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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)
)
) Chapter 11
Calpine Corporation., et al.,)
)
) Case No. 05-____ (____)
Debtors.) Jointly Administered
)

**EMERGENCY MOTION FOR (I) INTERIM ORDERS (A) AUTHORIZING
THE DEBTORS TO (1) OBTAIN POSTPETITION SECURED FINANCING
PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3) AND 364(e),
(2) UTILIZE CASH COLLATERAL PURSUANT TO 11 U.S.C. § 363, AND (3) PROVIDE
ADEQUATE PROTECTION TO CERTAIN PREPETITION LENDERS PURSUANT TO
11 U.S.C. §§ 361, 362 AND 363 AND (B) SCHEDULING FINAL HEARING PURSUANT
TO FED. R. BANKR. P. 4001(b) AND (c) AND (II) FINAL ORDERS (A) AUTHORIZING
DEBTORS TO (1) OBTAIN POSTPETITION SECURED FINANCING PURSUANT
TO 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3) AND 364(e), (2) UTILIZE
CASH COLLATERAL PURSUANT TO 11 U.S.C. § 363, (3) PROVIDE ADEQUATE
PROTECTION TO CERTAIN PREPETITION LENDERS PURSUANT TO 11 U.S.C.
§§ 361, 362 AND 363, (3) ASSUME THE GEYSERS AGREEMENT PURSUANT TO 11
U.S.C. § 365(a) AND CONSUMMATE THE TRANSACTIONS CONTEMPLATED
THEREBY PURSUANT TO § 363(b) AND (4) ASSUME THE AGNEWS
LEASE DOCUMENTS PURSUANT TO 11 U.S.C. § 365(a)**

The above-captioned debtors (collectively, the “Debtors”) hereby move the Court (the “Motion”) for entry of (I) an interim order, substantially in the form attached hereto as **Exhibit A** (the “Interim DIP Order”), (a) authorizing the Debtors to obtain postpetition financing pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3) and 364(e), and (b)

scheduling a final hearing pursuant to Federal Rules of Bankruptcy Procedure 4001(b) and (c); (II) an interim order, substantially in the form attached hereto as **Exhibit B** (the “Interim Cash Collateral Order” and, together with the Interim DIP Order, the “Interim Orders”), (a) authorizing the Debtors to (1) utilize cash collateral of certain prepetition lenders pursuant to 11 U.S.C. §§ 361, 362 and 363, and (2) provide adequate protection, and (b) scheduling a final hearing pursuant to Federal Rules of Bankruptcy Procedure 4001(b) and (c); (III) a final order, substantially in the form of the Interim DIP Order with the requisite conforming changes (the “Final DIP Order” and, together with the Interim DIP Order, the “DIP Orders”), authorizing the Debtors to (a) obtain postpetition financing pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3) and 364(e), and (b) assume the Geysers Agreement (as defined below) pursuant to 11 U.S.C. §§ 365(a) and consummate the transactions contemplated thereby pursuant to § 363(b) and (c) assume the Agnews Lease Documents (as defined below) pursuant to 11 U.S.C. § 365(a); and (IV) a final order, substantially in the form of the Interim Cash Collateral Order with the requisite conforming changes (the “Final Cash Collateral Order” and, together with the Interim Cash Collateral Order, the “Cash Collateral Orders”) authorizing the Debtors to (a) utilize cash collateral of certain prepetition lenders pursuant to 11 U.S.C. §§ 361, 362 and 363, and (b) provide adequate protection. In support of this Motion, the Debtors state as follows:¹

¹ The facts and circumstances supporting this Motion are set forth the Declaration of Kenneth A. Buckfire, Vice Chairman and Managing Director of Miller Buckfire, the Debtors’ financial advisor (the “Buckfire Declaration”), a copy of which is annexed hereto as **Exhibit F**.

Jurisdiction

1. This Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of this proceeding and this Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief sought herein are sections 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(e) and 365(a) of chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 4001 of the Federal Rules of Bankruptcy Procedure (each, a “Bankruptcy Rule” and, collectively, the “Bankruptcy Rules”).

Background

3. On the date hereof (the “Petition Date”), the Debtors filed their voluntary petitions for relief (the “Chapter 11 Cases”) under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

4. Calpine Corporation (“Calpine”), together with its direct and indirect subsidiaries (collectively, the “Company”), is involved in the development, construction, ownership and operation of power generation facilities and the sale of electricity and its by-product, thermal energy, primarily in the form of steam, predominantly in North America. It operates the largest fleet of natural gas-fired power plants in North America, and supplies approximately 3.5% of the electricity consumed in the United States, where the Company has ownership interests in, and operates, gas-fired power generation and cogeneration facilities, pipelines, geothermal steam fields and geothermal power generation facilities.

5. The Company owns, leases and operates 92 power plants in 21 states in the United States and three provinces in Canada. The Company also has interests in an additional

five plants under active construction, including an interest in a natural gas-fired facility in Mexico. The Company markets electricity produced by its generating facilities to utilities and other third party purchasers while thermal energy produced by the gas-fired power cogeneration facilities is sold primarily to industrial users. The Company offers to third parties energy procurement, liquidation and risk management services, combustion turbine component parts, engineering, and repair and maintenance services.

6. The Company is headquartered in San Jose, California, and employs approximately 3,302 people, of whom approximately 65 are represented by collective bargaining agreements.

7. The Company was founded in 1984 to manage energy projects and provide consulting services to power generators. The Company acquired its first megawatt in 1989 and completed its initial public offering in 1996. Since that time, the Company has ambitiously pursued its goal of acquiring and developing the energy industry's leading fleet of efficient, clean and reliable power generation facilities. To that end, between 2001 and 2004, the Company more than doubled the number of its power plants and can presently deliver more than 26,000 megawatts of electricity, with approximately 2,000 megawatts under active construction, or enough power altogether for approximately 28 million households.

8. The advanced technologies and cleaner fuel sources employed by the Company operate at significantly lower heat rates (a measure of efficiency), allowing for reduced fuel costs and strong competitive advantages, assuming free market-based competition. Within its major markets, the Company also seeks to locate its natural gas-fired plants in clusters, or "systems", to gain operational and supply-chain efficiencies.

9. One of the hallmarks of the Company's business model is its commitment to environmental responsibility. By focusing on the construction of modern, natural gas-fired and geothermal power plants – which emit significantly less carbon monoxide and other toxic substances than coal-fired facilities – the Company believes it currently has the largest, cleanest and most fuel-efficient fleet of power plants in the industry. The majority of the Company's plants use “combined cycle” generation; i.e., natural gas-fired combustion turbines and steam turbines that operate in tandem to generate power. This process requires up to 40% less fuel than older technologies and has a much lower environmental impact. The Company is also one of the world's largest (if not the largest) producers of renewable and clean geothermal power, a natural energy source that burns no fossil fuels and thus has only negligible air emissions. Located in northern California at The Geysers, the Company has more than 350 active production wells providing steam that is piped into turbines to generate electricity.

10. Among the Company's principal subsidiaries and affiliates are Calpine Energy Services, L.P., which offers to third parties energy procurement, liquidation and risk management services; Calpine Turbine Services, which sells combustion turbine component parts and repair and maintenance services; Calpine Power Services, Inc., which provides engineering, procurement, construction management, commissioning and operations and management services; and Calpine Construct, which develops and builds new power facilities.

The United States Electricity Market

11. The energy generation industry is one of the largest segments of the United States economy. Until recently, electricity providers consisted of relatively few utility monopolies operating aged, inefficient, expensive and high-pollution facilities. But various industry trends, including deregulation, have introduced greater competition into energy markets. Most

significantly, for the past decade, at the deregulated wholesale level, electric power generators have been able to sell directly to public utilities, municipalities and electric cooperatives.

12. The majority of United States power plants are coal-fired or nuclear, although most new power plants are fueled by natural gas. Future environmental protection initiatives could force many of the oldest and dirtiest coal plants to install costly emission control devices or close. Accordingly, the industry trend is likely to continue to be construction of cleaner and more efficient natural gas-fired facilities.

13. The Company's business model seeks to capitalize on these industry movements towards greater competition and cleaner fuel sources. But although the overall consumption rate of electricity continues to grow, the recent completion of many natural gas-fired combustion turbine projects has led to a sharp increase in power supplies and excess capacity in many of the Company's markets. During 2005, the Company operated at an average baseload capacity factor of approximately 45% through November. At the same time, the presently high cost of natural gas has made the operation of natural gas-fired plants more expensive. The combination of these two factors – an oversupply of electricity and the expensive price of natural gas fuel – has caused severe liquidity challenges for many of the power providers in the United States electricity markets, including the Company.

