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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**Form 10-Q**

(Mark One)

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d)  
OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended June 30, 2010

Or

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d)  
OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from \_\_\_\_\_ to \_\_\_\_\_  
Commission File No. 001-12079



**Calpine Corporation**

(A Delaware Corporation)

I.R.S. Employer Identification No. 77-0212977

717 Texas Avenue, Suite 1000, Houston, Texas 77002

Telephone: (713) 830-8775

Not Applicable

(Former Address)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. ☒ Yes ☐ No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). ☐ Yes ☐ No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See definition of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	<input checked="" type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/> (Do not check if a smaller reporting company)	Smaller reporting company	<input type="checkbox"/>

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

☐ Yes ☒ No

Indicate by check mark whether the registrant has filed all documents and reports required to be filed by Sections 12, 13 or 15(d) of the Securities Exchange Act of 1934 subsequent to the distribution of securities under a plan confirmed by a court.

☒ Yes ☐ No

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date: 444,586,271 shares of Common Stock, par value \$.001 per share, outstanding on July 28, 2010.

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CALPINE CORPORATION AND SUBSIDIARIES

REPORT ON FORM 10-Q  
For the Quarter Ended June 30, 2010

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**DEFINITIONS**

As used in this Report, the following abbreviations and terms have the meanings as listed below. Additionally, the terms “Calpine,” “we,” “us” and “our” refer to Calpine Corporation and its consolidated subsidiaries, unless the context clearly indicates otherwise. The term “Calpine Corporation” refers only to Calpine Corporation and not to any of its subsidiaries. Unless and as otherwise stated, any references in this Report to any agreement means such agreement and all schedules, exhibits and attachments in each case as amended, restated, supplemented or otherwise modified to the date of filing this Report.

<b>ABBREVIATION</b>	<b>DEFINITION</b>
2009 Form 10-K	Calpine Corporation’s Annual Report on Form 10-K for the year ended December 31, 2009, filed with the SEC on February 25, 2010
2017 First Lien Notes	\$1.2 billion aggregate principal amount of 7 1/4% senior secured notes due 2017, issued October 21, 2009, in exchange for a like principal amount of term loans under the First Lien Credit Facility
2019 First Lien Notes	\$400 million aggregate principal amount of 8% senior secured notes due 2019, issued May 25, 2010
2020 First Lien Notes	\$1.1 billion aggregate principal amount of 7.875% senior secured notes due 2020, issued July 23, 2010
AB 32	The California Global Warming Solutions Act of 2006, Assembly Bill 32, Chapter 488, Statutes of 2006, as codified in the Health and Safety Code section 38500 et seq
Adjusted EBITDA	EBITDA as adjusted for the effects of (a) impairment charges, (b) reorganization items, (c) major maintenance expense, (d) operating lease expense, (e) any unrealized gains or losses on commodity derivative mark-to-market activity, (f) adjustments to reflect only the Adjusted EBITDA from our unconsolidated investments, (g) stock-based compensation expense, (h) non-cash gains or losses on sales, dispositions or impairments of assets, (i) non-cash gains and losses from intercompany foreign currency translations, (j) any gains or losses on the repurchase or extinguishment of debt, (k) Connectiv acquisition-related costs, (l) adjusted EBITDA from our discontinued operations and (m) any other extraordinary, unusual or non-recurring items
AOCI	Accumulated Other Comprehensive Income
Average availability	Represents the total hours during the period that our plants were in-service or available for service as a percentage of the total hours in the period
Average capacity factor, excluding peakers	The average capacity factor, excluding peakers, is a measure of total actual generation as a percent of total potential generation. It is calculated by dividing (a) total MWh generated by our power plants, excluding peakers, by (b) the product of multiplying (i) the average total MW in operation, excluding peakers, during the period by (ii) the total hours in the period
BLM	Bureau of Land Management of the U.S. Department of the Interior
Blue Spruce	Blue Spruce Energy Center, LLC, an indirect, wholly owned subsidiary that owns Blue Spruce Energy Center, a 310 MW natural gas-fired peaker power plant located in Aurora, Colorado
Btu	British thermal unit(s), a measure of heat content
CAISO	California ISO
CalGen	Calpine Generating Company, LLC, an indirect, wholly owned subsidiary
CalGen Third Lien Debt	Together, the \$680,000,000 Third Priority Secured Floating Rate Notes Due 2011, issued by CalGen and CalGen Finance Corp.; and the \$150,000,000 11 1/2% Third Priority Secured Notes Due 2011, issued by CalGen and CalGen Finance Corp., in each case repaid on March 29, 2007

ABBREVIATION	DEFINITION
Calpine Equity Incentive Plans	Collectively, the Director Plan and the Equity Plan, which provide for grants of equity awards to Calpine employees and non-employee members of Calpine's Board of Directors
CCFC	Calpine Construction Finance Company, L.P., an indirect, wholly owned subsidiary
CCFC Notes	The \$1.0 billion aggregate principal amount of 8.0% Senior Secured Notes due 2016 issued May 19, 2009, by CCFC and CCFC Finance Corp.
CCFC Old Notes	The \$415 million total aggregate principal amount of Second Priority Senior Secured Floating Rate Notes Due 2011 issued by CCFC and CCFC Finance Corp., comprising \$365 million aggregate principal amount issued August 14, 2003, and \$50 million aggregate principal amount issued September 25, 2003, and redeemed, in each case, on June 18, 2009
CCFC Term Loans	The \$385 million First Priority Senior Secured Institutional Term Loans due 2009 borrowed by CCFC under the Credit and Guarantee Agreement, dated as of August 14, 2003, among CCFC, the guarantors party thereto, and Goldman Sachs Credit Partners L.P., as sole lead arranger, sole bookrunner, administrative agent and syndication agent, and repaid on May 19, 2009
CCFCP	CCFC Preferred Holdings, LLC
CCFCP Preferred Shares	The \$300 million of six-year redeemable preferred shares due 2011 issued by CCFCP and redeemed on or before July 1, 2009
CEHC	Conectiv Energy Holding Company, a wholly owned subsidiary of Conectiv
Channel Energy Center	Our 608 MW natural gas-fired cogeneration power plant located in Houston, Texas
Chapter 11	Chapter 11 of the U.S. Bankruptcy Code
Cogeneration	Using a portion or all of the steam generated in the power generating process to supply a customer with steam for use in the customer's operations
Commodity Collateral Revolver	Commodity Collateral Revolving Credit Agreement, dated as of July 8, 2008, among Calpine Corporation as borrower, Goldman Sachs Credit Partners L.P., as payment agent, sole lead arranger and sole bookrunner, and the lenders from time to time party thereto, which was repaid on July 8, 2010
Commodity expense	The sum of our expenses from fuel and purchased energy expense, fuel transportation expense, transmission expense and cash settlements from our marketing, hedging and optimization activities that are included in our mark-to-market activity in fuel and purchased energy expense, but excludes the unrealized portion of our mark-to-market activity
Commodity Margin	Non-GAAP financial measure that includes power and steam revenues, sales of purchased power and natural gas, capacity revenue, REC revenue, sales of surplus emission allowances, transmission revenue and expenses, fuel and purchased energy expense, fuel transportation expense, RGGI compliance and other environmental costs, and cash settlements from our marketing, hedging and optimization activities that are included in mark-to-market activity, but excludes the unrealized portion of our mark-to-market activity and other revenues
Commodity revenue	The sum of our revenues from power and steam sales, sales of purchased power and natural gas, capacity revenue, REC revenue, sales of surplus emission allowances, transmission revenue, and cash settlements from our marketing, hedging and optimization activities that are included in our mark-to-market activity in operating revenues, but excludes the unrealized portion of our mark-to-market activity
Company	Calpine Corporation, a Delaware corporation, and its subsidiaries
Conectiv	Conectiv Energy, a wholly owned subsidiary of PHI

ABBREVIATION	DEFINITION
Conectiv Acquisition	The acquisition of all of the membership interests in CEHC pursuant to the Conectiv Purchase Agreement on July 1, 2010 whereby we acquired all of the power generation assets of Conectiv from PHI, which include 18 operating power plants and one plant under construction, with approximately 4,490 MW of capacity (including completion of the York Energy Center, formerly known as the Delta Project, under construction and scheduled upgrades)
Conectiv Purchase Agreement	Purchase Agreement by and among PHI, Conectiv, LLC, CEHC and NDH dated as of April 20, 2010
Confirmation Order	The order of the U.S. Bankruptcy Court entitled “Findings of Fact, Conclusions of Law, and Order Confirming Sixth Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the U.S. Bankruptcy Code,” entered December 19, 2007, confirming the Plan of Reorganization pursuant to section 1129 of the U.S. Bankruptcy Code
CPUC	California Public Utilities Commission
Director Plan	The Amended and Restated Calpine Corporation 2008 Director Incentive Plan
EBITDA	Earnings before interest, taxes, depreciation and amortization
Effective Date	January 31, 2008, the date on which the conditions precedent enumerated in the Plan of Reorganization were satisfied or waived and the Plan of Reorganization became effective
Emergence Date Market Capitalization	The weighted average trading price of Calpine Corporation’s common stock over the 30-day period following the date on which it emerged from Chapter 11 bankruptcy protection, as defined in and calculated pursuant to Calpine Corporation’s amended and restated certificate of incorporation and reported in its Current Report on Form 8-K filed with the SEC on March 25, 2008
EPA	U.S. Environmental Protection Agency
Equity Plan	The Amended and Restated Calpine Corporation 2008 Equity Incentive Plan
ERCOT	Electric Reliability Council of Texas
Exchange Act	U.S. Securities Exchange Act of 1934, as amended
FDIC	U.S. Federal Deposit Insurance Corporation
First Lien Credit Facility	Credit Agreement, dated as of January 31, 2008, as amended by the First Amendment to Credit Agreement and Second Amendment to Collateral Agency and Intercreditor Agreement, dated as of August 20, 2009, among Calpine Corporation, as borrower, certain subsidiaries of the Company named therein, as guarantors, the lenders party thereto, Goldman Sachs Credit Partners L.P., as administrative agent and collateral agent, and the other agents named therein
First Lien Notes	Collectively, the 2017 First Lien Notes, the 2019 First Lien Notes and the 2020 First Lien Notes
GAAP	Generally accepted accounting principles in the U.S.
Geysers Assets	Our geothermal power plant assets, including our steam extraction and gathering assets, located in northern California consisting of 15 operating power plants and one plant not in operation
GHG(s)	Greenhouse gas(es), primarily carbon dioxide (CO <sub>2</sub> ), and including methane (CH <sub>4</sub> ), nitrous oxide (N <sub>2</sub> O), sulfur hexafluoride (SF <sub>6</sub> ), hydrofluorocarbons (HFCs) and perfluorocarbons (PFCs)
Greenfield LP	Greenfield Energy Centre LP, a 50% partnership interest between certain of our subsidiaries and a third party which operates the Greenfield Energy Centre, a 1,030 MW natural gas-fired, combined-cycle power plant in Ontario, Canada
Heat Rate(s)	A measure of the amount of fuel required to produce a unit of power
ISO	Independent System Operator
ISO NE	ISO New England

ABBREVIATION	DEFINITION
kWh	Kilowatt-hour(s), a measure of power produced
LIBOR	London Inter-Bank Offered Rate
Lyondell	Collectively, Lyondell Chemical Co. and certain of its subsidiaries, which filed for protection under Chapter 11 in the U.S. Bankruptcy Court and received U.S. Bankruptcy Court approval of their plan of reorganization on April 23, 2010
Market Capitalization	As of any date, Calpine Corporation's then market capitalization calculated using the rolling 30-day weighted average trading price of Calpine Corporation's common stock, as defined in and calculated in accordance with the Calpine Corporation amended and restated certificate of incorporation
Market Heat Rate(s)	The regional power price divided by the corresponding regional natural gas price
MMBtu	Million Btu
MW	Megawatt(s), a measure of plant capacity
MWh	Megawatt hour(s), a measure of power produced
NDH	New Development Holdings, LLC, an indirect, wholly owned subsidiary of Calpine Corporation
NDH Project Debt	The \$1.3 billion senior secured term loan facility and the \$100 million revolving credit facility issued on July 1, 2010 under the credit agreement, dated as of June 8, 2010, among NDH, as borrower, Credit Suisse AG, as administrative agent, collateral agent, issuing bank and syndication agent, Credit Suisse Securities (USA) LLC, Citigroup Global Markets Inc. and Deutsche Bank Securities Inc., as joint bookrunners and joint lead arrangers, Credit Suisse AG, Citibank, N.A., and Deutsche Bank Trust Company Americas, as co-documentation agents and the lenders party thereto
NJDEP	New Jersey Department of Environmental Protection
NOL(s)	Net operating loss(es)
NO <sub>x</sub>	Nitrogen oxides
NYISO	New York ISO
NYMEX	New York Mercantile Exchange
OCI	Other Comprehensive Income
OMEC	Otay Mesa Energy Center, LLC, an indirect, wholly owned subsidiary that owns the Otay Mesa Energy Center, a 608 MW power plant located in San Diego county, California
OTC	Over-the-Counter
PCF	Power Contract Financing, L.L.C.
PCF III	Power Contract Financing III, LLC
PG&E	Pacific Gas & Electric Company
PHI	Pepco Holdings, Inc.
PJM	Pennsylvania - New Jersey - Maryland Interconnection
Plan of Reorganization	Sixth Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the U.S. Bankruptcy Code filed by the U.S. Debtors with the U.S. Bankruptcy Court on December 19, 2007, as amended, modified or supplemented through the filing of this Report
PPA(s)	Any term power purchase agreement or other contract for a physically settled sale (as distinguished from a financially settled future, option or other derivative or hedge transaction) of any power product, including power, capacity and/or ancillary services, in the form of a bilateral agreement or a written or oral confirmation of a transaction between two parties to a master agreement, including sales related to a tolling transaction in which the purchaser provides the fuel required by us to generate such power and we receive a variable payment to convert the fuel into power and steam

ABBREVIATION	DEFINITION
PSCo	Public Service Company of Colorado, a wholly owned subsidiary of Xcel Energy Inc.
PSD	Prevention of significant deterioration
REC	Renewable Energy Credit
RGGI	Regional Greenhouse Gas Initiative
Rocky Mountain	Rocky Mountain Energy Center, LLC, an indirect, wholly owned subsidiary that owns Rocky Mountain Energy Center, a 621 MW combined-cycle, natural gas-fired power plant located in Keenesburg, Colorado
SDG&E	San Diego Gas & Electric Company
SEC	U.S. Securities and Exchange Commission
SO <sub>2</sub>	Sulfur dioxide
Spark spread(s)	The difference between the sales price of power per MWh and the cost of fuel to produce it
Steam Adjusted Heat Rate	The adjusted Heat Rate for our natural gas-fired power plants, excluding peakers, calculated by dividing (a) the fuel consumed in Btu reduced by the net equivalent Btu in steam exported to a third party by (b) the kWh generated. Steam Adjusted Heat Rate is a measure of fuel efficiency, so the lower our Steam Adjusted Heat Rate, the lower our cost of generation
TCEQ	Texas Commission on Environmental Quality
U.S. Bankruptcy Court	U.S. Bankruptcy Court for the Southern District of New York
U.S. Debtors	Calpine Corporation and each of its subsidiaries and affiliates that filed voluntary petitions for reorganization under Chapter 11 of the U.S. Bankruptcy Code in the U.S. Bankruptcy Court, which matters are being jointly administered in the U.S. Bankruptcy Court under the caption <i>In re Calpine Corporation, et al.</i> , Case No. 05-60200 (BRL)
VAR	Value-at-risk
VIE(s)	Variable interest entity(ies)
Whitby	Whitby Cogeneration Limited Partnership, a 50 MW natural gas-fired, cogeneration power plant in Ontario, Canada, a 50% equity interest held by our Canadian subsidiaries
York Energy Center	565 MW dual fuel, combined-cycle generation power plant (formerly known as the Delta Project) under construction located in Peach Bottom Township, Pennsylvania, included in the Conectiv Acquisition

## Forward-Looking Statements

In addition to historical information, this Quarterly Report on Form 10-Q (this “Report”) contains “forward-looking statements” within the meaning of Section 27A of the U.S. Securities Act of 1933, as amended, and Section 21E of the Exchange Act. We use words such as “believe,” “intend,” “expect,” “anticipate,” “plan,” “may,” “will,” “should,” “estimate,” “potential,” “project” and similar expressions to identify forward-looking statements. Such statements include, among others, those concerning our expected financial performance and strategic and operational plans, as well as all assumptions, expectations, predictions, intentions or beliefs about future events. You are cautioned that any such forward-looking statements are not guarantees of future performance and that a number of risks and uncertainties could cause actual results to differ materially from those anticipated in the forward-looking statements. Such risks and uncertainties include, but are not limited to:

- The uncertain length and severity of the current general financial and economic downturn, the timing and strength of an economic recovery, if any, and their impacts on our business including demand for our power and steam products, the ability of customers, suppliers, service providers and other contractual counterparties to perform under their contracts with us and the cost and availability of capital and credit;
- Financial results that may be volatile and may not reflect historical trends due to, among other things, fluctuations in prices for commodities such as natural gas and power, fluctuations in liquidity and volatility in the energy commodities markets and our ability to hedge risks;
- Our ability to manage our customer and counterparty exposure and credit risk, including our commodity positions;
- Our ability to manage our significant liquidity needs and to comply with covenants under our existing financing obligations, including our First Lien Credit Facility, First Lien Notes and NDH Project Debt;
- Competition, including risks associated with marketing and selling power in the evolving energy markets;
- Regulation in the markets in which we participate and our ability to effectively respond to changes in laws and regulations or the interpretation thereof including changing market rules and evolving federal, state and regional laws and regulations including those related to GHG emissions and derivative transactions;
- Natural disasters such as hurricanes, earthquakes and floods, or acts of terrorism that may impact our power plants or the markets our power plants serve;
- Seasonal fluctuations of our results and exposure to variations in weather patterns;
- Disruptions in or limitations on the transportation of natural gas and transmission of power;
- Our ability to attract, retain and motivate key employees;
- Our ability to implement our business plan and strategy;
- Risks related to our geothermal resources, including the adequacy of our steam reserves, unusual or unexpected steam field well and pipeline maintenance requirements, variables associated with the injection of wastewater to the steam reservoir and potential regulations or other requirements related to seismicity concerns that may delay or increase the cost of developing or operating geothermal resources;
- Risks associated with the operation, construction and development of power plants, including unscheduled outages or delays and plant efficiencies;
- Present and possible future claims, litigation and enforcement actions;
- The expiration or termination of our PPAs and the related results on revenues;
- Our planned sale of Blue Spruce and Rocky Mountain may not close as planned;
- Future PJM capacity revenues expected from the Conectiv Acquisition may not occur at expected levels; and
- Other risks identified in this Report and our 2009 Form 10-K.

Given the risks and uncertainties surrounding forward-looking statements, you should not place undue reliance on these statements. Many of these factors are beyond our ability to control or predict. Our forward-looking statements speak only as of the date of this Report. Other than as required by law, we undertake no obligation to update or revise forward-looking statements, whether as a result of new information, future events, or otherwise.

## Where You Can Find Other Information

Our website is [www.calgpine.com](http://www.calgpine.com). Information contained on our website is not part of this Report. Information that we furnish or file with the SEC, including our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and any amendments to or exhibits included in these reports are available for download, free of charge, on our website soon after such reports are filed with or furnished to the SEC. Our SEC filings, including exhibits filed therewith, are also available at the SEC’s website at [www.sec.gov](http://www.sec.gov). You may obtain and copy any document we furnish or file



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with the SEC at the SEC's public reference room at 100 F Street, NE, Room 1580, Washington, D.C. 20549. You may obtain information on the operation of the SEC's public reference facilities by calling the SEC at 1-800-SEC-0330. You may request copies of these documents, upon payment of a duplicating fee, by writing to the SEC at its principal office at 100 F Street, NE, Room 1580, Washington, D.C. 20549.

# PART I — FINANCIAL INFORMATION

## Item 1. Financial Statements

### CALPINE CORPORATION AND SUBSIDIARIES

#### CONSOLIDATED CONDENSED STATEMENTS OF OPERATIONS (Unaudited)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2010	2009	2010	2009
	(in millions, except share and per share amounts)			
Operating revenues	\$ 1,430	\$ 1,445	\$ 2,944	\$ 3,097
Cost of revenue:				
Fuel and purchased energy expense	904	922	1,873	1,937
Plant operating expense	213	206	431	449
Depreciation and amortization expense	132	108	265	213
Other cost of revenue	24	20	45	43
Total cost of revenue	1,273	1,256	2,614	2,642
Gross profit	157	189	330	455
Sales, general and other administrative expense	53	48	78	93
(Income) from unconsolidated investments in power plants	(6)	(23)	(13)	(40)
Other operating expense	2	5	7	9
Income from operations	108	159	258	393
Interest expense	216	203	408	409
Interest (income)	(4)	(4)	(6)	(10)
Debt extinguishment costs	7	33	7	33
Other (income) expense, net	1	(1)	6	2
Loss before reorganization items, income taxes and discontinued operations	(112)	(72)	(157)	(41)
Reorganization items	—	3	—	6
Loss before income taxes and discontinued operations	(112)	(75)	(157)	(47)
Income tax expense	6	15	17	24
Loss before discontinued operations	(118)	(90)	(174)	(71)
Discontinued operations, net of tax expense	4	11	12	23
Net loss	(114)	(79)	(162)	(48)
Net (income) loss attributable to the noncontrolling interest	(1)	1	—	2
Net loss attributable to Calpine	\$ (115)	\$ (78)	\$ (162)	\$ (46)
Basic and diluted loss per common share attributable to Calpine:				
Weighted average shares of common stock outstanding (in thousands)	486,057	485,675	485,989	485,560
Loss before discontinued operations	\$ (0.25)	\$ (0.18)	\$ (0.35)	\$ (0.14)
Discontinued operations, net of tax expense	0.01	0.02	0.02	0.05
Net loss per common share – basic and diluted	\$ (0.24)	\$ (0.16)	\$ (0.33)	\$ (0.09)

The accompanying notes are an integral part of these Consolidated Condensed Financial Statements.

**CALPINE CORPORATION AND SUBSIDIARIES**  
**CONSOLIDATED CONDENSED BALANCE SHEETS**  
(Unaudited)

	June 30, 2010	December 31, 2009
	(in millions, except share and per share amounts)	
ASSETS		
Current assets:		
Cash and cash equivalents (\$207 and \$242 attributable to VIEs. See Note 1)	\$ 971	\$ 989
Accounts receivable, net of allowance of \$2 and \$14	679	750
Margin deposits and other prepaid expense	331	490
Restricted cash, current (\$267 and \$322 attributable to VIEs. See Note 1)	298	508
Derivative assets, current	1,240	1,119
Assets held for sale (\$548 attributable to VIEs. See Note 1)	548	—
Inventory and other current assets	222	243
Total current assets	4,289	4,099
Property, plant and equipment, net (\$5,208 and \$5,319 attributable to VIEs. See Note 1)	11,408	11,583
Restricted cash, net of current portion (\$40 and \$45 attributable to VIEs. See Note 1)	47	54
Investments	89	214
Long-term derivative assets	223	127
Other assets	593	573
Total assets	\$ 16,649	\$ 16,650
LIABILITIES & STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 482	\$ 578
Accrued interest payable	59	54
Debt, current portion (\$575 and \$106 attributable to VIEs. See Note 1)	699	463
Derivative liabilities, current	1,244	1,360
Liabilities held for sale	13	—
Other current liabilities	276	294
Total current liabilities	2,773	2,749
Debt, net of current portion (\$2,816 and \$3,042 attributable to VIEs. See Note 1)	8,827	8,996
Deferred income taxes, net of current portion	112	54
Long-term derivative liabilities	382	197
Other long-term liabilities	216	208
Total liabilities	12,310	12,204
Commitments and contingencies (see Note 14)		
Stockholders' equity:		
Preferred stock, \$.001 par value per share; 100,000,000 shares authorized; none issued and outstanding	—	—
Common stock, \$.001 par value per share; 1,400,000,000 shares authorized; 445,034,189 and 443,325,827 shares issued, respectively, and 444,586,271 and 442,998,255 shares outstanding, respectively	1	1
Treasury stock, at cost, 447,918 and 327,572 shares, respectively	(5)	(3)
Additional paid-in capital	12,268	12,256
Accumulated deficit	(7,702)	(7,540)
Accumulated other comprehensive loss	(223)	(266)
Total Calpine stockholders' equity	4,339	4,448
Noncontrolling interest	—	(2)
Total stockholders' equity	4,339	4,446
Total liabilities and stockholders' equity	\$ 16,649	\$ 16,650

The accompanying notes are an integral part of these  
Consolidated Condensed Financial Statements.

**CALPINE CORPORATION AND SUBSIDIARIES**  
**CONSOLIDATED CONDENSED STATEMENTS OF CASH FLOWS**  
(Unaudited)

	<b>Six Months Ended June 30,</b>	
	<b>2010</b>	<b>2009</b>
	<b>(in millions)</b>	
Cash flows from operating activities:		
Net loss	\$ (162)	\$ (48)
Adjustments to reconcile net loss to net cash provided by (used in) operating activities:		
Depreciation and amortization expense <sup>(1)</sup>	298	268
Debt extinguishment costs	7	7
Deferred income taxes	(4)	26
Loss on disposal of assets	9	20
Unrealized mark-to-market activity, net	(62)	(23)
Income from unconsolidated investments in power plants	(13)	(40)
Stock-based compensation expense	12	22
Other	1	1
Change in operating assets and liabilities:		
Accounts receivable	68	29
Derivative instruments, net	(81)	(257)
Other assets	171	173
Accounts payable and accrued expenses	(91)	(23)
Other liabilities	3	(191)
Net cash provided by (used in) operating activities	<u>156</u>	<u>(36)</u>
Cash flows from investing activities:		
Purchases of property, plant and equipment	(97)	(97)
Cash acquired due to consolidation of OMEC	8	—
Contributions to unconsolidated investments	—	(8)
(Increase) decrease in restricted cash	224	(31)
Other	3	(1)
Net cash provided by (used in) investing activities	<u>138</u>	<u>(137)</u>
Cash flows from financing activities:		
Repayments of project financing, notes payable and other	(277)	(969)
Borrowings from project financing, notes payable and other	—	1,027
Issuance of First Lien Notes	400	—
Repayments on First Lien Credit Facility	(430)	(30)
Financing costs	(15)	(29)
Refund of financing costs	10	—
Other	—	(1)
Net cash used in financing activities	<u>(312)</u>	<u>(2)</u>
Net decrease in cash and cash equivalents	<u>(18)</u>	<u>(175)</u>
Cash and cash equivalents, beginning of period	989	1,657
Cash and cash equivalents, end of period	<u>\$ 971</u>	<u>\$ 1,482</u>
Cash paid during the period for:		
Interest, net of amounts capitalized	\$ 362	\$ 398
Income taxes	\$ 9	\$ 2
Reorganization items included in operating activities, net	\$ —	\$ 6
<b>Supplemental disclosure of non-cash investing and financing activities:</b>		
Settlement of commodity contract with project financing	\$ —	\$ 79
Change in capital expenditures included in accounts payable	\$ (7)	\$ —

(1) Includes depreciation and amortization that is also recorded in sales, general and other administrative expense and interest expense on our Consolidated Condensed Statements of Operations.

The accompanying notes are an integral part of these  
Consolidated Condensed Financial Statements.

## CALPINE CORPORATION AND SUBSIDIARIES

## NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS

June 30, 2010

(Unaudited)

**1. Basis of Presentation and Summary of Significant Accounting Policies**

We are an independent wholesale power generation company engaged in the ownership and operation primarily of natural gas-fired and geothermal power plants in North America. We have a significant presence in the major competitive power markets in the U.S., including CAISO and ERCOT, and the Conectiv Acquisition on July 1, 2010 (see Note 2), gives us significant presence in the PJM market. We sell wholesale power, steam, regulatory capacity, renewable energy credits and ancillary services to our customers, including industrial companies, retail power providers, utilities, municipalities, independent electric system operators, marketers and others. We engage in the purchase of natural gas as fuel for our power plants and in related natural gas transportation and storage transactions, and in the purchase of electric transmission rights to deliver power to our customers. We also enter into natural gas and power physical and financial contracts to economically hedge our business risks and optimize our portfolio of power plants.

*Basis of Interim Presentation* — The accompanying unaudited, interim Consolidated Condensed Financial Statements of Calpine Corporation, a Delaware corporation, and consolidated subsidiaries have been prepared pursuant to the rules and regulations of the SEC. In the opinion of management, the Consolidated Condensed Financial Statements include the normal, recurring adjustments necessary for a fair statement of the information required to be set forth therein. Certain information and note disclosures normally included in financial statements prepared in accordance with GAAP have been condensed or omitted from these statements pursuant to such rules and regulations and, accordingly, these financial statements should be read in conjunction with our audited Consolidated Financial Statements for the year ended December 31, 2009, included in our 2009 Form 10-K. The results for interim periods are not necessarily indicative of the results for the entire year primarily due to seasonal fluctuations in our revenues, timing of major maintenance expense, volatility of commodity prices and unrealized gains and losses from derivative contracts.

*Consolidation of OMEC* — We were required by GAAP to adopt new accounting standards for VIEs which became effective January 1, 2010 and required us to perform an analysis to determine whether we should consolidate any of our previously unconsolidated VIEs or deconsolidate any of our previously consolidated VIEs. We completed our required analysis and determined that we are the primary beneficiary of OMEC. Accordingly, as required by GAAP, we consolidated OMEC effective January 1, 2010. The consolidation of OMEC on January 1, 2010 was accounted for using historical cost and resulted in the addition to our Consolidated Condensed Balance Sheet of approximately \$8 million in cash and cash equivalents, \$535 million in net property, plant and equipment, \$26 million in other current and non-current assets, \$375 million in project debt and \$50 million in other current and non-current liabilities, and the removal of \$144 million representing our investment balance in OMEC. Our Consolidated Condensed Financial Statements as of and for the three and six months ended June 30, 2010, include the consolidated balances of OMEC. We presented our investment in OMEC's net assets, revenues and expenses under the equity method of accounting as of December 31, 2009, and for the three and six months ended June 30, 2009. We made no other changes to our group of subsidiaries that we consolidate as a result of the adoption of these new standards. See Note 4 for further discussion of accounting for our VIEs.

*Use of Estimates in Preparation of Financial Statements* — The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues, expenses and related disclosures included in our Consolidated Condensed Financial Statements. Actual results could differ from those estimates.

*Fair Value of Financial Instruments and Derivatives* — The carrying values of cash equivalents (including amounts in restricted cash), accounts receivable, accounts payable and other receivables and payables approximate their respective fair values due to their short-term maturities. See Note 6 for disclosures regarding the fair value of our debt instruments and Notes 7 and 8 for disclosures regarding the fair values of our derivative instruments.

*Concentrations of Credit Risk* — Financial instruments that potentially subject us to credit risk consist of cash and cash equivalents, restricted cash, accounts and notes receivable and derivative assets. Certain of our cash and cash equivalents, as well as our restricted cash balances, exceed FDIC insured limits or are invested in money market accounts with investment banks that are not FDIC insured. We place our cash and cash equivalents and restricted cash in what we believe are credit-worthy financial institutions and certain of our money market accounts invest in U.S. Treasury securities or

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other obligations issued or guaranteed by the U.S. Government, its agencies or instrumentalities. Additionally, we actively monitor the credit risk of our receivable and derivative counterparties. Our accounts and notes receivable are concentrated within entities engaged in the energy industry, mainly within the U.S. We generally have not collected collateral for accounts receivable from utilities and end-user customers; however, we may require collateral in the future. For financial and commodity counterparties, we evaluate the net accounts receivable, accounts payable and fair value of commodity contracts and may require security deposits, cash margin or letters of credit to be posted if our exposure reaches a certain level or their credit rating declines.

**Cash and Cash Equivalents** — We consider all highly liquid investments with an original maturity of three months or less to be cash equivalents. We have certain project finance facilities and lease agreements that require us to establish and maintain segregated cash accounts which have been pledged as security in favor of the lenders under such project finance facilities, and the use of certain cash balances on deposit in such accounts is limited, at least temporarily, to the operations of the respective projects. At June 30, 2010, and December 31, 2009, we had cash and cash equivalents of \$213 million and \$264 million, respectively, that were subject to such project finance facilities and lease agreements. Cash and cash equivalent balances that can only be used to settle the obligations of our consolidated VIEs have been disclosed on the face of our Consolidated Condensed Balance Sheets as required under the new accounting standards for VIEs. See Note 4 for a further discussion of accounting for our VIEs.

**Restricted Cash** — Certain of our debt agreements, lease agreements or other operating agreements require us to establish and maintain segregated cash accounts, the use of which are restricted. These amounts are held by depository banks in order to comply with the contractual provisions requiring reserves for payments such as for debt service, rent, major maintenance and debt repurchases or with applicable regulatory requirements. Funds that can be used to satisfy obligations due during the next 12 months are classified as current restricted cash, with the remainder classified as non-current restricted cash. Restricted cash is generally invested in accounts earning market rates; therefore, the carrying value approximates fair value. Such cash is excluded from cash and cash equivalents on our Consolidated Condensed Balance Sheets and Statements of Cash Flows. The table below represents the components of our restricted cash as of June 30, 2010, and December 31, 2009 (in millions):

	June 30, 2010			December 31, 2009		
	Current	Non-Current	Total	Current	Non-Current	Total
Debt service	\$ 56	\$ 25	\$ 81	\$ 193	\$ 25	\$ 218
Rent reserve	17	5	22	34	—	34
Construction/major maintenance	91	15	106	87	22	109
Security/project/insurance	110	—	110	146	—	146
Other	24	2	26	48	7	55
Total	<u>\$ 298</u>	<u>\$ 47</u>	<u>\$ 345</u>	<u>\$ 508</u>	<u>\$ 54</u>	<u>\$ 562</u>

**Inventory** — At June 30, 2010, and December 31, 2009, we had inventory of \$188 million and \$209 million, respectively. Inventory primarily consists of spare parts, stored natural gas, emission reduction credits and natural gas exchange imbalances. Inventory, other than spare parts, is stated primarily at the lower of cost or market value under the weighted average cost method. Spare parts inventory is valued at weighted average cost and are expensed to plant operating expense or capitalized to property, plant and equipment as the parts are utilized and consumed.

**Investments** — We use the equity method of accounting to record our net interest in Greenfield LP, a 50% partnership interest and Whitby, a 50% equity interest where we exercise significant influence over operating and financial policies. As discussed above, we presented our investment in OMEC's net assets, revenues and expenses under the equity method of accounting as of December 31, 2009, and for the three and six months ended June 30, 2009. Our share of net income (loss) is calculated according to our equity ownership or according to the terms of the applicable partnership agreement. See Note 4 for further discussion of our VIEs and unconsolidated investments.

## New Accounting Standards and Disclosure Requirements

**Consolidation of VIEs and Additional VIE Disclosures** — Effective for interim and annual periods beginning after November 15, 2009, the Financial Accounting Standards Board amended the accounting standards for determining which enterprise is the primary beneficiary of a VIE, added additional VIE disclosure requirements and amended guidance for determining whether an entity is a VIE. The new standards generally replace the quantitative-based risks and rewards calculation for determining which enterprise, if any, is the primary beneficiary of a VIE to a more qualitative assessment with

an approach focused on identifying which enterprise has the power to direct the activities of a VIE that most significantly impacts the VIE's economic performance and also has the obligation to absorb losses or receive benefits from the VIE. We completed our analysis during the first quarter of 2010, and determined that the consolidation of OMEC was required. See Note 4 for further discussion of implementation of these new accounting standards.

The new standards and disclosure requirements also added:

- A requirement to perform ongoing reassessments each reporting period of whether we are the primary beneficiary of our VIEs, which could require us to consolidate our VIEs that are currently not consolidated or deconsolidate our VIEs that are currently consolidated based upon our reassessments in future periods. No further changes to our determinations of whether we are the primary beneficiary of our VIEs were required during the second quarter of 2010.
- Disclosure provisions to present separately on the face of the statement of financial position the significant assets of a consolidated VIE that can be used only to settle obligations of the consolidated VIE and the significant liabilities of a consolidated VIE for which creditors (or beneficial interest holders) do not have recourse to the general credit of the primary beneficiary. Our Consolidated Condensed Balance Sheets include these required disclosures. The new standards also reduce required disclosures for consolidated VIEs without such restrictions if we are the equity holder and primary beneficiary.
- An additional reconsideration event for determining whether an entity is a VIE if any changes in facts and circumstances occur such that the holders of the equity investment at risk, as a group, lose the power from voting rights or similar rights of those investments to direct the activities of a VIE that most significantly impact the VIE's economic performance.

*Fair Value Measurements and Disclosures* — In January 2010, the Financial Accounting Standards Board issued Accounting Standards Update 2010-06, "Fair Value Measurements and Disclosures" to enhance disclosure requirements relating to different levels of assets and liabilities measured at fair value and to clarify certain existing disclosures. The update requires disclosure of significant transfers in and out of levels 1 and 2 and gross presentation of purchases, sales, issuances and settlements in the level 3 reconciliation of beginning and ending balances. The new disclosure requirements relating to level 3 activity are effective for interim and annual periods beginning after December 15, 2010, and all the other requirements are effective for interim and annual periods beginning after December 15, 2009. We adopted all of the disclosure requirements related to this update for the three and six months ended June 30, 2010 and 2009. Since this update only required additional disclosures, adoption of this standard did not have a material impact on our results of operations, cash flows or financial condition. See Note 7 for disclosure of our fair value measurements in accordance with these disclosure requirements.

## **2. Conectiv Acquisition and Planned Divestiture of Blue Spruce and Rocky Mountain**

### ***Conectiv Acquisition***

On July 1, 2010, we, through our indirect, wholly owned subsidiary NDH, completed the Conectiv Acquisition. The assets acquired include 18 operating power plants and one plant under construction, with approximately 4,490 MW of capacity (including completion of the York Energy Center under construction and scheduled upgrades). We did not acquire Conectiv's trading book, load serving auction obligations or collateral requirements. Additionally, we did not assume any of Conectiv's off-site environmental liabilities, environmental remediation liabilities related to certain assets located in New Jersey that are subject to the Industrial Site Recovery Act in excess of \$10 million or certain pre-close pension and retirement welfare liabilities. Our final purchase price at closing was approximately \$1.63 billion, including a \$60 million reduction in the closing payment attributable to lower capital expenditures incurred by PHI than were scheduled and a \$49 million increase in the closing payment for the estimated value of the fuel inventory at closing. As part of the Conectiv Acquisition, NDH received a cash contribution from Calpine Corporation of \$110 million to fund future capital expenditures to complete the York Energy Center. We financed the transaction through available cash and bank debt of \$1.3 billion provided under the NDH Project Debt. See Note 6 for further discussion of the NDH Project Debt.

The Conectiv Acquisition provides us with a significant presence in the PJM market, one of the most robust competitive power markets in the U.S., and positions us with three scale markets instead of two (CAISO and ERCOT) giving us greater geographic diversity.

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We accounted for the Conectiv Acquisition under the acquisition method of accounting in accordance with GAAP; however, the assets acquired are not reflected on our Consolidated Condensed Balance Sheet as of June 30, 2010, as the Conectiv Acquisition occurred subsequent to our balance sheet date. We expensed transaction and acquisition-related costs as incurred through June 30, 2010 of approximately \$19 million, which is included in sales, general and other administrative expense on our Consolidated Condensed Statements of Operations for the three and six months ended June 30, 2010. As of the filing of this Report, the accounting for the Conectiv Acquisition is not complete as the appraisals necessary to assess the fair value of the net assets acquired are not final and we are still in the process of determining the tax basis of these assets; however, we conducted an assessment of our net assets acquired and assigned preliminary values to identifiable assets and liabilities at their estimated fair values on the acquisition date. We do not anticipate any significant goodwill will be recognized as a result of this acquisition.

The following table summarizes the consideration transferred for the Conectiv Acquisition and the preliminary values assigned to the net assets acquired as of the acquisition date based on our assessment (in millions). The preliminary values assigned are subject to change as more information is obtained about the fair value of the net assets acquired.

<b>Consideration</b>	\$	1,634
<b>Preliminary values of identifiable assets acquired and liabilities assumed:</b>		
<b>Assets:</b>		
Current assets	\$	80
Property, plant and equipment, net		1,556
Other long-term assets		50
Total assets acquired	\$	1,686
<b>Liabilities:</b>		
Current liabilities	\$	30
Long-term liabilities		22
Total liabilities assumed		52
Net assets acquired	\$	1,634

The following table summarizes the pro forma operating revenues and net income (loss) attributable to Calpine for the periods presented as if the Conectiv Acquisition had occurred on January 1, 2009 (in millions). The pro forma information has been prepared by adding the preliminary, unaudited historical results of Conectiv as adjusted for depreciation expense (utilizing the preliminary values assigned to the net assets acquired from Conectiv disclosed above), interest expense from our NDH Project Debt and income taxes.

	<b>Three Months Ended June 30,</b>		<b>Six Months Ended June 30,</b>	
	<b>2010</b>	<b>2009</b>	<b>2010</b>	<b>2009</b>
Operating revenues	\$ 2,213	\$ 1,913	\$ 4,330	\$ 4,141
Net loss attributable to Calpine	\$ (220)	\$ (130)	\$ (276)	\$ (118)
Basic and diluted loss per common share attributable to Calpine	\$ (0.45)	\$ (0.27)	\$ (0.57)	\$ (0.24)

### ***Sale of Blue Spruce and Rocky Mountain***

On April 2, 2010, we, through our wholly owned subsidiaries Riverside Energy Center, LLC and Calpine Development Holdings, Inc., entered into an agreement with PSCo to sell 100% of our ownership interests in Blue Spruce and Rocky Mountain for approximately \$739 million, subject to certain working capital adjustments at closing. Both power plants currently provide power and capacity to PSCo under PPAs, which materially expire in 2013 and 2014. Under the agreement, Riverside Energy Center, LLC and Calpine Development Holdings, Inc. will use commercially reasonable efforts to cause Blue Spruce and Rocky Mountain to continue to operate and maintain the power plants in the ordinary course of business through the closing of the transaction, which is expected to occur in December 2010. As of the filing of this Report, we have received all of the required Federal approvals for the sales of Blue Spruce and Rocky Mountain and we expect approval from the Colorado Public Utilities Commission in the third quarter of 2010. The transaction is expected to remove the restrictions on approximately \$90 million in restricted cash at closing. We expect to use the sales proceeds received and the approximately \$90 million in restricted cash described above to repay project debt (with an expected balance of approximately \$412 million, after expected repayments prior to closing), for general corporate purposes and to focus more



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resources on our core markets. We expect to record a pre-tax gain of approximately \$220 million upon closing this transaction.

The assets and liabilities of Blue Spruce and Rocky Mountain are reported as assets and liabilities held for sale on our Consolidated Condensed Balance Sheet at June 30, 2010. The results of operations of Blue Spruce and Rocky Mountain, which were included as part of our West segment, are reported as discontinued operations on our Consolidated Condensed Statements of Operations for the three and six months ended June 30, 2010 and 2009.

