

ATTACHMENT 2

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September 1, 1998

The Honorable David P. Boergers
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

**Re: California Independent System Operator Corporation
Docket Nos. ER98-992-000, ER98-996-000, ER98-997-000, ER98-1002-
000, ER98-1309-000, ER98-1310-000, ER98-1910-000, ER98-1912-000,
ER98-1930-000, ER98-1931-000, ER98-1933-000, ER98-1935-000, ER98-
2499-000**

Dear Secretary Boergers:

Enclosed for filing are an original and seven copies of the Prepared Direct Testimony and Exhibits of Deborah A. Le Vine, submitted on behalf of the California Independent System Operator Corporation in the above referenced dockets. This matter is currently pending before Judge Delbert R. Terrill, Jr.

Also enclosed is an extra copy of the filing to be time/date stamped and returned to us by the messenger. Thank you for your assistance.

Respectfully submitted,



Kenneth G. Jaffe
David B. Rubin
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W.
Washington D.C. 20007

Counsel for the California
Independent System Operator

Enclosures

cc: The Honorable Delbert R. Terrill, Jr.
Restricted Service List

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing documents upon each person designated on the Restricted Service List compiled by the Presiding Judge in this proceeding.

Dated at Washington, D.C. on this 1st day of September, 1998.

A handwritten signature in black ink, appearing to read 'DRubin', written over a horizontal line.

David B. Rubin
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W.
Washington, D.C. 20007

Counsel for the California
Independent System Operator

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UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System	)	Docket Nos. ER98-992-000,
Operator Corporation	)	ER98-996-000,
	)	ER98-997-000,
	)	ER98-1002-000,
	)	ER98-1309-000,
	)	ER98-1310-000,
	)	ER98-1910-000,
	)	ER98-1912-000,
	)	ER98-1930-000,
	)	ER98-1931-000,
	)	ER98-1933-000,
	)	ER98-1935-000, and
	)	ER98-2499-000

PREPARED DIRECT TESTIMONY OF
DEBORAH A. LE VINE
ON BEHALF OF THE
CALIFORNIA INDEPENDENT SYSTEM
OPERATOR CORPORATION

Q. PLEASE STATE YOUR NAME, TITLE, AND BUSINESS ADDRESS.

A. My name is Deborah A. Le Vine and I am the Director of Contracts & Compliance for the California Independent System Operator Corporation (ISO). My business address is 151 Blue Ravine Road, Folsom, California 95630.

1 **Q. IN WHAT CAPACITY ARE YOU EMPLOYED?**

2 A. As the Director of Contracts & Compliance, I am responsible for
3 negotiation and administration of all contracts executed by Market
4 Participants including, but not limited to, the Interim Black Start
5 Agreement, the Interconnected Control Area Operating Agreement, the
6 Meter Service Agreement for Scheduling Coordinators, the Meter Service
7 Agreement for ISO Metered Entities, the Participating Generator
8 Agreement (PGA), the Responsible Participating Transmission Owner
9 Agreement and the Utility Distribution Company Operating Agreement.
10 The compliance portion of the job includes compliance with the obligations
11 cited in the agreements, and with the ISO Tariff including the ISO
12 Protocols.

13 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL**
14 **QUALIFICATIONS.**

15 A. I received a Bachelor of Science degree in Electrical Engineering from
16 San Diego State University in San Diego, California in May 1981. In May
17 1987, I received a Master in Business Administration from Pepperdine
18 University in Malibu, California. Additionally, I am a registered
19 Professional Electrical Engineer in the State of California.

20 **Q. HAVE YOU TESTIFIED PREVIOUSLY BEFORE THIS COMMISSION?**

1 A. Yes. I recently filed Direct Testimony on behalf of the ISO in Docket No.
2 ER98-1057-000 et al. concerning the ISO's Responsible Participating
3 Transmission Owner Agreements.

4 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

5 A. The purpose of this testimony is to describe to the Commission the role of
6 the PGA in the restructuring of the electric utility industry in California and
7 certain significant aspects of the agreement as they relate to the
8 restructuring and the ISO Tariff.

9 **Q. AS YOU TESTIFY, WILL YOU BE USING ANY SPECIALIZED TERMS?**

10 A. Yes. I will be using terms defined in the Master Definitions Supplement,
11 Appendix A of the ISO Tariff, such as: Generators, Scheduling
12 Coordinators, ISO Controlled Grid, Participating Generator, and Energy.

13 **Q. PLEASE DESCRIBE THE RELATIONSHIP BETWEEN THE PGAs AND**
14 **THE ISO TARIFF.**

15 A. The PGA was established to facilitate the relationship between
16 Generating Units interconnected to the ISO Controlled Grid which
17 schedule Energy or Ancillary Services. Additionally, the PGA establishes
18 that the Generating Unit undertakes in writing to comply with all applicable
19 provisions of the ISO Tariff.

1 **Q. WHAT PURPOSE IS SERVED BY THE PGA?**

2 A. The PGA is part of the series of agreements that, together with the ISO
3 Tariff, implement the new competitive electric industry market structure in
4 California. The PGA is applicable to Generators who wish to participate in
5 the California market by scheduling Energy and, if applicable, by
6 submitting bids through a Scheduling Coordinator into the ISO Controlled
7 Grid (with the exception of certain types of facilities that have existing
8 power purchase agreements). The PGA sets out the procedures that the
9 parties agree will govern the manner in which the Participating
10 Generator's facilities will interface with the ISO Controlled Grid.

11 The PGA also addresses matters such as generating unit technical
12 characteristics, certification requirements, and data requirements relating
13 to major incidents including emergencies that affect the reliability of the
14 ISO Controlled Grid, for which the ISO has responsibility under California
15 law. The PGA includes an acknowledgment that the reliability of the ISO
16 Controlled Grid depends on the Participating Generator's compliance with
17 the ISO Tariff.

18 **Q. WHAT PGAs HAVE BEEN ENTERED INTO BY THE ISO?**

19 A. As shown in Exhibit No. ISO-2, the ISO has entered into 25 PGAs.

1 **Q. DID THE COMMISSION ORDER CHANGES TO BE MADE TO THE**
2 **PGAs FILED BY THE ISO?**

3 A. Yes. In its orders dated February 25, 1998 and March 30, 1998, the
4 Commission required changes in conformance with its order of
5 December 17, 1997 in Pacific Gas & Electric Co. et al., 81 FERC ¶ 61,320
6 (December 17 Order).

7 **Q. PLEASE DESCRIBE THE CHANGES REQUIRED BY THE**
8 **COMMISSION'S DECEMBER 17 ORDER.**

9 A. The changes can be categorized into four issues. First, because of the
10 Commission's incorporation of the ISO Protocols into the ISO Tariff, all
11 references to the ISO Protocols as a separate document needed to be
12 deleted and the reference to the protocols needed to be tied to the ISO
13 Tariff. Second, the introductory sentence of the Master Definitions section
14 was revised. Third, Section 1.2, Rules of Interpretation, was modified to
15 eliminate inconsistencies between the ISO Tariff and the PGA. Lastly, the
16 Commission was concerned that the termination section of the PGAs did
17 not explicitly state that FERC acceptance of the notice of termination was
18 required prior to the termination of the agreement. Additionally, language
19 was added requiring the ISO to file a timely notice of termination.

