

**RATE AGREEMENT**

**By and Between**

**STATE OF CALIFORNIA DEPARTMENT OF WATER RESOURCES**

**and**

**STATE OF CALIFORNIA PUBLIC UTILITIES COMMISSION**

**Dated as of ~~August~~ September 6, 2001**

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## RATE AGREEMENT

**RATE AGREEMENT**, dated as of ~~August~~ September 6, 2001 by and between **STATE OF CALIFORNIA DEPARTMENT OF WATER RESOURCES** and **STATE OF CALIFORNIA PUBLIC UTILITIES COMMISSION**.

The parties mutually agree as follows:

### ARTICLE I DEFINITIONS

Section 1.1 Definitions. The terms set forth in this Section shall have the meanings ascribed to them herein for all purposes of this Agreement unless the context clearly requires otherwise. Words in the singular shall include the plural and words in the plural shall include the singular where the context so requires.

**“Act”** shall mean Chapter 4 of the Statutes of 2001 (AB 1 of the First 2001-02 Extraordinary Session) of the State, as amended from time to time.

**“Agreement”** shall mean this Rate Agreement, as from time to time hereafter amended or supplemented in accordance with the provisions hereof.

**“Bonds”** shall mean State California Department of Water Resources evidences of indebtedness issued pursuant to Section 80130 of the Act and the Executive Order of the Governor of the State of California, dated June 18, 2001, in an aggregate principal amount up to \$13,423,000,000; provided, however, that (i) Bonds shall include notes issued in anticipation of the issuance of bonds and retired from the proceeds of those bonds, but such notes shall not be counted against said dollar limitation, and (ii) Bonds shall include indebtedness issued to refund prior Bonds, but such refunding indebtedness shall not be counted against said dollar limitation.

**“Bond Related Costs”** shall mean payments of, or deposits or other provision to be made by the Department under the Financing Documents or the Act for the following:

- (i) principal of, premium, if any, and interest on Bonds;
- (ii) payments required to be made under agreements with issuers of credit and liquidity facilities, including but not limited to, letters of credit, bond insurance, guarantees, debt service reserve fund surety bonds, lines of credit and standby bond purchase agreements, and under agreements relating to hedges, including but not limited to, interest rate swaps, caps, options and forward purchase agreements, and under agreements relating to other financial instruments entered into in connection with the Bonds;
- (iii) repayments to the General Fund of amounts appropriated to the Fund including interest thereon at the pooled money investment rate;

(iv) debt service coverage determined in accordance with the Financing Documents; and

(v) deposits to debt service reserves established under the Financing Documents.

**“Commission”** shall mean the State of California Public Utilities Commission and any board, commission, department, corporation, authority or officer succeeding to the functions thereof, or to whom the powers conferred on the Commission by the Act shall be given by law.

**“Department”** shall mean the State of California Department of Water Resources and any board, commission, department, corporation, authority or officer succeeding to the functions thereof, or to whom the powers conferred on the Department by the Act shall be given by law.

**“Department Charges”** means the charges imposed upon Retail End Use Customers established by the Commission, in connection with Power made available to Retail End Use Customers by the Department for Power currently being supplied by the Department or as otherwise agreed to by the Department and the Commission.

**“Department Program”** shall mean collectively, Bond Related Costs and Operating Expenses.

**“Electrical Corporation”** shall have the meaning ascribed thereto in Section 218 of the Public Utilities Code, including any successor and assign thereof.

**“Financing Documents”** shall mean any resolution, indenture, trust agreement, loan agreement, revolving credit agreement, reimbursement agreement, standby purchase agreement or other agreement or instrument adopted or entered into by the Department authorizing, securing or enhancing the Bonds, as from time to time amended or supplemented in accordance therewith, copies of which shall be provided to the Commission.