The tables below present the components of assets and liabilities held for sale at June 30, 2010, and discontinued operations for the periods indicated (in millions):

	June 30, 2010
<b>Assets:</b>	
Current assets	\$ 14
Property, plant and equipment, net	516
Other long-term assets	18
Total assets held for sale	<u>\$ 548</u>
<b>Liabilities:</b>	
Current liabilities	11
Long-term liabilities	2
Total liabilities held for sale	<u>\$ 13</u>

	Three Months Ended June 30,		Six Months Ended June 30,	
	2010	2009	2010	2009
Operating revenues	\$ 25	\$ 26	\$ 50	\$ 51
Income from discontinued operations before income taxes	\$ 12	\$ 11	\$ 20	\$ 23
Income tax expense	8	—	8	—
Discontinued operations, net of tax expense	<u>\$ 4</u>	<u>\$ 11</u>	<u>\$ 12</u>	<u>\$ 23</u>

### 3. Property, Plant and Equipment, Net

As of June 30, 2010, and December 31, 2009, the components of property, plant and equipment were stated at cost less accumulated depreciation as follows (in millions):

	June 30, 2010	December 31, 2009
Buildings, machinery and equipment	\$ 13,281	\$ 13,373
Geothermal properties	1,089	1,050
Other	244	232
	<u>14,614</u>	<u>14,655</u>
Less: Accumulated depreciation	<u>3,456</u>	<u>3,322</u>
	11,158	11,333
Land	71	74
Construction in progress	179	176
Property, plant and equipment, net	<u>\$ 11,408</u>	<u>\$ 11,583</u>

#### *Change in Depreciation Methods, Useful Lives and Salvage Values*

As discussed in our 2009 Form 10-K and as described below, effective October 1, 2009, we made two changes to our methods of depreciation including (i) changing from composite depreciation to component depreciation for our rotatable parts utilized in our natural gas-fired power plants and (ii) changing from the units of production method to the straight line method for our Geysers Assets. In addition, we completed a life study for each of our natural gas-fired power plants and our Geysers Assets, and changed our estimate of the remaining useful lives of our power plants and the useful lives and salvage values of our rotatable parts utilized in our natural gas-fired power plants.

*Component Depreciation for Rotable Parts at our Natural Gas-Fired Power Plants* — During the three and six months ended June 30, 2009, we used the composite depreciation method for all of our natural gas-fired power plant assets.

Under this method, all assets comprising each power plant were combined into one group and depreciated under a composite depreciation rate. Effective October 1, 2009, we componentized our rotatable parts for our natural gas-fired power plant assets for purposes of calculating depreciation. The change in the method of depreciation for rotatable parts was considered a change in accounting estimate inseparable from a change in accounting principle, and resulted in changes to our depreciation expense prospectively. The change to component depreciation for our rotatable parts utilized in our natural gas-fired power plants also resulted in changes to the useful lives of our rotatable parts which are now generally estimated to range from 3 to 18 years. Furthermore, we reduced our estimate of salvage value for our rotatable parts to 0.15% of original cost to reflect our expectation with these separable parts. Prior to this change, our composite useful lives for our natural gas-fired power plant assets, including our rotatable parts, were 35 years and 40 years for our combined-cycle and our simple-cycle power plant assets, respectively. We also revised the estimated useful lives of our remaining composite pools to 37 years and 47 years for our combined-cycle and simple-cycle power plant assets, respectively, based in part on the results of our separate useful life study. Our change in useful lives is considered a change in accounting estimate and resulted in changes to our depreciation expense prospectively.

*Straight Line Method for our Geysers Assets* — During the three and six months ended June 30, 2009, our Geysers Assets used the units of production method for depreciation. Our units of production depreciation rate was calculated using a depreciable base of the net book value of the Geysers Assets plus the expected future capital expenditures over the economic life of the geothermal reserves. The rate of depreciation per MWh was determined by dividing the depreciable base by total expected future generation. As a result of our change from the units of production method to the straight line method for our Geysers Assets, and based in part on the results of our separate useful life study, we revised our estimates of the remaining composite useful lives of our Geysers Assets effective October 1, 2009 to 59 years and 13 years for our Geysers steam extraction and gathering assets and our Geysers power plant assets, respectively. Our change in the method of depreciation for our Geysers Assets is considered a change in accounting estimate inseparable from a change in accounting principle, and resulted in changes to depreciation expense prospectively.

#### **4. Variable Interest Entities and Unconsolidated Investments**

We consolidate all of our VIEs where we have determined that we are the primary beneficiary. We have the following types of VIEs:

*VIEs with a Purchase Option* — We have six power plants with PPAs or other agreements that provide third parties the option to purchase power plant assets, an equity interest, or a portion of the future cash flows generated from an asset. The purchase options are exercisable only within a specified period of time upon expiration of the PPA or other agreements which expire at various dates occurring from 2011 – 2032.

*Subsidiaries with Project Debt* — Certain of our subsidiaries have project debt that contains provisions which we have determined create variability. We retain ownership and absorb the full risk of loss and potential for reward once the project debt is paid in full. Actions by the lender to assume control of collateral can occur only under limited circumstances such as upon the occurrence of an event of default, which we have determined to be unlikely. See Note 6 for further information regarding our project debt and Note 1 for information regarding our restricted cash balances.

*Subsidiaries with PPAs* — Certain of our wholly owned subsidiaries have PPAs that are deemed to be a form of subordinated financial support and thus constitute a VIE.

*Other VIEs* — Our other consolidated VIEs as of December 31, 2009, primarily consisted of monetized assets secured by financing for our PCF and PCF III subsidiaries. These financings were fully repaid during the first quarter of 2010 and are no longer VIEs.

#### ***New Accounting Standards and Disclosure Requirements for VIEs***

*Implementation* — As further discussed in Note 1, new accounting standards became effective January 1, 2010 related to accounting for and consolidation of VIEs, which required us to perform an analysis of whether we are the primary beneficiary of our VIEs. The new standards generally replaced the quantitative-based risks and rewards calculation for determining which enterprise, if any, is the primary beneficiary of a VIE to a more qualitative assessment with an approach focused on identifying which enterprise has both the power to direct the activities of a VIE that most significantly impact the VIE's economic performance and the obligation to absorb losses or receive benefits from the VIE.

As required, we performed an analysis of all of our VIEs effective January 1, 2010 and, with the exception of OMEC, our determination of the primary beneficiary did not change. We concluded that we hold the obligation to absorb losses and receive benefits in all of our VIEs where we hold the majority equity interest. Therefore, our analysis to determine the primary beneficiary focused on determining which variable interest holder has the power to direct the most significant activities of the VIE (the primary beneficiary). Our analysis included consideration of the following primary activities which we believe to have a significant impact on a power plant's financial performance: operations and maintenance, plant dispatch, fuel strategy as well as our ability to control or influence contracting and overall plant strategy. Our approach to determining which entity holds the powers and rights was based on powers held as of the balance sheet date. Contractual terms that will apply in future periods, such as a purchase or sale option, were not considered in our analysis. Based on our analysis, we determined that we hold the power and rights to direct the most significant activities of all our wholly owned VIEs.

**OMEC** — During the second quarter of 2007, we determined that SDG&E had a greater variability of risk compared to us based upon the prior consolidation accounting standards, which focused on which party held the greater variability in the obligation to absorb the losses or the right to receive benefits from the VIE or both. We determined that SDG&E held the greater variability as a result of a put option held by OMEC to sell the Otay Mesa Energy Center for \$280 million to SDG&E, and a call option held by SDG&E to purchase the Otay Mesa Energy Center for \$377 million in 2019. Accordingly, we were not the primary beneficiary, consolidation was not appropriate and we accounted for our investment in OMEC under the equity method of accounting through December 31, 2009.

The transfer of ownership in conjunction with the exercise of the put/call option, which was the driving factor in the quantitative determination of the primary beneficiary under the previous accounting standards, would not occur until 2019. Neither we, nor SDG&E, hold any powers under the combination put/call option as of January 1, 2010. Accordingly, we did not include the benefits and obligations of the put/call option in the new determination of the primary beneficiary under the current accounting standards. Based upon our analysis, we believe the significant activity that has the most impact on the financial performance of OMEC is operations and maintenance which is controlled by us. As a result, we changed our determination of primary beneficiary from SDG&E to us effective January 1, 2010.

**New Disclosures** — Implementation of the new accounting standards also required separate disclosure on the face of our Consolidated Condensed Balance Sheet of the significant assets of a consolidated VIE that can only be used to settle obligations of the consolidated VIE and the significant liabilities of a consolidated VIE for which creditors (or beneficial interest holders) do not have recourse to the general credit of the primary beneficiary separately.

In determining which assets of our VIEs met the separate disclosure criteria, we reviewed all of our VIEs and determined this separate disclosure requirement was met where Calpine Corporation was substantially limited or prohibited from access to assets (primarily cash and cash equivalents, restricted cash and property, plant and equipment), where the VIE was not a guarantor or grantor under our primary debt facilities (our First Lien Credit Facility and First Lien Notes) and where there were prohibitions of the VIE under agreements that prohibited guaranteeing the debt of Calpine Corporation or its other subsidiaries and where the amounts were material to our financial statements. In determining which liabilities of our VIEs met the separate disclosure criteria, we reviewed all of our VIEs and determined this separate disclosure requirement was met where our VIEs had project financing that prohibits the VIE from providing guarantees on the debt of others, where Calpine Corporation has not provided a corporate guarantee and where the amounts were material to our financial statements.

The VIEs meeting the above disclosure criteria are wholly owned subsidiaries of Calpine Corporation and include natural gas-fired power plants with an aggregate capacity of approximately 10,835 MW. For these VIEs, we may provide other operational and administrative support through various affiliate contractual arrangements between the VIEs, Calpine Corporation and its other wholly owned subsidiaries whereby we support the VIE through the reimbursement of costs and/or the purchase and sale of energy. Calpine Corporation and its other wholly owned subsidiaries did not provide any significant support in the form of cash contributions other than amounts contractually required during the three and six months ended June 30, 2010 and 2009.

#### ***Unconsolidated VIEs and Investments***

We have a 50% partnership interest in Greenfield LP and a 50% equity interest in Whitby where we do not have the power to direct the most significant activities of these entities and therefore do not consolidate them. Greenfield LP and Whitby are also VIEs. We account for these entities under the equity method of accounting and include our net equity interest in investments on our Consolidated Condensed Balance Sheets as we exercise significant influence over their operating and financial policies. During 2009, we were not the primary beneficiary of OMEC and did not consolidate OMEC. Our equity

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interest in the net income from OMEC for the three and six months ended June 30, 2009, and both Greenfield LP and Whitby for the three and six months ended June 30, 2010 and 2009, are recorded in income from unconsolidated investments in power plants.

At June 30, 2010, and December 31, 2009, our equity method investments included on our Consolidated Condensed Balance Sheets were comprised of the following (in millions):

	Ownership Interest as of June 30, 2010	June 30, 2010	Our Maximum Exposure to Loss at June 30, 2010 <sup>(2)</sup>	December 31, 2009
OMEC <sup>(1)</sup>	100%	\$ —	\$ —	\$ 144
Greenfield LP	50%	85	85	70
Whitby	50%	4	4	—
Total investments		<u>\$ 89</u>	<u>\$ 89</u>	<u>\$ 214</u>

(1) OMEC was consolidated effective January 1, 2010. See Note 1.

(2) Our risk of loss related to our unconsolidated VIEs is limited to our investment balance. While we also could be responsible for our pro rata portion of debt, holders of the debt of our unconsolidated investments do not have recourse to Calpine Corporation and its other subsidiaries. The debt of our unconsolidated investments is not reflected on our Consolidated Condensed Balance Sheets. As of June 30, 2010, and December 31, 2009, equity method investee debt was approximately \$488 million and \$873 million, respectively, and based on our pro rata share of each of the investments, our share of such debt would be approximately \$244 million and \$624 million as of June 30, 2010 and December 31, 2009, respectively.

The following details our income from unconsolidated investments in power plants for the periods indicated (in millions):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2010	2009	2010	2009
OMEC <sup>(1)</sup>	\$ —	\$ 16	\$ —	\$ 26
Greenfield LP	3	5	7	10
Whitby	3	2	6	4
Total	<u>\$ 6</u>	<u>\$ 23</u>	<u>\$ 13</u>	<u>\$ 40</u>

(1) OMEC was consolidated effective January 1, 2010. See Note 1. During the three and six months ended June 30, 2009, we contributed \$4 million and \$8 million, respectively, as an additional investment in OMEC.

*Greenfield LP* — Greenfield LP is a limited partnership between certain subsidiaries of ours and of Mitsui & Co., Ltd., which operates the Greenfield Energy Centre, a 1,030 MW natural gas-fired power plant in Ontario, Canada. We and Mitsui & Co., Ltd. each hold a 50% interest in Greenfield LP. Greenfield LP holds an 18-year term loan in the amount of CAD \$648 million. Borrowings under the project finance facility bear interest at Canadian LIBOR plus 1.125% or Canadian prime rate plus 0.125%.

*Whitby* — Represents our 50% equity interest in Whitby held by our Canadian subsidiaries. We received \$2 million during the three and six months ended June 30, 2010, and nil and \$2 million during the three and six months ended June 30, 2009, respectively, in distributions from Whitby.

*Inland Empire Energy Center Put and Call Options* — We hold a call option to purchase the Inland Empire Energy Center (a 775 MW natural gas-fired power plant located in California which began commercial operations on May 3, 2010) from General Electric International, Inc. that may be exercised between years 7 and 14 after the start of commercial operation. General Electric International, Inc. holds a put option whereby they can require us to purchase the power plant, if certain plant performance criteria are met during year 15 after the start of commercial operation. We determined that we were not the primary beneficiary of the Inland Empire power and we do not consolidate it due to, but not limited to, the fact that General Electric International, Inc. directs the most significant activities of the power plant.

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*Significant Subsidiaries* — OMEC and Greenfield LP met the criteria of a significant subsidiary for the three and six months ended June 30, 2009, as defined under SEC guidelines, based upon the relationship of our equity income from our investment in each subsidiary to our consolidated loss before income taxes and discontinued operations. See Note 1 for further information regarding the OMEC consolidation effective January 1, 2010. The Condensed Statements of Operations for OMEC and for Greenfield LP for the periods indicated, are set forth below (in millions):

**OMEC**  
**Condensed Statements of Operations**

	Three Months Ended June 30, 2009	Six Months Ended June 30, 2009
Revenues <sup>(1)</sup>	\$ —	\$ —
Operating expenses	1	2
Loss from operations	(1)	(2)
Interest income <sup>(2)</sup>	(22)	(33)
Other (income) expense, net	5	5
Net income	\$ 16	\$ 26

(1) OMEC achieved commercial operations in October 2009.

(2) Interest income is primarily the result of unrealized mark-to-market gains from interest rate swap contracts.

**Greenfield LP**  
**Condensed Statements of Operations**

	Three Months Ended June 30,		Six Months Ended June 30,	
	2010	2009	2010	2009
Revenues	\$ 43	\$ 43	\$ 80	\$ 103
Operating expenses	30	28	52	73
Income from operations	13	15	28	30
Interest (income) expense, net	7	7	14	11
Other (income) expense, net	—	(2)	—	(1)
Net income	\$ 6	\$ 10	\$ 14	\$ 20

## 5. Comprehensive Income (Loss)

Comprehensive income (loss) includes our net loss, unrealized gains and losses from derivative instruments, net of tax that qualify as cash flow hedges, our share of equity method investees' OCI and the effects of foreign currency translation adjustments. See Note 8 for further discussion of our accounting for derivative instruments designated as cash flow hedges and the related amounts recorded in OCI. We report AOCI on our Consolidated Condensed Balance Sheets. The table below details the components of our comprehensive income (loss) for the periods indicated (in millions):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2010	2009	2010	2009
Net loss	\$ (114)	\$ (79)	\$ (162)	\$ (48)
Other comprehensive income (loss):				
Gain (loss) on cash flow hedges before reclassification adjustment for cash flow hedges realized in net loss	(71)	108	30	310
Reclassification adjustment for cash flow hedges realized in net loss	8	(118)	22	(185)
Foreign currency translation gain (loss)	(2)	3	—	1
Income tax benefit (expense)	(23)	14	(9)	27
Comprehensive income (loss)	(202)	(72)	(119)	105
Add: Comprehensive (income) loss attributable to the noncontrolling interest	(1)	1	—	2
Comprehensive income (loss) attributable to Calpine	\$ (203)	\$ (71)	\$ (119)	\$ 107

## 6. Debt

Our debt at June 30, 2010, and December 31, 2009, was as follows (in millions):

	June 30, 2010	December 31, 2009
First Lien Credit Facility <sup>(1)</sup>	\$ 4,230	\$ 4,661
First Lien Notes <sup>(1)</sup>	1,600	1,200
Commodity Collateral Revolver <sup>(2)</sup>	100	100
Project financing, notes payable and other	2,384	2,289
CCFC Notes	962	959
Capital lease obligations	250	250
Total debt	9,526	9,459
Less: Current maturities	699	463
Debt, net of current portion	\$ 8,827	\$ 8,996

(1) On July 23, 2010, we issued \$1.1 billion of 2020 First Lien Notes and repaid approximately \$1.1 billion of the First Lien Credit Facility term loans.

(2) The Commodity Collateral Revolver was repaid on July 8, 2010.

**First Lien Credit Facility** — As of June 30, 2010, and December 31, 2009, our primary debt facility was our First Lien Credit Facility. Our First Lien Credit Facility includes an original \$6.0 billion of senior secured term loans, a \$1.0 billion senior secured revolving facility and, subject to market conditions, the ability to raise up to \$2.0 billion of incremental term loans under an “accordion” provision available on a senior secured basis in order to refinance secured debt of subsidiaries. As of June 30, 2010, under our First Lien Credit Facility, we had approximately \$4.2 billion outstanding under the term loans and \$237 million of letters of credit issued against the revolver. Balances repaid under the senior secured term loans may not be reborrowed. Borrowings of term loans under our First Lien Credit Facility bear interest at a floating rate, at our option, of LIBOR plus 2.875% per annum or base rate plus 1.875% per annum. First Lien Credit Facility term loans require quarterly payments of principal equal to 0.25% of the original principal amount of First Lien Credit Facility term loans subject to adjustments as a result of First Lien Note offerings and repayments from excess cash flows. In May 2010, we repaid approximately \$394 million and in July 2010, we repaid approximately \$1.1 billion of the First Lien Credit Facility term loans with proceeds received from the issuance of the 2019 and 2020 First Lien Notes (as further discussed below). The First Lien Credit Facility matures on March 29, 2014.

The obligations under our First Lien Credit Facility are unconditionally guaranteed by certain of our direct and indirect domestic subsidiaries and are secured by a security interest in substantially all of the tangible and intangible assets of Calpine Corporation and certain of the guarantors. The obligations under our First Lien Credit Facility are also secured by a pledge of the equity interests of the direct subsidiaries of certain of the guarantors, subject to certain exceptions, including exceptions for equity interests in foreign subsidiaries, existing contractual prohibitions and prohibitions under other legal requirements. Our First Lien Credit Facility also requires compliance with financial covenants that include a maximum ratio of total net debt to Consolidated EBITDA (as defined in the First Lien Credit Facility), a minimum ratio of Consolidated EBITDA to cash interest expense, and a maximum ratio of total senior net debt to Consolidated EBITDA.

*Issuance of 2019 First Lien Notes* — On May 25, 2010, we issued \$400 million in aggregate principal amount of 8% senior secured notes due 2019 in a private placement. The 2019 First Lien Notes were issued under an amended and restated indenture, dated as of May 25, 2010, among Calpine, the guarantors party thereto and Wilmington Trust Company, as trustee. The 2019 First Lien Notes bear interest at 8% payable semi-annually on February 15 and August 15 of each year beginning on August 15, 2010. Interest is due to the holders of record on February 1 and August 1 immediately preceding the applicable interest payment date. The 2019 First Lien Notes will mature on August 15, 2019. Proceeds received from the issuance of the 2019 First Lien Notes were used to repay approximately \$394 million of the First Lien Credit Facility term loans on May 25, 2010. We recorded additional deferred financing costs of approximately \$8 million on our Consolidated Condensed Balance Sheet and we recorded \$7 million in debt extinguishment costs from the write-off of unamortized deferred financing costs related to the repayment of the First Lien Credit Facility term loans for the three and six months ended June 30, 2010.

*Issuance of 2020 First Lien Notes* — On July 23, 2010, we issued \$1.1 billion in aggregate principal amount of 7.875% senior secured notes due 2020 in a private placement. The 2020 First Lien Notes were issued under an amended and restated indenture, dated as of July 23, 2010, among Calpine, the guarantors party thereto and Wilmington Trust Company, as trustee. The 2020 First Lien Notes bear interest at 7.875% payable semi-annually on January 31 and July 31 of each year beginning on January 31, 2011. Interest is due to the holders of record on January 15 and July 15 immediately preceding the applicable interest payment date. The 2020 First Lien Notes will mature on July 31, 2020. Proceeds received from the issuance of the 2020 First Lien Notes were used to repay approximately \$1.1 billion of the First Lien Credit Facility term loans on July 23, 2010.

Our First Lien Notes are guaranteed by each of our current and future domestic subsidiaries that are guarantors under the First Lien Credit Facility and rank equally in right of payment with all of our and the guarantors' other existing and future senior indebtedness, and will be effectively subordinated in right of payment to all existing and future liabilities of our subsidiaries that do not guarantee our First Lien Notes. Our First Lien Notes are secured equally and ratably with indebtedness incurred under our First Lien Credit Facility and certain other indebtedness that is permitted to be secured by such assets by a first-priority lien, subject to certain exceptions and permitted liens, on substantially all of our and certain of the guarantors' existing and future assets.

*NDH Project Debt* — On June 8, 2010, NDH entered into a credit agreement to fund the Conectiv Acquisition and the remaining capital expenditures to complete the York Energy Center under construction. Our NDH Project Debt includes a \$1.3 billion seven-year senior secured term facility and a \$100 million three-year senior secured revolving credit facility, of which up to \$50 million will be available through a subfacility in the form of letters of credit. On July 1, 2010, the term facility was funded in the amount of \$1.3 billion. The NDH Project Debt was issued with an original issue discount of \$28 million and we recorded deferred financing costs of approximately \$40 million, which we recorded on our Consolidated Condensed Balance Sheet on July 1, 2010. Our NDH Project Debt bears interest at a floating rate, at our option, at a rate per annum equal to the alternate base rate or the adjusted LIBOR (subject to a minimum of 1.5%), plus, in each case, the applicable margin, which varies for the revolving credit facility (as defined in our NDH Project Debt agreement). An amount equal to 0.25% of the aggregate principal amount of the senior secured term facility outstanding on July 1, 2010, which was \$1.3 billion, will be payable at the end of each quarter commencing with the first full quarter after July 1, 2010, with the remaining balance payable on July 1, 2017. Additional repayments of principal will be required from excess cash flows (as defined in our NDH Project Debt agreement). No amortization will be required with respect to the revolving credit facility.

NDH's obligations under the NDH Project Debt are unconditionally guaranteed by each existing and subsequently acquired or organized domestic, wholly owned subsidiary of NDH (including the entities acquired) and will be secured by a first-priority lien on substantially all of NDH's and the guarantors' existing and future assets, in each case subject to certain exceptions and permitted liens. NDH and its subsidiaries (subject to certain exceptions) have made certain representations

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and warranties and are required to comply with various affirmative and negative covenants including, among others, certain limitations and prohibitions relating to additional indebtedness, liens, restricted payments, mergers and asset sales and certain financial covenants relating to limitations on capital expenditures, minimum interest coverage and maximum leverage. The NDH Project Debt is subject to customary events of default included in financing transactions, including, among others, failure to make payments when due, certain defaults under other material indebtedness, breach of certain covenants, breach of certain representations and warranties, involuntary or voluntary bankruptcy, and material judgments. Neither Calpine Corporation nor any of its subsidiaries, other than NDH and its subsidiaries (subject to certain exceptions), are guarantors under the NDH Project Debt.

As part of the Conectiv Acquisition and NDH Project Debt, we entered into various intercompany agreements with our NDH subsidiaries for the related sales and purchases of power, natural gas and the operation and maintenance of our NDH power plants, which will not materially impact our results of operations, financial condition or cash flows on a consolidated basis. While there is no direct recourse by holders of the NDH Project Debt to Calpine Corporation, a substantial portion of the commodity price risk related to NDH's power generation is absorbed by Calpine Energy Services, L.P. as an indirect, wholly owned subsidiary of Calpine Corporation, which purchases the power generated by NDH under an intercompany tolling agreement, which is also guaranteed by Calpine Corporation.

**OMEC Debt** — As further discussed in Note 1, we added approximately \$375 million in project debt to our Consolidated Condensed Balance Sheet when we consolidated OMEC effective January 1, 2010. As of June 30, 2010, OMEC had approximately \$370 million in project debt outstanding, which is included in the balance under the caption "Project financing, notes payable and other" in the table above. OMEC has a \$377 million non-recourse project term loan which matures in April 2019. The term loan bears interest at LIBOR plus 1.25%.

**Letter of Credit Facilities** — The table below represents amounts issued under our letter of credit facilities as of June 30, 2010, and December 31, 2009 (in millions):

	June 30, 2010	December 31, 2009
First Lien Credit Facility	\$ 237	\$ 206
Calpine Development Holdings, Inc. <sup>(1)</sup>	135	116
Various project financing facilities	113	90
Total	<u>\$ 485</u>	<u>\$ 412</u>

(1) Availability under the Calpine Development Holdings, Inc. letter of credit was increased by \$50 million to \$200 million on June 30, 2010.

### Fair Value of Debt

We did not elect to apply the alternative GAAP provisions of the fair value option for recording financial assets and financial liabilities. We record our debt instruments based on contractual terms, net of any applicable premium or discount. We measured the fair value of our debt instruments as of June 30, 2010, and December 31, 2009, using market information including credit default swap rates and historical default information, quoted market prices or dealer quotes for the identical liability when traded as an asset and discounted cash flow analyses based on our current borrowing rates for similar types of borrowing arrangements. The following table details the fair values and carrying values of our debt instruments as of June 30, 2010, and December 31, 2009 (in millions):

	June 30, 2010		December 31, 2009	
	Fair Value	Carrying Value	Fair Value	Carrying Value
First Lien Credit Facility <sup>(1)</sup>	\$ 3,871	\$ 4,230	\$ 4,402	\$ 4,661
First Lien Notes <sup>(1)</sup>	1,564	1,600	1,138	1,200
Commodity Collateral Revolver <sup>(2)</sup>	92	100	94	100
Project financing, notes payable and other <sup>(3)</sup>	1,891	1,957	1,808	1,840
CCFC Notes	1,025	962	1,030	959
Total	<u>\$ 8,443</u>	<u>\$ 8,849</u>	<u>\$ 8,472</u>	<u>\$ 8,760</u>

(1) On July 23, 2010, we issued \$1.1 billion of the 2020 First Lien Notes and repaid approximately \$1.1 billion of the First Lien Credit Facility term loans.



- (2) The Commodity Collateral Revolver was repaid on July 8, 2010.
- (3) Excludes leases that are accounted for as failed sale-leaseback transactions under GAAP and included in our project financing, note payable and other balance.

## 7. Fair Value Measurements

*Derivatives* — The primary factors affecting the fair value of our commodity derivative instruments at any point in time are the volume of open derivative positions (MMBtu and MWh); market price levels, principally for power and natural gas; our credit standing and that of our counterparties; and prevailing interest rates. Prices for power and natural gas are volatile, which can result in material changes in the fair value measurements reported in our financial statements in the future.

We utilize market data, such as pricing services and broker quotes, and assumptions that we believe market participants would use in pricing our assets or liabilities including assumptions about risks and the risks inherent to the inputs in the valuation technique. These inputs can be either readily observable, market corroborated or generally unobservable. The market data obtained from broker pricing services is evaluated to determine the nature of the quotes obtained and, where accepted as a reliable quote, used to validate our assessment of fair value; however, other qualitative assessments are used to determine the level of activity in any given market. We primarily apply the market approach and income approach for recurring fair value measurements and utilize what we believe to be the best available information. We utilize valuation techniques that seek to maximize the use of observable inputs and minimize the use of unobservable inputs. We classify fair value balances based on the observability of those inputs.

The fair value of our derivatives includes consideration of the credit standing of our counterparties and the impact of credit enhancements, if any. We have included an estimate of nonperformance risk in the determination of fair value based on our expectation of how market participants would determine fair value. Such valuation adjustments are generally based on market evidence, if available, or our best estimate.

Our level 1 fair value derivative instruments primarily consist of natural gas swaps, futures and options traded on the NYMEX.

Our level 2 fair value derivative instruments primarily consist of interest rate swaps and OTC power and natural gas forwards and swaps for which market-based pricing inputs are observable. Generally, we obtain our level 2 pricing inputs from markets and pricing services such as the Intercontinental Exchange and Bloomberg. To the extent we obtain prices from brokers in the marketplace, we have procedures in place to ensure that such prices represent executable prices for market participants. In certain instances, our level 2 derivative instruments may utilize models to measure fair value. These models are primarily industry-standard models that incorporate various assumptions, including quoted interest rates, correlation, volatility, as well as other relevant economic measures. Substantially all of these assumptions are observable in the marketplace throughout the full term of the instrument, can be derived from observable data or are supported by observable levels at which transactions are executed in the marketplace.

Our level 3 fair value derivative instruments primarily consist of our OTC power and natural gas forwards and options where pricing inputs are unobservable, as well as other complex and structured transactions. Complex or structured transactions are tailored to our or our customers' needs and can introduce the need for internally-developed model inputs which might not be observable in or corroborated by the market. When such inputs have a significant impact on the measurement of fair value, the instrument is categorized in level 3. Our valuation models may incorporate historical correlation information and extrapolate available broker and other information to future periods. In cases where there is no corroborating market information available to support significant model inputs, we initially use the transaction price as the best estimate of fair value. OTC options are valued using industry-standard models, including the Black-Scholes pricing model. At each balance sheet date, we perform an analysis of all instruments subject to fair value measurement and include in level 3 all of those whose fair value is based on significant unobservable inputs.

*Margin Deposits* — Our margin deposits are cash and cash equivalents and are generally classified within level 1 of the fair value hierarchy as the amounts approximate fair value.

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The following tables present our financial assets and liabilities that were accounted for at fair value on a recurring basis as of June 30, 2010, and December 31, 2009, by level within the fair value hierarchy. Financial assets and liabilities are classified in their entirety based on the lowest level of input that is significant to the fair value measurement. Our assessment of the significance of a particular input to the fair value measurement requires judgment, and may affect our estimate of the fair value of our assets and liabilities and their placement within the fair value hierarchy levels.

	Assets and Liabilities with Recurring Fair Value Measures as of June 30, 2010			
	Level 1	Level 2	Level 3	Total
	(in millions)			
Assets:				
Cash equivalents <sup>(1)</sup>	\$ 1,148	\$ —	\$ —	\$ 1,148
Margin deposits <sup>(2)</sup>	254	—	—	254
Commodity instruments:				
Commodity futures contracts	1,012	—	—	1,012
Commodity forward contracts <sup>(3)</sup>	—	383	68	451
Interest rate swaps	—	—	—	—
Total assets	<u>\$ 2,414</u>	<u>\$ 383</u>	<u>\$ 68</u>	<u>\$ 2,865</u>
Liabilities:				
Margin deposits held by us posted by our counterparties <sup>(2)</sup>	\$ 58	\$ —	\$ —	\$ 58
Commodity instruments:				
Commodity futures contracts	1,003	—	—	1,003
Commodity forward contracts <sup>(3)</sup>	—	182	25	207
Interest rate swaps	—	416	—	416
Total liabilities	<u>\$ 1,061</u>	<u>\$ 598</u>	<u>\$ 25</u>	<u>\$ 1,684</u>

	Assets and Liabilities with Recurring Fair Value Measures as of December 31, 2009			
	Level 1	Level 2	Level 3	Total
	(in millions)			
Assets:				
Cash equivalents <sup>(1)</sup>	\$ 1,306	\$ —	\$ —	\$ 1,306
Margin deposits <sup>(2)</sup>	413	—	—	413
Commodity instruments:				
Commodity futures contracts	953	—	—	953
Commodity forward contracts <sup>(3)</sup>	—	204	71	275
Interest rate swaps	—	18	—	18
Total assets	<u>\$ 2,672</u>	<u>\$ 222</u>	<u>\$ 71</u>	<u>\$ 2,965</u>
Liabilities:				
Margin deposits held by us posted by our counterparties <sup>(2)</sup>	\$ 9	\$ —	\$ —	\$ 9
Commodity instruments:				
Commodity futures contracts	1,096	—	—	1,096
Commodity forward contracts <sup>(3)</sup>	—	91	33	124
Interest rate swaps	—	337	—	337
Total liabilities	<u>\$ 1,105</u>	<u>\$ 428</u>	<u>\$ 33</u>	<u>\$ 1,566</u>

(1) Represents funds invested in money market accounts and are included in cash and cash equivalents and restricted cash on our Consolidated Condensed Balance Sheets. As of June 30, 2010, and December 31, 2009, we had cash equivalents of \$833 million and \$770 million included in cash and cash equivalents and \$315 million and \$536 million included in restricted cash, respectively.

(2) Margin deposits and margin deposits held by us posted by our counterparties represent cash collateral paid between our counterparties and us to support our commodity contracts.

(3) Includes OTC swaps and options.

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The following table sets forth a reconciliation of changes in the fair value of our net derivative assets (liabilities) classified as level 3 in the fair value hierarchy for the periods indicated (in millions):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2010	2009	2010	2009
Balance, beginning of period	\$ 57	\$ 114	\$ 38	\$ 105
Realized and unrealized gains (losses):				
Included in net loss:				
Included in operating revenues <sup>(1)</sup>	10	(1)	29	3
Included in fuel and purchased energy expense <sup>(2)</sup>	(3)	(3)	(3)	8
Included in OCI	(5)	5	—	18
Purchases, issuances, sales and settlements:				
Settlements	(16)	(13)	(22)	(26)
Transfers into and/or out of level 3 <sup>(3)</sup> :				
Transfers into level 3 <sup>(4)</sup>	—	—	—	(6)
Transfers out of level 3 <sup>(5)</sup>	—	(11)	1	(11)
Balance, end of period	<u>\$ 43</u>	<u>\$ 91</u>	<u>\$ 43</u>	<u>\$ 91</u>
Change in unrealized gains and (losses) relating to instruments still held at end of period	<u>\$ 7</u>	<u>\$ (4)</u>	<u>\$ 26</u>	<u>\$ 11</u>

(1) For power contracts and Heat Rate swaps and options, as shown on our Consolidated Condensed Statements of Operations.

(2) For natural gas contracts, swaps and options, as shown on our Consolidated Condensed Statements of Operations.

(3) We transfer amounts among levels of the fair value hierarchy as of the end of each period. There were no significant transfers into/out of level 1 during the three and six months ended June 30, 2010 and 2009.

(4) There were no significant transfers into level 3 for the three months ended June 30, 2010 and 2009, and the six months ended June 30, 2010. We had \$(6) million in losses transferred out of level 2 into level 3, for the six months ended June 30, 2009, due to changes in market liquidity in various power markets.

(5) There were no significant transfers out of level 3 for the three months ended June 30, 2010; however, we had \$11 million in gains transferred out of level 3 into level 2 for the three months ended June 30, 2009. We had \$(1) million in losses and \$11 million in gains transferred out of level 3 into level 2 for the six months ended June 30, 2010 and 2009, respectively. Transfers out of level 3 into level 2 were due to changes in market liquidity in various power markets.

## 8. Derivative Instruments

### *Types of Derivative Instruments and Volumetric Information*

**Commodity Instruments** — We are exposed to changes in prices for the purchase and sale of power, natural gas and other energy commodities. We enter into a variety of derivative instruments, including physical commodity contracts and financial commodity instruments such as OTC and exchange traded swaps, futures, options, forward agreements and instruments that settle on the power price to natural gas price relationships (Heat Rate swaps and options) for the purchase and sale of power, natural gas, and emission allowances to attempt to economically hedge a portion of the commodity price risk associated with our assets and thus maximize risk-adjusted returns. By entering into these transactions, we are able to economically hedge a portion of our spark spread at estimated generation and prevailing price levels.

**Interest Rate Swaps** — A significant portion of our debt is indexed to base rates, primarily LIBOR. We use interest rate swaps to adjust the mix between fixed and variable rate debt to hedge our interest rate risk for potential adverse changes in interest rates. These transactions primarily act as economic hedges for our interest cash flow.

As of June 30, 2010, the maximum length of our PPAs extends approximately 22 years into the future and the maximum length of time over which we were hedging using commodity and interest rate derivative instruments was 3 and 16 years, respectively.

As of June 30, 2010, and December 31, 2009, the net forward notional buy (sell) position of our outstanding commodity and interest rate swap contracts that did not qualify under the normal purchase normal sale exemption were as follows (in millions):

Derivative Instruments	Notional Amounts	
	June 30, 2010	December 31, 2009
Power (MWh)	(49)	(52)
Natural gas (MMBtu)	87	78
Interest rate swaps	\$ 5,824	\$ 7,324

Certain of our derivative instruments contain credit-contingent provisions that require us to maintain our current credit rating or higher from each of the major credit rating agencies. If our credit rating were to be downgraded, it could require us to post additional collateral or could potentially allow our counterparty to request immediate, full settlement on certain derivative instruments in liability positions. Currently, we do not believe that it is probable that a counterparty would request full and immediate settlement or that any additional collateral posted as a result of a credit rating downgrade would be material. The aggregate fair value of our derivative liabilities with credit-contingent provisions as of June 30, 2010, was \$23 million for which we have posted collateral of \$4 million by posting margin deposits or granted additional first priority liens on the assets currently subject to first priority liens under our First Lien Credit Facility.

#### *Accounting for Derivative Instruments*

We recognize all derivative instruments that qualify for derivative accounting treatment as either assets or liabilities and measure those instruments at fair value unless they qualify for, and we elect, the normal purchase normal sale exemption. For transactions in which we elect the normal purchase normal sale exemption, gains and losses are not reflected on our Consolidated Condensed Statements of Operations until the settlement dates. Revenues and fuel costs derived from instruments that qualify for hedge accounting are recorded in the same period and in the same financial statement line item as the item being hedged. Hedge accounting requires us to formally document, designate and assess the effectiveness of transactions that receive hedge accounting. We present the cash flows from our derivatives in the same category as the item being hedged within operating activities on our Consolidated Condensed Statements of Cash Flows unless they contain an other-than-insignificant financing element in which case their cash flows are classified within financing activities.

*Cash Flow Hedges* — We report the effective portion of the unrealized gain or loss on a derivative instrument designated and qualifying as a cash flow hedging instrument as a component of OCI and reclassify such gains and losses into earnings in the same period during which the hedged forecasted transaction affects earnings. Gains and losses due to ineffectiveness on commodity hedging instruments are included in unrealized mark-to-market gains and losses, and are recognized currently in earnings as a component of operating revenues (for power contracts and Heat Rate swaps and options), fuel and purchased energy expense (for natural gas contracts, swaps and options) and interest expense (for interest rate swaps). If it is determined that the forecasted transaction is no longer probable of occurring, then hedge accounting will be discontinued prospectively and future changes in fair value are recorded in earnings. If the hedging instrument is terminated or de-designated prior to the occurrence of the hedged forecasted transaction, the net accumulated gain or loss associated with the changes in fair value of the hedge instrument remains deferred in OCI until such time as the forecasted transaction impacts earnings, or until it is determined that the forecasted transaction is probable of not occurring.

*Derivatives Not Designated as Hedging Instruments* — Along with our portfolio of transactions which are accounted for as hedges under GAAP, we enter into power, natural gas and interest rate transactions that primarily act as economic hedges to our asset portfolio, but either do not qualify as hedges under the hedge accounting guidelines or qualify under the hedge accounting guidelines and the hedge accounting designation has not been elected. Changes in fair value of derivatives not designated as hedging instruments are recognized currently in earnings as a component of operating revenues (for power contracts and Heat Rate swaps and options), fuel and purchased energy expense (for natural gas contracts, swaps and options) and interest expense (for interest rate swaps).

**Derivatives Included on Our Consolidated Condensed Balance Sheets**

The following tables present the fair values of our net derivative instruments recorded on our Consolidated Condensed Balance Sheets by hedge type and location at June 30, 2010, and December 31, 2009 (in millions):

June 30, 2010			
	Interest Rate Swaps	Commodity Instruments	Total Derivative Instruments
<b>Balance Sheet Presentation</b>			
Current derivative assets	\$ —	\$ 1,240	\$ 1,240
Long-term derivative assets	—	223	223
Total derivative assets	\$ —	\$ 1,463	\$ 1,463
Current derivative liabilities	\$ 181	\$ 1,063	\$ 1,244
Long-term derivative liabilities	235	147	382
Total derivative liabilities	\$ 416	\$ 1,210	\$ 1,626
Net derivative assets (liabilities)	\$ (416)	\$ 253	\$ (163)
December 31, 2009			
	Interest Rate Swaps	Commodity Instruments	Total Derivative Instruments
<b>Balance Sheet Presentation</b>			
Current derivative assets	\$ —	\$ 1,119	\$ 1,119
Long-term derivative assets	18	109	127
Total derivative assets	\$ 18	\$ 1,228	\$ 1,246
Current derivative liabilities	\$ 202	\$ 1,158	\$ 1,360
Long-term derivative liabilities	135	62	197
Total derivative liabilities	\$ 337	\$ 1,220	\$ 1,557
Net derivative assets (liabilities)	\$ (319)	\$ 8	\$ (311)
June 30, 2010			
	Fair Value of Derivative Assets	Fair Value of Derivative Liabilities	
<b>Derivatives designated as cash flow hedging instruments:</b>			
Interest rate swaps	\$ —	\$ 368	
Commodity instruments	331	109	
Total derivatives designated as cash flow hedging instruments	\$ 331	\$ 477	
<b>Derivatives not designated as hedging instruments:</b>			
Interest rate swaps	\$ —	\$ 48	
Commodity instruments	1,132	1,101	
Total derivatives not designated as hedging instruments	\$ 1,132	\$ 1,149	
Total derivatives	\$ 1,463	\$ 1,626	
December 31, 2009			
	Fair Value of Derivative Assets	Fair Value of Derivative Liabilities	
<b>Derivatives designated as cash flow hedging instruments:</b>			
Interest rate swaps	\$ 18	\$ 324	
Commodity instruments	213	80	
Total derivatives designated as cash flow hedging instruments	\$ 231	\$ 404	
<b>Derivatives not designated as hedging instruments:</b>			
Interest rate swaps	\$ —	\$ 13	
Commodity instruments	1,015	1,140	
Total derivatives not designated as hedging instruments	\$ 1,015	\$ 1,153	
Total derivatives	\$ 1,246	\$ 1,557	

**Derivatives Included on Our Consolidated Condensed Statements of Operations**

Changes in the fair values of our derivative instruments (both assets and liabilities) are reflected either in cash for option premiums paid or collected, in OCI, net of tax, for the effective portion of derivative instruments which qualify for and we have elected cash flow hedge accounting treatment, or on our Consolidated Condensed Statements of Operations as a component of mark-to-market activity within our net loss.