Events Leading to the Chapter 11 Cases

14. As noted above, the Company more than doubled its installed capacity between 2001 and 2004. This rapid expansion was funded primarily by incurring additional debt. Obligations to service this debt, coupled with challenging market conditions for electricity providers generally and in certain regional markets for the Company specifically, as well as other recent setbacks faced by the Company, have precipitated these Chapter 11 Cases.

15. The cost of natural gas – needed to fuel the Company’s fleet of mostly natural gas-fired combustion plants – has risen to a historically high level while the cost of coal is relatively much lower. This persisting imbalance places the Company at a severe disadvantage as compared to its competitors that operate coal-fired facilities. The effect was exacerbated when the Company sold substantially all of its remaining oil and natural gas reserves in July 2005. Prior to the sale, the Company’s cost to produce natural gas was significantly lower than natural gas prices in recent years and the sale left the Company in an unhedged, short fixed-price gas position.

16. In addition, excess capacity in the energy market resulted in the Company running at an average baseload capacity factor during the past year of approximately 45%. This has resulted in lower revenues than the Company is capable of generating were it to run at optimal capacity levels. Excess capacity in the energy market (including due to the continued operation of coal-burning facilities) over the past several years has also resulted in a sustained period of low spark spreads (the difference between the cost of fuel and electricity revenues), particularly in the Southeast as well as in certain other markets in which the Company operates. Furthermore, certain contract constraints and other obligations prevent the Company from shutting down facilities that are not generating sufficient power to cover costs.

17. One reason for the presently high cost of natural gas is constrained supplies from traditional drilling programs relative to demand. Although the high prices have led to initiatives to develop alternative supply options such as liquid natural gas or coal gasification, such alternative sources of fuel are not currently available to the Company. So long as the price of natural gas remains high (or increases further), and the Company does not have access to significant sources of alternative fuel supplies, the Company will be adversely affected.

18. The inconsistent transition to deregulated energy markets in North America exposes the Company to varying competitive pressures. In deregulated, highly competitive markets, the Company's natural gas-fired or geothermal merchant capacity competes directly with all other sources of electricity, such as nuclear, coal, oil or gas-fired. In highly regulated, uncompetitive markets, however, a local utility relies largely on its own supply to satisfy its own demand before buying competitively provided power. It is a sizable challenge for the Company to operate within and among these varying environments.

19. The Company relied heavily on debt financing to fund its rapid growth. Satisfying its obligations under its indebtedness, while funding anticipated capital expenditures and working capital requirements during what has been a period of low average baseload capacity factors and depressed spark spreads has left the Company with liquidity shortfalls. Accordingly, the Company launched a strategic initiative to reduce debt in May 2005 that included the possible sale or monetization of certain of the Company's assets. But covenant restrictions in the Company's debt (and certain equity) instruments preclude the Company from undertaking certain of these transactions or restrict the use of proceeds therefrom. Thus, the Company has been prevented from raising the necessary money to fund its debt service and operational needs or, even if such transactions could be completed, using the proceeds to reduce its debt.

20. A number of recent setbacks to the Company's liquidity position culminated in the filing of the Chapter 11 Cases. Most significantly, the Company's use of certain asset sale proceeds to purchase fuel for its power plants resulted in litigation with the trustees representing the holders of the Company's First- and Second-Lien Notes, who alleged that the use of the asset sale proceeds violated the terms of the indentures governing those Notes. Within the last month,

the Delaware Chancery Court ruled that the Company's fuel purchases violated those indentures and ordered the Company to repay into a collateral account \$313 million plus interest by January 22, 2006. The Company appealed this decision but, on December 16, 2005, the Delaware Supreme Court affirmed the decision of the Chancery Court requiring that those funds be repaid. The prospect of having to satisfy such a sizable judgment in such a short period of time – along with the other factors described above – have made it necessary for the Company to commence reorganization cases under the Bankruptcy Code.

Summary of Prepetition Indebtedness

21. As set forth in the form 10-K filed by the Company on March 31, 2005, as of December 31, 2004, the Company's total consolidated funded debt was approximately \$18.0 billion, consisting of secured construction/project financing, capital lease obligations, senior notes and institutional term loans, convertible senior notes, preferred interests, trust preferred securities, secured and unsecured notes payable and borrowings under lines of credit. Moreover, as of the Petition Date, the Company had accumulated approximately \$3.9 billion of net operating loss carryforwards and other tax credits.

I. Calpine's Prepetition Financing

22. Calpine's primary secured obligations arise under a series of first and second lien financings totaling approximately \$4.32 billion in aggregate outstanding principal amount. Calpine's unsecured obligations total approximately \$5.33 billion.

A. The First Lien Debt

23. The Debtors' first lien debt is comprised of the \$785,000,000 9.625% First Priority Senior Secured Notes due 2014, issued by Calpine pursuant to that certain Indenture (the "Calpine First Lien Indenture"), dated as of September 30, 2004, between Calpine and

Wilmington Trust Company (the “Calpine First Lien Trustee”), as trustee (the “Calpine First Lien Debt,” and the holders thereof, the “Calpine First Lien Holders”). As of the Petition Date, the total principal amount outstanding under the Calpine First Lien Debt was approximately \$641.11 million.

24. The Calpine First Lien Debt is collaterally secured by first priority liens upon and security interests in (a) substantially all of the properties and assets owned by Calpine directly (the “Calpine Corp. Collateral”), including: (i) the equity interests of certain of Calpine’s first-tier domestic subsidiaries including, without limitation, Calpine International Holdings, Inc., Calpine Operations Management Company, Inc., Calpine Fuels Corporation, Calpine Power Company, Calpine Finance Company, Calpine Administrative Services, Inc., Calpine Energy Holdings, Inc., Calpine Northbrook Corporation of Maine, Inc. and Androscoggin Energy, Inc.; (ii) certain oil and gas reserves and natural gas assets located in the United States (most of which have been sold in accordance with the restrictions imposed by the Calpine First Lien Debt) and certain power plant assets; and (iii) certain intercompany notes issued by Calpine to its subsidiaries, but excluding in each case the Excluded Assets (as defined in the Calpine First Lien Indenture), and (b) 65% of the stock of Calpine Canada Energy Ltd. (“CCEC”), which is held by Quintana Canada Holdings, LLC, an indirect subsidiary of Calpine as a guarantor of the First Lien Debt. Other than CCEC, the Calpine Corp. Collateral does not include the equity interests of any indirect subsidiary of Calpine, including, without limitation, the equity interests of Thermal Power Company, Geysers Power I Company or Geysers Power Company II, LLC. All of the cash and cash equivalents owned by Calpine (other than cash held in deposit accounts up to \$50.0 million in the aggregate, the “Calpine Corp. Cash Collateral”) are “cash collateral” of the Calpine First Lien Holders as defined in section 363(a) of the Bankruptcy Code.

B. The Second Lien Debt

25. Calpine's second lien debt is comprised of (a) the \$500,000,000 Second Priority Senior Secured Floating Rate Notes due 2007; (b) the \$1,150,000,000 8.50% Second Priority Senior Secured Notes due 2010; (c) the \$900,000,000 8.75% Second Priority Senior Secured Notes due 2013, in each case issued by Calpine pursuant to certain indentures, dated as of July 16, 2003, between Calpine and Wilmington Trust Company (the "Calpine Second Lien Trustee"), as trustee; (d) the \$400,000,000 9.875% Second Priority Senior Secured Notes due 2011, issued by Calpine pursuant to that certain Indenture, dated as of November 18, 2003, between Calpine and the Calpine Second Lien Trustee and (e) the \$750,000,000 Senior Secured Term Loans due 2007, issued pursuant to that certain Credit Agreement, dated as of July 16, 2003, among Calpine, as borrower, Goldman Sachs Credit Partners, L.P., as sole lead arranger, sole bookrunner and administrative agent and the various co-arrangers, managing agents and lenders named therein (collectively, the "Calpine Second Lien Debt," and the holders thereof, the "Calpine Second Lien Holders"). As of the Petition Date, the total principal amount outstanding under the Calpine Second Lien Debt was approximately \$3.672 billion.