**“Fiscal Year”** shall mean the fiscal year of the State, which currently commences on July 1 of each year.

**“Fund”** shall mean the Department of Water Resources Electric Power Fund established by the Act.

**“Operating Expenses”** shall mean the following costs and expenses of the Department:

(i) costs incurred for the purchase of Power and the delivery of such Power including, ~~but not limited to,~~ amounts payable under short-term and long term Power Purchase Contracts as authorized by statute, termination and liquidation damage payments thereunder, payments thereunder relating to emission costs and emission opportunity costs, amounts payable in respect of balance of month Power, hour ahead Power and real time balancing Power, including in-market and out of market purchases, and costs incurred for transmission, distribution, scheduling, dispatch and other expenses incurred by the Department in connection with the delivery of its Power;

(ii) costs incurred for or in connection with fuel to be used in the production of Power purchased by the Department, whether payable as a charge under a Power Purchase Contract or a separate contract for the purchase, transportation or storage of fuel for use in the generation of Power, including but not limited to termination and liquidated damage payments under fuel purchase agreements, payments under options or other fuel or electricity instruments, and payments under financial instruments relating to fuel costs or costs related to fuel costs;

(iii) ~~costs incurred to avoid or minimize the amount of Power required to be purchased for retail end use customers pursuant to the Act, as follows: under-~~ the 20/20 conservation program as authorized in Executive Orders D-30-01 and D-33-01 and other costs incurred to avoid or minimize the amount of Power required to be purchased for retail end use customers pursuant to the Act, but only insofar as the Department is specifically authorized by statute to incur these other costs and to pay for them out of the Fund, ~~the California Independent System Operator demand relief program and the demand bidding program jointly developed by the California Independent System Operator, the Commission and the three investor owned utilities implemented through the filings with the Commission.~~

(iv) payments under any security agreements executed in connection with Power Purchase Contracts or in connection with contracts for the purchase, transportation and storage of fuel or any other agreement relating to the purchase of Power otherwise permitted to be paid pursuant to clause (i) hereof;

(v) reasonable administrative costs of the Department in administering Division 27 of the Water Code, including, general and overhead expenses, ~~legal and engineering expenses, expenses for consulting and technical services, insurance premiums,~~ and payments for employee benefits, ~~(including but not limited to such as payments to savings, pension, retirement, health and hospitalization funds);~~ provided all such costs, expenses, and payments shall be as previously appropriated or approved by the Legislature;

(vi) ~~insurance premiums;~~

~~(vii) \_\_\_\_\_ legal and engineering expenses;~~

~~(viii)~~ \_\_\_\_\_ expenses for consulting and technical services;

~~(ix)~~ \_\_\_\_\_ charges payable by the Department in connection with its activities under Division 27 of the Water Code pursuant to any licenses, orders or mandates from any agency or regulatory body having lawful jurisdiction;

(vii) any other costs or expenses that are: specifically approved by statute, required to be paid by the Department in connection with its activities under Division 27 of the Water Code, and appropriated by the Legislature;

~~(x)(viii)~~ \_\_\_\_\_ any taxes or, governmental charges, ~~and any other costs and expenses~~ required to be paid by the Department in connection with its activities under Division 27 of the Water Code;

~~(xi)(ix)~~ expenses, liabilities and compensation of the trustees or other fiduciaries required to be paid under the Financing Documents or pursuant to the Act, including charges and expenses payable during the continuance of an event of default thereunder;

~~(xii)(x)~~ costs with complying with any arbitrage restrictions or rebate requirements relating to the Bonds under Section 148 of the Internal Revenue Code of 1986 as amended, or a successor statute, and applicable regulations thereunder;

~~(xiii)(xi)~~ deposits to fund or replenish operating reserves established under the Financing Documents.

**“Power”** shall have the meaning ascribed thereto in Section 80010 of the Act.

**“Power Purchase Contract”** shall mean those contracts entered by the Department for the purchase of Power by the Department for sale to Retail End Use Customers pursuant to the Act and in accordance with this Agreement.

**“Retail End Use Customer”** shall mean each customer within the Service Area of an Electrical Corporation that has purchased Power from the Department under the Act.

**“Retail Revenue Requirements”** shall mean the revenues required to be generated from the imposition of Department Charges as communicated by the Department to the Commission from time to time in order to pay Bond Related Costs and Operating Expenses.

**“Revenues”** shall mean and include all revenues, income, charges, receipts, profits and other moneys or monetary benefits derived by the Department directly or indirectly from whatever source as a result of the purchase, sale, exchange, transfer or other disposition of Power pursuant to the Act.

“*Service Area*” shall mean the geographic area in which an Electrical Corporation distributes electricity.

“*Servicing Agreements*” shall mean any agreement between an Electrical Corporation and the Department relating to the billing, collection, segregation and enforcement of Department Charges and the delivery of Power to Retail End Use Customers by the Electrical Corporation, as agent of the Department or an order of the Commission having the effect of such an agreement.