The following tables detail the components of our total mark-to-market activity for both the net realized gain (loss) and the net unrealized gain (loss) recognized from our derivative instruments not designated as hedging instruments and where these components were recorded on our Consolidated Condensed Statements of Operations for the periods indicated (in millions):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2010	2009	2010	2009
<b>Realized gain (loss)</b>				
Interest rate swaps	\$ (6)	\$ (4)	\$ (12)	\$ (8)
Commodity instruments	59	44	52	(14)
Total realized gain (loss)	<u>\$ 53</u>	<u>\$ 40</u>	<u>\$ 40</u>	<u>\$ (22)</u>
<b>Unrealized gain (loss) <sup>(1)</sup></b>				
Interest rate swaps	\$ (16)	\$ 4	\$ (19)	\$ 4
Commodity instruments	(31)	(108)	81	17
Total unrealized gain (loss)	<u>\$ (47)</u>	<u>\$ (104)</u>	<u>\$ 62</u>	<u>\$ 21</u>
Total mark-to-market activity	<u>\$ 6</u>	<u>\$ (64)</u>	<u>\$ 102</u>	<u>\$ (1)</u>

(1) Changes in unrealized gains and losses include hedge ineffectiveness and adjustments to reflect changes in credit default risk exposure.

	Three Months Ended June 30,		Six Months Ended June 30,	
	2010	2009	2010	2009
<b>Realized and unrealized gain (loss)</b>				
Power contracts included in operating revenues	\$ 41	\$ (49)	\$ 12	\$ (9)
Natural gas contracts included in fuel and purchased energy expense	(13)	(15)	121	12
Interest rate swaps included in interest expense	(22)	—	(31)	(4)
Total mark-to-market activity	<u>\$ 6</u>	<u>\$ (64)</u>	<u>\$ 102</u>	<u>\$ (1)</u>

### Derivatives Included in OCI and AOCI

The following tables detail the effect of our net derivative instruments that qualify for hedge accounting treatment and included in OCI and AOCI for the periods indicated (in millions):

	Three Months Ended June 30,					
	2010		2009		2008	
	Gain (Loss) Recognized in OCI (Effective Portion)		Gain (Loss) Recognized in OCI (Effective Portion)		Gain (Loss) Recognized in OCI (Effective Portion)	
Interest rate swaps	\$	(16)	\$	80	\$	(62) <sup>(1)</sup>
Commodity instruments		(47)		(90)		166 <sup>(2)</sup>
Total	\$	(63)	\$	(10)	\$	118

	Six Months Ended June 30,					
	2010		2009		2008	
	Gain (Loss) Recognized in OCI (Effective Portion)		Gain (Loss) Recognized in OCI (Effective Portion)		Gain (Loss) Recognized in OCI (Effective Portion)	
Interest rate swaps	\$	(27)	\$	87	\$	(122) <sup>(1)</sup>
Commodity instruments		79		38		277 <sup>(2)</sup>
Total	\$	52	\$	125	\$	185

(1) Included in interest expense on our Consolidated Condensed Statements of Operations.

(2) Included in operating revenues and fuel and purchased energy expense on our Consolidated Condensed Statements of Operations.

Assuming constant June 30, 2010 power and natural gas prices and interest rates, we estimate that pre-tax net losses of \$3 million would be reclassified from AOCI into earnings during the next 12 months as the hedged transactions settle; however, the actual amounts that will be reclassified will likely vary based on changes in natural gas and power prices as well as interest rates. Therefore, we are unable to predict what the actual reclassification from AOCI to earnings (positive or negative) will be for the next 12 months. As of June 30, 2010, approximately \$70 million in unrealized losses were recorded in AOCI for interest rate swaps that were hedging the variable interest rates on approximately \$1.1 billion of First Lien Credit Facility term loans, which were repaid with the proceeds received from the issuance of the 2020 First Lien Notes on July 23, 2010 (see Note 6 for further discussion of our issuance of the 2020 First Lien Notes). These interest rate swaps will no longer qualify as cash flow hedges and the corresponding amounts will be reclassified into earnings during the third quarter of 2010 as additional interest expense. Additionally, prospective changes in the fair value of these interest rate swaps will also be recorded in earnings as interest expense.

## 9. Use of Collateral

We use margin deposits, prepayments and letters of credit as credit support with and from our counterparties for commodity procurement and risk management activities. In addition, we have granted additional first priority liens on the assets currently subject to first priority liens under our First Lien Credit Facility as collateral under certain of our power and natural gas agreements that qualify as “eligible commodity hedge agreements” under our First Lien Credit Facility and certain of our interest rate swap agreements in order to reduce the cash collateral and letters of credit that we would otherwise be required to provide to the counterparties under such agreements. The counterparties under such agreements would share the benefits of the collateral subject to such first priority liens ratably with the lenders under our First Lien Credit Facility.

The table below summarizes the balances outstanding under margin deposits, natural gas and power prepayments, and exposure under letters of credit and first priority liens for commodity procurement and risk management activities as of June 30, 2010, and December 31, 2009 (in millions):

	June 30, 2010	December 31, 2009
Margin deposits <sup>(1)</sup>	\$ 254	\$ 413
Natural gas and power prepayments	42	34
Total margin deposits and natural gas and power prepayments with our counterparties <sup>(2)</sup>	\$ 296	\$ 447
Letters of credit issued	\$ 391	\$ 353
First priority liens under power and natural gas agreements <sup>(3)</sup>	—	—
First priority liens under interest rate swap agreements	405	333
Total letters of credit and first priority liens with our counterparties	\$ 796	\$ 686
Margin deposits held by us posted by our counterparties <sup>(1)(4)</sup>	\$ 58	\$ 9
Letters of credit posted with us by our counterparties	57	70
Total margin deposits and letters of credit posted with us by our counterparties	\$ 115	\$ 79

(1) Balances are subject to master netting arrangements and presented on a gross basis on our Consolidated Condensed Balance Sheets. We do not offset fair value amounts recognized for derivative instruments executed with the same counterparty under a master netting arrangement for financial statement presentation.

(2) At June 30, 2010, and December 31, 2009, \$275 million and \$426 million were included in margin deposits and other prepaid expense, respectively, and \$21 million were included in other assets at both June 30, 2010 and December 31, 2009 on our Consolidated Condensed Balance Sheets.

(3) At June 30, 2010, and December 31, 2009, the fair value of our commodity derivative instruments collateralized by first priority liens included assets of \$253 million and \$123 million, respectively; therefore, there was no collateral exposure at June 30, 2010, or December 31, 2009.

(4) Included in other current liabilities on our Consolidated Condensed Balance Sheets.

Future collateral requirements for cash, first priority liens and letters of credit may increase or decrease based on the extent of our involvement in hedging and optimization contracts, movements in commodity prices, and also based on our credit ratings and general perception of creditworthiness in our market.

## 10. Income Taxes

For federal income tax reporting purposes, our consolidated GAAP financial reporting group is comprised primarily of two separate tax reporting groups, CCFC and its subsidiaries, which we refer to as the CCFC group, and Calpine Corporation and its subsidiaries other than CCFC, which we refer to as the Calpine group. In 2005, CCFCP issued the CCFCP Preferred Shares, which resulted in the deconsolidation of the CCFC group for income tax purposes. On July 1, 2009, the CCFCP Preferred Shares were redeemed; however, CCFCP continues to be a partnership and therefore, the CCFC group remains deconsolidated from Calpine Corporation for federal income tax reporting purposes. As of June 30, 2010, the CCFC group did not have a valuation allowance recorded against its deferred tax assets, whereas the Calpine group continued to have a valuation allowance. For the three and six months ended June 30, 2010 and 2009, we used the effective rate method to determine both the CCFC and Calpine groups’ tax provision; however, our income tax rates did not bear a customary



relationship to statutory income tax rates primarily as a result of the impact of state income taxes, changes in unrecognized tax benefits, the Calpine group valuation allowance and intraperiod tax allocations discussed below. Our consolidated income tax expense from continuing operations and imputed tax rate was approximately \$6 million and (5)% and approximately \$15 million and (20)% for the three months ended June 30, 2010 and 2009, respectively, and approximately \$17 million and (11)% and approximately \$24 million and (53)% for the six months ended June 30, 2010 and 2009, respectively. Our income tax expense from continuing operations included an intraperiod tax allocation (benefit) expense of a net (\$31) million and \$14 million for the three months ended June 30, 2010 and 2009, respectively, and a net (\$16) million, which includes approximately \$13 million in tax expense related to a prior period, and \$27 million for the six months ended June 30, 2010 and 2009, respectively, with an offsetting tax expense (benefit) allocated between discontinued operations or OCI in each respective period.

*Valuation Allowance* — GAAP requires that we consider all available evidence, both positive and negative, and tax planning strategies to determine whether, based on the weight of that evidence, a valuation allowance is needed to reduce the value of deferred tax assets. Future realization of the tax benefit of an existing deductible temporary difference or carryforward ultimately depends on the existence of sufficient taxable income of the appropriate character within the carryback or carryforward periods available under the tax law. In prior periods, we provided a valuation allowance on certain federal, state and foreign tax jurisdiction deferred tax assets of the Calpine group to reduce the gross amount of these assets to the extent necessary to result in an amount that is more likely than not of being realized. Projected future income from reversals of existing taxable temporary differences and tax planning strategies allowed a larger portion of the deferred tax assets to be offset against deferred tax liabilities resulting in a significant release of previously recorded valuation allowance in prior periods; however, we have not released any additional previously recorded valuation allowance in 2010.

*Income Tax Audits* — In September 2009, we received notice from the Canadian Revenue Authority (“CRA”) of their intent to conduct a limited scope income tax audit on four of our Canadian subsidiaries for the tax years ending 2005 through 2008. We have timely responded to their request for information and received notice from the CRA that they have completed their audit of transactions within Canada and no changes were proposed. The CRA international audit division continues to review cross border transactions within the audit period. At this time, we are unable to determine the likelihood of a material adverse assessment.

We remain subject to other various audits and reviews by state taxing authorities; however, we do not expect these will have a material effect on our tax provision. Any NOLs we claim in future years to reduce taxable income could be subject to U.S. Internal Revenue Service examination regardless of when the NOLs occurred. Due to significant NOLs, any adjustment of state returns or federal returns from 2006 and forward would likely result in a reduction of deferred tax assets rather than a cash payment of income taxes.

*Unrecognized Tax Benefits and Liabilities* — As of June 30, 2010, we had unrecognized tax benefits of \$87 million. If recognized within the next 12 months, \$40 million of our unrecognized tax benefits could impact the annual effective tax rate and \$47 million related to deferred tax assets could be offset against the recorded valuation allowance resulting in no impact to our effective tax rate. We also had accrued interest and penalties of \$18 million for income tax matters as of June 30, 2010. The amount of unrecognized tax benefits decreased by \$11 million for the six months ended June 30, 2010, primarily as a result of \$9 million related to a hedging position terminated for CCFC group and \$2 million related to depreciation taken on a position for a capitalized asset. The decrease related to temporary differences in tax reporting and did not impact the annual effective tax rate. We believe it is reasonably possible that a decrease of approximately \$1 million in unrecognized tax benefits could occur within the next 12 months primarily related to state tax liabilities and state interest and penalties.

*NOL Carryforwards* — Under federal income tax law, our NOL carryforwards can be utilized to reduce future taxable income subject to certain limitations, including if we were to undergo an ownership change as defined by Section 382 of the Internal Revenue Code. We experienced an ownership change on the Effective Date as a result of the cancellation of our old common stock and the distribution of our new common stock pursuant to our Plan of Reorganization. However, this ownership change and the resulting annual limitations are not expected to result in the expiration of our NOL carryforwards if we are able to generate sufficient future taxable income within the carryforward periods. If a subsequent ownership change were to occur as a result of future transactions in our stock, accompanied by a significant reduction in our market value immediately prior to the ownership change, our ability to utilize the NOL carryforwards may be significantly limited. The Calpine group adjusted its NOL for prior periods through December 31, 2009, increasing it by approximately \$175 million. These adjustments consisted of \$49 million to reduce the NOL for excluded cancellation of debt income, a \$230 million increase in prior period NOLs for development costs and construction in progress relating to abandoned projects and other decreases of \$6 million.

To manage the risk of significant limitations on our ability to utilize our tax NOL carryforwards, our amended and restated certificate of incorporation permits our Board of Directors to meet to determine whether to impose certain transfer restrictions on our common stock in the following circumstances: if, prior to February 1, 2013, our Market Capitalization declines by at least 35% from our Emergence Date Market Capitalization of approximately \$8.6 billion (in each case, as defined in and calculated pursuant to our amended and restated certificate of incorporation) and at least 25 percentage points of shift in ownership has occurred with respect to our equity for purposes of Section 382 of the Internal Revenue Code. We believe as of the filing of this Report, neither circumstance was met. While we do not believe an ownership change of 25 percentage points has occurred, the change in ownership is only slightly less than 25%. Accordingly, the transfer restrictions have not been put in place by our Board of Directors; however, if both of the foregoing events were to occur together and our Board of Directors were to elect to impose them, they could become operative in the future. There can be no assurance that the circumstances will not be met in the future, or in the event that they are met, that our Board of Directors would choose to impose these restrictions or that, if imposed, such restrictions would prevent an ownership change from occurring.

Should our Board of Directors elect to impose these restrictions, they shall have the authority and discretion to determine and establish the definitive terms of the transfer restrictions, provided that the transfer restrictions apply to purchases by owners of 5% or more of our common stock, including any owners who would become owners of 5% or more of our common stock via such purchase. The transfer restrictions will not apply to the disposition of shares provided they are not purchased by a 5% or more owner.

## 11. Loss per Share

Pursuant to our Plan of Reorganization, all shares of our common stock outstanding prior to the Effective Date were canceled and the issuance of 485 million new shares of reorganized Calpine Corporation common stock was authorized to resolve allowed unsecured claims. A portion of the 485 million authorized shares was immediately distributed, and the remainder was reserved for distribution to holders of certain disputed claims that, although allowed as of the Effective Date, are unresolved. To the extent that any of the reserved shares remain undistributed upon resolution of the disputed claims, such shares will not be returned to us but rather will be distributed pro rata to claimants with allowed claims to increase their recovery. Therefore, pursuant to our Plan of Reorganization, all 485 million shares ultimately will be distributed. Accordingly, although the reserved shares are not yet issued and outstanding, all conditions of distribution had been met for these reserved shares as of the Effective Date, and such shares are considered issued and are included in our calculation of weighted average shares outstanding. We also include restricted stock units for which no future service is required as a condition to the delivery of the underlying common stock in our calculation of weighted average shares outstanding.

As we incurred a net loss for the three and six months ended June 30, 2010 and 2009, diluted loss per share for those periods is computed on the same basis as basic loss per share, as the inclusion of any other potential shares outstanding would be anti-dilutive. We excluded the following potentially dilutive securities from our calculation of weighted average shares outstanding from diluted loss per common share for the periods indicated:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2010	2009	2010	2009
	(shares in thousands)			
Share-based awards	15,000	13,539	14,655	13,808

## 12. Stock-Based Compensation

The Calpine Equity Incentive Plans were approved as part of our Plan of Reorganization. These plans are administered by the Compensation Committee of our Board of Directors and provide for the issuance of equity awards to all employees as well as the non-employee members of our Board of Directors. The equity awards may include incentive or non-qualified stock options, restricted stock, restricted stock units, stock appreciation rights, performance compensation awards and other share-based awards.

On May 19, 2010, our shareholders, upon the recommendation of our Board of Directors, approved the amendment to the Director Plan to increase the aggregate number of shares of common stock authorized for issuance under the Director Plan by 400,000 shares and to extend the term of the Director Plan to January 31, 2018, and approved the amendment to the Equity Plan to increase the aggregate number of shares of common stock authorized for issuance under the Equity Plan by 12,700,000 shares. Subsequent to the amendments of the Calpine Equity Incentive Plans, there are 567,000 and 27,533,000 shares, respectively, of our common stock authorized for issuance to participants.

The equity awards granted under the Calpine Equity Incentive Plans include both graded and cliff vesting options which vest over periods between one and five years, contain contractual terms of seven and ten years and are subject to forfeiture provisions under certain circumstances, including termination of employment prior to vesting. Employment inducement options to purchase a total of 4,636,734 shares were granted outside of the Calpine Equity Incentive Plans in connection with the hiring of our Chief Executive Officer and our Chief Legal Officer in August 2008, and our Chief Commercial Officer in September 2008; however, no grants of options or shares of restricted stock were made outside of the Calpine Equity Incentive Plans during the six months ended June 30, 2010 and 2009.

We use the Black-Scholes option-pricing model to estimate the fair value of our employee stock options on the grant date, which takes into account the exercise price and expected life of the stock option, the current price of the underlying stock and its expected volatility, expected dividends on the stock, and the risk-free interest rate for the expected term of the stock option as of the grant date. For our restricted stock and restricted stock units, we use our closing stock price on the date of grant, or the last trading day preceding the grant date for restricted stock granted on non-trading days, as the fair value for measuring compensation expense. Stock-based compensation expense is recognized over the period in which the related employee services are rendered. The service period is generally presumed to begin on the grant date and end when the equity award is fully vested. We use the graded vesting attribution method to recognize fair value of the equity award over the service period. For example, the graded vesting attribution method views one three-year option grant with annual graded vesting as three separate sub-grants, each representing 33 1/3% of the total number of stock options granted. The first sub-grant vests over one year, the second sub-grant vests over two years and the third sub-grant vests over three years. A three-year option grant with cliff vesting is viewed as one grant vesting over three years.

Stock-based compensation expense recognized was \$6 million and \$9 million for the three months ended June 30, 2010 and 2009, respectively, and \$12 million and \$22 million for the six months ended June 30, 2010 and 2009, respectively. We did not record any tax benefits related to stock-based compensation expense in any period as we are not benefiting from a significant portion of our deferred tax assets, including deductions related to stock-based compensation expense. In addition, we did not capitalize any stock-based compensation expense as part of the cost of an asset for the three and six months ended June 30, 2010 and 2009. At June 30, 2010, there was unrecognized compensation cost of \$23 million related to options, \$17 million related to restricted stock and \$1 million related to restricted stock units, which is expected to be recognized over a weighted average period of 1.7 years for options, 2.1 years for restricted stock and 0.9 years for restricted stock units. We issue new shares from our reserves set aside for the Calpine Equity Incentive Plans and employment inducement options when stock options are exercised and for other share-based awards.

A summary of all of our non-qualified stock option activity for the Calpine Equity Incentive Plans for the six months ended June 30, 2010, is as follows:

	Number of Options	Weighted Average Exercise Price	Weighted Average Remaining Term (in years)	Aggregate Intrinsic Value (in millions)
Outstanding – December 31, 2009	13,232,519	\$ 19.09	6.6	\$ 2
Granted	1,051,791	\$ 11.27		
Exercised	810	\$ 8.84		
Forfeited	176,272	\$ 13.14		
Expired	181,586	\$ 17.37		
Outstanding – June 30, 2010	13,925,642	\$ 18.60	6.3	\$ 5
Exercisable – June 30, 2010	4,643,082	\$ 18.61	6.6	\$ —
Vested and expected to vest – June 30, 2010	13,514,809	\$ 18.81	6.2	\$ 4

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The total intrinsic value and the cash proceeds received from our employee stock options exercised were not significant for the six months ended June 30, 2010. There were no employee stock options exercised during the six months ended June 30, 2009.

The fair value of options granted during the six months ended June 30, 2010 and 2009, was determined on the grant date using the Black-Scholes pricing model. Certain assumptions were used in order to estimate fair value for options as noted in the following table.

	2010	2009
Expected term (in years) <sup>(1)</sup>	6.5	6.0 – 6.5
Risk-free interest rate <sup>(2)</sup>	2.9 – 3.3%	2.3 – 2.9%
Expected volatility <sup>(3)</sup>	35.0 – 37.6%	60.1 – 73.0%
Dividend yield <sup>(4)</sup>	—	—
Weighted average grant-date fair value (per option)	\$ 4.66	\$ 5.66

(1) Expected term calculated using the simplified method prescribed by the SEC due to the lack of sufficient historical exercise data to provide a reasonable basis to estimate the expected term.

(2) Zero Coupon U.S. Treasury rate or equivalent based on expected term.

(3) Volatility calculated using the implied volatility of our exchange traded stock options.

(4) We are currently prohibited under our First Lien Credit Facility and certain of our other debt agreements from paying any cash dividends on our common stock.

No restricted stock or restricted stock units have been granted other than under the Calpine Equity Incentive Plans. A summary of our restricted stock and restricted stock unit activity for the Calpine Equity Incentive Plans for the six months ended June 30, 2010, is as follows:

	Number of Restricted Stock Awards	Weighted Average Grant-Date Fair Value
Nonvested – December 31, 2009	2,046,599	\$ 11.95
Granted	1,474,410	\$ 11.32
Forfeited	209,745	\$ 10.96
Vested	428,422	\$ 15.54
Nonvested – June 30, 2010	2,882,842	\$ 11.17

The total fair value of our restricted stock and restricted stock units that vested during the six months ended June 30, 2010 and 2009, was \$4 million and \$6 million, respectively.

### 13. Segment Information

We assess our business on a regional basis due to the impact on our financial performance of the differing characteristics of these regions, particularly with respect to competition, regulation and other factors impacting supply and demand. At June 30, 2010, our reportable segments were West (including geothermal), Texas, Southeast and North (including Canada). We continue to evaluate the optimal manner in which we assess our performance including our segments and future changes may result.

Commodity Margin includes our power and steam revenues, sales of purchased power and natural gas, capacity revenue, REC revenue, sales of surplus emission allowances, transmission revenue and expenses, fuel and purchased energy expense, fuel transportation expense, RGGI compliance and other environmental costs, and cash settlements from our marketing, hedging and optimization activities that are included in mark-to-market activity, but excludes the unrealized portion of our mark-to-market activity and other revenues. Commodity Margin is a key operational measure reviewed by our chief operating decision maker to assess the performance of our segments.

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The tables below show our financial data for our segments for the periods indicated (in millions). Our West segment has been recast for all periods presented to exclude results for Blue Spruce and Rocky Mountain, which have been reported as discontinued operations. See Note 2 for further discussion of our discontinued operations.

Three Months Ended June 30, 2010						
	West	Texas	Southeast	North	Consolidation and Elimination	Total
Revenues from external customers	\$ 525	\$ 552	\$ 219	\$ 134	\$ —	\$ 1,430
Intersegment revenues	1	6	21	1	(29)	—
Total operating revenues	\$ 526	\$ 558	\$ 240	\$ 135	\$ (29)	\$ 1,430
Commodity Margin	\$ 258	\$ 128	\$ 68	\$ 79	\$ —	\$ 533
Add: Mark-to-market commodity activity, net and other revenue <sup>(1)</sup>	10	(10)	(9)	3	(6)	(12)
Less:						
Plant operating expense	88	78	31	23	(7)	213
Depreciation and amortization expense	50	39	26	18	(1)	132
Other cost of revenue <sup>(2)</sup>	10	(5)	—	7	7	19
Gross profit	120	6	2	34	(5)	157
Other operating expenses	13	17	2	17	—	49
Income (loss) from operations	107	(11)	—	17	(5)	108
Interest expense, net of interest income						212
Debt extinguishment costs and other (income) expense, net						8
Loss before income taxes and discontinued operations						\$ (112)

Three Months Ended June 30, 2009						
	West	Texas	Southeast	North	Consolidation and Elimination	Total
Revenues from external customers	\$ 764	\$ 371	\$ 177	\$ 133	\$ —	\$ 1,445
Intersegment revenues	7	18	20	2	(47)	—
Total operating revenues	\$ 771	\$ 389	\$ 197	\$ 135	\$ (47)	\$ 1,445
Commodity Margin	\$ 278	\$ 196	\$ 80	\$ 70	\$ —	\$ 624
Add: Mark-to-market commodity activity, net and other revenue <sup>(1)</sup>	57	(140)	(25)	14	(9)	(103)
Less:						
Plant operating expense	96	50	35	23	2	206
Depreciation and amortization expense	47	31	17	15	(2)	108
Other cost of revenue <sup>(2)</sup>	12	2	1	7	(4)	18
Gross profit (loss)	180	(27)	2	39	(5)	189
Other operating expenses	1	21	8	—	—	30
Income (loss) from operations	179	(48)	(6)	39	(5)	159
Interest expense, net of interest income						199
Debt extinguishment costs and other (income) expense, net						32
Loss before reorganization items, income taxes and discontinued operations						(72)
Reorganization items						3
Loss before income taxes and discontinued operations						\$ (75)

**Six Months Ended June 30, 2010**

	<b>West</b>	<b>Texas</b>	<b>Southeast</b>	<b>North</b>	<b>Consolidation and Elimination</b>	<b>Total</b>
Revenues from external customers	\$ 1,190	\$ 1,079	\$ 418	\$ 257	\$ —	\$ 2,944
Intersegment revenues	5	10	44	2	(61)	—
Total operating revenues	\$ 1,195	\$ 1,089	\$ 462	\$ 259	\$ (61)	\$ 2,944
Commodity Margin	\$ 471	\$ 235	\$ 126	\$ 131	\$ —	\$ 963
Add: Mark-to-market commodity activity, net and other revenue <sup>(1)</sup>	18	86	13	—	(14)	103
Less:						
Plant operating expense	178	162	59	45	(13)	431
Depreciation and amortization expense	101	74	55	38	(3)	265
Other cost of revenue <sup>(2)</sup>	25	1	2	14	(2)	40
Gross profit	185	84	23	34	4	330
Other operating expenses	32	19	7	14	—	72
Income from operations	153	65	16	20	4	258
Interest expense, net of interest income						402
Debt extinguishment costs and other (income) expense, net						13
Loss before income taxes and discontinued operations						\$ (157)

**Six Months Ended June 30, 2009**

	<b>West</b>	<b>Texas</b>	<b>Southeast</b>	<b>North</b>	<b>Consolidation and Elimination</b>	<b>Total</b>
Revenues from external customers	\$ 1,626	\$ 856	\$ 351	\$ 264	\$ —	\$ 3,097
Intersegment revenues	17	53	55	13	(138)	—
Total operating revenues	\$ 1,643	\$ 909	\$ 406	\$ 277	\$ (138)	\$ 3,097
Commodity Margin	\$ 550	\$ 318	\$ 141	\$ 119	\$ —	\$ 1,128
Add: Mark-to-market commodity activity, net and other revenue <sup>(1)</sup>	79	(50)	6	16	(23)	28
Less:						
Plant operating expense	218	128	67	43	(7)	449
Depreciation and amortization expense	92	61	33	31	(4)	213
Other cost of revenue <sup>(2)</sup>	27	5	4	13	(10)	39
Gross profit	292	74	43	48	(2)	455
Other operating expenses	13	37	15	(3)	—	62
Income from operations	279	37	28	51	(2)	393
Interest expense, net of interest income						399
Debt extinguishment costs and other (income) expense, net						35
Loss before reorganization items, income taxes and discontinued operations						(41)
Reorganization items						6
Loss before income taxes and discontinued operations						\$ (47)

(1) Mark-to-market commodity activity represents the unrealized portion of our mark-to-market activity, net, included in operating revenues and fuel and purchased energy expense on our Consolidated Condensed Statements of Operations.

(2) Excludes \$5 million and \$2 million of RGGI compliance and other environmental costs for the three months ended June 30, 2010 and 2009, respectively, and \$5 million and \$4 million for the six months ended June 30, 2010 and 2009, respectively, which are included as a component of Commodity Margin.

## 14. Commitments and Contingencies

### *Litigation*

We are party to various litigation matters, including regulatory and administrative proceedings arising out of the normal course of business, the more significant of which are summarized below. The ultimate outcome of each of these matters cannot presently be determined, nor can the liability that could potentially result from a negative outcome be reasonably estimated presently for every case. The liability we may ultimately incur with respect to any one of these matters in the event of a negative outcome may be in excess of amounts currently accrued with respect to such matters and, as a result of these matters, may potentially be material to our financial position or results of operations. We review our litigation activities and determine if an unfavorable outcome to us is considered “remote,” “reasonably possible” or “probable” as defined by GAAP. Where we have determined an unfavorable outcome is probable and is reasonably estimable, we have accrued for potential litigation losses. Following the Effective Date, pending actions to enforce or otherwise effect repayment of liabilities preceding December 20, 2005, the petition date, as well as pending litigation against the U.S. Debtors related to such liabilities, generally have been permanently enjoined. Any unresolved claims will continue to be subject to the claims reconciliation process under the supervision of the U.S. Bankruptcy Court. However, certain pending litigation related to pre-petition liabilities may proceed in courts other than the U.S. Bankruptcy Court to the extent the parties to such litigation have obtained relief from the permanent injunction. In particular, certain pending actions against us are anticipated to proceed as described below. In addition to the matters described below, we are involved in various other claims and legal actions, including regulatory and administrative proceedings arising out of the normal course of our business. We do not expect that the outcome of such other claims and legal actions will have a material adverse effect on our financial position or results of operations.

*Pit River Tribe, et al. v. Bureau of Land Management, et al.* — On June 17, 2002, the Pit River Tribe filed suit against the BLM and other federal agencies in the U.S. District Court for the Eastern District of California (“District Court”), seeking to enjoin further exploration, construction and development of the Calpine Fourmile Hill Project in the Glass Mountain and Medicine Lake geothermal areas. Its complaint challenged the validity of the decisions of the BLM and the U.S. Forest Service to permit the development of the proposed project under two geothermal mineral leases previously issued by the BLM. The lawsuit also sought to invalidate the leases. Only declaratory and equitable relief was sought.

On November 5, 2006, the U.S. Court of Appeals for the Ninth Circuit (“Ninth Circuit”) issued a decision granting the plaintiffs relief by holding that the BLM had not complied with the National Environmental Policy Act and other procedural requirements and, therefore, held that the lease extensions were invalid. The Ninth Circuit remanded the matter back to the District Court to implement its decision. On December 22, 2008 the District Court in turn remanded this matter back to federal agencies for curative action, including whether the leases may be extended. Before the agencies could reconsider, the Pit River Tribe appealed the District Court’s decision on the basis the original Ninth Circuit decision purportedly invalidated the leases, and therefore, the Pit River Tribe argues, the Ninth Circuit did not give the District Court latitude to grant an extension of the leases. Oral argument on the Tribe’s appeal was held in the Ninth Circuit on March 10, 2010. We anticipate a decision from the Ninth Circuit during the third quarter of 2010.

In addition, the Pit River Tribe and other interested parties filed two separate suits in the District Court seeking to enjoin exploration, construction, and development of the Telephone Flat leases and proposed project at Glass Mountain in May 2004. These two related cases continue to be subject to the discharge injunction as described in the Confirmation Order. Similar to above, we are now in communication with the U.S. Department of Justice regarding these two cases; but, the cases remain mostly inactive pending the outcome of the above described Pit River Tribe case.

### *Environmental Matters*

We are subject to complex and stringent environmental laws and regulations related to the operation of our power plants. On occasion, we may incur environmental fees, penalties and fines associated with the normal operation of our power plants. We do not, however, have environmental violations or other matters that would have a material impact on our financial condition, results of operations or cash flows, or that would significantly change our operations of our power plants. A summary of our larger environmental matters is as follows:

*Texas City and Clear Lake Environmental Matters* — As part of an internal review of our Texas City and Clear Lake power plants, we determined that these power plants were in violation of the requirements of the Acid Rain Program found in Title 40 of the U.S. Federal Code of Regulations Parts 72-78. These power plants were originally exempt from these provisions because each plant was a qualifying cogeneration power plant in operation before November 1990 with qualifying

original PPAs in place. However, the PPAs expired in 2002 for our Texas City power plant and in 1999 for our Clear Lake power plant. To remedy the violations, the power plants were required to retire the number of SO<sub>2</sub> emission allowances equal to actual SO<sub>2</sub> emitted since the expiration of the exemption and remit an excess emission fee for each ton of SO<sub>2</sub> emitted during the period of non-compliance. We self-reported the excess emissions to the TCEQ and the EPA. Compliance agreements between each power plant and the TCEQ were executed on September 26, 2008, which shielded the power plants from enforcement by the TCEQ. To remedy these violations with the EPA, both power plants retired SO<sub>2</sub> emission allowances equivalent to their historic applicable emissions after expiration of the exemption in July of 2010. In addition, the EPA required payment of excess emission fees of \$146,966 and \$127,767 for Clear Lake and Texas City, respectively, which were remitted to the EPA in July of 2010. Accordingly, we now consider this matter closed.

*Remediation of Certain Assets Acquired from Conectiv* — As part of the Conectiv Acquisition on July 1, 2010, we assumed environmental remediation liabilities related to certain of the assets located in New Jersey that are subject to the Industrial Site Recovery Act and could incur expenditures related thereto of up to \$10 million. Pursuant to the Conectiv Purchase Agreement, PHI is responsible for any amounts that exceed \$10 million. We have engaged a licensed site remediation professional who is evaluating the recognized environmental conditions as a preliminary step of the site investigation phase and ultimate cleanup plan.

*Heat Input Issues at Certain Assets Acquired from Conectiv* — In 2010, prior to the Conectiv Acquisition, Conectiv received Title V air permits for its Cumberland 1 and Sherman Avenue peaker power plants from the NJDEP. These permits include heat input limits that may restrict operation at full capacity and are the subject of ongoing litigation between Conectiv and the NJDEP prompted by two Administrative Orders and Notices of Civil Administrative Penalty Assessment issued to Conectiv by the NJDEP. PHI asserts that the NJDEP does not have the authority to limit heat input in Title V air permits. We have submitted timely appeals of the Sherman Avenue and Cumberland 1 Title V air permits and continue to work with the NJDEP to ensure that all of the Conectiv New Jersey assets may operate at full load. Currently, these restrictions require one of our peaker power plants (Deepwater Unit 1) to operate at approximately 8 MW less than its full capacity. We are preparing an application to modify the Deepwater Unit 1 permit to reclaim the 8 MW limitation, but there can be no assurance that our application will be successful and we may continue to be subject to the aforementioned limitation.

#### *Other Contingencies*

*Lyondell Bankruptcy* — On January 6, 2009, Lyondell, including its subsidiary Houston Refining LP, filed for protection under Chapter 11 in the U.S. Bankruptcy Court. Channel Energy Center leases its project site from Houston Refining LP and is granted certain easements in, over, under and on the site pursuant to the lease. Channel Energy Center provides power and steam to Houston Refining LP pursuant to a power services agreement and, pursuant to a power plant services agreement, provides clarified water and treated water to Houston Refining LP. Channel Energy Center is provided with raw water, refinery gas and certain other power plant services by Houston Refining LP. On April 23, 2010, the U.S. Bankruptcy Court approved Lyondell's plan of reorganization, which includes acceptance of the project site lease and power and plant services agreements described above. Additionally, we received approximately \$13 million in settlement under Lyondell's plan of reorganization to cure prepetition defaults under the assumed agreements during the second quarter of 2010. We reversed our bad debt allowance of approximately \$10 million, which is reported as a component of sales, general and other administrative expense on our Consolidated Condensed Statement of Operations during the first quarter of 2010. We now consider this matter closed.

*Distribution of Calpine Common Stock under our Plan of Reorganization* — Through the filing of this Report, approximately 441 million shares have been distributed to holders of allowed unsecured claims and approximately 44 million shares remain in reserve for distribution to holders of disputed claims whose claims ultimately become allowed under our Plan of Reorganization. To the extent that any of the reserved shares remain undistributed upon resolution of the remaining disputed claims, such shares will not be returned to us but rather will be distributed pro rata to claimants with allowed claims to increase their recovery. We are not required to issue additional shares above the 485 million shares authorized to settle unsecured claims, even if the shares remaining for distribution are not sufficient to fully pay all allowed unsecured claims. However, certain disputed claims, including prepayment premium and default interest claims asserted by the holders of CalGen Third Lien Debt, may be required to be settled with available cash and cash equivalents to the extent reorganized Calpine Corporation common stock held in reserve pursuant to our Plan of Reorganization for such claims is insufficient in value to satisfy such claims in full. We consider such an outcome to be unlikely. To the extent that holders of the CalGen Third Lien Debt have claims that remain unsettled or outstanding, they assert that they continue to have lien rights to the assets of the CalGen entities until the pending claims asserted in the case styled: *HSBC Bank USA, NA as Indenture Trustee, et al v. Calpine Corporation, et al*. Case No. 1:07-cv-03088, S.D.N.Y. are resolved either through court action or settlement.



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We dispute such allegations and contend that all liens were released when the CalGen secured claims were paid in full under the terms of applicable court orders and our Plan of Reorganization as confirmed. We continue to engage in settlement discussions with the various constituencies in this dispute.

**Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations****Forward-Looking Information**

This Management's Discussion and Analysis of Financial Condition and Results of Operations should be read in conjunction with our accompanying Consolidated Condensed Financial Statements and related notes. See the cautionary statement regarding forward-looking statements on page viii of this Report for a description of important factors that could cause actual results to differ from expected results.

**Introduction and Overview**

We are the largest independent wholesale power company in the U.S. measured by power produced. We own and operate primarily natural gas-fired and geothermal power plants in North America and have a significant presence in the major competitive power markets in the U.S., including CAISO and ERCOT, and to a lesser extent, in the competitive ISO NE and NYISO markets. The Conectiv Acquisition on July 1, 2010 adds significant presence in the PJM market. We sell wholesale power, steam, regulatory capacity, renewable energy credits and ancillary services to our customers, including utilities, independent electric system operators, industrial and agricultural companies, retail power providers, municipalities, power marketers and others. We purchase natural gas as fuel for our power plants, engage in related natural gas transportation and storage transactions and we purchase electric transmission rights to deliver power to our customers. We also enter into natural gas and power-related commodity and derivative transactions to financially hedge certain business risks and optimize our portfolio of power plants. Our goal is to be recognized as the premier independent power company in the U.S. as measured by our customers, regulators, shareholders and communities in which our power plants reside. We seek to achieve sustainable growth through financially disciplined power plant development, construction, operations and ownership.

We assess our business on a regional basis due to the impact on our financial performance of the differing characteristics of these regions, particularly with respect to competition, regulation and other factors impacting supply and demand. Our reportable segments are West (including geothermal), Texas, Southeast and North (including Canada). The generation assets we acquired in the Conectiv Acquisition will be reported in our North segment beginning in the third quarter of 2010.

With the Conectiv Acquisition and the expected sale of Blue Spruce and Rocky Mountain (further described below), our portfolio, including partnership interests, will include 91 operating power plants with an aggregate generation capacity of nearly 28,000 MW and 1,075 MW under construction and advanced development. Our generation capacity will include approximately 3,801 MW of baseload capacity from our Geysers Assets and cogeneration power plants, 17,537 MW of intermediate load capacity from our combined-cycle combustion turbines and 6,400 MW of peaking capacity from our simple-cycle combustion turbines and duct-fired capability. Our segments will have an aggregate generation capacity of 6,886 MW with an additional 510 MW under advanced development in the West, 7,433 MW in Texas, 6,083 MW in the Southeast and 7,336 MW with an additional 565 MW under construction in the North. Our Geysers Assets, included in our West segment, have generation capacity of approximately 725 MW from 15 operating power plants. We also have approximately 4 MW of capacity from solar power generation technology in the North.

The Conectiv Acquisition provides us with a significant presence in the PJM market, one of the most robust competitive power markets in the U.S., and positions us with three scale markets instead of two (CAISO and ERCOT) giving us greater geographical diversity. We have added 18 operating power plants and one plant under construction, with approximately 4,490 MW of capacity (including completion of the power plant under construction and scheduled upgrades). Approximately 340 MW of the plants acquired have conventional steam turbine technology where coal has historically been used as the primary fuel source. However, these power plants have flexibility as to fuel source and are also capable of burning natural gas or fuel oil to generate power. These plants have ceased burning coal and we will not burn coal to generate power from these plants in the future. Instead, we expect to generate power from these plants using natural gas or fuel oil and plan to modernize these sites in the longer term to natural gas-fired combustion turbines.

We have entered into an agreement to sell our interests in Blue Spruce and Rocky Mountain for approximately \$739 million, subject to certain working capital adjustments at closing, which is expected in December 2010. We believe the proceeds from the sale of Blue Spruce and Rocky Mountain will enable us to continue to strengthen our balance sheet and focus our efforts in our core markets.

We have continued to effectively manage our capital structure and reduce the longer term risk of our debt maturities. In May and July 2010, we repaid approximately \$1.5 billion of the First Lien Credit Facility term loans with proceeds from the issuance of the 2019 and 2020 First Lien Notes to extend our 2014 debt maturities. On July 8, 2010, we repaid \$100 million under the Commodity Collateral Revolver in accordance with its terms. We also expect to repay approximately \$412 million of project debt with the proceeds from the sales of Blue Spruce and Rocky Mountain.

We remain focused on increasing our earnings and generating cash flows sufficient to maintain adequate levels of liquidity in order to service our debt, meet our collateral needs and fund our operations and growth. We will continue to pursue opportunities to improve our fleet performance and reduce operating costs. In order to manage our various physical assets and contractual obligations, we will continue to execute commodity hedging agreements within the guidelines of our commodity risk policy.

### ***Legislative and Regulatory Update***

We are subject to complex and stringent energy, environmental and other governmental laws and regulations at the federal, state and local levels in connection with the development, ownership and operation of our power plants. Ongoing state, regional and federal initiatives to implement new environmental and other governmental regulations are expected to have a significant impact on the power generation industry. Such changes could have positive or negative impacts on our existing business. We are actively participating in these debates at the federal, regional and state levels. Significant updates are discussed below. For a further discussion of the environmental and other governmental regulations that affect us, please see “— Governmental and Regulatory Matters” in Part I, Item 1. of our 2009 Form 10-K.

As previously disclosed in “— Governmental and Regulatory Matters” of our 2009 Form 10-K, the EPA is moving forward to regulate GHG emissions pursuant to its existing authority under the Federal Clean Air Act. The EPA announced a proposal (the “Tailoring Rule”) to require sources emitting over 25,000 tons per year of GHG emissions to undergo major new source review (“NSR”) when such sources make modifications that would increase their GHG emissions by an additional 10,000 to 25,000 tons. Such modifications, or new construction, would be subject to the EPA’s PSD rules and subject to best available control technology for GHG, as well as public review and notice. The EPA finalized the Tailoring Rule on May 13, 2010, and increased the threshold of applicability from sources emitting over 25,000 tons per year to sources emitting over 100,000 tons per year of GHG. The EPA also increased the threshold for modifications from 10,000 to 25,000 tons to greater than 75,000 tons per year. Beginning in January 2011, new sources or modifications of existing sources that trigger major NSR for other criteria pollutants will also be subject to major NSR for GHG if emissions exceed these thresholds. Beginning in July 2011, sources exceeding the GHG PSD thresholds will be subject to major NSR, regardless of whether they trigger PSD review for other criteria pollutants. We believe that the impact of the final Tailoring Rule will be neutral to us because our power plants already meet the best available control technology for GHGs.

