companies during the Performance Cycle. As soon as practicable after the completion of the Performance Cycle, (i) the TSRs of the Corporation and each of the S&P 500 Companies shall be calculated, and (ii) the relative ranking of the Corporation’s TSR for the Performance Cycle as compared to the TSRs for the S&P 500 Companies for the Performance Cycle shall be determined and expressed as a percentile ranking (the “TSR Percentile Ranking”). If

at any time during the Performance Cycle, an S&P 500 Company ceases to be a publicly-traded company, such company shall be removed and treated as if it had never been an S&P 500 Company for purposes of determining the TSR Percentile Ranking.

(d) *Earned Percentage*. The Earned Percentage shall be determined in accordance with the following schedule based on the TSR Percentile Ranking, with any Earned Percentage for any TSR Percentile Ranking between the levels set forth in such schedule determined by linear interpolation:

TSR Percentile Ranking	Earned Percentage
90 th percentile	200%
80 th percentile	175%
70 th percentile	150%
60 th percentile	125%
50 th percentile	100%
40 th percentile	75%
30 th percentile	50%
Less than 30 th percentile	0%

(e) *Earned Performance Share Units*. The number of Performance Share Units earned (the “Earned Performance Share Units”) shall be the product of the number of Performance Share Units set forth in the Grant Notice multiplied by the Earned Percentage, subject to Committee certification pursuant to paragraph (f) of this Section 3.

(f) *Committee Certification*. As soon as practicable after completion of the Performance Cycle, the Committee shall determine and certify in writing the TSR Percentile Ranking attained, the Earned Percentage and the number of Earned Performance Share Units (which written certification may be in the form of approved minutes of the Committee meeting in which such certification is made).

(g) *Failure to Become Earned Performance Share Units*. To the extent that the Performance Share Units do not become Earned Performance Share Units pursuant to this Section 3, such Performance Share Units shall be automatically forfeited.

4. Termination of Employment. Any Performance Share Units that have not been settled in accordance with Section 5 hereof prior to the date on which the status of employment of the Participant with the Corporation or its Affiliates shall terminate (including by reason of such an Affiliate ceasing to be an Affiliate of the Corporation) (any such termination, “Termination of Employment”) shall be immediately and automatically forfeited upon such date, except as follows:

(a) *Disability or Death*. Upon Termination of Employment due to Disability (as defined in the Executive Employment Agreement between the Corporation and the Participant, dated as of August 10, 2008, as amended (the “Employment Agreement”)) or by reason of the Participant’s death, then, notwithstanding such Termination of Employment, the Earned Percentage shall be 100% and the Earned Performance Share Units shall be settled in accordance with Section 5 hereof.

(b) *Without Cause or For Good Reason*. Upon Termination of Employment by the Corporation without Cause (as defined in the Employment Agreement) or by the Participant for Good Reason (as defined in the Employment Agreement), then, notwithstanding such Termination of Employment, the Performance Share Units shall be eligible to become Earned Performance Share Units, and any Earned Performance Share Units shall be settled subject to the same terms and conditions hereunder had the Participant not incurred such Termination

of Employment, subject to the Participant's compliance with Sections 11 and 12 of the Employment Agreement through the date on which the Earned Performance Share Units are settled in accordance with Section 5 hereof.

(c) *Expiration of [Transition Term [JF]][Extended Term [TM]]*. Upon expiration of the [Transition Term] [Extended Term] (as defined in the Employment Agreement), provided that the Participant has not incurred a Termination of Employment on or before the date of such expiration, then, notwithstanding any Termination of Employment after such expiration, the Performance Share Units shall be eligible to become Earned Performance Share Units, and any Earned Performance Share Units shall be settled subject to the same terms and conditions hereunder had the Participant not incurred such Termination of Employment, subject to the Participant's compliance with Sections 11 and 12 of the Employment Agreement through the date on which the Earned Performance Share Units are settled in accordance with Section 5 hereof.

