

POWER PURCHASE AND OPERATING AGREEMENT
BETWEEN
AES PUERTO RICO, L.P.
AND
PUERTO RICO ELECTRIC POWER AUTHORITY

October 11, 1994

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POWER PURCHASE AND OPERATING AGREEMENT
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AND
PUERTO RICO ELECTRIC POWER AUTHORITY

THIS AGREEMENT, (the "Agreement") entered into and effective as of this 11th day of October, 1994 (the "Effective Date"), by and between AES Puerto Rico, L. P., a partnership duly organized and authorized under the laws of the state of Delaware, whose general partner is AES Puerto Rico, Inc., with offices at 46 West Baldorioty Street, Suite A, located at Guayama, Puerto Rico and duly registered to do business in the Commonwealth of Puerto Rico ("Operator") and herein represented by its Vice President, Sarah Slusser, duly authorized to enter into this Agreement as certified by the AES Puerto Rico, Inc. resolution dated August 25, 1994 and the PUERTO RICO ELECTRIC POWER AUTHORITY, a Puerto Rico public corporation and governmental instrumentality of the Commonwealth of Puerto Rico authorized to enter into this Agreement by virtue of Section 6 (f) of Act number 83 of May 2, 1941, as amended (22 LPRA § 196(f), with offices at 1110 Ponce de Leon Avenue, Santurce, Puerto Rico ("PREPA") and herein represented by its Executive Director, Miguel A. Cordero, of legal age, married, engineer and resident of Caguas, Puerto Rico. Both Operator and PREPA are herein individually referred to as "Party" and collectively referred to as "Parties".

RECITALS

WHEREAS, Operator, will be the entity who will own and operate a new cogeneration Facility consisting of two or more circulating fluidized bed (CFB) boilers and one or more steam turbine generators of approximately four hundred thirteen (413) Megawatts electric (MWe), to be located in Guayama, Puerto Rico; and

WHEREAS, PREPA is the electric utility engaged in the generation, transmission, distribution and sale of electric power within the Commonwealth of Puerto Rico; and

WHEREAS, the Operator wishes to sell exclusively to PREPA and PREPA is willing to purchase the Dependable Capacity and Energy produced by the Operator according to the Public Utility Regulatory Policies Act of 1978, as amended (PURPA); and

WHEREAS, the Parties hereto are willing to effectuate such sales and purchases of Dependable Capacity and Energy in accordance with the terms and conditions of this Agreement; and

NOW, mEREFORRE, in consideration of these premises and of the mutual covenants and agreements set forth herein, the Operator and PREPA, intending to be legally bound, hereby agree to the following:

Handwritten initials 'SAS' and a signature.

ARTICLE 1 • DEFINITIONS

Whenever the following capitalized terms appear in this Agreement, whether in the singular or in the plural, present or past tense, they shall have the meaning stated below:

1.1 "Additional Interconnection Facilities" • All equipment and facilities located on PREPA's side of the Interconnection Point, constructed and installed for the purpose of interconnecting the Facility with PREPA's electric transmission and distribution system, including but not limited to all metering equipment, transmission and distribution lines and associated equipment, transformers and associated equipment, relay and switching equipment, and protective devices and safety equipment.

1.2 "Agreement Year" - Means the period which begins with the Commercial Operation Date and ends on the first anniversary thereof, and each one (1) Year period thereafter commencing on each such anniversary date.

1.3 "Available Hours" - Means the number of hours, including Economy Shutdown Hours, in which the Facility is capable of providing service and such service is made available to PREPA, whether or not it is actually in service and regardless of the capacity level that can be provided.

1.4 "Billing Period" - has the meaning set forth in Section 10.4.

1.5 "Calendar Month" - Means such period of time beginning at 12:00 midnight on the last Day of any given month as adjudged in the calendar and ending at 12:00 midnight on the last Day of the following month as adjudged in the calendar.

1.6 "Calendar Year" • Means the twelve (12) Month period beginning 12:00 midnight

on December 31 and ending at 12:00 midnight on the subsequent December 31.

1.7 "Capacity Purchase Price" - Means the sum of the Demand Charge and the Fixed Operation and Maintenance Charge per kilowatt as determined in accordance with Article 11.

1.8 "Commercial Operation Date" - Means the first Day following the date in which Dependable Capacity has been set for the Facility.

1.9 "Construction Cost Index" - has the meaning set forth in Section 11.1 (b) (1) (ii).

1.10 "Court of Competent Jurisdiction" - Means the state courts of the Commonwealth of Puerto Rico, the United States District Courts for the District of Puerto Rico, the United States Court of Appeals for the First Circuit and the United States Supreme Court.

1.11 "Day" - Means a period of time consisting of twenty-four (24) hours, computed from any given point in time to another twenty-four (24) hours later.

1.12 "Demand Charge" - has the meaning set forth in Section 11.1 (b) (1).

1.13 "Dependable Capacity" - Means the net electric generating capacity for the Facility (gross electric generating capacity less station use) in kilowatts as determined by testing pursuant to Article 12 herein and made available from the Facility to PREPA at the Interconnection Point.

1.14 "Derated Hours" - Means the number of hours; exclusive of Outage Hours, during which the Facility is not capable of operating at 100% of its Dependable Capacity. Economy Shutdown Hours will be deemed to be Derated Hours if the Facility is not capable of operating at 100% of its Dependable Capacity.

1.15 "Design Limits" - Means the operating limits set forth in Sections 7.3 through 7.5.

1.16 "Dispatch" - Means the ability of PREPA's System Operation Center to schedule

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and control, directly or indirectly, manually or automatically, the generation of the Facility in order to increase or decrease the electricity delivered to the PREPA system in accordance with Prudent Utility Practices and the provisions set forth herein.

1.17 "Economic Dispatch" - Means the distribution of PREPA's total energy needs among available sources for optimum system economy in accordance with Prudent Utility Practices.

1.18 "Economy Shutdown Hours" - Means the hours during which the Facility is available but not in service as a result of Economic Dispatch.

1.19 "**Emergency**" - Means a condition or situation which in the sole judgment of PREPA is likely to result in imminent significant disruption of service to a significant number of customers or is imminently likely to endanger life or property.

1.20 "**Energy**" - Means the Net Electrical Output of the Facility measured in kilowatt-hours at the Interconnection Point.

1.21 "Energy Purchase **Price**" - Means the sum of the Variable Operation and Maintenance Charge and the Fuel Related Charge per kilowatt hour as determined in accordance with Article 11.

1.22 "Equity" - Means Operator's net worth in the Facility after deducting its liabilities from its assets.

1.23 "Equity Capital" - Means the amount invested in the Facility by Operator's direct or indirect parent corporation or other investors as common stock, preferred stock or equivalents, general or limited partnership interest, subordinated debt, or other qualifying contributions.

1.24 "Equivalent Availability Factor or EAF" - Means the Available Hours less the

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Equivalent Derated Hours, divided by the Period Hours, expressed as a percentage.

$$\text{EAF} = \{ (\text{AH} - \text{EDH}) / \text{PH} \} * 100 (\%)$$

Where:

EAF = Equivalent Availability Factor

AH = Available Hours

EDH = Equivalent Derated Hours

PH = Period Hours

For purposes of computing the Equivalent Availability Factor, the Equivalent Force Majeure Hours and Major Overhaul Hours will be excluded from the calculation. In this calculation and any other calculation hereunder, all hours shall be rounded to the nearest one tenth (1/10) of an hour and the EAF to the nearest one tenth (1/10) of a percent. Examples of the EAF calculation are included in Exhibit A.

1.25 "Equivalent **Derated** Hours" - Means the sum of the products of the Derated Hours and the size of the corresponding net reduction in capacity during the Derated Hours, divided by the Dependable Capacity.

1.26 "Equivalent **Force Majeure Hours**" - Means the sum of the products of the Derated Hours which are attributable to a Force Majeure claimed by either Party and the size of the corresponding net reduction in capacity during such Derated Hours, divided by Dependable Capacity, plus all Outage Hours attributable to a Force Majeure claimed by either Party.

1.27 "Estimated Dependable Capacity" - Means the net electric generating capacity for the Facility that Operator commits to PREPA as designated under the provisions of Section 12.1 herein.

1.28 "Estimated Financial Closing Date" - has the meaning set forth in Section 11.1 (b) (1) (ii).

1.29 "Facility" - Means the Operator's Facility and the Interconnection Facilities.

1.30 "Facility Debt" - Means the outstanding balance at any time of the initial debt incurred for the development, acquisition, construction or permanent financing of the Facility and Additional Interconnection Facilities (excluding subordinated debt), including related Lenders fees and expenses, not to exceed one thousand six hundred dollars per kW (\$1600/kW) times the initial Dependable Capacity, as amortized according to the amortization schedules established at the Financial Closing Date or refunding date, respectively, all as adjusted for the difference in the Construction Cost Index on the Financial Closing Date and that in effect on the Estimated Financial Closing Date.

1.31 "FERC" - Means the Federal Energy Regulatory Commission, or any successor thereto.

1.32 "Financial Closing Date" - Means the date on which documents which provide commitments for funding for the construction of the Facility are executed and funds for the first construction drawdown for the Facility become available to Operator.

1.33 "Fiscal Year" - Means the twelve (12) Month period beginning 12:00 midnight on June 30 of any given Year and ending 12:00 midnight on the subsequent June 30.

1.34 "Force Majeure" - has the meaning set in Article 17.

1.35 "Fuel" - Means coal or any other type of fuel as mutually agreed by the Parties.

1.36 "Fuel Cost Determination Factor or FCDF" - Means the factor expressed in British Thermal Units (BTUs) per net kilowatt-hour specified in Section 7.3 for the Facility.

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1.37 "Initial Synchronization Date" - Means the first date upon which: (a) Energy is generated by the Facility; and (b) such Energy is metered by the PREPA-owned metering equipment.

1.38 "Interconnection Facilities" - Means all equipment and facilities, on Operator's side of the Interconnection Point, constructed and installed for the purpose of interconnecting the Operator's Facility with PREPA's electric transmission and distribution system including, but not limited to, transmission and distribution lines and associated equipment, relay and switching equipment, and protective devices and safety equipment.

1.39 "Interconnection Point" - Means the physical point where the Net Electrical Output of the Facility is delivered to PREPA's system. This point will be at the planned 230 kV switchyard at the Jobos substation.

1.40 "Interest" - Means the compensation for the accrual of monetary obligations under this Agreement computed monthly and prorated daily from the time each such obligation is past due based on an annual interest rate equal to the lesser of (i) the Prime Commercial Lending Rate as set by Citibank N.A., New York or any other equivalent rate as mutually agreed by the Parties or (ii) the maximum rate allowable under Article 1649 of the Puerto Rico Civil Code or successor statute applicable to past due amounts. The provisions of this definition shall not be construed to limit the applicable rate of interest on the Facility Debt.

1.41 "Lender" - Means an individual, bank, corporation or partnership that extends money to the Operator (with the expectation of being repaid with interest) for the development, acquisition, construction, or permanent financing of the Facility (excluding subordinated debt).

1.42 "Licensing Costs" - Means the direct costs incurred by Operator for obtaining

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licenses and permits for the Facility including, without limitation, attorney's and consultant's fees, licensing fees and costs charged by permitting agencies, other disbursements directly associated with obtaining licenses and permits, and the normal salary and overhead of Operator's and Operator's affiliate's personnel directly allocated to obtaining licenses and permits.

1.43 "Major Overhaul Hours" - Means the first four hundred thirty-eight (438) hours during the scheduled outage period that Operator informs PREPA, pursuant to Article 8, that it is undertaking a major overhaul of the Facility. A minimum of thirty-six (36) Months must have elapsed from the end of the previous major overhaul period before a new major overhaul period can begin. Operator may not utilize more than a total of two thousand one hundred ninety (2190) hours as Major Overhaul Hours over the initial term of the Agreement. Notwithstanding the foregoing, Operator is not precluded from undertaking a major overhaul of the Facility whose hours may not be eligible for exclusion from the EAF calculation.

1.44 "Maximum Annual Fuel Requirement" - Means Dependable Capacity (or Estimated Dependable Capacity prior to determination of Dependable Capacity) x Fuel Cost Determination Factor at 100% of Dependable Capacity x 8760/1,000,000, expressed in MMBTU(HHV)/yr.

1.45 "Maximum Monthly Fuel Requirement" - Means Maximum Annual Fuel Requirement divided by twelve.

1.46 "Month" - Means, except for what is provided in Section 10.4 with respect to the Billing Period, the period of time computed from any given Day of any of the months as adjudged in the calendar to corresponding Day, if any, in the next Calendar Month or, if not any, to last Day of next Calendar Month.

1.47 "Net Electrical Output" - Means all of the Facility's electrical output made

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available for sale at the Interconnection Point. The Net Electrical Output will be delivered at 230 kV.

1.48 "Non-Scheduled Outage" - Means a planned interruption of the electrical output of one or more of the Units of the Facility that has been coordinated with PREPA and is required for any purpose including inspection, preventive maintenance, or corrective maintenance which has not been included in the Scheduled Outage Program.

1.49 "Off-Peak Period" - Means the time from 10:00 p.m. to 8:00 a.m. daily from Monday through Friday and all day Saturday and Sunday.

1.50 "Operator's Facility" - Means Operator's generation facility, to be located in Guayama, Puerto Rico, consisting of two or more circulating fluidized bed (CFB) boilers and one or more steam turbines with a total net capacity of approximately 413 MWe, including auxiliary equipment and unit transformers.

1.51 "Outage Hours" • Means the number of hours that are not Available Hours.

1.52 "Period Hours" - Means the sum of the Available Hours and the Outage Hours for any given period of time.

1.53 "Permanently Abandoned" or "Permanent Abandonment" - Means either: (a) an action taken by the Operator, its successors, or assignees, as applicable, to permanently shut down the operations of the Facility, or (b) that the Available Hours equal zero (0) in any period of twenty-four (24) consecutive Months with or without a Force Majeure event claimed by Operator on or after the Commercial Operation Date.

1.54 "Permanent Oosing" - Means that the Available Hours equal zero (0) in any period of twelve (12) consecutive Months, excluding periods of outages due to Force Majeure.

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1.55 "Prudent Electical **Practices**" - Means those practices, methods, standards and acts which, in the exercise of reasonable judgment in light of the facts known at the time a decision was made, would have been used in prudent electrical engineering and operations to operate equipment for the generation, transmission, distribution and delivery of electricity, lawfully and with efficiency and dependability, and that are in accordance with the National Electrical Safety Code, the National Electrical Code and any other applicable federal, state or local code.

1.56 "Prudent Utility **Practices**" - Means the practices generally followed by the electric utility industry in the United States and Puerto Rico, as changed from time to time, which generally include, but are not limited to, engineering and operating considerations.

1.57 "PURPA" - Means the Public Utility Regulatory Policies Act of 1978 and the regulations promulgated thereunder in effect as of the Effective Date or as they are amended in the future from time to time if applicable to this Facility.

1.58 "Qualifying Facility" - Means a cogeneration facility or a small power production facility which is a Qualifying Facility under Subpart B of Subchapter K, Part 292 of Chapter I, Title 18, Code of Federal Regulations, promulgated by the FERC as such regulations are in effect on the Effective Date or as amended from time to time if applicable to this Facility. Such a facility must be "new capacity" pursuant to PURPA, construction of which began on or after November 9, 1978.

1.59 "Quarter" - Means a three (3) Month period beginning 12:00 midnight on December 31, March 31, June 30, or September 30.

1.60 "Scheduled Outage **Program**" - Means a planned interruption of the Facility's generation that has been coordinated in advance with PREPA with a mutually agreed start and

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duration pursuant to Article 8.

1.61 "Tenn" - has the meaning set forth in Article 5.

1.62 "Twelve Month EAF" - has the meaning set forth in Section 11.2 (b).

1.63 **"Year"** - Means a twelve (12) Month period, computed from any given Day of any of the months as adjudged in the calendar to the corresponding Day, if any, of the same Calendar Month in the following Calendar Year or, if not any, to last Day of the Month, twelve (12) Months later.

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ARTICLE 2 - SALE AND PURCHASE OF ENERGY AND DEPENDABLE CAPACITY

2.1 Except as otherwise provided in this Article, and **subject** to the terms and conditions of this Agreement, Operator agrees to sell and PREPA agrees to accept delivery of and purchase Energy and, Dependable Capacity as of and following the Commercial Operation Date of the Facility as such Dependable Capacity is determined pursuant to Article 12 herein. However, prior to the Commercial Operation Date, PREPA shall accept delivery of and purchase only the Energy generated by the Facility and made available to PREPA.

2.2 Without limiting any other obligations of Operator in this Agreement, PREPA's obligation to purchase Energy and/or Dependable Capacity from Operator is contingent upon Operator's submittal to PREPA of the following information:

(a) One or more documents evidencing that Operator owns the Facility and has ownership or has the right to use, for the Term of the Agreement, the site on which the Facility is located. Such document or documents may include a deed or a lease agreement.

(b) A report by a qualified independent consultant selected by both Parties certifying (i) that the Facility, if operated and maintained in accordance with Prudent Electrical Practices and Prudent Utility Practices, can be expected to have a useful life at least equal to the Term of the Agreement, and (ii) that the Facility has been designed and constructed in compliance with the terms of the Agreement.

(c) FERC certification issued prior to the Financial Closing Date evidencing that the Facility, including the financial and ownership structure to be established at the Financial Closing Date, is a Qualifying Facility.

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(d) Originals of certificates of insurance policies for Insurance coverage required by Article 21.

(e) Copies of all material permits, licenses, approvals, and other governmental authorizations needed to construct and operate the Facility.

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ARTICLE 3 . NOTICES

3.1 All notices and other communications hereunder shall be in writing, other than dispatch orders which may be oral and immediately confirmed by telecopy, and shall be deemed duly given upon receipt after being delivered by hand or sent by registered or certified mail, return receipt requested, postage prepaid or by recognized overnight courier service or telecopy, addressed as follows:

If to the Operator to:
AES Puerto Rico, L.P.
20th Floor, 1001 North 19th Street
Arlington, Virginia 22209
Attn: Sarah Slusser
Fax: (703) 528-4510

If to PREPA:
Puerto Rico Electric Power Authority (if by hand)
1110 Ponce de Leon Avenue
Office #601
Santurce, Puerto Rico
Attn: Executive Director
or
Puerto Rico Electric Power Authority (if by mail)
P.O. Box 364267
San Juan, Puerto Rico 00936
Attn: Executive Director
Fax: 724-1353

3.2 Either Party hereto may change, by notice as above provided, the person and/or address to which all such notices and other communications are to be sent.



ARTICLE 4 PRE-OPERATION PERIOD

4.1 Operator shall, at its expense, acquire and maintain in effect from the FERC and from any and all other federal, Commonwealth and local agencies, commissions and authorities with jurisdiction over Operator and/or the Facility, all material permits, licenses, and approvals, and complete or have completed any environmental impact studies necessary: (a) for the construction, operation and maintenance of the Facility, which, if not obtained, would prevent Operator from operating the Facility and (b) for Operator to perform its obligations under this Agreement.

4.2 Operator shall submit to PREPA the following: (i) prior to the Effective Date, Operator's licensing and milestone construction schedules; (ii) within thirty (30) Days of its completion, the Facility's conceptual engineering design, including the relay protection scheme; (iii) within thirty (30) Days of its completion, the specifications of major equipment components of the Facility; (iv) within thirty (30) Days of its completion, the detailed engineering of the Facility; and (v) within thirty (30) Days of its receipt by Operator, the manufacturer's guaranteed performance data. Operator shall submit progress reports in a form satisfactory to PREPA on the first Day of every Month until Commercial Operation Date and notify PREPA of any changes to licensing and milestones construction schedules in a timely manner. PREPA shall have the right to monitor the construction, start-up and testing of the Facility. PREPA shall have the right to notify Operator of deviations from applicable design and construction standards or from documents previously submitted to PREPA resulting therefrom, and, in such event, PREPA and Operator shall cooperate in good faith to resolve the issues raised by PREPA; if the Parties are

unable to reach agreement in a timely manner, such issues shall be finally resolved by an independent engineer jointly selected and paid for by the Parties (taking into account the construction schedule). During the resolution of these issues Operator may continue to work in a manner not to affect the overall schedule of the project. Operator shall cooperate in such physical inspections of the Facility as may be required by PREPA during and after completion of construction, provided that PREPA shall use its best efforts to ensure that such inspections do not interfere with the normal course of construction or operation of the Facility. PREPA's technical review and inspection of the construction of the Facility, pursuant to this Agreement, regardless of time and manner, shall not be construed as endorsing the design thereof nor as any warranty of the safety, durability, or reliability of the Facility.

4.3 Operator shall notify PREPA in writing of a proposed Initial Synchronization Date ("Proposed Initial Synchronization Date") and the start-up and testing schedule for the Facility not later than one hundred eighty (180) Days prior to such Proposed Synchronization Date. Operator shall have the right to postpone such date with at least two (2) weeks advance notice to PREPA. PREPA and Operator shall agree on the Proposed Initial Synchronization Date for the Facility and PREPA shall have the right to have a representative present during such period.