*EPA Transport Rule* — On July 6, 2010, the EPA proposed the Transport Rule, which would require 31 states and the District of Columbia to significantly improve air quality by reducing power plant emissions that contribute to ozone and fine particle pollution in other states. Beginning in 2012, emission reductions will be governed by this rule, instead of the Clean Air Interstate Rule. The EPA estimates this rule, along with concurrent state and EPA actions, will reduce power plant SO<sub>2</sub> emissions by 71 percent and NO<sub>x</sub> emissions by 52 percent over 2005 levels by year 2014. The Transport Rule regulates emissions through state specific emissions budgets, intrastate trading and limited interstate trading. All allowances will be allocated to existing and new sources with separate programs for annual emissions and ozone season emissions. Allowance budgets will be allocated to states for disbursement. The EPA has proposed systems to ensure that interstate trading is limited such that downwind sources are assured that upwind sources achieve meaningful emission reductions. We are reviewing the proposed rules and will submit comments to the EPA.

*New Jersey Air Regulations* — New Jersey has enacted air regulations that will require future investment in controls to enable continued operation of certain of the generation assets we acquired in the Conectiv Acquisition. Our 158 MW Deepwater power plant and certain of the New Jersey peaker power plants will need additional NO<sub>x</sub> controls to continue operating beyond 2015 under the regulations. Recently, the NJDEP has proposed to extend the compliance deadline for these power plants to 2017.

*Ballot Initiative to Suspend Implementation of AB 32* — In November 2010, California voters will vote on a ballot initiative that would suspend AB 32 until unemployment in California reaches 5.5%. Since unemployment levels have only reached that arbitrary mark three times in the past decade, their proposition, if passed, is an effective repeal of AB 32. We are actively opposing the ballot initiative.

*Derivatives Legislation* — The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act") was signed into law on July 21, 2010. Title VII of the Dodd-Frank Act addresses regulatory reform of the OTC derivatives market in the U.S. and significantly changes the regulatory framework of this market. Title VII will be effective 360 days from the enactment of the Dodd-Frank Act and the implementing regulation is to be completed by the same date. Until these regulations have been finalized, the extent to which the provisions of Title VII might affect our derivatives activities is unknown. A number of features of the legislation may impact our existing business. One of the most significant of these is the requirement for central clearing of many OTC derivatives transactions with clearing organizations. This requirement is subject to an end-user exception. Whereas our OTC transactions have traditionally been negotiated on a bilateral basis, including the collateral arrangements thereunder, they now will be subject to the collateral and margining procedures of the clearing organization. To the extent the end-user exception is available to us, we may elect not to clear certain transactions. In these instances, the collateral margining requirements for these uncleared transactions might be subject to the requirements prescribed by this regulation. It is not known at this time whether, and, if so, to what extent, we will be required to provide collateral (for both our cleared and uncleared transactions) in excess of what is currently provided under our existing hedging relationships. Further, it is not certain whether the new margin requirements will apply retroactively to existing OTC derivatives transactions. Other features of the Dodd-Frank Act which will have an impact on our derivatives activities include trade reporting, position limits and trade execution. The effect of the Dodd-Frank Act on traditional dealers and market-makers as well as the consequential effect on market liquidity and, hence, pricing is uncertain.

**Results of Operations for the Three Months Ended June 30, 2010 and 2009**

Below are the results of operations for the three months ended June 30, 2010, as compared to the same period in 2009 (in millions, except for percentages and operating performance metrics). Our results of operations and operating performance metrics for the three months ended June 30, 2009 have been recast to exclude Blue Spruce and Rocky Mountain, which are reported in discontinued operations. In the comparative tables below, increases in revenue/income or decreases in expense (favorable variances) are shown without brackets while decreases in revenue/income or increases in expense (unfavorable variances) are shown with brackets.

	2010	2009	\$ Change	% Change
Operating revenues:				
Commodity revenue	\$ 1,379	\$ 1,444	\$ (65)	(5) %
Mark-to-market activity <sup>(1)</sup>	32	(4)	36	#
Other revenue	19	5	14	#
Operating revenues	1,430	1,445	(15)	(1)
Cost of revenue:				
Fuel and purchased energy expense:				
Commodity expense	841	818	(23)	(3)
Mark-to-market activity <sup>(1)</sup>	63	104	41	39
Fuel and purchased energy expense	904	922	18	2
Plant operating expense	213	206	(7)	(3)
Depreciation and amortization expense	132	108	(24)	(22)
Other cost of revenue <sup>(2)</sup>	24	20	(4)	(20)
Total cost of revenue	1,273	1,256	(17)	(1)
Gross profit	157	189	(32)	(17)
Sales, general and other administrative expense	53	48	(5)	(10)
(Income) from unconsolidated investments in power plants	(6)	(23)	(17)	(74)
Other operating expense	2	5	3	60
Income from operations	108	159	(51)	(32)
Interest expense	216	203	(13)	(6)
Interest (income)	(4)	(4)	—	—
Debt extinguishment costs	7	33	26	79
Other (income) expense, net	1	(1)	(2)	#
Loss before reorganization items, income taxes and discontinued operations	(112)	(72)	(40)	(56)
Reorganization items	—	3	3	#
Loss before income taxes and discontinued operations	(112)	(75)	(37)	(49)
Income tax expense	6	15	9	60
Loss before discontinued operations	(118)	(90)	(28)	(31)
Discontinued operations, net of tax expense	4	11	(7)	(64)
Net loss	(114)	(79)	(35)	(44)
Net (income) loss attributable to the noncontrolling interest	(1)	1	(2)	#
Net loss attributable to Calpine	\$(115)	\$(78)	\$(37)	(47)
Operating Performance Metrics:	2010	2009	Change	% Change
MWh generated (in thousands) <sup>(3)</sup>	19,246	18,422	824	4 %
Average availability	87.7%	90.6%	(2.9)	(3)
Average total MW in operation	23,057	22,473	584	3
Average capacity factor, excluding peakers	42.5%	42.3%	0.2	—
Steam Adjusted Heat Rate	7,306	7,274	(32)	—

# Variance of 100% or greater

(1) Amount represents the unrealized portion of our mark-to-market activity.

(2) Includes \$5 million and \$2 million of RGGI compliance and other environmental costs for the three months ended June 30, 2010 and 2009, respectively, which are components of Commodity Margin.

(3) Represents generation from power plants that we both consolidate and operate.

Commodity revenue, net of commodity expense, decreased \$88 million for the three months ended June 30, 2010 compared to the same period in 2009, primarily due to:

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- a decrease of \$26 million related to the expiration of the PCF arrangement in the fourth quarter of 2009;
- a lower average hedge margin, as anticipated, resulting from relatively lower hedge prices in the second quarter of 2010 as compared to hedge prices for the same period in 2009; and
- lower realized spark spreads on open positions due to weaker market conditions, particularly in California and Texas, for the three months ended June 30, 2010 compared to 2009;

partially offset by:

- an increase of \$23 million related to higher REC revenue from new contracts associated with our Geysers Assets in the second quarter of 2010 compared to the same period in 2009; and
- an increase of \$21 million related to OMEC, which achieved commercial operation in October 2009 and was consolidated on January 1, 2010.

Our average total MW in operation increased by 584 MW, or 3%, primarily due to OMEC, which achieved commercial operations in October 2009 and was consolidated on January 1, 2010. Generation increased 4% due primarily to higher spark spreads in April 2010 in Texas as well as a stronger pricing environment in the Southeast in the second quarter of 2010 compared to the same period in 2009.

Revenues from unrealized mark-to-market activity had a favorable variance of \$36 million due to the positive impact of gains for the three months ended June 30, 2010, as a result of short Heat Rate swap positions transacted prior to a period of declining power prices and the positive impact of the roll-off of previously recognized unrealized losses on economic hedges of power that settled during the three months ended June 30, 2010. Expenses related to unrealized mark-to-market activity had a favorable variance of \$41 million due to the loss in the three months ended June 30, 2009, which primarily resulted from the roll-off of previously recognized unrealized gains on short natural gas positions entered in 2008 when natural gas prices had reached significantly higher levels. Additional unrealized losses were recorded for the three months ended June 30, 2009, due to a relatively sharp recovery in natural gas prices from early 2009 when short natural gas positions had been entered to economically hedge a portion of spark spreads in 2010-2011. The unrealized loss for fuel expenses in the three months ended June 30, 2010, while less pronounced, was similarly driven by the impact of moderate natural gas price recovery for forward curves at June 30, 2010 from early 2010 short natural gas positions and the negative impact of the roll-off of previously recognized unrealized gains on such positions which settled during the three months ended June 30, 2010.

Other revenue increased due to \$17 million in revenue recognized in the second quarter of 2010 which included a \$16 million adjustment related to prior periods on a major maintenance contract. This increase was partially offset by a decrease of \$2 million related to an operations and maintenance contract which expired in March 2010.

Plant operating expense increased \$7 million during the three months ended June 30, 2010 compared to the same period in 2009, resulting from a \$4 million increase related to OMEC which achieved commercial operations in October 2009 and was consolidated on January 1, 2010, an \$8 million increase related to costs incurred for unscheduled outages predominantly in our Texas region in the second quarter of 2010 and a \$3 million increase in major maintenance resulting from our plant outage schedule. The increase was partially offset by a decrease of \$10 million in costs from scrap parts related to outages primarily due to a decrease in the net book value of our rotatable parts resulting from a revision in the estimated useful lives and salvage values of our power plants and related equipment. See Note 3 of the Notes to Consolidated Condensed Financial Statements for further information regarding our change in useful lives and salvage values.

Depreciation and amortization expense increased \$24 million for the three months ended June 30, 2010 compared to the same period in 2009, primarily resulting from a revision in the estimated useful lives and salvage values of our power plants and related equipment and changing our Geysers Assets depreciation from the units of production method to the straight line method. See Note 3 of the Notes to Consolidated Condensed Financial Statements for further information regarding our change in useful lives and salvage values as well as our change from the units of production method to the straight line depreciation method for our Geysers Assets.

Sales, general and other administrative expense increased for the three months ended June 30, 2010 compared to the same period in 2009, due to \$19 million in Conectiv acquisition-related costs incurred during the second quarter of 2010 partially offset by a \$7 million decrease in personnel costs largely due to lower stock-based compensation expense and temporary labor costs, a \$4 million decrease in consulting expense and a \$1 million favorable change in our bad debt expense.

Income from unconsolidated investments in power plants decreased by \$17 million for the three months ended June 30, 2010 compared to the same period 2009, primarily due to the consolidation of OMEC on January 1, 2010. During the three months ended June 30, 2009, OMEC recorded income of \$16 million which largely consisted of a \$22 million gain related to mark-to-market activity from interest rate swap contracts. See Notes 1 and 4 of the Notes to Consolidated Condensed Financial Statements for further information regarding our consolidation of OMEC and unconsolidated investments, respectively. Also contributing to the unfavorable change was a decrease of \$2 million in income from our investment in Greenfield LP for the three months ended June 30, 2010 compared to the same period in 2009.

Interest expense increased for the three months ended June 30, 2010 compared to the same period in 2009, primarily due to a \$20 million unfavorable change in value related to our interest rate swaps that do not qualify for hedge accounting and \$6 million in interest expense related to OMEC which achieved commercial operations in October 2009 and was consolidated on January 1, 2010. Also contributing to the increase was the annualized effective interest rates on our consolidated debt, excluding the impacts of capitalized interest and unrealized mark-to-market gains (losses) on interest rate swaps, after amortization of deferred financing costs and debt discounts, which increased to 8.5% for the three months ended June 30, 2010 from 8.0% for the three months ended June 30, 2009, due to the negative impact of realized activity on our interest rate swaps. The increase was partially offset by a decrease of \$5 million resulting from the repayment in February 2010 of the notes related to PCF and PCF III, as well as a decrease of \$10 million related to the refinancing of our CCFC Old Notes and CCFC Term Loans in May and June 2009, respectively, and the CCFCP Preferred Shares that were redeemed on or before July 1, 2009.

Debt extinguishment costs decreased for the three months ended June 30, 2010, compared to the same period in 2009 due to \$7 million in debt extinguishment costs from the write-off of unamortized deferred financing costs associated with the repayment of term loans under the First Lien Credit Facility in May 2010 compared to \$33 million in debt extinguishment costs associated with the refinancing of our CCFC Old Notes and CCFC Term Loans in May and June 2009, respectively, and the portion of the CCFCP Preferred Shares that were redeemed prior to their redemption date of July 1, 2009.

Income tax expense decreased from \$15 million for the three months ended June 30, 2009 to \$6 million for the three months ended June 30, 2010. The decrease primarily relates to the application of intraperiod tax allocation provisions, which included a net (\$31) million tax benefit compared to \$14 million in tax expense for the three months ended June 30, 2010 and June 30, 2009, respectively, with an offsetting tax expense of \$31 million allocated between discontinued operations and OCI for the three months ended June 30, 2010, and an offsetting tax benefit equal to (\$14) million in OCI for the three months ended June 30, 2009.

Income from discontinued operations decreased for the three months ended June 30, 2010 compared to the same period in 2009 due largely to \$8 million in intraperiod tax allocation expense as described above, while no such allocation was required in the same period of last year.

**Results of Operations for the Six Months Ended June 30, 2010 and 2009**

Below are the results of operations for the six months ended June 30, 2010, as compared to the same period in 2009 (in millions, except for percentages and operating performance metrics). Our results of operations and operating performance metrics for the six months ended June 30, 2009 have been recast to exclude Blue Spruce and Rocky Mountain, which are reported in discontinued operations. In the comparative tables below, increases in revenue/income or decreases in expense (favorable variances) are shown without brackets while decreases in revenue/income or increases in expense (unfavorable variances) are shown with brackets.

	2010	2009	\$ Change	% Change
Operating revenues:				
Commodity revenue	\$ 2,929	\$ 3,002	\$ (73)	(2) %
Mark-to-market activity <sup>(1)</sup>	(7)	84	(91)	#
Other revenue	22	11	11	#
Operating revenues	2,944	3,097	(153)	(5)
Cost of revenue:				
Fuel and purchased energy expense:				
Commodity expense	1,961	1,870	(91)	(5)
Mark-to-market activity <sup>(1)</sup>	(88)	67	155	#
Fuel and purchased energy expense	1,873	1,937	64	3
Plant operating expense	431	449	18	4
Depreciation and amortization expense	265	213	(52)	(24)
Other cost of revenue <sup>(2)</sup>	45	43	(2)	(5)
Total cost of revenue	2,614	2,642	28	1
Gross profit	330	455	(125)	(27)
Sales, general and other administrative expense	78	93	15	16
(Income) from unconsolidated investments in power plants	(13)	(40)	(27)	(68)
Other operating expense	7	9	2	22
Income from operations	258	393	(135)	(34)
Interest expense	408	409	1	—
Interest (income)	(6)	(10)	(4)	(40)
Debt extinguishment costs	7	33	26	79
Other (income) expense, net	6	2	(4)	#
Loss before reorganization items, income taxes and discontinued operations	(157)	(41)	(116)	#
Reorganization items	—	6	6	#
Loss before income taxes and discontinued operations	(157)	(47)	(110)	#
Income tax expense	17	24	7	29
Loss before discontinued operations	(174)	(71)	(103)	#
Discontinued operations, net of tax expense	12	23	(11)	(48)
Net loss	(162)	(48)	(114)	#
Net loss attributable to the noncontrolling interest	—	2	(2)	#
Net loss attributable to Calpine	\$ (162)	\$ (46)	\$ (116)	#
Operating Performance Metrics:	2010	2009	Change	% Change
MWh generated (in thousands) <sup>(3)</sup>	39,604	36,576	3,028	8 %
Average availability	89.0%	90.6%	(1.6)	(2)
Average total MW in operation	23,069	22,473	596	3
Average capacity factor, excluding peakers	44.3%	42.3%	2.0	5
Steam Adjusted Heat Rate	7,266	7,239	(27)	—

# Variance of 100% or greater

(1) Amount represents the unrealized portion of our mark-to-market activity.

(2) Includes \$5 million and \$4 million of RGGI compliance and other environmental costs for the six months ended June 30, 2010 and 2009, respectively, which are components of Commodity Margin.

(3) Represents generation from power plants that we both consolidate and operate.

Commodity revenue, net of commodity expense, decreased \$164 million for the six months ended June 30, 2010 compared to the same period in 2009, primarily due to:



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- a decrease of \$51 million related to the expiration of the PCF arrangement in the fourth quarter of 2009;
- a lower average hedge margin, as anticipated, resulting from relatively lower hedge prices in the first half of 2010 as compared to hedge prices for the same period in 2009; and
- lower realized spark spreads on open positions due to weaker market conditions, particularly in California and Texas, in the first half of 2010 compared to the same period in 2009;

partially offset by:

- an increase of \$26 million related to higher REC revenue from new contracts associated with our Geysers Assets in the first half of 2010 compared to the same period in 2009; and
- an increase of \$40 million related to OMEC, which achieved commercial operation in October 2009 and was consolidated on January 1, 2010.

Our average total MW in operation increased by 596 MW, or 3%, primarily due to OMEC, which achieved commercial operations in October 2009 and was consolidated on January 1, 2010. Generation increased 8% due primarily to higher spark spreads in April 2010, as well as colder weather in January and February 2010 in Texas compared to the same periods in 2009 as well as a stronger pricing environment in the Southeast in the second quarter of 2010 compared to the same period in 2009.

Revenues from unrealized mark-to-market activity decreased by \$91 million primarily related to unrealized gains recognized for the six months ended June 30, 2009, as a result of short Heat Rate swap positions transacted in 2008 for 2009 and 2010 settlement, prior to a period of declining power prices, and the positive impact of the roll-off of previously recognized unrealized losses on economic hedges of power that settled during the six months ended June 30, 2009 that did not recur in 2010. Expenses from unrealized mark-to-market activity had a favorable variance of \$155 million due to unrealized gains on short natural gas positions that were transacted at higher prices in 2009 for 2010 and 2011 settlement and the roll-off of losses previously recognized which settled during the first half of 2010 related to long natural gas positions, including options, entered into prior to a period of decreasing natural gas prices. These unrealized gains were mostly recognized in the three months ended March 31, 2010 and more than offset the net unrealized losses for fuel expense for the three months ended June 30, 2010. The favorable change is also the result of the unrealized losses in 2009 due to the roll-off of previously recognized unrealized gains on short natural gas positions entered in 2008 when natural gas prices had reached significantly higher levels.

Other revenue increased for the six months ended June 30, 2010 compared to the same period in 2009 due primarily to \$17 million in revenue recognized in the second quarter of 2010 which included a \$15 million adjustment related to prior periods on a major maintenance contract. This increase was partially offset by a decrease of \$4 million related to an operations and maintenance contract that expired in March 2010.

Plant operating expense decreased \$18 million during the six months ended June 30, 2010 compared to the same period in 2009, resulting from a decrease of \$12 million in costs from scrap parts related to outages primarily due to a decrease in the net book value of our rotatable parts resulting from a revision in the estimated useful lives and salvage values of our power plants and related equipment. See Note 3 of the Notes to Consolidated Condensed Financial Statements for further information regarding our change in useful lives and salvage values. Also contributing to the favorable change was a decrease of \$7 million in normal, recurring plant operating expenses, a decrease of \$5 million in stock-based compensation expense related to plant personnel costs and a \$4 million decrease in major maintenance resulting from our plant outage schedule. The decrease in plant operating expense was partially offset by an increase of \$7 million related to OMEC which achieved commercial operations in October 2009 and was consolidated on January 1, 2010, and a \$3 million increase related to costs incurred for unscheduled outages predominantly in our Texas region.

Depreciation and amortization expense increased \$52 million for the six months ended June 30, 2010 compared to the same period in 2009, primarily resulting from a revision in the estimated useful lives and salvage values of our power plants and related equipment and changing our Geysers Assets depreciation from the units of production method to the straight line method. See Note 3 of the Notes to Consolidated Condensed Financial Statements for further information regarding our change in useful lives and salvage values, as well as our change from the units of production method to the straight line depreciation method for our Geysers Assets.

Sales, general and other administrative expense decreased for the six months ended June 30, 2010 compared to the same period in 2009, due to a \$12 million favorable change in our bad debt expense primarily related to a \$10 million

reversal of our bad debt allowance as a result of Lyondell's emergence from Chapter 11 bankruptcy and the bankruptcy court's acceptance of our claim (see also Note 14 of our Notes to Consolidated Condensed Financial Statements for further information regarding the disposition of our claims against Lyondell), an \$11 million decrease in personnel costs due largely to lower stock-based compensation expense and temporary labor costs, a \$6 million decrease in consulting expense and a \$2 million decrease in office expense. The decrease was partially offset by \$19 million in Conectiv acquisition-related costs incurred during the second quarter of 2010.

Income from unconsolidated investments in power plants decreased by \$27 million for the six months ended June 30, 2010 compared to the same period 2009, primarily due to the consolidation of OMEC on January 1, 2010. During the six months ended June 30, 2009, OMEC recorded income of \$26 million which largely consisted of a \$31 million gain related to mark-to-market activity from interest rate swap contracts. See Notes 1 and 4 of the Notes to Consolidated Condensed Financial Statements for further information regarding our consolidation of OMEC and unconsolidated investments, respectively. Also contributing to the unfavorable change was a decrease of \$3 million in income from our investment in Greenfield LP for the six months ended June 30, 2010 compared to the same period in 2009.

Debt extinguishment costs decreased for the six months ended June 30, 2010, compared to the same period in 2009 due to \$7 million in debt extinguishment costs from the write-off of unamortized deferred financing costs associated with the repayment of term loans under the First Lien Credit Facility in May 2010 compared to \$33 million in debt extinguishment costs associated with the refinancing of our CCFC Old Notes and CCFC Term Loans in May and June 2009, respectively, and the portion of the CCFCP Preferred Shares that were redeemed prior to their redemption date of July 1, 2009.

Reorganization items primarily consisted of settlements of various disputed claims for the six months ended June 30, 2009.

Income tax expense decreased from \$24 million for the six months ended June 30, 2009 to \$17 million for the six months ended June 30, 2010. The decrease primarily relates to the application of intraperiod tax allocation provisions, which included a net (\$16) million tax benefit, including approximately \$13 million tax expense related to a prior period, compared to \$27 million in tax expense for the six months ended June 30, 2010 and June 30, 2009, respectively, with an offsetting tax expense of \$16 million allocated between discontinued operations and OCI for the six months ended June 30, 2010, and an offsetting tax benefit equal to (\$27) million in OCI for the six months ended June 30, 2009.

Income from discontinued operations decreased for the six months ended June 30, 2010 compared to the same period in 2009 due largely to \$8 million in intraperiod tax allocation expense as described above, while no such allocation was required in the same period of last year.

### **Commodity Margin and Adjusted EBITDA**

Management's Discussion and Analysis of Financial Condition and Results of Operations includes financial information prepared in accordance with GAAP, as well as the non-GAAP financial measures, Commodity Margin and Adjusted EBITDA, discussed below, which we use as a measure of our performance.

#### ***Commodity Margin by Segment for the Three Months Ended June 30, 2010 and 2009***

We use Commodity Margin, a non-GAAP financial measure, to assess our performance by our reportable segments. Commodity Margin includes our power and steam revenues, sales of purchased power and natural gas, capacity revenue, REC revenue, sales of surplus emission allowances, transmission revenue and expenses, fuel and purchased energy expense, fuel transportation expense, RGGI compliance and other environmental costs, and cash settlements from our marketing, hedging and optimization activities that are included in mark-to-market activity, but excludes the unrealized portion of our mark-to-market activity and other revenues. We believe that Commodity Margin is a useful tool for assessing the performance of our core operations and is a key operational measure reviewed by our chief operating decision maker. Commodity Margin is not a measure calculated in accordance with GAAP, and should be viewed as a supplement to and not a substitute for our results of operations presented in accordance with GAAP. Commodity Margin does not intend to represent gross profit (loss), the most comparable GAAP measure, as an indicator of operating performance and is not

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necessarily comparable to similarly titled measures reported by other companies. See Note 13 of the Notes to Consolidated Condensed Financial Statements for a reconciliation of Commodity Margin to income (loss) from operations by segment.

The following tables show our Commodity Margin and related operating performance metrics by segment for the three months ended June 30, 2010 and 2009. Our Commodity Margin and related performance metrics for the three months ended June 30, 2009 have been recast to exclude Blue Spruce and Rocky Mountain. In the comparative tables below, favorable variances are shown without brackets while unfavorable variances are shown with brackets.

<b>West:</b>	<b>2010</b>	<b>2009</b>	<b>Change</b>	<b>% Change</b>	
Commodity Margin (in millions)	\$ 258	\$ 278	\$ (20)	(7)	%
Commodity Margin per MWh generated	\$ 47.04	\$ 48.37	\$ (1.33)	(3)	
MWh generated (in thousands)	5,485	5,747	(262)	(5)	
Average availability	88.4%	90.7%	(2.3)	(3)	
Average total MW in operation	6,904	6,371	533	8	
Average capacity factor, excluding peakers	40.2%	46.0%	(5.8)	(13)	
Steam Adjusted Heat Rate	7,359	7,458	99	1	

*West* — Commodity Margin in our West segment decreased by \$20 million, or 7%, for the three months ended June 30, 2010 compared to the same period in 2009, primarily resulting from a decrease of \$26 million related to the expiration of the PCF arrangement in the fourth quarter of 2009, lower average hedge prices for the second quarter of 2010 compared to 2009, and lower realized spark spreads on our open positions due to lower Market Heat Rates caused primarily by higher rainfall in June 2010 compared to the same period in 2009. The decrease in Commodity Margin was partially offset by an increase of \$23 million related to higher REC revenue from new contracts associated with our Geysers Assets, \$21 million from OMEC that achieved commercial operation in October 2009 and was consolidated on January 1, 2010 and a \$12 million credit recognized in the second quarter of 2010 related to overcharges associated with a gas transportation contract. Average total MW in operation increased 533 MW, or 8%, due primarily to OMEC which was partially offset by the ownership transfer of our Pittsburg power plant to a third party in March 2010 as well as the expiration of the operating lease for our Watsonville (Monterey) cogeneration plant in May 2010. Despite this increase in generation capacity, weaker market price conditions described above contributed to a 5% decline in MWh generated in the second quarter of 2010 as compared to the same quarter in 2009.

<b>Texas:</b>	<b>2010</b>	<b>2009</b>	<b>Change</b>	<b>% Change</b>	
Commodity Margin (in millions)	\$ 128	\$ 196	\$ (68)	(35)	%
Commodity Margin per MWh generated	\$ 15.53	\$ 25.77	\$ (10.24)	(40)	
MWh generated (in thousands)	8,243	7,605	638	8	
Average availability	88.4%	90.7%	(2.3)	(3)	
Average total MW in operation	7,197	7,146	51	1	
Average capacity factor, excluding peakers	52.4%	48.7%	3.7	8	
Steam Adjusted Heat Rate	7,222	7,132	(90)	(1)	

*Texas* — Commodity Margin in our Texas segment decreased by \$68 million, or 35%, for the three months ended June 30, 2010 compared to the same period in 2009, primarily resulting from lower average hedge prices and lower realized spark spreads on open positions, particularly in June 2010 which did not benefit from the extreme heat, congestion-driven pricing and tighter reserve margin that prevailed in June 2009. Despite the overall weaker market environment and decreased average availability in the second quarter of 2010 compared to the same quarter in 2009, generation increased 8% largely as a result of higher spark spreads in April 2010 given tighter market conditions driven by higher competitor generation outage levels as well as higher natural gas prices compared to April 2009.

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<b>Southeast:</b>	<b>2010</b>	<b>2009</b>	<b>Change</b>	<b>% Change</b>	
Commodity Margin (in millions)	\$ 68	\$ 80	\$ (12)	(15)	%
Commodity Margin per MWh generated	\$ 16.11	\$ 20.22	\$ (4.11)	(20)	
MWh generated (in thousands)	4,222	3,957	265	7	
Average availability	87.1%	87.7%	(0.6)	(1)	
Average total MW in operation	6,083	6,083	—	—	
Average capacity factor, excluding peakers	35.3%	34.8%	0.5	1	
Steam Adjusted Heat Rate	7,319	7,241	(78)	(1)	

*Southeast* — Commodity Margin in our Southeast segment decreased by \$12 million, or 15%, primarily resulting from lower average hedge prices and lower realized spark spreads for our Oneta and Pine Bluff power plants for the three months ended June 30, 2010 compared to the same period in 2009. During the second quarter of 2009, in contrast to the current quarter, these plants were advantaged by lower delivered natural gas prices relative to many of our competitors driving higher realized spark spreads. The decrease in Commodity Margin was partially offset by higher realized spark spreads on open positions throughout the rest of the Southeast region (excluding our Oneta and Pine Bluff power plants) caused by warmer weather in May and June 2010 as well as the non-recurring negative impact from the settlement of a disputed steam contract in the second quarter of 2009. Generation in the Southeast increased 7% consistent with a stronger pricing environment in the second quarter of 2010 compared to the same period in 2009.

<b>North:</b>	<b>2010</b>	<b>2009</b>	<b>Change</b>	<b>% Change</b>	
Commodity Margin (in millions)	\$ 79	\$ 70	\$ 9	13	%
Commodity Margin per MWh generated	\$ 60.96	\$ 62.89	\$ (1.93)	(3)	
MWh generated (in thousands)	1,296	1,113	183	16	
Average availability	85.4%	96.0%	(10.6)	(11)	
Average total MW in operation	2,873	2,873	—	—	
Average capacity factor, excluding peakers	31.3%	26.3%	5.0	19	
Steam Adjusted Heat Rate	7,648	7,687	39	1	

*North* — Commodity Margin in our North segment increased by \$9 million, or 13%, primarily due to higher average hedge prices and higher realized spark spreads on open positions driven by much warmer weather for May and June 2010 compared to the same period in 2009. The stronger market pricing led to a 16% increase in generation despite an 11% decrease in average availability due in large part to an unplanned outage at our Bethpage power plant in the second quarter of 2010.

#### **Commodity Margin by Segment for the Six Months Ended June 30, 2010 and 2009**

The following tables show our Commodity Margin and related operating performance metrics by segment for the six months ended June 30, 2010 and 2009. Our Commodity Margin and related performance metrics for the six months ended June 30, 2009 have been recast to exclude Blue Spruce and Rocky Mountain. In the comparative tables below, favorable variances are shown without brackets while unfavorable variances are shown with brackets.

<b>West:</b>	<b>2010</b>	<b>2009</b>	<b>Change</b>	<b>% Change</b>	
Commodity Margin (in millions)	\$ 471	\$ 550	\$ (79)	(14)	%
Commodity Margin per MWh generated	\$ 32.04	\$ 40.53	\$ (8.49)	(21)	
MWh generated (in thousands)	14,702	13,571	1,131	8	
Average availability	90.8%	89.9%	0.9	1	
Average total MW in operation	6,936	6,371	565	9	
Average capacity factor, excluding peakers	54.2%	54.9%	(0.7)	(1)	
Steam Adjusted Heat Rate	7,298	7,340	42	1	

*West* — Commodity Margin in our West segment decreased by \$79 million, or 14%, for the six months ended June 30, 2010 compared to the same period in 2009, primarily resulting from a decrease of \$51 million related to the expiration of the PCF arrangement in the fourth quarter of 2009, lower average hedge prices in the first half of 2010 compared to 2009, lower realized spark spreads on our open positions due to lower Market Heat Rates caused primarily by higher rainfall in

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June 2010 and a decrease of \$11 million for the sale of surplus emission allowances in the first quarter of 2009 which did not reoccur in the same period in 2010. The decrease in Commodity Margin was partially offset by an increase of \$26 million related to higher REC revenue from new contracts associated with our Geysers Assets, \$40 million from OMEC that achieved commercial operation in October 2009 and was consolidated on January 1, 2010 and a \$12 million credit recognized in the second quarter of 2010 related to overcharges associated with a gas transportation contract. Average total MW in operation increased 565 MW, or 9%, due primarily to OMEC that was also the largest contributor to the 8% increase in generation. The increase in average total MW in operation was partially offset by the ownership transfer of our Pittsburg power plant to a third party in March 2010, as well as the expiration of the operating lease for our Watsonville (Monterey) cogeneration plant in May 2010.

<b>Texas:</b>	<b>2010</b>	<b>2009</b>	<b>Change</b>	<b>% Change</b>	
Commodity Margin (in millions)	\$ 235	\$ 318	\$ (83)	(26)	%
Commodity Margin per MWh generated	\$ 15.79	\$ 24.82	\$ (9.03)	(36)	
MWh generated (in thousands)	14,885	12,812	2,073	16	
Average availability	85.5%	89.5%	(4.0)	(4)	
Average total MW in operation	7,177	7,146	31	—	
Average capacity factor, excluding peakers	47.8%	41.3%	6.5	16	
Steam Adjusted Heat Rate	7,169	7,086	(83)	(1)	

*Texas* — Commodity Margin in our Texas segment decreased by \$83 million, or 26%, for the six months ended June 30, 2010 compared to the same period in 2009, primarily resulting from lower average hedge prices and lower realized spark spreads on open positions, particularly with regard to June 2010, which did not benefit from the extreme heat, congestion-driven pricing and tighter reserve margin that occurred in June 2009. Generation increased 16% driven by higher spark spreads in April 2010, as well as colder weather in January and February 2010 compared to the same periods in 2009.

<b>Southeast:</b>	<b>2010</b>	<b>2009</b>	<b>Change</b>	<b>% Change</b>	
Commodity Margin (in millions)	\$ 126	\$ 141	\$ (15)	(11)	%
Commodity Margin per MWh generated	\$ 16.48	\$ 17.99	\$ (1.51)	(8)	
MWh generated (in thousands)	7,647	7,836	(189)	(2)	
Average availability	91.4%	90.9%	0.5	1	
Average total MW in operation	6,083	6,083	—	—	
Average capacity factor, excluding peakers	32.8%	34.7%	(1.9)	(5)	
Steam Adjusted Heat Rate	7,305	7,235	(70)	(1)	

*Southeast* — Commodity Margin in our Southeast segment decreased by \$15 million, or 11%, for the six months ended June 30, 2010 compared to the same period in 2009 primarily as a result of lower average hedge prices and lower realized spark spreads for our Oneta and Pine Bluff power plants. During the first six months of 2009, in contrast to the same period in 2010, these plants were advantaged by lower delivered natural gas prices relative to many of our competitors driving higher realized spark spreads. The decrease in Commodity Margin was partially offset by higher realized spark spreads on open positions throughout the rest of the Southeast region (excluding our Oneta and Pine Bluff power plants) caused by warmer weather in May and June 2010, as well as the non-recurring negative impact from the settlement of a disputed steam contract in the second quarter of 2009.

<b>North:</b>	<b>2010</b>	<b>2009</b>	<b>Change</b>	<b>% Change</b>	
Commodity Margin (in millions)	\$ 131	\$ 119	\$ 12	10	%
Commodity Margin per MWh generated	\$ 55.27	\$ 50.49	\$ 4.78	9	
MWh generated (in thousands)	2,370	2,357	13	1	
Average availability	88.9%	94.0%	(5.1)	(5)	
Average total MW in operation	2,873	2,873	—	—	
Average capacity factor, excluding peakers	28.8%	28.6%	0.2	1	
Steam Adjusted Heat Rate	7,613	7,658	45	1	

*North* — Commodity Margin in our North segment increased by \$12 million, or 10%, primarily due to higher average hedge prices and higher realized spark spreads on open positions due to much warmer weather in the second quarter

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of 2010 compared to the same period in 2009. Average availability decreased 5% due in large part to an unplanned outage at our Bethpage power plant in the first half of 2010.

## Adjusted EBITDA

The tables below provide a reconciliation of Adjusted EBITDA by operating segment to our income (loss) from operations on an operating segment basis and to net loss attributable to Calpine on a consolidated basis for the periods indicated (in millions).

Three Months Ended June 30, 2010						
	West	Texas	Southeast	North	Consolidation and Elimination	Total
Net loss attributable to Calpine						\$ (115)
Net income attributable to noncontrolling interest						1
Discontinued operations, net of tax expense						(4)
Income tax expense						6
Other (income) expense and debt extinguishment costs, net						8
Interest expense, net						212
Income (loss) from operations	\$ 107	\$ (11)	\$ —	\$ 17	\$ (5)	\$ 108
Add:						
Adjustments to reconcile income (loss) from operations to Adjusted EBITDA:						
Depreciation and amortization expense, excluding deferred financing costs <sup>(1)</sup>	51	40	28	19	(2)	136
Major maintenance expense	10	24	6	3	—	43
Operating lease expense	5	—	—	6	—	11
Unrealized (gains) losses on commodity derivative mark-to-market activity	(7)	31	10	(3)	—	31
Adjustments to reflect Adjusted EBITDA from unconsolidated investments <sup>(2)</sup>	—	—	—	8	—	8
Stock-based compensation expense	2	3	—	1	—	6
Non-cash gain on dispositions of assets	(1)	—	—	—	—	(1)
Conectiv acquisition-related costs	—	—	—	19	—	19
Adjusted EBITDA from continuing operations	167	87	44	70	(7)	361
Adjusted EBITDA from discontinued operations	20	—	—	—	—	20
Total Adjusted EBITDA	\$ 187	\$ 87	\$ 44	\$ 70	\$ (7)	\$ 381

**Three Months Ended June 30, 2009**

	<b>West</b>	<b>Texas</b>	<b>Southeast</b>	<b>North</b>	<b>Consolidation and Elimination</b>	<b>Total</b>
Net loss attributable to Calpine						\$ (78)
Net loss attributable to noncontrolling interest						(1)
Discontinued operations, net of tax expense						(11)
Income tax expense						15
Reorganization items						3
Other (income) expense and debt extinguishment costs, net						32
Interest expense, net						199
Income (loss) from operations	\$ 179	\$ (48)	\$ (6)	\$ 39	\$ (5)	\$ 159
Add:						
Adjustments to reconcile income (loss) from operations to Adjusted EBITDA:						
Depreciation and amortization expense, excluding deferred financing costs <sup>(1)</sup>	47	32	18	15	(1)	111
Major maintenance expense	24	2	12	2	—	40
Operating lease expense	4	—	—	7	—	11
Unrealized (gains) losses on commodity derivative mark-to-market activity	(50)	144	26	(12)	—	108
Adjustments to reflect Adjusted EBITDA from unconsolidated investments <sup>(2)</sup>	(16)	—	—	1	—	(15)
Stock-based compensation expense	3	4	1	1	—	9
Non-cash loss on dispositions of assets	1	5	2	1	—	9
Other	2	—	2	1	—	5
Adjusted EBITDA from continuing operations	194	139	55	55	(6)	437
Adjusted EBITDA from discontinued operations	20	—	—	—	—	20
Total Adjusted EBITDA	<u>\$ 214</u>	<u>\$ 139</u>	<u>\$ 55</u>	<u>\$ 55</u>	<u>\$ (6)</u>	<u>\$ 457</u>

**Six Months Ended June 30, 2010**

	<b>West</b>	<b>Texas</b>	<b>Southeast</b>	<b>North</b>	<b>Consolidation and Elimination</b>	<b>Total</b>
Net loss attributable to Calpine						\$ (162)
Discontinued operations, net of tax expense						(12)
Income tax expense						17
Other (income) expense and debt extinguishment costs, net						13
Interest expense, net						402
Income from operations	\$ 153	\$ 65	\$ 16	\$ 20	\$ 4	\$ 258
Add:						
Adjustments to reconcile income from operations to Adjusted EBITDA:						
Depreciation and amortization expense, excluding deferred financing costs <sup>(1)</sup>	104	76	58	39	(4)	273
Major maintenance expense	19	60	13	6	—	98
Operating lease expense	9	—	—	13	—	22
Unrealized (gains) losses on commodity derivative mark-to-market activity	(11)	(61)	(10)	1	—	(81)
Adjustments to reflect Adjusted EBITDA from unconsolidated investments <sup>(2)</sup>	—	—	—	15	—	15
Stock-based compensation expense	5	5	1	1	—	12
Non-cash (gain) loss on dispositions of assets	(1)	5	1	—	—	5
Connectiv acquisition-related costs	—	—	—	19	—	19
Other	1	—	—	—	—	1
Adjusted EBITDA from continuing operations	279	150	79	114	—	622
Adjusted EBITDA from discontinued operations	41	—	—	—	—	41
Total Adjusted EBITDA	<u>\$ 320</u>	<u>\$ 150</u>	<u>\$ 79</u>	<u>\$ 114</u>	<u>\$ —</u>	<u>\$ 663</u>



**Six Months Ended June 30, 2009**

	<b>West</b>	<b>Texas</b>	<b>Southeast</b>	<b>North</b>	<b>Consolidation and Elimination</b>	<b>Total</b>
Net loss attributable to Calpine						\$ (46)
Net loss attributable to noncontrolling interest						(2)
Discontinued operations, net of tax expense						(23)
Income tax expense						24
Reorganization items						6
Other (income) expense and debt extinguishment costs, net						35
Interest expense, net						399
Income from operations	\$ 279	\$ 37	\$ 28	\$ 51	\$ (2)	\$ 393
Add:						
Adjustments to reconcile income from operations to Adjusted EBITDA:						
Depreciation and amortization expense, excluding deferred financing costs <sup>(1)</sup>	93	63	36	31	(3)	220
Major maintenance expense	58	29	16	(1)	—	102
Operating lease expense	10	—	—	13	—	23
Unrealized (gains) losses on commodity derivative mark-to-market activity	(61)	60	(2)	(14)	—	(17)
Adjustments to reflect Adjusted EBITDA from unconsolidated investments <sup>(2)</sup>	(26)	—	—	9	—	(17)
Stock-based compensation expense	10	7	3	2	—	22
Non-cash loss on dispositions of assets	6	7	2	2	—	17
Other	3	—	—	1	—	4
Adjusted EBITDA from continuing operations	372	203	83	94	(5)	747
Adjusted EBITDA from discontinued operations	41	—	—	—	—	41
Total Adjusted EBITDA	\$ 413	\$ 203	\$ 83	\$ 94	\$ (5)	\$ 788

(1) Depreciation and amortization expense in the income (loss) from operations calculation on our Consolidated Condensed Statements of Operations excludes amortization of other assets and amounts classified as sales, general and other administrative expenses.

(2) Adjustments to reflect Adjusted EBITDA from unconsolidated investments include unrealized gains on mark-to-market activity of nil and \$26 million for the three months ended June 30, 2010 and 2009, respectively, and nil and \$41 million for the six months ended June 30, 2010 and 2009, respectively.

**Liquidity and Capital Resources**

Our business is capital intensive. Our ability to successfully implement our strategy is dependent on the continued availability of capital on attractive terms. In addition, our ability to successfully operate our business and to meet certain near-term debt repayment obligations is dependent on maintaining sufficient liquidity. We believe that we have adequate resources from a combination of cash and cash equivalents on hand and cash expected to be generated from future operations to continue to meet our obligations as they become due.