5. Settlement of Earned Performance Share Units. During calendar year 2016, as soon as reasonably practicable following completion of all determinations and certifications contemplated by Section 3, but in no event later than March 15, 2016, subject to satisfaction of applicable tax withholding obligations in accordance with Section 7, the Corporation shall cause to be paid to the Participant an amount in cash equal to the product of the number of Earned Performance Share Units multiplied by the Fair Market Value of a share of Common Stock as of the last trading day of the Performance Cycle, provided, however, that if the Participant incurs a Termination of Employment as described in Section 4(a) hereof, then such payment shall be made within sixty (60) days after the date of such Termination of Employment and such Fair Market Value shall be determined as of the date of such Termination of Employment, less applicable taxes in accordance with Section 7. Notwithstanding the foregoing provisions of this Section 5 to the contrary, if at the time of the Participant's separation from service within the meaning of Code Section 409A, the Participant is a "specified employee" within the meaning of Code Section 409A, any payment hereunder that constitutes a "deferral of compensation" under Code Section 409A and that would otherwise become due on account of such separation from service shall be delayed, and payment shall be made in full upon the earlier to occur of (a) a date during the thirty-day period commencing six months and one day following such separation from service and (b) the date of the Participant's death.

6. Change in Control.

(a) *Accelerated Payment of Performance Share Units*. Notwithstanding Sections 3 and 5, in the event a Change in Control occurs prior to the end of the Performance Cycle, and provided that the Performance Share Units have not been forfeited pursuant to Section 4 prior to the date of such Change in Control, then: (i) the Corporation's TSR, the TSR for each S&P 500 Company and the TSR Percentile Ranking shall be determined in accordance with Section 3(a), (b) and (c) for the portion of the Performance Cycle that ends on the last trading day that is on or immediately prior to the fifth (5th) day immediately prior to the date of the Change in Control; (ii) the number of Earned Performance Share Units shall be equal to the product of (A) the greater of (x) the Earned Percentage determined in accordance with Section 3(d) based on the TSR Percentile Ranking determined in accordance with clause (i) of this Section 6(a), and (y) 100%, multiplied by (B) the number of Performance Share Units set forth in the Grant Notice, and (iii) subject to satisfaction of applicable tax withholding obligations in accordance with Section 7, the Corporation shall cause to be paid to the Participant an amount in cash equal to the product of such number of Earned Performance Share Units multiplied by the Change in Control Price (as defined in paragraph (b) of this Section 6) on, or within five (5) business days after, the date of such Change in Control, based on the Change in Control Price; provided, however, that if such Change in Control does not constitute a "change in control event," within the meaning of Treasury Regulations Section 1.409A-3(i)(5), then any amounts payable under this Section 6 that constitute a "deferral of compensation" under Code Section 409A shall be made at the time specified in Section 5 notwithstanding the occurrence of such Change in Control. All determinations under this Section 6 shall be made by the Committee as constituted immediately prior to the applicable Change in Control.

(b) *Change in Control Price*. For purposes of this Section 6, “Change in Control Price” means the closing price of a share of the Common Stock on the principal United States exchange on which Common Stock trades on the last trading day occurring immediately prior to the date of the Change in Control.

7. Taxes. Upon settlement of the Earned Performance Share Units, or as of any other date on which the value of any Performance Share Units otherwise becomes includable in the Participant’s gross income for Federal, state, local or non-United States income tax or other tax or social security purposes (or results in any other taxes of any kind), the Participant shall deliver to the Corporation at the time of such settlement or such other date such amount of cash as the Corporation or its Affiliate may require to meet its obligations under applicable tax and other laws or regulations, provided that the Corporation may determine that any such tax obligations shall be satisfied by the Corporation withholding any amount otherwise payable to the Participant pursuant to this Agreement. The Corporation or an Affiliate may, in the discretion of the Committee, provide for alternative arrangements to satisfy applicable tax withholding requirements in accordance with Section 21 of the Plan. Regardless of any action the Corporation or any Affiliate takes with respect to any or all tax withholding obligations, the Participant acknowledges that the ultimate liability for all such taxes is and remains the Participant’s responsibility.

