

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

California Independent System )  
Operator Corporation )

Docket No. ER10-1524-000

**MOTION TO INTERVENE AND PROTEST OF  
THE CALIFORNIA WIND ENERGY ASSOCIATION**

Pursuant to Rules 211, 212, and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. §§ 385.211, 385.212 and 385.214, and the Commission’s Notice of Filing issued June 23, 2010, the California Wind Energy Association (“CalWEA”) respectfully submits this Motion to Intervene and Protest to the California Independent System Operator’s (“CAISO”) June 22, 2010, filing in the above captioned proceeding to implement Phase 2 of the CAISO’s Standard Capacity Product (“SCP”).

The CAISO’s proposed amendments are referred to as “SCP II” and will: (1) extend SCP to Resource Adequacy (“RA”) resources with qualifying capacity (“QC”) determined by historical output; (2) establish a three-month advisory period for the settlement of non-availability charges and availability incentive payments applicable to these resources; (3) modify existing SCP provisions to clarify the types of outages considered when determining the non-availability of RA resources; and (4) correct the provision allocating excess non-availability funds to load.<sup>1</sup> The proposal to extend SCP to RA resources with QC determined by historical output, which includes intermittent renewable resources such as solar and wind generators, is neither just nor reasonable because application of SCP to intermittent renewable resources still

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<sup>1</sup> Ltr. of June 22, 2010 from N. Saracino, A. Ivancovich, and B. Burns to K. Bose, at pp. 1-2, Docket No. ER10-1524-000 (“Transmittal Letter”).

results in duplicative penalties for non-availability of the resource. As such, CalWEA requests the Commission to reject this proposal. In further support, CalWEA shows as follows:

## I. COMMUNICATIONS

Persons who should receive communications in connection with this motion to intervene and protest include the following:

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## II. MOTION TO INTERVENE

CalWEA is a non-profit corporation supported by over 25 members of the wind energy industry, including turbine manufacturers, project developers actively involved in developing wind projects to help meet California's Renewables Portfolio Standard ("RPS") program, existing project owners, component manufacturers, support contractors, and others. CalWEA seeks to encourage and support the production of electricity through the use of wind generators, and actively represents the interests of its members in various proceedings before regulatory agencies and the CAISO.

The business interests of CalWEA's members are significantly affected by regulatory policies such as California's RPS requirements, the cost of, and access to, transmission facilities, the requirements for interconnecting new generating facilities to the transmission system, and the structure and operation of the various CAISO markets. CalWEA was, therefore, an active participant on behalf of its members in the CAISO's stakeholder

process that culminated in the filing of its SCP II tariff revisions on June 22, 2010. As such, CalWEA and its members may be directly affected by the outcome of this proceeding. The interests of CalWEA and its members are not adequately represented by any other party. Accordingly, granting CalWEA's timely motion to intervene in this proceeding is in the public interest.

### **III. PROTEST**

#### **A. Intermittent Renewable Generators Are Currently Exempt From SCP Because the Commission Determined That Resources Should Not Be Subject Duplicative Penalties for Non-Availability**

Intermittent renewable resources are currently exempt from the SCP availability incentive pursuant to the Commission's order on the CAISO's original SCP filing in Docket No. ER09-1064-000.<sup>2</sup> In that order, the Commission found that, because the RA capacity of intermittent resources is based on their historical output, intermittent renewables already had an incentive to maintain high availability, and that applying the SCP availability incentive mechanism in addition to the existing incentive would impose a duplicative penalty for the same outage. The Commission's described its reasoning as follows:

We accept the CAISO's proposal to exempt from the proposed availability standards resources whose qualifying capacity is determined by historical output. As the CAISO explains, existing resource adequacy rules treat certain resources differently in determining their amount of qualifying capacity. Under the existing CPUC market rules, resources whose qualifying capacity is determined by historical output are penalized for poor performance through a reduction of their qualifying capacity. Therefore, it would be a harsh result to apply the same availability standards, which are designed to penalize poor performance, to resources already subject to qualifying capacity adjustments. We find that doing so could potentially result in penalizing such resources twice for the same outage or de-rate. As long as this

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<sup>2</sup> *Cal. Indep. Sys. Operator Corp.*, 127 FERC ¶ 61,298 (2009) ("June 2009 Order").

counting feature of the market continues, we find the proposed exemption to be permissible and not unduly discriminatory.<sup>3</sup>

Thus, the Commission adopted the existing exemption to ensure that resources are not penalized twice for the same outage or de-rate.