***Liquidity***

As of June 30, 2010, we had \$971 million in cash and cash equivalents and \$345 million of restricted cash. Our availability under our First Lien Credit Facility revolver as of June 30, 2010, was \$763 million for future letters of credit or cash borrowings. The following table provides a summary of our liquidity position at June 30, 2010, and December 31, 2009 (in millions):

	June 30, 2010	December 31, 2009
Cash and cash equivalents, corporate <sup>(1)</sup>	\$ 758	\$ 725
Cash and cash equivalents, non-corporate	213	264
Total cash and cash equivalents	971	989
Restricted cash	345	562
Letter of credit availability <sup>(2)</sup>	65	34
Revolver availability	763	794
Total current availability	<u>\$ 2,144</u>	<u>\$ 2,379</u>

(1) Includes \$58 million and \$9 million of margin deposits held by us posted by our counterparties as of June 30, 2010, and December 31, 2009, respectively.

(2) Includes available balances for Calpine Development Holdings, Inc. We increased our availability by \$50 million under this letter of credit facility on June 30, 2010.

We have economically hedged a substantial portion of our generation and natural gas portfolio mostly through power and natural gas forward physical and financial transactions for the remainder of 2010; however, we remain susceptible to significant price movements for 2011 and beyond. The future impact on our Commodity Margin, primarily beyond 2010, is highly dependent on the severity and duration of the recessionary environment we experienced in 2008 and 2009, the speed, strength and duration of an economic recovery, if any, the price of natural gas, and our continued ability to successfully hedge our Commodity Margin.

The availability of non-conventional natural gas supplies, in particular from the emergence of significant deposits of shale natural gas, has altered the natural gas supply landscape in the U.S. which could have a longer-term and more profound impact on natural gas markets. The potential for sustainable supplies of natural gas at low prices relative to those seen over the last several years may adversely impact our Commodity Margin in the short term as our cost of production advantage relative to less efficient natural gas-fired generation is diminished on an absolute basis.

It is difficult to predict future developments and the amount of credit support that we may need to provide as part of our business operations should financial market and commodity price volatility and economic uncertainty persist for a significant period of time. Our ability to generate sufficient cash is dependent upon, among other things:

- improving the profitability of our operations;
- continued compliance with the covenants under our existing financing obligations, including our First Lien Credit Facility, First Lien Notes and NDH Project Debt;
- stabilizing and increasing future contractual cash flows; and
- our significant counterparties performing under their contracts with us.

We favorably amended our credit agreement to our First Lien Credit Facility and closed significant financings during 2009, as further described in our 2009 Form 10-K. In 2010, we successfully issued the 2019 First Lien Notes on May 25, 2010, the 2020 First Lien Notes on July 23, 2010 and our NDH Project Debt on July 1, 2010. The net proceeds from the

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2019 and 2020 First Lien Notes were used to repay approximately \$1.5 billion of term loan borrowings plus accrued interest under our First Lien Credit Facility in May and July 2010, effectively extending approximately \$1.5 billion of our 2014 debt maturities. The net proceeds received from the NDH Project Debt were used, together with available cash, to pay the Conectiv Acquisition purchase price of \$1.63 billion and fund a cash contribution from Calpine Corporation to NDH of \$110 million to fund future capital expenditures to complete the York Energy Center. We also repaid \$100 million, plus accrued interest, outstanding under our Commodity Collateral Revolver in accordance with its terms on July 8, 2010 from available cash on hand. While we cannot provide any assurance that we will continue to be successful in the future, if credit markets present favorable opportunities, we may continue to refinance additional portions of our nearer term maturities or more costly debt.

*Issuance of 2019 First Lien Notes* — On May 25, 2010, we issued \$400 million in aggregate principal amount of 8% senior secured notes due 2019 in a private placement. The 2019 First Lien Notes will mature on August 15, 2019.

*Issuance of 2020 First Lien Notes* — On July 23, 2010, we issued \$1.1 billion in aggregate principal amount of 7.875% senior secured notes due 2020 in a private placement. The 2020 First Lien Notes will mature on July 31, 2020.

*NDH Project Debt* — On June 8, 2010, NDH entered into a credit agreement to fund the Conectiv Acquisition and the remaining capital expenditures to complete the York Energy Center under construction. Our NDH Project Debt includes a \$1.3 billion seven-year senior secured term facility and a \$100 million three-year senior secured revolving credit facility, of which up to \$50 million will be available through a subfacility in the form of letters of credit. On July 1, 2010, the term facility was funded in the amount of \$1.3 billion.

As part of the Conectiv Acquisition and NDH Project Debt, we entered into various intercompany agreements with our NDH subsidiaries for the related sales and purchases of power, natural gas and the operation and maintenance of our NDH power plants, which will not materially impact our results of operations, financial condition or cash flows on a consolidated basis. While there is no direct recourse by holders of the NDH Project Debt to Calpine Corporation, a substantial portion of the commodity price risk related to NDH's power generation is absorbed by Calpine Energy Services, L.P. as an indirect, wholly owned subsidiary of Calpine Corporation, which purchases the power generated by NDH under an intercompany tolling agreement, which is also guaranteed by Calpine Corporation.

See also Note 6 of the Notes to Consolidated Condensed Financial Statements for further discussion of our 2019 and 2020 First Lien Notes and our Conectiv Project Debt.

*Letter of Credit Facilities* — The table below represents amounts issued under our letter of credit facilities as of June 30, 2010 and December 31, 2009 (in millions):

	June 30, 2010	December 31, 2009
First Lien Credit Facility	\$ 237	\$ 206
Calpine Development Holdings, Inc. <sup>(1)</sup>	135	116
Various project financing facilities	113	90
Total	<u>\$ 485</u>	<u>\$ 412</u>

(1) Availability under the Calpine Development Holdings, Inc. letter of credit was increased by \$50 million to \$200 million on June 30, 2010.

*Liquidity Sensitivity* — Significant changes in commodity prices and Market Heat Rates can have an impact on our liquidity as we use margin deposits, cash prepayments and letters of credit as credit support (collateral) with and from our counterparties for commodity procurement and risk management activities. Utilizing our portfolio of transactions subject to collateral exposure, we estimate that as of July 16, 2010, an increase of \$1/MMBtu in natural gas prices would result in an increase of collateral required by approximately \$216 million. If natural gas prices decreased by \$1/MMBtu, we estimate that our collateral requirements would decrease by approximately \$232 million. Changes in Market Heat Rates also affect our liquidity. For example, as demand increases, less efficient generation is dispatched, which increases the Market Heat Rate and results in increased collateral requirements. Historical relationships of natural gas and Market Heat Rate movements for our portfolio of assets have been volatile over time; therefore, we derived a statistical analysis that implies that a change of \$1/MMBtu in natural gas approximates an average Market Heat Rate change of 170 Btu/kWh. We estimate that as of July 16, 2010, an increase of 170 Btu/kWh in the Market Heat Rate would result in an increase in collateral required by

approximately \$23 million. If Market Heat Rates were to fall at a similar rate, we estimate that our collateral required would decrease by approximately \$28 million. These amounts are not necessarily indicative of the actual amounts that could be required, which may be higher or lower than the amounts estimated above.

In order to reduce the cash collateral and letters of credit that we would otherwise be required to provide to our counterparties, we have granted additional liens on the assets currently subject to liens under our First Lien Credit Facility to collateralize our obligations under certain of our power and natural gas agreements that qualify as “eligible commodity hedge agreements” under our First Lien Credit Facility and certain of our interest rate swap agreements. The counterparties under such agreements will share the benefits of the collateral subject to such liens ratably with the lenders under our First Lien Credit Facility. We continue to use these additional liens to manage cash collateral that would otherwise be required. See Note 9 of the Notes to Consolidated Condensed Financial Statements for further information on our margin deposits and collateral used for commodity procurement and risk management activities.

**Cash Management** — We manage our cash in accordance with our intercompany cash management system subject to the requirements of our First Lien Credit Facility and requirements under certain of our project debt and lease agreements or by regulatory agencies. Our cash and cash equivalents, as well as our restricted cash balances, generally exceed FDIC insured limits or are invested in money market accounts with investment banks that are not FDIC insured. We place our cash, cash equivalents and restricted cash in what we believe to be credit-worthy financial institutions and certain of our money market accounts invest in U.S. Treasury securities or other obligations issued or guaranteed by the U.S. Government, its agencies or instrumentalities.

We do not expect to pay any cash dividends on our common stock for the foreseeable future because we are currently prohibited under our First Lien Credit Facility and certain of our other debt agreements from paying cash dividends. Future cash dividends, if any, will be at the discretion of our Board of Directors and will depend upon, among other things, our future operations and earnings, capital requirements, general financial condition, contractual and financing restrictions and such other factors as our Board of Directors may deem relevant.

#### ***Acquisitions, Divestitures, Construction, Project Development, Upgrades and Growth Initiatives***

**Conectiv Acquisition** — On July 1, 2010, we, through our indirect, wholly owned subsidiary NDH, completed the Conectiv Acquisition. The assets acquired include 18 operating power plants and one plant under construction, with approximately 4,490 MW of capacity (including completion of the York Energy Center under construction and scheduled upgrades). The Conectiv Acquisition gives us significant presence in the PJM market. We did not acquire Conectiv’s trading book, load serving auction obligations or collateral requirements. Additionally, we did not assume any of Conectiv’s off-site environmental liabilities, environmental remediation liabilities related to certain assets located in New Jersey that are subject to the Industrial Site Recovery Act in excess of \$10 million or certain pre-close pension and retirement welfare liabilities. Our final purchase price at closing was approximately \$1.63 billion, including a \$60 million reduction in the closing payment attributable to lower capital expenditures incurred by PHI than were scheduled and a \$49 million increase in the closing payment for the estimated value of the fuel inventory at closing. As part of the Conectiv Acquisition, NDH received a cash contribution from Calpine Corporation of \$110 million to fund future capital expenditures to complete the York Energy Center. We financed the transaction through available cash and bank debt of \$1.3 billion provided under the NDH Project Debt.

See also Notes 2 and 6 of the Notes to Consolidated Condensed Financial Statements for additional details of the Conectiv Purchase Agreement, the Conectiv Acquisition and the NDH Project Debt.

**Sale of Blue Spruce and Rocky Mountain** — On April 2, 2010, we, through our wholly owned subsidiaries Riverside Energy Center, LLC and Calpine Development Holdings, Inc., entered into an agreement with PSCo to sell 100% of our ownership interests in Blue Spruce and Rocky Mountain for approximately \$739 million, subject to certain working capital adjustments at closing. Both power plants currently provide power and capacity to PSCo under PPAs, which materially expire in 2013 and 2014. Under the agreement, Riverside Energy Center, LLC and Calpine Development Holdings, Inc. will use commercially reasonable efforts to cause Blue Spruce and Rocky Mountain to continue to operate and maintain the power plants in the ordinary course of business through the closing of the transaction, which is expected to occur in December 2010. As of the filing of this Report, we have received all of the required Federal approvals for the sales of Blue Spruce and Rocky Mountain and we expect approval from the Colorado Public Utilities Commission in the third quarter of 2010. We believe the proceeds from the sales of Blue Spruce and Rocky Mountain will enable us to continue to strengthen our balance sheet. The transaction is expected to remove the restrictions on approximately \$90 million in restricted cash at

closing. We expect to use the sales proceeds received and the approximately \$90 million in restricted cash described above to repay project debt (with an expected balance of approximately \$412 million, after expected repayments prior to closing), for general corporate purposes and to focus more resources on our core markets. We expect to record a pre-tax gain of approximately \$220 million upon closing this transaction. See also Note 2 of the Notes to Consolidated Condensed Financial Statements for additional details of the Blue Spruce and Rocky Mountain amounts reported as assets and liabilities held for sale and discontinued operations.

*Pittsburg Power Plant and Watsonville (Monterey) Cogeneration Plant* — We no longer operate these power plants which had an aggregate capacity of 93 MW. In March 2010, we transferred ownership of our Pittsburg power plant to a third party pursuant to a transfer agreement executed in August 2007. The operating lease associated with our Watsonville (Monterey) cogeneration plant expired in May 2010 at which time we began dismantling the power plant in accordance with the lease agreement.

*Construction, Project Development, Upgrades and Growth Initiatives* — We continue to review development opportunities to determine whether future actions are appropriate. We may pursue new opportunities that arise, particularly if power contracts and financing are available and attractive returns are expected. In addition, we believe that upgrades and expansions to our current assets offer proven and financially disciplined opportunities to improve our operations, capacity and efficiencies. Our significant projects under construction and development, growth initiatives and upgrades are discussed below.

- We acquired the York Energy Center, a 565 MW dual fuel, combined-cycle power plant under construction in Peach Bottom Township, Pennsylvania, formerly known as the Delta Project, as part of the Conectiv Acquisition. The York Energy Center remains on budget and on schedule. All permits have been received and commercial operations are expected to commence in June 2011. The York Energy Center will sell power under a six-year PPA with a third party. As part of its purchase, NDH received a cash contribution from Calpine Corporation to fund the remaining expected capital expenditures of approximately \$110 million to complete construction.
- Russell City Energy Center, remains under advanced stages of development. The Russell City Energy Center is currently contracted to deliver its full output to PG&E under a PPA, which was executed in December 2006 and approved by the CPUC in January 2007. The PPA was amended in 2008 and again on April 9, 2010, to extend the expected commercial operations date to June 2013 as a result of delays in obtaining certain permits. We are in possession of all material permits which are subject to an appeal period related to our air permit and possible amendments to our California Energy Commission license to operate within our permits. We and other parties filed a joint petition on April 15, 2010 seeking CPUC approval of the amendment to the PPA. We do not expect the CPUC to act on the petition for approval prior to September 2010. Completion of the Russell City Energy Center is dependent upon construction funding under project financing facilities, approval of the amendment to the PPA by the CPUC and the exhaustion of certain appeals processes associated with our air permit. We do not expect the costs to complete the Russell City Energy Center to be material to us on a consolidated basis. Upon completion, this project would bring on line approximately 362 MW of net interest baseload capacity (390 MW with peaking capacity) representing our 65% share.
- During 2009, we and PG&E negotiated a new PPA to replace the existing California Department of Water Resources contract and facilitate the upgrade of our Los Esteros Critical Energy Facility from a 188 MW simple-cycle generation power plant to a 308 MW combined-cycle generation power plant. In addition to the increase in capacity, the upgrade will increase the efficiency and environmental performance of the power plant by lowering the Heat Rate. The PPA was approved by the CPUC on July 29, 2010, subject to PG&E filing an Advice Letter, as directed by the CPUC, which advice letter we expect to be filed soon.
- We continue to look to expand our production from our Geysers Assets. In the fourth quarter of 2009, we started drilling additional wells and have made expenditures of approximately \$38 million during the first half of 2010 related to these expansion efforts. We have completed eight of the 13 planned test wells and we expect to make a determination before the end of 2010 if the new wells will produce enough additional steam to warrant the construction of additional geothermal power plants at our Geysers Assets. Additionally, we are currently seeking to take advantage of certain incentives under the American Recovery and Reinvestment Act of 2009, also referred to as the Stimulus Bill. We expect that new geothermal power plant development will qualify for

the 30% cash grant in lieu of a production tax credit from the U.S. Internal Revenue Service, and our additional projects for the re-powering of our existing power plants will qualify for either the 30% cash grant in lieu of a production tax credit or the 10% cash grant in lieu of an investment tax credit.

- We continue to move forward with our turbine upgrade program. We have completed the upgrade of four Siemens turbines and plan to upgrade approximately nine additional Siemens turbines. Our Siemens turbine upgrade program is expected to increase our generation capacity in total by approximately 195 MW with estimated remaining capital expenditures of approximately \$90 million. These upgrades began in the fourth quarter of 2009 and are scheduled through 2014. As of the filing of this Report, the initial testing of the upgraded turbines has indicated additional capacity and improvements in operating Heat Rates falling in line with expectations.

*Customer-Oriented Origination Business* — We continue to focus on our customer origination function.

- We received approval of our PPA contracts totaling 450 MW with SDG&E and PG&E from the CPUC.
- We have entered into a new seven-year PPA with Xcel Energy to provide 200 MW of power generated by our Oneta Energy Center to Southwestern Public Service Company, a subsidiary of Xcel Energy.

### **NOLs**

We have significant NOLs that will provide future tax deductions when we generate sufficient taxable income during the applicable carryover periods. Our federal and state income tax reporting group is comprised primarily of two groups, CCFC and its subsidiaries, which we refer to as the CCFC group and Calpine Corporation and its subsidiaries other than CCFC, which we refer to as the Calpine group. As of December 31, 2009, our consolidated federal NOLs totaled approximately \$7.5 billion, which consisted of approximately \$7.0 billion from the Calpine group and approximately \$513 million from the CCFC group. The Calpine group adjusted its NOL for prior periods through December 31, 2009, increasing it by approximately \$175 million. These adjustments consisted of \$49 million to reduce the NOL for excluded cancellation of debt income, a \$230 million increase in prior period NOLs for development costs and construction in progress relating to abandoned projects and other decreases of \$6 million.

### **Cash Flow Activities**

The following table summarizes our cash flow activities for the six months ended June 30, 2010 and 2009 (in millions):

	2010	2009
Beginning cash and cash equivalents	\$ 989	\$ 1,657
Net cash provided by (used in):		
Operating activities	156	(36)
Investing activities	138	(137)
Financing activities	(312)	(2)
Net decrease in cash and cash equivalents	(18)	(175)
Ending cash and cash equivalents	\$ 971	\$ 1,482

### **Net Cash Provided By (Used In) Operating Activities**

Cash flows provided by operating activities for the six months ended June 30, 2010, resulted in net inflows of \$156 million compared to cash flows used in operating activities of \$36 million for the same period in 2009. The change in cash flows from operating activities is primarily due to:

- Decreases in working capital — Working capital employed decreased by approximately \$267 million during the period after adjusting for debt related balances which did not impact cash provided by operating activities. The decrease was primarily due to reductions in margin deposits and certain derivative activity.
- Decreases in interest paid — Cash paid for interest decreased by \$36 million to \$362 million for the six months ended June 30, 2010, as compared to \$398 million for the same period in 2009, primarily due to the refinancing

of CCFC and other project financing.

This was partially offset by:

- Decrease in gross profit — Gross profit, after excluding non-cash items such as unrealized gains and losses in mark-to-market activity, depreciation expense, and loss on asset disposals, decreased by \$126 million in 2010 resulting primarily from the expiration of the PCF arrangement in the fourth quarter of 2009, and lower average hedge prices and lower realized spark spreads on open positions for the six months ended June 30, 2010.

#### *Net Cash Provided By (Used In) Investing Activities*

Cash flows provided by investing activities for the six months ended June 30, 2010, were \$138 million compared to cash flows used in investing activities of \$137 million for the six months ended June 30, 2009. The difference was primarily due to:

- Reduced restricted cash requirements — The net reduction in restricted cash was \$224 million in 2010 compared to a \$31 million increase in 2009. Restricted cash decreased in 2010 mainly due to the maturity of the PCF project financing.
- Consolidation of OMEC — In 2010, a favorable cash effect of \$8 million was received from the consolidation of OMEC.

#### *Net Cash Used In Financing Activities*

Cash flows used in financing activities for the six months ended June 30, 2010, resulted in outflows of \$312 million, a \$310 million increase compared to \$2 million for the same period in 2009. The increase was primarily due to higher repayments on project financing of \$125 million, lower net proceeds related to CCFC and other project financing of \$209 million, offset by reduced finance costs of \$24 million.

#### *Special Purpose Subsidiaries*

Pursuant to applicable transaction agreements, we have established certain of our entities separate from Calpine Corporation and our other subsidiaries. In accordance with applicable accounting standards, we consolidate these entities. As of the date of filing this Report, these entities included: Rocky Mountain Energy Center, LLC, Riverside Energy Center, LLC, Calpine Riverside Holdings, LLC, PCF, PCF III, GEC Holdings, LLC, Gilroy Energy Center, LLC, Creed Energy Center, LLC, Goose Haven Energy Center, LLC, Calpine Gilroy Cogen, L.P., Calpine Gilroy 1, Inc., Calpine King City Cogen, LLC, Calpine Securities Company, L.P. (a parent company of Calpine King City Cogen, LLC), Calpine King City, LLC (an indirect parent company of Calpine Securities Company, L.P.), Russell City Energy Company, LLC and OMEC.

#### **Risk Management and Commodity Accounting**

We actively seek to manage the commodity risks of our portfolio, utilizing multiple strategies of buying and selling power, natural gas or Heat Rate transactions to manage our spark spread.

We use derivative instruments, which include physical commodity contracts and financial commodity instruments such as OTC and exchange traded swaps, futures, options, forward agreements and instruments that settle on the power price to natural gas price relationships (Heat Rate swaps and options) for the purchase and sale of power, natural gas, and emission allowances to manage commodity price risk and to maximize the risk-adjusted returns from our power and natural gas assets. We also use interest rate swaps to manage the interest rate risk of our variable rate debt. We conduct these hedging and optimization activities within a structured risk management framework based on controls, policies and procedures. We monitor these activities through active and ongoing management and oversight, defined roles and responsibilities, and daily risk measurement and reporting. Additionally, we seek to manage the associated risks through diversification, by controlling position sizes, by using portfolio position limits, and by entering into offsetting positions that lock in a margin.

Along with our portfolio of hedging transactions, we enter into power and natural gas positions that often act as hedges to our asset portfolio, but do not qualify as hedges under hedge accounting guidelines, such as commodity options transactions and instruments that settle on power price to natural gas price relationships (Heat Rate swaps and options).

While our selling and purchasing of power and natural gas is mostly physical in nature, we also engage in marketing, hedging and optimization activities, particularly in natural gas, that are financial in nature. While we enter into these transactions primarily to provide us with improved price and price volatility transparency, as well as greater market access, which benefits our hedging activities, we also are exposed to commodity price movements (both profits and losses) in connection with these transactions. These positions are included in and subject to our consolidated risk management portfolio position limits and controls structure. Changes in fair value of commodity positions that do not qualify for either hedge accounting or the normal purchase normal sale exemption are recognized currently in earnings in mark-to-market activity within operating revenues, in the case of power transactions, and within fuel and purchased energy expense, in the case of natural gas transactions. Our future hedged status, and marketing and optimization activities are subject to change as determined by our commercial operations group, Chief Risk Officer, Risk Management Committee of senior management and Board of Directors.

We have economically hedged a substantial portion of our generation and natural gas portfolio mostly through power and natural gas forward physical and financial transactions for much of 2010; however, we remain susceptible to significant price movements for 2011 and beyond. By entering into these transactions, we are able to economically hedge a portion of our spark spread at pre-determined generation and price levels. We use a combination of PPAs and other hedging instruments to manage our variability in future cash flows. As of June 30, 2010, the maximum length of our PPAs extends 22 years into the future and the maximum length of time over which we were hedging using commodity and interest rate derivative instruments was 3 and 16 years, respectively. Assuming constant June 30, 2010 power and natural gas prices and interest rates, we estimate that pre-tax net losses of \$3 million would be reclassified from AOCI into earnings during the next 12 months as the hedged transactions settle; however, the actual amounts that will be reclassified will vary based on changes in natural gas and power prices as well as interest rates. Therefore, we are unable to predict what the actual reclassification from AOCI to earnings (positive or negative) will be for the next 12 months. As of June 30, 2010, approximately \$70 million in unrealized losses were recorded in AOCI for interest rate swaps that were hedging the variable interest rates on approximately \$1.1 billion of First Lien Credit Facility term loans, which were repaid with the proceeds received from the issuance of the 2020 First Lien Notes on July 23, 2010 (see Note 6 of the Notes to Consolidated Condensed Financial Statements for further discussion of our issuance of the 2020 First Lien Notes). These interest rate swaps will no longer qualify as cash flow hedges and the corresponding amounts will be reclassified into earnings during the third quarter of 2010 as additional interest expense. Additionally, prospective changes in the fair value of these interest rate swaps will also be recorded in earnings as interest expense.

*Derivatives* — We enter into a variety of derivative instruments, which include physical commodity contracts and financial commodity instruments such as OTC and exchange traded swaps, futures, options, forward agreements and instruments that settle on the power price to natural gas price relationships (Heat Rate swaps and options) for the purchase and sale of power, natural gas, and emission allowances as well as interest rate swaps. Derivative contracts are measured at their fair value and recorded as either assets or liabilities unless they qualify for, and we elect, the normal purchase normal sale exemption. All changes in the fair value of contracts accounted for as derivatives are recognized currently in earnings (as a component of our operating revenues, fuel and purchased energy expense, or interest expense) unless specific hedge criteria are met. The hedge criteria require us to formally document, designate and assess the effectiveness of transactions that receive hedge accounting. The actual amounts that will ultimately be settled will likely vary based on changes in natural gas prices and power prices as well as changes in interest rates. Such variances could be material.

The primary factors affecting our market risk and the fair value of our derivatives at any point in time are the volume of open derivative positions (MMBtu and MWh), changing commodity market prices, principally for power and natural gas, liquidity risk, counterparty credit risk and changes in interest rates. Volatility in both natural gas and power prices, as well as increased hedging and optimization activities, impacts the presentation of our derivative assets and liabilities. Our derivative assets have increased to \$1.5 billion at June 30, 2010, compared to \$1.3 billion at December 31, 2009, while our derivative liabilities of \$1.6 billion at June 30, 2010 remained comparable to those at December 31, 2009. As of June 30, 2010, the fair value of our level 3 derivative assets and liabilities represent only a small portion of our total assets and liabilities (less than 1%). See Note 7 of the Notes to Consolidated Condensed Financial Statements for further information related to determining the fair value of our derivatives, including our level 3 derivative assets and liabilities. There is a substantial amount of volatility inherent in accounting for the fair value of these derivatives, which may affect our results. The change in fair value of our outstanding commodity and interest rate derivative instruments from January 1, 2010, through June 30, 2010, is summarized in the table below (in millions):



	Interest Rate Swaps	Commodity Instruments	Total
Fair value of contracts outstanding at January 1, 2010	\$ (319)	\$ 8	\$ (311)
Losses recognized or otherwise settled during the period <sup>(1)(2)</sup>	129	28	157
Fair value attributable to new contracts	—	—	—
Changes in fair value attributable to price movements	(231)	217	(14)
Change in fair value attributable to nonperformance risk	5	—	5
Fair value of contracts outstanding at June 30, 2010 <sup>(3)</sup>	<u>\$ (416)</u>	<u>\$ 253</u>	<u>\$ (163)</u>

- (1) Interest rate settlements consist of recognized losses from interest rate cash flow hedges of \$115 million and recognized losses from undesignated interest rate swaps of \$14 million (represents a portion of interest expense as reported on our Consolidated Condensed Statements of Operations).
- (2) Gains on settlement of commodity contracts not designated as hedging instruments of \$15 million (represents a portion of operating revenues and fuel and purchased energy expense as reported on our Consolidated Condensed Statements of Operations) and \$43 million related to recognition of losses from cash flow hedges, previously reflected in OCI, offset by other changes in derivative assets and liabilities not reflected in OCI or net income (loss).
- (3) Net commodity and interest rate derivative assets and liabilities reported in Notes 7 and 8 of the Notes to Consolidated Condensed Financial Statements.

The change since the last balance sheet date in the total value of the derivatives (both assets and liabilities) is reflected either in cash for option premiums paid or collected, in OCI, net of tax, for cash flow hedges, or on our Consolidated Condensed Statements of Operations as a component (gain or loss) in current earnings.

The following tables detail the components of our total mark-to-market activity for both the net realized gain (loss) and the net unrealized gain (loss) recognized from our derivative instruments not designated as hedging instruments and where these components were recorded on our Consolidated Condensed Statements of Operations for the periods indicated (in millions):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2010	2009	2010	2009
<b>Realized gain (loss)</b>				
Interest rate swaps	\$ (6)	\$ (4)	\$ (12)	\$ (8)
Commodity instruments	59	44	52	(14)
Total realized gain (loss)	<u>\$ 53</u>	<u>\$ 40</u>	<u>\$ 40</u>	<u>\$ (22)</u>
<b>Unrealized gain (loss)<sup>(1)</sup></b>				
Interest rate swaps	\$ (16)	\$ 4	\$ (19)	\$ 4
Commodity instruments	(31)	(108)	81	17
Total unrealized gain (loss)	<u>\$ (47)</u>	<u>\$ (104)</u>	<u>\$ 62</u>	<u>\$ 21</u>
Total mark-to-market activity	<u>\$ 6</u>	<u>\$ (64)</u>	<u>\$ 102</u>	<u>\$ (1)</u>

- (1) Changes in unrealized gains and losses include hedge ineffectiveness and adjustments to reflect changes in credit default risk exposure.

	Three Months Ended June 30,		Six Months Ended June 30,	
	2010	2009	2010	2009
<b>Realized and unrealized gain (loss)</b>				
Power contracts included in operating revenues	\$ 41	\$ (49)	\$ 12	\$ (9)
Natural gas contracts included in fuel and purchased energy expense	(13)	(15)	121	12
Interest rate swaps included in interest expense	(22)	—	(31)	(4)
Total mark-to-market activity	<u>\$ 6</u>	<u>\$ (64)</u>	<u>\$ 102</u>	<u>\$ (1)</u>

Our change in AOCI from an accumulated loss of \$266 million at December 31, 2009, to an accumulated loss of \$223 million at June 30, 2010, was primarily driven by the effect of a decrease in power and natural gas prices, reclassification adjustment for cash flow hedges realized in net loss, an increase in interest rates and the effect of income taxes.

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**Commodity Price Risk** — Commodity price risks result from exposure to changes in spot prices, forward prices, price volatilities and correlations between the price of power, steam and natural gas. We manage the commodity price risk and the variability in future cash flows from forecasted sales of power and purchases of natural gas of our entire portfolio of generating assets and contractual positions by entering into various derivative and non-derivative instruments.

The net fair value of outstanding derivative commodity instruments at June 30, 2010, based on price source and the period during which the instruments will mature, are summarized in the table below (in millions):

Fair Value Source	2010	2011-2012	2013-2014	After 2014	Total
Prices actively quoted	\$ (62)	\$ 60	\$ —	\$ —	\$ (2)
Prices provided by other external sources	151	75	3	1	230
Prices based on models and other valuation methods	4	21	—	—	25
Total fair value	<u>\$ 93</u>	<u>\$ 156</u>	<u>\$ 3</u>	<u>\$ 1</u>	<u>\$ 253</u>

We measure the commodity price risks in our portfolio on a daily basis using a VAR model to estimate the maximum potential one-day risk of loss based upon historical experience resulting from market movements in comparison to internally established thresholds. Our VAR is calculated for our entire portfolio, which is comprised of commodity derivatives, power plants, PPAs, and other physical and financial transactions. The portfolio VAR calculation incorporates positions for the remaining portion of the current calendar year plus the following two calendar years. We measure VAR using a variance/covariance approach based on a confidence level of 95%, a one-day holding period, and actual observed historical correlation. While we believe that our VAR assumptions and approximations are reasonable, different assumptions and/or approximations could produce materially different estimates.

The table below presents the high, low and average of our daily VAR for the three and six months ended June 30, 2010 and 2009, as well as our VAR at June 30, 2010 and 2009 (in millions):

	2010	2009
Three months ended June 30:		
High	\$ 29	\$ 55
Low	\$ 23	\$ 46
Average	\$ 26	\$ 50
Six months ended June 30:		
High	\$ 58	\$ 59
Low	\$ 23	\$ 46
Average	\$ 33	\$ 51
As of June 30	\$ 24	\$ 48

**Liquidity Risk** — Liquidity risk arises from the general funding requirements needed to manage our activities and assets and liabilities. Increasing natural gas prices or Market Heat Rates can cause increased collateral requirements. Our liquidity management framework is intended to maximize liquidity access and minimize funding costs during times of rising prices. See further discussion regarding our uses of collateral as they relate to our commodity procurement and risk management activities in Note 9 of the Notes to Consolidated Condensed Financial Statements.

**Credit Risk** — Credit risk relates to the risk of loss resulting from nonperformance or non-payment by our counterparties related to their contractual obligations with us. Risks surrounding counterparty performance and credit could ultimately impact the amount and timing of expected cash flows. We also have credit risk if counterparties are unable to provide collateral or post margin. We monitor and manage our credit risk through credit policies that include:

- credit approvals;
- routine monitoring of counterparties' credit limits and their overall credit ratings;
- limiting our marketing, hedging and optimization activities with high risk counterparties;
- margin, collateral, or prepayment arrangements; and

- payment netting arrangements, or master netting arrangements that allow for the netting of positive and negative exposures of various contracts associated with a single counterparty.

We believe that our credit policies adequately monitor and diversify our credit risk. We currently have no individual significant concentrations of credit risk to a single counterparty; however, a series of defaults or events of nonperformance by several of our individual counterparties could impact our liquidity and future results of operations. We monitor and manage our total comprehensive credit risk associated with all of our contracts and PPAs irrespective of whether they are accounted for as an executory contract, a normal purchase normal sale or whether they are marked-to-market and included in our derivative assets and liabilities on our Consolidated Condensed Balance Sheets. Our counterparty credit quality associated with the net fair value of outstanding derivative commodity instruments is included in our derivative assets and liabilities at June 30, 2010, and the period during which the instruments will mature are summarized in the table below (in millions):

<b>Credit Quality</b>					
(Based on Standard & Poor's Ratings as of June 30, 2010)					
	<b>2010</b>	<b>2011-2012</b>	<b>2013-2014</b>	<b>After 2014</b>	<b>Total</b>
Investment grade	\$ 96	\$ 159	\$ 3	\$ —	\$ 258
Non-investment grade	—	(1)	—	—	(1)
No external ratings	(3)	(2)	—	1	(4)
Total fair value	<u>\$ 93</u>	<u>\$ 156</u>	<u>\$ 3</u>	<u>\$ 1</u>	<u>\$ 253</u>

**Interest Rate Risk** — We are exposed to interest rate risk related to our variable rate debt. Interest rate risk represents the potential loss in earnings arising from adverse changes in market interest rates. Our variable rate financings are indexed to base rates, generally LIBOR. Significant LIBOR increases could have an adverse impact on our future interest expense.

Our fixed-rate debt instruments do not expose us to the risk of loss in earnings due to changes in market interest rates. In general, such a change in fair value would impact earnings and cash flows only if we were to reacquire all or a portion of the fixed rate debt in the open market prior to their maturity.

Currently, we use interest rate swaps to adjust the mix between fixed and variable rate debt as a hedge of our interest rate risk. We do not use interest rate derivative instruments for trading purposes. As of June 30, 2010, we have effectively hedged \$5.8 billion and \$5.1 billion of our variable rate debt through December 31, 2010 and 2012, respectively, in order to manage our risk to significant increases in LIBOR, through the use of variable to fixed interest rate swaps, the majority of which mature in years 2010 through 2012. To the extent eligible, our interest rate swaps have been designed as cash flow hedges, and changes in fair value are recorded in OCI to the extent they are effective.

#### **New Accounting Standards and Disclosure Requirements**

See Note 1 of the Notes to Consolidated Condensed Financial Statements for a discussion of new accounting standards and disclosure requirements.

#### **Item 3. Quantitative and Qualitative Disclosures About Market Risk**

See “Risk Management and Commodity Accounting” in Item 2.

#### **Item 4. Controls and Procedures**

##### **Disclosure Controls and Procedures**

As of the end of the period covered by this Report, we carried out an evaluation, under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures as defined in Rule 13a-15(e) or Rule 15d-15(e) of the Exchange Act. Based upon, and as of the date of this evaluation, the Chief Executive Officer and the Chief Financial Officer concluded that our disclosure controls and procedures were effective to provide reasonable assurance that the information required to be disclosed in our SEC reports is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms, and is accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate, to allow timely decisions regarding required disclosure.

**Changes in Internal Control Over Financial Reporting**

There were no changes in our internal control over financial reporting during the second quarter of 2010 that materially affected, or are reasonably likely to materially affect our internal control over financial reporting. However, we do wish to highlight some changes which, taken together, are expected to have a favorable impact on our controls over a multi-year period. During the first quarter of 2010, we initiated the implementation of an upgrade of our financial accounting systems and revised our consolidated financial chart of accounts. The system implementation efforts were carefully planned and executed. Training sessions were administered to those employees who were impacted by the new accounting system and chart of accounts, and system controls and functionality were reviewed and successfully tested prior and subsequent to implementation. The implementation was successfully completed in the second quarter of 2010 and, following evaluation, management believes that the new system has been successfully implemented. There were no other changes in our internal control over financial reporting during the second quarter of 2010 that materially affected, or are reasonably likely to materially affect our internal control over financial reporting.

## PART II — OTHER INFORMATION

### Item 1. *Legal Proceedings*

See Note 14 of the Notes to Consolidated Condensed Financial Statements for a description of our legal proceedings.

### Item 1A. *Risk Factors*

Various risk factors could have a negative effect on our business, financial position, cash flows and results of operations. These include the risk factors set forth in “Item 1A. Risk Factors” in our 2009 Form 10-K. There have been no significant changes to our risk factors from those disclosed in our 2009 Form 10-K through the filing of this Report except as noted below:

***Our planned sale of Blue Spruce and Rocky Mountain may not close as planned, which could negatively impact our future business and financial results.***

Our planned asset divestiture to sell our ownership interests in Blue Spruce and Rocky Mountain may be delayed or may not close at all. The closing of this transaction is conditioned upon certain regulatory approvals, as well as our counterparties being able to fund the approximate \$739 million purchase price. The failure or delay in obtaining necessary regulatory approvals, or the failure or delay of the purchaser to obtain the necessary funding could result in the planned closing of this transaction being delayed or not occurring at all. This could result in additional required capital or the failure to integrate the anticipated benefits from this transaction into our business and strategy as planned.

***Future PJM capacity revenues expected from the Conectiv Acquisition may be diminished or may not occur at expected levels.***

PJM is responsible for ensuring that there is sufficient generating capacity (plus an adequate reserve margin) to meet the load requirements within its transmission control area and requires retail sellers of electricity in the PJM region to maintain capacity either from ownership or through bilateral contracts for the purchase of capacity credits in auctions administered by PJM from wholesale generators. The purchase of the capacity credits in the PJM region is conducted through a forward capacity auction procedure known as the Reliability Pricing Model (“RPM”). Under the RPM, each auction covers capacity to be supplied over consecutive 12-month periods. The most recent auction covered the period from June 2013 through May 2014 and was completed in May 2010, with auction prices clearing at higher prices relative to previous years. The next annual auction, for the June 2014 to May 2015 period, is scheduled to be completed in May 2011.

The power generation assets we acquired from Conectiv are located in the transmission control area administered by PJM, and a significant source of revenue from these power generation assets is expected to come from the sale of capacity. If future capacity auctions occur below anticipated price levels, if there are adverse changes in the RPM, or if the power generation assets we acquired from Conectiv fail to meet certain reliability levels, the amount of capacity we may be able to sell in future capacity auctions, and hence the amount of capacity revenues we would realize in the applicable year, may be diminished.

In addition to participating in the PJM auctions, we may elect to participate in the forward capacity market as both sellers and buyers, subject to our risk management policy, and accordingly, prices realized in the PJM capacity auctions may not be indicative of Commodity Margin that we earn in respect of our capacity purchases and sales during a given period.

**Item 2. Unregistered Sales of Equity Securities and Use of Proceeds**

*Repurchase of Equity Securities* — Upon vesting of restricted stock awarded by us to employees, we withhold shares to cover employees' tax withholding obligations, other than for employees who have chosen to make tax withholding payments in cash. As set forth in the table below, during the second quarter of 2010, we withheld a total of 55 shares in the indicated month that are included in treasury stock. These were the only repurchases of equity securities made by us during this period. We do not have a stock repurchase program.

Period	(a)	(b)	(c)	(d)
	Total Number of Shares Purchased	Average Price Paid Per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Maximum Number of Shares That May Yet Be Purchased Under the Plans or Programs
May	55	\$ 13.70	—	n/a
Total	55	\$ 13.70	—	n/a

**Item 6. Exhibits**

The following exhibits are filed herewith unless otherwise indicated:

**EXHIBIT INDEX**

<b>Exhibit Number</b>	<b>Description</b>
4.1	Amended and Restated Indenture, dated May 25, 2010, among Calpine Corporation, the guarantors party thereto and Wilmington Trust Company, as trustee, including the form of the Notes (incorporated by reference to Exhibit 4.1 to Calpine's Current Report on Form 8-K filed with the Securities and Exchange Commission on May 25, 2010).
4.2	Amended and Restated Indenture, dated July 23, 2010, among Calpine Corporation, the guarantors party thereto and Wilmington Trust Company, as trustee, including the form of the Notes (incorporated by reference to Exhibit 4.1 to Calpine's Current Report on Form 8-K filed with the Securities and Exchange Commission on July 23, 2010).
10.1	Purchase and Sale Agreement by and between Riverside Energy Center, LLC and Calpine Development Holdings, Inc., as Sellers and Public Service Company of Colorado, as Purchaser dated as of April 2, 2010.*††
10.2	Purchase Agreement by and among Pepco Holdings, Inc., Conectiv, LLC, Conectiv Energy Holding Company, LLC and New Development Holdings, LLC dated as of April 20, 2010 (incorporated by reference to Exhibit 10.1 to Calpine's Current Report on Form 8-K filed with the Securities and Exchange Commission on July 8, 2010).
10.3	The Amended and Restated Calpine Corporation 2008 Director Incentive Plan (incorporated by reference to Appendix A to the Company's Definitive Proxy Statement on Schedule 14A filed with the Securities and Exchange Commission on April 5, 2010).†
10.4	The Amended and Restated Calpine Corporation 2008 Equity Incentive Plan (incorporated by reference to Appendix B to the Company's Definitive Proxy Statement on Schedule 14A filed with the Securities and Exchange Commission on April 5, 2010).†
10.5	Credit Agreement dated as of June 8, 2010, among New Development Holdings, LLC, as Borrower, The Lenders Party Hereto and Credit Suisse AG, as Administrative Agent and Collateral Agent; Credit Suisse Securities (USA) LLC, Citigroup Global Markets Inc., and Deutsche Bank Securities Inc., as Joint Bookrunners and Joint Lead Arrangers; Credit Suisse AG as Syndication Agent; Credit Suisse AG, Citibank, N.A., and Deutsche Bank Trust Company Americas as Co-Documentation Agents (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on June 11, 2010).
10.6	Calpine Corporation 2010 Calpine Incentive Plan.*†
31.1	Certification of the Chief Executive Officer Pursuant to Rule 13a-14(a) or Rule 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.*
31.2	Certification of the Chief Financial Officer Pursuant to Rule 13a-14(a) or Rule 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.*
32.1	Certification of Chief Executive Officer and Chief Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.*

\* Filed herewith.

† Management contract or compensation plan or arrangement.

†† Portions of this exhibit have been omitted pursuant to a request for confidential treatment under Rule 24b-2 under the Securities Exchange Act of 1934.

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this Report to be signed on its behalf by the undersigned thereunto duly authorized.

**CALPINE CORPORATION**

By: /s/ ZAMIR RAUF  
Zamir Rauf  
Executive Vice President and  
Chief Financial Officer

Date: July 29, 2010



## EXHIBIT INDEX

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10.5	Credit Agreement dated as of June 8, 2010, among New Development Holdings, LLC, as Borrower, The Lenders Party Hereto and Credit Suisse AG, as Administrative Agent and Collateral Agent; Credit Suisse Securities (USA) LLC, Citigroup Global Markets Inc., and Deutsche Bank Securities Inc., as Joint Bookrunners and Joint Lead Arrangers; Credit Suisse AG as Syndication Agent; Credit Suisse AG, Citibank, N.A., and Deutsche Bank Trust Company Americas as Co-Documentation Agents (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on June 11, 2010).
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\* Filed herewith.