8. Dividend Equivalents. With respect to the number of Performance Share Units set forth in the Grant Notice, the Participant shall be credited with Dividend Equivalents with respect to each such Performance Share Unit equal to the amount per share of Common Stock of any ordinary cash dividends declared by the Board with record dates during the period beginning on the first day of the Performance Cycle and ending on the earliest to occur of: (a) the last day of the Performance Cycle; (b) the date of a Change in Control and (c) the date such Performance Share Unit terminates or is forfeited under Section 3 or Section 4. The Corporation shall pay in cash to the Participant an amount equal to the product of (i) sum of the aggregate amount of such Dividend Equivalents credited to the Participant, multiplied by (ii) the Earned Percentage, such amount to be paid as and when the related Performance Share Units are paid in accordance with Section 5 or Section 6, as applicable. Any Dividend Equivalents shall be forfeited as and when the related Performance Share Units are forfeited in accordance with Section 3 or Section 4.

9. No Rights as a Shareholder. Neither the Participant nor any other person shall at any time be or become the beneficial owner of any shares of Common Stock underlying the Performance Share Units, nor have any rights to dividends or other rights as a shareholder with respect to any such shares.

10. Transferability. The Performance Share Units shall not be transferable otherwise than by will or the laws of descent and distribution; provided, however, that the Participant may file with the Company a written designation of a beneficiary on such form as may be prescribed by the Company and may, from time to time, amend or revoke such designation, and, in the event of the Participant’s death, any payment due under Section 5 shall be made to the most recently designated such beneficiary, and if no designated beneficiary survives the Participant, any such payment shall be made to the executor or administrator of the Participant’s estate.

11. No Right to Continued Employment. Neither the Performance Share Units nor any terms contained in this Agreement shall confer upon the Participant any rights or claims except in accordance with the express provisions of the Plan and this Agreement, and shall not give the Participant any express or implied right to be retained in the employment or service of the Corporation or any Affiliate for any period, or in any particular position or at any particular rate of compensation, nor restrict in any way the right of the Corporation or any Affiliate, which right is hereby expressly reserved, to modify or terminate the Participant’s employment or service at any time for any reason. The Participant acknowledges and agrees that any right to Earned Performance Share Units is earned only by continuing as an employee of the Corporation or an Affiliate and satisfaction of other applicable terms and conditions contained in the Plan and this Agreement, and not through the act of being hired or being granted the Performance Share Units hereunder.

12. The Plan. By accepting any benefit under this Agreement, the Participant and any person claiming under or through the Participant shall be conclusively deemed to have indicated his or her acceptance and ratification of, and consent to, all of the terms and conditions of the Plan and this Agreement and any action taken under

the Plan by the Board, the Committee or the Corporation, in any case in accordance with the terms and conditions of the Plan. This Agreement is subject to all the terms, provisions and conditions of the Plan, which are incorporated herein by reference, and to such rules, policies and regulations as may from time to time be adopted by the Committee. In the event of any conflict between the provisions of the Plan and this Agreement, the provisions of the Plan shall control, and this Agreement shall be deemed to be modified accordingly. The Plan and the prospectus describing the Plan can be found on the Corporation's HR intranet. A paper copy of the Plan and the prospectus shall be provided to the Participant upon the Participant's written request to the Corporation at the address indicated in Section 13 hereof.

13. Notice. All notices required to be given under this Agreement or the Plan shall be in writing and delivered in person or by registered or certified mail, postage prepaid, to the other party, in the case of the Corporation, at the address of its principal place of business (or such other address as the Corporation may from time to time specify), or, in the case of the Participant, at the Participant's address set forth in the Corporation's records; provided, however, any such notice to the Participant may be delivered electronically to the Participant's email address set forth in the Corporation's records. Each party to this Agreement agrees to inform the other party immediately upon a change of address. All notices shall be deemed delivered when received.

14. Other Plans. The Participant acknowledges that any income derived from the Performance Share Units shall not affect the Participant's participation in, or benefits under, any other benefit plan or other contract or arrangement maintained by the Corporation or any Affiliate.