1 **Q. DID THE ISO SUBMIT REVISED VERSIONS OF THE PGAs**
2 **INCORPORATING THESE CHANGES?**

3 A. Yes. Unexecuted revised versions of the PGAs with Southern California
4 Edison Company (Edison); San Diego Gas & Electric Company; Midway
5 Sunset Cogeneration Company; Pacific Gas & Electric Company; Texaco
6 Exploration & Production, Inc.; El Segundo Power, LLC; Alta Power
7 Generation, LLC; Ocean Vista Power Generation, LLC; Oeste Power
8 Generation, LLC; and the California Department of Water Resources were
9 submitted in the ISO's June 1, 1998, compliance filing. The ISO has been
10 filing the executed versions as it receives them.

11 Exhibit No. ISO-3 is a pro forma version of the PGA that incorporates the
12 changes made in response to the December 17 Order. The PGAs filed
13 more recently incorporated these changes.

14 **Q. HAS THE ISO FILED ANY OTHER CHANGES TO THE PGAs?**

15 A. Yes. Section 4.3.3 of many of the PGAs specifies a date for obtaining
16 required certifications for providing Ancillary Services to the ISO.

17 Pursuant to section 2.5.6 of the ISO Tariff:

18 No Scheduling Coordinator shall be permitted to
19 submit a bid to the ISO for the provision of an
20 Ancillary Service from a Generating Unit, Load or
21 System Resource, or to submit a schedule for self
22 provision of an Ancillary Service from that Generating

1 Unit, Load or System Resource, unless the
2 Scheduling Coordinator is in the possession of a
3 current certificate issued by the ISO confirming that
4 the Generating Unit, Load or System Resource
5 complies with the ISO's technical requirements for
6 providing the Ancillary Service concerned.

7 Initially, Section 4.3.3 of the PGA stated that the ISO was to implement its
8 certification process no later than July 1, 1998. Section 4.3.3 also
9 provided that until "the ISO fully implements its certification process... the
10 Participating Generator and its Scheduling Coordinator . . . may submit a
11 bid for the provision of an Ancillary Service or submit a schedule for the
12 self provision of an Ancillary Service."

13 The ISO now intends to implement its certification process by
14 November 1, 1998. Accordingly, the ISO has been filing amendments to
15 the PGAs to extend the expiration date for the exemption from the
16 certification requirement from July 1, 1998 until no later than November 1,
17 1998. Additionally, the ISO has begun testing of the generators to meet
18 the certification schedule.

19 The ISO has also filed two amendments to Schedule 1 of the PGA with
20 Edison reflecting Edison's divestiture of certain generating facilities.

21 **Q. PLEASE SUMMARIZE THE SIGNIFICANT PROVISIONS OF THE PGA .**

- 1 A. The PGA is divided into eleven Articles.
- 2 • Article I specifies the definitions and rules of interpretation to be
- 3 used in construing the PGA.
- 4 • Article II contains the parties' acknowledgment that the ISO is
- 5 responsible for the efficient use and reliable operation of the ISO
- 6 Controlled Grid and that all Generators (except those with existing
- 7 power purchase agreements with a Utility Distribution Company)
- 8 wishing to schedule Energy and to submit bids into the California
- 9 markets through a Schedule Coordinator must sign a PGA. The
- 10 article also establishes certain Generators which are exempted
- 11 from executing a PGA.
- 12 • Article III provides the conditions under which the PGA became
- 13 effective and can be terminated.
- 14 • Article IV specifies the general terms and conditions for the
- 15 agreement. The Participating Generator is required to identify the
- 16 units it owns and operates, to provide the ISO with certain technical
- 17 characteristics regarding the Generating Units, and to notify the
- 18 ISO promptly of any changes with respect to the information it has
- 19 provided. This article requires the Participating Generator and the
- 20 ISO to comply with all applicable provisions of the ISO Tariff and
- 21 states that the Participating Generator is subject to the ISO Tariff.
- 22 Article IV also describes the Participating Generator's obligations

- 1 with respect to providing Ancillary Services and for providing data
2 in the event of major incidents.
- 3 • Article V addresses the penalties and sanctions that can be
4 imposed on the Participating Generator for failing to comply with
5 the PGA once the penalty and sanctions have been filed and made
6 effective by FERC.
 - 7 • Article VI states that the Participating Generator is responsible for
8 all its costs incurred in connection with operating and maintaining
9 its units for the purpose of meeting its obligations under the PGA.
 - 10 • Article VII governs dispute resolution, requiring adherence to the
11 alternative dispute resolution process set forth in Section 13 of the
12 ISO Tariff.
 - 13 • The remaining articles concern a variety of issues including
14 representations and warranties, liability, uncontrollable forces,
15 assignments, notice, waivers, governing law and forum, merger,
16 severability, section headings, and amendments.

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**Q. HAS THE ISO REVIEWED THE CONCERNS EXPRESSED BY THE
OTHER PARTICIPANTS IN THIS PROCEEDING?**

A. Yes, I have reviewed the protests filed by all of the intervenors and have
been engaged in extensive settlement discussions since March 1998 to
resolve the issues cited by the intervenors.

1 **Q. IS THE ISO WILLING TO MODIFY THE PGAs IN RESPONSE TO THE**
2 **CONCERNS EXPRESSED BY THE OTHER PARTICIPANTS?**

3 A. Yes. Exhibit No. ISO-4 is a document that shows the changes that the
4 ISO is willing to make to the PGAs that have been executed and that the
5 ISO would be willing to include in the pro forma agreement in response to
6 these concerns.

7 **Q. PLEASE SUMMARIZE THE SIGNIFICANT CHANGES THE ISO IS**
8 **WILLING TO MAKE TO ACCOMMODATE THE CONCERNS**
9 **EXPRESSED BY THE OTHER PARTICIPANTS IN THIS PROCEEDING.**

10 A. The ISO has agreed to make the following changes to the PGAs in
11 response to intervenors' concerns:

- 12 • Section 3.2.1 and 3.2.2 - The ISO would agree to add text that
13 specifically states the requirement to be fulfilled by the ISO for filing
14 the notice of termination on a timely basis at FERC.
- 15 • Section 4.1.2 and 4.1.3 - The addition to these sections clarifies
16 existing authority the ISO has in the ISO Tariff, and the mechanism
17 the ISO will use to change Schedule 1.
- 18 • Section 4.3.3 - Because of delay in the ISO Operations Date, the
19 certification of Ancillary Services has also been delayed. The ISO
20 would delay the implementation of certification until November 1,
21 1998.