† Management contract or compensation plan or arrangement.

†† Portions of this exhibit have been omitted pursuant to a request for confidential treatment under Rule 24b-2 under the Securities Exchange Act of 1934.

\*\*\* Material has been omitted pursuant to a request for confidential treatment and such material has been filed separately with the Securities and Exchange Commission. A series of three asterisks within brackets denotes omissions.

EXHIBIT 10.1

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**PURCHASE AND SALE AGREEMENT**

**by and between**

**Riverside Energy Center, LLC  
and  
Calpine Development Holdings, Inc.,**

**as Sellers,**

**and**

**Public Service Company of Colorado,**

**as Purchaser,**

**dated as of April 2, 2010**

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## PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (this "Agreement"), dated as of April 2, 2010 (the "Execution Date"), is made and entered into by and among Calpine Development Holdings, Inc., a Delaware corporation ("Blue Spruce Seller") and Riverside Energy Center, LLC, a Wisconsin limited liability company ("Rocky Mountain Seller"), and together with Blue Spruce Seller, each a "Seller" and collectively "Sellers"), and Public Service Company of Colorado, a Colorado corporation ("Purchaser").

### RECITALS

WHEREAS, Blue Spruce Seller owns 100% of the limited liability company interests ("Blue Spruce Interests") of Blue Spruce Energy Center, LLC, a Delaware limited liability company ("Blue Spruce Company");

WHEREAS, Rocky Mountain Seller owns 100% of the limited liability company interests ("Rocky Mountain Interests"), and collectively with the Blue Spruce Interests, the "Interests") of Rocky Mountain Energy Center, LLC, a Delaware limited liability company ("Rocky Mountain Company"), and together with Blue Spruce Company, each a "Company" and collectively the "Companies";

WHEREAS, the Companies are special purpose companies that own the Rocky Mountain Energy Center ("RMEC"), a natural gas combined cycle facility with a plant nominal winter capacity of 652 MW located in Keenesburg, CO, and Blue Spruce Energy Center ("BSEC" and RMEC, each a "Facility", and collectively the "Facilities"), a nominal winter 310 MW natural gas simple cycle peaking facility located in Aurora, CO, respectively;

WHEREAS, Purchaser is the owner and operator of electric generation, transmission and distribution facilities through which it is engaged in the business of generating, transmitting and selling electric energy to the general public and at wholesale;

WHEREAS, Purchaser has been the tolling counterparty under the PPAs since commercial operation of the Facilities; and

WHEREAS, Sellers desire to sell to Purchaser, and Purchaser desires to purchase from Sellers, all of the Interests, as provided in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises made in this Agreement and of the mutual benefits to be derived from such promises, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties to this Agreement, intending to be legally bound, agree as follows:

### ARTICLE I

#### DEFINITIONS AND CONSTRUCTION

Section 1.01           Definitions. For purposes of this Agreement, the following terms shall have the respective meanings set forth below:

“1933 Act” has the meaning set forth in Section 5.07.

“Adjusted Current Assets” means all “accounts receivable, trade” of the Companies, each determined in a manner consistent with the September 30, 2009, balance sheets of the Companies and in accordance with GAAP, consistently applied, as set forth on Schedule 1.01(a).

“Adjusted Current Liabilities” means all “accounts payable, trade and accrued liabilities (excluding accrued audit fees and accrued letter of credit fees)” of the Companies, each determined in a manner consistent with the September 30, 2009, balance sheets of the Companies and in accordance with GAAP, consistently applied, as set forth on Schedule 1.01(a).

“Adjusted Net Working Capital” means Adjusted Current Assets minus Adjusted Current Liabilities of the Companies, determined as of 11:59 pm on the day prior to the Closing Date, calculated as set forth on Schedule 1.01(a).

“Affected Employee” has the meaning set forth in Section 6.09(a).

“Affiliate” means any Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the Person specified. For purposes of this definition, control of a Person means the power, direct or indirect, to direct or cause the direction of the management and policies of such Person whether through ownership of voting securities or ownership interests, by contract or otherwise, and specifically with respect to a corporation, partnership, trust or limited liability company, means direct or indirect ownership of more than fifty percent (50%) of the voting securities in such corporation or of the voting interest in a partnership or limited liability company or of the beneficial interests in a trust.

“Agreement” has the meaning set forth in the introductory paragraph to this Agreement.

“Allocation Schedule” has the meaning set forth in Section 2.08.

“Antitrust Laws” means the HSR Act, the Sherman Antitrust Act of 1890, as amended, the Clayton Antitrust Act of 1914, as amended, the Federal Trade Commission Act of 1914, as amended, and any other federal or state statutes, rules, regulations, orders, decrees, administrative or judicial doctrines or other laws that prohibit, restrict or regulate actions that have the purpose or effect of monopolizing or restraining trade.

“Balance Sheet Date” has the meaning set forth in Section 4.17(a).

“Base Purchase Price” has the meaning set forth in Section 2.02(a).

“Benefit Plan” means: (a) each “employee benefit plan,” as such term is defined in Section 3(3) of ERISA, (b) each stock bonus, stock ownership, stock option, stock purchase, stock appreciation rights, phantom stock, or other equity plan (whether qualified or nonqualified), (c) each bonus, deferred compensation or incentive compensation plan, and (d) any other employee benefit plan, program, agreement or arrangement of any kind (including, any employment, consulting, retention, change in control or severance plan, policy, arrangement or agreement), in each case covering either current or former employees, officers or directors of the Company who are or were employed at or providing services in respect of the Facility, provided

that the term “Benefit Plan” shall not include (1) routine employment policies and procedures, including wage, vacation, holiday, and sick or other leave policies, (2) workers compensation insurance, and (3) directors and officers liability insurance.

“Blue Spruce Company” has the meaning set forth in the recitals.

“Blue Spruce Credit Agreement” means that certain Credit Agreement dated as of February 1, 2008 by and among Blue Spruce Energy Center, LLC, Cobank, ACB, and Siemens Financial Services, Inc.

“Blue Spruce Interests” has the meaning set forth in the recitals.

“Blue Spruce Seller” has the meaning set forth in the introductory paragraph to this Agreement.

“Books and Records” means all files, documents, instruments, papers, books, reports, records, drawings, tapes, microfilms, photographs, letters, budgets, ledgers, journals, title policies, supplier lists, regulatory filings, operating data and plans, technical documentation (design specifications, functional requirements, operating instructions, logic manuals, flow charts, etc), user documentation (installation guides, user manuals, training materials, release notes, working papers, etc.), internal and external correspondence and other documents relating to the operation of the Facilities (including correspondence with contractors, customers, suppliers, vendors and the like), and other similar materials that, in all such cases, are primarily related to the business and the assets and the operations of the Companies, in whatever form (including electronic), but excluding (i) materials relating to this transaction and market and similar forecast information, and (ii) electronic correspondence and files stored on equipment and media which are not located at the Facilities at the Closing and are not material to the operation and ownership of the Companies following the Closing (“Excluded Electronic Records”).

“BSEC” has the meaning set forth in the recitals.

“BSEC 2007 Emissions Losses” means any and all Losses that arise out of, or result from, or otherwise relate to, the matters set forth under Section 4.10(b) of Schedule 4.10.

“Business Day” means a day other than Saturday, Sunday or any day on which banks located in the City of New York are authorized or obligated to close.

“Calpine Guarantees” mean (i) the Guaranty, dated May 11, 2001, by Calpine Corporation in favor of Purchaser, in connection with the performance by Blue Spruce Company under its PPA, and (ii) the Guaranty, dated May 11, 2001, by Calpine Corporation in favor of Purchaser, in connection with the performance by Rocky Mountain Company under its PPA.

“Change of Law” means the adoption, implementation, promulgation, repeal, modification or reinterpretation of any Law, order, protocol, practice or measure of or by any Governmental Authority, which occurs subsequent to the Execution Date.

“Charter Documents” means with respect to any Person, the certificate or articles of incorporation, organization or formation and by-laws, the limited partnership agreement, the

partnership agreement or the operating or limited liability company agreement, equityholder agreements and/or other organizational and governance documents of such Person, including those that are required to be registered or kept in the place of incorporation, organization or formation of such Person and which establish the legal personality of such Person.

“Claim” means any demand, claim, action, legal proceeding (whether at law or in equity) or arbitration.

“Closing” has the meaning set forth in Section 2.03.

“Closing Date” means the date on which the Closing occurs.

“Code” means the Internal Revenue Code of 1986.

“Commonly Controlled Entity” means any trade or business, whether or not incorporated, that, together with the Company, would be a “single employer” within the meaning of Section 414(b) or (c) of the Code.

“Company” and “Companies” have the meaning set forth in the recitals.

“Confidentiality and Non-Disclosure Agreement” means that certain Confidentiality and Non-Disclosure Agreement, dated as of June 29, 2009, by and between Calpine Corporation and Purchaser.

“Contract” means any written contract, lease, license, evidence of indebtedness, mortgage, indenture, purchase order, binding bid, letter of credit, security agreement or other written and legally binding arrangement.

“CPUC” means the Colorado Public Utilities Commission.

“Credit Agreements” mean the Blue Spruce Credit Agreement, the Rocky Mountain Credit Agreement, and any other credit agreement or agreements to which either of the Companies is a party or by which it is bound or to which any of its assets or securities are subject.

“Debt” of any specified Person means: (a) any and all liabilities and obligations of any Person (i) for borrowed money (including the current portion thereof), (ii) under or related to any reimbursement obligation relating to a letter of credit, bankers’ acceptance or note purchase facility, (iii) evidenced by a bond, note, debenture or similar instrument (including a purchase money obligation), (iv) for the payment of money relating to a lease or instrument that is required to be classified as a capitalized/finance lease obligation in accordance with GAAP, (v) for all or any part of the deferred purchase price of property or services (other than non-Affiliate trade payables), (vi) under or related to any agreement that is an interest rate swap agreement, basis swap, forward rate agreement, commodity swap, commodity option, equity or equity index swap or option, bond option, interest rate option, forward foreign exchange agreement, rate cap, collar or floor agreement, currency swap agreement, cross-currency rate swap agreement, currency option or other similar agreement (including any option to enter into any of the foregoing), and (vii) audit fees, and (b) any and all liabilities and obligations of others described in the preceding clause (a) that such Person has guaranteed or that is recourse to such Person or

any of its assets or that is otherwise its legal liability or that is secured in whole or in part by the assets of such Person. For purposes of this Agreement, Debt shall include any and all accrued interest, success fees, prepayment premiums, make-whole premiums or penalties, and fees or expenses (including, without limitation, attorneys' fees) associated with any Debt.

"Discovery Work" means maintenance and repair work that is identified in the course of completing the work contemplated by the Fall 2010 RMEC Outage Schedule and Scope but was not contemplated by the Fall 2010 RMEC Outage Schedule and Scope and, should, in accordance with Good Industry Practices, be completed before the next major outage for RMEC gas turbine unit #2.

"Disproportionate Impact" has the meaning set forth in the definition of Material Adverse Effect.

"Due Diligence Information" means the information provided or made available to Purchaser or its Representatives, shareholders, Affiliates or agents, including, without limitation, any information, document, or material provided or made available, or statements made, to Purchaser (including its Representatives, shareholders, Affiliates or agents) during site or office visits, in any "data rooms" (virtual or otherwise), management presentations, "break-out" discussions, in responses to questions submitted by or on behalf of Purchaser (including its Representatives, shareholders, Affiliates or agents), whether orally or in writing, or in any supplemental due diligence information provided to Purchaser (including its Representatives, shareholders, Affiliates or agents), in connection with discussions with management or in any other form in expectation of the transactions contemplated by this Agreement.

"Environmental Law" means any applicable federal, state or local law, statute, ordinance, rule, regulation, permit or order of any Governmental Authority relating to (a) the protection, preservation or restoration of the environment (including air, surface water, groundwater, drinking water supply, surface land, subsurface land, plant and animal life or any other natural resource), or (b) the exposure to, or the use, storage, recycling, treatment, generation, transportation, processing, handling, labeling, production, release or disposal of Hazardous Substances, in each case as in effect at the Execution Date.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"Essential Discovery Work" means Discovery Work that, under Good Industry Practices, should be completed before RMEC gas turbine unit #2 is placed back into service in order to avoid a potentially hazardous or dangerous condition.

"Estimated Purchase Price" has the meaning set forth in Section 2.05(a).

"Execution Date" has the meaning set forth in the introductory paragraph to this Agreement.

"Facility" and "Facilities" have the meaning set forth in the recitals.

“Fall 2010 RMEC Outage Schedule and Scope” means the work plan, schedule and scope attached hereto as Schedule 1.01(b) for the Fall 2010 RMEC Outage Work, as such schedule may be amended by Sellers with Purchaser’s consent (not to be unreasonably withheld).

“Fall 2010 RMEC Outage Work” means the maintenance and repair work contemplated by the Fall 2010 RMEC Outage Schedule and Scope, and all related, post-outage operations confirmation in accordance with Schedule 1.01(c), as such schedule may be amended by Sellers with Purchaser’s consent (not to be unreasonably withheld), as well as any Discovery Work that must also be completed prior to the conclusion of the outage as set forth in Section 6.16(c). It is anticipated that the maintenance and repair work will commence on or about [\*\*\*], and continue for approximately [\*\*\*] thereafter, and that the post-outage operations confirmation will commence upon completion of the outage and continue for another approximately [\*\*\*] thereafter.<sup>1</sup>

“Federal Power Act” means the Federal Power Act, as amended.

“FERC” means the Federal Energy Regulatory Commission, or any successor agency.

“Final Purchase Price” has the meaning set forth in Section 2.06(c).

“Financial Statements” has the meaning set forth in Section 4.17.

“GAAP” means generally accepted accounting principles in the United States of America.

“Good Industry Practices” means, with respect to the Facilities, any of the practices, methods and acts generally engaged in or approved by a significant portion of the electric power generation industry during the relevant time period that, in the exercise of reasonable judgment in light of the applicable manufacturer’s recommendations and the facts known or that reasonably should have been known at the time the decision was made, would reasonably have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Industry Practices are intended to consist of practices, methods or acts generally accepted in the region where the Facilities are located, and are not intended to be limited to optimum practices, methods or acts to the exclusion of all others.

“Governmental Authority” means any court, tribunal, arbitrator, authority, agency, commission, official or other instrumentality of the United States or any state, county, city or other political subdivision or similar governing entity, and including any governmental, quasi-governmental or non-governmental body administering, regulating or having general oversight over gas, electricity, power or other markets, including, without limitation, NERC and WECC.

“Hazardous Substance” means any substance presently listed, defined or classified as a pollutant, contaminant, hazardous substance, toxic substance, hazardous waste, solid waste or special waste under any applicable Environmental Law, including, without limitation, asbestos,

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<sup>1</sup> Material has been omitted pursuant to a request for confidential treatment and such material has been filed separately with the Securities and Exchange Commission. A series of three asterisks within brackets denotes omissions.

mold, petroleum or any fraction of petroleum, polychlorinated biphenyls, or urea formaldehyde foam insulation.

“HSR Act” means the Hart-Scott Rodino Antitrust Improvements Act of 1976, as amended.

“Indemnified Party” has the meaning set forth in Section 9.04.

“Indemnifying Party” has the meaning set forth in Section 9.04.

“Independent Accounting Firm” means a nationally recognized accounting firm that is not the principal accounting firm of either Purchaser or either Seller, as agreed to between the Parties.

“Independent Engineer” means Worley Parsons or, if such firm is unable or unwilling to promptly serve as Independent Engineer, URS Corporation or, if both such firms are unable or unwilling to promptly serve as Independent Engineer, such other nationally recognized engineering firm that is reasonably acceptable to the Parties.

“Intellectual Property” has the meaning set forth in Section 4.13.

“Interest Rate” means the prime per annum rate of interest as published from time to time by The Wall Street Journal.

“Interests” has the meaning set forth in the recitals.

“Interim Period” means the period of time from the Execution Date until the Closing Date or termination of this Agreement.

“Knowledge” means, (i) in the case of Sellers or the Companies, the actual knowledge (as opposed to any constructive or imputed knowledge) of the individuals listed on Schedule 1.01(d) after due inquiry, and (ii) in the case of Purchaser, the actual knowledge (as opposed to any constructive or imputed knowledge) of the individuals listed on Schedule 1.01(e) after due inquiry.

“Laws” means all laws, statutes, rules, regulations, ordinances and other pronouncements having the effect of law of any Governmental Authority.

“Lien” means any security interest, pledge, mortgage, lien, charge, encumbrance, conditional sale agreement, title retention contract, right of first refusal, option to purchase, proxy, voting trust or voting agreement or any similar interest.

“Losses” means any and all judgments, losses, liabilities, amounts paid in settlement, damages, fines, penalties, deficiencies, losses and expenses (including interest, court costs, reasonable fees of attorneys, accountants and other experts or other reasonable expenses of litigation or other proceedings or of any Claim, default or assessment).

“Material Adverse Effect” means any change, event or effect occurring on or after the date hereof that, individually or in the aggregate, is materially adverse to the assets, operations, business, or properties of the Facilities or the Companies, taken as a whole, except for any such change, event or effect resulting from or arising out of (a) changes in economic or financial conditions generally or in the electric generating, transmission or distribution industries, whether national, regional or state, that do not have a disproportionate impact on the Facilities or the Companies as compared to similar facilities or their owners in the regions in which the Facilities are located (a “Disproportionate Impact”); (b) changes in the national, regional or state wholesale or retail markets for electric power or fuel supply or transportation, including those due to actions by competitors, that do not have a Disproportionate Impact; (c) any acts of war or terrorism that do not have a Disproportionate Impact; (d) changes in the North American, national, regional, or state transmission or distribution systems that do not have a Disproportionate Impact, or any change in any way relating to Purchaser’s electric transmission or distribution systems; (e) strikes, work stoppages or other labor disturbances that do not occur at the Facilities; (f) increases in the costs of commodities or supplies, including fuel, that do not have a Disproportionate Impact; (g) effects of weather or meteorological events that do not have a Disproportionate Impact; (h) any change in GAAP or Change of Law (including but not limited to changes in regulatory policy and any such change relating to climate change, renewables or the environment); (i) any judgment, order or decree, including but not limited to any such change, judgment, order or decree relating to climate change, renewables or the environment, that does not have a Disproportionate Impact; (j) changes or adverse conditions in the securities markets, including those relating to debt financing; (k) any adverse change or effect attributable to the execution, delivery or pendency of this Agreement or the consummation of the transactions contemplated hereby or the announcement of any of the aforementioned matters set forth in this clause (k), including but not limited to any decrease in customer demand, any reduction in revenues, any disruption in supplier or similar relationships, or any loss of employees; and (l) any actions taken or to be taken pursuant to this Agreement or any other action of, or omission by, Purchaser or any of its Affiliates (including, without limitation, any default by Purchaser under the PPAs).

“Material Contracts” has the meaning set forth in Section 4.06(a).

“Material Non-Real Estate Assets” has the meaning set forth in Section 4.07(b)(i).

“NERC” means North American Electric Reliability Corporation and any successor.

“Operator” means Calpine Operating Services Company, Inc.

“Operator Facility Employees” means the employees employed full time or part-time by the Operator at the Facilities, including all employees (both active and inactive, who are receiving disability pay of any kind).

“Ordinary Course” means the ordinary and normal course of each Company’s conduct of business consistent with past practice employed by such Company.

“Owned Real Property” has the meaning set forth in Section 4.07(a).



“Party” or “Parties” means Purchaser, on the one hand, and Sellers, on the other hand, provided that when the context dictates, such terms shall include the Companies.

“Permits” has the meaning set forth in Section 4.05(b).

“Permitted Liens” means (a) mechanic’s, materialmen’s, workmen’s, repairmen’s and similar Liens arising in the Ordinary Course with respect to any amounts not yet due and payable or which (i) are being contested in good faith through appropriate proceedings or (ii) have been bonded, provided that, in either case, the applicable property will not be subject to forfeiture or sale during the pendency of any such proceeding, (b) Liens for Taxes not yet due and payable or which are being contested in good faith through appropriate proceedings, provided that no portion of the Facilities or the Owned Real Property will be subject to sale or forfeiture during the pendency of such proceedings, (c) purchase money Liens securing obligations not yet due and payable, and Liens securing rental payments not yet due and payable under capital lease arrangements, arising in each case in the Ordinary Course, (d) pledges or deposits under workers’ compensation legislation, unemployment insurance Laws or similar Laws, (e) good faith deposits in connection with bids, tenders or contracts, including rent security deposits, (f) pledges or deposits to secure public or statutory obligations or appeal bonds, (g) Liens arising by operation of applicable Law securing amounts not yet due and payable arising in the Ordinary Course, (h) Liens and other matters disclosed on Schedule 1.01(f) hereto and (i) such imperfections of title, easements, encumbrances, restrictions or other Liens that, individually or in the aggregate, do not materially affect the current or future value or use of the Companies’ assets in a manner consistent with past practice.

“Person” means any natural person, corporation, general partnership, limited partnership, limited liability company, proprietorship, other business organization, trust, union, association or Governmental Authority.

“Post-Closing Adjustment” has the meaning set forth in Section 2.06(a).

“Post-Closing Straddle Period” has the meaning set forth in Section 6.03(e).

“PPA Termination Instruments” means such instruments, reasonably acceptable to the Parties, necessary to terminate the PPAs effective as of the Closing Date.

“PPAs” means the Power Purchase Agreement, dated January 26, 2001, between Blue Spruce Company and Purchaser, as amended from time to time, and the Power Purchase Agreement, dated March 9, 2001, between Rocky Mountain Company and Purchaser, as amended from time to time.

“Pre-Closing Straddle Period” has the meaning set forth in Section 6.03(e).

“Pre-Closing Tax Period” means any Tax period ending on or before the Closing Date.

“Purchaser” has the meaning set forth in the introductory paragraph to this Agreement.

“Purchaser Governmental Approvals” has the meaning set forth in Section 5.03(c).

“Representatives” means the officers, directors, managers, employees, counsel, accountants, financial advisers or consultants of a Person.

“RMEC” has the meaning set forth in the recitals.

“RMEC Outage Work Period” means the period of time required to complete the Fall 2010 RMEC Outage Work as set forth in the Fall 2010 RMEC Outage Schedule and Scope.

“Rocky Mountain Company” has the meaning set forth in the recitals.

“Rocky Mountain Credit Agreement” means that certain Credit Agreement, dated as of June 24, 2004 by and among Rocky Mountain Energy Center, LLC, Credit Suisse First Boston, Union Bank of California, N.A., Cobank ACB and the financial institutions listed on Exhibit H therein.

“Rocky Mountain Interests” has the meaning set forth in the recitals.

“Rocky Mountain Seller” has the meaning set forth in the introductory paragraph to this Agreement.

“Schedule” or “Schedules” means one or more of the disclosure schedules attached hereto.

“Seller” and “Sellers” have the meaning set forth in the introductory paragraph to this Agreement.

“Seller Guarantor” means Calpine Corporation, a Delaware corporation.

“Seller Guaranty” has the meaning provided in Section 2.04(f).

“Seller Approvals” has the meaning set forth in Section 3.03(c).

“Sellers’ Additional Maintenance and Repair Work Notice” has the meaning set forth in Section 6.16(c).

“Sellers’ Incomplete Discovery Work Notice” has the meaning set forth in Section 6.16(d)(ii).

“Sellers’ Marks” has the meaning set forth in Section 6.11.

“Specified Representations” have the meaning set forth in Section 9.02(c).

“Straddle Period” has the meaning set forth in Section 6.03(e).

“Subsidiary” means, with respect to any Person, any corporation or other organization, whether incorporated or unincorporated, of which such Person or any Subsidiaries of such Person owns, directly or indirectly, more than fifty percent (50%) of the stock or other equity interest, or controls more than fifty percent (50%) of the voting power entitled (x) to vote on the

election of members to the board of directors or similar governing body or (y) to manage the business of such Person.

“Supplemental Disclosure” has the meaning set forth in Section 10.4.

“Surface Use Agreement Losses” means any and all Losses that arise out of, or result from, or otherwise relate to, any breach by [\*\*\*] of any of the provisions of, or any default by [\*\*\*] on the performance or other satisfaction of any of its obligations under, the Surface Use Agreement dated [\*\*\*], by and among [\*\*\*] as supplemented by the letter dated April 18, 2002, by [\*\*\*], which was agreed to and accepted by [\*\*\*] on [\*\*\*].<sup>2</sup>

“Surviving Credit Agreement Indemnities” means indemnification and other obligations of the borrowers under the Credit Agreements that will survive the payoff of the debt thereunder and the Closing.

“Tax” or “Taxes” means any foreign, United States federal, state or local net income, alternative or add-on minimum tax, gross income, gross receipts, sales, use, ad valorem, personal property (tangible and intangible), real property (including general and special assessments), value added, transfer, franchise, profits, license, withholding, payroll, employment, excise, severance, stamp, occupation, premium, environmental or windfall profit tax, custom, duty or other tax, governmental fee or other like assessment or charge of any kind whatsoever, together with any interest, penalty or addition thereto.

“Tax Proceeding” has the meaning set forth in Section 6.03(b).

“Tax Returns” means any return, report or similar statement required to be filed with respect to any Taxes, including any information return, claim for refund, amended return and declaration of estimated Tax.

“Taxing Authority” means, with respect to any Tax, the governmental entity or political subdivision thereof that imposes such Tax, and the agency (if any) charged with the collection of such Tax for such entity or subdivision.

“Termination Date” has the meaning set forth in Section 8.01(b)(i).

“Title Evidence” has the meaning set forth in Section 6.15.

“Transfer Taxes” means all transfer, sales, use, goods and services, value added, documentary, recording, stamp duty, gross receipts, excise, and conveyance Taxes and other similar Taxes, duties, fees or charges.

“Unaudited Balance Sheet” has the meaning set forth in Section 4.17(a).

“Unaudited Financial Statements” has the meaning set forth in Section 4.17(a).

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<sup>2</sup> Material has been omitted pursuant to a request for confidential treatment and such material has been filed separately with the Securities and Exchange Commission. A series of three asterisks within brackets denotes omissions.

“WECC” means Western Electricity Coordinating Council and any successor.

Section 1.02                      Construction.

(a) All Article, Section, Subsection, Schedule and Exhibit references used in this Agreement are to Articles, Sections, Subsections, Schedules and Exhibits to this Agreement unless otherwise specified. The Exhibits and Schedules attached to this Agreement constitute a part of this Agreement and are incorporated herein for all purposes, provided that, in the event of any conflict between any of the provisions of such Exhibits or Schedules and any of the provisions of this Agreement, the provisions of this Agreement shall control.

(b) If a term is defined as one part of speech (such as a noun), it shall have a corresponding meaning when used as another part of speech (such as a verb). Unless the context of this Agreement clearly requires otherwise, words importing the masculine gender shall include the feminine and neutral genders and vice versa. The words “includes” or “including” shall mean “includes without limitation” or “including without limitation,” the words “hereof,” “hereby,” “herein,” “hereunder” and similar terms in this Agreement shall refer to this Agreement as a whole and not any particular Section or Article in which such words appear and any reference to a Law shall include any amendment thereof or any successor thereto and any rules and regulations promulgated thereunder. Currency amounts referenced herein are in U.S. Dollars.

(c) Whenever this Agreement refers to a number of days, such number shall refer to calendar days unless Business Days are specified. Whenever any action must be taken hereunder on or by a day that is not a Business Day, then such action may be validly taken on or by the next day that is a Business Day.

(d) Sellers may, at their option, include in the Schedules items that are not material, and any such inclusion, or any references to dollar amounts, shall not be deemed to be an acknowledgment or representation that such items are material or would cause a Material Adverse Effect, to establish any standard of materiality or to define further the meaning of such terms for purposes of this Agreement. Information disclosed in each Schedule shall be deemed to be disclosed in each other Schedule hereto to the extent the applicability of such information on other Schedules is reasonably apparent.

(e) Each Party acknowledges that it and its attorneys have been given an equal opportunity to negotiate the terms and conditions of this Agreement and that in the event an ambiguity of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption shall arise favoring any Party by virtue of the authorship of any provisions of this Agreement.

**ARTICLE II**

**PURCHASE AND SALE AND CLOSING**

Section 2.01                      Purchase and Sale. On the terms and subject to the conditions set forth in this Agreement, Purchaser shall purchase from Sellers, and Sellers shall sell to Purchaser, the Interests in the Companies.

Section 2.02                    Purchase Price.

(a)            The aggregate base purchase price to be paid by Purchaser to Sellers shall be \$739,000,000 (the “Base Purchase Price”).

(b)            In addition to any other adjustments referenced in this Section 2.02, the Base Purchase Price will be increased or decreased, as the case may be, to the extent that the amount of Adjusted Net Working Capital as of the Closing is greater or less, respectively, than zero dollars (\$0). The Base Purchase Price is also subject to such adjustments as may occur under the provisions of Section 2.06 following the Closing.

Section 2.03                    Closing. The closing of the transactions contemplated by this Agreement (the “Closing”) shall take place at the offices of White & Case LLP, 1155 Avenue of the Americas, New York, New York 10036 at 10:00 A.M. local time, on the second Business Day after the conditions to the Closing set forth in Article VII (other than actions to be taken or items to be delivered at the Closing) have been satisfied or waived by the applicable Party or Parties, or on such other date and at such other time and place as the applicable Parties mutually agree in writing, but not earlier than December 1, 2010. All actions listed in Section 2.04 or Section 2.05 that occur on the Closing Date shall be deemed to occur simultaneously at the Closing. Subject to the provisions of Article VIII, failure to consummate the transactions provided for in this Agreement on the date determined pursuant to this Section 2.03 will not result in the termination of this Agreement and will not relieve any Party of any obligation under this Agreement.

Section 2.04                    Closing Deliveries by Sellers to Purchaser. At the Closing, Sellers shall deliver, or shall cause to be delivered, to Purchaser the following:

(a)            an assignment of the Interests being transferred by each Seller, substantially in the form attached hereto as Exhibit A together with such documents endorsed for transfer or executed in blank as are necessary to transfer such Interests;

(b)            the certificate described in Section 7.02(c);

(c)            an affidavit dated as of the Closing Date, in the form required by Treasury Regulations Section 1.1445-2(b)(2) and signed under penalties of perjury, stating that each Seller (or, in the case of a Seller that is a disregarded entity, its owner for federal income Tax purposes) is not a foreign person (within the meaning of Section 1445 of the Code);

(d)            Books and Records of the Companies (at Closing or as soon as reasonably practical thereafter) regardless of whether held at the Facilities or held by an affiliate of the Companies which may be made available at the Facilities;

(e)            evidence reasonably satisfactory to Purchaser that all Liens arising under the Credit Agreements on the Interests and the assets or properties of the Companies have been terminated as of the Closing;

(f)            a guaranty (the “Seller Guaranty”) by the Seller Guarantor of the obligations of Sellers under this Agreement in the form attached hereto as Exhibit B;

(g) appropriate termination statements under the Uniform Commercial Code, and such other documents and instruments (including consents and waivers) as may be reasonably requested by Purchaser, evidencing (i) the repayment and otherwise complete satisfaction of all Debt for borrowed money of the Companies and (ii) the extinguishment or termination of (1) all security interests (other than Permitted Liens) in the assets of the Companies and (2) the contractual rights of lenders that may affect the business and operations of the Companies or the continuation or termination of the existence of the Companies, including the rights of lenders under the Rocky Mountain Credit Agreement that might otherwise limit in any way Purchaser's ability to independently and unilaterally (a) operate or direct the operation of the business and affairs of the Rocky Mountain Company (including the ability to amend or terminate the Third Amended and Restated Limited Liability Company Operating Agreement of the Rocky Mountain Company dated June 24, 2004) and (b) determine the continuation and termination of the Rocky Mountain Company's existence (including the termination of its existence by liquidation and dissolution, merger or otherwise) and the disposition of its assets; and

(h) the PPA Termination Instruments and such instruments as are reasonably requested by Sellers to terminate the Calpine Guarantees and letters of credit posted thereunder.

Section 2.05            Closing Deliveries by Purchaser to Sellers. At the Closing, Purchaser shall deliver, or shall cause to be delivered, to Sellers the following:

(a) wire transfers of immediately available funds (to such account or accounts as Sellers shall have designated to Purchaser at least two (2) Business Days prior to the Closing Date) in an aggregate amount equal to the Base Purchase Price as adjusted pursuant to Section 2.02, as estimated in good faith by Sellers (the "Estimated Purchase Price"). Sellers shall deliver a calculation of the Estimated Purchase Price in writing to Purchaser at least two (2) Business Days prior to the Closing Date and shall attach to the calculation of the Estimated Purchase Price a schedule showing the estimated adjustment to the Base Purchase Price pursuant to Section 2.02; and

(b) the certificate described in Section 7.03(c); and

(c) the PPA Termination Instruments and such instruments as are reasonably required by Sellers to terminate the Calpine Guarantees and letters of credit posted thereunder.

Section 2.06            Post-Closing Adjustment.

(a) As soon as practicable after the Closing, but no later than ninety (90) days after the delivery of the financial Books and Records pursuant to Section 2.04(d) which will enable Purchaser to perform said calculation, Purchaser shall determine the actual adjustment to the Base Purchase Price, pursuant to Section 2.02(b). Sellers and Purchaser shall cooperate and provide each other access to their respective books and records (and those of the Companies) as are reasonably requested in connection with the matters addressed in this Section 2.06. Purchaser shall provide Sellers with written notice of such determination, along with reasonable supporting information (the "Post-Closing Adjustment").

(b) If Sellers object to any determinations set forth in the Post-Closing Adjustment, then Sellers shall provide Purchaser written notice thereof within ten (10) Business Days after receiving the Post-Closing Adjustment, together with a reasonably detailed explanation of the nature and bases of such objections. If Sellers and Purchaser are unable to agree on the adjustment to the Base Purchase Price, pursuant to Section 2.02(b) within thirty (30) days after Purchaser's receipt of Sellers' objection to the Post-Closing Adjustment, Purchaser and Sellers shall refer such dispute to the Independent Accounting Firm which firm shall make a final and binding determination as to all such matters in dispute relating to adjustment to the Base Purchase Price (and only such matters) on a timely basis and promptly shall notify Purchaser and such Sellers in writing of its resolution. Such firm shall not have the power to modify or amend any term or provision of this Agreement. Each of Purchaser and Sellers shall bear and pay one-half of the fees and other costs charged by such accounting firm.

(c) If the Base Purchase Price pursuant to Section 2.02(a), as adjusted, using such actual values (as agreed or determined by the Independent Accounting Firm) (the "Final Purchase Price") is greater than the Estimated Purchase Price, then Purchaser shall pay Sellers within five (5) Business Days after such actual values are agreed or determined, by wire transfer of immediately available funds, an amount equal to the difference between the Final Purchase Price and the Estimated Purchase Price plus interest thereon at the Interest Rate from the Closing Date through and including the date of such payment. If the Final Purchase Price is less than the Estimated Purchase Price, then Sellers shall pay Purchaser within five (5) Business Days after such actual values are agreed or determined, by wire transfer of immediately available funds, an amount equal to the difference between the Estimated Purchase Price and the Final Purchase Price plus interest thereon at the Interest Rate from the Closing Date through and including the date of such payment. In each case, the recipient Party or Parties, as applicable, shall designate the account or accounts to which such payments are to be made at least two (2) Business Days prior to the date such payments are due.

Section 2.07 Closing Date Cash. On or prior to the Closing Date, Sellers shall be permitted to transfer, to themselves or their designees, all of the cash and cash equivalents (including, without limitation, restricted cash) of the Companies, without any adjustment to the Base Purchase Price.

Section 2.08 Purchase Price Allocation. The Final Purchase Price, plus the amount of the Companies' liabilities included in the amount realized on the sale of the Companies' assets for federal income Tax purposes, shall be allocated among the assets of the Companies in accordance with Section 1060 of the Code and the applicable Treasury Regulations promulgated thereunder. Purchaser shall prepare and deliver to Sellers an allocation schedule setting forth Purchaser's determination of the allocation (the "Allocation Schedule") within ninety (90) days after the Execution Date. Sellers shall have fifteen (15) days to review the Allocation Schedule and either notify Purchaser that they are in agreement with such Allocation Schedule or deliver, in writing, any objections that they may have with respect thereto. If Sellers notifies Purchaser that they disagree with any aspect of the Allocation Schedule, Purchaser and Sellers shall work together in good faith to resolve any such disagreement. If any dispute regarding the Allocation Schedule remains unresolved after forty five (45) days following Purchaser's delivery of such Allocation Schedule to Sellers, then such disagreement shall be immediately submitted to the Independent Accounting Firm, which shall be instructed to resolve such disagreement within

thirty (30) days after such disagreement is submitted to it for resolution and shall notify Purchaser and Sellers in writing of its resolution. The Independent Accounting Firm's resolution of the disagreement shall be final and binding on Purchaser and Sellers. Purchaser and Sellers shall file all Tax Returns (including IRS Form 8594) in a manner consistent with the agreed upon or final Allocation Schedule and neither Purchaser nor Sellers shall take any position (whether in Tax Proceedings, on Tax Returns, or otherwise) that is inconsistent with such Allocation Schedule except as may be adjusted by subsequent agreement following an audit by the Internal Revenue Service or by court decision. In the event the Base Purchase Price is adjusted pursuant to Section 2.06 or Article IX, Purchaser shall promptly prepare and deliver to Sellers an updated Allocation Schedule reflecting such adjustment, and any Sellers' disagreement with such adjustment shall be resolved in the same manner as a disagreement over the original Allocation Schedule. If incurred, any fees and expenses of the Independent Accounting Firm shall be borne fifty percent (50%) by Purchaser and fifty percent (50%) by Sellers.

### ARTICLE III

#### REPRESENTATIONS AND WARRANTIES REGARDING SELLERS

Each Seller hereby severally represents and warrants to Purchaser that:

Section 3.01      Organization and Qualification. Such Seller is a limited liability company duly formed or a corporation duly incorporated, validly existing and in good standing under the laws of the jurisdiction of its organization. Such Seller is duly qualified or licensed to do business in each other jurisdiction where the actions required to be performed by it under this Agreement makes such qualification or licensing necessary, except in those jurisdictions where the failure to be so qualified or licensed would not have a Material Adverse Effect.

Section 3.02      Authority. Such Seller has all requisite company or corporate power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery by such Seller of this Agreement, and the performance by such Seller of its obligations hereunder, have been duly and validly authorized by all necessary limited liability company or corporate action on the part of such Seller. This Agreement has been duly and validly executed and delivered by such Seller and constitutes the legal, valid and binding obligation of such Seller enforceable against such Seller in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar Laws relating to or affecting the rights of creditors generally, or by general equitable principles regardless of whether considered in a proceeding at law or in equity.

Section 3.03      No Conflicts; Consents and Approvals. The execution and delivery by such Seller of this Agreement does not, and the performance by such Seller of its obligations under this Agreement and the consummation of the transactions contemplated hereby will not:

- (a) conflict with or result in a violation or breach of any of the terms, conditions or provisions of the Charter Documents of such Seller;
- (b) materially violate or result in a material default (or give rise to any right of termination, cancellation or acceleration) under any material Contract to which such Seller is a



party, or require any notice under any material Contract to which such Seller is a party or by which it is bound or to which any of its assets is subject (or result in the imposition of any Lien (other than a Permitted Lien) upon any of the assets of the Facilities; and

(c) assuming all required filings, approvals, consents, authorizations and notices set forth on Schedule 3.03(c) (collectively, “Seller Approvals”) have been made, obtained or given, (i) materially violate or materially breach any material Law or writ, judgment, order or decree applicable to such Seller (ii) require any consent or approval of any Governmental Authority under any material applicable Law applicable to such Seller or (iii) require the material consent or material approval of any third party (other than a Governmental Authority) under a material Contract.

Section 3.04 Ownership of Interests. Rocky Mountain Seller owns 100% of the equity interest in Rocky Mountain Company, and Blue Spruce Seller owns 100% of the equity interests in Blue Spruce Company. Each Seller owns its interests in the applicable Company directly and free and clear of all Liens other than those arising pursuant to this Agreement or applicable securities laws or as set forth in Schedule 3.04.

#### ARTICLE IV

##### REPRESENTATIONS AND WARRANTIES REGARDING THE COMPANIES

Each Seller hereby represents and warrants to Purchaser, with respect to itself and the Company owned by it, that:

Section 4.01 Organization and Qualification. Such Company is a limited liability company duly formed, validly existing and in good standing under the laws of the State of Delaware. Such Company has the requisite limited liability company power and authority to own, lease and operate its assets and properties and to carry on its business as it is now being conducted. Such Company is qualified to transact business and is in good standing in each jurisdiction in which the properties owned, leased or operated by it or the nature of the business conducted by it makes such qualification necessary, unless the failure to be so qualified would not have a Material Adverse Effect.

Section 4.02 No Conflicts; Consents and Approvals. Except as set forth on Schedule 4.02, the execution and delivery by Sellers of this Agreement does not, and the performance by Sellers of their obligations under this Agreement and the consummation of the transactions contemplated hereby will not:

(a) conflict with or result in a violation or breach of any of the terms, conditions or provisions of the Charter Documents of the applicable Company;

(b) materially violate or result in a material default (or give rise to any right of termination, cancellation or acceleration) under any Material Contract, or require any notice under any Material Contract to which such Company is a party or by which it is bound or to which any of its assets is subject or result in the imposition of any Lien (other than a Permitted Lien) upon any of the assets of the applicable Facility; and

(c) assuming all the Seller Approvals have been made, obtained or given, (i) materially violate or materially breach any material Law or writ, judgment, order or decree applicable to such Company (ii) require any consent or approval of any Governmental Authority under any material Law applicable to such Company or (iii) require the material consent or material approval of any third party (other than a Governmental Authority), under any Material Contract except as set forth in Schedule 4.02(c).

Section 4.03            Subsidiaries; No Other Business. Each Company does not own equity interests in any Person and has not conducted any business other than activities incidental to its ownership and operation of the applicable Facility.

Section 4.04            Litigation. Except as disclosed on Schedule 4.04, as of the date hereof there are no material Claims pending or, to the Knowledge of Sellers, overtly threatened against either of Sellers, either of the Companies or either of the Facilities (or any of the assets of either of the Facilities, including the Owned Real Property) before any Governmental Authority or any arbitrator. Except as disclosed on Schedule 4.04, there are no material outstanding judicial orders or judgments to which either of Sellers or either of the Companies is subject or by which either of Sellers, either of the Companies or either of the Facilities (or any assets of either of the Facilities, including the Owned Real Property) are bound.

Section 4.05            Compliance with Laws; Permits.

(a) Except (i) as disclosed on Schedule 4.05(a) and (ii) with respect to Environmental Laws (as to which certain representations and warranties are set forth in Section 4.10) and laws relating to Taxes (as to which certain representations and warranties are set forth in Section 4.12), such Company is not, and the operation of such Facility is not, in material violation of any material Law, and the Facilities and the Owned Real Property are operating in compliance in all materials respects with applicable Laws.