15. Arbitration. Any dispute or controversy arising under or in connection with this Agreement shall be settled by binding arbitration in Houston, Texas by one arbitrator appointed in the manner set forth by the American Arbitration Association. Any arbitration proceeding pursuant to this paragraph shall be conducted in accordance with the Employment Dispute Resolution Rules of the American Arbitration Association. Judgment may be entered on the arbitrators' award in any court having jurisdiction.

16. Entire Agreement and Amendments. This Agreement and the Plan contain the entire agreement of the parties relating to the matters contained herein and supersede all prior agreements and understandings, oral or written, between the parties with respect to the subject matter hereof. This Agreement may be amended in accordance with Section 22 of the Plan.

17. Separability. If any provision of this Agreement is rendered or declared illegal or unenforceable by reason of any existing or subsequently enacted legislation or by the decision of any arbitrator or by decree of a court of last resort, the parties shall promptly meet and negotiate substitute provisions for those rendered or declared illegal or unenforceable to preserve the original intent of this Agreement to the extent legally possible, but all other provisions of this Agreement shall remain in full force and effect.

18. Electronic Delivery And Signatures. The Corporation may, in its sole discretion, decide to deliver any documents related to the Performance Share Units, this Agreement or to participation in the Plan or to future grants that may be made under the Plan by electronic means or to request the Participant's consent to participate in the Plan by electronic means. The Participant hereby consents to receive such documents by electronic delivery and, if requested, to agree to participate in the Plan through an on-line or electronic system established and maintained by the Corporation or another third party designated by the Corporation. If the Corporation establishes procedures of an electronic signature system for delivery and acceptance of Plan documents (including this Agreement or any Award Agreement like this Agreement), the Participant hereby consents to such procedures and agrees that his or her electronic signature is the same as, and shall have the same force and effect as, his or her manual signature.

19. Section 409A. This Agreement and delivery of shares of Common Stock under this Agreement are intended to be exempt from or to comply with Section 409A of the Code and shall be administered and construed in accordance with such intent. In furtherance, and not in limitation, of the foregoing: (a) in no event may the Participant designate, directly or indirectly, the calendar year of any payment to be made hereunder; and (b) notwithstanding any other provision of this Agreement to the contrary, a Termination of Employment hereunder shall mean and be interpreted

consistent with a “separation from service” within the meaning of Code Section 409A with respect to any payment hereunder that constitute a “deferral of compensation” under Code Section 409A that becomes due on account of such separation from service.

**AMENDED AND RESTATED
CALPINE CORPORATION
2008 EQUITY INCENTIVE PLAN**

Notice of Performance Share Unit Grant

Participant: [●]

Corporation: Calpine Corporation

Notice: You have been granted the following Performance Share Units in accordance with the terms of this notice, the Performance Share Unit Award Agreement attached hereto as Attachment A (such notice and agreement, collectively, this “Agreement”) and the Plan identified below.

Type of Award: Performance-based Restricted Stock Units, referred to herein as “Performance Share Units”. A Performance Share Unit is an unfunded and unsecured obligation of the Corporation to pay the cash equivalent of up to two (2) shares of Common Stock, as determined in accordance with this Agreement and subject to the terms and conditions of this Agreement and those of the Plan.

Plan: Amended and Restated Calpine Corporation 2008 Equity Incentive Plan.

Grant: Grant Date : February [●], 2013
Number of Performance Share Units : [●]

Acknowledgement and Agreement: The undersigned Participant acknowledges receipt of, and understands and agrees to, the terms and conditions of this Agreement and the Plan.

CALPINE CORPORATION

PARTICIPANT

By: _____
Name: _____
Title: _____

Date: _____

Date: _____

**AMENDED AND RESTATED
CALPINE CORPORATION
2008 EQUITY INCENTIVE PLAN**

Performance Share Unit Award Agreement

This Performance Share Unit Award Agreement, dated as of the Grant Date set forth in the Notice of Performance Share Unit Grant to which this Performance Share Unit Award Agreement is attached (the “Grant Notice”), is made between Calpine Corporation (the “Corporation”) and the Participant set forth in the Grant Notice. The Grant Notice is included in and made part of this Performance Share Unit Award Agreement.