4.4 Operator shall provide PREPA with relay settings for review and inspection by PREPA no later than one hundred eighty (180) Days prior to the Proposed Initial Synchronization Date. If these are not found to be acceptable to PREPA, Operator agrees to comply with any request made by PREPA within sixty (60) Days of Operator's receipt of PREPA's request to provide acceptable relay types and relay settings. Operator shall also provide PREPA with Facility design heat balance, flow diagrams and major equipment list for review prior to Financial

Closing Date. All information must be submitted in a manner acceptable to PREPA, particularly the turbine generator data, which shall be used for PREPA's inspections and transient stability analysis. Turbine generator data for the Facility must be completely submitted at least one hundred fifty (150) Days prior to the Proposed Initial Synchronization Date. PREPA agrees to give any comments or suggested changes which it is entitled to give to Operator pursuant to this Section 4.4 within sixty (60) Days after Operator submits any required documents or other information to PREPA.

4.5 Operator and PREPA shall mutually develop detailed written operating procedures no later than one hundred twenty (120) Days prior to the Proposed Initial Synchronization Date. The operating procedures will be based on the design of the Facility, design of the interconnection to PREPA's bulk electric system, and PREPA's standard operating procedures. The operating procedures shall include procedures to integrate the Facility and output into PREPA's bulk electric system. Topics covered shall include, but not necessarily be limited to, method of day-to-day communications, key personnel lists for both Operator and utility operating centers, clearances and switching practices, outages scheduling, daily available capacity and Energy reports, Facility operations log, and reactive power support. The operating procedures can only be modified with the written consent of the Parties.

4.6 PREPA shall prepare and submit to Operator a written voltage schedule for the Facility no later than thirty (30) Days prior to the Proposed Initial Synchronization Date. PREPA may change such voltage schedule upon thirty (30) Days prior written notice. Operator shall use such voltage schedule in the operation of its Facility provided that it is in accordance with the Design Limits of the Facility. Operator shall specify that its generator(s) shall be capable of

operating at a 0.85 power factor (lagging) at the maximum kilowatt rating. This voltage schedule shall be based on the normally expected operating conditions for the Facility and the reactive power requirements of PREPA's system.

4.7 PREPA reserves the right to delay the Initial Synchronization Date for the Facility due to problems with the Facility which could adversely affect PREPA's operations. In such event, PREPA shall give Operator notice of such problems and Operator shall promptly remedy any problems with facilities or equipment which Operator installed or maintains.

4.8 Operator shall provide PREPA with certified as-built drawings of the Facility within one hundred twenty (120) Days after Commercial Operation Date.

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ARTICLE 5 . TERM

The term of this Agreement (lithe Term") shall begin with the Effective Date and shall continue for a period of twenty-five (25) Agreement Years unless extended under Section 20.1 (c) hereof, or terminated in accordance with Article 18. If the Term is extended under this Agreement, the word Term shall thereafter be deemed to mean the original Term so extended.



ARTICLE 6 • REPRESENTATIONS AND WARRANTIES

6.1 Operator represents and warrants that, commencing six (6) Months prior to the Commercial Operation Date, Operator shall have at all times a reliable supply of Fuel of quality and in quantity not less than the Maximum Annual Fuel Requirement, which shall consist of any existing Fuel inventory and enforceable contracts for Fuel supply. From time to time, as PREPA may reasonably request, Operator shall provide PREPA evidence of its compliance with this obligation. Operator shall have an on-site Fuel supply of not less than the Maximum Monthly Fuel Requirement.

6.2 Operator warrants that the Facility shall be operated and maintained in accordance with: (a) operating and maintenance standards recommended by the Facility's equipment suppliers; (b) operating procedures developed pursuant to Section 4.5; and (c) Prudent Utility Practices, including without limitation, synchronizing, voltage and reactive power control.

6.3 Operator warrants that the Facility shall be operated in such a manner so as not to have an adverse effect on PREPA's voltage level or voltage waveform.

6.4 Operator warrants that the Facility shall be operated at the voltage levels determined pursuant to Section 4.6 provided such levels are within the Design Limits of the Facility.

6.5 Operator shall, at all times, comply with all applicable laws, ordinances, rules and regulations applicable to it unless, the noncompliance therewith would not have a material adverse effect on the operation or maintenance of the Facility, provided that in the event of any such noncompliance, Operator shall be diligently contesting any such law, ordinance, rule or

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regulation in good faith. Operator shall give all required notices, shall procure and maintain all material governmental permits, licenses and inspections necessary for the performance of this Agreement, and shall pay all charges and fees in connection therewith unless Operator shall be diligently contesting such payments in good faith.

6.6 Operator warrants that any combustion waste or by-product produced by the operation of the Facility, which cannot be used for beneficial commercial uses, will not be stored anywhere in the Commonwealth of Puerto Rico for a period in excess of one hundred eighty (180) Days and that it will not be disposed anywhere in the Commonwealth of Puerto Rico or its neighboring waters. The process for obtaining the approval for any disposal or use of such combustion waste or by-product shall not adversely affect the milestone schedules set forth in this Agreement.

6.7 The Operator shall have the sole responsibility for the payment of any and all fines or other penalties incurred by or imposed upon the Operator or its agents, suppliers, employees or subcontractors for noncompliance by Operator, its agents, employees, suppliers or subcontractors with laws, rules, regulations or ordinances applicable to the proper operation of the Facility as determined by those having jurisdiction over the Facility, and PREPA shall be held harmless from the payment of any such fines or penalties and expenses related to these (including without limitation all reasonable attorneys' fees).

6.8 The Operator hereby warrants:

(a) As of the Effective Date, the Operator is a partnership duly organized, validly existing and in good standing under the laws of Delaware and authorized to do business in the Commonwealth of Puerto Rico. The Operator has all requisite power and authority to

conduct its business, to own its properties, and to execute, to deliver, and to perform its obligations under this Agreement.

(b) The execution, delivery and performance by the Operator of this Agreement have been duly authorized by all necessary corporate or partnership action, and do not and will not (i) require any consent or approval of the Operator's Board of Directors, shareholders, or partners other than that which has been obtained, (evidence of which shall be, if it has not heretofore been delivered, to PREPA), (ii) violate any provision of law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect, or (iii) result in a breach of or constitute a default under the Operator's bylaws, other organic documents or other material indentures, contracts, or agreements.

(c) The Operator is not in default under the corporate bylaws or other organic documents or other material indentures, contracts or agreements to which it is a party or by which it or its property may be bound.

(d) This Agreement is a valid and binding obligation of the Operator.

(e) There is no pending action or proceeding affecting the Operator before any court, governmental agency or arbitrator that could be expected to affect materially and adversely the financial condition or operations of the Operator or the ability of the Operator to perform its obligations under this Agreement, or which purports to affect the legality, validity or enforceability of this Agreement (as in effect on the date hereof).

(f) Operator shall have committed as of the Financial Closing Date, and shall have contributed prior to the Commercial Operation Date of the Facility an amount of not less than ten percent (10%) of the Facility cost in Equity Capital of which not more than 50% of the

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Equity Capital shall be in the form of subordinated debt. Such initial amount in Equity Capital shall be maintained throughout the Term of this Agreement. PREPA shall have the right to review the documents establishing the commitment of Equity Capital, to confirm that such commitment has been made to its satisfaction.

(g) Operator agrees to maintain a minimum Working Capital of four million dollars (\$4 million) on the Commercial Operation Date, ten million dollars (\$10 million) by the end of the first Agreement Year, fifteen million dollars (\$15 million) by the end of the second Agreement Year, and twenty-five million dollars (\$25 million) by the end of the third Agreement Year and thereafter. Operator further agrees to maintain the following amounts of Working Capital in cash, including an operating and maintenance reserve cash account, which shall be deposited in a local bank or United States bank if required by the Lenders: by the end of the first Agreement Year, three million dollars (\$3 million); by the end of the second Agreement Year, six million dollars (\$6 million); and by the third Agreement Year and thereafter, ten million dollars (\$10 million).

"Working Capital" shall mean the excess of Current Assets over Current Liabilities. "Current Assets" shall include an operating and maintenance reserve cash account, non-restricted cash and marketable securities available for current operations, inventories, other receivables collectible in one year, accounts receivable, notes receivable, and prepaid expenses. "Current Liabilities" shall include accounts payable, collections received in advance of services, accrued expenses and other liabilities (excluding principal and interest repayment) coming due within one year.

(h) On the Financing Closing Date Operator shall provide, as credit support

for the Permanent Financing to be incurred by Operator for the Facility, the highest rated letter of credit then available to the Operator which results in the most cost-effective overall financing for the Facility; however, in the event the most cost-effective overall financing for the Facility is obtainable without a letter of credit, Operator shall upon PREPA's approval secure such financing without a letter of credit.

6.9 Operator agrees that upon request of PREPA and at no cost to PREPA, Operator shall cause its counsel to issue and deliver an opinion in a form acceptable to PREPA at the Financial Closing Date affirming the representations in Section 6.8 (a) to (e).

6.10 Operator agrees that, within forty-five (45) Days after every other Quarter following the Commercial Operation Date it will cause to be delivered to PREPA a report prepared in accordance with Generally Accepted Accounting Principles (GAAP) and signed by the Chief Financial Officer of the Operator setting forth the following:

- (a) a separate income and expense statement for such semiannual period just ended;
- (b) a balance sheet as of the end of such semiannual period;
- (c) a statement of cash flows of such semiannual period;
- (d) a statement of changes in stockholders' Equity as of the end of such semiannual period; and
- (e) notes to the financial statements, as applicable.

In addition, Operator agrees that each Fiscal Year following the Commercial Operation Date it will cause an audit to be prepared in accordance with GAAP, of its books and accounts pertaining to the Facility by an independent firm of certified public accountants acceptable to PREPA, of suitable experience and responsibility. Such audit shall commence on or before July 31 of the following Fiscal Year and shall be completed within ninety (90) Days after commencement date. On or before the last Day of the first Month following the completion of such audit, reports of such audits shall be delivered to PREPA. Such audit reports shall set forth,

in respect to the preceding Fiscal Year, the same matters as are herein above required for the semiannual reports.

Operator further agrees that it will cause to be delivered to PREPA an annual certification of the names of its directors, officers, accountants, and consulting engineers.

6.11 Operator shall make available to PREPA on a confidential basis copies that Operator receives of any and all maintenance evaluations or similar reports to be provided by the Operator to any third party with a financial security interest in or lien on the Facility, including evaluations or reports generated at the request of such third parties or performed by an engineer employed by third party.

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6.12 Operator agrees to preserve and keep in full force and effect during the Term of this Agreement its partnership existence and all material franchises, licenses and permits necessary to the proper conduct of its business, including without limitation the business of constructing, owning and operating the Facility. Operator further agrees that it will not permit or suffer any entity that is a general partner therein as of the Effective Date to cease to be such a general partner, will not permit any entity that is not a general partner therein as of the Effective Date to become such a general partner and will not dissolve and wind-up its affairs, or otherwise dispose of all or substantially all of its assets, without the prior approval of PREPA, which approval shall not be unreasonably withheld or delayed.

6.13 Operator agrees that whenever a technology improvement applicable to the Facility, other than capital improvements not in excess of one million dollars (\$1,000,000) escalated from the Effective Date with changes in the PR-CPI as defined in Article 11, becomes commercially available at a cost that is likely to justify its incorporation into the Facility and known to

Operator, Operator shall provide written notification of said technology improvement to PREPA. Following Operator's decision (or PREPA's request) to investigate the feasibility of incorporating such technology improvement into the Facility, Operator shall submit to PREPA a technical report describing such improvement, a cost estimate and the expected benefits of the incorporation of such technology improvement into the Facility. Operator further agrees that if it decides to incorporate such technology improvement into the Facility, PREPA shall have the option to participate equally with Operator in the costs and benefits of such technology improvement.

6.14 PREPA agrees that all information (whether financial, technical, or otherwise) obtained from Operator or from PREPA's inspections of the Facility or from any third parties pursuant to Section 6.11 which is not otherwise generally available to the public shall be kept confidential and used solely by PREPA in connection with the performance of its obligations under this Agreement. Disclosure of such information may be made only within PREPA's organization to key personnel, and to third parties serving as PREPA's legal, financial or technical advisors, whose duties justify their need to review and know such material. PREPA shall require each person (and personnel thereof) to agree for the benefit of Operator to maintain the confidentiality of such information. To the extent PREPA is required to disclose such information by any court, governmental agency or to the extent necessary to secure governmental approval or authorization, PREPA shall use its best efforts to seek a confidentiality agreement that assures confidential treatment of the information consistent with the terms of this Section 6.14. In the event PREPA is not successful in seeking a confidentiality agreement, at PREPA's request, Operator shall participate with PREPA in any court action necessary to obtain

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an appropriate protective order.

6.15 Operator agrees that it will be required to obtain the consent of PREPA, which will not be unreasonably withheld, before establishing the Financial Closing Date if, and only if, the Construction Permit has been issued but is not yet final and nonappealable.

6.16 PREPA hereby agrees that, throughout the Term of this Agreement, all payments by PREPA to Operator under this Agreement shall be treated as current expenses as defined by the terms of the Trust Indenture dated January 1, 1947 as amended between PREPA and The Chase Manhattan Bank (National Association) as successor trustee, the Trust Agreement dated as of January 1, 1974 as amended (the "1974 Agreement") between PREPA and State Street Bank and Trust, Company, as successor trustee, and any successor indentures or agreements, including any amendments, supplements or modifications thereto.

6.17 PREPA shall cause its counsel to issue an opinion in a form reasonably acceptable to Operator or its Lenders at the Financial Closing Date affirming that the Agreement is a valid and binding obligation of PREPA, enforceable according to its terms.

6.18 Operator agrees that (i) in seeking personnel to perform services for the Facility in Puerto Rico, Operator and its subcontractors shall give first preference to individuals who (a) have been residents of Puerto Rico for a continuous period of at least one year immediately prior to starting work on the Facility, (b) at some time prior to starting work on the Facility, but not necessarily including the period of time immediately prior to starting work on the Facility, were residents of Puerto Rico for a period of at least five (5) consecutive years and have relocated to Puerto Rico in order to perform work on the Facility, or (c) were born in Puerto Rico or have at least one parent who was born in Puerto Rico and in the opinion of PREPA sufficient

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connection with Puerto Rico to be entitled to the preference established in this paragraph; and (ii) without limitation of the foregoing, not less than thirty percent (30%) of the total personnel hours expended in performance of the services in Puerto Rico under this Agreement prior to the Commercial Operation Date, and not less than fifty percent (50%) of the total personnel hours expended in performance of the services under this Agreement following the Commercial Operation Date, shall be performed by individuals who meet the conditions of (a), (b), or (c) in clause (i) above. Without limitation of the foregoing, not less than thirty percent (30%) of the services performed in Puerto Rico under this Agreement prior to the Commercial Operation Date, and measured by person-hours on an annual basis, shall be performed by business concerns which are owned and controlled by one or more individuals who meet at least one of the three criteria described in clause (i) of the preceding sentence. For purposes of the preceding sentence, owned and controlled means a business (i) which is at least fifty-one percent (51 %) owned by one or more of such individuals (e.g., in the case of a corporate form of organization such individuals must hold at least fifty-one percent (51 %) of all voting stock of the corporation; in the case of a special partnership such individuals must hold at least fifty-one percent (51 %) of the beneficial interests in the partnership); and (ii) whose management and daily business operations are controlled by one or more of such individuals (who need not be owners of the business).

6.19 At all times, as available, Operator agrees to provide at no cost to PREPA copies of all site related data, including without limitation, technical, environmental, geological, seismological, licensing and permitting data in Operator's possession, excluding any proprietary design information relating to the Facility.

6.20 Operator shall cause its contract with its contractor of the Facility to include a

provision that recognizes PREPA's right, but not the obligation, to assume all rights and obligations of Operator under such contract in the event Operator and Lenders abandon the Facility.

6.21 Operator warrants that it will include in its contract for the construction of the Facility a dispute resolution provision providing that in the event the construction contractor suspends construction on account of a dispute with Operator or a default under the construction contract, the construction contractor and Operator shall resolve the dispute or default within sixty (60) Days of the commencement of the suspension of construction, and the construction contractor and Operator agrees to resume construction immediately upon resolution of the dispute or default, but not later than 60 days after the commencement of the suspension of construction.

6.22 Operator warrants that it will require that its contractors guaranty that the Facility will be constructed in a manner that will allow Operator to comply with all the terms and conditions established under this Agreement and that will meet all environmental standards.

ARTICLE 7 - DISPATCHING

7.1 PREPA, at its sole discretion, shall have the right to Dispatch ^{the} Facility within its Design Limits. PREPA's Operating Center will determine the appropriate level of Dispatch by means of its Automatic Generation Control (AGC) system and the use of Prudent Utility Practices. The Operator will give the dispatcher a status report every eight (8) hours of the Facility conditions including any Facility restrictions and the hourly integrated net generation. Operator shall notify the dispatcher immediately if there is any significant change in the Facility's status. The Operator shall make available through the Facility's remote terminal unit ("RTU") the actual Facility load limit adjustment.

7.2 By Friday of each week, PREPA shall provide Operator with an estimated schedule of operations for the following week. The actual schedule will be determined by the requirements for operation in accordance with Economic Dispatch or PREPA's automatic generation control system and may be substantially different than the schedule provided in accordance with this Section.

7.3 The Facility can be dispatched from 100% of its Dependable Capacity (the "Maximum Dispatch Operating Level") to 50% of its Dependable Capacity (the "Minimum Dispatch Operating Level").

The Fuel Cost Determination Factor (FCDF) shall be 9800 BTU per net kWh, subject to adjustment in accordance with Article 22. The FCDF shall be adjusted for dispatch of the Facility below 90% of Dependable Capacity by multiplying the FCDF by the multiplier as follows:

x = Dependable Capacity requested by PREPA	Percentage of Multiplier
90% \leq x	1.00
80% \leq x < 90%	1.016
70% \leq x < 80%	1.031
60% \leq x < 70%	1.063
50% \leq x < 60%	1.094

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 Within ninety (90) Days after the Commercial Operation Date, Operator shall determine if the Facility can be dispatched below 50% of its, ^{UNIT} Dependable Capacity without adversely affecting the Facility's technical and environmental operating limits. If Operator so determines, Operator shall inform PREPA. In that event, PREPA and Operator shall work together to establish an appropriate Minimum Dispatch Operating Level, and an appropriate adjustment to the FCDF above, based on Operator's testing of the Facility.

UNIT
 7.4 After/the Facility has been off line it can achieve the levels of operation specified above within the time periods indicated below:.,

UNIT
 If the ~~Facility and associated boilers~~ ^{UNIT} have been out of operation for an extended period of time and cooled to ambient temperature, it can be synchronized within 10 hours and achieve full electrical output within 14 hours following PREPA's notice to start-up.

UNIT
 The ~~Facility~~ ^{UNIT} may be held in standby condition for up to 12 hours, in which ~~the generating Facility~~ ^{UNIT} and boiler temperatures are maintained such that the Facility can achieve full electrical output within 4 hours following PREPA's notice to start-up ("Hot Restart Conditions").

UNIT
 7.5 Under Hot Restart Conditions, once the ~~Facility~~ ^{UNIT} has been synchronized with PREPA's system, its output may be increased at the rate of 2% of ~~Dependable~~ ^{UNIT} Capacity per minute. If the ~~Facility~~ ^{UNIT} is operating above fifty percent (50%) of the ,pendable Capacity, its

output may be increased at the rate of 5% of *actual* load per minute up to the Maximum Dispatch Operating Level and may be reduced at the rate of 5% of actual load per minute down to fifty percent (50%) of the ^{UNIT} ~~Dependable~~ Capacity. These are good faith estimated values that may be ✓ adjusted upwards or downwards by mutual agreement of the Parties based on operating experience and testing of Facility capability.

7.6 Should any operating mode other than as described in Section 7.3 be requested by PREPA, Operator shall make its best efforts to accommodate PREPA's system needs on a mutually agreed incremental cost reimbursement basis provided that any such operating mode would be in accordance with Prudent Utility Practices and Prudent Electrical Practices and would be consistent with Operator's obligations under its agreements to supply steam. However, PREPA will provide Operator with two (2) hours prior notice of a request to shut down ^{A UNIT} ~~the Facility~~. Start-up will be accomplished according to Sections 7.4 and 7.5. The notices herein mentioned must be given orally and confirmed by telecopy to the Operator.