(b) (i) Schedule 4.05(b)(i) sets forth the material permits, licenses, franchises, variances, exemptions, orders and other authorizations, consents and approvals from Governmental Authorities ("Permits"), which relate to the operation of the Facilities or any assets that are used or held by Sellers or any of their Affiliates in connection with operation of the Facilities, and the holder thereof. (ii) Except as set forth on Schedule 4.05(b)(ii), such Company holds, and is in compliance in all material respects with, all Permits currently required to be held by such Company under applicable Law for the operation of its business, and is not in material violation of the terms of any Permits, and there is no material pending governmental proceeding or, to the Knowledge of Sellers, any overt threat by any Governmental Authority to cancel, modify, or fail to renew any Permit, other than modifications to the Companies' authorizations from FERC to sell electric energy, capacity and certain ancillary services at market-based rates of general applicability to similarly-situated sellers.

Section 4.06            Contracts.

(a) Excluding Contracts with respect to which the applicable Company will not be bound or have liability after the Closing, Schedule 4.06(a) sets forth a list as of the date of this Agreement of all Contracts requiring payments, either individually or in the aggregate, in

excess of two hundred fifty thousand dollars (\$250,000) per annum and which will be in effect, or as to which such Company will have obligations, after the Closing (collectively, "Material Contracts").

(b) The applicable Company has provided Purchaser with copies of, or access to, true and complete copies of all Material Contracts.

(c) Except as set forth on Schedule 4.06(c) hereto, each Material Contract is a legal, valid and binding obligation of the applicable Company and, to the Knowledge of Sellers, the other parties thereto, enforceable against such Seller or such Company, as applicable, and, to the Knowledge of Sellers, the other parties thereto in all material respects in accordance with their respective terms, except as the same may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and general equitable principles regardless of whether considered in a proceeding at law or in equity.

(d) Neither such Company nor, to the Knowledge of Sellers, any other party is in default in the performance or observance of any material term or material provision of, and to the applicable Company's Knowledge, no event has occurred that, with lapse of time or action by a third party, would result in such a default under any Material Contract to which such Company is a party or by which it is bound or to which its assets or property is subject.

Section 4.07                      Assets.

(a)                      Real Property.

(i) Schedule 4.07(a)(i) describes all real property, or any interest therein, owned in whole or in part (and states the names of the owners, the nature of their affiliation with Sellers and their respective ownership percentages in any partially owned real property) by Sellers and their Affiliates and used in connection with the operation of the Facilities as of the Execution Date, including, without limitation, any easements, licenses or similar interests ("Owned Real Property").

(ii) Except as described on Schedule 4.07(a)(i), there is no real property other than the Owned Real Property owned, leased, used or occupied by either Company in connection with the ownership and operation of the applicable Facility. Such Company has made available to Purchaser, to the extent within such Company's possession or control, a copy of all certificates of occupancy for the Owned Real Property, a copy of all special or conditional use permits, and any variance granted with respect to the Owned Real Property pursuant to applicable zoning laws or ordinances, all of which documents are true and complete copies thereof. Such Company has provided or made available to Purchaser the most recent existing surveys for the Owned Real Property, commitments for title insurance and the most recent Phase 1 environmental report in such Company's possession or control relating to the Owned Real Property. Except for Permitted Liens and except as set forth on Schedule 4.07(a)(ii), the applicable Company has

good and marketable title to the Owned Real Property attributed to it on Schedule 4.07(a)(i) and, subject to the Permitted Liens, there is no unrecorded Lien, easement, right-of-way agreement, license, lease (including leases of minerals and/or oil and gas), sublease, occupancy agreement, or like instrument burdening the Owned Real Property. Such Company has not received any written condemnation notice from any Governmental Authority with respect to the Owned Real Property as to which Sellers have not given notice to Purchaser and there is no pending or, to the Knowledge of Sellers, threatened condemnation of any material portion of the Owned Real Property. The Owned Real Property complies in all material respects with all applicable easements, covenants and similar restrictions.

(iii) The Owned Real Property of each Company constitutes separate parcels for real estate tax assessment and conveyancing purposes.

(iv) No portion of the Owned Real Property or the Facilities has been classified under any designation under applicable Law to obtain a special ad valorem tax rate or receive either an abatement or deferment of Taxes that may result in any catch-up or other deferred Taxes.

(v) As of the Execution Date, neither of Sellers nor either of the Companies has received notice of any, and to the Knowledge of Sellers there are no, pending or proposed special assessments affecting any of the Owned Real Property or the Facilities or any proposed or pending public improvements that may give rise to any special assessments affecting the Owned Real Property or the Facilities.

(vi) No commitment has been made by any Person that is binding on the Companies or the Owned Real Property to dedicate any of the Owned Real Property.

(vii) Sellers and the Companies have not received notice of any, and to the Knowledge of Sellers there is no, actual or threatened curtailment, cancellation or suspension of any utility service, except in accordance with the terms of such service (e.g. force majeure).

(viii) To the Knowledge of Sellers, except as set forth on Schedule 4.07(a)(viii), there are no conditions or obligations related to any special use permits, annexation agreements, zoning, planned development, subdivision or site plan approvals, or other land use permits or approvals issued in connection with any of the Owned Real Property or the Facilities that have not been satisfied or completed.

(b) Other Property.

(i) List of Material Non-Real Estate Assets. Set forth on Schedule 4.07(b)(i) is a complete and correct list of all of the material non-real estate assets

used, or held for use by the applicable Company, in the operation of the applicable Facility (“Material Non-Real Estate Assets”).

(ii) Title to Material Non-Real Estate Assets. The applicable Company has good and marketable title to the Material Non-Real Estate Assets that it owns and purports to own, free clear of all Liens other than Permitted Liens and Liens set forth on Schedule 4.07(b)(ii), and except as set forth on Schedule 4.07(b)(ii) has valid and enforceable contractual rights to hold and use all of the other tangible Material Non-Real Estate Assets used or held for use by it in the operation of the applicable Facility.

(iii) Maintenance and Repair of Material Non-Real Estate Assets. Schedule 4.07(b)(iii) sets forth a list of each maintenance and repair record relating to each of the Facilities, where the cost (including capital expenditures and maintenance and repair expenses) is in excess of \$400,000, complete and correct copies of which have been delivered to Purchaser. Each maintenance and repair activity listed in such records was performed at the times indicated in such records and was performed in all material respects in a professional and workmanlike manner consistent with Good Industry Practices.

Section 4.08 Employee Benefit Plans.

(a) Schedule 4.08(a) lists all material Benefit Plans covering any or all current Operator Facility Employees. Sellers have made available to Purchaser complete and correct copies of all such Benefit Plans, and, as applicable, all related summary plan descriptions with all amendments, and summaries of material modifications.

(b) Schedule 4.08(b) describes all material employment practices, policies, contracts, programs or arrangements which are applicable to Operator Facility Employees, including wage, vacation, holiday and sick and other leave plans, to the extent not listed on Schedule 4.08(a).

(c) Neither the Companies nor any Commonly Controlled Entity has, prior to the Closing Date, (i) incurred any liability under ERISA, or (ii) failed to satisfy the minimum funding requirements of Section 302 of ERISA or Section 412 of the Code (including with respect to installments). All contributions or payments required to be made by any Commonly Controlled Entity or Affiliate of such Company with respect to any Benefit Plan have been timely made.

(d) Such Company neither maintains nor contributes to nor has ever maintained or contributed to, nor been required to contribute to, any Benefit Plan, including without limitation any Benefit Plan which is subject to Title IV of ERISA or a multiemployer plan within the meaning of Section 3(37) of ERISA.

(e) Neither such Company nor any Commonly Controlled Entity or any other Person has taken any action, failed to take any action or otherwise incurred any liability with respect to any Benefit Plan or any other employee benefit plan subject to ERISA that is or was maintained or contributed to, or required to be contributed to, by such Company or any

Commonly Controlled Entity that may subject Purchaser or its Affiliates (following the Closing) to any liability, including but not limited to any Tax or penalty under ERISA or the Code.

(f) No Owned Real Property is and no non-real estate assets such Company owns or purports to own are subject to a Lien under ERISA or under Section 412 of the Code.

Section 4.09 Labor and Employment Matters; Independent Contractors.

(a) Except as set forth in Schedule 4.09(a), as of the date of this Agreement there are no (i) collective bargaining agreements or other labor agreements relating to such Company or covering any Operator Facility Employee to which such Company is a party or by which it is bound, (ii) material unfair labor practice complaints against such Company, pending or, to the Knowledge of Sellers, threatened in writing before the National Labor Relations Board or any state or local agency with respect to the operation of such Company, (iii) pending or, to the Knowledge of Sellers, threatened in writing labor strikes or other material labor troubles affecting such Company, or (iv) material labor grievances pending against such Company. Such Company does not have, and has never at any time had, any employees. Operator is the only entity that is providing or has provided operating and maintenance services to such Company.

(b) Schedule 4.09(b) sets forth a list of all major independent contractors who have performed services for the Facilities during the twelve (12) months immediately prior to the Execution Date, including a description of such services performed.

Section 4.10 Environmental Matters. Except as disclosed on Schedule 4.10, (a) such Company and the Facility owned by it are in compliance in all material respects with all material applicable Environmental Laws, (b) there are no material suits, notices, demands, claims, hearings or proceedings pending or, to the Knowledge of Sellers, threatened against such Company relating to any material violation, or alleged violation, of any material Environmental Law, (c) no Hazardous Substance has been disposed of or released at such Facility other than in compliance in all material respects with applicable Environmental Laws, (d) such Company has not disposed of, released or transported, or arranged for the disposal, release, or transportation of, any Hazardous Substance related to the operation of the Facility owned by it in a manner giving rise to any material liability or material obligation to report, investigate or cleanup under any applicable Environmental Law, and (e) such Company is not subject to any material corrective actions or remedial obligations relating to any settlement, court order, administrative order, or judgment asserted or arising under any material Environmental Law. The foregoing representation is the sole representation in this Agreement relating to Environmental Laws.

Section 4.11 Insurance. At the date hereof, such Company and its businesses and properties are insured under the insurance policies listed on Schedule 4.11(i). Such Company has made available to Purchaser accurate and complete copies of the certificates of insurance listed on Schedule 4.11(i). From January 1, 2007, to the date hereof, such Company has not made any claim under any of the insurance policies, or suffered any losses that could give rise to any such claims, for an amount in excess of \$250,000, except as set forth on Schedule 4.11(ii). Neither such Company nor any of its Affiliates has failed to give, in a timely manner, any material notice required under any of the insurance policies to preserve its rights thereunder with

respect to the Owned Real Property and all other material assets of the Facilities respecting any claim in excess of \$250,000.

Section 4.12                      Taxes.

(a)            Except as set forth in Schedule 4.12(a), all material Tax Returns required to be filed by each Company have been timely filed (taking into account any properly obtained extensions) and all such Tax Returns were correct and complete in all material respects. All Taxes due and owing by the Companies (whether or not shown to be due and payable on any Tax Return) have been timely paid or a reserve for the amount of such Tax has been established, which reserve shall have been accrued on the books and records of the applicable Company.

(b)            Except as set forth in Schedule 4.12(b), (i) there is no material action, suit, proceeding, audit, written claim or assessment pending or, to the Knowledge of Sellers or the Companies, proposed against either Company with respect to a material amount of Taxes or with respect to any material Tax Return filed by either Company, (ii) there are no waivers or extensions of any applicable statute of limitations for the assessment or collection of material Taxes of either Company that remain in effect, (iii) neither Company is currently the beneficiary of any extension of time within which to file any Tax Return, (iv) there are no material Liens for Taxes upon the assets of either Company, other than Permitted Liens, and (iv) each Company has withheld and remitted to the proper Taxing Authority all Taxes that it was required to withhold and remit.

(c)            Except as set forth in Schedule 4.12(c), neither Company (i) has any liability for the Taxes of any other Person as a transferee or successor or pursuant to any Law, (ii) is a party to any Tax sharing, allocation or indemnity agreement, arrangement or similar Contract the subject matter of which is the payment of or indemnification for Taxes, (iii) has participated in any "listed transaction" as defined in Section 6707A of the Code or Treasury Regulation Section 1.6011-4(b)(2) or any comparable provision of state, local or foreign Law, or (iv) has received notice of any claim by a Taxing Authority in a jurisdiction where the Company has not filed and currently does not file Tax Returns that it is or may be (or was or may have been) subject to a material amount of taxation by that Taxing Authority.

(d)            Each Company has been classified as a disregarded entity for federal income tax purposes at all times since it was formed.

Section 4.13                      Intellectual Property. Schedule 4.13(a) sets forth all material patent, registered trademark, service mark, trade name and registered copyright (collectively, "Intellectual Property") owned by such Company. Schedule 4.13(b) sets forth all material licenses and other rights to use intellectual property of others used by such Company in the operation of the Facilities. Such Company has not received from any third party any material claim in writing that such Company is infringing the Intellectual Property of such third party.

Section 4.14                      PUHCA. Such Company meets the requirements for, and has been determined by FERC to be, an "Exempt Wholesale Generator" within the meaning of the Public Utility Holding Company Act of 2005.

Section 4.15            Brokers. Such Company has no liability or obligation to pay fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement, and no Person is entitled to receive any brokerage commission or other similar payment with respect to the Owned Real Property, for which Purchaser or any of its Affiliates could become liable or obligated.

Section 4.16            Capital Structure. The Interests constitute all of the limited liability company interests in the Companies. There are no outstanding rights to acquire from such Company, or any obligations of such Company to issue, any limited liability company interests in such Company, and there are no outstanding obligations of such Company to repurchase, redeem or otherwise acquire any limited liability company interests in such Company. Such Company is not a party to any agreement restricting the purchase or transfer of, relating to the voting of, requiring the registration of, or granting any preemptive or antidilutive rights with respect to, any limited liability company interests in such Company. Such Company does not directly or indirectly beneficially own any securities of, or other beneficial ownership interests in, any other entity.

Section 4.17            Financial Statements. Such Company has heretofore delivered to Purchaser the following financial statements (the “Financial Statements”):

(a)            the unaudited Balance Sheet of such Company (the “Unaudited Balance Sheet”) as of September 30, 2009 (the “Balance Sheet Date”), the unaudited Statement of Earnings for the nine-month period ended September 30, 2009, the unaudited Statement of Changes in Partners’ Equity for the nine-month period ended September 30, 2009, and the unaudited Statement of Cash Flows for the nine-month period ended September 30, 2009 (the Financial Statements referred to in this Section 4.17(a) being referred to collectively as “Unaudited Financial Statements”); and

(b)            the audited Balance Sheet of such Company as of December 31, 2008, the audited Statement of Earnings for the year ended December 31, 2008, the audited Statement of Changes in Partners’ Equity for the year ended December 31, 2008, and the audited Statement of Cash Flows for the year ended December 31, 2008, together with the notes thereto and the report thereon by PricewaterhouseCoopers, LLP, independent certified public accountants.

(c)            Each of the Financial Statements was prepared from the books and records kept by such Company and fairly presents (subject, in the case of the Unaudited Financial Statements, to year-end audit adjustments and the absence of footnote disclosure) the financial position of such Company, as of such dates, and the results of such Company’s operations and such Company’s cash flows for the periods then ended in accordance with GAAP consistently applied. The Unaudited Balance Sheet reflects all material properties and assets, real, personal or mixed, that are owned by such Company as of the Execution Date, except for inventory purchased or sold in the Ordinary Course since the Balance Sheet Date, other properties and assets (other than capital assets) not in excess of \$250,000 (in the aggregate) purchased or sold since the Balance Sheet Date in the Ordinary Course, capital assets purchased since the Balance Sheet Date in an amount not in excess of \$500,000 (in the aggregate), and purchase commitments disclosed on Schedule 4.18. No financial statements of any Person other than such Company are required by GAAP to be included in the Financial Statements.



Section 4.18                    Liabilities. Except as disclosed on Sellers' Schedules, such Company has no Debt or other liabilities or obligations of any nature whatsoever, whether absolute, accrued or contingent, that are, in the aggregate, material, except for those (a) reflected or reserved on the Unaudited Balance Sheet, (b) incurred or accrued since the Balance Sheet Date in the Ordinary Course, (c) set forth on Schedule 4.18, or (d) incurred in compliance with Section 6.02.

Section 4.19                    Changes in Circumstances. Except as disclosed on Schedule 4.19, since the Balance Sheet Date, there has not been a Material Adverse Effect that is continuing.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser hereby represents and warrants to each Seller that:

Section 5.01                    Organization and Qualification. Purchaser is a corporation duly formed, validly existing and in good standing under the Laws of the State of Colorado. Purchaser is duly qualified or licensed to do business in each other jurisdiction where the actions required to be performed by it hereunder makes such qualification or licensing necessary, except in those jurisdictions where the failure to be so qualified or licensed would not have a material adverse effect on Purchaser's ability to perform its obligations hereunder.

Section 5.02                    Authority. Purchaser has all requisite corporate power and authority to enter into this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery by Purchaser of this Agreement and the performance by Purchaser of its obligations hereunder have been duly and validly authorized by all necessary corporate action on behalf of Purchaser. This Agreement has been duly and validly executed and delivered by Purchaser and constitutes the legal, valid and binding obligation of Purchaser enforceable against Purchaser in accordance with its terms except as the same may be limited by bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar Laws relating to or affecting the rights of creditors generally or by general equitable principles.

Section 5.03                    No Conflicts; Consents and Approvals. The execution and delivery by Purchaser of this Agreement does not, and the performance by Purchaser of its obligations under this Agreement and the consummation of the transactions contemplated hereby will not:

(a)                    conflict with or result in a violation or breach of any of the terms, conditions or provisions of its Charter Documents;

(b)                    violate or result in a default (or give rise to any right of termination, cancellation or acceleration) under any Contract to which Purchaser is a party, except for any such violations or defaults (or rights of termination, cancellation or acceleration) which would not, in the aggregate, have a material adverse effect on Purchaser's ability to perform its obligations hereunder; and

(c)                    assuming all required filings, approvals, consents, authorizations and notices set forth in Schedule 5.03(c) (collectively, the "Purchaser Governmental Approvals") have been made, obtained or given, (i) violate or breach any Law or writ, judgment, order or

decree applicable to Purchaser or (ii) require the consent or approval of any Governmental Authority under any applicable Law, except where any such violation or breach or the failure to obtain any such consent or approval would not have a material adverse effect on Purchaser's ability to perform its obligations hereunder.

Section 5.04      Litigation. There are no Claims pending or, to Purchaser's Knowledge, threatened in writing, or, to Purchaser's Knowledge, any investigations ongoing or threatened in writing against Purchaser before any Governmental Authority or any arbitrator, that would, in the aggregate, have a material adverse effect on Purchaser's ability to perform its obligations hereunder. Purchaser is not subject to any judgment, decree, injunction, rule or order of any Governmental Authority or any arbitrator that prohibits the consummation of the transactions contemplated by this Agreement or would, in the aggregate, have a material adverse effect on Purchaser's ability to perform its obligations hereunder.

Section 5.05      Compliance with Laws. Purchaser is not in violation of any Law, except for violations that would not, in the aggregate, have a material adverse effect on Purchaser's ability to perform its obligations hereunder.

Section 5.06      Brokers. Purchaser does not have any liability or obligation to pay fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement for which any Seller or its Affiliates could become liable or obligated.

Section 5.07      No Registration for Acquisition. Purchaser is acquiring the Interests for its own account without the present intent to sell, transfer or otherwise distribute the same to any other Person in violation of the Securities Act of 1933 (the "1933 Act"). Purchaser acknowledges that the Interests are not registered pursuant to the 1933 Act and that the Interests may not be transferred, except pursuant to an applicable exception under the 1933 Act. Purchaser is an "accredited investor" as defined under Rule 501 promulgated under the 1933 Act.

Section 5.08      Financial Resources. Purchaser has sufficient funds available or sources of sufficient funding capacity available, and will have the same available at the Closing, to enable it to purchase the Interests on the terms hereof and otherwise perform its obligations hereunder.

Section 5.09      No Knowledge of Breach. Except as set forth on Schedule 5.09, the individuals whose names are set forth on Schedule 1.01(d) do not have actual knowledge (without due inquiry) of any material breach by Sellers of any of Sellers' respective representations and warranties herein of which Purchaser has not given notice to Sellers.

Section 5.10      Reliance on Sellers' Representations and Warranties. In entering into this Agreement, Purchaser has relied solely upon the representations, warranties and covenants contained herein and has not been induced by and has not relied upon any representations, warranties or statements, whether oral or written, express or implied, made by any Seller or any of its Representatives, Affiliates or agents that are not expressly set forth in this Agreement, and except as specifically set forth in this Agreement, Sellers have not made any representations or warranties of any kind, oral or written, express or implied. Neither of the Sellers nor either of the Companies or any of their respective Representatives, Affiliates or agents shall have any

liability or responsibility whatsoever to Purchaser or its Representatives, shareholders, Affiliates or agents on any basis in contract or tort, under federal or state securities Laws or otherwise, resulting from the furnishing to Purchaser, or from Purchaser's use of, any Due Diligence Information, except (i) where such Due Diligence Information is set forth in a Schedule or Exhibit to this Agreement or the Sellers make a representation or warranty specifically covering the Due Diligence Information in this Agreement or in any other document, instrument or agreement delivered in connection herewith and (ii) in the case of intentional fraud.

## ARTICLE VI

### COVENANTS

The Parties hereby covenant and agree as follows:

#### Section 6.01      Access of Purchaser.

(a) During the Interim Period, Sellers shall cause each Company to provide Purchaser and its Representatives with reasonable access to the Facilities and the officers and management employees of such Company and, from and after September 1, 2010, suitable office space for not more than one Representative of Purchaser at each Facility for purposes of observing the operations of the Facilities and facilitating the transition of ownership, in such a manner so as not to unreasonably interfere with the business or operations of such Company, provided that such Company shall have the right to (i) have a Representative present for any communication with employees or officers of such Company or its contractors and (ii) impose reasonable restrictions and requirements for safety or operational purposes, provided further that neither Purchaser nor its Representatives shall collect or analyze any environmental samples (including building materials, indoor and outdoor air, surface and ground water, and surface and subsurface soils), without the prior written authorization of Sellers. Notwithstanding the foregoing, Sellers and the Companies shall not be required to provide any information or allow any inspection which they reasonably believe they may not provide to Purchaser or allow by reason of applicable Law, which constitutes or allows access to information protected by attorney/client privilege, or which Sellers or the Companies are required to keep confidential or prevent access to by reason of contract, agreement or understanding with third parties if Sellers or the Companies have used reasonable commercial efforts to obtain the consent of such third party to such inspection or disclosure. Notwithstanding anything to the contrary contained herein, Purchaser shall not be permitted to contact any of either Company's vendors, customers or suppliers, or any Governmental Authorities, during the Interim Period, regarding Sellers, the Companies or the Facilities, without receiving prior written authorization from Sellers; provided that the foregoing is not intended to prohibit Purchaser from contacting those Governmental Authorities from whom it must obtain regulatory approval regarding the transactions contemplated by this Agreement. Following the Closing, Sellers shall be entitled to retain copies of all books and records relating to its ownership and/or operation of the Companies and its businesses, subject to the terms of the confidentiality agreements entered into between Sellers and Purchaser.

(b) Purchaser shall indemnify, defend and hold harmless Sellers and their Representatives from and against all Losses incurred by Sellers, their Representatives or any other Person arising out of the access rights under this Section 6.01, including any Claims by any

of Purchaser's Representatives for any injuries or Losses while present at the Facilities, to the extent that such Losses do not result from or arise out of the gross negligence or willful misconduct of either of the Sellers or either of the Companies or the Operator or any of their respective Representatives or Affiliates or any employee of any of such Persons.

Section 6.02                      Conduct of Business Pending the Closing.

(a)            During the Interim Period, Sellers shall use commercially reasonable efforts to cause the Companies to operate and maintain the Facilities in the Ordinary Course in accordance with Good Industry Practices and in compliance in all material respects with all applicable Laws. Without limiting the foregoing, except as otherwise contemplated by this Agreement or set forth in Schedule 6.02(a) or as consented to by Purchaser, which consent shall not be unreasonably withheld, conditioned or delayed, each Company will not, during the Interim Period:

(i)            sell, transfer, convey, encumber or otherwise dispose of any portion of, or interest in, any Owned Real Property, or grant any easement, right-of-way agreement, license, lease, sublease, occupancy agreement, or like instrument burdening any portion of, or interest in, the Owned Real Property other than Permitted Liens;

(ii)           sell, transfer, convey, encumber or otherwise dispose of any Material Non-Real Estate Assets outside the Ordinary Course, except for Permitted Liens;

(iii)           other than trade or account payables incurred in the Ordinary Course, incur, create, assume or otherwise become liable for any Debt other than Debt that will be discharged at or prior to the Closing;

(iv)           fail to maintain its existence or merge or consolidate with any other Person or acquire all or substantially all of the assets of any other Person, having a value of more than \$100,000 in any one instance or \$500,000 in the aggregate;

(v)           issue or sell any of its equity interests;

(vi)           liquidate, dissolve, reorganize or otherwise wind up its business or operations;

(vii)           purchase any securities of any Person, except for short-term investments or cash equivalents made in the Ordinary Course;

(viii)           amend or modify its Charter Documents in any manner that will have a material adverse effect on such Company or Purchaser;

(ix)           effect any recapitalization, reclassification or like change in its capitalization;

- Law;
- (x) except in the Ordinary Course, acquire any material assets;
  - (xi) engage in any new line of business;
  - (xii) make any change in its accounting or Tax reporting principles, methods or policies, except as required by GAAP or applicable Law;
  - (xiii) cease to be treated as a disregarded entity for federal and Colorado state income Tax purposes;
  - (xiv) make any material change in the levels of inventory maintained at such Facility for the applicable time of year, except for such changes as are consistent with Good Industry Practices;
  - (xv) enter into, modify or terminate any Contract required to be listed in Schedule 4.06(a), except in the Ordinary Course, which action shall be promptly disclosed to Purchaser by Sellers;
  - (xvi) make any loans or advances to any Person, except for expenses incurred in the Ordinary Course;
  - (xvii) enter into any agreement or settlement with any Governmental Authority that relates to any amount of Tax, unless the amount of all Taxes imposed as a result of such agreement or settlement does not exceed \$100,000 in the aggregate;
  - (xviii) enter into any transaction with any Affiliate by which the Company would be bound following the Closing;
  - (xix) terminate any material policy of insurance, unless such policy is replaced with a policy of insurance from financially responsible insurers covering substantially the same risks, including substantially the same coverage amounts, and including substantially the same or lower deductibles, in each case to the extent available on commercially reasonable terms;
  - (xx) adopt, create, sponsor or otherwise establish, maintain or contribute to any Benefit Plan;
  - (xxi) hire any individual as an employee or otherwise establish or maintain any employer/employee relationship with any individual;
  - (xxii) agree or commit to do any of the foregoing.

or

(b) Notwithstanding Section 6.02(a) or any other provision herein, such Company may (i) take commercially reasonable actions with respect to emergency situations or to comply with applicable Law or the PPAs and (ii) at or before the Closing, irrevocably transfer out all cash to Sellers.

(c) With respect to any Permits that will expire, lapse or otherwise cease to be effective prior to the Closing Date or within sixty (60) days thereafter and any Permits for which the filing of an application for extension, renewal or replacement is due during the Interim Period (regardless of whether such Permits will expire, lapse or otherwise cease to be effective prior to the Closing Date or within the sixty-day period thereafter), including but not limited to the Permits identified and described on Schedule 6.02(c), Sellers shall, or shall cause such Company to, prepare and file during the Interim Period any and all such applications for the extension, renewal or replacement of such Permits and/or any and all such other filings, and shall take (or cause such Company to take) during the Interim Period any and all such other commercially reasonable actions, as may be necessary to ensure that such Permits will be extended, renewed or replaced prior to the expiration, lapsing or other cessation of the effectiveness of such Permits without any material modifications to the terms of such Permits other than (i) modifications to comply with applicable Law or the PPAs or (ii) modifications with Purchaser's consent, which shall not be unreasonably withheld or delayed.

(d) For purposes of clarity, nothing contained in this Agreement shall prohibit the Companies from complying with the PPAs. Nothing in this Agreement shall be deemed to be an amendment or modification of the PPAs.

(e) Sellers shall repay in full or otherwise fully extinguish, eliminate or transfer without recourse to the Companies, all Debt of the Companies at or prior to the Closing.

Section 6.03                      Tax Matters.

(a)                      Tax Returns

(i)                      Tax Reporting. Purchaser and Sellers shall, for federal income Tax purposes (and, to the extent permissible, for state and local income Tax purposes), treat the purchase and sale of the Interests pursuant to this Agreement as the purchase and sale of the assets of the Companies, and shall report the purchase and sale on all such income Tax Returns consistently with such treatment.

(ii)                      Seller Income Tax Returns. Sellers shall include or cause to be included in their federal income Tax Returns (and to the extent permissible, state and local income Tax Returns) that include the income and activities of such Seller all items of income, gain, loss, deduction and credit or other items of the Companies through the Closing Date.

(iii)                      Purchaser Tax Returns. Following the Closing, Purchaser shall cause to be timely filed all Tax Returns required to be filed by each Company after the Closing Date, and shall be responsible for the timely payment of all Taxes shown due thereon, subject to reimbursement by Sellers pursuant to Section 6.03(e).

(b)                      Cooperation. Purchaser and Sellers shall cooperate fully, and shall cause their respective Affiliates to cooperate fully, as and to the extent reasonably requested by either Party, in connection with the filing of Tax Returns pursuant to this Section 6.03 and any audit, litigation or other proceeding (each a "Tax Proceeding") with respect to such Tax Returns. Such

cooperation shall include (upon a Party's request) the provision of records and information which are reasonably relevant to any such Tax Proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. Purchaser shall within fifteen (15) days of receipt notify Sellers in writing of the receipt by Purchaser or any affiliate of Purchaser (including the Companies following the Closing Date) of written notice of any inquires, claims, assessments, audits or similar events with respect to Taxes relating to a Taxable period ending on or prior to the Closing Date. Purchaser agrees to retain all original Books and Records related to Taxes or Tax matters until the fourth anniversary of the Closing Date.

(c) Transfer Taxes. In the event that any Transfer Taxes (but, for the avoidance of doubt, not any Taxes based on or measured by income) are payable in connection with the sale of the Interests, all such Transfer Taxes shall be borne by Purchaser. Accordingly, if Sellers are required by law to pay any such Transfer Taxes, Purchaser shall promptly reimburse Sellers within five (5) Business Days of receipt of written request from Sellers for the amount of such Transfer Taxes actually paid by Sellers. Sellers and Purchaser shall timely file any Tax Returns for Transfer Taxes as required by law and shall notify the other when such filings have been made. Sellers and Purchaser shall cooperate and consult with each other prior to filing any Tax Returns for Transfer Taxes to ensure that all such Tax Returns are filed in a consistent manner. Notwithstanding the foregoing, Sellers shall file all Tax Returns required to be filed in conjunction with the transfer of the Owned Real Property and Purchaser shall be solely liable for and shall pay all Colorado real property Transfer Taxes related thereto and shall indemnify, defend and hold harmless Sellers and their respective Affiliates from and against any and all liability for the payment of such Colorado real property Transfer Taxes and the filing of such Tax Returns related thereto. Purchaser shall reimburse Sellers for any Colorado real property Transfer Taxes actually paid by Sellers within five (5) Business Days of receipt of written request from Sellers therefor.

(d) Tax Sharing or Similar Agreement. Any Tax sharing or similar agreement between a Company on the one hand and a Seller or an Affiliate of Sellers on the other hand shall terminate as of the Closing Date, and no party thereto shall have any rights or obligations thereunder with respect to any past, current or future Tax period.

(e) Reimbursement of Certain Taxes. Any Tax (other than Transfer Taxes that are the subject of Section 6.03(c)) with respect to the property or operations of a Company that are due and payable with respect to any Tax period that begins on or before the Closing Date and ends after the Closing Date (a "Straddle Period") will be apportioned between the portion of the Straddle Period that ends on the Closing Date (the "Pre-Closing Straddle Period") and the portion of the Straddle Period that begins on the day after the Closing Date (the "Post-Closing Straddle Period") as follows: (i) in the case of any ad valorem real estate and personal property Taxes, on a per diem basis and (ii) in the case of any sales Taxes, use or similar Taxes, excise Taxes, value added Taxes and withholding Taxes, as determined from the books and records of each Company as though the taxable period of each Company terminated at the close of business on the Closing Date. Sellers shall reimburse and pay over to Purchaser the amount of any Taxes due and payable with respect to a Pre-Closing Straddle Period within thirty (30) days of receipt of written request from the Purchaser therefore (but in no case earlier than five (5) Business Days prior to the date on which the relevant Taxes are required to be paid to the relevant Tax

authority), except to the extent such Taxes were taken into account for purposes of computing Adjusted Net Working Capital.

(f) Refunds. Any Tax refund (including any interest in respect thereof) received by Purchaser or the Companies, and any amounts of overpayments of Tax credited against Taxes which Purchaser, the Companies or any Affiliate thereof otherwise would be or would have been required to pay that relate to Taxes attributable to any Pre-Closing Tax Period or Pre-Closing Straddle Period shall be for the account of Sellers, and Purchaser shall pay over to Sellers any such refund or the amount of any such credit within thirty (30) days after receipt or the application of any such refund or credit to reduce a Tax liability of Purchaser, the Companies or any Affiliate thereof, except to the extent such Tax refund was taken into account in the calculation of the Adjusted Net Working Capital.

Section 6.04 Public Announcements. Sellers and Purchaser shall not, without prior written consent of the other party, issue any press release or make any public statement with respect to this Agreement and the transactions contemplated hereby except as may be required by applicable Law or any listing agreement with a national securities exchange or quotation system, and will consult with each other before issuing, and provide each other a reasonable opportunity to review and make reasonable comment upon such press release or public statement.

Section 6.05 Expenses and Fees. Except as expressly provided otherwise herein, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Party incurring such expenses.

Section 6.06 Agreement to Cooperate; Regulatory Approval.

(a) Subject to the terms and conditions of this Agreement and applicable Law, each Party shall use its commercially reasonable efforts to take, or cause to be taken, all action and do, or cause to be done, all things necessary, proper or advisable to obtain as promptly as reasonably practicable all necessary or appropriate waivers, consents, approvals or authorizations of Governmental Authorities and to satisfy all other conditions required in order to consummate the transactions contemplated by this Agreement (and, in such case, to proceed with the consummation of the transactions contemplated by this Agreement as expeditiously as possible).

(b) In addition to and without limitation of the foregoing, Purchaser, on the one hand, and each Seller, on the other hand, shall file as soon as practicable, but in no event later than forty-five (45) days following the Execution Date, any application, form or report required by any Governmental Authority to be filed prior to Closing relating to antitrust, competition, trade or energy regulation matters. Each of the Parties shall request expedited treatment of any such filings and shall (i) respond as promptly as practicable to any inquiries or requests received from any Governmental Authority for additional information or documentation, (ii) not enter into any agreement with any Governmental Authority not to consummate the transactions contemplated by this Agreement, except with the prior consent of the other Party (which shall not be unreasonably withheld, delayed or conditioned), (iii) subject to Section 6.06(c), provide the other Party with a copy of any proposed filing, or amendment or supplement thereto, with any Governmental Authority concerning this Agreement or the transactions contemplated hereby for their review, except any such filing, amendment or supplement that



will not become a matter of public record, (iv) provide status updates to the other Party in respect of any filings, investigation or inquiry concerning this Agreement or the transactions contemplated hereby, as may be required by the other Party from time to time, except in respect of any such filing, investigation or inquiry that is not a matter of public record, and (v) at such Party's sole discretion, consult with the other Party in advance of or following its participation in any in-person, substantive meeting with any Governmental Authority in respect of any filings, investigation or inquiry concerning this Agreement or the transactions contemplated hereby, and it being understood that any such consultation with the other Party shall not constitute, or be construed as constituting, the undertaking of an obligation to solicit or obtain the consent or approval of the other Party.

(c) Prior to filing any application, form or report required by FERC with respect to the transactions contemplated by this Agreement, Purchaser and Sellers, as the case may be, shall provide each other a copy of such proposed filing for their review (except any such proposed filing that will not become a matter of public record), provided that the Parties shall cooperate in the preparation of, and have the joint right to approve, any such application, form or report that must be submitted jointly by Sellers and Purchaser prior to filing.

(d) The application, form or report required by CPUC to be filed with respect to the transactions contemplated by this Agreement shall request CPUC approval of (i) the purchase of the applicable Interests by Purchaser pursuant to the terms and conditions of this Agreement, (ii) the liquidation of the Companies, and the transfer to Purchaser (including transfer by merger) of all of the assets and liabilities of the Companies, immediately after the Closing, and (iii) the placement of the assets of the Companies into Purchaser's utility rate base and interim rate relief for Purchaser to recover the revenue requirements associated with such assets, either through a Purchase Capacity Cost Adjustment rider or through an alternative recovery mechanism, until such assets are actually reflected in the setting of Purchaser's base rates. Sellers shall provide, and shall cause the Companies to provide, such assistance to Purchaser as Purchaser may reasonably request in connection with obtaining such CPUC approvals.

(e) The application, form or report required by FERC to be filed with respect to the transactions contemplated by this Agreement shall state that the consummation of the transactions contemplated by this Agreement will have no effect (or a neutral effect) on market concentration within all relevant markets and that no further action, condition or obligation is required to satisfy the requirements under Section 203 of the Federal Power Act and applicable FERC regulations for approval for the consummation of the transactions contemplated by the Agreement.

(f) Purchaser shall bear the filing fees associated with any filings made pursuant to this Section 6.06.

Section 6.07 Further Assurances. Subject to the terms and conditions of this Agreement, at any time or from time to time after the Closing, at any Party's request and without further consideration, the other Parties shall execute and deliver to such Party such other instruments of sale, transfer, conveyance, assignment and confirmation, provide such materials and information and take such other actions and execute and deliver such other documents as

such Party may reasonably request in order to consummate the transactions contemplated by this Agreement.

Section 6.08                      Post-Closing Access to Information. After the Closing Date, each Seller and Purchaser shall grant each other (or their respective designees), and Purchaser shall cause such Company to grant to each Seller (or its designees), access at all reasonable times to all of the information, books and records relating to the Companies and the Facilities in its possession, and shall afford such Party the right (at such party's expense) to take extracts therefrom and to make copies thereof, to the extent reasonably necessary to implement the provisions of, or to investigate or defend any Claims arising under, this Agreement. Further, after the Closing Date, Purchaser shall cause such Company to grant to each Seller (or its designees) the access and right to take extracts and make copies described in the preceding sentence for such other purposes as such Seller may reasonably request. Without limiting the foregoing, for a period of twenty-four (24) months after the Closing Date, Sellers shall use commercially reasonable efforts to promptly furnish Purchaser with such Excluded Electronic Records as Purchaser may reasonably request from time to time.

Section 6.09                      Employee and Benefit Matters.

(a)                      Sellers have provided Purchaser with a list (i) containing the names of all active employees, contract employees and any other person with reemployment rights with the Operator or its Affiliate, and employed at the Facilities, and (ii) describing the job title, base and incentive compensation, years of service, date of hire, and leave status of each such active employee, inactive employee with the reason for inactive status, contract employee or any such other person with reemployment rights as of the date such list is prepared, who is employed at the Facilities. Seller agrees to update such list from time to time and as of the Closing Date. Prior to the Closing Date, Purchaser or its designee shall interview all Operator Facility Employees, who are "actively at work" as of the Execution Date (for purposes of this Section 6.09 an employee is not "actively at work" if the employee is receiving disability benefits under any plan or program established or maintained by Operator for any reason, including the employee having represented that he or she is unable to perform any work). Purchaser, or its designee, shall have the right, but not the obligation, to offer employment (effective as of the Closing Date) to any, all or none of the Operator Facility Employees to perform services at the Facilities. Each offer of employment shall be made not less than sixty (60) days prior to the Closing Date and on terms and conditions determined by Purchaser in its sole discretion. Each Operator Facility Employee who accepts Purchaser's offer of employment shall be referred to herein as an ("Affected Employee").

(b)                      Seller or its Affiliate shall retain responsibility under its employee welfare benefit plans for all amounts payable by reason of claims reported or submitted by Affected Employees and their eligible spouses and dependents prior to the Closing Date, and Purchaser or its Affiliate shall be responsible under its employee welfare benefit plans for all amounts payable by reason of claims reported or submitted by Affected Employees and their eligible spouses and dependents on or after the Closing Date. Purchaser or its Affiliate shall be solely responsible for compliance with the requirements of Section 4980B of the Code and part 6 of subtitle B of Title I of ERISA ("COBRA"), including the provision of continuation coverage with respect to all Affected Employees, and their spouses and dependents, for whom a qualifying event occurs on

or after the Closing Date. For purposes of this Section 6.09(b), the terms “continuation coverage” and “qualifying event” shall have the meanings ascribed to them in COBRA.

(c) Nothing in this Section 6.09 or elsewhere in this Agreement is intended to confer upon any Affected Employee or other Operator Facility Employee any rights of any kind whatsoever under or by reason of this Agreement, including but not limited to any rights to or of employment for a specified period or any other form of employment security, or a right to participate in, or to continue to participate in, any employee benefit plan or program. Purchaser shall not assume any obligation or liability for employment practices or policies maintained by the Operator with respect to Operator Facility Employees. Purchaser and its Affiliates shall not assume any Benefit Plan and shall have no liability or obligation with respect to the Benefit Plans. In addition, Purchaser shall have no obligation or liability nor incur any cost or expense with respect to any claims, whether arising before, on or after the Closing, by any employee or former employee, director or consultant of the Operator arising by reason of the sale or purchase of the Interests in the Companies pursuant to this Agreement or by reason of such employee or former employee's, director's or consultant's employment or service, or the termination of his or her employment or service, by or with such Operator. Without limiting the generality of the foregoing, Operator shall honor and pay all unused vacation, holiday, sickness and personal days accrued prior to the consummation of the Closing by the Affected Employee under the policies and practices of such employer.

Section 6.10 Resignation of Members, Managers, Officers and Directors. At the Closing, such Seller shall cause the resignation of all officers and directors or similar persons on any board or operating, management or other committee established under such Company's Charter Documents.

Section 6.11 Use of Certain Names. Within fifteen (15) days following the Closing, Purchaser shall cause such Company to cease using the word “Calpine” and any word or expression similar thereto or constituting an abbreviation or extension thereof (the “Sellers' Marks”), including eliminating the Sellers' Marks from all assets of the Companies and the disposing of any unused stationery and literature of the Companies, and thereafter, Purchaser shall not, and shall cause the Companies and the Facilities not to, use the Sellers' Marks or any logos, trademarks, trade names, patents or other Intellectual Property rights belonging to Sellers or any of their Affiliates, or which Sellers or any of their Affiliates have the right to use, and Purchaser acknowledges that it, its Affiliates, the Companies and the Facilities have no rights whatsoever to use such Intellectual Property.