- 1 • Section 8.2 - To facilitate divestiture of generating units, the ISO
2 would agree that necessary approvals could be obtained prior to
3 the effective date of the agreement rather than prior to the date of
4 execution.
- 5 • Section 11.2 - The ISO is proposing to change the Notice section
6 to denote that changes in the contact persons are deemed not to
7 be an amendment to the PGA and, therefore, would not be filed
8 with the Commission.
- 9 • Section 11.4 - The ISO would delete "primary or exclusive" as a
10 qualifier for jurisdiction, along with allowing for the appropriate
11 forum for any action arising under the PGA.
- 12 • Section 11.8 - The ISO would agree to add a new section for
13 clarification.
- 14 • Section 11.9 -The ISO would agree that all amendments, except
15 changes to the Notice Section, will be filed with the Commission.

16 Additionally, the ISO is proposing to correct some typographical errors
17 and minor words in the agreement.

18 **Q. THANK YOU. I HAVE NO FURTHER QUESTIONS.**

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UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System	)	Docket Nos. ER98-992-000,
Operator Corporation)	ER98-996-000, ER98-997-000,
)	ER98-1002-000, ER98-1309-000,
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)	ER98-1912-000, ER98-1930-000,
)	ER98-1931-000, ER98-1933-000,
)	ER98-1935-000, and
)	ER98-2499-000

AFFIDAVIT

STATE OF)
) ss:
 CALIFORNIA)

Deborah A. Le Vine, being duly sworn, deposes and says that she has read the foregoing questions and answers labeled as her testimony; that if asked the same questions her answers in response would be as shown; and that the facts contained in her answers are true to the best of her knowledge, information and belief.

Deborah A. Le Vine

Subscribed and sworn to before
me on this 28th day of August, 1998.

Notary Public

My Commission Expires: 6-30-00

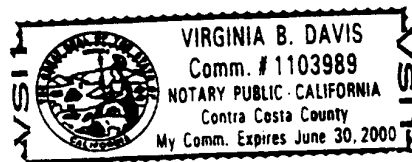


EXHIBIT NO. ISO - 2

LIST OF PARTICIPATING GENERATOR AGREEMENTS

The ISO has entered into 25 PGAs as of August 18, 1998. On December 9, 1997, the ISO filed PGAs with Southern California Edison Company (Edison) (Docket No. ER98-992-000), San Diego Gas & Electric Company (SDG&E) (Docket No. ER98-996-000), Midway Sunset Cogeneration Company (Midway Sunset) (Docket No. ER98-997-000), and Pacific Gas & Electric Company (PG&E) (Docket No. ER98-1002-000). On December 30, 1997, the ISO filed PGAs with Texaco Exploration & Production, Inc. (Texaco) (Docket No. ER98-1309-000) and El Segundo Power, LLC (El Segundo) (Docket No. ER98-1310-000).

On February 18, 1998, the ISO filed unilaterally unexecuted PGAs with Mountain Vista Power Generation, LLC (Mountain Vista) (Docket No. ER98-1910-000); Alta Power Generation, LLC (Alta Power) (Docket No. ER98-1930-000); Ocean Vista Power Generation, LLC (Ocean Vista) (Docket No. ER98-1931-000); Oeste Power Generation, LLC (Oeste Power) (Docket No. ER98-1935-000); the Anaheim Public Utility Department (Anaheim)(Docket No. ER98-1912-000); and Long Beach Generation (Long Beach)(Docket No. ER98-1933-000) as directed by the Commission, so that the Commission would have sufficient time to review and accept the filings prior to the March 31, 1998 ISO Operations Date. On March 6, 1998, the ISO filed an unexecuted PGA with the

California Department of Water Resources (CDWR) (Docket No. ER98-2115-000) so that CDWR could participate in the ISO's market in early June.

On March 12, 1998, the ISO filed executed PGAs with Mountain Vista Alta Power, Ocean Vista Power, and Oeste Power. On May 1, 1998, the ISO filed the executed PGAs with Long Beach and the CDWR. These submissions were assigned to the same dockets as the previously-submitted unexecuted versions.

On May 11, 1998, the ISO filed a PGA with Wheelabrator Martell, Inc. (Wheelabrator) (Docket No. ER98-2950-000). On May 14, 1998, the ISO filed PGAs with AES Redondo Beach, LLC (Redondo Beach) (Docket No. ER98-2996-000), AES Huntington Beach, LLC (Huntington Beach) (Docket No. ER98-3000-000), and AES Alamitos, LLC (Alamitos) (Docket No. ER98-2997-000). The next day, the ISO filed PGAs with Duke Energy Oakland (Oakland) (Docket No. ER98-3021-000), Duke Energy Morrow Bay (Morrow Bay) (Docket No. ER98-3018-000), and Duke Energy Moss Landing (Moss Landing) (ER98-3019-000). On June 4, 1998, the ISO filed PGAs with Ormand Beach Power Generation (Ormand Beach) (Docket No. ER98-3244-000) and Burney Forest Products (Burney) (Docket No. ER98-3223-000). On July 6, 1998, the ISO filed a PGA with Martinez Refining Company (Martinez) (Docket No. ER98-3613-000). On July 20, 1998, the ISO filed a PGA with Calpine Geysers (Calpine) (Docket No. ER98-3802-000), and on August 18, 1998 the ISO filed a PGA with Sierra Pacific Industries (Sierra Pacific) (Docket No. ER98-4273-000).

The filings with Wheelabrator, Redondo Beach, Huntington Beach, Alamitos, Oakland, Morrow Bay, Moss Landing, Ormand Beach, Burney, and Martinez have been accepted by the Commission subject to the outcome of these proceedings. The Commission has not yet issued orders concerning the filings for Calpine and Sierra Pacific.

EXHIBIT NO. ISO - 3

**CALIFORNIA INDEPENDENT SYSTEM
OPERATOR**

**PRO FORMA
PARTICIPATING GENERATOR
AGREEMENT**

BLACKLINE

PARTICIPATING GENERATOR AGREEMENT (PGA)

THIS AGREEMENT is dated this ___ day of _____, 19__ and is entered into, by and between:

(1) [Full Legal Name] having its registered and principal place of business located in [Address] (the "Participating Generator");

and

(2) **California Independent System Operator Corporation**, a California nonprofit public benefit Corporation having a principal executive office located at such place in the State of California as the ISO Governing Board may from time to time designate, initially 151 Blue Ravine Road, Folsom, California 95630 (the "ISO").

The Participating Generator and the ISO are hereinafter referred to as the "Parties".