“*State*” shall mean the State of California.

“*Trustee*” shall mean any bank or trust company, or the State Treasurer, appointed as trustee, co-trustee or collateral agent in connection with the Bonds or bond related obligations pursuant to the Financing Documents and its successors and assigns, which bank or trust company shall not itself to the extent possible, or by or through any of its corporate affiliates trade in electricity or natural gas commodity markets, or appears itself or have any of its affiliates appear on the list of top twenty creditors for any Electrical Corporation that has petitioned for bankruptcy.

## **ARTICLE II REPRESENTATIONS AND WARRANTIES**

Section 2.1 Representations and Warranties of Department. The Department makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(a) It is a department within the Resources Agency of the State, validly existing under the Constitution and laws of the State, and has full power and authority to execute, deliver and perform and observe all of the terms and provisions of this Agreement.

(b) The execution, delivery and performance of this Agreement have been duly authorized by all necessary action on the part of the Department.

Section 2.2 Representations and Warranties of Commission. The Commission makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(a) It is a commission of the State, validly existing under the Constitution and laws of the State, and has full power and authority to execute, deliver and perform and observe all of the terms and provisions of this Agreement.



(b) The execution, delivery and performance of this Agreement, have been duly authorized by all necessary action on the part of the Commission.

**ARTICLE III  
AGREEMENTS FOR BOND ISSUANCE; ASSIGNMENT**

Section 3.1 Agreement for Bond Issuance. Subject in all respects to the provisions of Articles VI and VIII hereof, the Department and the Commission agree that this Agreement is executed to facilitate the issuance of Bonds and the execution of additional agreements by the Department in connection with the Bonds.

Section 3.2 Agreement of State. As authorized by Section 80200(e) of the Act, the Department includes in this Agreement the following pledge of the State:

While any obligations of the Department incurred under the Act remain outstanding and not fully performed or discharged, the rights, powers, duties and existence of the Department and the Commission shall not be diminished or impaired in any manner that will affect adversely the interests and rights of the holders of or parties to such obligations.

Section 3.3 No Indebtedness. Nothing contained in the Agreement, or in the Financing Documents or any other document or instrument executed and delivered in connection with any of them, shall be deemed to create or constitute a debt or liability of the State or of any political subdivision thereof, or a pledge of the full faith and credit or taxing power of the State or of any such political subdivision.

Section 3.4 No Pecuniary Liability of Commission. Nothing in this Agreement shall be deemed to create any pecuniary liability of the Commission, its officers, directors, employees or agents to any person, the sole remedy for any default by the Commission hereunder being the exercise of remedies specifically afforded hereunder and under the Act.

**ARTICLE IV**  
**RETAIL REVENUE REQUIREMENTS; JUST AND REASONABLE COSTS**

Section 4.1 Retail Revenue Requirements. (a) Generally. The Department shall, at least annually, and more frequently as deemed reasonably necessary or appropriate by the Department review, determine and revise its Retail Revenue Requirements. The Commission agrees to cooperate with and assist the Department in any such review at the request of the Department. The Department shall promptly notify the Commission following any determination or revision of the Retail Revenue Requirements, including the amount of the Retail Revenue Requirements ~~required~~ proposed to be collected from Retail End Use Customers in each Service Area. Any communication of a Retail Revenue Requirement to the Commission shall also include an accounting by the Department of its actual expenditures under the previously submitted revenue requirement. If any such annual or more frequent review indicates that the Department Charges are, or will be, insufficient to meet the requirements of Section 5.1, and the Department so notifies the Commission, the Commission shall take necessary action to cure or avoid any such deficiency, including adjustment of existing, and the calculation and imposition of additional, Department Charges within the time frames provided in subsections (c) and (d) of Section 5.1.

(b) Additional Information. In any determination of the Retail Revenue Requirements, the Department shall include the amount required to be recovered in the applicable period and may set forth amounts required to be collected during subsequent periods. The Retail Revenue Requirements for any period shall take into account any deficiency or any surplus in amounts recovered in earlier periods. The Department's notification of its Retail Revenue Requirements pursuant to Section 4.1(a) shall also specify the amount of Power the Department expects to deliver to Retail End Use Customers during the applicable periods. In addition, the Department's notification to the Commission of the Retail Revenue Requirements shall include a statement containing the Department's projections (with reasonable detail) of the following information for each month during the period covered by the Retail Revenue Requirements:

- (i) the beginning balance of funds on deposit in the Fund;
- (ii) the amounts necessary to pay or provide for the principal of, premium, if any, and interest on all Bonds and all other Bond Related Costs under the Financing Documents as and when the same shall become due;
- (iii) the amounts necessary to pay or provide for each Operating Expense included in the Department Program; and
- (iv) the amount of its Retail Revenue Requirement for that month.

