

APPENDIX A

AGREEMENT TO IMPLEMENT ASSEMBLY BILL 80

This AGREEMENT TO IMPLEMENT ASSEMBLY BILL 80 ("*Agreement*") is entered into by and between SOUTHERN CALIFORNIA EDISON COMPANY, a California corporation ("*SCE*"), and CITY OF CERRITOS, a California municipal corporation ("*Cerritos*"). This Agreement shall become effective on the date it is approved by the California Public Utilities Commission ("*CPUC*") and it is fully executed by SCE and Cerritos ("*Effective Date*"). SCE and Cerritos may be referred to herein individually as a "*Party*" and collectively as the "*Parties*."

- RECITALS -

- A. Cerritos is a project participant in the development of the Magnolia Power Project, a natural gas-fired electric generating facility being constructed at an existing site in Burbank, California under conditions approved by the California Energy Commission in Order No. 02-0305-03.
- B. Assembly Bill ("*AB*") 80 (Stats. 2002, Ch. 837) was approved by the Governor of California, and chaptered by the Secretary of State, on September 24, 2002. AB 80 provides that, notwithstanding specified existing law, a city with rights and obligations to the Magnolia Power Project may serve as a community aggregator on behalf of all retail end-use customers within its jurisdiction, if the Magnolia Power Project has been constructed and is otherwise capable of beginning deliveries of electricity to the cities with rights and obligations to the Magnolia Power Project under the Magnolia Power Project Planning Agreement, dated May 1, 2001 ("*Magnolia Project Participants*"). Cerritos anticipates that the Magnolia Power Project will be constructed and capable of beginning deliveries of electricity to the Magnolia Project Participants on or about May 1, 2005.
- C. SCE and Cerritos have met and conferred with the intent of addressing and resolving their differing interpretations of AB 80. This Agreement reflects the Parties' resolution of certain issues in a manner that is intended to allow Cerritos to implement AB 80 on the date that the Magnolia Power Project becomes capable of beginning deliveries of electricity to the Magnolia Project Participants.

- AGREEMENT -

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, SCE and Cerritos agree as follows:

1. Statutory Basis: AB 80 is a unique, self-limiting bill that provides the statutory basis for allowing Cerritos to provide electric service to retail end-use customers within its jurisdiction (i.e., its city boundaries). Other cities do not have comparable rights, and

this Agreement is not intended to establish, and should not be used as, a precedent for allowing other cities to provide comparable service.

2. Opt-in Service; Load Limit: Subject to the Initial Load Limit (defined in this Section) and the provisions of Section 5 below, Cerritos may serve each selected retail end-use electric customer account located within its jurisdiction that agrees to receive such service by positive written declaration (i.e., on an opt-in basis). The aggregate load served by Cerritos pursuant to this section shall be referred to herein as the "**Opt-In Load.**" Cerritos shall provide reasonable notice to SCE, in a form and timeline acceptable to SCE, of the amount of load Cerritos intends to serve. Cerritos shall limit the Opt-In Load to no more than 13.02 megawatts (the "**Initial Load Limit**"), which represents Cerritos' current generation entitlement share of the Magnolia Power Project, as determined by multiplying Cerritos' percentage share (4.2000 percent) to the nominally rated net peaking capacity of the Magnolia Power Project (310 megawatts), as described in Appendices B and C to the March 1, 2003 Magnolia Power Project Power Sales Agreement (Project B), which are incorporated herein by this reference. Cerritos may serve the Opt-In Load from the Magnolia Power Project and from other generation resources, including renewable and distributed generation resources; provided, however, (a) Cerritos hereby expresses its intent to serve at least a majority of the Opt-In Load from the Magnolia Power Project and (b) in any event, at all times during at least the three-year period commencing on the date Cerritos begins to serve the Opt-In Load, Cerritos shall include the Magnolia Power Project as a resource within the generation portfolio used to serve the Opt-In Load.
3. Determination of the Initial Load Limit; Enforceability:
 - a. The annual group coincident peak demand of the Opt-In Load shall be used as the methodology for measuring whether Cerritos has exceeded the Initial Load Limit. SCE shall have the right, but not the obligation, to measure the annual group coincident peak demand of the Opt-In Load at any time to ensure that Cerritos is in compliance with the Initial Load Limit. Notwithstanding SCE's right to measure the annual group coincident peak demand of the Opt-In Load, SCE shall not be responsible for Cerritos' compliance with the Initial Load Limit. Cerritos shall be solely responsible for ensuring that the Opt-In Load does not exceed the Initial Load Limit.
 - b. If either Party discovers that Cerritos has exceeded the Initial Load Limit, such Party shall give prompt notice to the other Party. Cerritos shall have two billing periods from the date of the notice to comply with the Initial Load Limit. If, by the end of the two billing periods, Cerritos is not in compliance with the Initial Load Limit, as determined by SCE by measuring the annual group coincident peak demand of the Opt-In Load, then SCE shall have the right, upon notice to Cerritos, to immediately return to bundled service any specified customer accounts of Cerritos, selected by SCE in its sole discretion, whose aggregate load is sufficient to bring Cerritos back into compliance with the Initial Load Limit.