26. The Calpine Second Lien Debt is secured by second priority liens on and security interests in the Calpine Corp. Collateral. In addition, the Calpine Second Lien Holders have a second priority lien on the Calpine Corp. Cash Collateral. The Second Lien Debt is also guaranteed by Quintana Canada Holdings, LLC.

C. Unsecured Debt

27. As of November 30, 2005, Calpine was obligated in the aggregate principal amount of approximately \$786.06 million under the (a) \$180,000,000 10.5% Senior Notes due 2006, issued by Calpine pursuant to that certain Indenture, dated as of May 16, 1996, between Calpine and U.S. Bank National Association, as successor trustee, as supplemented by the First

Supplemental Indenture, dated as of August 1, 2000, and the Second Supplemental Indenture, dated as of April 26, 2004; (b) \$275,000,000 8.75% Senior Notes due 2007, issued by Calpine pursuant to that certain Indenture, dated as of July 8, 1997, between Calpine and The Bank of New York, as trustee, as supplemented by the First Supplemental Indenture, dated as of September 10, 1997, the Second Supplemental Indenture, dated as of July 31, 2000, and the Third Supplemental Indenture, dated as of April 26, 2004; (c) \$400,000,000 7.875% Senior Notes due 2008, issued by Calpine pursuant to that certain Indenture, dated as of March 31, 1998, between Calpine and The Bank of New York, as trustee, as supplemented by the First Supplemental Indenture, dated as of July 24, 1998, the Second Supplemental Indenture, dated as of July 31, 2000, and the Third Supplemental Indenture, dated as of April 26, 2004; (d) \$250,000,000 7.625% Senior Notes due 2006, issued by Calpine pursuant to that certain Indenture, dated as of March 29, 1999, between Calpine and The Bank of New York, as trustee, as supplemented by the First Supplemental Indenture, dated as of July 31, 2000, and the Second Supplemental Indenture, dated as of April 26, 2004; and (e) \$350,000,000 7.75% Senior Notes due 2009, issued by Calpine pursuant to that certain Indenture, dated March 29, 1999, between Calpine and The Bank of New York, as trustee, as supplemented by the First Supplemental Indenture, dated as of July 31, 2000, and the Second Supplemental Indenture, dated as of April 26, 2004.

28. In addition, as of November 30, 2005, Calpine has approximately \$3.807 billion aggregate principal amount of debt issued pursuant to that certain Indenture (the “Calpine Original Indenture”), dated as of August 10, 2000, between Calpine and Wilmington Trust Company, as trustee, as supplemented by the First Supplemental Indenture (the “Calpine First Supplement”), dated as of September 28, 2000, the Second Supplemental Indenture (the

“Calpine Second Supplement”), dated as of September 30, 2004, and the Third Supplemental Indenture (the “Calpine Third Supplement”), dated as of June 23, 2005, as follows: (a) approximately \$411.14 million principal amount outstanding of the \$750 million 8.625% Senior Notes due 2010 issued pursuant to the Calpine Original Indenture as amended by the Calpine First Supplement; (b) approximately \$641.69 million principal amount outstanding of the \$736 million at maturity of Contingent Convertible Notes due 2014 issued pursuant to the Calpine Original Indenture as supplemented by the Calpine First Supplement and the Calpine Second Supplement; (c) approximately \$650.0 million principal amount outstanding of the \$650 million 7.75% Contingent Convertible Notes due 2015 issued pursuant to the Calpine Original Indenture as supplemented by the Calpine First Supplement, the Calpine Second Supplement and the Calpine Third Supplement; (d) approximately \$682.79 million principal amount outstanding of the \$850 million 8.5% Senior Notes due 2011 issued pursuant to the Calpine Original Indenture as supplemented by the Calpine First Supplement and (e) approximately \$1.31 million principal amount outstanding of the \$1.2 billion 4.00% Convertible Senior Notes due 2006 issued pursuant to the Calpine Original Indenture as supplemented by the Calpine First Supplement. In addition, Calpine has (a) approximately \$633.76 million principal amount outstanding of the \$900 million 4.75% Contingent Convertible Senior Notes due 2023 pursuant to that certain Amended and Restated Indenture, dated as of March 12, 2004; (b) approximately \$1.42 billion principal amount outstanding of the \$2.03 billion 8.5% Senior Notes due 2008; (c) approximately \$171.12 million principal amount outstanding of the C\$200 million 8.75% Senior Notes due 2007 pursuant to that certain Amended and Restated Indenture, dated as of October 16, 2001, between Calpine Canada Energy Finance ULC and Wilmington Trust Company as trustee, in each case guaranteed by Calpine pursuant to that certain Guarantee Agreement, dated as of April 25, 2001,

between Calpine and Wilmington Trust Company, as trustee, as amended by the First Amendment, dated as of October 16, 2001; and (d) \$207.12 million principal amount outstanding of the £200 million 8.875% Senior Notes due 2011 and \$137.51 million principal amount outstanding of the €175 million 8.375% Senior Notes due 2008 pursuant to that certain Indenture, dated as of October 18, 2001, between Calpine Canada Energy Finance II ULC and Wilmington Trust Company as Trustee, in each case guaranteed by Calpine pursuant to that certain Guarantee Agreement, dated as of October 18, 2001, between Calpine and Wilmington Trust Company, as amended by the First Amendment, dated as of October 18, 2001.

D. Calpine's L/C Credit Facilities

29. As of November 30, 2005, approximately \$147.43 million in letters of credit had been issued on Calpine's behalf pursuant to that certain Letter of Credit Agreement (the "BLB L/C Facility"), dated as of September 30, 2004, between Calpine and Bayerische Landesbank ("BLB"), acting through its Cayman Islands Branch. An approximately \$36.33 million letter of credit was drawn (the "Drawn L/C"), resulting in the aggregate outstanding letters of credit issued on Calpine's behalf to be approximately \$111.11 million. The BLB L/C Facility is secured by cash on deposit in a cash collateral account, which has been reduced to approximately \$111.23 million because of a draw corresponding to the Drawn L/C.

30. On December 7, 2005, a \$78,354,030 standby letter of credit expiring December 20, 2005, issued on Calpine's behalf pursuant to that certain \$78,354,030 Amended and Restated Letter of Credit and Reimbursement Agreement (as amended, modified and supplemented, the "CSFB L/C Facility"), dated as of September 15, 2004, between Calpine, as borrower, and Credit Suisse First Boston ("CSFB"), as issuer, was drawn in the amount of \$74,142,536.20. However, the CSFB L/C Facility is secured solely by a back-up letter of credit issued by BLB,

on which CSFB has previously drawn to the extent permitted, and is not guaranteed by any of Calpine's subsidiaries.

II. The Projects

A. The CalGen Projects

31. The primary prepetition obligations of Calpine Generating Company, LLC² ("CalGen") arise under a series of first, second and third lien financings (the "CalGen Secured Debt"). The obligations of CalGen under the CalGen Secured Debt are guaranteed by substantially all of CalGen's domestic subsidiaries on a non-recourse basis. As of the Petition Date, the total principal amount outstanding under the CalGen Secured Debt was approximately \$2.405 billion. The only recourse holders of the CalGen Secured Debt have is against the security pursuant to certain security documents and, to the extent it has co-issued any of the CalGen Secured Debt, CalGen Finance Corp. ("CalGen Finance"). However, certain obligations of affiliates of CalGen under power purchase and gas supply agreements, operation and maintenance agreements and other project agreements that have been pledged as security for the CalGen Secured Debt have been guaranteed by Calpine.

The CalGen First Lien Debt

32. CalGen's first lien debt (the "CalGen First Lien Debt") is comprised of (a) the \$235,000,000 First Priority Secured Floating Rate Notes due 2009, issued by CalGen and CalGen Finance pursuant to that certain First Priority Indenture, dated as of March 23, 2004,

² CalGen and each of the project subsidiaries of Calpine described in paragraphs 31 through 93 of this Motion shall henceforth be referred to collectively as the "Project Debtors," and each individually as a "Project Debtor." The agreements evidencing indebtedness of the Project Debtors, collectively with all related security, depository and other agreements, shall henceforth be referred to as the "Project Loan Documents," and the holders of the debt evidenced by the Project Loan Documents, the "Project Lenders."

among CalGen, CalGen Finance and Wilmington Trust FSB, as first priority trustee, (b) the \$600,000,000 First Priority Secured Institutional Term Loans due 2009, issued by CalGen pursuant to that certain Credit and Guarantee Agreement, dated as of March 23, 2004, among CalGen, the guarantor subsidiaries of CalGen listed therein, Morgan Stanley Senior Funding, Inc., as administrative agent, sole lead arranger and sole bookrunner, and the various lenders named therein and (c) the \$200,000,000 Amended and Restated Credit Agreement, dated as of March 23, 2004, among CalGen, the guarantors party thereto, the lenders party thereto, The Bank of Nova Scotia, as administrative agent, L/C bank, lead arranger and sole bookrunner, Bayerische Landesbank, Cayman Islands Branch, as arranger and co-syndication agent, Credit Lyonnais, New York Branch, as arranger and co-syndication agent, ING Capital LLC, as arranger and co-syndication agent, Toronto Dominion (Texas) Inc., as arranger and co-syndication agent, and Union Bank of California, N.A., as arranger and co-syndication agent.