The Department shall provide to the Commission when available a copy of any audit conducted pursuant to Section 80270 of the Act.

Section 4.2 Just and Reasonable Costs. The Department and the Commission acknowledges Section 80110 of the Act and agrees to be bound by it. The Department agrees that prior to including any cost in the ~~Bond-Retail~~ Revenue Requirements communicated to the Commission in accordance with Section 4.1(a), the Department will conduct whatever procedures are required by law to determine that such cost is just and reasonable within the meaning of Section 451 of the California Public Utilities Code.

## **ARTICLE V COVENANTS**

### Section 5.1 Rate Covenant.

(a) The Commission acknowledges that the Department is entitled under this Agreement to recover, as a Retail Revenue Requirement, such amounts at such times as shall be sufficient, together with any moneys and securities on deposit in the Fund, to provide for payment of the Bond Related Costs and Operating Expenses.

The Commission agrees that it shall accept each determination by the Department of the Retail Revenue Requirements pursuant to Section 4.1 hereof, absent arithmetic error or the inclusion of costs and expenses other than Bond Related Costs or Operating Expenses. In the event that the Commission believes that a Retail Revenue Requirement as submitted to the Commission contains an error as specified in the preceding sentence it will so advise the Department and the Commission may correct any arithmetic error or exclude from the Retail Revenue Requirement any cost that is neither a Bond Related Cost nor an Operating Expense. ~~request a correction.~~

(b) The Commission hereby covenants and agrees to calculate, revise and impose, from time to time, Department Charges for Power sold by the Department to Retail End Use Customers sufficient to provide moneys in the amounts and at the times necessary to satisfy the Retail Revenue Requirements as specified by the Department. Department Charges shall be established without regard to the levels or amounts of any particular rates or charges authorized by the Commission to be charged by any Electrical Corporation for power sold by such Electrical Corporations.

(c) The Commission agrees that it shall calculate and impose Department Charges for Department Power sold, to be sold or deemed to be sold to Retail End Use Customers no later than 90 days following the delivery to the Commission by the Department of a statement of new or revised Retail Revenue Requirements in accordance with

this Section 5.1, unless the Department shall specify an earlier date pursuant to sub-section (d) below or a later date for such calculation and imposition at the time that it shall convey such new or revised Retail Revenue Requirements to the Commission.

(d) The Commission shall calculate and impose adjusted Department Charges within ~~30-45~~ days or such longer period as the Department may in its sole discretion specify, of receipt of a Department certificate in the form attached hereto as Exhibit A, requesting such expedited adjustment of Department Charges. If such adjustment of Department Charges is required, in whole or in part, by a revision of the Department's previously applicable Retail Revenue Requirement, such certificate shall be accompanied by a revised Retail Revenue Requirement covering the remainder of the period for which Department Charges were previously adopted. In recognition of the expedited procedure of the Commission set forth in this sub-section (d), the Commission may make such revised Department Charges subject to adjustment for rate spreading and impose revised rate spreading within 90 days of the entry of a Commission order responding to the Department's certificate for such expedited adjustment.

(e) As authorized by Section 80110 of the Act by reference to Article 5.5 (commencing with Section 840) of Chapter 4 of Part 1 of Division 1 of the California Public Utilities Code, this Agreement has the force and effect of a "financing order" adopted thereunder and shall be irrevocable except to the extent amended in accordance with the terms hereof.

(f) Consistent with the limitations set forth in Water Code Section 80110, upon the request of the Commission, the Department will participate in any Commission proceedings, including public hearings and comments, taken in connection with the establishment of Department Charges by the Commission, pursuant to this Section 5.1.