4. Increase in the Initial Load Limit:

- a. If Cerritos is required under law to participate as a retail seller in the renewable portfolio standard program, then upon the effective date of such requirement, the Initial Load Limit shall increase by the amount of renewable generation, qualified under Section 1078 of the California Public Utilities Code (the "*P.U. Code*"), that Cerritos is obligated to acquire under the renewable portfolio standard program. The Parties shall execute a written amendment to this Agreement to effectuate any such increase in the Initial Load Limit.
- b. Cerritos may increase the Initial Load Limit upon (a) obtaining SCE's written agreement to an increase, or (b) providing thirty (30) calendar days advance written notice to SCE after obtaining a final, unappealable decision from the CPUC or a court of competent jurisdiction as to Cerritos' rights under AB 80 to serve as a community aggregator for customers within its jurisdiction on an opt-in, as opposed to opt-out, basis. In any proceeding to determine Cerritos' rights and/or obligations under AB 80, the initial implementation of AB 80 under this Agreement shall not be construed as precedential, nor shall SCE or Cerritos be deemed to have waived any right to assert or challenge any theory respecting Cerritos' rights and/or obligations under AB 80.

5. Service Initiation Date: In no event may Cerritos begin to serve customers under AB 80 pursuant to this Agreement unless and until the Magnolia Power Project is constructed and capable of beginning deliveries of electricity to the Magnolia Project Participants, which Cerritos currently expects to occur on or about May 1, 2005.

6. Future Legislation: The implementation of AB 80 under this Agreement will be subject to any future legislation that modifies either Party's rights and/or obligations under AB 80.

7. Cost Recovery Mechanism:

- a. The CPUC must implement a cost recovery mechanism consistent with Section 366.1(c)(1) and 366.1(d) of the P.U. Code (the "*Cost Recovery Mechanism*"), and submit a report to the Senate Energy, Utilities and Communications Committee and the Assembly Committee on Utilities and Commerce consistent with Section 366.1(c)(2) of the P.U. Code, before Cerritos can serve as a community aggregator under AB 80 pursuant to this Agreement. The CPUC must approve any interim cost responsibility surcharge agreed to between the Parties. The Parties agree, subject to CPUC approval, that if the CPUC has not adopted the Cost Recovery Mechanism by the date on which Cerritos is ready to begin serving the Opt-In Load, then the cost responsibility surcharge applicable to direct access customers set forth in Schedule DA-CRS shall be utilized by the Parties as the interim cost responsibility surcharge applicable to the Opt-In Load until such time as the

CPUC adopts the Cost Recovery Mechanism; provided, however, unless otherwise applicable to the Opt-In Load because of its status as a direct access customer prior to receiving service from Cerritos, the provisions of Schedule DA-CRS recovering the undercollection of costs assigned to direct access customers (Sections A.(3) and A.(5), and Section B) shall not be applicable to the Opt-In Load.

- b. When a Cost Recovery Mechanism is adopted under AB 80, SCE shall account for the difference between CRS amounts received by application of the interim cost responsibility surcharge to the Opt-In Load (as described in Section 8.a. above) and CRS amounts that otherwise would have been received by application of the Cost Recovery Mechanism. Within a reasonable period following the CPUC's adoption of the Cost Recovery Mechanism, the Parties shall true-up the costs recovered under the interim cost responsibility surcharge to the Cost Recovery Mechanism, with any imbalance being collected from or credited to, as the case may be, the Opt-In Load regardless whether these customers are taking bundled service in the future.

8. Cooperation: The Parties shall work cooperatively and expeditiously to effectuate this Agreement by requesting regulatory approval from the CPUC, and entering into any subsequent implementation agreements, as needed.

9. Transaction Costs and Operating Rules:

- a. Transaction cost issues relating to the implementation of AB 80 under this Agreement shall be addressed in a reasonable and mutually agreeable manner. The Parties agree that, under this Agreement, the transaction costs and operating rules applicable to Energy Service Providers and direct access customers under Schedules ESP-NDSF and ESP-DSF, Rules 22 and 22.1, and related SCE tariff provisions, as regularly or otherwise updated, shall apply to Cerritos and its customers, and are incorporated herein by this reference.

- b. A service agreement in a form substantially similar to the CPUC-approved SCE Energy Service Provider Service Agreement shall be entered into by the Parties subsequent to the Effective Date hereof, but in any event prior to the date on which Cerritos begins serving the Opt-In Load.