Section 6.12 Support Obligations. At the Closing, Purchaser shall effect the full and unconditional release of Sellers and their Affiliates from any credit support obligations provided by Sellers or such Affiliates with respect to the Companies, the Facilities or the operation thereof, including the credit support obligations listed on Schedule 6.12.

Section 6.13 Termination of Certain Services, Contracts, Receivables and Payables. Notwithstanding anything in this Agreement to the contrary, during the Interim Period, Sellers shall take such actions as may be necessary to terminate or sever as to the Companies or the Facilities (with appropriate mutual releases) upon the Closing any services jointly shared or used by any of the Companies, the Facilities and Sellers or any of their Affiliates, including joint Tax

services, joint legal services and joint banking services (to include the severance of any centralized clearance accounts) operation and maintenance services including each Contract listed on Schedule 6.13.

Section 6.14 Insurance. Purchaser shall be solely responsible for providing insurance to such Company and the business of such Facility as of the Closing. Purchaser acknowledges that no insurance coverage or policy maintained for the Companies or the Facilities will extend beyond the Closing for the benefit of Purchaser. For at least twenty-four (24) months following Closing, Purchaser shall provide insurance no less favorable than the coverage set forth in Schedule 6.14, to the extent available on commercially reasonable terms.

Section 6.15 Title Evidence. Prior to the Execution Date, Purchaser has been provided commitments for an ALTA owner's title insurance policy in respect of the Owned Real Property (collectively the "Title Evidence"). Prior to the Execution Date, Purchaser shall have notified Sellers of any matters contained in the Title Evidence that would constitute a Lien that is not a Permitted Lien or Purchaser's failure to so notify Sellers shall be deemed a waiver as of the Execution Date by Purchaser of any right not to close or any right to indemnification pursuant to Article IX following the Closing, as the case may be, by virtue of any matters shown by the Title Evidence. In the event that new or additional Liens are added by an updated title commitment thereto prior to the Closing Date which are not Permitted Liens, Purchaser may make objections thereto in writing within five (5) Business Days following receipt of such updated commitment by Purchaser and Purchaser's failure to so object shall be deemed a waiver of Purchaser's right to object to such new or additional Liens. Sellers shall use commercially reasonable efforts to cure or remove prior to Closing all said Liens which are not Permitted Liens to which Purchaser shall have objected.

Section 6.16 Fall 2010 RMEC Outage.

(a) [\*\*\*].<sup>3</sup>

(b) Purchaser shall have the right to observe the Fall 2010 RMEC Outage Work, subject to Section 6.01(b) hereof.

(c) In the event that, during the course of performing the Fall 2010 RMEC Outage Work, Rocky Mountain Seller identifies any maintenance or repair work that is not contemplated by the Fall 2010 RMEC Schedule and Scope and which will not be completed during the RMEC Outage Work Period, Rocky Mountain Seller shall promptly notify Purchaser in writing ("Sellers' Additional Maintenance and Repair Work Notice") of (i) such work and (ii) whether it does or does not regard such work as Discovery Work. Within two (2) Business Days after its receipt of a Sellers' Additional Maintenance and Repair Work Notice, Purchaser shall notify Rocky Mountain Seller in writing as to whether it does or does not regard such work as Discovery Work. If Rocky Mountain Seller and Purchaser do not agree as to whether such work is Discovery Work, a dispute shall be deemed to exist and shall be immediately referred to the

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<sup>3</sup> Material has been omitted pursuant to a request for confidential treatment and such material has been filed separately with the Securities and Exchange Commission. A series of three asterisks within brackets denotes omissions.

Independent Engineer, who shall be instructed to determine whether any or all of such work is Discovery Work. The determination of the Independent Engineer shall be final and binding on the Parties, and the cost of the Independent Engineer shall be shared equally by the Parties.

(d) Discovery Work shall be completed as follows:

(i) Discovery Work that is capable of being completed during the RMEC Outage Work Period shall be completed during such period.

(ii) Upon the determination by Rocky Mountain Seller of any Discovery Work that is not capable of being completed within the RMEC Outage Work Period, Rocky Mountain Seller shall notify Purchaser in writing ("Sellers' Incomplete Discovery Work Notice") of (1) such Discovery Work and (2) whether it does or does not regard such work as Essential Discovery Work. Within two (2) Business Days after its receipt of a Sellers' Incomplete Discovery Work Notice, Purchaser shall notify Rocky Mountain Seller in writing as to whether it does or does not regard such Discovery Work as Essential Discovery Work. If Rocky Mountain Seller and Purchaser do not agree as to whether such Discovery Work is Essential Discovery Work, a dispute shall be deemed to exist and shall be immediately referred to the Independent Engineer, who shall be instructed to determine whether any or all of such Discovery Work is Essential Discovery Work. The determination of the Independent Engineer shall be final and binding on the Parties, and the cost of the Independent Engineer shall be shared equally by the Parties. The RMEC Outage Work Period shall be extended as reasonably necessary to accommodate Rocky Mountain Seller's completion of any Essential Discovery Work.

(iii) [\*\*\*].

In the event that the time required to complete Essential Discovery Work under clause (ii) of this Section 6.16(d) extends beyond the Termination Date, Sellers shall be entitled to reasonable extensions of the Termination Date, not to exceed [\*\*\*] in the aggregate, in order to complete such work.<sup>4</sup>

## ARTICLE VII

### CONDITIONS TO THE CLOSING

Section 7.01 Conditions to the Obligations of Each Party. The obligations of the Parties to proceed with the Closing are subject to the satisfaction on or prior to the Closing Date of all of the following conditions, any one or more of which may be waived in writing, in whole or in part, as to a Party by such Party:

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<sup>4</sup> Material has been omitted pursuant to a request for confidential treatment and such material has been filed separately with the Securities and Exchange Commission. A series of three asterisks within brackets denotes omissions.

(a) no permanent judgment, injunction, order or decree of a court or other Governmental Authority of competent jurisdiction shall be in effect which has the effect of making the transactions contemplated by this Agreement illegal or otherwise restraining or prohibiting the consummation of the transactions contemplated by this Agreement (each Party agreeing to use its reasonable commercial efforts, including appeals to higher courts, to have any judgment, injunction, order or decree lifted);

(b) the Parties shall have obtained (i) an order from FERC that, without any material limitation or qualification, authorizes the purchase and sale of the applicable Interests pursuant to Section 203 of the Federal Power Act, and does not subject either Party to any conditions or restrictions that would be materially more burdensome than those proposed in the respective applications for such order, and (ii) an order from CPUC that, without any material limitation or qualification, grants all of the approvals described in clauses (i), (ii) and (iii) of the first sentence in Section 6.06(d) and does not subject Purchaser to any conditions or restrictions that are materially more burdensome than those proposed in the respective applications for such order; and

(c) all required waiting periods applicable to this Agreement and the transactions contemplated hereby under the HSR Act shall have expired or been terminated; provided, however, that notwithstanding any other provision of this Agreement or any implied duty of good faith or other legal or equitable doctrine, Purchaser shall not be required, in order to obtain such expiration or termination, to agree to (i) any prohibition of or limitation on the ownership or operation of any portion of its or of any of its Affiliates' or Sellers' businesses or assets, (ii) any requirement that Purchaser or any of its Affiliates or Sellers divest, hold separate or otherwise dispose of any of their respective businesses or assets, (iii) any limitation on Purchaser's ability to acquire or hold or exercise full rights of ownership of the Interests or to acquire or hold or exercise full rights of ownership of Sellers or their respective businesses or assets, or (iv) any other limitation on Purchaser's or any of its Affiliates' ability to effectively control their respective businesses and assets.

Section 7.02 Conditions to the Obligations of Purchaser. The obligation of Purchaser to proceed with the Closing is subject to the satisfaction on or prior to the Closing Date of the following further conditions, any one or more of which may be waived, in whole or in part, by Purchaser:

(a) each Seller shall have performed all of its obligations hereunder required to be performed by it at or prior to the Closing Date, except (solely for the purposes of this Section 7.02(a)) where the failure to perform would not in the aggregate have a Material Adverse Effect;

(b) the representations and warranties of the applicable Seller contained in this Agreement (without regard to Material Adverse Effect or similar qualifiers other than those in Section 4.19 (Change in Circumstances)) shall be true and correct as of the Closing Date (except to the extent such representations and warranties expressly relate to an earlier date, in which case as of such earlier date), except (solely for the purposes of this Section 7.02(b)) for failures of the representations and warranties to be true and correct that have not in the aggregate resulted in a Material Adverse Effect;

- (c) Purchaser shall have received a certificate signed on behalf of the applicable Seller indicating that the conditions provided in Section 7.02(a) and Section 7.02(b) have been satisfied;
- (d) the Purchaser Governmental Approvals shall have been obtained;
- (e) Purchaser shall have received the deliveries to be made by the applicable Seller under Section 2.04;
- (f) the Facilities have not suffered any theft, damage, removal, destruction or casualty loss of any portion of the Facilities, not covered by insurance, which has resulted in a Material Adverse Effect; and
- (g) Rocky Mountain Seller shall have completed all of the Fall 2010 RMEC Outage Work.

Section 7.03 Conditions to the Obligations of Sellers. The obligation of each Seller to proceed with the Closing is subject to the satisfaction on or prior to the Closing Date of the following further conditions, any one or more of which may be waived, in whole or in part, by such Seller:

- (a) Purchaser shall have performed all of its obligations hereunder required to be performed by it at or prior to the Closing Date, except (solely for the purposes of this Section 7.03(a)) where the failure to perform would not in the aggregate have a material adverse effect on Purchaser's ability to perform its obligations hereunder;
- (b) the representations and warranties of Purchaser contained in this Agreement (without regard to material adverse effect or similar qualifiers) shall be true and correct as of the Closing Date (except to the extent such representations and warranties expressly relate to an earlier date, in which case as of such earlier date), except (solely for the purposes of this Section 7.03(b)) for failures of the representations and warranties to be true and correct that have not in the aggregate had a material adverse effect on Purchaser's ability to perform its obligations hereunder;
- (c) such Seller shall have received a certificate signed on behalf of Purchaser indicating that the conditions provided in Section 7.03(a) and Section 7.03(b) have been satisfied;
- (d) the Seller Approvals for the applicable Company shall have been obtained; and
- (e) the applicable Seller shall have received the deliveries to be made by Purchaser under Section 2.05.

## ARTICLE VIII

### TERMINATION

Section 8.01 Termination. This Agreement may be terminated and the consummation of the transactions contemplated hereby may be abandoned at any time prior to the Closing:

(a) by mutual written consent of Purchaser and Sellers;

(b) by either Purchaser or Sellers:

(i) if the Closing has not occurred on or before the date that is 270 days after the later of the date of the public filing with CPUC of the application for approval of the transactions contemplated hereby in accordance with Section 6.06(d) and the date of the public filing with FERC of the application for approval of the transactions contemplated hereby in accordance with Section 6.06(e), subject to any extension as provided in Section 6.16 (the "Termination Date"), regardless of the stage or status of any then current and still ongoing regulatory approval process, proceeding, investigation or inquiry, provided that the right to terminate this Agreement pursuant to this Section 8.01(b)(i) shall not be available to any Party whose breach of any provision of this Agreement has been the cause of, or resulted in, the failure of the Closing to occur by the Termination Date;

(ii) [\*\*\*]<sup>5</sup>; or

(iii) if the United States Department of Justice, the United States Federal Trade Commission or the Colorado Attorney General (1) informs either Purchaser or Sellers in writing that it will file a lawsuit to challenge any of the transactions contemplated by this Agreement under the Antitrust Laws or (2) files such a lawsuit;

(c) by Purchaser (i) if there has been a material breach by any Seller of any representation, warranty, covenant or agreement contained in this Agreement which would result in a failure of a condition set forth in Section 7.02, (ii) within five (5) days after receipt of any Supplemental Disclosure which shows that there has been a Material Adverse Effect on the Companies or the Facilities which Material Adverse Effect (1) was not caused by Purchaser's breach of any provision of this Agreement and (2) cannot be cured prior to the Termination Date or (iii) if there is any insolvency, bankruptcy, reorganization or other similar proceeding affecting Seller Guarantor, Sellers or the Companies;

(d) by Sellers if (i) there has been a material breach by Purchaser of any representation, warranty, covenant or agreement contained in this Agreement which (1) would result in a failure of a condition set forth in Section 7.03 and (2) cannot be cured prior to the Termination Date, or (ii) if there is any insolvency, bankruptcy, reorganization or other similar proceeding affecting Purchaser;

The Party desiring to terminate this Agreement pursuant to this Section 8.01 (other than pursuant to Section 8.01(a)) shall give notice of such termination to the other Party.

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<sup>5</sup> Material has been omitted pursuant to a request for confidential treatment and such material has been filed separately with the Securities and Exchange Commission. A series of three asterisks within brackets denotes omissions.



Section 8.02                    Effect of Termination. In the event of termination of this Agreement by any Seller or by Purchaser prior to a Closing pursuant to the provisions of Section 8.01, there shall be no liability or further obligation on the part of Purchaser or Sellers or their respective officers, managers or directors (except as set forth in this Section 8.02 and Sections 6.01(b) (Access of Purchaser), 6.02(d), 6.04 (Public Announcements), 6.05 (Expenses and Fees), 9.03 (Waiver of Other Representations) and Article X (Miscellaneous), all of which shall survive the termination hereof), provided that nothing in this Section 8.02 shall relieve any Party from liability for any breach of this Agreement by such Party prior to termination of this Agreement.

## ARTICLE IX

### INDEMNIFICATION

Section 9.01                    Survival. All representations and warranties and covenants and other obligations in this Agreement or in any other agreement, instrument or other document delivered in connection herewith, and the right to commence any Claim with respect thereto, shall survive the execution and delivery hereof and the Closing Date, provided that (i) such representations and warranties (which shall be deemed to have been made anew as of the Closing Date for the purposes of Section 9.02, except to the extent such representations and warranties expressly relate to an earlier date) and, (ii) except as otherwise specifically provided in this Agreement or any other agreement, instrument or other document delivered in connection herewith, such covenants and other obligations, shall terminate on the date that is twenty-four (24) months after the Closing Date (the "Survival Termination Date"), except that the representations and warranties in Section 4.12 (Taxes) and the covenants in Section 6.03 (Tax Matters) shall terminate on the expiration of the applicable statute of limitations period plus thirty (30) days. After the Survival Termination Date or, in the case of the representations and warranties in Section 4.12 (Taxes) and the covenants in Section 6.03 (Tax Matters), after the expiration of the applicable statute of limitations period plus thirty (30) days or, in the case of any other covenant or other obligation contained in this Agreement or any other agreement, instrument or other document delivered in connection herewith for which a different termination date or survival period is specifically provided herein or therein, after such different termination date or the expiration of such different survival period, as the case maybe, no Party may make or assert any Claim for any breach of or inaccuracy in any representation or warranty of any other Party, or for any breach by any other Party of any covenant or other obligation, contained in this Agreement or in any other agreement, instrument or other document delivered in connection herewith, except that any claims made or asserted by a Party within the applicable time period prescribed above setting forth such Claim in reasonable detail (including a reasonable specification of the legal and factual basis for such Claim and the Loss incurred) shall survive the Survival Termination Date or such different termination date or the expiration of the applicable survival period, as the case may be, until such Claim is finally resolved and all obligations with respect thereto are fully satisfied.

Section 9.02                    Indemnification.

(a)                    Subject to the provisions of this Article IX, Sellers, jointly and severally from and after the Closing Date, shall indemnify and hold harmless Purchaser and each Company from and against any and all Losses actually incurred by any of them (i) that arise out of or result from the breach of any of Sellers' (1) representations and warranties (without giving

effect to any “material”, “materiality”, “Material Adverse Effect” or similar qualification) contained in this Agreement or in any other agreement, instrument or other document delivered in connection herewith, as of the date when made, or (2) covenants or other obligations contained in this Agreement or in any other agreement, instrument or other document delivered in connection herewith and, without duplication, (ii) for any and all Taxes (or the nonpayment thereof) of the Companies that are due and payable with respect to any Pre-Closing Tax Period and any Pre-Closing Straddle Period, except to the extent such Taxes were taken into account for purposes of computing Adjusted Net Working Capital and (iii) with respect to the Surviving Credit Agreement Indemnities and all related Losses, any and all Surface Use Agreement Losses, and any and all BSEC 2007 Emissions Losses, none of which shall be subject to the survival limitations of Section 9.01 or the liability limitations of Section 9.02(c) and Section 9.02(d).

(b) Subject to the provisions of this Article IX, Purchaser from and after the Closing Date shall indemnify and hold harmless Sellers from and against any and all Losses actually incurred by Sellers that arise out of or result from the breach of any of Purchaser’s (i) representations and warranties contained in this Agreement or in any agreement, instrument or other document delivered in connection herewith, as of the date when made, and (ii) covenants or agreements contained in this Agreement or in any agreement, instrument or other document delivered in connection herewith.

(c) The total aggregate liability of Sellers for any claims for Losses arising under Section 9.02(a) shall not exceed [\*\*\*] of the Final Purchase Price, except that (i) the total aggregate liability of Sellers for any claims for Losses resulting from (1) the breach of or inaccuracy in any of the representations or warranties set forth in Section 3.01 (Organization and Qualification), Section 3.02 (Authority), Section 3.03 (No Conflicts; Consents and Approvals), Section 3.04 (Ownership of Interests), Section 4.01 (Organization and Qualification), Section 4.02 (No conflicts; Consents and Approvals), Section 4.03 (Subsidiaries; No Other Business), the fourth sentence of Section 4.07(a)(ii) (Assets – Real Property), Section 4.07(b)(ii) (Assets – Other Property – Title to Material Non-Real Estate Assets), Section 4.08 (Employee Benefit Plans), Section 4.09 (Labor and Employment Matters), Section 4.15 (Brokers), and Section 4.16 (Capital Structure) (collectively the “Specified Representations”), and (2) the breach of any covenant or other obligation contained in this Agreement or any other agreement, instrument or other document delivered in connection herewith, shall not, in the aggregate, exceed [\*\*\*] of the Final Purchase Price and (ii) there shall be [\*\*\*] on the liability of Sellers for any claims for Losses resulting from the breach of or inaccuracy in any of the representations or warranties set forth in Section 4.12 (Taxes) or from the breach of any of the covenants set forth in Section 6.03 (Tax Matters) or from the Surviving Credit Agreement Indemnities and related Losses, the Surface Use Agreement Losses or the BSEC 2007 Emissions Losses indemnified in Section 9.02(a)(iii).<sup>6</sup>

(d) Except for indemnification obligations related to (i) breaches of or inaccuracies in any of the Specified Representations or in any of the representations and warranties in Section 4.12 (Taxes), (ii) breaches of covenants or other obligations contained in

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<sup>6</sup> Material has been omitted pursuant to a request for confidential treatment and such material has been filed separately with the Securities and Exchange Commission. A series of three asterisks within brackets denotes omissions.

this Agreement or any other agreement, instrument or other document delivered in connection herewith, and (iii) the Surviving Credit Agreement Indemnities and related Losses, the Surface Use Agreement Losses and the BSEC 2007 Emissions Losses indemnified in Section 9.02(a)(iii), none of which are subject to the following limitation in this Section 9.02(d), Sellers shall have no liability in respect of their indemnification obligations under Section 9.02(a), and there shall be no claim for indemnification asserted by Purchaser, until the aggregate amount of all Losses under Section 9.02(a) exceeds, on a cumulative basis, [\*\*\*] (and then only to the extent of such excess).<sup>7</sup>

(e) In calculating any amount of Losses recoverable pursuant to Section 9.02(a) or 9.02(b), the amount of such Losses shall be reduced by (i) any recoverable insurance proceeds relating to such Loss, net of any related deductible and any expenses to obtain such proceeds, (ii) any prior or subsequent recoveries from third-parties pursuant to indemnification (or otherwise) with respect thereto, net of any expenses incurred by the Indemnified Party in obtaining such third-party payment, and (iii) the amount of any net Tax benefit actually realized from the incurrence or payment of such Losses. The Parties shall treat any indemnification payment pursuant to this Article IX as an adjustment to the Final Purchase Price for all Tax purposes unless otherwise required by applicable Law. The Indemnified Party shall use its commercially reasonable efforts to seek insurance recoveries in respect of losses to be indemnified hereunder. If any insurance proceeds or other recoveries from third-parties or net Tax benefits are actually realized (in each case net of expenses of such recoveries) by an Indemnified Party subsequent to the receipt by such Indemnified Party of an indemnification payment hereunder in respect of the claims to which such insurance proceedings, third-party recoveries or net Tax benefits relate, appropriate refunds shall be made promptly to the Indemnifying Party regarding the amount of such indemnification payment.

(f) Each Party shall have a duty to use commercially reasonable efforts to mitigate any Loss suffered by such Party in connection with this Agreement.

(g) Sellers shall have no liability for any Losses that represent the cost of repair or replacement exceeding the reasonable cost of repair or replacement.

(h) The remedies for environmental claims set forth in this Agreement shall be Purchaser's sole and exclusive remedies and Purchaser expressly waive all other rights of recovery against Sellers under any Environmental Law including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act and the Resource Conservation and Recovery Act.

(i) This Article IX shall be the sole and exclusive remedy of the Parties hereto following the Closing for any Loss arising out of any misrepresentation or breach of the representations, warranties, covenants or agreements of the Parties contained in this Agreement. In furtherance of the foregoing, each of the Parties hereto hereby waives, to the fullest extent permitted under applicable Law, any and all rights, claims and causes of action it may have

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<sup>7</sup> Material has been omitted pursuant to a request for confidential treatment and such material has been filed separately with the Securities and Exchange Commission. A series of three asterisks within brackets denotes omissions.

against the other Parties hereto, arising under or based upon any Law, other than the right to seek indemnity pursuant to this Article IX, except in the case of intentional fraud.

Section 9.03      Right to Specific Performance; Certain Limitations. Notwithstanding anything in this Agreement to the contrary:

(a) Without limiting or waiving in any respect any rights or remedies of a Party under this Agreement now or hereafter existing at law in equity or by statute, each of the Parties hereto shall be entitled to specific performance of the obligations to be performed by the other Party in accordance with the provisions of this Agreement; and

(b) Except as otherwise provided under the Seller Guaranty, no Representative, Affiliate of, or direct or indirect equity owner in, any Seller shall have any personal liability to Purchaser or any other Person as a result of the breach of any representation, warranty, covenant, agreement or obligation of Sellers in this Agreement, and no Representative, Affiliate of, or indirect equity owner in, Purchaser shall have any personal liability to any Seller or any other Person as a result of the breach of any representation, warranty, covenant, agreement or obligation of Purchaser in this Agreement; and

(c) No Party shall be liable for special, punitive, exemplary, incidental, consequential or indirect damages, or lost profits or losses calculated by reference to any multiple of earnings before interest, tax, depreciation or amortization (or any other valuation methodology) whether based on contract, tort, strict liability, other Law or otherwise and whether or not arising from the other Party's sole, joint or concurrent negligence, strict liability or other fault for any matter relating to this Agreement and the transactions contemplated hereby.

Section 9.04      Procedures for Indemnification. Whenever a Claim shall arise for indemnification under Section 9.02, the Person entitled to indemnification (the "Indemnified Party") shall promptly notify in writing the Party from which indemnification is sought (the "Indemnifying Party") of such Claim and, when known, the facts constituting the basis of such Claim, provided that in the event of a Claim for indemnification resulting from or in connection with a Claim by a third party, the Indemnified Party shall give such written notice thereof to the Indemnifying Party not later than ten (10) Business Days prior to the time any response to the third party Claim is required, if possible, and in any event within fifteen (15) Business Days following receipt of notice thereof (provided, that failure to timely notify the Indemnifying Party shall not relieve the Indemnifying Party of any liability it may have to the Indemnified Party, except to the extent that the Indemnifying Party has been actually prejudiced by such failure). Following receipt of notice of any such third party Claim, and unless counsel to the Indemnified Party shall have reasonably determined in good faith that the assumption of such defense by the Indemnifying Party would be inappropriate due to a conflict of interest, the Indemnifying Party shall have the option, at its cost and expense, to assume the defense of such matter and to retain counsel (not reasonably objected to by the Indemnified Party) to defend any such claim or legal proceeding, and the Indemnifying Party shall not be liable to the Indemnified Party for any fees of other counsel or any other expenses (except as expressly provided to the contrary herein) with respect to the defense of such Claim, other than reasonable fees and expenses of counsel employed by the Indemnified Party for any period during which the Indemnifying Party has not assumed the defense thereof. The Indemnified Party shall have the option of joining the defense

of such Claim (which shall be at the sole cost and expense of the Indemnified Party) with its own counsel and counsel for each Party shall, to the extent consistent with such counsel's professional responsibilities, cooperate with the other Party and any counsel designated by that Party. In effecting the settlement or compromise of, or consenting to the entry of any judgment with respect to, any such Claim, the Indemnifying Party, or the Indemnified Party, as the case may be, shall act in good faith, shall consult with the other Party and shall enter into only such settlement or compromise or consent to the entry of any judgment as the other Party shall consent, such consent not to be unreasonably withheld, conditioned or delayed. An Indemnifying Party shall not be liable for any settlement, compromise or judgment not made in accordance with the preceding sentence.

## ARTICLE X

### MISCELLANEOUS

Section 10.01      Notices. All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally to, or by nationally recognized overnight courier service, or mailed by registered or certified mail (return receipt requested) if and when received by, or sent via facsimile if and when received by, the Parties at the following addresses (or at such other address for a Party as shall be specified by like notice):

(a)      If to the Companies (prior to the Closing) or Sellers, to:

Calpine Corporation  
717 Texas Avenue, Suite 1000  
Houston, TX 77002  
Attention: Chief Legal Officer  
Facsimile: (713) 830-2001

with a copy to:

Calpine Corporation  
4160 Dublin Blvd., Suite 100  
Dublin, CA 94568  
Attn: Vice President, Origination  
Facsimile: (925) 479-9560

and with a copy to:

White & Case LLP  
1155 Avenue of the Americas  
New York, New York 10036  
Attention: Michael S. Shenberg, Esq.  
Facsimile: (212) 819-8535

(b)      If to Purchaser, to:

Public Service Company of Colorado

414 Nicollet Mall, 7<sup>th</sup> Floor  
Minneapolis, MN 55401-1927  
Attention: Paras M. Shah, Director,  
Business Development  
Facsimile: (612) 215-4575

with a copy to:

Public Service Company of Colorado  
414 Nicollet Mall  
Minneapolis, MN 55401-1927  
Attention: Michael C. Connelly,  
Vice President and  
General Counsel  
Facsimile: (612) 215-9025

Section 10.02      Headings. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 10.03      Assignment. This Agreement (including the documents and instruments referred to herein) shall not be assigned by operation of Law or otherwise.

Section 10.04      Supplements to Schedules. With respect to matters arising from circumstances first occurring after the date of this Agreement or as to which a Party first acquires knowledge after the date of this Agreement, Sellers and Purchaser shall have the right to make any changes or additions to the Schedules (such changes or additions being referred to as "Supplemental Disclosure") that may be necessary to correct any matter that would otherwise constitute a breach of any representation or warranty in this Agreement. Sellers agree to advise Purchaser promptly in writing of any matter or occurrence of which either of the Sellers has or obtains knowledge, and Purchaser agrees to advise each of the Sellers promptly in writing of any matter of which Purchaser has or obtains knowledge, that, in either case, would reasonably be expected to constitute a breach by such Party of any representation, warranty or covenant contained in this Agreement. Any Supplemental Disclosure shall be deemed not to have been disclosed for the purposes of determining whether or not the conditions to Closing set forth in Section 7.02 or Section 7.03, as applicable, have been satisfied and, if the Closing occurs, shall not be deemed to have cured any breach of any representation, warranty, covenant or agreement relating to the matter set forth in the Supplemental Disclosure for the purposes of indemnification pursuant to Article IX; provided, however, that any Supplemental Disclosure by Purchaser in respect of its representation and warranty in Section 5.09 (a) shall be deemed to have cured any breach by Purchaser of such representation and warranty that, but for such disclosure, would have otherwise existed, but (b) for the purposes of indemnification pursuant to Article IX, shall not be deemed to have cured any breach by Sellers of any of their representations and warranties so disclosed by Purchaser under Section 5.09.

Section 10.05      Governing Law; Jurisdiction; Waiver of Jury Trial. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, applicable to agreements made and to be performed entirely within such State, without regard to the conflict

of laws principles thereof. Any disputes or claims arising out of or in connection with this Agreement and the transactions contemplated or documents required hereby shall be submitted to the exclusive jurisdiction of the courts of the State of New York and the federal courts of the United States of America located in the State of New York, County of New York, and appropriate appellate courts therefrom. Each of the Parties hereto acknowledges and agrees that any controversy which may arise under this Agreement is likely to involve complicated and difficult issues, and therefore each such Party hereby irrevocably and unconditionally waives any right such Party may have to a trial by jury in respect of any litigation directly or indirectly arising or relating to this Agreement or the transactions contemplated by this Agreement. The Parties hereby irrevocably waive, to the fullest extent permitted by applicable Law, any objection which they may now or hereafter have to the laying of venue of any dispute arising out of or relating to this Agreement or any of the transactions contemplated hereby brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Each of the Parties hereto agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law. This consent to jurisdiction is being given solely for purposes of this Agreement and the transactions contemplated hereunder, and is not intended to, and shall not, confer consent to jurisdiction with respect to any other dispute in which a Party to this Agreement may become involved. Each of the Parties hereto hereby consents to process being served by any Party to this Agreement in any suit, action, or proceeding of the nature specified in this Section 10.05 by the mailing of a copy thereof in the manner specified by the provisions of Section 10.01.

Section 10.06            Counterparts. This Agreement may be executed in two (2) or more counterparts, and by facsimile, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement.

Section 10.07            Amendments. This Agreement may not be amended, waived or modified except by an instrument in writing signed on behalf of Purchaser and each Seller.

Section 10.08            Entire Agreement. This Agreement and the Confidentiality and Non-Disclosure Agreement constitute the entire agreement between the Parties with respect to the subject matter hereof and supersede all prior agreements, understandings and negotiations, both written and oral, between the Parties with respect to the subject matter of this Agreement. No representation, inducement, promise, understanding, condition or warranty not set forth herein has been made or relied upon by any Party. Neither this Agreement nor any provision hereof is intended to confer upon any person other than the Parties hereto any rights or remedies hereunder except as expressly provided otherwise in Section 6.01(b) and Article IX.

Section 10.09            Severability. If any term or other provision of this Agreement is invalid, illegal, or incapable of being enforced by any rule of applicable Law, or public policy, then such term or provision shall be severed from the remaining terms and provisions of this Agreement, and such remaining terms and provisions shall nevertheless remain in full force and effect.

[Remainder of page intentionally left blank. Signature page to follow.]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

**SELLERS:**

**PURCHASER:**

CALPINE DEVELOPMENT  
HOLDINGS, INC.

PUBLIC SERVICE COMPANY OF COLORADO

By: /s/ JACK A. FUSCO  
Name: Jack A. Fusco  
Title: President and Chief Executive Officer

By: /s/ DAVID M. SPARBY  
Name: David M. Sparby  
Title: Vice President and CFO

RIVERSIDE ENERGY CENTER, LLC

By: /s/ JACK A. FUSCO  
Name: Jack A. Fusco  
Title: President and Chief Executive Officer



## CALPINE CORPORATION

### 2010 Calpine Incentive Plan

#### **I. Effective Date**

The 2010 Calpine Incentive Plan ("CIP" or "Plan") is effective as of January 1, 2010.

#### **II. Plan Purpose**

The Calpine Incentive Plan is designed to drive achievement of annual goals including key financial and operating results and strategic goals that drive value for shareholders. The Plan is a key element of Calpine Corporation's ("Company") total compensation program for eligible employees.

#### **III. Plan Eligibility**

All regular full-time and part-time, non-collective bargaining unit employees hired prior to October 1, 2010 are eligible to participate in the 2010 CIP. Employees who retire from the company at age 55 or older with age plus service of 70 or more will be eligible for a bonus for the year in which they retire. Otherwise, a participant must be employed by Calpine on the date when annual incentives are paid.

#### **IV. Incentive Pool Determination**

The aggregate CIP incentive pool as approved by the Compensation Committee of the Board of Directors (the "Committee") after the end of the fiscal year shall be determined as follows:

1. Each Plan participant will be assigned a target CIP incentive, expressed as a percentage of incentive-eligible earnings, at the beginning of the year. Incentive targets are developed by Corporate Human Resources based on competitive market practices and provide a highly competitive incentive opportunity based on each participant's position, pay grade and scope of responsibilities. The sum of all participants' target annual incentive amounts is the total target incentive pool.
2. At the beginning of the fiscal year performance period, the Company shall confirm the business/performance goals for the Company ("Corporate Goals") and/or for the various plants/departments ("Plant/Department Goals").
3. At the end of the fiscal year, if Company results meet or exceed the minimum corporate performance target, then Company performance on each Corporate Goal shall be determined and an overall weighted performance, expressed as a percentage of target performance, shall be calculated. This percentage shall be applied to the target CIP incentive pool to determine the funded CIP incentive

pool. Performance on each Corporate Goal must exceed a threshold level to be included in CIP funding for the year. At threshold, 60% of target for each Corporate Goal shall be funded. The maximum funding for each Corporate Goal and the aggregate CIP incentive pool shall be 150% of the target amounts.

4. A similar assessment of performance shall be performed for the various plants/departments at the end of the fiscal year. Based on the results of these assessments, Calpine management shall allocate the funded CIP incentive pool to the various plants/departments.

#### **V. Participant Incentive Award Determination**

Although CIP participant incentive award determinations are completely at the discretion of the Plan Administrator, several factors shall be considered in determining an individual participant's incentive award:

1. **Target Incentive** – Each eligible position is associated with a job code and assigned to a pay grade which has a target incentive, expressed as a percentage of eligible earnings. Pay grades and target incentives are determined by Corporate Human Resources, or in the case of Corporate officers by the Board Compensation Committee based on level of responsibility and competitive market practices for the position. The target incentive shall be communicated to each participant upon hire, placement in, or promotion to any CIP eligible position.
2. **Eligible Earnings** – The target incentive percentage shall be applied to eligible earnings to determine each participant's target incentive amount. Eligible earnings consist of actual compensation received during the fiscal year while in a CIP eligible position. Eligible earnings for a participant shall be prorated for any partial service on account of disability, leaves, promotions or any other position changes. Eligible earnings shall not include step up pay, time off for leave of absences or supplemental payments including but not limited to bonuses, relocation, awards and vacation payouts.
3. **Incentive funding and allocation** – A participant's incentive opportunity for the fiscal year may be less than or greater than the target incentive depending on the aggregate CIP incentive funded and allocated to the various plants/departments (see description of incentive pool determination above).
4. **Participant Performance** – Participant incentive awards shall vary in consideration of an assessment of individual performance during the fiscal year. As applicable, the assessment shall be based on the attainment of specific individual goals and objectives, which are established by the participant along with the participant's respective manager at the beginning of the fiscal year.
5. **Calpine Standards of Conduct** - Employees should at all times behave in manner consistent with Calpine's standards of ethical conduct and integrity. Our

shareholders, customers, suppliers, and communities expect that each participant will conduct Calpine's business in an open and honest fashion and actions, and that decisions will represent the Company with honor and distinction in the face of public scrutiny. This encompasses conduct in compliance with all applicable laws and Company policies, procedures and standards (including, but not limited to, the Code of Conduct, the Risk Management Procedures Manual, the Antitrust Policy, the Safety and Health Policy, the Equal Employment Opportunity Policy and NERC, FERC and any other regulatory laws, rules or regulations).

**VI. Payment of Incentive Awards**

1. The intended timing for payment of incentive awards shall be by March 15, 2011, but in no event shall it be paid after December 31, 2011.
2. Participants in the Transition Incentive Award program of the CIP: The CIP also provides a limited number of incentive awards to participants under the Transition Incentive Provision ("Exhibit A"). These employees are engaged in activities such as asset sales, plant closings, etc. which may, by the nature of the activity, result in the elimination of their jobs. Employees in this classification will be advised of their respective participation based on criteria determined by the Company from time to time.
3. Incentive payments shall be subject to all applicable taxes and any applicable and appropriate deductions for garnishments, 401(k) Retirement Savings Plan, and other deductions or withholdings.
4. The Construction Completion Bonus Plan included in the 2009 Calpine Incentive Plan has been terminated effective December 31, 2009.

**VII. Transfers and New Hires**

In the event that a participant is hired or transfers from one position to another during the course of the year, the incentive award for the year, if any, shall be calculated on a pro-rated basis to reflect the working days of Plan participation or in each position and the respective incentive target(s). An employee must be hired or promoted into an incentive-eligible position on or before October 1 to be eligible to participate in the CIP for that year.

**VIII. Retirements, Disability, Death and Terminations**

Except as provided below, participants are eligible to receive an incentive award under this Plan provided they remain actively employed on the day incentive payments are made. Except as otherwise provided below, any participant whose employment is terminated by the Company for any reason (including such termination by the Company after a participant becomes eligible for retirement) or who voluntarily resigns (except for retirement) prior to incentive payments being

made for the year shall not be eligible to receive an incentive payment under such program.

Notwithstanding the foregoing, in the event of a participant's retirement (provided such participant qualified under the Company's retirement policy), short-term disability, long-term disability, or death during a Plan year, the incentive award will be pro-rated to reflect days of active service during the Plan year. Plan participant's who die or become subject to short-term or long-term disability after the conclusion of a Plan year, but prior to the time of incentive payouts with respect to that Plan year shall be eligible to receive an incentive award determined in the same manner as for other Plan participants for the year.

**IX. Administration**

The Plan shall be administered by Calpine's Chief Executive Officer, or the Company officer designated by the Chief Executive Officer from time to time. The Plan Administrator shall have broad authority to interpret the terms and conditions of the Plan and to review and approve incentive payments, subject to the following decisions reserved for the Board Compensation Committee:

1. As required, the approval of the Company's financial and non-financial goals discussed in Section IV above; and
2. Interpretation of the Plan on any matters in which the Chief Executive Officer or the Plan Administrator is not a disinterested party.

Furthermore, the Board Compensation Committee must approve any modifications, amendments, or adjustments to the Plan or any of its key provisions and all incentive payments.

**X. Disputes**

If a Plan participant disputes a Plan interpretation or an incentive payment or the absence of a payment, he or she must submit a claim in writing describing the claim to the Plan Administrator. The Plan Administrator will respond to the claim within a reasonable time. Any decisions of the Plan Administrator may be appealed in writing to the Committee. However, any decision by a majority of the Committee is final and binding on all parties.

**XI. Discretion in Amendment/Termination**

Distribution and payout of all incentive amounts under the CIP are at the sole discretion of the Plan Administrator. The Plan Administrator may at any time and for any reason, amend, alter, suspend or terminate this Plan, subject to the approval of the Committee. Any amendment, supplement, or exception to this Plan must be in writing and will be communicated to all eligible participants. Likewise, any

superseding incentive plan must be in writing and expressly state that it supersedes this Plan. The Committee may in its discretion suspend any and all payments under the Plan.

**XII. No Employment Rights**

Notwithstanding anything to the contrary herein, each Plan participant's employment with the Company is and shall continue to be at-will. A participant's employment with the Company may be terminated at any time by the participant or the Company, with or without cause and with or without notice, as permitted by law.

**XIII. Governing Law**

The validity, interpretation, construction and performance of this Plan shall be governed in accordance with Texas law, except for its conflict of laws provisions, unless a superseding federal law is applicable or, in the case of Canada, unless a superseding law under Canadian jurisdiction is applicable.

**XIV. No Assignment**

Without the written consent of the Plan Administrator, no participant may assign any right or obligation under this Plan to any other person or entity. Notwithstanding the foregoing, the terms of this Plan and all rights of the participant hereunder shall inure to the benefit of, and be enforceable by, the participant's personal and legal representatives, executors, administrators, successors, heirs, distributes, devisees or legatees.

**XV. Integration**

This document and each exhibit hereto represent the entire agreement and understanding between the Company and the participants in the Plan as to the subject matter herein, and therefore supersede all prior or contemporaneous agreements, whether written or oral.

**XVI. Severability**

The invalidity or unenforceability of any provision or provisions of this Plan shall not affect the validity or enforceability of any other provision hereof, which shall remain in full force and effect.

**EXHIBIT A**  
**Transition Incentive Plan**

In connection with activities necessary to the successful disposition of assets, closing of plants and similar activities designed to support the restructuring of Calpine, there may be a number of employees who, by the nature of their activities, eliminate their respective jobs. The Transition Incentive Plan provides a program that rewards these participants for their work in completing assignments and specific transactions that enhance Calpine's value.

A transaction/transition incentive is available to be paid to CIP eligible employees who are working on a specific assignment with a targeted end date. In the majority of cases, the completion of the assignment will result in the affected employee's lay-off. Generally, the Transaction/Transition Incentive for an affected employee will be calculated based upon his/her annual incentive target. Any Transaction/Transition incentive may be paid during the assignment or specific transaction, upon the assignment's or transaction's completion, or both. The Transaction/Transition incentive is paid in lieu of a CIP incentive. A Transaction/Transition incentive shall be paid within 2½ months following the assignment's or transaction's completion date.

Subject to a written agreement, an employee who voluntarily resigns or is terminated by the Company for any reason prior to successful completion of the specified assignment will not be eligible for a Transaction/Transition incentive payment.

## CERTIFICATIONS

I, Jack A. Fusco, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Calpine Corporation (the “registrant”);
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant’s other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant’s disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant’s internal control over financial reporting that occurred during the registrant’s most recent fiscal quarter (the registrant’s fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant’s internal control over financial reporting; and
5. The registrant’s other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant’s auditors and the audit committee of the registrant’s board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant’s ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant’s internal control over financial reporting.

Date: July 29, 2010

/s/ JACK A. FUSCO  
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Jack A. Fusco  
President, Chief Executive Officer  
and Director  
Calpine Corporation

## CERTIFICATIONS

I, Zamir Rauf, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Calpine Corporation (the “registrant”);
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant’s other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant’s disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant’s internal control over financial reporting that occurred during the registrant’s most recent fiscal quarter (the registrant’s fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant’s internal control over financial reporting; and
5. The registrant’s other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant’s auditors and the audit committee of the registrant’s board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant’s ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant’s internal control over financial reporting.

Date: July 29, 2010

/s/ ZAMIR RAUF

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Zamir Rauf  
Executive Vice President and  
Chief Financial Officer  
Calpine Corporation



**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of Calpine Corporation (the "Company") on Form 10-Q for the period ending June 30, 2010, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), each of the undersigned does hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of his knowledge, based upon a review of the Report:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operation of the Company.

/s/ JACK A. FUSCO  
Jack A. Fusco  
President, Chief Executive Officer  
And Director  
Calpine Corporation

/s/ ZAMIR RAUF  
Zamir Rauf  
Executive Vice President and  
Chief Financial Officer  
Calpine Corporation

Dated: July 29, 2010

A signed original of this written statement required by Section 906 has been provided to Calpine Corporation and will be retained by Calpine Corporation and furnished to the Securities and Exchange Commission or its staff upon request.