33. The CalGen First Lien Debt is collaterally secured on a first-priority basis by (a) a pledge of all of the membership interests in CalGen, which are held by Calpine CalGen Holdings, Inc., (b) a pledge of all of the membership interests in CalGen Expansion Company, LLC, which are held by CalGen and (c) substantially all of the real and personal property of CalGen and its subsidiaries, other than CalGen Finance and Goldendale Energy Center, LLC (collectively, the “CalGen Collateral”).

The CalGen Second Lien Debt

34. CalGen’s second lien debt (the “CalGen Second Lien Debt”) is comprised of (a) the \$640,000,000 Second Priority Secured Floating Rate Notes due 2010, issued by CalGen and CalGen Finance pursuant to that certain Second Priority Indenture, dated as of March 23, 2004, among CalGen, CalGen Finance and Wilmington Trust FSB, as second priority trustee, and (b) the \$100,000,000 Second Priority Secured Term Loans due 2010, issued by CalGen

pursuant to that certain Credit and Guarantee Agreement, dated as of March 23, 2004, among CalGen, the guarantor subsidiaries of CalGen listed therein, Morgan Stanley Senior Funding, Inc., as administrative agent, sole lead arranger and sole bookrunner and the various lenders named therein. The CalGen Second Lien Debt is collaterally secured on a second-priority basis by the CalGen Collateral.

The CalGen Third Lien Debt

35. CalGen's third lien debt (the "CalGen Third Lien Debt") is comprised of (a) the \$680,000,000 Third Priority Secured Floating Rate Notes due 2011 and (b) the \$150,000,000 11.5% Third Priority Secured Notes due 2011, in each case issued by CalGen and CalGen Finance pursuant to that certain Third Priority Indenture, dated as of March 23, 2004, among CalGen, CalGen Finance and Wilmington Trust Company FSB, as third priority trustee. The CalGen Third Lien Debt is collaterally secured on a third-priority basis by the CalGen Collateral.

The CalGen Deposit Account

36. All revenues generated by CalGen are required by the terms of the CalGen Secured Debt to be deposited into a deposit account that is subject to a control agreement for the benefit of the CalGen Secured Debt. The funds on deposit in the account are subject to certain blocking rights by the collateral trustee upon the occurrence of an event of default. Otherwise, CalGen may use the funds for any purpose other than for making certain restricted payments, including, without limitation, payments or other distributions on account of its equity interests. Payments and other distributions to its parent entities and other restricted payments are only permitted from excess cash flow, provided no default or event of default under the CalGen Secured Debt has occurred and is continuing and any amounts due under any subordinated indebtedness of CalGen have been paid in full.

B. The KIAC Project

37. KIAC Partners (“KIAC”) owns a central heating and refrigeration plant, thermal distribution system, and natural gas-fired cogeneration plant at John F. Kennedy International Airport in Queens, New York (the “KIAC Facility”). The primary prepetition obligations of KIAC arise under (a) that certain Guaranty (the “KIAC Guaranty”), dated as of May 1, 1996, in favor of The Bank of New York (as successor to the United States Trust Company of New York) as Trustee (the “KIAC Trustee”) pursuant to that certain Trust Indenture, dated as of May 1, 1996, by and between the Port Authority of New York and New Jersey (the “Port Authority”) and the KIAC Trustee, pursuant to which KIAC guaranteed \$250,000,000 of special project bonds (the “KIAC Bonds”) issued to finance the construction, operation and maintenance of the KIAC Facility and (b) under that certain Agreement of Lease, dated as of April 28, 1993, as amended, (the “KIAC Lease”) between the Port Authority and KIAC pursuant to which KIAC leases the KIAC Facility from the Port Authority. As of the Petition Date, approximately \$204.20 million of the KIAC Bonds were outstanding.

38. KIAC’s obligations under the KIAC Lease and the KIAC Guaranty are secured on a first-priority basis by substantially all of the property of KIAC, including without limitation KIAC’s interests under the KIAC Lease.

39. All revenues generated by the KIAC Facility are to be deposited into a revenue account established by the KIAC Trustee. The funds on deposit in the revenue account are subject to certain blocking rights by the KIAC Trustee upon the occurrence of an event of default. The KIAC Trustee is also required to establish the following accounts: (a) an operation and maintenance fund, (b) a major maintenance fund, (c) a debt service reserve fund, (d) a subordinated expense fund, (e) a working capital fund, and (f) a distribution fund. Otherwise, KIAC may use the funds for any purpose other than making certain restricted payments, which

include any payments or distributions on account of equity interests. Payments and other distributions on account of KIAC's equity interests are only allowed on a semi-annual basis from excess cash flow, provided that no event of default under the KIAC Guaranty has occurred and is continuing.

C. The Nissequogue Cogen Project

40. Nissequogue Cogen Partners ("NCP") owns an approximately 40 megawatt cogeneration power plant located on the campus of the State University of New York at Stony Brook (the "NCP Facility"). The primary prepetition obligations of NCP arise under (a) that certain Guaranty (the "NCP Guaranty"), dated as of November 1, 1998, by NCP in favor of the Bank of New York (as successor to the United States Trust Company of New York) as trustee (the "NCP Trustee") under that certain Amended and Restated Indenture of Trust, dated as of November 1, 1998, between Suffolk County Industrial Development Agency (the "SCIDA") and the NCP Trustee, pursuant to which NCP guaranteed payment of \$74,200,000 of Industrial Revenue Bonds (the "NCP Bonds") issued to finance the construction, operation and maintenance of the NCP Facility and (b) that certain Amended and Restated Lease Agreement (the "NCP Lease"), dated as of November 1, 1998, between the SCIDA and NCP pursuant to which NCP leases the NCP Facility from the SCIDA. As of the Petition Date, approximately \$71.70 million of the NCP Bonds were outstanding.

41. NCP's obligations under the NCP Guaranty and the NCP Lease are secured on a first priority basis by substantially all of the property of NCP, including without limitation NCP's interests under the NCP Lease.

42. All revenues generated by the NCP Facility are to be deposited into a revenue account established by the NCP Trustee. The funds on deposit in the revenue account are subject to certain blocking rights by the NCP Trustee upon the occurrence of an event of default. The

NCP Trustee is also required to establish the following accounts: (a) an operation and maintenance fund, (b) a major maintenance fund, (c) a debt service fund, (d) a debt service reserve fund, (e) a revenue stabilization fund, (f) a subordinated expense fund, (g) a working capital fund, and (h) a distribution fund. Otherwise, NCP may use the funds for any purpose other than making certain restricted payments, which include any payments or distributions on account of its equity interests. Payments and other distributions on account of NCP's equity interests are only allowed on a semi-annual basis from excess cash flow, provided that no event of default under the NCP Guaranty has occurred and is continuing.