7.7 If during the Term of this Agreement the cost of the Facility's Energy becomes more costly on an incremental basis than other sources then available to PREPA, the ~~Net Electric Output~~ of the Facility, ^{to zero} may be reduced to zero upon PREPA's request. The duration of each such reduction will be counted as Economy Shutdown Hours and during such period the ^{AVAILABLE} ~~Dependable~~ Capacity of the Facility ^{ON UNIT} will be utilized as a capacity reserve. PREPA shall be limited to not more than five (5) such requests per Agreement Year ^{PER UNIT} and not more than one (1) request per Month. ^{PER UNIT} Following each such reduction and subsequent request by PREPA to the Operator to increase the Net Electrical Output from zero to at least ~~the~~ Minimum Dispatch Operating Level, PREPA shall pay to Operator a Start-up Payment as set forth in Article 11 to compensate

Operator for the costs of shutdown and start-up of the Facility. For the first extended period, PREPA shall provide Operator with at least twenty-four (24) Months advance notice of any planned shutdown of the Facility that would exceed thirty (30) consecutive Days or sixty (60) Days in any Calendar Year. PREPA shall provide Operator with sufficient notice to permit Operator to obtain and install an auxiliary boiler, if required, to meet all of the steam requirements of Operator's steam customer during the extended shutdown period and PREPA shall fully reimburse Operator for (1) the incremental capital and operating costs associated with the acquisition and use of the boiler, or (2) the cost to buyout the contract with Operator's steam customers, whichever is lower.

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ARTICLE 8 - CONTROL AND OPERATION OF THE FACILITY

8.1 Operator shall, at least thirty (30) Days prior to the Commercial Operation Date, submit to PREPA a proposed Scheduled Outage Program for the first Year of the Facility's operations. Thereafter, Operator shall submit to PREPA by September 1 of each Year, its proposed Scheduled Outage Program for the next Calendar Year. Such proposed Scheduled Outage Program shall be in accordance with Exhibit A, to this Agreement.

8.2 Within sixty (60) Days of the receipt of the proposed Scheduled Outage Program, PREPA shall notify Operator in writing whether the proposed scheduled outage periods are acceptable. If PREPA cannot accept any of the proposed scheduled outage periods, PREPA shall advise Operator of the time period closest to the proposed period when the outage can be scheduled. Operator shall only schedule outages during periods approved by PREPA, and such approval shall not be unreasonably withheld. Operator shall not schedule an outage during the period of April 1st to September 30 of any Year that would decrease the capacity output of the Facility below its Dependable Capacity without the prior written consent of PREPA. Notwithstanding the above, Non-Scheduled Outages may be conducted during Off-Peak Periods.

Operator shall make its best efforts to comply with the Scheduled Outage Program. In the event the Operator has reason to believe that the Facility will exceed the total allowable scheduled outage hours, the Operator shall notify PREPA, as soon as possible, of the cause or causes for such delay and of the additional time required to finalize the outage. In such event, Operator will use its best efforts to return the Facility to Operation in the shortest possible time.

8.3 PREPA shall have the right, upon six (6) Months prior written notice, to revise,

but not lengthen, the period during which Operator shall not schedule an outage. PREPA shall not direct operation of the Facility in such a manner as to deprive Operator of the scheduled outage periods required in accordance with Prudent Utility Practices and Prudent Electrical Practices.

8.4 Operator shall control and operate the Facility consistent with PREPA's Dispatch of the Facility; provided, however, that from time to time PREPA shall not be obligated to purchase or receive, and may require Operator to reduce, Energy deliveries if:

- (a) In PREPA's sole opinion, a condition exists which constitutes an Emergency; or
- (b) It is necessary to construct, install, maintain, repair, replace, remove, investigate, inspect or test any part of the Facility or the Interconnection Facilities, or any other affected part of PREPA's system.

PREPA will use its best efforts to notify and coordinate such reductions with Operator and to minimize the number, length and degree of such reductions. Except with respect to Section 8.4 (a) above, PREPA shall use its best efforts to provide Operator with at least twenty-four (24) hours prior notice; such notice may be given orally and must be confirmed by telecopy to the Facility. Any reduction required of Operator hereunder shall be implemented and completed as soon as possible consistent with Prudent Utility Practices.

8.5 Operator shall employ qualified personnel for monitoring the Facility and for coordinating operations of the Facility with PREPA's system. Operator shall provide PREPA, no less than one hundred eighty (180) Days prior to the Commercial Operation Date with a list and qualifications of the Facility's personnel who will be responsible for supervising the operation and maintenance of the Facility and coordinating operations of the Facility with PREPA's system. Operator shall ensure that such personnel are on duty at all times, twenty-four (24) hours a Day

and seven (7) Days a week.

8.6 If an Emergency is declared by PREPA, PREPA's Operations Center will notify Operator's personnel and, if requested by PREPA, Operator's personnel shall place the Net Electrical Output within the exclusive control of PREPA's Operations Center for the duration of such Emergency. Without limiting the generality of the foregoing, PREPA's Operation Center may require Operator's personnel to raise or lower production of Energy generated by the Facility to maintain safe and reliable load levels and voltages on PREPA's transmission and/or distribution system; provided, however, any changes in the level of the Net Electrical Output required by PREPA hereunder shall be implemented in a manner consistent with Prudent Utility Practices and within the Facility's Design Limits.

8.7 Operator shall cooperate with PREPA in establishing Emergency plans, including without limitation, recovery from a local or widespread electrical blackout; voltage reduction in order to effect load curtailment; and other plans addressing circumstances which may arise. The Operator shall provide to PREPA all pertinent technical references available in relation to start-up times and minimum load-carrying ability.

8.8 If Operator has a scheduled outage, and such scheduled outage occurs or would occur coincident with an Emergency making operation of the Facility necessary or desirable, Operator shall make best efforts to reschedule the outage or, if the outage has begun, to expedite the completion thereof.

8.9 Operator shall provide at its expense the following communication facilities linking the Facility with the PREPA dispatching centers:

- (a) For the purpose of telemetering, data acquisition, and automatic generation control by PREPA:

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- (1) One dual ported RTU for data acquisition and generation control compatible with PREPA's Energy Management System.
 - (2) Two voice grade telecommunication circuits for the dual ported RTD. One to Monacillos transmission center ("TC") and the other to Ponce TC.
 - (3) One voice grade telecommunication circuit for the Facility for the backup telemetry to Monacillos TC.
 - (4) Pro rata cost of installation by PREPA of all equipment needed for this purpose outside of the Facility and attributable to the Facility.
- (b) A voice telephone extension for the purpose of accessing PREPA's dial-up metering equipment and for communicating with the designated PREPA Operations Center.
 - (c) Telephone line and equipment to transmit and receive telecopies for purposes of confirming the coordinations.
 - (d) Ring down telephone line to Monacillos TC for the communication of the coordinations.
 - (e) Telecommunications radio compatible with PREPA's trunking radio system.

Items provided by Operator in accordance with this Section 8.9 shall be subject to the approval of PREPA, which approval shall not be unreasonably withheld or delayed.

8.10 Each Party shall keep complete and accurate records and all other data required by each of them for the purposes of proper administration of this Agreement. All such records and data shall be maintained for a minimum of five (5) Years after the creation of such record or data and for any additional length of time required by regulatory agencies with jurisdiction over the Parties; provided, however, that neither Party shall dispose of or destroy any such records or data that are not confidential with respect to the other Party even after the five (5) Years without thirty (30) Days prior notice to the other Party. If notice is given to the notifying

Party during such thirty (30) Day period, the notifying Party shall promptly deliver such records and data to the Party wishing to retain such records.

Operator shall maintain an accurate and up-to-date operating log at the Facility with records of: (i) real and reactive power production for each clock hour; (ii) changes in operating status and scheduled outages; and (iii) any unusual conditions found during inspections.

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Either Party shall have the right from time to time, upon fourteen (14) Days written notice to the other Party, to examine the records and data of the other Party relating to this Agreement at any time during the period the records are required to be maintained.

8.11 PREPA agrees to provide electric service to Operator as requested by Operator at the most advantageous rate available to Operator in accordance with PREPA's applicable rates.

ARTICLE 9 - INTERCONNECTION

9.1 The Operator shall design, construct and install all ~~Interconnection~~ Facilities and Additional Interconnection Facilities. The ~~Operator~~ shall own and be responsible for the safe and ~~adequate operation and maintenance~~ of all Interconnection Facilities other than metering equipment. PREPA shall own and be responsible for the safe and adequate operation and maintenance of the Additional Interconnection Facilities. The design of the Interconnection Facilities and the Additional Interconnection Facilities shall be part of the project design to be submitted for approval to the Permits and Regulations Administration of Puerto Rico. In addition, the design of the ~~Interconnection Facilities~~ and the Additional Interconnection Facilities shall be subject to review by PREPA.

9.2 Operator shall provide to PREPA data required in Exhibit C attached hereto by the dates specified therein. ~~Exhibit C~~ *Exh C*

9.3 PREPA shall perform an interconnection study and provide the same to Operator within one hundred twenty (120) Days of Operator's completion of the requirements of Section 9.2 above under conditions agreed upon by the Parties. The interconnection study shall, at a minimum, (a) determine the major interconnection equipment required to complete the ~~Interconnection Facilities and~~ Additional Interconnection Facilities, and (b) designate the PREPA Operations Center that will coordinate the operation of the Facility. ~~The Interconnection~~ *The Interconnection* Facilities design shall be consistent with Prudent Utility Practices considering the functional one-line diagram and site plan provided to PREPA pursuant to Section 9.2.

The Additional Interconnection Facilities shall include the construction of a 230 kV

switchyard at the site designated in Exhibit D, the construction of 2 transmission lines of approximately 2 miles from the 230 kV switchyard to PREPA's 230 kV network, and the necessary rights of way to construct and utilize the transmission lines.

9.4 If Operator cannot obtain the land rights necessary for the ~~Interconnection Facilities and the~~ Additional Interconnection Facilities at a fair market value within a reasonable time, Operator shall so notify PREPA, and PREPA, upon request of Operator, shall, within a reasonable time, obtain and maintain title to all the land, or such portion of such land that Operator requests PREPA to obtain, necessary for ~~the Interconnection Facilities and the~~ Additional Interconnection Facilities, and shall provide to Operator sufficient rights to use the land to enable Operator to construct and install the Interconnection Facilities and Additional Interconnection Facilities and to operate and maintain the Interconnection Facilities for the Term of the Agreement.

9.5 Operator shall notify PREPA and provide the following information which PREPA shall have the right to review and comment on: (i) a detailed list of the equipment required for the ~~Interconnection Facilities and Additional Interconnection Facilities~~; (ii) the total estimated cost of the ~~Interconnection Facilities and~~ Additional Interconnection Facilities including the estimated cost of construction and/or installation; and (iii) the time required to construct and/or install the Interconnection Facilities and Additional Interconnection Facilities.

9.6 Within one hundred twenty (120) Days of PREPA's receipt of the information submitted by Operator in accordance with Section 9.5 above, PREPA shall either issue Operator a Notice to Proceed or notify Operator of any disagreement with the information provided. In such event Operator and PREPA will use their best efforts to reach an agreement; if the Parties

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are unable to reach an agreement in a timely manner such issues shall be finally resolved by an independent engineer jointly selected and paid for by the Parties (taking into account the construction schedule). Operator shall not purchase, construct or install any ~~Interconnection Facilities~~ or Additional Interconnection Facilities until receipt of a Notice to Proceed from PREPA, which shall constitute acceptance by PREPA of the need to purchase, construct or install such ~~Interconnection Facilities~~ or Additional Interconnection Facilities and the total estimated cost thereof previously provided by the Operator to PREPA. Once the Notice to Proceed is received by Operator, Operator shall use its best efforts to complete construction and/or installation of the ~~Interconnection Facilities~~ and Additional Interconnection Facilities within the time period Operator previously stated that such construction and/or installation would take.

9.7 If the total costs incurred by Operator to purchase, construct and install ~~the Interconnection Facilities~~ and the Additional Interconnection Facilities exceed five million dollars (\$5 million), PREPA will pay Operator the difference between such total costs and five million dollars (\$5 million) within forty-seven (47) Days of PREPA's receipt of each of the invoices that, when added to the prior invoices, exceed five million dollars (\$5 million). If the total costs incurred by Operator to purchase, construct and install the ~~Interconnection Facilities~~ and the Additional Interconnection Facilities are less than five million dollars (\$5 million), Operator will pay PREPA the difference between five million dollars (\$5 million) and such total costs within forty-seven (47) Days after the Commercial Operation Date. The total costs incurred by Operator pursuant to this section shall not exceed by more than ten percent (10%) of the estimated cost previously agreed under Sections 9.5 and 9.6, without PREPA's previous written approval.

9.8 PREPA reserves the right to modify or expand its requirements for protective

devices in conformance with Prudent Electrical Practices.

9.9 Each Party shall notify the other in advance of any changes to its system that will affect the proper coordination of protective devices on the two systems.

9.10 Notwithstanding the foregoing, PREPA will have the option to design, construct and install all or parts of the Interconnection Facilities and Additional Interconnection Facilities. In order to exercise this option, PREPA, after a feasibility study and no later than two hundred forty (240) Days after the Effective Date, shall notify Operator of its decision to construct and install all or part of the Interconnection Facilities and Additional Interconnection Facilities. In such event, Operator will comply with Section 9.4 through Section 9.7 to the extent it applies to that part of the Interconnection Facilities or Additional Interconnection Facilities for which Operator will be responsible.

9.11 In the event PREPA notifies Operator of its decision to construct all or parts of the Interconnection Facilities and Additional Interconnection Facilities, PREPA shall be solely responsible for such construction and all legal requirements for such construction. PREPA shall use best efforts to complete such construction prior to the Proposed Initial Synchronization Date specified pursuant to Section 4.3 herein. In the event PREPA fails to complete such construction prior to the Proposed Initial Synchronization Date, Operator shall have the option to complete such construction in PREPA's place. If Operator exercises its option to complete such construction, PREPA will use its best efforts to assist Operator to complete the construction in a timely manner. If such construction is not completed by the Proposed Initial Synchronization Date the Commercial Operation Date shall be deemed to have occurred sixty (60) Days after the Proposed Initial Synchronization Date, and PREPA shall be responsible to pay Operator the


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Capacity Purchase price times the Estimated Dependable Capacity commencing on the sixty-first (61st) Day after the Proposed Initial Synchronization Date. In the event that Operator exercises its right to complete such construction, the Commercial Operation Date shall be deemed to have occurred as set forth in the preceding sentence unless PREPA can demonstrate that the inability to complete such construction was caused by Operator's failure to exercise due diligence.



ARTICLE 10 - METERING

10.1 PREPA shall own and maintain all meters and metering devices (including RTUs) used to measure the delivery and receipt of Energy, or Energy and Dependable Capacity, for payment purposes. Operator shall install meters and metering devices for backup purposes subject to Section 10.3; provided that such meters and metering devices shall be subject to PREPA's approval.

 10.2 All meters and metering equipment including any backup meters used to determine the Energy, or Energy and Dependable Capacity, delivered to PREPA shall be located at the Interconnection Point and sealed, and the seals broken only by PREPA personnel when the meters are to be inspected, tested or adjusted; PREPA shall give Operator two (2) weeks prior written notice thereof and Operator shall have the right to have a representative present during the meter inspection, testing or adjustment.

10.3 At least once a year and, in addition, from time to time upon two (2) weeks prior written notice by Operator, PREPA will test and calibrate the meter(s), including any backup meters, in accordance with the provisions for meter testing as established in American National Standard Code for Electricity Metering (ANSI) Standard C 12.16 for Solid State Electricity Meters, and the Handbook for Electrical Metering, Edison Electric Institute 8th Edition or the updated edition in effect and available to PREPA at the time the test is performed. When, as a result of such a test, a meter is found to be no more than two percent (2%) fast or slow no adjustment will be made in the amount paid to Operator for Energy, or Energy and Dependable Capacity, delivered to PREPA. If the meter is found to be more than two percent (2%) fast or

slow, PREPA will use the backup meter to calculate the correct amount delivered to PREPA for the actual period during which inaccurate measurements were made or, if the actual period cannot be determined to the mutual satisfaction of the Parties, for a period equal to one-half of the time elapsed since the most recent test, but in no case for a period in excess of six (6) Months. If the backup meters are not available, or if the testing of the backup meters demonstrates that those meters are more than two percent (2%) fast or slow, the meter readings for the actual period during which inaccurate measurements were made shall be adjusted based on the corrected meter readings or, if the actual period cannot be determined to the mutual satisfaction of the Parties, for a period equal to one-half of the time elapsed since the most recent test. but in no case for a period in excess of six (6) Months. The previous payments by PREPA for this period shall be subtracted from the amount of payments that are calculated to have been owed under this Agreement. The difference shall be offset against or added to the next payment to either Party as appropriate under this or other agreements between the Parties.

10.4 Starting with the Initial Synchronization Date, PREPA shall read the meters once a Month, which monthly period shall not exceed thirty-three (33) Days nor be less than twenty-eight (28) Days (the "Billing Period"), to determine the amount of Energy delivered to PREPA during the immediately preceding Billing Period. The meters will be read on the dates indicated on the meter reading program prepared by PREPA and submitted to the Operator on or before January 1st of each Calendar Year. PREPA shall notify Operator in advance of any change on the meter reading program. The Operator may be present, at its option, during all meter readings. PREPA shall provide the Operator with a written statement containing the results of such meter readings within fifteen (15) Days following the reading.

ARTICLE 11 - BILLING AND PAYMENT

11.1 PREPA shall pay Operator for the Energy and Dependable Capacity delivered and billed to PREPA on a monthly basis. Such payment will be equal to an Energy Purchase Price times the Energy delivered, a Capacity Purchase Price times the Dependable Capacity and a Start-up Payment.

11.1(a) **Energy Purchase Price** - PREPA shall pay Operator for the Energy of the Facility (including Energy delivered prior to the Commercial Operation Date) measured by PREPA's meters installed in accordance with Section 10.1 on a cents per kWh basis at a rate equal to the Energy Purchase Price. The Energy Purchase Price shall be equal to the sum of (i) the Fuel Related Charge, plus (ii) the Variable Operation and Maintenance Charge.

11.1 (a)(I) The Fuel Related Charge (FRC) shall be calculated as indicated below:

$$\text{FRC (cents/kWh)} = \frac{\text{Cost of Fuel} \times \text{Fuel Cost Determination Factor}}{10,000}$$

Where:

The Cost of Fuel shall be that price for Fuel used during the Billing Period for which such calculation is made, under pricing established in Article 13, and shall reflect that all-in price paid by Operator including transportation and all taxes, duties and any other governmental charges or impositions. The price shall be stated in dollars per million BTU's (HHV) (rounded to four decimal places) and calculated assuming Fuel burned on a first-in first-out Fuel inventory method.

The Fuel Cost Determination Factor for each hour shall be determined according to Section 7.3.

11.1(a)(2) The Variable Operation and Maintenance Charge shall be equal to

0.419 cents/kWh as of January 1, 1994, as increased or decreased as appropriate on January 1, 1995 and on each January 1 thereafter by the percentage change between the Puerto Rico Consumer Price Index For All Families corresponding to the Fiscal Year ending on June 30, 1993 (as published by the Puerto Rico Bureau of Labor Statistics, Department of Labor and Human Resources)(the "PR-CPI") and the PR-CPI corresponding to the Fiscal Year ending on the June 30th immediately preceding the date of such adjustment.

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11.1 (b) Capacity Purchase Price - The Capacity Purchase Price for Dependable Capacity shall be the sum of (i) the Demand Charge and (ii) the Fixed Operation and Maintenance Charge, calculated as indicated below.

11.1 (b)(1) Demand Charge - Shall be the Base Demand Charge as in effect for the Agreement Year adjusted by the Force Majeure Delay Adjustment and the Financial Adjustment calculated as indicated below.

11.1(b)(1)(i) Base Demand Charge - Commencing on the Commercial Operation Date, the Base Demand Charge for Dependable Capacity shall be twenty-one dollars and seventy-six cents (\$21.76) per kilowatt of Dependable Capacity per Month. The Base Demand Charge shall be changed at the beginning of each Agreement Year to be the Base Demand Charge as set forth below for such Agreement Year (as in effect for each respective Agreement Year, the "Base Demand Charge").

Base Demand Charge

<u>Agreement Year</u>	<u>\$/kW Month</u>
1	21.76
2	21.98
3	22.20
4	22.42
5	22.64
6	22.87
7	23.10
8	23.33
9	23.56
10	23.80
11	24.04
12	24.28
13	24.52

Base Demand Charge

<u>Agreement Year</u>	<u>\$/kW Month</u>
14	24.77
15	25.01
16	25.26
17	25.52
18	25.77
19	26.03
20	26.29
21	13.28
22	13.41
23	13.54
24	13.68
25	13.82

11.1 (b)(1)(ii) Force Majeure Delay Adjustment - The Base Demand

Charge for each Agreement Year set forth above through Agreement Year 20 shall be subject to adjustment in the event that the Financial Closing Date for the Facility is not achieved by 30 Months after the Effective Date ("Estimated Financial Closing Date") due to the occurrence of one or more Force Majeure events. The revised Base Demand Charge for each Agreement Year in such event shall be the Base Demand Charge set forth above for each such Year multiplied by a fraction, the numerator of which shall be the Construction Cost Index in effect on the Financial Closing Date and the denominator of which shall be the Construction Cost Index in effect for the Estimated Financial Closing Date. As used herein, the term Construction Cost Index shall mean the average of all regions in United States of the "Total Steam Production Plant (Table E, Line No.6)" of the Handy-Whitman Index of Public Utility Construction Costs publication. The index value will be interpolated from such published index values assuming the increase or decrease in such index value occurred evenly throughout the six-Months index period. If such publication has been discontinued, a similar index reflecting such cost trends shall be

substituted by mutual agreement.