## Section 5.2 Electrical Corporations.

(a) The Commission has ordered and agrees, as may be requested from time to time by the Department, to continue to order all Electrical Corporations to deliver all Power made available pursuant to Section 80012 and Chapter 2 of Division 27 of the Water Code by the Department to Retail End Use Customers within their respective Service Areas. The Department shall at all times maintain ownership of Power purchased by it until such Power is delivered and sold to such Retail End Use Customers. With respect to the delivery and sale of such Power, the Electrical Corporation shall function solely as agent for the Department, and shall have no ownership interest in the Power purchased and sold by the Department whatsoever or rights to or interest in any rates, charges and payments relating thereto.

(b) The Department has entered into, or has requested, Servicing Agreements with Electrical Corporations to transmit or provide for the transmission of, and distribute the Power and provide billing, collection, and other related services, as agent of the Department, on terms and conditions that reasonably compensate the Electrical Corporations for their services. The Servicing Agreements will include the provision by the Electrical Corporations of information concerning sales of Power and Power consumption by Retail End Use Customers by class of service, in such detail as is reasonably requested by the Department to implement the matters described herein. As permitted by the Act, if an Electrical Corporation fails to perform such services as agent of the Department, the Commission agrees at the request of the Department to issue orders and enforce the same or afford other appropriate relief to require such Electrical Corporation to do so.

(c) The Commission agrees at the request of the Department to issue rules regulating the enforcement of the above-described agency function as described in the Act and the Servicing Agreements, including the provision of information to the Department.

All money collected with respect to any Power acquired by the Department pursuant to the Act and the Governor's Emergency Proclamation dated January 17, 2001, and all money paid directly or indirectly to or for the account of the Department with respect to any sale, exchange, transfer, or disposition of Power acquired by the Department pursuant to the Act and the Governor's Emergency Proclamation dated January 17, 2001, shall constitute property of the Department. To the extent any moneys are received by an Electrical Corporation pursuant to the Act in the process of collection, pending their transfer to the Department, such moneys shall be segregated by the Electrical Corporation on terms and conditions established by the Department and shall be held in trust for the benefit of the Department. The Commission agrees to issue orders or afford other appropriate relief to enforce the foregoing requirements.

### Section 5.3 Compliance with Agreement.

(a) The Commission hereby covenants with the Department that the Commission shall take all such actions or refrain from taking all such actions, as the case may be, so as to comply with the terms and provisions of the Act and this Agreement.

(b) The Commission hereby covenants that, so long as any Bonds shall be outstanding, it will not take any action, or fail to take any action, which, if taken or not taken, as the case may be, would adversely affect the tax-exempt status of the interest payable on Bonds then outstanding, the interest on which, at the time of issuance thereof, was exempt from Federal income taxation or not includable in gross income for purposes of Federal income taxation. In furtherance of the foregoing, the Commission agrees to act at the direction of the Department with respect to those matters within its control that could adversely affect the exclusion of interest on Bonds from gross income for purposes of federal income taxation.

Section 5.4 Liens. Until the Bonds have been paid in full or provision has been made therefor in accordance with the Financing Documents, the Commission, to the extent it has the power to do so, shall not permit to be created any purported lien upon or pledge of the Department Charges except any lien and pledge thereon created by or pursuant to the Act as security for the enforcement of the Department's obligations entered into pursuant thereto.

Section 5.5 Enforcement of Rules and Regulations. In accordance with the Act, unless otherwise approved by the Department, the Commission shall enforce and cause the Electrical Corporations to enforce the rules and regulations, as they may be amended from time to time, providing for discontinuance of or disconnection from the supply of Power for nonpayment of rates or other charges established by the Commission with respect to Power sold by ~~the an~~ Electrical Corporation or the Department to Retail End Use Customers.

## **ARTICLE VI EVENTS OF DEFAULT AND REMEDIES**

Section 6.1 Events of Default. An "event of default" or a "default" shall mean, whenever they are used in this Agreement, any one or more of the following events:

- (a) failure of the Commission to calculate and impose Department Charges in accordance with Section 5.1;
- (b) failure of the Commission to observe any other covenant, term or condition of this Agreement, provided, however, that such failure shall have continued for a period of twenty (20) days after written notice, specifying such failure and requesting that it be remedied, is given to the Commission by the Department, unless the Department shall agree in writing to an extension of such time prior to its expiration, and provided further, that if the failure stated in the notice cannot be remedied within the applicable period, the Department shall not unreasonably withhold its consent to an extension of such time if corrective action has been instituted by the Commission within such period and is being diligently pursued.