D. The Bethpage Project

43. Bethpage Energy Center 3, LLC ("BEC3") owns a 79.9 megawatt combined cycle generating facility located in Hicksville, New York (the "BEC3 Facility"). BEC3 is the borrower under (a) a \$64,024,440 first priority term loan (the "BEC3 First Lien Loan") pursuant to that certain First Lien Credit Agreement, dated as of June 30, 2005, among BEC3, the lenders referred to therein, Calyon New York Branch, the lenders for the letters of credit and Wilmington Trust Company, as first lien collateral agent and administrative agent, (b) a \$44,491,560 first priority term loan for related expenses (the "BEC3 First Lien Related Expenses Loan") pursuant to that certain First Lien Related Expenses Credit Agreement, dated as of June 30, 2005, among BEC3, the lenders referred to therein, and Wilmington Trust Company, as first lien collateral agent and administrative agent, (c) an \$8,632,290 second priority term loan (the "BEC3 Second Lien Loan") pursuant to that certain Second Lien Credit Agreement, dated as of June 30, 2005, among BEC3, the lenders referred to therein, Calyon New York Branch, the lenders for the letters of credit, and Wilmington Trust Company, as second lien collateral agent and administrative agent and (d) a \$5,998,710 second priority term loan for related expenses (the "BEC3 Second Lien Related Expenses Loan") pursuant to that certain Second Lien Related

Expenses Credit Agreement, dated as of June 30, 2005, among BEC3, the lenders referred to therein, Calyon New York Branch, and Wilmington Trust Company, as second lien collateral agent and administrative agent. The First Lien Loan and the First Lien Related Expenses Loan are referred to collectively as the “BEC3 First Lien Facilities,” and the BEC3 Second Lien Loan and the BEC3 Second Lien Related Expenses Loan are referred to collectively as the “BEC3 Second Lien Facilities.”

44. As of the Petition Date, the outstanding amount of the BEC3 First Lien Loan was \$62.02 million; the outstanding amount of the BEC3 First Lien Related Expenses Loan was \$44.49 million; the outstanding amount of the BEC3 Second Lien Loan was \$8.63 million; and the outstanding amount of the BEC3 Second Lien Related Expenses Loan was approximately \$6.00 million.

45. The BEC3 First Lien Facilities and the BEC3 Second Lien Facilities are secured by first and second priority liens, respectively, on (a) all of the assets of BEC3, including all real and personal property and all revenues and accounts pursuant to various mortgages and security agreements and (b) all of the ownership interest of Calpine Eastern Corporation in BEC3 pledged pursuant to certain pledge agreements. The accounts have been created pursuant to and are controlled by the terms of that certain Depositary and Trust Agreement (the “BEC3 Depositary Agreement”), dated as of June 30, 2005, among BEC3 and Wilmington Trust Company, in its capacity as administrative agent, first lien collateral agent, second lien collateral agent and the depositary bank (the “BEC3 Depositary Bank”) and that certain Special Deposit Account Control Agreement (the “BEC3 Local Account Control Agreement”), dated as of June 30, 2005, among BEC3, Wilmington Trust Company and Union Bank of California. All revenues of the BEC3 Facility are deposited into the accounts established pursuant to the terms of the BEC3 Depositary

Agreement, and upon the occurrence and continuance of an event of default, the first lien collateral agent and the second lien collateral agent have the sole authority to direct all activities with respect to such accounts. In addition to certain reserve accounts, the accounts created by the BEC3 Depositary Agreement include: the construction account, the revenue account, the operating account, the suspense account, the borrower account, the loss proceeds account, the warranty account, the delay liquidated damages account and the performance liquidated damages account. The local account is created pursuant to and controlled by the BEC3 Local Account Control Agreement.

46. The reserve accounts created pursuant to the BEC3 Depositary Agreement include: (a) the debt service reserve account, which has on deposit an amount equal to the required payments on the BEC3 First Lien Facilities for the next two financial quarters, (b) the major maintenance account, which has an amount on deposit equal to the required major maintenance of the BEC3 Facility for the current budget year, (c) the mortgage recording tax reserve account, which has on deposit an amount equal to the New York mortgage recording tax payable on the BEC3 First Lien Facilities and BEC3 Second Lien Facilities,³ (d) the condemnation reserve account, which has \$7,000,000 on deposit, until claims associated with the New York Power Authority's condemnation of the site have been judicially resolved or settled and (e) the site lease reserve account, which has \$1,215,277 on deposit, until BEC3 exercises its option to purchase the site from the Long Island Power Authority pursuant to the site lease.

³ Upon an event of default, the financing parties can withdraw funds on reserve in the mortgage recording tax reserve account and record certain revised mortgages in the county records of Suffolk County, New York, which mortgages are currently in escrow with Wilmington Trust Company.

E. The Watsonville Project

47. The Watsonville project is a 28.5 megawatt combined cycle cogeneration facility located in Santa Cruz County, California (the “Watsonville Facility”). Calpine Monterey Cogeneration, Inc., a California corporation (the “Watsonville Facility Lessee”) leases the Watsonville Facility from State Street Bank and Trust Company of California, N.A. (the “Watsonville Owner Trustee”) pursuant to that certain Facility Lease (the “Watsonville Facility Lease”), dated as of June 22, 1995, by and between the Watsonville Owner Trustee, and the Watsonville Facility Lessee.

48. The Watsonville Facility Lessee, the Watsonville Owner Trustee and the disbursement trustee are also parties to that certain Participation Agreement (the “Participation Agreement”), dated as of June 8, 1995, among the Watsonville Facility Lessee, Calpine, Ford Motor Credit Company (the “Watsonville Owner Participant”), Bank of America, NT SA (as successor-in-interest to USL Capital Corporation), as authorized agent of Watsonville Owner Participant, and U.S. Bank, National Association (as successor-in-interest to State Street Bank and Trust Company of California, N.A.), as owner trustee and disbursement trustee.

49. On December 28, 2005, the stipulated loss value under the Watsonville Facility Lease will be \$17,404,841.00. In addition to the remedies for default under the Watsonville Facility Lease, the Watsonville Facility Lessee’s obligations under the Watsonville Facility Lease are secured by (a) revenue from the Watsonville Facility and the Watsonville Facility Lessee’s interests in all of the accounts listed in the following paragraph, (b) the Watsonville Facility Lessee’s interest in the Watsonville Facility and real estate, (c) shares of common stock of the Watsonville Facility Lessee pledged by Calpine under a stock pledge agreement and (d) a gas sale and purchase agreement, as assigned to the Watsonville Owner Participant.

50. All revenues received by the Watsonville Facility Lessee are deposited into the revenue account established under that certain Disbursement Agreement (the “Watsonville Disbursement Agreement”), dated as of June 22, 1995, among Watsonville Facility Lessee, the Watsonville Owner Trustee and the disbursement trustee. The Watsonville Disbursement Agreement created the following accounts, each of which is held as collateral by the disbursement trustee: (a) the revenue account, (b) the rent reserve account, (c) the working capital reserve account, (d) the major maintenance reserve account, (e) the insurance and condemnation proceeds account, (f) the permanent steam line account, (g) the pre-closing revenue account and (h) the pre-closing expense account.

F. The Greenleaf Project

51. Calpine Greenleaf, Inc., (“Greenleaf”), leases two cogeneration projects (“Unit One” (49.2 megawatts) and “Unit Two” (49.5 megawatts)) and certain related equipment located in Sutter County, California (collectively, the “Greenleaf Facilities”). The Greenleaf Facilities are leased by Greenleaf pursuant to that certain Facility Lease Agreement (the “Greenleaf Facilities Lease”), dated as of August 10, 1998, among U.S. Bank, National Association (the “Greenleaf Owner Trustee”) and Greenleaf, as amended. As of November 30, 2005, the stipulated loss value under the Greenleaf Facility Lease is \$50,048,423.00.

52. In addition to the remedies for default under the Greenleaf Facility Lease, the Greenleaf’s obligations are secured by pledges of (a) all cash and receivables of the Greenleaf Facilities, all equipment, general intangibles and rights under certain project agreements, and (b) all rights under real property leases, improvements, easements and all equipment. Certain of Greenleaf’s obligations under the Greenleaf Facilities Lease are guaranteed under that certain Calpine Equity Rent Guaranty, dated as of August 10, 1998, by Calpine and that certain Guaranty, dated as of August 15, 2000, by Calpine, each in favor of the Greenleaf Owner

Trustee. Calpine has also guaranteed (a) certain payment obligations of CPN Gas Marketing Company under a gas sale and purchase agreement pursuant to that certain Guaranty, dated as of June 12, 2000, by Calpine in favor of Greenleaf, and (b) certain obligations of Sutter Dryers, Inc. under a thermal host agreement pursuant to that certain Unit One Thermal Host Guaranty Agreement, dated as of August 10, 1998, by Calpine in favor of the administrative agent and Greenleaf Owner Trustee. In addition, Calpine Fuels Corporation has (a) pledged all of its right under certain gas fuel supply agreements (the “Greenleaf Gas Fuel Supply Agreements”) to the Greenleaf Owner Trustee as collateral support for the payment obligations of Greenleaf to the Greenleaf Owner Trustee under the Greenleaf Facilities Lease and other transaction documents and all of its obligations to the Greenleaf Owner Trustee, and (b) pledged all of its right under the Greenleaf Gas Fuel Supply Agreements to Greenleaf as collateral support for all of its payment obligations to Greenleaf.