Whereas:

- A. The ISO Tariff provides that the ISO shall not schedule Energy or Ancillary Services generated by any Generating Unit interconnected to the ISO Controlled Grid, or to the Distribution System of a Participating TO or of a UDC otherwise than through a Scheduling Coordinator.
- B. The ISO Tariff further provides that the ISO shall not be obliged to accept Schedules or Adjustment Bids or bids for Ancillary Services relating to Generation from any Generating Unit interconnected to the ISO Controlled Grid unless the relevant Generator undertakes in writing to the ISO to comply with all applicable provisions of the ISO Tariff.
- C. The Participating Generator wishes to be able to Schedule Energy and to submit Adjustment Bids, Supplemental Energy bids and bids for Ancillary Services to the ISO through a Scheduling Coordinator and, therefore, wishes to undertake to the ISO that it will comply with the applicable provisions of the ISO Tariff ~~and the ISO Protocols.~~
- D. The Parties are entering into this Agreement in order to establish the terms and conditions on which the ISO and the Participating Generator will discharge their respective duties and responsibilities under the ISO Tariff ~~and the ISO Protocols.~~

NOW THEREFORE, in consideration of the mutual covenants set forth herein, **THE PARTIES AGREE** as follows:

**ARTICLE I
DEFINITIONS AND INTERPRETATION**

- 1.1 Master Definitions Supplement.** ~~Unless the context otherwise requires,~~ All terms and expressions used in this Agreement shall have the same meaning as those contained in the Master Definitions Supplement to the ISO Tariff.
- 1.2 Rules of Interpretation.** The following rules of interpretation and conventions shall apply to this Agreement:
- (a) ~~unless the context otherwise requires,~~ if there is any inconsistency between this Agreement and the ISO Tariff ~~or any applicable ISO Protocol,~~ the ISO Tariff ~~or applicable ISO Protocol~~ will prevail to the extent of the inconsistency;
 - (b) the singular shall include the plural and vice versa;
 - (c) the masculine shall include the feminine and neutral and vice versa;
 - (d) "includes" or "including" shall mean "including without limitation";
 - (e) references to a Section, Article or Schedule shall mean a Section, Article or a Schedule of this Agreement, as the case may be, unless the context otherwise requires;
 - (f) a reference to a given agreement or instrument shall be a reference to that agreement or instrument as modified, amended, supplemented or restated through the date as of which such reference is made;
 - (g) unless the context otherwise requires, references to any law shall be deemed references to such law as it may be amended, replaced or restated from time to time;
 - (h) unless the context otherwise requires, any reference to a "person" includes any individual, partnership, firm, company, corporation, joint venture, trust, association, organization or other entity, in each case whether or not having separate legal personality;
 - (i) unless the context otherwise requires, any reference to a Party includes a reference to its permitted successors and assigns;
 - (j) any reference to a day, week, month or year is to a calendar day, week, month or year; and
 - (k) the captions and headings in this Agreement are inserted solely to facilitate reference and shall have no bearing upon the interpretation of any of the terms and conditions of this Agreement.

**ARTICLE II
ACKNOWLEDGEMENTS OF PARTICIPATING GENERATOR AND ISO**

- 2.1 ISO Responsibility.** The Parties acknowledge that the ISO is responsible for the efficient use and reliable operation of the ISO Controlled Grid consistent with achievement of planning and operating reserve criteria no less stringent than those established by the Western Systems Coordinating Council and the North American Electric Reliability Council and further acknowledges that the ISO may not be able to satisfy fully these responsibilities if the Participating Generator fails to fully comply with all of its obligations under this Agreement, and the ISO Tariff ~~and the ISO Protocols~~.
- 2.2 Scope of Application to Parties.** The Participating Generator and ISO acknowledge that all Generators, except those specified in Section 2.2.1 of this Agreement, wishing to schedule Energy and to submit Adjustment Bids, Supplemental Energy bids and bids for Ancillary Services to the ISO through a Scheduling Coordinator must sign this Agreement in accordance with Section 5 of the ISO Tariff.
- 2.2.1 Exemption for Certain Generators.** The Generator with an existing power purchase agreement with a UDC is not required to sign a Participating Generator Agreement if: (a) the Generator sells all of its Energy (excluding any Energy consumed by auxiliary load equipment electrically connected to that Generator at the same point) and Ancillary Services to the UDC; (b) the Generator sells any Energy through "over the fence" arrangements as authorized under Section 218(b) of the California Public Utilities Code; or (c) the Generator employs landfill gas technology for the generation of electricity as authorized under 218(c) of the California Public Utilities Code. With respect to subsections (a) and (b), an existing power purchase agreement shall mean an agreement which has been entered into and is effective as of December 20, 1995. With respect to subsection (c), an existing power purchase agreement shall mean an agreement which has been entered into and is effective as of December 31, 1996.

**ARTICLE III
TERM AND TERMINATION**

- 3.1 Effective Date.** This Agreement shall be effective as of the later of the date it is executed by the Parties or the date accepted for filing and made effective by FERC, and shall remain in full force and effect until terminated pursuant to Section 3.2 of this Agreement.

4.23.2 Termination

- 3.2.1 Termination by ISO.** Subject to Section 5.2, the ISO may terminate this Agreement by giving written notice of termination in the event that the

Participating Generator commits any material default under this Agreement, ~~and/or the ISO Tariff and/or the ISO Protocols~~ which, if capable of being remedied, is not remedied within thirty (30) days after the ISO has given, to the Participating Generator, written notice of the default, unless excused by reason of Uncontrollable Forces in accordance with ~~Section 15 of the ISO Tariff~~ Article X of this Agreement. With respect to any notice of termination given pursuant to this Section, the ISO must file a timely notice of termination with FERC. This Agreement shall terminate upon acceptance by FERC of such a notice of termination. ~~must also be filed at the FERC. Pending acceptance by the FERC of such termination, the Parties agree not to request services under this Agreement and the operation of the terms of this Agreement and of the ISO Tariff shall be suspended.~~

3.2.2 Termination by Participating Generator. In the event that the Participating Generator no longer wishes to schedule Energy or provide Ancillary Services through a Scheduling Coordinator over the ISO Controlled Grid, it may terminate this Agreement, on giving the ISO ninety (90) days written notice, provided, however, that in accordance with Section 4.1.3, the Participating Generator may modify Schedule 1 to eliminate Generating Units which it no longer owns and such modification shall be effective upon receipt by the ISO. With respect to any notice of termination given pursuant to this Section, the ISO must file a timely notice of termination with FERC. This Agreement shall terminate upon acceptance by FERC of such a notice of termination. ~~must also be filed at the FERC. Pending acceptance by the FERC of such termination, the Parties agree not to request services under this Agreement and the operation of the terms of this Agreement and of the ISO Tariff shall be suspended.~~

ARTICLE IV GENERAL TERMS AND CONDITIONS

4.1 Generating Units

- 4.1.1 Identification of Generating Units.** The Participating Generator has identified the Generating Units that it owns or operates in Schedule 1, as required by Section 5.3 of the ISO Tariff.
- 4.1.2 Technical Characteristics.** The Participating Generator has provided to the ISO in Schedule 1 the required information regarding the capacity and operating characteristics of each of the Generating Units listed in that schedule.
- 4.1.3 Notification of Changes.** The Participating Generator shall notify the ISO promptly of any change to the information provided in Schedule 1. Subject to such notification this Agreement shall not apply to any generating unit identified in Schedule 1 which the Participating Generator no longer owns.