11.1 (b)(I)(iii) Permanent Financing Adjustment

(A) The Base Demand Charge for each Agreement Year set forth above shall be subject to a Permanent Financing Adjustment each Month in the manner set forth below in the event that the Monthly Deemed Total Debt Service for the permanent financing of the Facility Debt is higher or lower than the Monthly Expected Total Debt Service at the Effective Date solely due to changes in (1) the Permanent Financing Interest Rates for each tranche of debt; (2) Fees related to the permanent financing of the Facility; (3) the principal repayment schedule for each tranche of debt for the permanent financing; or (4) the relative proportion each tranche of debt bears to the total of the permanent financing; provided, however, that the Base Demand Charge shall not be adjusted for any changes in the debt component of the Facility Cost, which, for the purposes of this Section, equals \$1,600 per kilowatt. The Permanent Financing Adjustment shall be established for the term of the permanent financing at the Financial Closing Date and shall be subject to further adjustment as a result of changes in the permanent financing due to costs associated with any refinancing approved by PREPA and with the rollover of any Section 936 funds that comprise a tranche of debt in the permanent financing at the Financial Closing Date, provided, however, that the initial Dependable Capacity shall not be determined until the Facility has been tested in accordance with Article 12 of this Agreement. The Permanent Financing Adjustment shall be calculated in accordance with the following formulas:

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$$\text{Permanent Financing Adjustment} = \text{Monthly Deemed Total Debt Service} - \text{Monthly Expected Total Debt Service}$$

Where:

Monthly Deemed Total Debt Service = $\frac{\text{Monthly Actual Total Debt Service} \times \$1600/\text{kW}}{\text{Actual Permanent Financing Amount } (\$/\text{kW})}$.

Monthly Actual Total Debt Service = $\frac{\text{Permanent Financing Interest} + \text{Principal}}{\text{initial Dependable Capacity}}$

Actual Permanent Financing Amount = $\frac{\text{actual amount of permanent financing}}{\text{initial Dependable Capacity}}$

Permanent Financing Interest means, commencing with the Month following the Commercial Operation Date, the total interest expense related to the permanent financing debt service for the Facility to be incurred over the pertinent Agreement Year, divided by twelve (12).

Principal means, commencing with the Month following the Commercial Operation Date, the principal repayment related to the permanent financing debt service for the Facility and fees related to the permanent financing of the Facility such as payments relating to interest rate swaps or other hedging agreements, attorneys' fees, underwriters' fees, accountants' fees, letters of credit fees and other fees that are to be incurred over the pertinent Agreement Year, divided by twelve (12).

Monthly Expected Total Debt Service - means a level payment of \$14.09/kW-Month for a term of 240 Months.

Permanent Financing Interest Rate - means the actual weighted average rate of interest charged for all tranches of debt for the permanent financing of the Facility to be determined in accordance with the following formula:

$$\frac{(X_1 \times Y_1 \times Z_1) + (X_2 \times Y_2 \times Z_2) + \dots + (X_n \times Y_n \times Z_n)}{(X_1 \times Z_1) + (X_2 \times Z_2) + \dots + (X_n \times Z_n)}$$

Where:

X₁ = tranche 1 debt

Y₁ = annual interest rate of tranche 1

2_1 = average life of tranche 1
 X_2 = tranche 2 debt
 Y_2 = annual interest rate of tranche 2
 2_2 = average life of tranche 2
 X_n = tranche n debt
 Y_n = annual interest rate of tranche n
 2_n = average life of tranche n

All years are expressed to the second decimal point. All percentages are expressed to the third decimal point. The permanent financing for the Facility will be obtained in multiple tranches of debt.

For each tranche of Permanent Financing, the average life is calculated in accordance with the following formula:

$$\frac{\text{Sum of the Principal Repayments in each year} \times \text{Year in which repayment is made}}{\text{Sum of the repayments}}$$

Examples of this adjustment are set forth in Exhibit E.

(B) The selection of the underwriter for the construction financing of the Facility shall be made by the Operator in Operator's sole discretion if there is no intention of issuing permanent debt. If the Operator intends to issue permanent debt as part of the construction financing, the conditions for the issuance of permanent debt shall apply.

(C) The selection of the underwriter for each tranche of the permanent financing of the Facility shall be made by PREPA from a list of six (6) qualified underwriters submitted by Operator, of which at least four (4) are authorized to do business in Puerto Rico and have local offices, whose approval shall not be unreasonably withheld.

Operator commits to use its best efforts to obtain the lowest possible financing cost for the permanent financing of the Facility Debt and PREPA and Operator shall mutually agree on the debt structure, issuance date, maturity schedule, interest rates and

issuance cost. Notwithstanding the foregoing, the marketing of the permanent debt is the sole responsibility of the Operator and PREPA is not responsible and does not guarantee the market availability of the total permanent debt or any tranche.

(D) In the event PREPA reasonably determines that refinancing by Operator of **any** tranche of the permanent financing of the Facility would produce a net present value savings of more than five percent (5%) with respect to that tranche, PREPA may request Operator to refinance that tranche. The total costs and expenses of such refinancing, including but not limited to issuance costs and expenses, underwriting fees and issuance expenses, prepayment charges, fees and expenses related to the debt being refinanced, and refinancing, shall be included in determining the total amount of the tranche of debt being refinanced. The Base Demand Charge shall be adjusted on a prospective basis in accordance with paragraphs (A), (B), and (C) above by the annual savings (specified in dollars per kW-Month) in permanent financing costs produced by such refinancing.

(E) Operator agrees to notify PREPA of the anticipated Permanent Financing Interest Rate at least forty-five (45) Days prior to the anticipated Financial Closing Date. If, at least fifteen (15) Days prior to the anticipated Financial Closing Date, PREPA demonstrates to Operator's satisfaction, by means of an opinion of an independent investment banking firm, that the Permanent Financing Interest Rate exceeds the all-in interest expenses rate (including any underwriting fees and expenses and credit enhancement fees and expenses) that PREPA could have obtained for its own account in the municipal market at or near the time of the Financial Closing Date for a similar Facility for the same amount of funds and for a comparable financing term plus three hundred fifty (350) basis points (such sum expressed

as a rate of interest and referred to as the "Maximum Interest Rate"), then PREPA shall have the right, upon written notice to Operator prior to the anticipated Financial Closing Date, to terminate the Agreement upon payment to Operator, within sixty (60) Days of such notice, in an amount equal to (i) all costs accrued by or on behalf of Operator after the Effective Date, including all termination costs or fees, if any, owed by Operator to suppliers or contractors under agreements relating to the Facility, (ii) Interest thereon from the date on which such costs were incurred and (iii) twenty percent (20%) of the Licensing Costs for the Facility incurred by Operator, unless Operator, within fifteen (15) Days of receipt of such written notice, notifies PREPA in writing that Operator agrees to bear the costs in excess of the Maximum Interest Rate. In such event, the Permanent Financing Interest Rate Adjustment shall be determined as if the Permanent Financing Interest Rate equals the Maximum Interest Rate.

If PREPA exercises its right to terminate, and upon payment to Operator as stated above, PREPA shall have the right to acquire from Operator, its parent company, affiliates, successors, assignees or any other party which may have any interest, right or title to the Facility every and all interests, rights, and titles existing, or which may exist over the Facility in relation to its present and/or future ownership and operation.

11.1(b)(2) Fixed Operations and Maintenance Charge - Commencing with the Commercial Operation Date and continuing for the remainder of the Term, Operator shall be paid a Fixed Operation and Maintenance Charge equal to \$3.84/KW-Month as of January 1, 1994, as increased or decreased as appropriate on January 1, 1995 and on each January 1 thereafter by the percentage change between the PR-CPI corresponding to the Fiscal Year ending on June 30, 1993 (as published by the Puerto Rico Bureau of Labor Statistics, Department of Labor and Human

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Resources) and the PR-CPI corresponding to the Fiscal Year ending on the June 30th immediately preceding the date of such adjustment.

11.1(c) Start-up Payment - The Start-up payment shall equal the price of Fuel or alternative fuel used after an Economy Shutdown to start-up the Facility until the Facility is synchronized to PREPA's system.

11.2 The amount payable by PREPA to Operator for Dependable Capacity in each Billing Period may be subject to further adjustment in accordance with this Section.

11.2 (a) Force Majeure Event - For each Billing Period, the actual amount to be paid by PREPA to Operator for Dependable Capacity shall be subject to adjustment with respect to outages or deratings due to a Force Majeure event, in which Operator is unable to deliver or PREPA is unable to receive all or part of the electricity, by the application of the formula set forth below computed for each Billing Period for which such payment is being determined (the "Force Majeure Adjusted Capacity Payment").

$$\text{FMACP} = \frac{\text{CPP} \times (\text{BPH} - \text{EFMH}) \times \text{DC}}{\text{BPH}}$$

Where:

FMACP = Force Majeure Adjusted Capacity Payment

CPP = Capacity Purchase Price

EFMH = Equivalent Force Majeure Hours

DC = Dependable Capacity

BPH = Billing Period Hours

Notwithstanding the above adjustments for Dependable Capacity, if for any such Force

Majeure event the Facility is capable of delivering all or a portion of its Dependable Capacity at the Interconnection Point to PREPA and PREPA is unable to receive such electricity due to a Force Majeure event claimed by PREPA on its side of the Interconnection Point, then the adjustment due to such Force Majeure event shall not be applied to the Facility.

11.2 (b) Equivalent Availability - the monthly capacity payment will be adjusted downward if the Equivalent Availability Factor (EAF) for the period comprising the last twelve Billing Periods ending with the one being billed ("Twelve Month EAF") falls below ninety percent (90%). Such adjustment will be as follows:

<u>Range</u>	<u>Downward Adjustment</u>
EAF \geq 90%	0
90% > EAF \geq 88%	(90-EAF) x 1.25%
88% > EAF \geq 85%	2.5% + (88-EAF) x 1.5%
85% > EAF > 70%	7% + (85-EAF) x 2%
70% > EAF > 60%	37% + (70-EAF) x 3%
60% > EAF	100%

Notwithstanding the foregoing, during the first Agreement Year, monthly capacity payments for each Billing Period included therein will be adjusted if the EAF falls below eighty-eight (88%). During the first Agreement Year, the applicable EAF will be calculated for the period beginning on the Commercial Operation Date and ending on the final day of the Billing Period. So long as the EAF for the first Agreement Year equals or exceeds eighty-eight (88%), for purposes of calculating the EAF for each of the next eleven (11) Months following the first Agreement Year, the EAF for each Month of the first Agreement Year shall be deemed to have

been ninety percent (90%). For example, an EAF of seventy-five percent (75%) during the first Agreement Year would reduce the monthly capacity payment by twenty-four and one-half percent (24.5%), and an EAF of seventy-five percent (75%) after the first Agreement Year would reduce the monthly capacity payment by twenty-seven percent (27%). Examples of the Capacity Payment adjustment calculation are included in Exhibit F.

11.3 Payment for the Energy delivered to PREPA, for the Dependable Capacity made available to PREPA, and for the Start-up Payment incurred during the Billing Period, and for all other amounts or reimbursements due to Operator hereunder, shall be made within forty-seven (47) Days after the Billing Period. On the outstanding payments due to Operator, Interest shall accrue commencing on the forty-eighth (48th) Day after the Billing Period. Notwithstanding the payment requirements set forth in this Section 11.3, any amounts billed by PREPA to Operator relating to the Facility that are not paid when due to PREPA may, at PREPA's discretion, be offset against the amounts due to Operator from PREPA under this Agreement.

Payment to PREPA shall be made by wire transfer to an account with a bank to be specified by PREPA in writing at least thirty (30) Days prior to the Commercial Operation Date or with such other banks as may thereafter be specified by PREPA in writing.

Payment to Operator shall be made by wire transfer to an account with a bank to be specified by Operator in writing at least thirty (30) Days prior to the Commercial Operation Date or with such other banks or institutions as may thereafter be specified by Operator in writing.

Either Party may, by written notice to the other, change the address to which such payments are to be sent.

ARTICLE 12 - TESTING AND CAPACITY RATINGS

12.1 Operator represents that the Estimated Dependable Capacity for the Facility is 413 MW.

12.2 The Dependable Capacity for the Facility shall be determined by testing described in this Article 12. Operator shall give PREPA at least seven (7) Days notice as to when the Facility will be tested. Operator shall perform the test according to Exhibit G and PREPA shall have the right to monitor the test.

12.3 If the test is completed successfully according to Exhibit G, Operator shall set the Dependable Capacity within plus or minus ten percent ($\pm 10\%$) of the Estimated Dependable Capacity as specified in Section 12.1.


12.4 The Operator may request additional tests described herein if Operator is not satisfied with the test and has not set the Dependable Capacity. Requests for additional tests can be made only after five (5) Days have expired since the termination of the most recent previous test. Upon completion of such additional test (s), if any, Operator shall set the Dependable Capacity at any level within plus or minus ten percent ($\pm 10\%$) of the Estimated Dependable Capacity as specified in Section 12.1.

12.5 Upon completion of the first Agreement Year, the Dependable Capacity may be reset by Operator by testing as described in this Article 12. At least fourteen (14) Days prior to completion of that first Agreement Year, Operator shall notify PREPA of its intention to reset the Dependable Capacity. The payments for Dependable Capacity thereafter shall be made based on this new Dependable Capacity. This new Dependable Capacity shall be within plus or minus

ten percent ($\pm 10\%$) of the Dependable Capacity set pursuant to Section 12.3, but also must be within plus or minus ten percent ($\pm 10\%$) of the Estimated Dependable Capacity specified in Section 12.1.

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12.6 Following the initial setting of the Dependable Capacity as per this Article, Operator shall notify PREPA in writing of the set Dependable Capacity and consequently the Commercial Operation Date.

ARTICLE13 - FUELPROCUREMENT



13.1 (a) Operator shall maintain at all times a list of qualified suppliers for Fuel and for Fuel transportation to the Facility (the "Suppliers List"), which shall be updated and submitted to PREPA at least once a year. Operator agrees to include in the Suppliers List up to five (5) additional suppliers designated by PREPA, provided such suppliers are recognized and creditworthy suppliers. Not less than ninety (90) Days prior to issuing a request for proposal, including Fuel Specifications (the "Fuel RFP"), for the purchase of a supply of Fuel or for Fuel transportation to the Facility, Operator will give to PREPA a copy of the Fuel RFP. Operator agrees to incorporate any revisions to such Fuel RFP submitted by PREPA within thirty (30) Days of PREPA's receipt of the copy of the Fuel RFP. unless the Operator provides PREPA with a written explanation demonstrating that such revisions will have a material adverse effect on the operation of the Facility. The Fuel RFP shall be submitted to all suppliers in the Suppliers List.

(b) The Fuel RFP may include, at the option of Operator, the transportation and disposal of any ash produced after the utilization of Fuel in the Facility from any supplier ("Ash Disposal"). Operator shall request all bidders to state separately (1) the cost for the sale and transportation of Fuel ("Fuel and Transportation Costs") and (2) the total of the Ash Disposal cost and of the Fuel and Transportation Costs, provided that the bidder may elect to bid only on the sale and transportation of Fuel. The Fuel RFP shall also specify that the bidder shall be bound by its bid for the total of the Ash Disposal cost and the Fuel and Transportation Costs, and separately, for the Fuel and Transportation Costs. Operator shall have the right to select either the bid for the sale and transportation of Fuel or the bid to provide both the Ash Disposal and

the sale and transportation of Fuel. In accordance with Section 11.1(a)(1) of this Agreement, the cost of Fuel will be determined using only the Fuel and Transportation Costs of the bid that fully conformed to all material requirements of the Fuel RFP that has the lowest Fuel and Transportation Costs ("Low Bid Fuel Cost"). Operator shall have the right to include in the Fuel RFP an annual minimum take provision, provided that at no time shall the annual minimum take obligations in the aggregate exceed twenty percent (20%) of the Maximum Annual Fuel Requirement for the period of the contract or contracts unless PREPA, in its sole discretion, consents to a greater minimum obligation. Operator shall have the right to cancel the Fuel RFP if fewer than three (3) bids provide for the Ash Disposal.

13.2 Operator agrees to provide to PREPA copies of all responses to the Fuel RFP within fifteen (15) Days after Operator receives them. Operator further agrees that prior to executing any agreement for the supply of Fuel or for Fuel transportation to the Facility (a "Proposed Fuel Agreement"), it shall submit such agreement to PREPA for review. PREPA may either endorse or object to the terms and provisions of any such Proposed Fuel Agreement by written notice delivered to Operator within thirty (30) Days of receipt of such Proposed Fuel Agreement. If PREPA does not object to the terms and conditions of such Proposed Fuel Agreement by written notice delivered to Operator within the initial thirty (30) Days period, such Proposed Fuel Agreement shall be deemed acceptable to PREPA.

13.3 If PREPA objects in writing to the terms and provisions of any such Proposed Fuel Agreement within such thirty (30) Day period, in accordance with the preceding Section 13.2, the Parties shall negotiate in good faith for a period of ten (10) Days following Operator's receipt of such written objection to attempt to modify the terms and provisions of such Proposed Fuel

Agreement to obtain an agreement reasonably acceptable to both Operator and PREPA. If both (i) the Parties shall fail to reach mutual agreement on such terms and provisions within such ten (10) Day period, and (ii) PREPA does not obtain an alternative Fuel supply and Fuel transportation agreement on substantially the same terms as the Fuel RFP from a third party Fuel supplier and transporter, that are both recognized and creditworthy, and does not deliver to Operator a proposed alternative Fuel supply or Fuel transportation agreement, as the case may be, within sixty (60) Days of the expiration of such ten (10) Day period set forth above, Operator shall be permitted to execute the original Proposed Fuel Agreement.

13.4 Operator agrees to obtain all necessary Fuel supply and Fuel transportation agreements in accordance herewith and agrees that such Fuel supply and Fuel transportation agreements shall have initial terms of not less than two Years nor more than the remainder of the Term providing at least eighty percent (80%) of the Maximum Annual Fuel Requirement. Nothing herein shall prohibit Operator from purchasing additional Fuel for use in meeting its obligations to supply steam under steam purchase contracts entered into by Operator. Notwithstanding anything to the contrary in this Article 13, Operator shall be permitted but not required to sign a long term contract or contracts with one or more Fuel suppliers and Fuel transporters, on or before the Financial Closing Date, in accordance with the standards set forth in this Article.

13.5 In order to comply with Section 6.1, Operator shall commence the process for the execution of Fuel supply and transportation agreement no later than twelve (12) Months prior to the proposed Commercial Operation Date as specified in Section 19.1 hereunder and shall seek extensions of existing agreements or new Fuel supply and transportation arrangements

commencing not less than eighteen (18) Months prior to the expiration of the then existing agreements so that such arrangements are in effect not less than twelve (12) Months prior to the expiration of the then existing agreements.

13.6 In addition, in the event of any actual or anticipated interruption in the supply or transportation of Fuel under any Fuel supply or Fuel transportation agreement approved by Operator and PREPA under the foregoing Section (whether such interruption arises from events of Force Majeure, lack of performance or inability to perform by any third party under any such Fuel supply or Fuel transportation agreement, bankruptcy or insolvency of any such third party, or any other similar reason or circumstance), Operator shall have the right to propose Emergency purchases or transportation arrangements for up to twice the Maximum Monthly Fuel Requirement and submit such proposed agreements to PREPA for review. Unless PREPA, within five (5) working Days of its receipt of the proposed agreement, both (i) objects to the terms and provisions of any such proposed emergency arrangements by telecopied written notice or any other means of written communication delivered to Operator and (ii) includes a comparable counterproposal from a recognized and creditworthy third party on substantially the same terms as the Fuel RFP, Operator shall be permitted to execute the Operator proposed emergency agreements. Payments by Operator for Fuel or transportation thereunder shall be included for purposes of determining the Cost of Fuel under this Agreement. In addition to such emergency purchases, the Parties agree that PREPA may at any time propose to Operator, and Operator agrees to enter into, other spot or short-term purchases of Fuel under this Agreement as long as any such proposed purchase (i) does not violate the terms of any then existing Fuel supply or Fuel transportation contracts entered into by Operator, (ii) will not cause any significant operating

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concerns and (iii) shall be included for purposes of determining the Cost of Fuel under this Agreement.