10. Future Requirements: Unless exempted therefrom, Cerritos shall be subject to any procurement rules and requirements that the CPUC or the legislature establishes relating to Community Choice Aggregators ("CCAs") or load serving entities, including, but not limited to, reserve and resource adequacy requirements and renewable portfolio standard requirements.

11. Future Customer Rights and Obligations: With respect to any core/non-core model enacted by the legislature and/or adopted by the CPUC that applies to customers within SCE's service territory, customers served by Cerritos as a community aggregator under

AB 80 pursuant to this Agreement will have the same rights and obligations under such core/non-core legislation or CPUC decision as do customers of Energy Service Providers under AB 1890 and CCAs under AB 117, unless and to the extent customers served by Cerritos as a community aggregator under AB 80 are otherwise expressly provided for in such core/non-core legislation or CPUC decision.

12. Notice:

- a. All notices required or permitted under this Agreement shall be in writing, and shall be delivered in person or sent by certified mail or overnight delivery, postage prepaid, and properly addressed as follows:

SCE:

Southern California Edison Company
Attn: Diane Romeyko
14811 Chestnut St.
Westminster, California 92683

CERRITOS:

City of Cerritos
City Manager
18125 Bloomfield Avenue
Cerritos, California 90703-3130

With a copy to its counsel:

Scott Blaising
Braun & Blaising, P.C.
8980 Mooney Road
Elk Grove, California 95624

- b. Changed Representatives and Addresses. A Party may change its representative or address upon written notice to the other Party.
- c. Effective Date of Notices. All notices required or permitted under this Agreement shall be effective upon delivery if delivered personally or by overnight delivery; if delivered by certified mail, such notice shall be effective three calendar days following deposit in the United States mail, postage prepaid.

13. Term and Termination:

- a. Term. This Agreement shall commence as of the Effective Date, and shall continue in full force and effect until terminated pursuant to the termination provisions below.
- b. Termination. This Agreement may be terminated (i) by either Party upon the repeal of AB 80 or the termination of the rights granted to Cerritos thereunder; (ii) by the non-breaching Party in the event of a material breach by the other Party of any provision of this Agreement, including those provisions

incorporated by reference herein, provided such breach is not remedied within thirty (30) calendar days notice thereof from a non-breaching Party; or (iii) by Cerritos upon thirty (30) calendar days notice.

14. Representations and Warranties:

- a. Each Party represents and warrants that it is and shall remain in compliance with all applicable laws and tariffs, including applicable CPUC requirements.
- b. Each Party represents and warrants that (a) it has the full power and authority to execute and deliver this Agreement and to perform its terms and conditions; (b) the execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate or other action by such Party; and (c) this Agreement constitutes such Party's legal, valid and binding obligation, enforceable against such Party in accordance with its terms.
- c. Each Party shall exercise all reasonable care, diligence and good faith in the performance of its duties pursuant to this Agreement, and carry out its duties in accordance with applicable recognized professional standards in accordance with the requirements of this Agreement.

15. Limitation of Liability:

- a. Each Party's liability to the other Party for any loss, cost, claim, injury, liability, or expense, including reasonable attorneys' fees, relating to or arising from any act or omission in its performance of this Agreement, shall be limited to the amount of direct damage actually incurred, except as provided for in this paragraph. In no event shall either Party be liable to the other Party for any indirect, special, consequential, or punitive damages of any kind whatsoever, whether in contract, tort or strict liability, except in the event of an action covered by the indemnification provisions of Section 16 of this Agreement, in which case this Section 15 shall not be applicable.
- b. The Parties acknowledge and agree that (i) SCE is not responsible for ensuring that the Magnolia Power Plant is constructed and capable of beginning deliveries of electricity to the Magnolia Project Participants on or about May 1, 2005 or otherwise, and (ii) SCE has no duty to initiate any action with respect to the operability or inoperability of the Magnolia Power Plant.

16. Indemnification:

- a. To the fullest extent permitted by law, and subject to the limitations set forth in Section 15 of this Agreement, each Party (the "*Indemnifying Party*") shall indemnify and hold harmless the other Party, and its current and future direct and indirect parent companies, affiliates and their shareholders, officers, directors, employees, agents, servants and assigns (collectively the

“*Indemnified Party*”) and at the Indemnified Party’s option, the Indemnifying Party shall defend the Indemnified Party, from and against any and all claims and/or liabilities for losses, expenses, damage to property, injury to or death of any person, including, but not limited to, the Indemnified Party’s employees and its affiliates’ employees, subcontractors and subcontractors’ employees, or any other liability incurred by the Indemnified Party, including reasonable expenses, legal or otherwise, which shall include reasonable attorneys’ fees, to the extent arising from (i) the Indemnifying Party’s negligence or willful misconduct in the Indemnifying Party’s performance of its obligations hereunder, or (ii) the Indemnifying Party’s breach of this Agreement.