Section 6.2 Remedies. Whenever any event of default shall have occurred and be continuing, and written notice of the default shall have been given to the Commission by the Department and the default shall not have been cured within any period provided therefor, the Department may take whatever action at law or in equity may appear necessary or desirable to enforce performance and observance of any obligation, agreement or covenant of the Commission under the Agreement.

Section 6.3 Consent to Assignment. (a) The Commission consents to the collateral assignment by the Department to the Trustee identified in the Financing Documents of the covenants of the Commission contained in Section 5.1 and 5.2 hereof; provided, however,

that any rights so granted to the Trustee shall not be greater than the rights of the Department under such Sections of this Agreement, and such right on the part of the Trustee to enforce such covenants shall only commence after the Department has both defaulted under its obligations contained in the Financing Documents and has failed to enforce such covenants in accordance with the terms of this Agreement. Prior to exercising any rights granted to the Trustee in accordance with this Section 6.3, the Trustee shall be required to (i) give prior written notice within the time period required in Section 6.3(b) below, (ii) certify to the Commission that an event of default, other than an event of default predicated solely on the Commission's failure to act hereunder, has occurred under the Financing Documents and (iii) comply or cause the Department to comply with the provisions of this Agreement relating to the Department's rights, duties and obligations hereunder, including, without limitation, the requirement to provide the documentation specified in Section 4.1(b) hereof.

(b) In addition to the requirements of Section 6.3(a) for exercising its rights hereunder, the Trustee shall give the Commission 30 days prior written notice of the exercise by the Trustee of any of the Department's rights under Section 5.1 hereof.

## **ARTICLE VII TERMINATION**

Section 7.1 Termination. The Agreement shall terminate, and the covenants and other obligations contained in the Agreement shall be discharged and satisfied, when payment of the Bonds and all other amounts required to be paid by the Department under the Financing Documents have been made or provided for in accordance with the Financing Documents. If Bonds with a maturity of more than five years are not issued prior to December 31, 2002, the Agreement shall apply only with respect to the Credit and Security Agreement among the State of California acting through the Department of Water Resources, Various Lenders, and Morgan Guaranty Trust Company of New York, as Agent, Dated as of June 26, 2001 (the "Credit and Security Agreement") and shall terminate upon termination of that Credit and Security Agreement.

Section 7.2 Termination of Purchase of Power by the Department. Circumstances may occur during the term of this Agreement which result in changes to the Department Program. Each party recognizes that these changes in circumstances may result in a reduction of the Retail Revenue Requirements. Any change in the Department Program shall be expeditiously reflected in an appropriate adjustment to the Retail Revenue Requirement filed as set forth in Section 4.1 of this Agreement. Certain changes in circumstances as described below may occur which shall be described as "Transition Events" for purposes of this section.

Legislative Transition Events. Without limiting the generality of the foregoing, “Transition Events” may include changes in state law which have the direct or indirect result of changing the character or scope of the Department Program (a “Legislative Transition Event”). The Department covenants that, upon the occurrence of a Legislative Transition Event, it shall promptly provide to the Commission a description of any resulting changes to the Department Program (including, but not limited to, changes in the categories under the terms “Bond Related Costs” and “Operating Expenses” hereunder), as well as file with the Commission appropriately adjusted Retail Revenue Requirements pursuant to Section 4.1 of this Agreement.

Residual Net Short Transition Events. A “Transition Event” shall also occur on (i) the date one hundred twenty (120) days preceding the last date (the “Sunset Date”) upon which the Department is permitted to execute new agreements for the purchase of Power under the Act or (ii) the date on which the Department is advised in writing by the Commission that (A) an Electrical Corporation is then rated at least investment grade by at least two rating agencies, or the Commission has determined that an Electrical Corporation has sufficient financial resources to purchase sufficient power in the market to meet the residual net short load (i.e. the portion of the net short load not provided for by Power Purchase Contracts in effect as of the Transition Date, as such term is defined below) attributable to Retail End Use Customers within such Electrical Corporation's Service Area, and (B) either (x) such Electrical Corporation has advised the Commission in writing (with a copy to the Department) that it is prepared to purchase the residual net short or (y) the Commission has entered an order directing such Electrical Corporation to purchase such residual net short load, which order has become final. In the event the Commission delivers the written advice referred to in clause (ii) above (hereinafter referred to as a “Transition Notice”), the transition date shall, unless otherwise agreed by the Department, be one hundred twenty (120) days (the “Transition Date”) following the date of receipt of the written advice referred to in clause (ii) above (the date of receipt of such Transition Notice being referred to herein as the “Transition Notice Date”). The Department covenants that on or prior to the Transition Date, it shall provide to the Commission a description of any resulting changes to the Department Program to reflect the Transition Event, as well as file with the Commission appropriately adjusted Retail Revenue Requirements pursuant to Section 4.1 of this Agreement.