13.7 The range of Fuel quality specifications and ash analysis for Fuel to be purchased for the Facility shall be in accordance with Exhibit H, provided that the percentage of sulfur may be increased at the option of Operator from the Exhibit H percentage to the maximum permitted under Operator's air permit. However, PREPA will have the opportunity to participate with Operator, if at any time during the Term Operator has the right to do so, in any process before any permitting agencies that could result in any permit requirements which would result in significant changes to the specifications set forth in Exhibit H.

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ARTICLE 14 - LIABILITY


14.1 Each of the Operator and PREPA shall be responsible for the Energy and facilities, located on its respective side of the Interconnection Point. The Energy made available by the Operator to PREPA under this Agreement shall become the property of PREPA at the Interconnection Point, and, except as provided in Section 14.2 below, the Operator shall not be liable to PREPA for loss or damage to PREPA's generation, transmission, and distribution system, including the Additional Interconnection Facilities, resulting directly or indirectly from the use, misuse or presence of said Energy once it passes the Interconnection Point.

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14.2 Each of the Operator and PREPA shall be liable for all foreseeable damages suffered by the other as a necessary consequence of the Operator or PREPA's respective negligent performance or omissions or failure to perform its respective obligations under this Agreement, including during any cure period in accordance with Article 19, as stated under Article 1060 of the Puerto Rico Civil Code, subject to the terms of Section 14.3 below.

14.3 Further notwithstanding anything to the contrary in this Agreement, neither Party nor its officers, directors, agents, employees and representatives shall in any event be liable to the other Party or its officers, directors, agents, employees or representatives for claims for incidental, consequential or indirect damages to persons or property, whether arising in tort, contract or otherwise, connected with or resulting from performance or non-performance under this Agreement.

[Handwritten note:]
 A wrongful
 act other
 than a breach
 of contract
 for which
 relief may
 be obtained
 or an infraction.

ARTICLE 15 - PREPA's OPTION TO PURCHASE THE FACILITY

15.1 If a Permanent Abandonment or a Permanent Closing of the Facility occurs, PREPA shall have the option to purchase the Facility at the original cost of the Facility as depreciated on a twenty (20) Year straight-line basis together with the depreciated value of any capital improvements on a twenty (20) Year straight-line basis from the date of such improvements or the appraised value which ever is lower; but in no event lower than the Facility Debt.

15.2(a) If the tracking account balance under Section 20.1 exceeds twice the amount accrued on the letter or letters of credit (or other security acceptable to PREPA) pursuant to Section 19.7(a), PREPA shall have the option to purchase the Facility at the original cost of the Facility as depreciated on a twenty (20) Year straight-line basis together with the depreciated value of any capital improvements on a twenty (20) Year straight-line basis from the date of such improvements or the appraised value which ever is lower; but in no event lower than the Facility Debt plus the initial Equity Capital reduced to zero (0) on a straight-line basis over a period of forty-five (45) Years; provided, however, that PREPA shall give Operator sixty (60) Days notice of its intent to purchase the Facility pursuant to the terms of this Section. Further provided that, if Operator reimburses PREPA within such sixty (60) Day period in an amount sufficient to reduce the tracking account balance below twice the amount accrued on the letters of credit, PREPA's option shall lapse.

15.2 (b) If, after the fifteenth anniversary of the Commercial Operation Date, PREPA obtains an evaluation from an independent consulting firm acceptable to Operator, such

determination of acceptability to be made in a non-arbitrary manner, concluding that the continued dispatch of the Net Electric Output is no longer economic and will not be expected to become economic for the remainder of the Term, PREPA shall have the option to purchase the Facility at a price equal to the Facility Debt plus the initial Equity Capital; provided, however, that PREPA shall give Operator sixty (60) Days notice of its intent to purchase the Facility pursuant to the terms of this Section. Further provided that if, within such sixty (60) Day period, Operator reduces its Capacity Purchase Price or Energy Purchase Price such that said independent consulting firm determines that the continued dispatch of the Facility is expected to be or to become economic for the remainder of the Term, Operator shall have the right to make such pricing adjustment and PREPA's option under this Section 15.2 (b) shall lapse.

15.3 The Parties shall have a period, which will not exceed six (6) Months after PREPA's notification to the Operator of its intent to purchase the Facility, to establish the appraised value for the Facility.

15.4 In determining the appraised value of the Facility the Parties shall consider the price which would be obtained for the Facility in its then-current condition, taking into account its profitability and assuming a sale of the Facility in an arms-length transaction between a willing seller and a willing buyer with the need for the full Dependable Capacity and Energy from the Facility and with an assumed closing date of one hundred twenty (120) Days after the date of determination of the appraised value.


15.5 After the six (6) Month period pursuant to Section 15.3, if the Parties have not agreed on the appraised value of the Facility, the case will be submitted to a voluntary eminent domain process in a Court of Competent Jurisdiction. In this event, the Parties mutually agree

to request the Court of Competent Jurisdiction to appoint a special master pursuant to Rule 41 of the Puerto Rico Rules of Civil Procedure of 1979, 32 L.P.R.A. App.III, R.41, for the purpose of determining the appraised value of the Facility. The Parties further agree to request of the Court that the master to be appointed to determine the appraised value of the Facility consider the factors set forth in Section 15.4.

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15.6 The purchase price determined hereunder shall be due and payable on the date of closing, at which time Operator shall transfer title of the Facility to PREPA free and clear of any debts, liens, claims, interests and other encumbrances, other than those approved by PREPA.

15.7 Any amount paid by PREPA to reduce the debt of the Facility and/or any capital improvement made by PREPA on the Facility during PREPA's Operating Period, as defined in Section 19.10 hereunder, shall be subtracted from the purchase price of the Facility in the event PREPA exercises its option to purchase the Facility in accordance with Section 15.1 hereof. In the event PREPA does not exercise its option to purchase, and the Facility is sold to a third party, PREPA shall receive from the proceeds of such sale reimbursement for its payments to reduce the debt and capital improvements made pursuant to this paragraph; provided that PREPA's right to receive such reimbursement shall be subordinate to the rights of the Lenders to receive repayment out of such proceeds.

ARTICLE 16 - INDEMNIFICATION



16.1 Subject to the provisions in Article 14, each Party shall indemnify and hold harmless the other Party and each of its directors, officers, shareholders, employees, agents and representatives and each of their respective heirs, successors and assignees from and against any and all damages, claims, losses, liabilities, actions, causes of action, costs, expenses and obligations (including, without limitation, all reasonable attorneys' fees) whether arising in contract, tort, or otherwise, to third parties for or on account of injury, bodily or otherwise, to or death of persons or for damages to or destruction of property, resulting from, arising out of or in connection with such indemnifying Party's negligent performance or failure to perform under this Agreement or such indemnifying Party's ownership, construction, operation or maintenance of its respective facilities under this Agreement.

16.2 In the event any Party to this Agreement receives notice of any claim or cause of action for which such Party elects to assert a right of indemnification and hold harmless from the other Party, the Party receiving such notice must give prompt written notice to the other Party of the claim. The Party required to give the indemnification and hold harmless under the terms and provisions of this Agreement will have control of the defense of any such claim or cause of action (except to the extent prevented by any legal conflict of interest) including the selection of counsel to handle same. In addition to the counsel so selected, the Party being indemnified and held harmless shall be entitled to be represented by counsel of his or its own choosing but, in such event, the cost and expense of said additional counsel shall be borne by the indemnitee.

16.3 As of the Effective Date and for the Term, Operator shall indemnify and hold

harmless PREPA for any and all judgments and expenses (including costs and reasonable attorneys' fees) incurred by PREPA as a result of claims of any nature whatsoever resulting from any environmental harm due to the actions of the Operator or Operator's agents, employees, successors or assignees in the construction or operation of the Facility or arising as a result of the presence at the Facility of pollutants, hazardous substances, materials or wastes in excess of amounts and concentrations permitted by applicable Federal or Commonwealth laws, rules or regulations then in effect. In the event Operator fails to reimburse PREPA for such expenses within thirty (30) Days of receipt of written notice from PREPA stating that such expenses were incurred, PREPA may offset the amount of such expenses against amounts due Operator from PREPA under this Agreement.

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ARTICLE 17 - FORCE MAJEURE

17.1 For purposes of this Agreement, Force Majeure means any cause beyond the reasonable control of and without the fault or negligence of the Party claiming the Force Majeure. A Force Majeure shall excuse the performance of the Party claiming a Force Majeure event if such event causes the non-performance or inability to perform. The burden of proof as to whether a Force Majeure has caused a non-performance or inability to perform shall be on the Party claiming the Force Majeure. The Parties hereto shall be excused from performing hereunder and shall not be liable in damages or otherwise if the non-performance or inability to perform is due to a Force Majeure Event.

17.2 Subject to Section 17.1 above, Force Majeure events include, but are not limited to, the following: acts of God, strikes, industrial disturbances, acts of public enemy, war, blockages, boycotts, riots, insurrections, epidemics, earthquakes, storms, floods, civil disturbances, lockouts, fires, explosions, interruptions of services due to acts or failure to act of any governmental authority, condemnation, and any delay or inability of Operator in obtaining the necessary licenses, permits or governmental approvals.

17.3 Except as otherwise provided in Section 11.2(a), if either Party is rendered wholly or partly unable to perform its obligations under this Agreement because of Force Majeure, that Party shall be excused from whatever performance is affected by the Force Majeure to the extent so affected, provided that: (i) the non-performing Party, within ten (10) Days after the occurrence of the Force Majeure, gives the other Party written notice describing the particulars of the occurrence and its estimated duration; (ii) the suspension of performance be of no greater scope


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and of no longer duration than is required by the Force Majeure; (iii) no obligations of either Party which arose prior to the Force Majeure be excused as a result of the Force Majeure; and (iv) the non-performing Party use its best efforts to remedy its inability to perform and resume' in full its performance under this Agreement, provided that this obligation shall not require the settlement of any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to its best interest.

17.4 Neither Party shall be excused by reason of Force Majeure from the obligation to make any payment due to the other Party for more than ten (10) Days after said payment is due.

17.5 For purposes of this Article, if a Party disputes the other Party's claim of Force Majeure, such dispute shall be resolved by binding arbitration in accordance with the following requirements:

- (1) If within sixty (60) Days the dispute is not resolved through negotiations pursued diligently in good faith, the Parties shall attempt to agree on a person with special knowledge and expertise with respect to the claimed Force Majeure to serve as arbitrator. If the Parties cannot agree on an arbitrator within ten (10) Days, each shall then appoint one person to serve as an arbitrator and the two thus appointed shall select a third arbitrator with such special knowledge and expertise to serve as chairman of the panel of arbitrators; and such ~~three~~ arbitrators shall determine all matters by majority vote; provided, however, if the two arbitrators appointed by the Parties are unable to agree upon the appointment of the third arbitrator within five (5) Days after their appointment, both shall give written notice of ~~such~~ failure to agree to the Parties, and, if the Parties fail to agree upon the selection




of such third arbitrator within five (5) Days thereafter, then either of the Parties upon written notice to the other may require such appointment from and pursuant to the rules of the American Arbitration Association with the selection of arbitrators from the National Academy of Arbitrators. Prior to appointment, each arbitrator shall agree to conduct such arbitration in accordance with the terms of this subsection. The arbitration panel may choose legal counsel to advise it on the remedies it may grant, procedure and such other legal issues as the panel deems appropriate.

- (2) The Parties shall have sixty (60) Days to perform discovery and present evidence and argument to the arbitrators. During that period, the arbitrators shall be available to receive and consider all such evidence as is relevant and, within reasonable limits due to the restricted time period, to hear as much argument as is feasible, giving a fair allocation of time to each Party to the arbitration. The arbitrators shall use all reasonable means to expedite discovery and to sanction noncompliance with reasonable discovery requests or any discovery order. The arbitrators shall not consider any evidence or argument not presented during such period and shall not extend such period except by the written consent of both Parties. At the conclusion of such period, the arbitrators shall have forty-five (45) Days to reach a determination. To the extent not in conflict with the procedures set forth herein, which shall govern, such arbitration shall be held in accordance with the prevailing rules of the American Arbitration Association for commercial arbitration.

- (3) The arbitrators shall have the right only to interpret and apply the terms and conditions of this Agreement and to order any remedy allowed by this Agreement, but may not change any term or condition of this Agreement, deprive either Party of any right or remedy expressly provided hereunder, or provide any right or remedy that has been excluded hereunder.
- (4) The arbitrators shall give a written decision to the Parties stating their findings of fact, conclusions of law and order, and shall furnish to each Party a copy thereof signed by them within five (5) Days from the date of their determination.
- (5) Any actual determination made by the arbitrators shall be conclusive and binding upon the Parties and not subject to judicial review, except on the grounds of fraud or bias and may be presented to any Court of Competent Jurisdiction as a stipulation of the Parties. Any conclusions and any order issued by the arbitrators shall be subject to review in any Court of Competent Jurisdiction, provided however, that any order issued by the arbitrators shall be effective and enforceable unless and until a stay of the order is issued by the arbitrators or by such court under the prevailing standards for issuing stays, or such court enjoins, modifies or reverses the order of the arbitrators.
- (6) The Parties shall each pay fifty percent (50%) of the cost of arbitrator or arbitrators.

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ARTICLE 18 . TERMINATION

18.1 Termination of this Agreement shall occur only upon: (i) expiration of the Term of this Agreement as provided in Article 5; or (ii) mutual written consent of the Parties; or (iii) the Facility being Permanently Abandoned or the Permanent Closing of the Facility; or (iv) the material breach of any of the terms and conditions of this Agreement by either Party, subject to the provisions of Article 19 hereof; or (v) delay by Operator in achieving the Commercial Operation Date as specified in Section 19.1(iii) by eighty-six (86) Months after the Effective Date, whether or not due to a Force Majeure event, in which case the termination right can be only exercised by PREPA; (vi) termination by PREPA pursuant to Section I1.I(b)(I)(iii)(E); or (vii) any other reason as specified in this Article 18.

18.2 The Parties agree that the continued effectiveness of this Agreement is dependent on Operator's determination that the project to be constructed in accordance with this Agreement is financially feasible. If Operator notifies PREPA that the project is not financially feasible on or before ninety (90) Days after the Effective Date, either Party may terminate this Agreement without liability.

18.3 Termination of this Agreement shall not discharge either Party hereto from any obligation it owes to the other Party under this Agreement by reasons of any transaction, loss, cost, damage, expense or liability which shall occur or arise (or the circumstances, events, or basis of which shall occur or arise) prior to termination. It is the intent of the Parties hereby that any such obligation owed (whether the same shall be known or unknown at termination or whether the circumstances, events or basis of the same shall be known or unknown at

termination) shall survive termination. Any indebtedness by either Party to the other shall be considered payable within ninety (90) Days of the termination of this Agreement, subject to Section 11.3 hereof. This Section 18.3 shall survive the termination of the Agreement.

18.4 In the event Operator is unable to obtain a construction permit, despite its due diligence in pursuing its application for approval of such permit, within fifty-four (54) Months after the Effective Date, whether or not due to a Force Majeure event, or in the event the construction permit application is denied, despite Operator's due diligence in pursuing its application for approval of such permit, either Party may terminate the Agreement without liability to either Party, except as provided for in Section 18.3 hereof. In such event, PREPA agrees to return to Operator any amounts remaining in any security provided by Operator.



ARTICLE 19 - BREACH OF AGREEMENT

19.1 A breach of this Agreement shall be deemed to exist upon the occurrence of any one of the following: (i) construction permit is not obtained by thirty (30) Months after the Effective Date; (ii) commencement of construction does not begin by thirty-two (32) Months after the Effective Date; (iii) Commercial Operation Date is not achieved by sixty-two (62) Months after the Effective Date, subject in the case of all the foregoing dates, to extension for any Force Majeure Event; (iv) the failure by either Party to perform its obligations under this Agreement, subject to the provisions of Section 19.3 below; (v) the Equivalent Availability Factor is less than sixty percent (60%) for any period of twelve (12) consecutive Months, or less than seventy percent (70%) for any period of twenty-four (24) consecutive Months.

19.2 If Operator breaches this Agreement pursuant to Section 19.1 (i), (ii) or (iii) above, PREPA shall have those rights and remedies set forth in Sections 19.5 and 19.6 below as an exclusive remedy. This Section shall not limit PREPA's rights or remedies which may exist under this Agreement or under the law for any other breach by Operator.

19.3 If either Party believes the other Party has breached this Agreement pursuant to Section 19.1 (iv) above or if PREPA believes the Operator has breached this Agreement pursuant to Section 19.1 (v) above, the non-breaching Party shall provide such other Party with written notice thereof. If within fifteen (15) Days of the receipt of such notice, such other Party fails to respond in writing to such notice, the non-breaching Party shall be entitled to invoke its remedies under this Agreement and/or under the law. If such other Party disputes in writing that a breach by it has occurred, the Parties may attempt to resolve the matter by any form of dispute

resolution mutually acceptable. If the matter is not resolved within sixty (60) Days of receipt of the notice of breach, the Party serving the notice of breach may pursue its remedies under this Agreement and/or under the law. In the case the other Party admits in writing that a breach has occurred that Party shall have a minimum of thirty (30) Days from the receipt of written notice to cure the breach or the cause of such breach if the breach is one which by its nature cannot be cured, provided however, that if the breach or such cause cannot be cured within the thirty (30) Day period, the breaching Party shall be given an additional reasonable time period to cure the breach or such cause with the exercise of due diligence. If the breaching Party fails to cure the breach or such cause within such time period, the non-breaching Party may pursue its remedies under this Agreement and/or under the law.

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19.4 Within ninety (90) Days after the Effective Date of this Agreement, Operator shall provide to PREPA, at Operator's sole expense, an unconditional and irrevocable direct pay letter or letters of credit issued by a local bank or any other bank, all of which shall be acceptable to PREPA (or other security acceptable to PREPA) in accordance with the following table:

<u>Months after Effective Date</u>	<u>Preconstruction Security Amount</u>
3 Months	\$5.00 per kW of Estimated Dependable Capacity
6 Months	\$7.50 per kW of Estimated Dependable Capacity
9 Months	\$10.00 per kW of Estimated Dependable Capacity
12 Months	\$12.50 per kW of Estimated Dependable Capacity
15 Months	\$15.00 per kW of Estimated Dependable Capacity
18 Months	\$17.50 per kW of Estimated Dependable Capacity
21 Months	\$20.00 per kW of Estimated Dependable Capacity


This letter or letters of credit (or other security acceptable to PREPA) required herein shall be maintained up to the Commercial Operation Date.

19.5 (a) The letter or letters of credit (or other security acceptable to PREPA) required under Section 19.4 above, is established to assure PREPA a source of recovery for damages incurred as a result of an Operator breach of the Agreement under Article 19. During the Term of this Agreement the monetary value of the letter or letters of credit (or other security acceptable to PREPA) shall not limit PREPA's right to recover damages from Operator in amounts over and above the amount in the letter of credit, except as set forth in Section 19.5 (b) below.

(b) As to delays in compliance by Operator with the deadlines set forth for obtaining the construction permit, construction commencement, and Commercial Operation Date as set forth in Section 19.1(i), 19.1(ii) and 19.1(iii), respectively, (any such deadline including any extension to such deadline pursuant to Section 19.1 shall be referred to herein as a "Milestone Date") and as long as the Agreement is not terminated by PREPA for Operator's Milestone Date default, the amount of the letter or letters of credit (or other security acceptable to PREPA) shall be considered liquidated damages and Operator shall not be liable for damages arising from such delays in excess of such amount. These liquidated damages shall be paid in accordance with Section 19.6 herein.

19.6 (a) Commencing two (2) Months after the failure to meet any Milestone Date, PREPA may, on the first Day of each Month for up to ten (10) consecutive Months, draw on such letter or letters of credit (or other security acceptable to PREPA) in the amount of two dollars (\$2.00) per kilowatt of Estimated Dependable Capacity per Month as compensation for

damages for the detrimental impact of such missed Milestone Date on PREPA's generation planning. Any such monthly compensation payment shall commensurately extend all subsequent Milestones Dates.




(b) If after twelve (12) Months following the default of any such Milestone Date the applicable milestone has not been achieved by Operator, such default shall be considered as a material breach and PREPA may terminate this Agreement as specified in Section 18.1(iv), without Operator being entitled to any curing period. Notwithstanding the previous sentence, before the exercise of PREPA's termination right under Section 18.1(iv), PREPA shall permit and Operator shall be entitled to an extension of a number of additional Months (not to exceed twelve (12) Months in the aggregate) to achieve such Milestone Date, but only to the extent that Operator, at the time of such request for extension: (i) shall demonstrate to PREPA that the Facility is at least sixty percent (60%) complete in the case of an extension of the Commercial Operation Date; and (ii) shall pay PREPA the amount of two dollars (\$2.00) per kilowatt of Estimated Dependable Capacity per each additional Month requested by the Operator (not to exceed twelve (12) Months in the aggregate), as compensation for such delay in achieving the Milestone Dates for the Facility.