- 4.2 Agreement Subject to ISO Tariff and ISO Protocols.** The Parties will comply with all applicable provisions of the ISO Tariff ~~4~~, including Sections 2.3.2, 2.5.3.4 and 5) ~~and all applicable provisions of the ISO Protocols.~~ This Agreement shall be subject to the ISO Tariff ~~and the ISO Protocols~~ which shall be deemed to be incorporated herein.
- 4.3 Obligations Relating to Ancillary Services**
- 4.3.1 Submission of Bids.** When the Scheduling Coordinator on behalf of the Participating Generator submits a bid for Ancillary Services, the Participating Generator will, by the operation of this Section 4.3.1, warrant to the ISO that it has the capability to provide that service in accordance with the ISO Tariff ~~and ISO Protocols~~ and that it will comply with ISO Dispatch instructions for the provision of the service in accordance with the ISO Tariff ~~Protocols~~.
- 4.3.2 Certification.** Except as provided in Section 4.3.3, the Participating Generator shall not use a Scheduling Coordinator to submit a bid for the provision of an Ancillary Service or submit a schedule for the self provision of an Ancillary Service unless the Scheduling Coordinator serving that Participating Generator is in possession of a current certificate pursuant to Sections 2.5.6 and 2.5.24 of the ISO Tariff.
- 4.3.3 Initial Exemption.** Not later than July 1, 1998, the ISO shall fully implement its certification process in accordance with Sections 2.5.6 and 2.5.24 of the ISO Tariff. Until full implementation of the certification process and notification of the Participating Generator and its Scheduling Coordinator of the completion of such process, the non-certified Scheduling Coordinator on behalf of a Participating Generator may submit a bid for the provision of an Ancillary Service or submit a schedule for the self provision of an Ancillary Service. Upon timely notification by the ISO, the Participating Generator must complete the certification process prior to July 1, 1998 to continue its participation in accordance with Section 4.3.2 of this Agreement.
- 4.4 Obligations relating to Major Incidents**
- 4.4.1 Major Incident Reports.** The Participating Generator shall promptly provide such information as the ISO may reasonably request in relation to major incidents, in accordance with Section 5.8.3 of the ISO Tariff.

ARTICLE V PENALTIES AND SANCTIONS

- 5.1 **Penalties.** If the Participating Generator fails to comply with any provisions of this Agreement, the ISO shall be entitled to impose penalties and sanctions on the Participating Generator. No penalties or sanctions may be imposed under this Agreement unless a Schedule providing for such penalties or sanctions has first been filed with and made effective by FERC. Nothing in the Agreement, with the exception of the provisions relating to ADR, shall be construed as waiving the rights of the Participating Generator to oppose or protest any penalty proposed by the ISO to the FERC or the specific imposition by the ISO of any FERC-approved penalty on the Participating Generator.
- 5.2 **Corrective Measures.** If the Participating Generator fails to meet or maintain the requirements set forth in this Agreement, and/or the ISO Tariff ~~or the ISO Protocols~~, the ISO shall be permitted to take any of the measures, contained or referenced in the ~~ISO Protocols~~ ISO Tariff, which the ISO deems to be necessary to correct the situation.

ARTICLE VI COSTS

- 6.1 **Operating and Maintenance Costs.** The Participating Generator shall be responsible for all its costs incurred in connection with operating and maintaining the Generating Units identified in Schedule 1 for the purpose of meeting its obligations under this Agreement.

ARTICLE VII DISPUTE RESOLUTION

- 7.1 **Dispute Resolution.** The Parties shall make reasonable efforts to settle all disputes arising out of or in connection with this Agreement. In the event any dispute is not settled, the Parties shall adhere to the ISO ADR Procedures set forth in Section 13 of the ISO Tariff, which is incorporated by reference, except that any reference in Section 13 of the ISO Tariff to Market Participants shall be read as a reference to the Participating Generator and references to the ISO Tariff shall be read as references to this Agreement.

**ARTICLE VIII
REPRESENTATIONS AND WARRANTIES**

- 8.1 Representation and Warranties.** Each Party represents and warrants that the execution, delivery and performance of this Agreement by it has been duly authorized by all necessary corporate and/or governmental actions, to the extent authorized by law.
- 8.2 Necessary Approvals.** The Participating Generator represents that all necessary approvals, permits, licenses, easements, rights of way or access to install, own and operate its Generating Units have been ~~or will be~~ obtained by the Participating Generator prior ~~to the later of the ISO Operations Date or the effective date~~ to execution of this Agreement.

**ARTICLE IX
LIABILITY**

- 9.1 Liability.** The provisions of Section 14 of the ISO Tariff will apply to liability arising under this Agreement, except that all references in Section 14 of the ISO Tariff to Market Participants shall be read as references to the Participating Generator and references to the ISO Tariff shall be read as references to this Agreement.

**ARTICLE X
UNCONTROLLABLE FORCES**

- 10.1 Uncontrollable Forces Tariff Provisions.** Section 15 of the ISO Tariff shall be incorporated by reference into this Agreement except that all references in Section 15 of the ISO Tariff to Market Participants shall be read as a reference to the Participating Generator and references to the ISO Tariff shall be read as references to this Agreement.

**ARTICLE ~~X~~-XI
MISCELLANEOUS**

- ~~10.1~~**11.1 Assignments.** Either Party may assign or transfer any or all of its rights and/or obligations under this Agreement with the other Party's prior written consent in accordance with Section 17 of the ISO Tariff. Such consent shall not be unreasonably withheld. Any such transfer or assignment shall be conditioned upon the successor in interest accepting the rights and/or obligations under this Agreement as if said successor in interest was an original Party to this Agreement.
- ~~10.2~~**11.2 Notices.** Any notice, demand or request which may be given to or made upon either Party regarding this Agreement shall be made in accordance with

Section 20.1 of the ISO Tariff. A Party must update the information in Schedule 3 of this Agreement as information changes.

10.311.3 Waivers. Any waivers at any time by either Party of its rights with respect to any default under this Agreement, or with respect to any other matter arising in connection with this Agreement, shall not constitute or be deemed a waiver with respect to any subsequent default or other matter arising in connection with this Agreement. Any delay, short of the statutory period of limitations, in asserting or enforcing any right under this Agreement shall not constitute or be deemed a waiver of such right.

10.411.4 Governing Law and Forum. This Agreement shall be deemed to be a contract made under, and for all purposes shall be governed by and construed in accordance with, the laws of the State of California, except its conflict of law provisions. The Parties irrevocably consents that any legal action or proceeding arising under or relating to this Agreement to which the ISO ADR Procedures do not apply, shall be brought as appropriate, in any of the following forums: any court of the State of California, any federal court of the United States of America located in the State of California, or, where subject to its primary or exclusive jurisdiction, before the Federal Energy Regulatory Commission.

10.511.5 Consistency with Federal Laws and Regulations. This Agreement shall incorporate by reference Section 20.8 of the ISO Tariff as if the references to the ISO Tariff were referring to this Agreement.