1. Definitions. Capitalized terms used but not defined herein have the meanings set forth in the Plan.
2. Grant of Performance Share Units. Subject to the provisions of this Agreement and the provisions of the Plan, the Corporation hereby grants to the Participant, pursuant to the Plan, the number of Performance Share Units set forth in the Grant Notice.
3. Vesting Criteria Applicable to Performance Share Units.

(a) *Performance Cycle*. The Performance Cycle for the Performance Share Units shall commence on January 1, 2013, and shall end on December 31, 2015.

(b) *Performance Goal*. The performance goal for the Performance Cycle is the cumulative total return per share of Common Stock to the Corporation’s shareholders, inclusive of dividends paid, during the Performance Cycle in comparison to the cumulative total return per share of common stock, inclusive of dividends paid, during the Performance Cycle achieved by the companies (each, an “S&P 500 Company,” and collectively, the “S&P 500 Companies”) comprising the Standard & Poor’s 500 index on January 1, 2013, as set forth in this Section 3(b). For purposes of this Agreement, such cumulative total shareholder return (“TSR”) for the Corporation and each of the S&P 500 Companies shall be measured by dividing (A) the sum of (1) the dividends paid (regardless of whether paid in cash or property) on the common stock of such company during the Performance Cycle, assuming reinvestment of such dividends in such stock (based on the closing price of such stock on the date such dividend is paid), plus (2) the difference between the average closing price of a share of such company’s common stock on the principal United States exchange on which such stock trades for the twenty (20) trading days occurring immediately prior to the first day of the Performance Cycle (the “Beginning Average Value”) and the average closing price of a share of such stock on the principal United States exchange on which such stock trades for the twenty (20) trading days immediately prior to and including the last day of the Performance Cycle (appropriately adjusted for any stock dividend, stock split, spin-off, merger or other similar corporate events affecting such stock), by (B) the Beginning Average Value. For the avoidance of doubt, it is intended that the foregoing calculation of TSR shall take into account not only the reinvestment of dividends in a share of common stock of the Corporation or any S&P 500 Company, as applicable, but also capital appreciation or depreciation in the shares deemed acquired by such reinvestment. All determinations under this Section 3 shall be made by the Committee.

(c) *TSR Percentile Ranking*. Except as provided in Section 4 or Section 6 hereof, the Performance Share Units shall be earned based on the Corporation’s TSR percentile ranking in comparison to the TSRs of the S&P 500 Companies during the Performance Cycle. As soon as practicable after the completion of the Performance Cycle, (i) the TSRs of the Corporation and each of the S&P 500 Companies shall be calculated, and (ii) the relative ranking of the Corporation’s TSR for the Performance Cycle as compared to the TSRs for the S&P 500 Companies for the Performance Cycle shall be determined and expressed as a percentile ranking (the “TSR Percentile Ranking”). If at any time during the Performance Cycle, an S&P 500 Company ceases to be a publicly-traded company, such company

shall be removed and treated as if it had never been an S&P 500 Company for purposes of determining the TSR Percentile Ranking.

(d) *Earned Percentage*. The Earned Percentage shall be determined in accordance with the following schedule based on the TSR Percentile Ranking, with any Earned Percentage for any TSR Percentile Ranking between the levels set forth in such schedule determined by linear interpolation:

TSR Percentile Ranking	Earned Percentage
90 th percentile	200%
80 th percentile	175%
70 th percentile	150%
60 th percentile	125%
50 th percentile	100%
40 th percentile	75%
30 th percentile	50%
Less than 30 th percentile	0%

(e) *Earned Performance Share Units*. The number of Performance Share Units earned (the “Earned Performance Share Units”) shall be the product of the number of Performance Share Units set forth in the Grant Notice multiplied by the Earned Percentage, subject to Committee certification pursuant to paragraph (f) of this Section 3.

(f) *Committee Certification*. As soon as practicable after completion of the Performance Cycle, the Committee shall determine and certify in writing the TSR Percentile Ranking attained, the Earned Percentage and the number of Earned Performance Share Units (which written certification may be in the form of approved minutes of the Committee meeting in which such certification is made).