**B. Notwithstanding Recent Revisions To QC Calculation Rules, Application of SCP To Intermittent Renewable Generators Will Still Result In Duplicative Penalties for Non-Availability Because the Generator Will Lose Its Revenue Stream and Be Liable for the CAISO-Imposed SCP Penalty**

Unfortunately, the CAISO's proposal to remove the SCP exemption will still result in duplicative penalties for non-availability of intermittent renewable resources. The basis for the existing exemption – the CAISO's representation to the Commission that there was a “double penalty” problem with the RA counting rules and the SCP availability incentive – has little relationship to the financial incentives applicable to wind resources in California. Substantially all wind generators operate under power purchase agreements approved by the California Public Utilities Commission (“CPUC”) through the state's RPS program. As discussed below, these contracts have very strong incentives to ensure that these resources maintain high availability, but these incentives are completely independent of the RA counting rules or the level of the RA capacity provided by a wind generator. Simply put, payments to wind generators in California are based on energy production, and not at all on the RA capacity they provide. Thus, the change in the RA counting rules – removing forced outages from the calculation of an intermittent resource's RA capacity<sup>4</sup> – that the CAISO now claims has remedied the “double penalty” problem has not done that at all because an intermittent resource with a forced outage will still lose revenue under its off-take agreement in addition to being penalized by the CAISO. This step has not changed in any way the availability incentives facing

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<sup>3</sup> June 2009 Order, at P 56.

wind generators in California, much less solved a “double penalty” problem. Because the existing incentives for wind generators to achieve high availability are completely independent of the RA counting rules, if this Commission accepts the CAISO proposal to apply the SCP availability incentives to intermittent resources in California, there will continue to be a “double penalty” problem. As a result, CalWEA requests the Commission to continue the exemption granted in the June 2009 Order and reject the CAISO’s proposal to extend SCP to intermittent renewable resources.

1. The Structure of RPS Power Purchase Agreements in California Already Provides Ample Incentive To Maintain High Availability

CalWEA has sought repeatedly to inform the CAISO about the availability incentives applicable to wind resources in California, both in comments filed with the CPUC and in stakeholder comments provided directly to the CAISO as part of the stakeholder process preceding the CAISO’s SCP II filing.<sup>5</sup> CalWEA will repeat that information here.

First and foremost, CalWEA agrees with the need to ensure that RA resources have an incentive to achieve high availability. Many dispatchable fossil resources operate in relatively few hours, i.e. only when capacity is needed to meet peak demands. In the bilateral, unbundled market for RA capacity, a generator typically receives a bilateral RA capacity payment irrespective of its real-time performance when dispatched. As a result, there is a need for the SCP availability incentive to ensure that unbundled RA resources have an incentive to achieve high availability, even if they are actually dispatched in relatively few hours.

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<sup>4</sup> The CPUC approved this change in Decision 10-06-036, issued June 17, 2010, in R. 09-10-032.

<sup>5</sup> CalWEA submitted comments on these issues through the SCP II stakeholder process at the CAISO. See <http://www.caiso.com/27c4/27c49a971a200.html#2780840351cc0>. CalWEA also presented comments in multiple filings in CPUC Docket R. 09-10-032. These filings can be found on the CPUC website at <http://docs.cpuc.ca.gov/published/proceedings/R0910032.htm>.

However, the structure of RPS power purchase agreements adopted by the CPUC is much different than contracts for dispatchable fossil generation, and the structure of the RPS contracts inherently provides a very strong incentive to achieve high availability. Under the RPS contracts, the form of which is approved by the CPUC for each of the investor-owned utilities,<sup>6</sup> intermittent renewable projects provide both energy and capacity, but are paid purely on an energy basis, typically using a single price expressed in dollars per MWh of energy delivered. As a result, the energy payment rate includes a project's full compensation for its capacity value. To the extent that the wind is blowing or the sun is shining, but the wind turbines or solar receivers are unavailable due to a forced outage, the project receives no payment - i.e., it loses the equivalent of its capacity payment for that hour. This creates the desired incentive to maintain high availability. If an RPS project is not available, it will not produce MWhs, and it will not be paid for those lost MWhs.