Prior to the Transition Date, the Commission and the Department shall, together with the applicable Electrical Corporation, develop a transition plan which shall set forth and provide for the effectuation of the purchase of the residual net short load by the applicable Electrical Corporation and shall include at least the following:

(a) the sharing of necessary information to permit (i) the applicable Electrical Corporation to purchase the residual net short load for its Service Area on and after the Transition Date and (ii) the Department to continue to administer existing Power Purchase Contracts;



(b) identification and provision by the applicable Electrical Corporation of staffing and other resource needs to permit such Electrical Corporation to resume purchase of the residual net short load on and after the Transition Date;

(c) coordination of activities and responsibilities between such Electrical Corporation and the Department, as appropriate; and

(d) purchase of the residual net short load by the Electrical Corporation on and after the Transition Date.

Following receipt of the Transition Notice, the Commission and the Department agree that the Department will not solicit additional contracts for the purchase of Power having a term longer than one year which are intended to be the source of Power for retail end use customers within a Service Area of such Electrical Corporation, except to the extent that the Department determines is necessary to fulfill its responsibilities under the Act, taking into account the ability of the Electrical Corporation to meet the residual net short load in such Electrical Corporation's Service Area.

Nothing in this Section shall be deemed to (a) affect the ability, right or obligation of the Department to perform its obligations, or its right to purchase Power, under any agreements entered into prior to the Transition Date (including agreements in principle the termination of which may in the judgment of the Department expose the Department to liability) or its right, power and obligation to otherwise perform its obligations under the Act, the Financing Documents and any Power Purchase Contracts, or (b) affect the right, ability or obligation of the Commission to perform its obligations under this Agreement or to carry out its statutory obligations.

Assignment of Power Purchase Contracts. In addition, if requested by the Commission prior to the Transition Date, subject to the next succeeding paragraph, the Department agrees to consider the assignment of some or all of those Power Purchase Contracts that may legally be assigned to the applicable Electrical Corporation, have a term longer than one year, and are the source of Power being provided to retail end use customers within the Service Area of the applicable Electrical Corporation. To the extent that the transition plan includes the assignment of Power Purchase Contracts it shall include at least the following:

(1) the sharing of necessary information with the Commission regarding the terms of Power Purchase Contracts proposed to be assigned, including economic terms and provisions concerning assignment;

(2) the Department's using its best efforts to obtain consent for the assignment of those Power Purchase Contracts which are not freely assignable;

(3) identification and provision by the applicable Electrical Corporation of staffing and other resource needs to permit such Electrical Corporation to assume such Power Purchase Contracts;

(4) coordination of activities and sharing of resources and responsibilities in connection with such assignments between such Electrical Corporation and the Department, as appropriate; and

(5) assumption of those Power Purchase Contracts to be assigned by the Electrical Corporation on and after the Transition Date.

Nothing herein shall be deemed to require the Department to assign any of its Power Purchase Contracts to the extent that such assignment would adversely affect the tax exemption of the Bonds, impose any material expense on the Department, adversely affect the rights of any party secured by the Financing Documents, adversely affect the ability of the Department to recover its existing Retail Revenue Requirements, adversely affect the security for the Bonds or cause the Department or the State to breach any covenant contained in, or otherwise be in default under the Financing Documents or any other agreement of the Department entered into as required by the Act.

Alternative Revenue Stream for Refinancing of Bonds. In the event the Department determines to pursue a refinancing of the Bonds or a change in law provides for an alternative financing mechanism after the bonds are issued, the Department agrees that it shall ~~(i)~~ consult with the Commission and the State Treasurer on the possibility of substituting the covenants of the Commission contained in Article 5 of this Agreement with a dedicated revenue stream for the repayment of the Bonds, ~~and~~ If such alternate revenue stream is identified by the Commission, (ii) determine, in consultation with the Commission, the Department and the Commission shall determine the legality and practicality of such substitution, ~~and (iii)~~ If determined, in consultation with the Commission, to be legal and practical ~~and in the public interest, use its best efforts to~~ the Department shall implement in conjunction with the State Treasurer such substitution in a refinancing of the Bonds or in an amendment of the financing documents.