10.611.6 Merger. This Agreement constitutes the complete and final agreement of the Parties with respect to the subject matter hereto and supersedes all prior agreements, whether written or oral, with respect to such subject matter.

10.711.7 Severability. If any term, covenant, or condition of this Agreement or the application or effect of any such term, covenant, or condition is held invalid as to any person, entity, or circumstance, or is determined to be unjust, unreasonable, unlawful, imprudent, or otherwise not in the public interest by any court or government agency of competent jurisdiction, then such term, covenant, or condition shall remain in force and effect to the maximum extent permitted by law, and all other terms, covenants, and conditions of this Agreement and their application shall not be affected thereby, but shall remain in force and effect and the Parties shall be relieved of their obligations only to the extent necessary to eliminate such regulatory or other determination unless a court or governmental agency of competent jurisdiction holds that such provisions are not separable from all other provisions of this Agreement.

10.811.8 Amendments. This Agreement and the Schedules attached hereto may be amended from time to time by the mutual agreement of the Parties in writing. Amendments that are subject to FERC approval shall not take effect

until FERC has accepted such amendments for filing and has made them effective.

10.911.9 Counterparts. This Agreement may be executed in one or more counterparts at different times, each of which shall be regarded as an original and all of which, taken together, shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed on behalf of each by and through their authorized representatives as of the date hereinabove written.

California Independent System Operator Corporation

By: _____
Name

Title

[NAME OF PARTICIPATING GENERATOR]

By: _____
Name

Title

EXHIBIT NO. ISO - 4

CALIFORNIA INDEPENDENT SYSTEM OPERATOR

AND

[PARTICIPATING GENERATOR]

**PARTICIPATING GENERATOR
AGREEMENT**

PARTICIPATING GENERATOR AGREEMENT (PGA)

THIS AGREEMENT is dated this ___ day of _____, 19___ and is entered into, by and between:

- (1) **[Full Legal Name]** having its registered and principal place of business located at **[Address]** (the "Participating Generator");

and

- (2) **California Independent System Operator Corporation**, a California nonprofit public benefit corporation having a principal executive office located at such place in the State of California as the ISO Governing Board may from time to time designate, initially 151 Blue Ravine Road, Folsom, California 95630 (the "ISO").

The Participating Generator and the ISO are hereinafter referred to as the "Parties".

Whereas:

- A. The ISO Tariff provides that the ISO shall not schedule Energy or Ancillary Services generated by any Generating Unit interconnected to the ISO Controlled Grid, or to the Distribution System of a Participating TO or of a UDC otherwise than through a Scheduling Coordinator.
- B. The ISO Tariff further provides that the ISO shall not be obliged to accept Schedules or Adjustment Bids or bids for Ancillary Services relating to Generation from any Generating Unit interconnected to the ISO Controlled Grid unless the relevant Generator undertakes in writing to the ISO to comply with all applicable provisions of the ISO Tariff.
- C. The Participating Generator wishes to be able to Schedule Energy and to submit Adjustment Bids, Supplemental Energy bids and bids for Ancillary Services to the ISO through a Scheduling Coordinator and, therefore, wishes to undertake to the ISO that it will comply with the applicable provisions of the ISO Tariff.
- D. The Parties are entering into this Agreement in order to establish the terms and conditions on which the ISO and the Participating Generator will discharge their respective duties and responsibilities under the ISO Tariff.

NOW THEREFORE, in consideration of the mutual covenants set forth herein, **THE PARTIES AGREE** as follows:

**ARTICLE I
DEFINITIONS AND INTERPRETATION**

- 1.1 Master Definitions Supplement.** All terms and expressions used in this Agreement shall have the same meaning as those contained in the Master Definitions Supplement to the ISO Tariff.
- 1.2 Rules of Interpretation.** The following rules of interpretation and conventions shall apply to this Agreement:
- (a) if there is any inconsistency between this Agreement and the ISO Tariff, the ISO Tariff will prevail to the extent of the inconsistency;
 - (b) the singular shall include the plural and vice versa;
 - (c) the masculine shall include the feminine and neutral and vice versa;
 - (d) "includes" or "including" shall mean "including without limitation";
 - (e) references to a Section, Article or Schedule shall mean a Section, Article or a Schedule of this Agreement, as the case may be, unless the context otherwise requires;
 - (f) a reference to a given agreement or instrument shall be a reference to that agreement or instrument as modified, amended, supplemented or restated through the date as of which such reference is made;
 - (g) unless the context otherwise requires, references to any law shall be deemed references to such law as it may be amended, replaced or restated from time to time;
 - (h) unless the context otherwise requires, any reference to a "person" includes any individual, partnership, firm, company, corporation, joint venture, trust, association, organization or other entity, in each case whether or not having separate legal personality;

- (i) unless the context otherwise requires, any reference to a Party includes a reference to its permitted successors and assigns;
- (j) any reference to a day, week, month or year is to a calendar day, week, month or year; and
- (k) the captions and headings in this Agreement are inserted solely to facilitate reference and shall have no bearing upon the interpretation of any of the terms and conditions of this Agreement.

ARTICLE II ACKNOWLEDGMENTS OF PARTICIPATING GENERATOR AND ISO

- 2.1 ISO Responsibility.** The Parties acknowledge that the ISO is responsible for the efficient use and reliable operation of the ISO Controlled Grid consistent with achievement of planning and operating reserve criteria no less stringent than those established by the Western Systems Coordinating Council and the North American Electric Reliability Council and further acknowledges that the ISO may not be able to satisfy fully these responsibilities if the Participating Generator fails to fully comply with all of its obligations under this Agreement and the ISO Tariff.
- 2.2 Scope of Application to Parties.** The Participating Generator and ISO acknowledge that all Generators, except those specified in Section 2.2.1 of this Agreement, wishing to schedule Energy and to submit Adjustment Bids, Supplemental Energy bids and bids for Ancillary Services to the ISO through a Scheduling Coordinator must sign this Agreement in accordance with Section 5 of the ISO Tariff.
- 2.2.1 Exemption for Certain Generators.** The Generator with an existing power purchase agreement with a UDC is not required to sign a Participating Generator Agreement if: (a) the Generator sells all of its Energy (excluding any Energy consumed by auxiliary load equipment electrically connected to that Generator at the same point) and Ancillary Services to the UDC; (b) the Generator sells any Energy through "over the fence" arrangements as authorized under Section 218(b) of the California Public Utilities Code; or (c) the Generator employs landfill gas technology for the generation of electricity as authorized under 218(c) of the California Public Utilities Code. With respect to subsections (a) and (b), an existing power purchase agreement shall mean an agreement which has been entered into and is effective as of December 20, 1995. With respect to subsection (c), an existing power purchase agreement shall mean an agreement which has been entered into and is effective as of December 31, 1996.