Indeed, because an RPS project's payments for both energy and capacity are combined in a single energy price and are tied directly to performance, the availability incentive in an RPS contract is far stronger than the SCP availability incentive. A typical all-in price for wind or solar generation under an RPS contract is \$100 per MWh. Thus, if a wind or solar project loses production as a result of a forced outage, its revenues drop by approximately \$100 for each MWh not produced. This loss of revenues occurs for every MWh not produced, without a dead band around a target availability in which there is no penalty. In contrast, the CAISO's SCP availability incentive penalty of \$41 per kW-year, allocated over the peak hours to which it applies and expressed on a comparable energy payment basis, amounts to \$33 per MWh.<sup>7</sup> In

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<sup>6</sup> See e.g., *Decision Conditionally Accepting 2009 Renewables Portfolio Standard Procurement Plans and Integrated Resource Plan Supplements*, CPUC Decision 09-06-018 (June 8, 2009).

<sup>7</sup> \$41 per kW-year times 1,000 divided by 1,254 peak hours per year (5 hours per non-holiday weekday).

addition, the SCP incentive does not apply to every forced outage; as it only becomes effective when a project's forced outages reduce its monthly capacity factor in the designated peak hours to less than the lower bound of the dead band around the monthly target availability. This is a far weaker availability incentive than the payment-only-for-performance incentive that is inherent in the all-in energy price structure of RPS contracts.

Furthermore, RPS contracts have additional availability incentives. For example, Southern California Edison Company's ("SCE") pro forma RPS contract (including the proposed 2010 version) requires the Seller to provide an Availability Guarantee which mandates that the project achieve a specified availability or pay damages to SCE.<sup>8</sup> SCE's 2009 pro forma PPA also includes an Energy Delivery Obligation that requires the project to deliver at least a certain amount of energy on an annual or biennial basis (the P-95 wind output or 140% of the P-50 value for solar measured over 2 years).<sup>9</sup> Thus, the RPS contracts already provide an ample incentive to maintain a high level of availability.

2. Applying SCP To Intermittent Renewable Generators Under An RPS Contract Will Result In the Generator Being Penalized Twice For the Same Forced Outage

Given these multiple existing availability incentives, applying the SCP availability incentive to intermittent renewable resources clearly would subject them to a new double penalty for forced outages. The CAISO and the other parties supporting the CAISO SCP II proposal have consistently ignored the fact that intermittent resources are already subject to multiple strong availability incentives as an inherent feature of how they are paid for their power, and have never justified why intermittent renewable resources should face an additional penalty

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<sup>8</sup> The relevant provisions are in Section 3.17 and Exhibit O of SCE's 2009 *pro forma* RPS contract, which is available at [www.sce.com](http://www.sce.com). Excerpts of this agreement are also included in Attachment A to this motion to intervene and protest.

<sup>9</sup> This requirement is addressed in Section 3.05 and Exhibit F of the SCE 2009 *pro forma* RPS contract.

as a result of the application of the SCP availability incentive to these resources. In June 2009, this Commission exempted intermittent resources from the SCP availability incentive on the basis of a much smaller “double penalty” problem based on the CAISO’s assumption that intermittent generators were somehow paid on the basis of the RA capacity they provided.<sup>10</sup> Now, the Commission should maintain the exemption based on a correct understanding, presented above, of the multiple incentives to achieve high availability that intermittent resources in California already face and will continue to face, even if exempted from the SCP availability incentive, and the much larger “double penalty” problem created by the application of SCP to intermittent resources. Significantly, none of the RPS contract incentives to achieve high availability will be removed or affected in any way by the recent CPUC decision changing the methodology for “counting” the RA capacity of intermittent resources.

Layering on yet another incentive is duplicative and burdensome for these resources, and would discriminate against these renewable resources in comparison to fossil resources that do not face such double penalties for forced outages. Subjecting renewable generators to double penalties will only serve to make the development of these preferred resources more complex and expensive, thus harming the state’s ability to meet its ambitious renewable energy goals. Therefore, the Commission should reject the CAISO’s proposal to apply the SCP to intermittent renewable resources.