(g) *Failure to Become Earned Performance Share Units*. To the extent that the Performance Share Units do not become Earned Performance Share Units pursuant to this Section 3, such Performance Share Units shall be automatically forfeited.

4. *Termination of Employment*. Any Performance Share Units that have not been settled in accordance with Section 5 hereof prior to the date on which the status of employment of the Participant with the Corporation or its Affiliates shall terminate (including by reason of such an Affiliate ceasing to be an Affiliate of the Corporation) (any such termination, “Termination of Employment”) shall be immediately and automatically forfeited upon such date, except as follows:

(a) *Death*. Upon Termination of Employment by reason of the Participant’s death, then, notwithstanding such Termination of Employment, the Earned Percentage shall be 100%, and the Earned Performance Share Units shall be settled in accordance with Section 5 hereof.

(b) *Retirement Eligible*. In the event that the Participant is, or becomes, eligible to Retire, then, effective on the later to occur of: (i) the date on which the Participant initially becomes eligible to Retire, and (ii) the one-year anniversary of the Grant Date, notwithstanding any Termination of Employment occurring after such later date, the Performance Share Units shall be eligible to become Earned Performance Share Units, and any Earned Performance Share Units shall be settled subject to the same terms and conditions hereunder had the Participant not incurred such Termination of Employment. For the avoidance of doubt, if the Participant incurs a Termination of Employment prior to such later date, then this paragraph (b) of Section 4 shall not apply.

5. *Settlement of Earned Performance Share Units*. During calendar year 2016, as soon as reasonably practicable following completion of all determinations and certifications contemplated by Section 3, but in no event later than March 15, 2016, subject to satisfaction of applicable tax withholding obligations in accordance with

Section 7, the Corporation shall cause to be paid to the Participant an amount in cash equal to the product of the number of Earned Performance Share Units multiplied by the Fair Market Value of a share of Common Stock as of the last trading day of the Performance Cycle, provided, however, that if the Participant incurs a Termination of Employment as described in Section 4(a) hereof, then such payment shall be made within sixty (60) days after the date of such Termination of Employment and such Fair Market Value shall be determined as of the date of such Termination of Employment, less applicable taxes in accordance with Section 7. Notwithstanding the foregoing provisions of this Section 5 to the contrary, if at the time of the Participant's separation from service within the meaning of Code Section 409A, the Participant is a "specified employee" within the meaning of Code Section 409A, any payment hereunder that constitutes a "deferral of compensation" under Code Section 409A and that would otherwise become due on account of such separation from service shall be delayed, and payment shall be made in full upon the earlier to occur of (a) a date during the thirty-day period commencing six months and one day following such separation from service and (b) the date of the Participant's death.

6. Change in Control.

(a) *Accelerated Payment of Performance Share Units*. Notwithstanding Sections 3 and 5, in the event a Change in Control occurs prior to the end of the Performance Cycle, and provided that the Performance Share Units have not been forfeited pursuant to Section 4 prior to the date of such Change in Control, then: (i) the Corporation's TSR, the TSR for each S&P 500 Company and the TSR Percentile Ranking shall be determined in accordance with Section 3(a), (b) and (c) for the portion of the Performance Cycle that ends on the last trading day that is on or immediately prior to the fifth (5th) day immediately prior to the date of the Change in Control; (ii) the number of Earned Performance Share Units shall be equal to the product of (A) the greater of (x) the Earned Percentage determined in accordance with Section 3(d) based on the TSR Percentile Ranking determined in accordance with clause (i) of this Section 6(a), and (y) 100%, multiplied by (B) the number of Performance Share Units set forth in the Grant Notice, and (iii) subject to satisfaction of applicable tax withholding obligations in accordance with Section 7, the Corporation shall cause to be paid to the Participant an amount in cash equal to the product of such number of Earned Performance Share Units multiplied by the Change in Control Price (as defined in paragraph (b) of this Section 6) on, or within five (5) business days after, the date of such Change in Control, based on the Change in Control Price; provided, however, that if such Change in Control does not constitute a "change in control event," within the meaning of Treasury Regulations Section 1.409A-3(i)(5), then any amounts payable under this Section 6 that constitute a "deferral of compensation" under Code Section 409A shall be made at the time specified in Section 5 notwithstanding the occurrence of such Change in Control. All determinations under this Section 6 shall be made by the Committee as constituted immediately prior to the applicable Change in Control.