53. The Greenleaf Owner Trustee’s interest in the Greenleaf Facilities is subject to indebtedness issued by the Greenleaf Owner Trustee pursuant to that certain Amended and Restated Credit Agreement, dated as of August 10, 1998, between the Greenleaf Owner Trustee and the lenders described therein. Greenleaf, the Greenleaf Owner Trustee, Bankers Commercial Corporation (the “Greenleaf Owner Participant”), Greenleaf Holdings, Inc., (“Greenleaf Holdings”), Sumitomo Mitsui Banking Corporation (the “Greenleaf Administrative Agent”) and the banks are parties to that certain Participation Agreement, dated as of August 10, 1998.

54. All revenues are deposited in a receipts account established under that certain Amended and Restated Security Deposit Agreement, dated as of August 10, 1998 (“Greenleaf Depository Agreement”), by and among Greenleaf, Calpine Greenleaf Holdings, Inc., the depository, the Greenleaf Owner Trustee, the Greenleaf Owner Participant and the Greenleaf

Administrative Agent. In addition to the receipts account, the following accounts have been created pursuant to, and are controlled by, the terms of the Greenleaf Depositary Agreement (the “Greenleaf Accounts”): (a) the operating account, (b) the rent reserve account, (c) the Unit One major maintenance reserve account, (d) the Unit Two major maintenance reserve account, (e) the Unit One loss proceeds account and (f) the Unit Two loss proceeds account. The Greenleaf Accounts have been pledged to the Greenleaf Owner Trustee.

G. The Gilroy Cogen Project

55. Calpine Gilroy Cogen, L.P. (“Gilroy Cogen”) owns a gas-fired cogeneration facility and related equipment located in Gilroy, California (the “Gilroy Facilities”). Pursuant to that certain Purchase Agreement, dated as of October 30, 2003 (the “Gilroy Purchase Agreement”), among SPCP Group, LLC, MacKay Shields LLC, Special Situations Investing Group, Inc., Drawbridge Special Opportunities Fund L.P., DB Special Opportunities LLC, Canpartners Investments IV, LLC (collectively, the “Gilroy Purchasers”), BNY Asset Solutions LLC, as administrative agent (the “Gilroy Administrative Agent”), Calpine and Gilroy Cogen, Calpine sold to the Gilroy Purchasers certain Pacific Gas & Electric Company (“PG&E”) receivables. The net proceeds received by Calpine under the Gilroy Purchase Agreement was \$133,430,077.50.

56. Under the terms of the Gilroy Purchase Agreement, Calpine and Gilroy Cogen have continuing obligations, including certain indemnity obligations pursuant to which Calpine and Gilroy Cogen have indemnified the Gilroy Purchasers for all losses arising from (a) breach of any representation or warranty in the Gilroy Purchase Agreement, (b) any failure by Calpine or Gilroy Cogen to perform any covenant or obligation under the Gilroy Purchase Agreement, or the related guaranty, intercompany note, security agreement or deed of trust, (c) any set-off or reduction in payment by PG&E, and (d) after determination by a bankruptcy court that (i) the

intercompany note from Calpine to Gilroy Cogen does not constitute a valid obligation of Calpine, ranking pari passu with other unsecured debt, or (ii) Calpine and Gilroy Cogen are subject to substantive consolidation; provided that the indemnity obligation set forth in clause (d) come into effect after the occurrence and continuance of a payment default. The maximum liability of Calpine and Gilroy Cogen under the Gilroy Purchase Agreement is subject to a cap, and as of November 30, 2005, the maximum liability was, in the aggregate, approximately \$141.66 million (the “Gilroy Maximum Liability Amount”). The Buyers have a “put right” to require either Calpine or Gilroy Cogen to repurchase the receivable at the Maximum Liability Amount, if (a) an event of bankruptcy with respect to Calpine or Gilroy Cogen occurs, and (b) the indemnity obligations of Calpine or Gilroy Cogen under the Gilroy Purchase Agreement is rejected.

57. Calpine’s obligations under the Gilroy Purchase Agreement (including Calpine’s indemnity obligations) have been guaranteed by Gilroy Cogen pursuant to that certain Secured Guaranty (the “Gilroy Guaranty”), dated November 26, 2003, from Gilroy Cogen, as guarantor, to the Gilroy Administrative Agent. In addition, as security for Gilroy Cogen’s obligations under the Gilroy Purchase Agreement and the Gilroy Guaranty, Gilroy Cogen has pledged (a) certain project assets of Gilroy Cogen consisting of equipment, equipment, inventory, fixtures, goods, intellectual property, collateral proceeds and other tangible personal property (the “Gilroy Project Collateral”), (b) all interest in the ConAgra Lease, any improvements, all easements and other rights relating to the site (the “Gilroy Mortgaged Assets”) and (c) an intercompany demand note in the amount of \$80,000,000 payable by Calpine to Gilroy Cogen. The maximum liability with respect to the Gilroy Project Collateral and Gilroy Mortgaged Assets, in the aggregate, is subject to a maximum amount of \$20,000,000.

H. The Geysers Projects

58. Geysers Power Company, LLC (“GPC”) leases nineteen geothermal electric generating facilities (collectively, the “Geysers Facilities”) located in the Sonoma and Lake Counties, California, from Geysers Statutory Trust (the “Geysers Statutory Trust”), a Connecticut statutory trust controlled by Steam Heat, LLC (“Steam Heat”), pursuant to that certain Third Amended and Restated Facility Lease Agreement, dated as of May 7, 1999 (the “Geysers Facility Lease”).

59. Through a series of transactions ending in the late 1990s, GPC had acquired the Geysers Facilities, as well as rights to the real estate upon which the Geysers Facilities are located (the “Geysers Plant Sites”), and GPC and its affiliate Silverado Geothermal Resources, Inc. (“Silverado”) acquired related mineral and other real estate rights (the “Steam Field Assets,” together with the Geysers Facilities, the Geysers Plant Sites and all other assets related to the Geysers project, the “Geysers Project”) which produce steam for the operation of the Geysers Facilities. Between 1999 and 2001, GPC entered into four leveraged sale-leaseback transactions for the Geysers Facilities pursuant to which GPC sold the Geysers Facilities to the Geysers Statutory Trust, which then leased back the Geysers Facilities pursuant to the Geysers Facility Lease. GPC then leased to the Geysers Statutory Trust and then subleased back the Geysers Plant Sites. However, GPC and Silverado retained their interests in the Steam Field Assets, so the Geysers Statutory Trust does not have any direct rights in the Steam Field Assets or any other real or personal property assets that are not related to the Geysers Facilities, any assets that are currently Federal Energy Regulatory Commission jurisdictional assets or any contracts or operating permits (collectively, the “Excluded Assets”).

60. To finance a portion of the purchase price for the Geysers Facilities, the Geysers Statutory Trust issued lessor notes (the “Geysers Lessor Notes”) to Newcourt Capital USA Inc.

(“Newcourt”) and Steam Heat Lender Trust, a Delaware business trust for the benefit of Newcourt Project Finance Fund (the “Geysers Lender Trust,” and, together with Newcourt, the “Geysers Lenders”) under an Indenture of Trust and Security Agreement (the “Geysers Lease Indenture”). To secure GPC’s obligations under the Geysers Facility Lease, GPC’s direct parents, Geysers Power I Company (“GP I”) and Geysers Power Company II, LLC (“GP II”), pledged all of their limited liability company interests in GPC to the Geysers Statutory Trust, and Silverado’s sole shareholder pledged all of its stock in Silverado to GPC. In addition, to provide collateral for the Geysers Lessor Notes, the Geysers Statutory Trust collaterally assigned its interests in the Geysers Facilities, as well as its interest in the foregoing equity pledges to a trustee (the “Geysers Lease Indenture Trustee”) for the benefit of the Geysers Lenders. Calpine issued a guaranty guaranteeing payment of equity rents, certain indemnity, certain project power purchase agreement payments and certain real property lease obligations.