(c) If the milestone is achieved by Operator less than twelve (12) Months after the default on the applicable Milestone Date, Operator shall no longer be deemed to be in breach for that particular Milestone Date, and PREPA shall no longer be entitled to further draw by reason of that particular breach on the letter or letters of credit (or other security acceptable to PREPA) provided by Operator under Section 19.4.

(d) PREPA's drawing on the letter or letters of credit (or other security

acceptable to PREPA) due to the failure of Operator to meet the Milestone Dates shall be considered liquidated damages as to delays, but shall not limit any other non-delay damage recovery PREPA may be entitled to pursuant to Section 14.2 of the Agreement in the event that PREPA terminates this Agreement in accordance with Section 18.1 (iv), for Operator's Milestone Date default.

 19.7 (a) Commencing with the Commercial Operation Date of the Facility, Operator shall increase the amount of the letter or letters of credit (or other security acceptable to PREPA) required under Section 19.4 above to an amount equal to thirty dollars (\$30.00) per kilowatt of Estimated Dependable Capacity, increasing thereafter at a compound annual escalation rate of seven percent (7%) per year throughout the remainder of the Term, provided that if Operator achieves a Twelve Month EAF of seventy percent (70%) or more for every Billing Period during the last twenty-four (24) consecutive Month period ending with the anniversary date of the tenth Agreement Year, no further escalation shall apply. For each subsequent Agreement Year, escalation shall resume for an additional Year at any time Operator fails to achieve a Twelve Month EAF of seventy percent (70%) or more for every Billing Period during the previous twenty-four (24) consecutive Month period.

(b) PREPA may draw on the letter or letters of credit (or other security acceptable to PREPA) required under Section 19.7(a) above, to offset any damages PREPA may be entitled to under this Agreement upon Operator's breach of Agreement under Section 19.1 (iv) or 19.1(v) which is not cured within the applicable period set forth in Section 19.3, provided that PREPA either obtains the agreement of Operator to the level of damages or obtains a judgment from a Court of Competent Jurisdiction specifying the level of damages. If PREPA reasonably

determines that the letter or letters of credit would otherwise expire or cease to exist prior to such agreement or judgment, PREPA may draw on the outstanding letter or letters of credit in an amount equal to PREPA's claim of damages, provided that PREPA places the drawn amounts in an escrow account in a bank reasonably acceptable to Operator until the appropriate amount of damages is determined. Following such determination, PREPA may draw from the escrow account and retain amounts equal to the amount of damages determined to be due to PREPA and PREPA shall deliver to Operator all amounts remaining in the escrow account, if any. Drawing under such letter or letters of credit (or other security acceptable to PREPA) shall not be the exclusive remedy available to PREPA.

19.8 Any amount drawn by PREPA on the letter or letters of credit (or other security acceptable to PREPA) according to Sections 19.6 (a) above, shall be replenished by Operator within thirty (30) Days, and if drawn according to 19.7 (b) above after the Commercial Operation Date, shall be replenished (in the form of cash escrow, letter of credit or other security acceptable to PREPA) by Operator from the net after-tax cash flow to the Operator that is produced after the date that PREPA draws amounts on the letter or letters of credit, so that the letter or letters of credit (or other security acceptable to PREPA) required under Sections 19.4 and 19.7 (a) above do not decrease in value, including any accrued amount. The net after-tax cash flow shall not be reduced by the debt service owed on subordinated debt to the extent that such subordinated debt is counted toward satisfaction of the Equity Capital requirement as set forth in Section 6.8 (f) hereof. If any letter or letters of credit (or other security acceptable to PREPA) drawn according to Section 19.7 (b) above after the Commercial Operation Date are not replenished within ninety (90) Days of drawdown by PREPA, Operator shall provide PREPA with a monthly

statement from a recognized independent accounting firm, until full replenishment is accomplished, certifying in accordance with GAAP that the net after-tax cash flow from the project is insufficient to replenish the letter or letters of credit (or other security acceptable to PREPA). Any failure of the Operator to replenish the letter or letters of credit (or other security acceptable to PREPA) in the manner specified above shall be considered a material breach of this Agreement, and then PREPA may terminate this Agreement pursuant to Section 18.1 (iv), without Operator being entitled to any cure period.

19.9 Operator shall be entitled to terminate the letter or letters of credit (or other security acceptable to PREPA) required under Sections 19.4 and 19.7(a) above, upon termination of the Agreement and after payment of any and all amounts owed to PREPA.

19.10 Should a Permanent Abandonment of the Facility occur as per Section 1.53 without PREPA being notified sixty (60) Months prior to such occurrence or if there shall be a Permanent Closing, the Operator shall be in a breach of contract under Article 19.1 (iv) hereof. In such case, PREPA shall be entitled to invoke its remedies under this Agreement and/or under the law, provided that PREPA shall also have the right, and the Operator shall permit PREPA, to operate the Facility for a period of sixty (60) Months from the occurrence of a Permanent Abandonment decreased by the actual number of Months between the date of notice to PREPA of such Permanent Abandonment and the date operation of the Facility by Operator actually ceases, or for a period of sixty (60) Months from occurrence of a Permanent Closing, in which case PREPA shall continue paying the debt service of the Facility Debt applicable for that period ("PREPA's Operating Period"), including the corresponding interest amount; further provided, that PREPA shall have and retain an option to purchase the Facility in any moment after the occurrence of

a Permanent Abandonment or Permanent Closing, in accordance with Article 15.1 hereof.

19.11 Upon any termination of this Agreement prior to the end of the Term which is attributable to Operator's breach of the Agreement or Permanent Abandonment or Permanent Closing of the Facility or upon termination under Sections 18.2 and 18.4 hereof, Operator agrees to provide at no cost to PREPA copies of all site related data, including without limitation, technical, environmental, geological, seismological, licensing and permitting data in Operator's possession, excluding any proprietary design information relating to the Facility.

19.12 Either Party may waive breach by the other Party, provided that no waiver by or on behalf of either Party of any breach of this Agreement shall take effect or be binding on that Party unless the waiver is in writing. A waiver of breach shall extend only to the particular breach waived and shall not limit or otherwise affect any rights that either Party may have with respect to any other or future breach.

ARTIO.E 20 - TAXES AND ENVIRONMENTAL COSTS

20.1 For purposes of this Agreement, "Taxes" shall mean any and all taxes, fees or other charges of any nature, excluding income taxes, that are imposed or assessed on the operation of the Facility by federal, commonwealth or municipal agencies responsible for implementing tax laws, regulations or orders. "Environmental Costs" shall mean any and all fixed and variable costs imposed or assessed on the operations of the Facility by federal, commonwealth or municipal agencies responsible for implementing environmental laws or protecting the environment. "Debt Service Coverage Ratio" shall mean the ratio of (i) all Facility revenues minus all Facility operating expenses to (ii) debt service on all indebtedness related to the development, acquisition and construction of the Facility (excluding subordinated debt), including principal, interest and letter of credit fees related to the permanent financing, as such ratio shall be computed by Operator for the Year.

(a) All present or future federal, commonwealth, municipal or other lawful Taxes, income taxes, and Environmental Costs applicable by reason of the sale by Operator to PREPA of Energy or Dependable Capacity shall be paid by Operator, except those taxes exclusively applicable to Fuel used by Operator in connection with this Agreement which shall be paid by Operator but reimbursed by PREPA to Operator; provided, however, if during the first twenty (20) Agreement Years the payment of Taxes or Environmental Costs, exclusively imposed on Operator by laws, regulations or orders passed or issued after the Effective Date ("post-Effective Date Taxes or Environmental Costs") would cause the Debt Service Coverage Ratio in Operator's permanent financing of the Facility to fall below 1.20, or below the Debt Service

Coverage Ratio that would have resulted in the absence of the post-Effective Date Taxes or Environmental Cost ("Alternative Ratio"), whichever is lower, PREPA shall pay the necessary amount of such post-Effective Date Taxes or Environmental Costs to permit the maintenance of the Debt Service Coverage Ratio at a minimum of 1.20 or the Alternative Ratio, whichever is lower. Such post-Effective Date Taxes or Environmental Costs payable by PREPA according to the foregoing shall be paid to Operator in equal monthly installments due on the same dates and on the same terms as payments made under Section 11.3 hereof.

(b) All such post-Effective Date Taxes or Environmental Costs paid by PREPA according to the preceding Section, shall be recorded in an unfunded tracking account and shall accrue Interest. If at any time during the first twenty (20) Agreement Years the Operator's current payment obligation of post-Effective Date Taxes and Environmental Costs would enable the Operator to maintain a Debt Service Coverage Ratio in excess of 1.20, Operator shall reimburse PREPA for amounts contained in the tracking account sufficient to reduce the Debt Service Coverage Ratio to 1.20, and the tracking account balance shall be reduced by such reimbursed amounts.

(c) **If** there remains a balance in the tracking account on the twentieth (20th) anniversary of the Commercial Operation Date of the Facility, Operator agrees to reduce its Demand Charge each Billing Period by fifty percent (50%) which shall reduce the tracking account balance by an equal dollar amount. This monthly Demand Charge reduction shall be eliminated when the tracking account balance equals zero; provided that if any amount has not been repaid at the end of the twenty-fifth (25th) Agreement Year, PREPA shall have the option to extend the Term of this Agreement for up to such additional period as necessary to repay such

balance by applying such monthly credit as set forth above. If the Agreement is so extended, the Demand Charge for the twenty-sixth (26th) Agreement Year and thereafter shall be equal to sixty-six percent (66%) of the Base Demand Charge for the twenty-fifth (25th) Agreement Year, half of which shall be used as a credit to the tracking account. In the event this Agreement is terminated according to Article 18 herein, and there is a balance in the tracking account, such amount shall be paid to PREPA according to Section 18.3. Notwithstanding, during the Term of this Agreement and before any termination of this Agreement takes place, Operator shall have the option to prepay all or any portion of the balance of the tracking account at any time or from time to time.

(d) Notwithstanding the foregoing, if the tracking account balance exceeds twice the amount accrued under the letter or letters of credit (or other security acceptable to PREPA) required under Section 19.7(a), PREPA shall have the option to purchase the Facility at the purchase price specified in Section 15.2 (a).

(e) The Operator agrees that any financial impact attributable to a post-Effective Date Tax or Environmental Cost paid by PREPA will be subject to the end of Fiscal Year audit, as provided in Section 6.10 hereof, and properly adjusted if applicable.

20.2 Operator will promptly pay and discharge all lawful taxes, assessments and governmental charges or levies imposed upon it or in respect of all or any part of its property or business, all trade accounts payable in accordance with usual and customary business terms, and all claims for work, labor or materials which, if unpaid, might become a lien or charge upon any of its property; provided, however, that Operator shall not be required to pay any such tax, assessment, charge, levy, account payable or claim if (a) the validity, applicability or amount

thereof is being contested in good faith by appropriate actions or proceedings which will prevent

the forfeiture or sale of any property of Operator or any material interference with the use thereof

by Operator and (b) Operator shall set aside on its books reserves deemed by it to be adequate

with respect thereto.

ARTICLE 21 INSURANCE

21.1 Operator shall obtain or cause its agent or its affiliate to obtain on or before the later of (i) the Financial Closing Date and (ii) the commencement of construction of the Facility, and shall maintain during the remainder of the Term the following policies of insurance issued by a rated insurance company:

- (a) Workmen's Compensation Insurance which complies with the laws of the Commonwealth of Puerto Rico and Employer's Liability Insurance with limits of at least \$1,000,000; and
- (b) Comprehensive or Commercial General Liability Insurance with bodily injury and property damage combined single limits of at least \$5,000,000 per occurrence. Such insurance shall include, but not necessarily be limited to, specific coverage for contractual liability encompassing the indemnification provision in Article 16, broad form property damage liability, personal injury liability, explosion and collapse hazard coverage, products/completed operations liability, and, where applicable, watercraft protection and indemnity liability; and
- (c) Comprehensive Automobile Liability Insurance with bodily injury and property damage combined single limits of at least \$5,000,000 per occurrence covering vehicles owned, hired or non-owned; and
- (d) Excess Umbrella Liability Insurance with a single limit of at least \$5,000,000 per occurrence in excess of the limits of insurance provided in subparagraphs (a), (b) and (c) above.
- (e) All risk physical damage insurance, including comprehensive boiler and machinery coverages, to cover all real and personal property of Operator (including earthquake and hurricanes occurrence) to a hundred percent (100%) of replacement cost to the extent available on commercially reasonable terms as determined by the Operator and subject to a reasonable deductible which shall be the responsibility of the Operator.

21.2 The amounts of insurance required in Section 21.1 above may be satisfied by the Operator purchasing primary coverage in the amounts specified or by buying a separate excess

Umbrella Liability **policy** together with lower limit primary underlying coverage. The structure of the coverage is the Operator's option, so long as the total amount of insurance meets the requirements set forth in Section 21.1.

21.3 The coverages requested in Section 21.1 (b) above and any Umbrella or Excess coverage should be "occurrence" form policies. In the event Operator has "claims-made" form coverage, Operator must obtain prior approval of all "claims-made" policies from PREPA, which approval shall not be unreasonably withheld.

21.4 Operator shall cause its insurers to amend its Comprehensive or Commercial General Liability and, if applicable, Umbrella or Excess Liability policies with the following endorsement items (a) through (e) with respect to the Facility; and to amend Operator's Workmen's Compensation and Auto Liability policies with endorsement item (e):

- (a) PREPA, its board of directors, directors, officers and employees are additional insureds under this policy; and
- (b) This insurance is primary with respect to the interest of PREPA, its directors, officers, and employees and other insurance maintained by them is excess and not contributory with this insurance; and
- (c) The following cross liability clause is made a part of the policy: "In the event of claims being made by reason of (i) personal and/or bodily injuries suffered by any employee or employees of one insured hereunder for which another insured hereunder is or may be liable, or (ii) damage to property belonging to any insured hereunder for which another insured is or may be liable, then this policy shall cover such insured against whom a claim is made or may be made in the same manner as if separate policies have been issued to each insured hereunder, except with respect to the limits of insurance and only if such claim pertains to the Agreement"; and
- (d) Insurer hereby waives all rights of subrogation against PREPA, its officers, directors and employees; and
- (e) Notwithstanding any provision of the policy, this policy may not be cancelled, non-renewed or materially changed by the insurer without giving thirty (30) Days (ten (10) Days in the case of non-payment of premiums) prior written notice to PREPA. All other terms and conditions of the

policy remain unchanged.

21.5 Regarding breach of insurance warranties by Operator, all insurance policies shall be endorsed as follows: "The breach of any of the warranties or conditions in this policy by Operator shall not prejudice PREPA's right under this policy".

21.6 Operator shall cause its insurers or agents to provide PREPA within ninety (90) Days after the Financial Closing Date with the originals of the certificates of insurance evidencing the policies and endorsements listed above with respect to the Facility. Failure of PREPA to obtain certificates of insurance does not relieve Operator of the insurance requirements set forth herein. Failure to obtain the insurance coverage required by this Article 21 shall in no way relieve or limit Operator's obligations and liabilities under other provisions of this Agreement.

21.7 Operator will require from its contractor(s) for the construction of the Facility to obtain a payment and performance bond(s) of not less than one hundred fifty million dollars (\$150,000,000), that will guarantee the payment of all subcontractors and suppliers and the satisfactory completion of the project, on time and in a manner that will allow Operator to comply with its obligations established under this Agreement. Under such bond(s) PREPA will be named as a dual obligee. PREPA will have the right but not the obligation to assume all rights and obligations of Operator under the construction contract.

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ARTICLE 22 - STEAM TURBINE GENERATOR (S)

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22.1 The rates, terms and conditions of this Agreement are based on the assumption that Operator shall purchase the turbine-generator set designed by Hitachi (the "Hitachi Turbine") currently owned and stored by PREPA at the Aguirre Power Station. PREPA and Operator agree to use best efforts to negotiate a purchase agreement between PREPA and Operator (the "Hitachi Turbine Purchase Agreement") based on the terms and conditions stated in this Article 22 within twelve (12) Months of the Effective Date (the "Negotiation Period"). The Negotiation Period may be extended by mutual agreement of the Parties. In the event Operator purchases the Hitachi Turbine, the terms of such purchase shall be governed by the Hitachi Turbine Purchase Agreement. Operator's obligation to purchase the Hitachi Turbine is contingent on the occurrence of the Financial Closing Date and the execution of the Hitachi Turbine Purchase Agreement by the Parties.

22.2 The Parties understand and agree that the Hitachi Turbine will have to be refurbished or upgraded in order to be utilized in the Facility. Within ninety (90) Days of the Effective Date, Operator will give to PREPA a copy of the request for proposal for refurbishing or upgrading the Hitachi Turbine (the "Upgrade RFP") and a list of proposed bidders (the "Bidders List"). Operator agrees to incorporate any revisions to such Upgrade RFP submitted by PREPA within thirty (30) Days of PREPA's receipt of the copy of the Upgrade RFP, unless the Operator provides PREPA with a written explanation demonstrating that such revisions will have a material adverse effect on the permitting or operation of the Facility; provided, however, PREPA shall not exclude options to increase the capacity or improve the heat rate of the Hitachi

Turbine. The Upgrade RFP shall require an equipment supplier to provide sufficient warranties of performance of the equipment to enable nonrecourse project financing of the Facility (the "Turbine Warranty"). Operator agrees to include in the Bidders List additional bidders designated by PREPA within thirty (30) Days of PREPA's receipt of the copy of the Bidders List, provided such bidders are recognized **and** creditworthy companies in the business of turbine manufacture, repair, refurbishment, or upgrade. The Upgrade RFP shall be submitted to all bidders on the Bidders List.

22.3 Selection of Upgrade Bid

(a) Operator agrees to provide to PREPA copies of all responses to the Upgrade RFP (such responses, the "Upgrade Bids") within ten (10) Days after Operator receives them.

(b) Within sixty (60) Days of PREPA's receipt of the Upgrade Bids, or longer as extended by mutual agreement of the Parties, PREPA shall provide Operator with a copy of PREPA's evaluation of the Upgrade Bids (the "PREPA Bid Evaluation") and recommend a bidder to upgrade the Hitachi Turbine (the "Recommended Bidder"). The PREPA Bid Evaluation will be based on an evaluation of level of capacity, heat rate, upgrade cost and other evaluation factors. All economic assumptions, including discount rate, financing costs, fuel costs and evaluation time period, shall be stated in the PREPA Bid Evaluation.

(c) Operator shall select the bidder to upgrade the Hitachi Turbine (the "Selected Bidder"), provided that in the event the Selected Bidder is not the Recommended Bidder, the Hitachi Turbine purchase price shall be adjusted to compensate PREPA for differences stated in the PREPA Bid Evaluation between the bids of the Selected Bidder and the Recommended Bidder, such price adjustment the "Evaluated Cost Differential".

22.4 Hitachi Turbine Purchase Price

(a) The purchase price for the Hitachi Turbine (the "Hitachi Turbine Purchase Price") is thirty-six million dollars (\$36 million) as adjusted (i) downward by the cost of the bid selected to refurbish or upgrade the Hitachi Turbine and to provide the Turbine Warranty (the "Upgrade and Warranty Costs"), and (ii) upward by the Evaluated Cost Differential, such adjustments to be calculated pursuant to the following formula:

$$\begin{aligned} \text{Hitachi Turbine Purchase Price} &= \$36 \text{ million} - \text{Upgrade and Warranty Costs} \\ &+ \text{Evaluated Cost Differential} \end{aligned}$$

(b) Payment of the Hitachi Turbine Purchase Price shall be made over the course of the construction period according to a payment schedule comparable to payment schedules for turbine-generator sets in the construction of similar facilities to the Facility.

(c) The unpaid balance of the Hitachi Turbine Purchase Price shall accrue Interest from the Financial Closing Date.


(d) Operator shall retain twenty percent (20%) of the Hitachi Turbine Purchase Price (the "Retainer") until completion of performance testing as described in Section 22.6 below.

22.5 Scope Changes to the Hitachi Turbine Purchase Agreement

(a) As soon as Operator becomes aware of any circumstances that Operator reasonably believes may necessitate a scope change to the Hitachi Turbine Purchase Agreement, Operator shall issue to PREPA a **Scope Change Order Notice (SCON)**. All SCONs shall describe the proposed scope change and include documentation sufficient to enable PREPA to determine (i) whether such scope change is needed to obtain or maintain the Turbine Warranty, (ii) the impact the scope change will have on the Hitachi Turbine Purchase Price (the "Scope Change


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Cost"), (iii) the impact the scope change is likely to have on the Hitachi Turbine capacity and heat rate, and (iv) such other information as PREPA may reasonably request in connection with such SCON.

 (b) PREPA shall promptly review any SCON and may, but shall not be obligated to, provide written notice to Operator directing it to proceed with the scope change (the "PREPA Scope Change Order"), in which event the terms of the SCON shall be binding on Operator.