## ARTICLE VIII AMENDMENTS

Section 8.1 Amendments to Agreement. No amendment to the Agreement shall be effective unless it is in writing, signed by each of the parties hereto.

## **ARTICLE IX MISCELLANEOUS**

Section 9.1 No Waiver. No failure to exercise, and no delay in exercising by the parties hereto, any right, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof, or the exercise of any right, power or privilege. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law, including the Act.

Section 9.2 Notices. All notices, requests and other communications under this Agreement shall be deemed to have been duly given if in writing and delivered personally or by certified mail (a) to the Department at 1416 9<sup>th</sup> Street, 11<sup>th</sup> Floor, Sacramento, California 95814, attention: Director; (b) to the Commission at 505 Van Ness Avenue, San Francisco, California 94102, attention: Director, Energy Division and General Counsel; or such other address as the Department, or the Commission, as the case may be, shall hereafter designate by notice in writing to the other party.

Section 9.3 Severability. In the event that any one or more of the provisions contained in the Agreement is or are invalid, irregular or unenforceable in any respect, the validity, regularity and enforceability of the remaining provisions contained in this Agreement shall be in no way affected, prejudiced or disturbed thereby.

Section 9.4 Headings. The descriptive headings of the several articles of the Agreement are inserted in the Agreement for convenience only and shall not be deemed to affect the meaning or construction of any of the provisions of the Agreement.

Section 9.5 Governing Law. The Agreement shall be governed by, and construed in accordance with, the Constitution and laws of the State of California.

Section 9.6 Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 9.7 Date of Agreement. The date of this Agreement shall be for identification purposes only. This Agreement shall become effective immediately upon execution and delivery by the parties hereto.

Section 9.8 Successors. This agreement shall inure to the benefit of the parties hereto and their successors as provided by operation of law.

Section 9.9 Third Party Beneficiaries. Except as specifically provided in sections 6.3 and 9.8, ~~or~~ nothing in this agreement express or implied shall be construed to give

any person or entity, other than the parties hereto, any legal or equitable right, remedy, or claim under or in respect of the agreement or any covenants, agreements, representations, or provisions contained herein.

IN WITNESS WHEREOF, the Department has caused this Agreement to be executed in its name by the Director of Water Resources and the Commission by the affirmative vote of the Commission (Order No. \_\_\_\_ ) has caused this Agreement to be executed in its name by those Commissioners who constituted a majority of the Commission when it approved this agreement its President, all as of the date first above written.

**STATE OF CALIFORNIA DEPARTMENT OF  
WATER RESOURCES**

By: \_\_\_\_\_  
Director of Water Resources

**STATE OF CALIFORNIA PUBLIC UTILITIES  
COMMISSION**

By: \_\_\_\_\_  
~~Executive Director~~Commissioner

By: \_\_\_\_\_  
Commissioner

By: \_\_\_\_\_  
Commissioner

By: \_\_\_\_\_  
Commissioner

By: \_\_\_\_\_  
Commissioner

## EXHIBIT A

[Department Certificate for Expedited Adjustment of Department Charges under Section 5.1(d)].

The undersigned hereby certifies on behalf of the Department that the condition(s) checked below exist(s). All terms defined herein have the meaning set forth in the Indenture.

- (1) The amount presently held in the Debt Service Reserve Account is less than the Debt Service Reserve Account Requirement.
- (2) The amount presently held in the General Reserve Account established under the Indenture is less than the Minimum General Reserve Account Balance.
- (3) Based upon the Department's projection of its revenues and expenses attached hereto and incorporated herein by his reference, unless Department Charges are adjusted on an expedited basis as set forth in Section 5.1 (d) of the Rate Agreement, there is a material risk that during the period covered by the currently applicable Retail Revenue Requirement (as such Retail Revenue Requirement may have been revised by the Department in accordance with Section 4.1 of the Rate Agreement) either (1) or (2) above will occur or the Department will be in default under a material financial covenant contained in the Bonds or the Financing Documents.