61. All revenues are deposited in a revenue account established under the Amended and Restated Depositary Agreement, dated as of May 7, 1999 (“Geysers Depositary Agreement”), by and among GPC, the depositary (the “Geysers Depositary”), the Geysers Lease Indenture Trustee, the Geysers Statutory Trust, Steam Heat and the original lender. The following accounts have been created pursuant to, and are controlled by, the terms of the Geysers Depositary Agreement (the “Geysers Accounts”): (a) the “Geysers Power Revenue Account,” (b) the “Geysers Power Working Capital Reserve Account,” (c) the “Geysers Power Rent Service Reserve Account,” (d) the “Geysers Power Attornment Reserve Account” and (e) the “Geysers Power Casualty Account.” The Geysers Accounts have not been expressly pledged to the Geysers Statutory Trust or the Geysers Lenders. However, pursuant to Section 4.9 of the Geysers Depositary Agreement, upon receipt by the Geysers Depositary of written notice to the

effect that a lease event of default shall have occurred and be continuing, the Geysers Depository is required to distribute the funds in all of the accounts in the amount and in the manner as directed by the Geysers Lease Indenture Trustee.

I. The Agnews Project

62. O.L.S. Energy-Agnews, Inc. (“Agnews”) leases a 28.5 megawatt combined cycle cogeneration facility located in Santa Clara County, California (the “Agnews Facility”). The Agnews Facility is leased from The Bank of New York Trust Company, NA., in its capacity as Agnews Owner Trustee (the “Agnews Lessor”) pursuant to that certain Facility Lease Agreement (the “Agnews Facility Lease”), dated as of December 1, 1990, between the Agnews Lessor and Agnews. Pursuant to that certain Guaranty, dated as of December 1, 1990, Calpine guaranteed certain obligations of Agnews to maintain amounts in certain reserve accounts under the Agnews Project Revenues Agreement and to pay certain types of “Additional Rent” under the Agnews Facility Lease.

63. Agnews, the Agnews Owner Trustee (as defined below) and the Agnews Agent (as defined below) are parties to that certain Participation Agreement (as amended, the “Agnews Participation Agreement”), dated as of December 1, 1990, among (a) Agnews, (b) Verizon Capital Corp., (c) Credit Suisse First Boston (as “Agnews Agent,” “Agnews Lender,” and “Agnews Depository”), (d) The Bank of New York Trust Company, N.A. (the “Agnews Owner Trustee”) and (e) Calpine.

64. On January 1, 2005, each of the stipulated loss value and the termination value under the Agnews Facility Lease will be \$25,972,277.41. In addition to the remedies for default under the Agnews Facility Lease, Agnews’ obligations under the Agnews Facility Lease are secured by (a) Agnews’ rights under certain project documents, (b) the stock of Agnews pledged by its parent Calpine Agnews, Inc., and (c) Agnews’ interest in the rent collateral account. The

Agnews Owner Trustee's interest in the Agnews Facility is subject to indebtedness issued by the Agnews Owner Trustee pursuant to that certain Loan and Security Agreement, dated as of December 1, 1990, between the Agnews Owner Trustee and Credit Suisse, New York, as lender and agent.

65. All gross revenues received by Agnews are deposited into a project control account (the "Agnews Project Control Account") established under that certain Project Revenues Agreement, dated as of December 1, 1990, among Agnews, the Agnews Owner Trustee and Agent, as amended by that certain Amendment No. 1 to the Project Revenues Agreement dated as of August 15, 2000 among Agnews, Verizon Capital Corp., Agnews Lender, Agnews Owner Trustee and Calpine, and that certain Amendment No. 2 to the Project Revenues Agreement, among Agnews, Agnews Owner Trustee and Agent (as amended, the "Agnews Project Revenues Agreement"). The Agnews Project Revenues Agreement also created the following accounts: (a) the special operating account, (b) the working capital reserve account, (c) the PG&E settlement account, (d) the debt service reserve account, (e) the project collateral account, (f) the rent collateral account, (g) the property tax reserve account, (h) the restoration account, (i) the liquidated damages account and (j) the contract completion account. Pursuant to an overhaul escrow agreement, the Agnews Owner Trustee holds separately the overhaul escrow account, which is an account of the Agnews but is deemed separate from the collateral and the trust estate.. The Agnews Owner Trustee has a lien on the Agnews Project Control Account and all of the other accounts created under the Agnews Project Revenues Agreement other than the contract completion account.

J. The Rumford-Tiverton Projects

66. Tiverton Power Associates Limited Partnership ("Tiverton") leases a 265 megawatt gas-fired combined cycle merchant power plant located in Tiverton, Rhode Island (the

“Tiverton Facility”) from PMCC Calpine New England Investment LLC (the “Rumford-Tiverton Owner Lessor”) pursuant to that certain Facility Lease Agreement (Tiverton) (the “Tiverton Lease”), dated as of December 19, 2000, between the Rumford-Tiverton Owner Lessor and Tiverton.

67. Rumford Power Associates Limited Partnership (“Rumford” and, together with Tiverton, the “Rumford-Tiverton Facility Lessees”) leases a 265 megawatt gas-fired combined cycle merchant power plant located in Rumford, Maine (the “Rumford Facility) from the Rumford-Tiverton Owner Lessor pursuant to that certain Facility Lease Agreement (Rumford) (the “Rumford Lease” and together with the Tiverton Lease, the “Rumford-Tiverton Facility Leases”) dated as of December 19, 2000, between the Rumford-Tiverton Owner Lessor and Rumford.

68. The Rumford-Tiverton Owner Lessor, Rumford-Tiverton Facility Lessees, the Rumford-Tiverton Indenture Trustee (as defined below) and the Rumford-Tiverton Pass Through Trustee (as defined below) are parties to that certain Participation Agreement (the “Rumford-Tiverton Participation Agreement”), dated as of December 19, 2000, among (a) Tiverton, (b) Rumford, (c) Calpine, (d) PMCC Calpine New England Investment LLC, (e) PMCC Calpine NEIM LLC, (f) State Street Bank and Trust Company of Connecticut, National Association (the “Rumford-Tiverton Indenture Trustee”) and (g) State Street Bank and Trust Company of Connecticut, National Association (the “Rumford-Tiverton Pass Through Trustee”).

69. As of December 15, 2005, the termination value under the Tiverton Lease is \$279,034,796.55 and the termination value under the Rumford Lease is \$258,474,337.86. In addition to the remedies for default under the Rumford-Tiverton Facility Leases, the Rumford-Tiverton Facility Lessees’ obligations under their respective Rumford-Tiverton Facility Leases

are secured by an equity collateral account, which was pledged to the Rumford-Tiverton Owner Participant as security for Calpine's performance of its obligations as guarantor to pay the equity portion of the termination value. As of December 8, 2005, upon failure of Calpine to renew the qualifying letter of credit, the equity collateral account has been funded with \$74,142,536.20.

K. The Aries Project

70. The Aries project is an approximately 600 megawatt dispatchable, combined cycle natural gas-fired generating facility located in Cass County, Missouri (the "Aries Facility") and is owned by MEP Pleasant Hill, LLC ("MEPPH"). Pursuant to that certain Amended and Restated Loan Agreement (the "Aries Loan Agreement"), dated as of March 26, 2004, among MEPPH, the banks and financial institutions named therein (the "Aries Term Lenders"), and DZ Bank, AG, Deutsche Zentral-Genossenschaftsbank, Frankfurt AM Main, New York Branch, as administrative agent (the "Aries Administrative Agent"), and Union Bank of California, N.A., as security agent (the "Aries Security Agent"), the Aries Term Lenders provided term loans (the "Aries Term Loans") to MEPPH to repay, together with other moneys contributed by Calpine, the construction loans in respect of the Aries Facility. The Aries Term Loans are secured by all of MEPPH's assets, including the Aries Facility, MEPPH's revenues and the accounts described below. MEPPH is owned by CPN Pleasant Hill, LLC, which has pledged its ownership interests in MEPPH to secure the Aries Term Loans. As of November 30, 2005, the total outstanding principal balance under the Aries term Loans is approximately \$169.5 million.

71. The majority of the Aries Facility's revenues are earned under that certain Tolling Agreement (the "Aries Tolling Agreement"), dated as of March 26, 2004, between MEPPH and Calpine Energy Services, L.P. ("CES"). Certain amounts payable to CES under the Aries Tolling Agreement and to Calpine Central, L.P. (the "Aries Operator") pursuant to that certain Second Amended and Restated Operating and Maintenance Agreement (the "Aries O&M

Agreement”), dated as of March 26, 2004, have been subordinated to the payment of debt service and other MEPPH expenses and the funding of reserve accounts or are otherwise restricted under the terms of that certain Loan Agreement and Security Deposit Agreement (the “Aries Security Deposit Agreement”), dated as of March 26, 2004, between MEPPH, the Aries Administrative Agent and the Aries Security Agent. Calpine has guaranteed the obligations of CES under the Aries Tolling Agreement and Aries Operator under the Aries O&M Agreement. Calpine has also entered into that certain Calpine Support Agreement, dated as of March 26, 2004, with MEPPH and the Aries Administrative Agent, under which Calpine agreed to use commercially reasonable efforts to enter into new long-term tolling or power purchase agreements to replace the Aries Tolling Agreement.