ARTICLE III TERM AND TERMINATION

- 3.1 Effective Date.** This Agreement shall be effective as of the later of the date it is executed by the Parties or the date accepted for filing and made effective by FERC, and shall remain in full force and effect until terminated pursuant to Section 3.2 of this Agreement.
- 3.2 Termination**
- 3.2.1 Termination by ISO.** Subject to Section 5.2, the ISO may terminate this Agreement by giving written notice of termination in the event that the Participating Generator commits any material default under this Agreement and/or the ISO Tariff which, if capable of being remedied, is not remedied within thirty (30) days after the ISO has given, to the Participating Generator, written notice of the default, unless excused by reason of Uncontrollable Forces in accordance with Article X of this Agreement. With respect to any notice of termination given pursuant to this Section, the ISO must file a timely notice of termination with FERC. The filing of the notice of termination by the ISO will be considered timely if: (1) the request to file a notice of termination is made after the preconditions for termination have been met, and (2) the ISO files the notice of termination within 30 days of receipt of such request. This Agreement shall terminate upon acceptance by FERC of such a notice of termination.
- 3.2.2 Termination by Participating Generator.** In the event that the Participating Generator no longer wishes to schedule Energy or provide Ancillary Services through a Scheduling Coordinator over the ISO Controlled Grid, it may terminate this Agreement, on giving the ISO ninety (90) days written notice, provided, however, that in accordance with Section 4.1.3, the Participating Generator may modify Schedule 1 to eliminate Generating Units which it no longer owns and such modification shall be effective upon receipt by the ISO. With respect to any notice of termination given pursuant to this Section, the ISO must file a timely notice of termination with FERC. The filing of the notice of termination by the ISO will be considered timely if: (1) the request to file a notice of termination is made after the preconditions for termination have been met, and (2) the ISO files the notice of termination within 30 days of receipt of such request. This Agreement shall terminate upon acceptance by FERC of such a notice of termination.

ARTICLE IV GENERAL TERMS AND CONDITIONS

4.1 Generating Units

4.1.1 Identification of Generating Units. The Participating Generator has identified the Generating Units that it owns or operates in Schedule 1, as required by Section 5.3 of the ISO Tariff.

4.1.2 Technical Characteristics. The Participating Generator has provided to the ISO in Schedule 1 the required information regarding the capacity and operating characteristics of each of the Generating Units listed in that schedule. Pursuant to Section 2.5.25 of the ISO Tariff, the ISO may verify, inspect and test the capacity and operating characteristics provided in Schedule 1.

4.1.3 Notification of Changes. Sixty (60) days prior to changing any technical information in Schedule 1, the Participating Generator shall notify the ISO. Pursuant to Section 2.5.25 of the ISO Tariff, the ISO may verify, inspect and test the capacity and operating characteristics provided in the revised Schedule 1. The change will become effective at the earliest opportunity the ISO has to incorporate the change into the ISO's Master File. Subject to such notification this Agreement shall not apply to any generating unit identified in Schedule 1 which the Participating Generator no longer owns.

4.2 Agreement Subject to ISO Tariff. The Parties will comply with all applicable provisions of the ISO Tariff, including Sections 2.3.2, 2.5.3.4 and 5. This Agreement shall be subject to the ISO Tariff which shall be deemed to be incorporated herein.

4.3 Obligations Relating to Ancillary Services

4.3.1 Submission of Bids. When the Scheduling Coordinator on behalf of the Participating Generator submits a bid for Ancillary Services, the Participating Generator will, by the operation of this Section 4.3.1, warrant to the ISO that it has the capability to provide that service in accordance with the ISO Tariff and that it will comply with ISO Dispatch instructions for the provision of the service in accordance with the ISO Tariff.

4.3.2 Certification. Except as provided in Section 4.3.3, the Participating Generator shall not use a Scheduling Coordinator to submit a bid for the provision of an Ancillary Service or submit a schedule for the self provision of an Ancillary Service unless the Scheduling Coordinator serving that Participating Generator is in possession of a current certificate pursuant to Sections 2.5.6 and 2.5.24 of the ISO Tariff.

4.3.3 Initial Exemption. Not later than November 1, 1998, the ISO shall fully implement its certification process in accordance with Sections 2.5.6 and 2.5.24 of the ISO Tariff. Until full implementation of the certification process and notification of the Participating Generator and its Scheduling Coordinator of the completion of such process, the non-certified Scheduling Coordinator on behalf of a Participating Generator may submit a bid for the provision of an Ancillary Service or submit a schedule for the self provision of an Ancillary Service. Upon timely notification by the ISO, the Participating Generator must complete the certification process prior to November 1, 1998 to continue its participation in accordance with Section 4.3.2 of this Agreement.

4.4 Obligations relating to Major Incidents

4.4.1 Major Incident Reports. The Participating Generator shall promptly provide such information as the ISO may reasonably request in relation to major incidents, in accordance with Section 5.8.3 of the ISO Tariff.

ARTICLE V PENALTIES AND SANCTIONS

5.1 Penalties. If the Participating Generator fails to comply with any provisions of this Agreement, the ISO shall be entitled to impose penalties and sanctions on the Participating Generator. No penalties or sanctions may be imposed under this Agreement unless a Schedule providing for such penalties or sanctions has first been filed with and made effective by FERC. Nothing in the Agreement, with the exception of the provisions relating to ADR, shall be construed as waiving the rights of the Participating Generator to oppose or protest any penalty proposed by the ISO to the FERC or the specific imposition by the ISO of any FERC-approved penalty on the Participating Generator.

5.2 Corrective Measures. If the Participating Generator fails to meet or maintain the requirements set forth in this Agreement and/or the ISO Tariff, the ISO shall be permitted to take any of the measures, contained or referenced in the ISO Tariff, which the ISO deems to be necessary to correct the situation.

ARTICLE VI COSTS

6.1 Operating and Maintenance Costs. The Participating Generator shall be responsible for all its costs incurred in connection with operating and maintaining the

Generating Units identified in Schedule 1 for the purpose of meeting its obligations under this Agreement.

ARTICLE VII DISPUTE RESOLUTION

- 7.1 **Dispute Resolution.** The Parties shall make reasonable efforts to settle all disputes arising out of or in connection with this Agreement. In the event any dispute is not settled, the Parties shall adhere to the ISO ADR Procedures set forth in Section 13 of the ISO Tariff, which is incorporated by reference, except that any reference in Section 13 of the ISO Tariff to Market Participants shall be read as a reference to the Participating Generator and references to the ISO Tariff shall be read as references to this Agreement.

ARTICLE VIII REPRESENTATIONS AND WARRANTIES

- 8.1 **Representation and Warranties.** Each Party represents and warrants that the execution, delivery and performance of this Agreement by it has been duly authorized by all necessary corporate and/or governmental actions, to the extent authorized by law.
- 8.2 **Necessary Approvals.** The Participating Generator represents that all necessary approvals, permits, licenses, easements, rights of way or access to install, own and operate its Generating Units have been or will be obtained by the Participating Generator prior to the effective date of this Agreement.