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<sup>10</sup> See June 2009 Order, at P 9 (paraphrasing the CAISO’s position that non-availability penalties are appropriate “because resource adequacy resources receive capacity payments for providing resource adequacy capacity”).

3. Applying SCP to Intermittent Renewable Generators Is Not Necessary To Achieve A Liquid RA Market

Finally, the CAISO's goal in developing the SCP is, in the words of the June 2009 Order, to "facilitate the selling, purchasing, and trading of resource adequacy capacity."<sup>11</sup> However, achieving this goal does not require the immediate integration of intermittent resources into the SCP availability incentive. RA capacity from intermittent resources is not likely to be an attractive source of tradable RA capacity. The output of intermittent renewables is designed to meet the state's RPS requirements, and the associated RA capacity is contractually dedicated to the purchasing utility, which clearly has a need for and will use this capacity to meet their considerable RA needs. There is no evident reason why the utility would want to trade this capacity, nor has the CAISO explained why this capacity must be subject to the SCP in order to achieve the goal of a more liquid market for RA capacity. In any event, because the RA qualifying capacities from these resources are re-calculated annually based on historical production, the utility could have difficulty selling this RA capacity for a term of more than one year.

For these reasons, the success of the CAISO's SCP initiative does not at all depend on whether intermittent renewable generators have exactly the same availability incentive mechanism as dispatchable fossil resources. It is important that intermittent resources have strong incentives to maintain high availability, and CalWEA has shown above that the California RPS contracts provide such incentives. Indeed, these existing incentives have far greater financial impact than the SCP incentive mechanism. This issue does not have to be resolved now, and can be reviewed in the future, when more intermittent resources are on-line and after experience has been gained in the trading of RA capacity using the SCP. Those

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<sup>11</sup> June 2009 Order, at P 1.

developments will show whether the development of the RA market really requires subjecting intermittent resources to the double penalty of another layer of availability incentives.

The Commission has already determined that intermittent renewable resources should not be subject to duplicative penalties for non-availability. As described above, the California RPS contracts already provide ample incentives for intermittent renewable generators to maintain a high level of availability. The application of SCP to these resources would result in the resource being penalized twice for the same forced outage – once through the loss of its revenue stream, which includes its equivalent of a capacity payment, and once through the application of a non-availability penalty by the CAISO. To avoid this result, CalWEA requests that the Commission reject the CAISO’s proposal to extend the SCP to intermittent renewable generators.

#### IV. CONCLUSION

Wherefore, for the foregoing reasons, (1) CalWEA respectfully moves for leave to intervene as a full party to this proceeding, (2) protests the CAISO's filing, and (3) requests the Commission to reject the CAISO's proposal to extend SCP to RA resources with qualifying capacity determined by historical output.

Respectfully submitted,

/s/ Nancy Rader

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*On behalf of the California Wind  
Energy Association*

Dated: July 13, 2010

**ATTACHMENT A**  
**Excerpts from Southern California Edison 2009**  
**pro forma RPS contract**

## ATTACHMENT A

### Excerpts from Southern California Edison 2009 pro forma RPS contract

#### 3.05 Seller's Energy Delivery Obligation.

On the commencement of the first Term Year and for every Term Year thereafter, Seller is subject to the electric energy delivery requirements and damages for failure to perform as set forth in this Section 3.05.

##### (a) Performance Requirements.

##### (i) Seller's *[Annual]* Energy Delivery Obligation.

Seller's Energy Delivery Obligation equals one hundred forty percent (140%) of the Expected Annual Net Energy Production.

*{SCE Comment: Non-Wind Intermittent only.}*

Seller's Annual Energy Delivery Obligation equals the P-95 Value in the Final Wind Report.

*{SCE Comment: Wind only.}*

Seller's Annual Energy Delivery Obligation equals ninety percent (90%) of the Expected Annual Net Energy Production.

*{SCE Comment: Base Load only.}*

##### (ii) Event of Deficient Energy Deliveries.

At the end of each Term Year commencing with the end of the second Term Year, if the sum of the Qualified Amounts plus any Lost Output (calculated in accordance with Exhibit M) in the applicable Calculation Period does not equal or exceed Seller's Energy Delivery Obligation, *then* an Event of Deficient Energy Deliveries will be deemed to have occurred.