(b) *Change in Control Price*. For purposes of this Section 6, "Change in Control Price" means the closing price of a share of the Common Stock on the principal United States exchange on which Common Stock trades on the last trading day occurring immediately prior to the date of the Change in Control.

7. Taxes. Upon settlement of the Earned Performance Share Units, or as of any other date on which the value of any Performance Share Units otherwise becomes includable in the Participant's gross income for Federal, state, local or non-United States income tax or other tax or social security purposes (or results in any other taxes of any kind), the Participant shall deliver to the Corporation at the time of such settlement or such other date such amount of cash as the Corporation or its Affiliate may require to meet its obligations under applicable tax and other laws or regulations, provided that the Corporation may determine that any such tax obligations shall be satisfied by the Corporation withholding any amount otherwise payable to the Participant pursuant to this Agreement. The Corporation or an Affiliate may, in the discretion of the Committee, provide for alternative arrangements to satisfy applicable tax withholding requirements in accordance with Section 21 of the Plan. Regardless of any action the Corporation or any Affiliate takes with respect to any or all tax withholding obligations, the Participant acknowledges that the ultimate liability for all such taxes is and remains the Participant's responsibility.

8. Dividend Equivalents. With respect to the number of Performance Share Units set forth in the Grant Notice, the Participant shall be credited with Dividend Equivalents with respect to each such Performance Share Unit equal to the amount per share of Common Stock of any ordinary cash dividends declared by the Board with record dates during the period beginning on the first day of the Performance Cycle and ending on the earliest to occur

of: (a) the last day of the Performance Cycle; (b) the date of a Change in Control and (c) the date such Performance Share Unit terminates or is forfeited under Section 3 or Section 4. The Corporation shall pay in cash to the Participant an amount equal to the product of (i) sum of the aggregate amount of such Dividend Equivalents credited to the Participant, multiplied by (ii) the Earned Percentage, such amount to be paid as and when the related Performance Share Units are paid in accordance with Section 5 or Section 6, as applicable. Any Dividend Equivalents shall be forfeited as and when the related Performance Share Units are forfeited in accordance with Section 3 or Section 4.

9. No Rights as a Shareholder. Neither the Participant nor any other person shall at any time be or become the beneficial owner of any shares of Common Stock underlying the Performance Share Units, nor have any rights to dividends or other rights as a shareholder with respect to any such shares.

10. Transferability. The Performance Share Units shall not be transferable otherwise than by will or the laws of descent and distribution; provided, however, that the Participant may file with the Company a written designation of a beneficiary on such form as may be prescribed by the Company and may, from time to time, amend or revoke such designation, and, in the event of the Participant's death, any payment due under Section 5 shall be made to the most recently designated such beneficiary, and if no designated beneficiary survives the Participant, any such payment shall be made to the executor or administrator of the Participant's estate.

11. No Right to Continued Employment. Neither the Performance Share Units nor any terms contained in this Agreement shall confer upon the Participant any rights or claims except in accordance with the express provisions of the Plan and this Agreement and shall not give the Participant any express or implied right to be retained in the employment or service of the Corporation or any Affiliate for any period, or in any particular position or at any particular rate of compensation, nor restrict in any way the right of the Corporation or any Affiliate, which right is hereby expressly reserved, to modify or terminate the Participant's employment or service at any time for any reason. The Participant acknowledges and agrees that any right to Earned Performance Share Units is earned only by continuing as an employee of the Corporation or an Affiliate and satisfaction of other applicable terms and conditions contained in the Plan and this Agreement, and not through the act of being hired or being granted the Performance Share Units hereunder.