- b. The Indemnifying Party’s obligation to indemnify under this Section 16 shall survive termination of this Agreement, and shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Indemnifying Party under any statutory scheme.

17. Conflicts:

- a. Should a conflict exist or develop between the provisions of this Agreement and the relevant direct access tariff, as approved by the CPUC and regularly or otherwise updated, then the provisions of this Agreement shall prevail.
- b. Should a conflict exist or develop between the provisions of this Agreement and a CPUC decision, then the CPUC decision shall prevail.

18. Dispute Resolution:

- a. Except as otherwise provided in this Agreement, any dispute arising between the Parties relating to interpretation of the provisions of this Agreement or to the performance of either Party of its obligations hereunder shall be reduced to writing and referred to the Parties’ duly appointed representatives for resolution. Should such a dispute arise, the Parties shall be required to meet and confer in an effort to resolve their dispute. Pending resolution, the Parties shall proceed diligently with the performance of their respective obligations under this Agreement. If the Parties fail to reach an agreement within a reasonable period of time, the matter shall, upon demand of either Party, be submitted to resolution before the CPUC in accordance with the CPUC’s rules, regulations and procedures applicable to resolution of such disputes; provided, however, the foregoing shall not be construed as limiting either Parties’ ability to pursue available legal remedies from a court of competent jurisdiction concerning either Parties’ rights or obligations under AB 80.
- b. Notwithstanding the foregoing, (a) all disputes between the Parties relating to the payment by Cerritos of any SCE fees or charges shall be subject to the provisions of SCE’s applicable tariffs governing disputes over customer bills;

and (b) SCE may pursue available remedies for unauthorized electrical use by Cerritos' customers in a court of competent jurisdiction.

- c. If the dispute involves a request for damages, the Parties are hereby notified that the CPUC has no authority to award damages. To resolve such issues, the Parties may mutually agree to pursue mediation or arbitration to resolve such issues, or the Parties may pursue other available legal remedies.

19. Amendments or Modifications:

- a. Except as provided in Section 19(b) below, no amendment or modification shall be made to this Agreement, in whole or in part, except by an instrument in writing signed by both Parties.
- b. This Agreement may be subject to such changes or modifications as the CPUC may from time to time direct or necessitate in the exercise of its jurisdiction, and the Parties may amend the Agreement by an instrument in writing signed by both Parties to conform to changes directed or necessitated by the CPUC.

20. Miscellaneous:

- a. This Agreement constitutes the entire agreement between the Parties, and all prior and contemporaneous negotiations and oral agreements relating to the matters addressed herein are included herein.
- b. Each Party shall perform its obligations under this Agreement as an independent contractor. Nothing contained in this Agreement shall be construed to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation, or liability on or with regard to either Party. Each Party shall be liable individually and severally for its own obligations under this Agreement.
- c. This Agreement may not be assigned, in whole or in part, by either Party without the prior written consent of the other Party.
- d. The provisions of this Agreement are for the benefit of the Parties and not for any other person or third party beneficiary. This Agreement shall not impart right enforceable by any person, firm or organization other than a Party or a successor or assignee of a Party to this Agreement.
- e. The headings in this Agreement are used for convenience only and shall not affect the construction or interpretation of this Agreement.
- f. This Agreement shall be governed by and construed under the laws of the State of California without regard for its conflict of laws principles. Except for matters and disputes with respect to which the CPUC is the proper venue

for dispute resolution pursuant to applicable law or this Agreement, then except as otherwise provided for in this Agreement, the federal and state courts located in Los Angeles County, California shall constitute the sole proper venue for resolution of any matter or dispute hereunder, and the Parties submit to the exclusive jurisdiction of such courts with respect to such matters and disputes.

- g. In the event that any one or more provisions contained in this Agreement should for any reason be held unenforceable in any respect, such unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such unenforceable provision(s) had not been contained herein.
- h. Any waiver at any time by either Party of its rights with respect to a default under this Agreement, or with respect to any other matter arising in connection with this Agreement, shall not be deemed a waiver with respect to any other or subsequent default or matter and no waiver shall be considered effective unless in writing signed by the waiving Party.
- i. For the convenience of the Parties, this Agreement may be executed in several original counterparts, each of which shall be deemed an original for all purposes and all of such counterparts shall constitute but one and the same agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their duly authorized representatives.

SOUTHERN CALIFORNIA EDISON
COMPANY

CITY OF CERRITOS

By: 

By: 

Name: John R. Fielder

Name: VINCE BRAR

Title: Sr. V. P.

Title: ASST. CITY MANAGER / PU

Date: 8/13/04

Date: 8/13/04

(END OF APPENDIX A)