*{SCE Comment: Non-Wind Intermittent only.}*

At the end of each Term Year if the sum of the Qualified Amounts plus any Lost Output (calculated in accordance with Exhibit M) during the Term Year does not equal or exceed Seller's Annual Energy Delivery Obligation, *then* an Event of Deficient Energy Deliveries will be deemed to have occurred.

*{SCE Comment: Wind and Base Load only.}*

##### (b) Energy Replacement Damage Amount.

If an Event of Deficient Energy Deliveries occurs, as determined in accordance with Section 3.05 (a)(ii) above, the Parties acknowledge that the damages sustained by SCE associated with Seller's failure to meet Seller's *[Annual]* Energy Delivery Obligation would be difficult or impossible to determine, or that obtaining an adequate remedy would be unreasonably time consuming or expensive, and therefore agree that Seller

- (i) shall pay SCE as liquidated damages an amount which is intended to compensate SCE for Seller's failure to perform, irrespective of whether SCE actually purchased such replacement electric energy by reason of Seller's failure to perform (the "Energy Replacement Damage Amount").
- (ii) Within ninety (90) days after the end of the applicable Term Year, SCE shall calculate any Energy Replacement Damage Amount as set forth in Exhibit F, and shall provide Notice to Seller of any Energy Replacement Damage Amount owing, including a detailed explanation of, and rationale for, its calculation methodology, annotated work papers and source data.
- (iii) Seller shall have thirty (30) days after receipt of SCE's Notice to review SCE's calculation and either pay the entire Energy Replacement Damage Amount claimed by SCE or pay any undisputed portion and provide Notice to SCE of the portion Seller disputes along with a detailed explanation of, and rationale for, Seller's calculation methodology, annotated work papers and source data.
- (iv) The Parties shall negotiate in good faith to resolve any disputed portion of the Energy Replacement Damage Amount and shall, as part of such good faith negotiations, promptly provide information or data relevant to the dispute as each Party may possess which is requested by the other Party.
- (v) If the Parties are unable to resolve a dispute regarding any Energy Replacement Damage Amount within thirty (30) days after the sending of a Notice of dispute by Seller, either Party may submit the dispute to mediation and arbitration as provided in Article Twelve.

(c) Continuing Obligations of Seller.

Notwithstanding any payment of an Energy Replacement Damage Amount or any dispute regarding a Quarterly Statement, Seller will remain obligated to convey all electric energy generated by the Generating Facility and all Green Attributes, Capacity Attributes and Resource Adequacy Benefits to SCE during the Term, as provided in Sections 3.01 and 3.02.

**3.17 Availability Guarantee and Obligation to Make Availability Guarantee Lost Production Payment.**

*{SCE Comment: Wind only.}*

- (d) Seller hereby guarantees that the Wind Turbines shall achieve Generating Facility Annual Availability equal to or greater than the Availability Guarantee during each of the first ten (10) Term Years.
- (e) Within thirty (30) days after the end of each of the first ten (10) Term Years, Seller shall provide SCE Notice of the Generating Facility Annual Availability for the prior Term Year.

Seller's Notice must include:

- (i) The Generating Facility Annual Availability for the prior Term Year;

- (ii) A copy of the Wind Turbine manufacturer's wind turbine availability calculation and methodology so long as any of the Wind Turbines are still under warranty;
- (iii) A summary of availability of each Wind Turbine, based on the manufacturer's wind turbine availability calculation and methodology, during the prior Term Year;
- (iv) A copy of all supporting data from the Generating Facility's control system;
- (v) A letter from the Wind Turbine manufacturer, so long as any of the Wind Turbines are under warranty, or an independent engineer reasonably acceptable to SCE, stating that the Wind Turbine manufacturer has reviewed Seller's calculation and methods and results and found them to be consistent with the Wind Turbine manufacturer's wind turbine availability calculation methodology as set forth in its contract guarantee to Seller; and
- (vi) An attestation from Seller's highest ranking executive that the calculation for determining availability is accurate.