12. The Plan. By accepting any benefit under this Agreement, the Participant and any person claiming under or through the Participant shall be conclusively deemed to have indicated his or her acceptance and ratification of, and consent to, all of the terms and conditions of the Plan and this Agreement and any action taken under the Plan by the Board, the Committee or the Corporation, in any case in accordance with the terms and conditions of the Plan. This Agreement is subject to all the terms, provisions and conditions of the Plan, which are incorporated herein by reference, and to such rules, policies and regulations as may from time to time be adopted by the Committee. In the event of any conflict between the provisions of the Plan and this Agreement, the provisions of the Plan shall control, and this Agreement shall be deemed to be modified accordingly. The Plan and the prospectus describing the Plan can be found on the Corporation's HR intranet. A paper copy of the Plan and the prospectus shall be provided to the Participant upon the Participant's written request to the Corporation at the address indicated in Section 12 hereof.

13. Notice. All notices required to be given under this Agreement or the Plan shall be in writing and delivered in person or by registered or certified mail, postage prepaid, to the other party, in the case of the Corporation, at the address of its principal place of business (or such other address as the Corporation may from time to time specify), or, in the case of the Participant, at the Participant's address set forth in the Corporation's records; provided, however,, any such notice to the Participant may be delivered electronically to the Participant's email address set forth in the Corporation's records. Each party to this Agreement agrees to inform the other party immediately upon a change of address. All notices shall be deemed delivered when received.

14. Other Plans. The Participant acknowledges that any income derived from the Peformance Share Units shall not affect the Participant's participation in, or benefits under, any other benefit plan or other contract or arrangement maintained by the Corporation or any Affiliate.

15. Arbitration. Any dispute or controversy arising under or in connection with this Agreement shall be settled by binding arbitration in Houston, Texas by one arbitrator appointed in the manner set forth by the

American Arbitration Association. Any arbitration proceeding pursuant to this paragraph shall be conducted in accordance with the Employment Dispute Resolution Rules of the American Arbitration Association. Judgment may be entered on the arbitrators' award in any court having jurisdiction.

16. Entire Agreement and Amendments. This Agreement and the Plan contain the entire agreement of the parties relating to the matters contained herein and supersede all prior agreements and understandings, oral or written, between the parties with respect to the subject matter hereof. This Agreement may be amended in accordance with Section 22 of the Plan.

17. Separability. If any provision of this Agreement is rendered or declared illegal or unenforceable by reason of any existing or subsequently enacted legislation or by the decision of any arbitrator or by decree of a court of last resort, the parties shall promptly meet and negotiate substitute provisions for those rendered or declared illegal or unenforceable to preserve the original intent of this Agreement to the extent legally possible, but all other provisions of this Agreement shall remain in full force and effect.

18. Electronic Delivery And Signatures. The Corporation may, in its sole discretion, decide to deliver any documents related to the Performance Share Units, this Agreement or to participation in the Plan or to future grants that may be made under the Plan by electronic means or to request the Participant's consent to participate in the Plan by electronic means. The Participant hereby consents to receive such documents by electronic delivery and, if requested, to agree to participate in the Plan through an on-line or electronic system established and maintained by the Corporation or another third party designated by the Corporation. If the Corporation establishes procedures of an electronic signature system for delivery and acceptance of Plan documents (including this Agreement or any Award Agreement like this Agreement), the Participant hereby consents to such procedures and agrees that his or her electronic signature is the same as, and shall have the same force and effect as, his or her manual signature.

19. Section 409A. This Agreement and delivery of shares of Common Stock under this Agreement are intended to be exempt from or to comply with Section 409A of the Code and shall be administered and construed in accordance with such intent. In furtherance, and not in limitation, of the foregoing: (a) in no event may the Participant designate, directly or indirectly, the calendar year of any payment to be made hereunder; and (b) notwithstanding any other provision of this Agreement to the contrary, a Termination of Employment hereunder shall mean and be interpreted consistent with a "separation from service" within the meaning of Code Section 409A with respect to any payment hereunder that constitute a "deferral of compensation" under Code Section 409A that becomes due on account of such separation from service.