(c) In the event PREPA does not provide a PREPA Scope Change Order within thirty (30) Days of its receipt of a SCON for a scope change that Operator reasonably believes (i) is necessary to obtain or maintain the Turbine Warranty and (ii) it has provided sufficient documentation to PREPA to enable PREPA to determine whether such scope change is needed to obtain or maintain the Turbine Warranty in accordance with Section 22.5(a)(i), Operator may proceed with the scope change and seek reimbursement from PREPA by providing written notice to PREPA of Operator's decision to proceed with such scope change (the "Operator Scope Change Order"). Within thirty (30) Days of PREPA's receipt of such Operator Scope Change Order and pending resolution of any dispute, and subject to subsequent adjustment to conform to any final agreement or judgment regarding any such dispute, the Hitachi Turbine Purchase Price shall be revised by the amount, if any, PREPA reasonably believes it should pay of such scope change (such amount, the "PREPA Scope Change Amount") plus one-half (1/2) the difference between the PREPA Scope Change Amount and the Scope Change Cost. In the event such an Operator Scope Change Order is issued, Operator shall provide PREPA with all purchase orders, invoices, subcontractor quotes and other documents and records as may enable PREPA to verify, to its reasonable satisfaction, the Scope Change Cost.

22.6 Hitachi Turbine Testing and Performance Adjustments

 (a) Within one hundred twenty (120) Days after the Commercial Operation Date, the Hitachi Turbine shall be tested in accordance with the latest revision of ASME Performance Test Code 6 on Steam Turbines ("PTC 6") in effect at the time of testing (the "Performance Test"). The Performance Test will determine the capacity in MW (the "As-Tested Capacity") and heat rate in BTU/kWh (the "As-Tested Heat Rate") of the upgraded Hitachi Turbine at test conditions. The As-Tested Capacity shall be adjusted to the operating conditions specified in Exhibit I (the "PREPA Turbine Guarantee Conditions"), such adjusted capacity in MW, the "Adjusted Capacity". The As-Tested Heat Rate shall be adjusted to the PREPA Turbine Guarantee Conditions, such adjusted heat rate in BTU/kWh, the "Adjusted Heat Rate".

(b) Testing shall be conducted by a qualified independent testing company selected by the Parties by mutual agreement. Adjustments to the as-tested data shall be conducted by a qualified independent performance engineering company selected by the Parties by mutual agreement. Test procedures shall be developed by the testing and performance contractors and approved by the Parties. Operator and PREPA shall use best efforts to select the testing and performance engineering companies and approve test procedures prior to the Commercial Operation Date. All additional costs required for conducting the Performance Test and adjusting the data to PREPA Turbine Guarantee Conditions, including the cost of installing special test instrumentation, testing personnel, and the cost of performance engineering shall be paid by PREPA.

(c) The Hitachi Turbine Purchase Price shall be adjusted by adding to the Retainer a Capacity Adjustment in the event the Adjusted Capacity is greater than or less than 450 MW,

such adjustment determined pursuant to the following formula:

$$\text{Capacity Adjustment} = [(\text{Adjusted Capacity} / 450 \text{ MW})^{0.6} - 1] \times \$36 \text{ million}$$


(d) The Fuel Cost Determination Factor (FCDF) in Section 7.3 shall be revised based on the Adjusted Heat Rate pursuant to the following formula:

$$\text{FCDF} = \text{Adjusted Heat Rate} \times 1.257$$

Provided, however, that the FCDF set forth in Section 7.3 shall be utilized until the new FCDF is determined after testing for the Adjusted Heat Rate, and the Energy Purchase Price shall be adjusted retroactively to reflect the Adjusted Heat Rate.

22.7 Within one hundred twenty (120) Days of the Effective Date, Operator shall present PREPA with one or more alternative proposals to utilize one or more new main steam generators in the Facility in lieu of Operator's purchase of the Hitachi Turbine, including an alternative proposal for a single, main steam turbine generator with a Capacity Purchase Price and an Energy Purchase Price that is at least as favorable to PREPA as the Energy Purchase Price and the Capacity Purchase Price set forth in Sections 11.1 (a) and 11.1 (b), respectively. PREPA shall have the option to proceed with the Hitachi Turbine Purchase Agreement or to select an alternative proposal by providing written notification to Operator within sixty (60) Days of PREPA's receipt of the Upgrade Bids, or longer as extended by mutual agreement of the Parties. In the event PREPA decides to proceed with the Hitachi Turbine Purchase Agreement, PREPA agrees that it will not sell the Hitachi Turbine during the remainder of the Negotiation Period to any other party without the prior written consent of the Operator.

ARTICLE 23 - ASSIGNMENT

 This Agreement shall not be assigned or transferred by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any attempt to assign this Agreement without the prior written consent of the corresponding Party shall be void.

Notwithstanding the above, the Operator may assign its rights and benefits but not its obligations and duties under this Agreement without PREPA's consent as collateral security, as a means of obtaining financing, provided that the Operator shall not be relieved of its responsibility to carry out its duties and obligations under this Agreement, and further provided that any such assignment is made expressly subject to the terms and conditions of this Agreement between the Operator and PREPA. PREPA agrees to execute the appropriate consenting documents, as required by Lenders, in connection with any assignment made by Operator in accordance with this Article.

ARTICLE 24 . QUALIFYING FACILITY STATUS

24.1 The Operator hereby agrees that the Facility will achieve qualifying cogeneration facility certification status pursuant to PURPA on or before the Financial Closing Date. Operator shall provide PREPA on or before the Financial Closing Date with a sworn statement duly notarized by a notary public certifying that the Operator has entered into a steam supply agreement with the steam host.

24.2 In the event the Facility loses its status as a qualifying cogeneration facility pursuant to PURPA, the Operator shall vigorously pursue and use reasonable efforts to reobtain Qualifying Facility status, provided that Operator shall not have such obligation if the loss of the Qualifying Facility status results from the buyout of Operator's contract(s) with its steam customers as the result of an extended shutdown requested pursuant to Section 7.7. Notwithstanding the above, should the Operator be unable to obtain recertification of the Facility, this Agreement shall remain in effect and the Operator shall comply, in its relationship with PREPA, with all other provisions of PURPA and the regulations approved under PURPA by FERC or any successor (other than requirements for maintaining Qualifying Facility status) applicable to the relationship between qualifying cogeneration facilities and electric utilities, in particular those provisions which protect, defend, preserve, and/or are propitious to electric utilities, provided, however, that nothing under PURPA or the regulations thereunder shall materially adversely affect in any way the rights, duties, and obligations of the Parties under this Agreement.

ARTICLE 25 .. MISCELLANEOUS PROVISIONS

25.1 This Agreement, including the exhibits, and any document related thereto, can be amended only by agreement between the Parties in writing.

25.2 The failure of either Party to insist in anyone or more instances upon strict performance of any provisions of this Agreement, or to take advantage of any of its rights hereunder, shall not be construed as a waiver of any such provisions or the relinquishment of any such right or any other right hereunder, which shall remain in full force and effect.

25.3 The headings contained in this Agreement are used solely for convenience and do not constitute a part of the Agreement between the Parties hereto, nor should they be used to aid in any manner in the construction of this Agreement.

25.4 This Agreement is intended solely for the benefit of the Parties hereto. Nothing in this Agreement shall be construed to create any duty to, or standard of care with reference to, or any liability to, any person not a Party to this Agreement.

25.5 No officer, employee, or agent of Operator or PREPA or of the Commonwealth or Municipal Governments shall be admitted to any share or part of this Agreement or to any benefit that may arise therefrom that would be in violation of any law, rule, regulation, order, or policy of the Commonwealth of Puerto Rico or PREPA.

25.6 This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative

of, or to otherwise bind, the other Party.

25.7 Cancellation, expiration or earlier termination of this Agreement shall not relieve the Parties of obligations incurred prior to, or as a result of, such cancellation, expiration or earlier termination of this Agreement, which by their nature should survive such events, including without limitation warranties, remedies, promises of indemnity and confidentiality.

25.8 (a) The Operator hereby certifies and warrants that at the Effective Date it has filed its income tax return for the last five (5) Years, if required, and does not owe any taxes to the Commonwealth of Puerto Rico.


(b) The Operator certifies and warrants that at the Effective Date it has made all payments and does not owe any monies to the Labor and Human Resources Department of Puerto Rico, required by the Puerto Rico Employment Security Act to cover applicable unemployment, temporary disability or sickness, and social security for chauffeurs.

(c) It is expressly agreed that these conditions are an essential requirement of the present Agreement and if the abovementioned certifications are not correct in whole or in part this will be sufficient cause to cancel this Agreement. If this cancellation takes place the Operator will be obligated to reimburse to PREPA all the payments received under this Agreement.

(d) All subcontractors employed by the Operator shall also comply with the abovementioned certifications.

(e) The Operator shall be responsible for requiring such certification from all subcontractors and notifying PREPA of such compliance.

25.9 Each Party to this Agreement warrants that, except to the extent that a particular



provision of this Agreement expressly creates a different standard, it will be reasonable with respect to the timing and substance of any exercise of its respective rights, obligations, duties and discretion in implementing this Agreement, including, without limitation, the making of and satisfying of requests, the issuance and withholding of consents and findings of acceptability or satisfaction, the incurrance of costs that are the responsibility of the other Party, and the provision of notice to the other Party (and its Lenders if applicable).

25.10 This Agreement shall inure to the benefit of and be binding upon the Operator and PREPA and their respective successors and assigns.

25.11 In the event that a Court of Competent Jurisdiction issues an order prohibiting material performance of either Party under this Agreement, the performance of both Parties shall be excused during the period in which such order is in effect (the "Court Order Period"). Operator's obligations under Sections 19.1 (i), 19.1 (ii), 19.1 (iii) and 19.4 shall be extended by one Day for each Day of the Court Order Period and the Capacity Purchase Price and Facility Debt shall be adjusted as if there were a Force Majeure event as set forth in Section 11.1(b)(1)(ii) and Section 1.31, respectively.

ARTICLE 26 - CHOICE OF LAW

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This Agreement shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Puerto Rico and, to the extent applicable, the laws of the United States of America. The Parties herein agree to submit themselves to the appropriate administrative body having jurisdiction over the Parties and the Agreement or to a Court of Competent Jurisdiction.

ARTICLE 27 - ENTIRETY

This Agreement is intended by the Parties as the final expression of their agreement and is intended also as a complete and exclusive statement of the terms of their agreement with respect to the Energy and Dependable Capacity sold and purchased hereunder. All prior and contemporaneous written or oral understandings, agreements, offers or other communications of every kind pertaining to the sale of Energy and Dependable Capacity hereunder to PREPA by Operator are hereby superseded.

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IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first above written.

ATTEST:

AES Puerto Rico, L. P.

AES Puerto Rico, Inc., General Partner

By: David Smitson

Garal Jasse

Title: Engineer Manager

Title: Vice President

(Corporate Seal)

ATTEST: PUERTO RICO ELECTRIC POWER AUTHORITY

By:

Hyetta M. Lopez de Colon Alordis

Title: Secretary of the Governing

Title: Executive Director

Board

(Corporate Seal)

EXHIBITS

EXHIBIT A - Equivalent Availability Factor Calculation Examples

Handwritten initials/signature

Exhibit A - Equivalent Availability Factor Examples
 Overhaul Hours Greater than 438 Allowed as Major Overhaul Hours

Example 3

Fourth Agreement Year

Month	OH	Accum.OH 12 month	Accum. AH 12 month	Derated Capacity Reduction (MW)	Derated Hours	EDH	Accum. EDH 12 month	Overhaul Hours	PH	Accum. PH 12 month	EAF	Monthly Capacity Payment
Jul	---			0.0	0.0	0.0			744.0			
Aug	20.0			---	---	0.0			744.0			
Sep	10.0			206.5	20.0	14.8			720.0			
				50.0	40.0							
Oct	40.0			50.0	40.0	4.8			744.0			
Nov	---			---	---	0.0			720.0			
Dec	---			---	---	0.0			744.0			
Jan	---			206.5	400.0	200.0			744.0			
Feb	---			206.5	400.0	200.0			672.0			
Mar	500.0			---	---	0.0			744.0			
Apr	---			---	---	0.0			720.0			
May	70.0			---	---	0.0			744.0			
Jun	---	640.0'	8120.0	---	---	0.0	419.6		720.0	8760.0	87.90%	97.35%

EAF Fourth Agreement Year = 87.90%

Fifth Agreement Year

Jul *	0.0	640.0	7760.0	100.0	50.0	12.1	431.7	360.0	384.0	8400.0	87.24%	96.36%
Aug **	48.0	668.0	7654.0	206.5	450.0	225.0	656.7	240.0	666.0	8322.0	82.14%	87.28%

* All 360 overhaul hours of Jul are considered Major Overhaul Hours and are excluded from the PH.

** The first 78 overhaul hours of Aug complete the allowed 438 Major Overhaul Hours and are excluded from the PH
 The other 162 hours are considered Outage Hours.

AH - Available Hours

OH - Outage Hours

EDH - Equivalent Derated Hours

PH - Period Hours

EAF - Equivalent Availability Factor

Exhibit A - Equivalent Availability Factor Examples

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Example 1

First Agreement Year

Month	OH	Accum.OH 12 month	Accum.AH 12 month	Derated Capacity Reduction (MW)	Derated Hours	EDH	Accum. EDH 12 month	EFMH	PH	Accum. PH 12 month	EAF	Monthly Capacity Payment
Jul	---	0.0	720.0	0.0	0.0	0.0	0.0	24.0	720.0	720.0	100.00%	96.77%
Aug	20.0	20.0	1444.0	---	---	0.0	0.0		744.0	1464.0	98.63%	100.00%
Sep	10.0	30.0	2154.0	206.5	20.0	14.8	14.8		720.0	2184.0	97.95%	100.00%
				50.0	40.0							
Oct	40.0	70.0	2858.0	50.0	40.0	4.8	19.6		744.0	2928.0	96.94%	100.00%
Nov	---	70.0	3578.0	---	---	0.0	19.6		720.0	3648.0	97.54%	100.00%
Dec	---	70.0	4322.0	---	---	0.0	19.6		744.0	4392.0	97.96%	100.00%
Jan	---	70.0	5066.0	206.5	400.0	200.0	219.6		744.0	5136.0	94.36%	100.00%
Feb	---	70.0	5738.0	206.5	400.0	200.0	419.6		672.0	5808.0	91.57%	100.00%
Mar	500.0	570.0	5982.0	---	---	0.0	419.6		744.0	6552.0	84.90%	95.30%
Apr	---	570.0	6702.0	---	---	0.0	419.6		720.0	7272.0	86.39%	97.59%
May	70.0	640.0	7376.0	---	---	0.0	419.6		744.0	8016.0	86.78%	98.17%
Jun	---	640.0	8000.0	---	---	0.0	419.6	96.0	624.0	8640.0	87.74%	86.33%

IEAF First Agreement Year = 87.74%

Second Agreement Year

Jul	70.0	710.0	7954.0	100.0	50.0	12.1	431.7		744.0	8664.0	86.82%	95.73%
Aug	50.0	740.0	7924.0	206.5	450.0	225.0	656.7		744.0	8664.0	83.88%	90.76%

- AH - Available Hours
- OH - Outage Hours
- EDH - Equivalent Derated Hours
- PH - Period Hours
- EAF - Equivalent Availability Factor
- EFMH - Equivalent Force Majeure Hours

Example 2

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First Agreement Year

Month	OH	Accwn.OH 12 month	Accwn. AH 12 month	Derated Capacity Reduction (MW)	Derated Hours	EDH	Accum. EDH 12 month	EFMH	PH	Accwn. PH 12 month	EAF	Monthly Capacity Payment
Jul	---	0.0	744.0	206.5	170.0	85.0	85.0		744.0	744.0	88.58%	100.00%
Aug	20.0	20.0	1468.0	---	---	0.0	85.0		744.0	1488.0	92.94%	100.00%
Sep	10.0	30.0	2178.0	206.5	20.0	14.8	99.8		720.0	2208.0	94.12%	100.00%
Oct	40.0	70.0	2882.0	50.0	40.0	4.8	104.6		744.0	2952.0	94.09%	100.00%
Nov	---	70.0	3602.0	---	---	0.0	104.6		720.0	3672.0	95.25%	100.00%
Dec	---	70.0	4346.0	---	---	0.0	104.6		744.0	4416.0	96.05%	100.00%
Jan	---	70.0	5090.0	206.5	400.0	200.0	304.6		744.0	5160.0	92.74%	100.00%
Feb	---	70.0	5762.0	206.5	400.0	200.0	504.6		672.0	5832.0	90.15%	100.00%
Mar	450.0	520.0	6056.0	---	---	0.0	504.6		744.0	6576.0	84.42%	94.34%
Apr	---	520.0	6776.0	---	---	0.0	504.6		720.0	7296.0	85.96%	96.94%
May	0.0	520.0	7520.0	---	---	0.0	504.6		744.0	8040.0	87.26%	98.89%
Jun	---	520.0	8240.0	---	---	0.0	504.6		720.0	8760.0	88.30%	100.00%

IEAF First Agreement Year = 88.30%

Second Agreement Year

Jul	70.0	452.0	8308.0	100.0	50.0	12.1	431.7		744.0	8760.0	89.91%	99.89%
Aug	50.0	427.6	8332.4	206.5	450.0	225.0	656.7		744.0	8760.0	87.62%	96.93%

- The Accumulated Available Hours of the previous eleven (11) months in the First Agreement Year were adjusted assuming an EAF of 90%.
- The Accumulated Available Hours of the previous ten (10) months in the First Agreement Year were adjusted assuming an EAF of 90%.

AH - Available Hours

OH - Outage Hours

EDH - Equivalent Derated Hours

PH - Period Hours

EAF - Equivalent Availability Factor

EFMH - Equivalent Force Majeure Hours

EXHIBIT B - Scheduled Outage Program

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Annual Maintenance

- 2 weeks: One boiler shutdown
(50% electric output)
- 3 weeks: Complete shutdown
(no electric output)

Major Overhaul Year (Every 4-6 years)

- 2 weeks: One boiler shutdown
(50% electric output)
- 6 weeks: Complete shutdown
(no electric output)

III

EXHmIT C - Data Required to Pelfolm Interconnection Study

The following shall be provided to PREPA within ninety (90) Days following the Effective Date:

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1. Electrical one-line of the Facility.
 2. Explanation of proposed equipment protection and control scheme (may be shown functionally on the one-line).
 3. Site plan showing plant layout, property, lines, access roads and switchyard boundaries.
 4. Preliminary equipment layout and arrangement for switchyard and generator step-up transformers (GSU).
 5. GSU impedance.
 6. GSU connection and winding.
 7. Generator reactances.
 8. Generator kilowatt rating.
 9. Generator KiloVar rating.
 10. Reactive Power Capacity curve of generator.
 11. Explanation of the excitation system.
 12. Station auxiliary load.
 13. Additional Data necessary for initial transient stability study. At a minimum:
 - Inertia Constant, H of turbo generator shaft.
 - Stator resistance of generator (R_s).
 - Direct axis and quadrature axis open circuit transient time constants.
 - Generator saturation curves.
 - IEEE Mechanical System Model covering speed governing and turbine time constants and gains.
 14. Requirements for construction and start-up power.
-

15. Project schedule (I-J or bar chart format) including but not limited to the following milestones:

QF status obtained
Engineering 30% complete
One-line approved
Financial Closing
Major licenses/permits
Major material procurement
Start construction
Engineering 70% complete
Utility technical submittals complete
Operating procedures finalized
Start test and start-up
Roll turbine
Initial synchronizing date
Capacity test complete
Commercial operation

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Data submitted in a preliminary or estimated form shall be updated within thirty (30) Days after final equipment arrangements and specifications are established.