(f) Within sixty (60) days of SCE's receipt of Seller's Notice in accordance with Section 3.17(b), SCE shall provide Seller a Notice which must include:

- (i) A calculation of any Availability Guarantee Lost Production Payment calculated in accordance with Exhibit O;
- (ii) An invoice for any Availability Guarantee Lost Production Payment owed to SCE; and
- (iii) Annotated work papers, source data and a detailed explanation of the calculation.

(g) Seller will have thirty (30) days after receipt of SCE's Notice in accordance with Section 3.17(c) to review SCE's calculation and either pay the entire Availability Guarantee Lost Production Payment claimed by SCE or pay any undisputed portion and provide Notice to SCE of the portion Seller disputes along with a detailed explanation of, and rationale for, Seller's calculation methodology, and annotated work papers and source data.

The Parties shall negotiate in good faith to resolve any disputed portion of an Availability Guarantee Lost Production Payment and shall, as part of such good faith negotiations, promptly provide information or data relevant to the dispute as each Party may possess which is requested by the other Party.

If the Parties are unable to resolve a dispute regarding an Availability Guarantee Lost Production Payment within thirty (30) days after the sending of a Notice of dispute by Seller, either Party may submit the dispute to mediation and arbitration pursuant to Article Twelve.

The Availability Guarantee Lost Production Payment shall be made by Seller irrespective of whether SCE actually purchased replacement electric energy as a result of the Generating Facility's failure to achieve the Availability Guarantee.

The Availability Guarantee Lost Production Payment will be a credit against Energy Replacement Damage Amount owed by Seller as provided in Exhibit F, but will not otherwise replace or reduce Seller's obligation to pay the Energy Replacement Damage Amount.

**EXHIBIT F-2**

*Energy Replacement Damage Amount*

\*\*\*SCE Comment: For Wind only.\*\*\*

In accordance with the provisions of Section 3.05, if in any Term Year Seller fails to meet Seller's Annual Energy Delivery Obligation, *then* Seller shall be subject to an Energy Replacement Damage Amount penalty calculated as follows:

ENERGY REPLACEMENT DAMAGE AMOUNT =

$$[(A - B - C) \times (D - E)] - F$$

Where:

- A = Seller's Annual Energy Delivery Obligation in kWh.
- B = Sum of Qualified Amounts over the Term Year in kWh.
- C = Sum of Lost Output over the Term Year in kWh.
- D = Simple average of the Market Price for all Settlement Intervals in the Term Year in \$/kWh.
- E = Energy Price in \$/kWh (i.e., \$/MWh/1000).
- F = Availability Guarantee Lost Production Payment made by Seller for the applicable Term Year, in dollars.

Notes:

1. In the above calculation, the result of "(D - E)" will not be greater than five cents (\$0.05) per kWh or less than two cents (\$0.02) per kWh.
2. If the result of the calculation above is zero or less, Seller will not be obligated to pay an Energy Replacement Damage Amount.
3. In no event will SCE pay an Energy Replacement Damage Amount.

**EXHIBIT O**

*Availability Guarantee Lost Production Payment*

\*\*\* *SCE Comment: Wind only.* \*\*\*

If Seller fails to meet the Availability Guarantee in any Term Year during the Guarantee Period, *then* Seller shall be subject to an Availability Guarantee Lost Production Payment in accordance with the provisions of Section 3.17, calculated as follows:

$$\text{AVAILABILITY GUARANTEE LOST PRODUCTION PAYMENT} = [(A - B) \times (C \times (D - E))]$$

Where:

- A = Availability Guarantee for the applicable Term Year, in percent.
- B = Generating Facility Annual Availability for the applicable Term Year, in percent.
- C = Expected Annual Net Energy Production, in kWh.
- D = Simple average of the Market Price for all Settlement Intervals during the applicable Term Year, in \$/kWh (i.e., \$/MWh/1000).
- E = Energy Price for the applicable Term Year in \$/kWh (i.e., \$/MWh/1000).

In the above calculation, the result of “(D - E)” will not be greater than two cents (\$0.02) per kWh or less than zero cents (\$0.00) per kWh.

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document by electronic mail or U.S. mail upon each person designated on the official service list compiled by the Secretary in these proceedings.

Dated at Washington, D.C. this 13th day of July, 2010.

*/s/ Chimera N. Bowen*

Chimera N. Bowen