ARTICLE IX LIABILITY

- 9.1 **Liability.** The provisions of Section 14 of the ISO Tariff will apply to liability arising under this Agreement, except that all references in Section 14 of the ISO Tariff to Market Participants shall be read as references to the Participating Generator and references to the ISO Tariff shall be read as references to this Agreement.

ARTICLE X UNCONTROLLABLE FORCES

- 10.1 Uncontrollable Forces Tariff Provisions.** Section 15 of the ISO Tariff shall be incorporated by reference into this Agreement except that all references in Section 15 of the ISO Tariff to Market Participants shall be read as a reference to the Participating Generator and references to the ISO Tariff shall be read as references to this Agreement.

ARTICLE XI MISCELLANEOUS

- 11.1 Assignments.** Either Party may assign or transfer any or all of its rights and/or obligations under this Agreement with the other Party's prior written consent in accordance with Section 17 of the ISO Tariff. Such consent shall not be unreasonably withheld. Any such transfer or assignment shall be conditioned upon the successor in interest accepting the rights and/or obligations under this Agreement as if said successor in interest was an original Party to this Agreement.
- 11.2 Notices.** Any notice, demand or request which may be given to or made upon either Party regarding this Agreement shall be made in accordance with Section 20.1 of the ISO Tariff. A Party must update the information in Schedule 3 of this Agreement as information changes. Such changes shall not constitute an amendment to this Agreement.
- 11.3 Waivers.** Any waivers at any time by either Party of its rights with respect to any default under this Agreement, or with respect to any other matter arising in connection with this Agreement, shall not constitute or be deemed a waiver with respect to any subsequent default or other matter arising in connection with this Agreement. Any delay, short of the statutory period of limitations, in asserting or enforcing any right under this Agreement shall not constitute or be deemed a waiver of such right.
- 11.4 Governing Law and Forum.** This Agreement shall be deemed to be a contract made under, and for all purposes shall be governed by and construed in accordance with, the laws of the State of California, except its conflict of law provisions. The Parties irrevocably consent that any legal action or proceeding arising under or relating to this Agreement to which the ISO ADR Procedures do not apply, shall be brought in any of the following forums, as appropriate: any court of the State of California, any federal

court of the United States of America located in the State of California, or, where subject to its jurisdiction, before the Federal Energy Regulatory Commission.

- 11.5 Consistency with Federal Laws and Regulations.** This Agreement shall incorporate by reference Section 20.8 of the ISO Tariff as if the references to the ISO Tariff were referring to this Agreement.
- 11.6 Merger.** This Agreement constitutes the complete and final agreement of the Parties with respect to the subject matter hereto and supersedes all prior agreements, whether written or oral, with respect to such subject matter.
- 11.7 Severability.** If any term, covenant, or condition of this Agreement or the application or effect of any such term, covenant, or condition is held invalid as to any person, entity, or circumstance, or is determined to be unjust, unreasonable, unlawful, imprudent, or otherwise not in the public interest by any court or government agency of competent jurisdiction, then such term, covenant, or condition shall remain in force and effect to the maximum extent permitted by law, and all other terms, covenants, and conditions of this Agreement and their application shall not be affected thereby, but shall remain in force and effect and the Parties shall be relieved of their obligations only to the extent necessary to eliminate such regulatory or other determination unless a court or governmental agency of competent jurisdiction holds that such provisions are not separable from all other provisions of this Agreement.
- 11.8 Section Headings:** Section headings provided in this Agreement are for ease of reading and are not meant to interpret the text in each Section.
- 11.9 Amendments.** This Agreement and the Schedules attached hereto may be amended from time to time by the mutual agreement of the Parties in writing. Amendments that require FERC approval shall not take effect until FERC has accepted such amendments for filing and made them effective. If the amendment does not require FERC approval, the amendment will be filed with FERC for information.
- 11.10 Counterparts.** This Agreement may be executed in one or more counterparts at different times, each of which shall be regarded as an original and all of which, taken together, shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed on behalf of each by and through their authorized representatives as of the date hereinabove written.

California Independent System Operator Corporation

By: _____

Name: _____

Title: _____

Date: _____

[NAME OF PARTICIPATING GENERATOR]

By: _____

Name: _____

Title: _____

Date: _____

[The following page is a placeholder for Schedule 1, Section 1.]

SCHEDULE 2

ISO IMPOSED PENALTIES AND SANCTIONS
[Section 5.1]

[TO BE INSERTED UPON FERC APPROVAL]

SCHEDULE 3

**NOTICES
(Section 10.2)**

Participating Generator

Name of the Primary

Representative:

Address:

City/State/Zip Code

Email Address:

Phone:

Fax No:

Name of Alternative

Representative:

Address:

City/State/Zip Code

Email Address:

Phone:

Fax No:

ISO

Name of the Primary

Representative:

Address:

City/State/Zip Code

Email Address:

Phone:

Fax No:

Name of Alternative

Representative:

Address:

City/State/Zip Code

Email Address:

Phone:

Fax No:

OFFICE OF THE SECRETARY

98 OCT 20 PM 4:56

FEDERAL ENERGY
REGULATORY
COMMISSION

Exhibit No.: _____

Date: October 20, 1998

Witness: James A. Ross

UNITED STATES OF AMERICA

BEFORE THE

FEDERAL ENERGY REGULATORY COMMISSION

California Independent System
Operator Corporation

Docket No. ER98-992-000 et al.

PREPARED DIRECT TESTIMONY OF

JAMES A. ROSS

ON BEHALF OF THE

COGENERATION ASSOCIATION OF CALIFORNIA

OCTOBER 1998

REGULATORY & COGENERATION SERVICES, INC.

DO NOT REMOVE

**PREPARED DIRECT TESTIMONY OF
JAMES A. ROSS**

**ON BEHALF OF
THE COGENERATION ASSOCIATION OF CALIFORNIA**

I. INTRODUCTION AND SUMMARY OF CONCLUSIONS

Q PLEASE STATE YOUR NAME, OCCUPATION AND BUSINESS ADDRESS.

A My name is James A. Ross. I am a member of the consulting firm of Regulatory & Cogeneration Services, Inc. ("RCS"), a utility rate and economic consulting firm. My business address is 500 Chesterfield Center, Suite 320, Chesterfield, Missouri, 63017. A statement of my qualifications is attached as Appendix A.

Q ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS PROCEEDING?

A This testimony is presented on behalf of the Cogeneration Association of California ("C.A.C.).

C.A.C. represents the power generation, power marketing and cogeneration operation interests of the following entities: Kern River Cogeneration Company; Sycamore Cogeneration Company; ARCO Western Energy ("AWE") Placerita I; AWE Placerita II; Midway Sunset Cogeneration Company; AWE Kern Field Projects; AWE Oxford Lease Projects; Mid-Set Cogeneration Company; Coalinga Cogeneration Company; Sargent Canyon Cogeneration Company; Salinas River Cogeneration Company; Texaco North Midway Cogeneration Project; Texaco McKittrick Cogeneration Project; Texaco Four Star Lost Hills Cogeneration Project; and Union Pacific Fuels, Inc.