EXHffiiT D - Location of Switchyanl and Interconnection Facilities

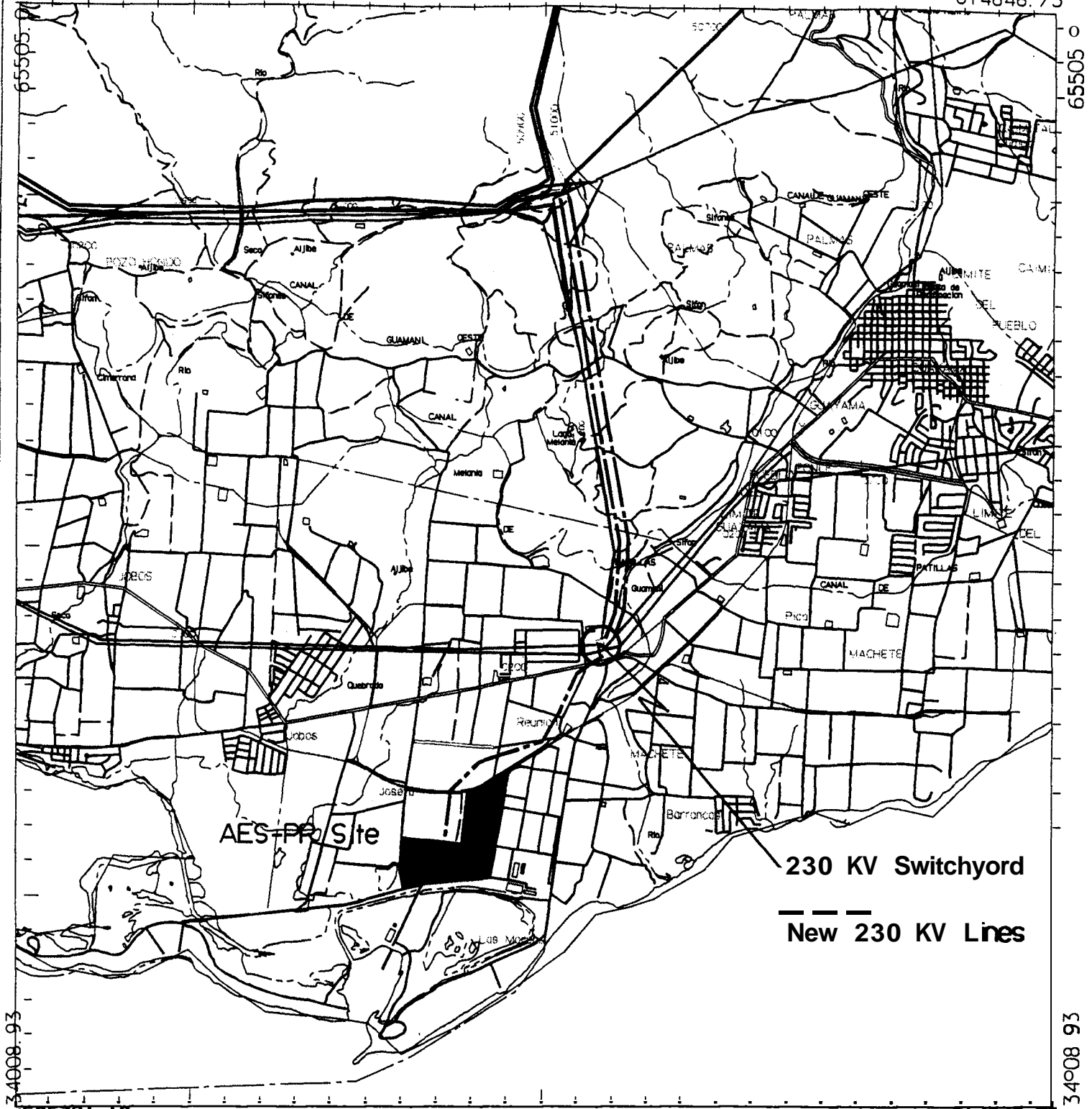
Ok
8/15

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EXHIBIT D

585321.18

614848.75



Area De Jobsos
Scale-1 :4000

Drafter: PLANN ING	Plot Time: 8:47 a. m.	A. E. E.
Filename: trans	Plot Date: Aug 19 1994	Scale: Varies

EXHIBIT E .. Pelmanent Financing Adjustment ("Adjustment" Examples**Example 1** - Term shortened to 18 years, 18th year Adjustment

Adjustment = DTDS - ETDS

$$= \text{ATDS} \times \frac{\$1600/\text{kW}}{\text{APFA}} - \text{ETDS}$$

$$= \frac{\$72.78 \text{ MM}}{413 \text{ MW} \times 12 \text{ Months}} \times \frac{\$1600/\text{kW}}{\$1600/\text{kW}} - \$14.09/\text{kWm}$$

$$= \$14.69/\text{kWm} \times 1 - \$14.09/\text{kWm}$$

$$= + \$0.60/\text{kWm}$$

Example 2 - Term Shortened to 18 years, 19th year Adjustment

Adjustment = DTDS - ETDS

$$= \text{ATDS} \times \frac{\$1600/\text{kW}}{\text{APFA}} - \text{ETDS}$$

$$= \frac{\$0\text{MM}}{413 \text{ MW} \times 12 \text{ Months}} \times \frac{\$1600/\text{kW}}{\$1600/\text{kW}} - \$14.09/\text{kWm}$$

$$= \$0/\text{kWm} \times 1 - \$14.09/\text{kWm}$$

$$= - \$14.09/\text{kWm}$$

Example 3 - Term Extended to 23 years, 20th year Adjustment

Adjustment = DTDS - ETDS

$$= \text{ATDS} \times \frac{\$1600/\text{kW}}{\text{APFA}} - \text{ETDS}$$

$$= \frac{\$66.55 \text{ MM}}{413\text{MW} \times 12 \text{ Months}} \times \frac{\$1600/\text{kW}}{\$1600/\text{kW}} - \$14.09/\text{kWm}$$

$$= \$13.43/\text{kWm} \times 1 - \$14.09/\text{kWm}$$

$$= - \$0.66/\text{kWm}$$

Example 4 - Term Extended to 23 years. 21 st year Adjustment

Adjustment = DTDS - ETDS

$$= \text{ATDS} \times \frac{\$1600/\text{kW}}{\text{APFA}} - \text{ETDS}$$

$$= \frac{\$66.55 \text{ MM}}{413\text{MW} \times 12 \text{ Months}} \times \frac{\$1600/\text{kW}}{\$1600/\text{kW}} - \$0/\text{kWm}$$

$$= \$13.43/\text{kWm} \times 1 - \$0/\text{kWm}$$

$$= + \$13.43/\text{kWm}$$

Example 5 - Term stays at 20 years. Interest Rates go down. 20th year Adjustment

Adjustment = DTDS - ETDS

$$= \text{ATDS} \times \frac{\$1600/\text{kW}}{\text{APFA}} - \text{ETDS}$$

$$= \frac{\$66.2 \text{ MM}}{413\text{MW} \times 12 \text{ Months}} \times \frac{\$1600/\text{kW}}{\$1600/\text{kW}} - \$14.09/\text{kWm}$$

$$= \$13.36/\text{kWm} \times 1 - \$14.09/\text{kWm}$$

$$= -\$0.73/\text{kWm}$$

Example 6 - Term stays at 20 years. Interest Rates go down. 21st year Adjustment

Adjustment = DTDS - ETDS

$$= \text{ATDS} \times \frac{\$1600/\text{kW}}{\text{APFA}} - \text{ETDS}$$

$$= \frac{\$0 \text{ MM}}{413\text{MW} \times 12 \text{ Months}} \times \frac{\$1600/\text{kW}}{\$1600/\text{kW}} - \text{ETDS}$$

$$= \$0/\text{kWm} \times 1 - \$0/\text{kWm}$$

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= \$O/kWm

GLOSSARY

DTDS = Monthly Deemed Total Debt Service

ETDS = Monthly Expected Total Debt Service

ATDS = Monthly Actual Total Debt Service

kW = Kilowatt

MM = Million

MW = Megawatt

kWm = Kilowatt - Month

ATDS

Note: The ATDS will be calculated as of the Commercial Operation Date; these ATDS example values are merely estimates that are needed to illustrate how the formula will be applied to the ATDS when it is actually determined.

EXHmIT F - Capacity Payment Adjustment Examples

$$\begin{aligned} \text{Example 1 - EAF} &= 90\% \\ \text{Adjustment} &= 0 \end{aligned}$$

$$\begin{aligned} \text{Example 2- EAF} &= 85\% \\ \text{Adjustment} &= -\{2.5\% + (88 - 85) \times 1.5\% \} \\ &= -7\% \end{aligned}$$

$$\begin{aligned} \text{Example 3 - EAF} &= 70\% \\ \text{Adjustment} &= -\{7\% + (85-70) \times 2\% \} \\ &= -37.00\% \end{aligned}$$

$$\begin{aligned} \text{Example 4 - EAF} &= 60\% \\ \text{Adjustment} &= -\{37\% + (70-60) \times 3\% \} \\ &= -67.00\% \end{aligned}$$

$$\begin{aligned} \text{Example 5 - EAF} &= < 60\% \\ \text{Adjustment} &= -100\% \end{aligned}$$

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EXHIBIT G - Dependable Capacity Test ProcedureObjective

The purpose of the test is to set the Dependable Capacity of the Facility.

Test Duration

On the day of testing, the test period shall be thirteen (13) hours commencing at 9:00 a.m. and ending at 10:00 p.m.

Test Conditions

The Facility shall be in its normal base-loaded operating mode with the voltage regulator and governor in service, but not on Automatic Generation Control. The process steam load shall approximate design conditions for the Facility. All major components shall be operated within their design pressures, temperatures, and flow rates. All necessary safety and environmental equipment shall be in-service.

Test Verification

During the Dependable Capacity test, critical pressures, temperatures, and flow rates along with electrical loads shall be recorded at least hourly and copies of the records provided to PREPA.

Witnessing

PREPA may provide on-site witnesses at its discretion.

Declaration of Dependable Capacity

Upon completion of the Dependable Capacity test, Operator shall declare the Dependable Capacity of the Facility provided that the Dependable Capacity set by such declaration shall be based upon actual operation of the Facility during the Dependable Capacity test at an average output level equal to or greater than the Dependable Capacity declared by Operator. Operator shall notify PREPA of the Dependable Capacity in accordance with Article 3.

EXHIBIT H - Fuel Quality

Range of Coal Quality Specifications

	From	To
Moisture	6%	13%
Ash:	5%	10%
Calorific Value HHV, BTU/lb. (Total Moisture Basis)	11,000	13,000
Volatile Matter: (Total Moisture Basis)	30%	38%
Sulfur	0.3%	1.0%
Grindability, Hardgrove	43	56
Size of Fuel, inches	2x0	2x0
Fixed Carbon (Total Moisture Basis)	43%	61%
Ash Fusion		
Initial Deformation (Reducing Range)	2,270F	2,640F
Chlorine	0	0.05%

Mineral Analysis of Ash
(% Weight Ignited Basis)

SiO ₂	45 - 70
AlO ₃	20 - 35
TiO ₂	0.9 - 4
Fe ₂ O ₃	3 - 15
CaO	0.5 - 4.9
MgO	< 3.3
Na ₂ O	< 0.3
K ₂ O	< 0.5
P ₂ O ₅	< 0.3
S ₂ O ₃	< 5.0


all
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Exhibit H
Page 2Trace Elements
(Maximum Limits)

	<u>mg/kg (ppm)</u>
Arsenic	2.5
Beryllium	1.0
Cadmium	0.75
Chromium	50
Copper	50
Fluorine	20
Lead	15
Mercury	0.5
Molybdenum	2.5
Nickel	15
Selenium	2.5
Vanadium	20
Zinc	75

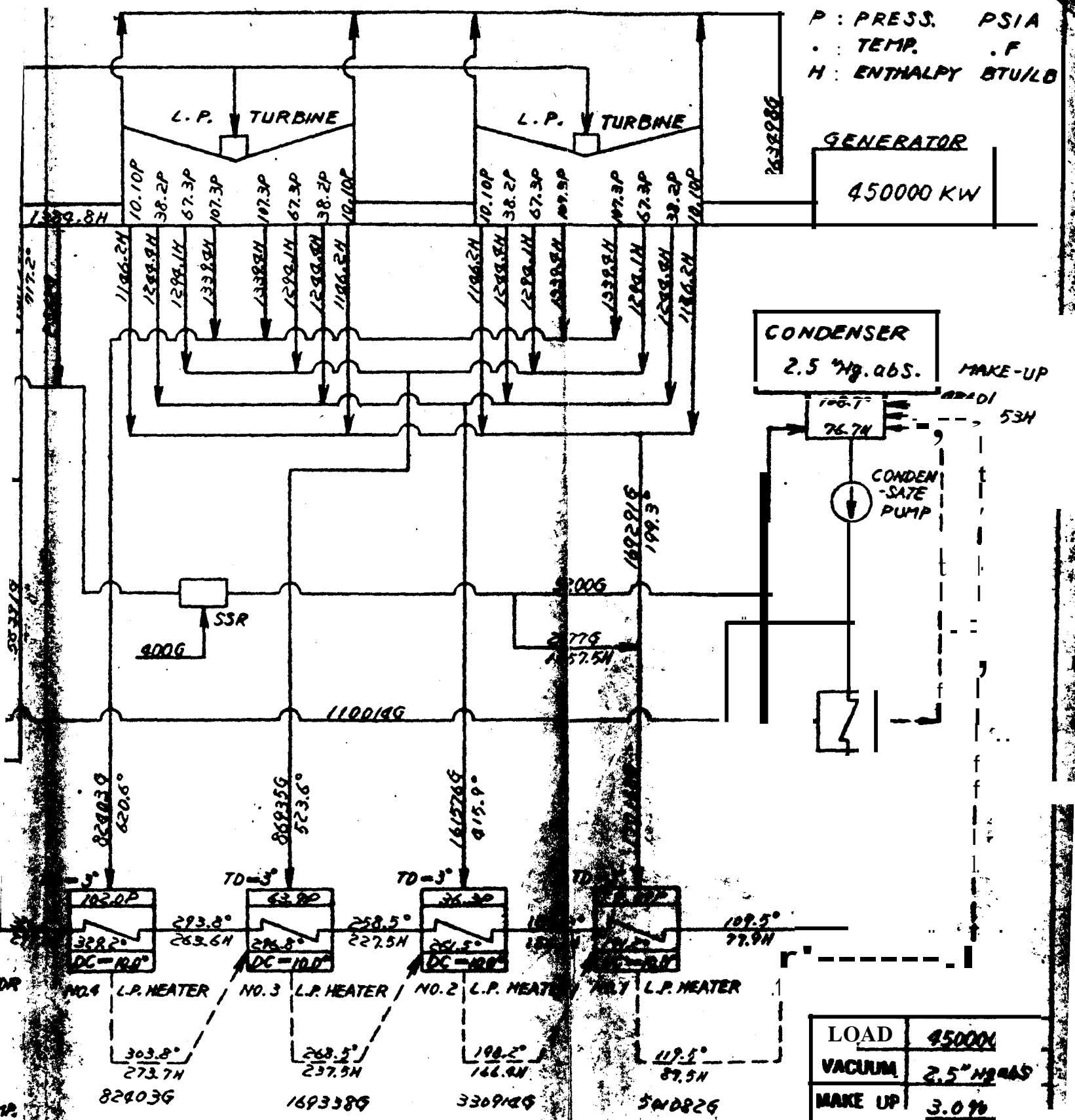
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EXHmITI PREPA Turbine Guarantee Conditions

 The detailed conditions of the steam turbine cycle are found in the following drawing: Heat Balance Diagram, JD-117-329, with boiler feedwater pump power excluded from the denominator in the calculation of steam cycle heat rate. The generator hydrogen pressure is at 60 psig. and the power factor is 0.85 lagging.

LEGEND

- Q : FLOW LB/H
- P : PRESS. PSIA
- T : TEMP. °F
- H : ENTHALPY BT/100 LB

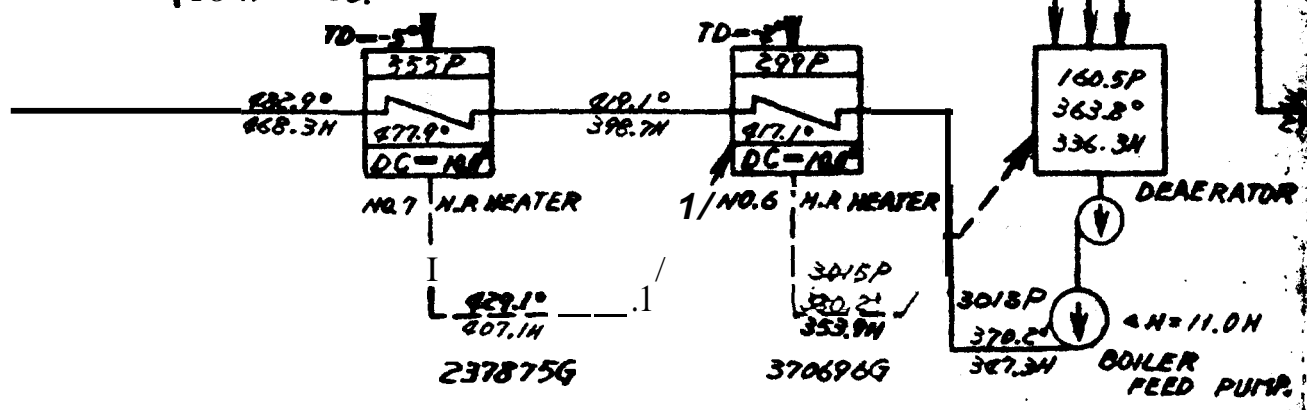
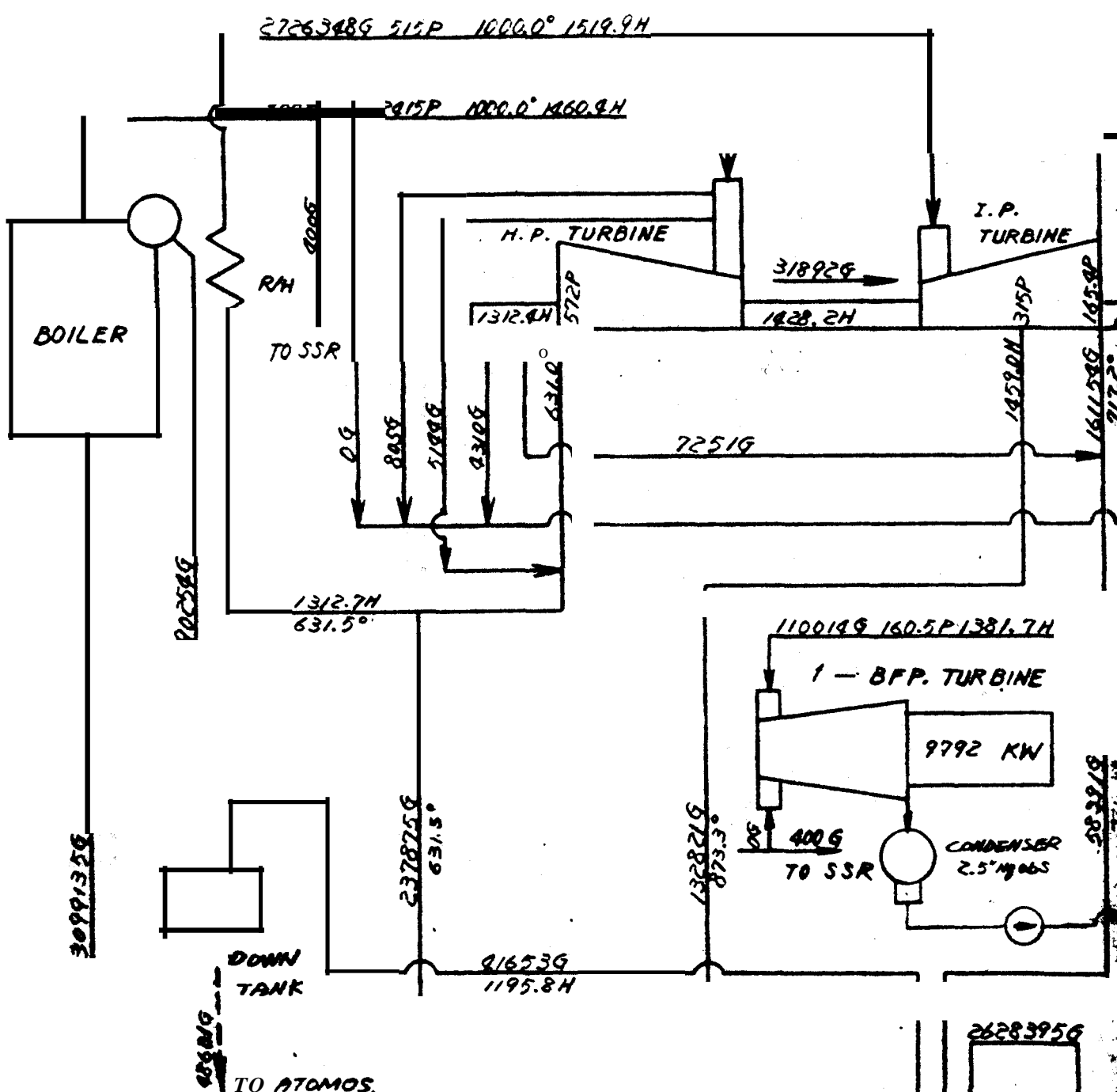


GUARANTEED THROTTLE FLOW

LOAD	45000
VACUUM	2.5" Hg. abs.
MAKE UP	3.0%
FUEL	
REMARKS	GUARANTEED CAPABILITY

TCGF 25° 2600PSIG 1000°/MIN 3600RPM		DWG. NO.
DWN.	J. Yanda 25-Sept-55	Hitachi, Ltd. Tokyo Japan
CHKD.	H. Iida	
APPD.	J. Yanda	
		JD-117-329

(957)



GROSS STEAM CONSUMPTION = $\frac{3008881}{29000 + 9792}$ = 6.504 LB/KWH
GROSS HEAT CONSUMPTION = $\frac{3008881 \times 1966.9 - 3099135 \times 968.3 + 2726348 \times 1519.9 - 1312.7}{250000 + 9792}$
 = 7629 BTU/KWH

STEAM TABLE : ASM