72. The Aries Security Agent has established the following accounts pursuant to the Aries Security Deposit Agreement: (a) the revenue account into which a majority of MEPPH’s revenues are deposited, (b) the loan accrual account, (c) the major maintenance reserve account, (d) the debt service reserve account, (e) the insurance and condemnation proceeds account, (f) the swap breakage reserve account, (g) the distribution account, and (h) the eurodollar loan prepayment account.

73. The Aries Security Deposit Agreement sets forth the priority of payments to be made from the revenue account. Revenues are used monthly (a) to pay operation and maintenance expenses, then (b) to pay capital expenditures, then (c) to pay fees and expenses of the Aries Security Agent and the Aries Administrative Agent, then (d) to pay interest on the Aries Term Loans, then (e) to pay principal of the Aries Term Loans, then (f) to pay swap breakage (payable to the original swap counterparties since, at the closing of the Aries Term Loan, a portion of the construction loan was repaid and there was a mismatch in outstanding

Aries Term Loans and loans that had been hedged), then (g) to fund the major maintenance reserve account in an amount which fluctuates depending, in part, on the number of times the Aries Facility is dispatched, then (h) to fund of the swap breakage reserve account to fund estimated swap breakage payments, then (i) to fund the debt service reserve account in an amount equal to \$6 million, and then (j) to pay a portion of the operator fee payable to the Aries Operator under the Aries O&M Agreement.

74. Any excess monies in the revenue account on the December payment date each year are used to repay the Aries Term Loans and make related swap breakage payments for the first six years after closing of the Aries Term Loans, and thereafter such excess monies will be used to fund the distribution account if the conditions established in the Aries Security Deposit Agreement are satisfied or, if such conditions are not satisfied, used to continue to prepay debt. Monies deposited to the distribution account are to be used (a) to make payment of all amounts owing to CES under the Aries Tolling Agreement, then (b) to pay certain bonus payments payable to the Aries Operator under the Aries O&M Agreement, then (c) to make any subordinated debt payment, and then (d) to make distribution to MEPPH owners.

L. The South Point Project

75. South Point Energy Center, LLC (the “South Point Facility Lessee”), leases a 530 megawatt gas-fired combined cycle power plant located near Bullhead, Arizona (the “South Point Facilities”). The South Point Facilities are owned by four separate entities - South Point OL-1, LLC, South Point OL-2, LLC, South Point OL-3, LLC and South Point OL-4, LLC (each a “South Point Owner Lessor”) – with each South Point Owner Lessor owning an undivided 25% ownership interest in the South Point Facilities. The South Point Facility Lessee leases an undivided 25% interest in the South Point Facilities from each of the South Point Owner Lessors pursuant to four separate Facility Lease Agreements, each dated as of October 18, 2001 (the

“South Point Facility Leases”), between South Point Energy LLC and each of the South Point Owner Lessors.

76. In addition to the remedies for default under the South Point Facility Leases, the South Point Facility Lessee’s obligations are secured by pledges of the ownership interest in the South Point Facility Lessee pursuant to four separate Pledge and Security Agreements, each dated as of September 30, 2003 (the “South Point Pledge Agreements”), among South Point Holdings, LLC, Calpine Corporation (“Calpine”), the South Point Facility Lessee and each of the South Point Owner Lessors. Certain of the South Point Facility Lessee’s obligations under the South Point Facility Leases are guaranteed by Calpine under four separate Calpine Guaranty and Payment Agreements, each dated October 18, 2001, among Calpine, each of the Owner Lessors, each of four separate Owner Participants (SBR OP-1, LLC, SBR OP-2, LLC, SBR OP-3, LLC and SBR OP-4, LLC) and U.S. Bank National Association (as “Pass Through Trustee” and “Indenture Trustee”).

77. The South Point Owner Lessors’ interest in the South Point Facilities is subject to indebtedness issued by each of the South Point Owner Lessors pursuant to four separate Indenture of Trust, Mortgage, Security Agreement and Fixture Filings, each dated as of October 18, 2001, by each of the South Point Owner Lessors and the Indenture Trustee. The South Point Facility Lessee, Calpine, the Indenture Trustee, the Pass Through Trustee and Wells Fargo Bank Northwest (as the “Lessor Manager”) are parties to four separate Participation Agreements, each dated as of October 18, 2001, with each of the respective South Point Owner Lessors and the South Point Owner Participants.

78. The obligations of South Point Facility Lessee are not secured by any collateral other than the ownership interest in the South Point Facility Lessee, and related rights thereto,

pledged to the Owner Lessors under the South Point Pledge Agreements. There is no revenue control agreement at South Point.

M. The Broad River Project

79. Broad River Energy LLC (the “Broad River Facility Lessee”), leases a 850 megawatt gas-fired combined cycle power plant located near Gaffney, South Carolina (the “Broad River Facilities”). The Broad River Facilities are owned by four separate entities - Broad River OL-1, LLC, Broad River OL-2, LLC, Broad River OL-3, LLC and Broad River OL-4, LLC (each a “Broad River Owner Lessor”) – with each Broad River Owner Lessor owning an undivided 25% ownership interest in the Broad River Facilities. The Broad River Facility Lessee leases an undivided 25% interest in the Broad River Facilities from each of the Broad River Owner Lessors pursuant to four separate Facility Lease Agreements, each dated as of October 18, 2001 (the “Broad River Facility Leases”), between Broad River Energy LLC and each of the Broad River Owner Lessors.

80. In addition to the remedies for default under the Broad River Facility Leases, the Broad River Facility Lessee’s obligations are secured by pledges of the ownership interest in the Broad River Facility Lessee pursuant to four separate Pledge and Security Agreements, each dated as of September 30, 2003 (the “Broad River Pledge Agreements”), among Broad River Holdings, LLC, Calpine Corporation (“Calpine”), the Broad River Facility Lessee and each of the Broad River Owner Lessors. Certain of the Broad River Facility Lessee’s obligations under the Broad River Facility Leases are guaranteed by Calpine under four separate Calpine Guaranty and Payment Agreements, each dated October 18, 2001, among Calpine, each of the Owner Lessors, each of four separate Owner Participants (SBR OP-1, LLC, SBR OP-2, LLC, SBR OP-3, LLC and SBR OP-4, LLC) and U.S. Bank National Association (as “Pass Through Trustee” and “Indenture Trustee”).

81. The Broad River Owner Lessors' interest in the Broad River Facilities is subject to indebtedness issued by each of the Broad River Owner Lessors pursuant to four separate Indenture of Trust, Mortgage, Security Agreement and Fixture Filings, each dated as of October 18, 2001, by each of the Broad River Owner Lessors and the Indenture Trustee. The Broad River Facility Lessee, Calpine, the Indenture Trustee, the Pass Through Trustee and Wells Fargo Bank Northwest (as the "Lessor Manager") are parties to four separate Participation Agreements, each dated as of October 18, 2001, with each of the respective Broad River Owner Lessors and the Broad River Owner Participants. The obligations of Broad River Facility Lessee are not secured by any collateral other than the ownership interest in the Broad River Facility Lessee, and related rights thereto, pledged to the Owner Lessors under the Broad River Pledge Agreements. There is no revenue control agreement at Broad River.

N. The RockGen Project

82. RockGen Energy LLC (the "RockGen Facility Lessee"), leases a 520 megawatt gas-fired combined cycle power plant located near Christiana, Wisconsin (the "RockGen Facilities"). The RockGen Facilities are owned by four separate entities - RockGen OL-1, LLC, RockGen OL-2, LLC, RockGen OL-3, LLC and RockGen OL-4, LLC (each a "RockGen Owner Lessor") – with each RockGen Owner Lessor owning an undivided 25% ownership interest in the RockGen Facilities. The RockGen Facility Lessee leases an undivided 25% interest in the RockGen Facilities from each of the RockGen Owner Lessors pursuant to four separate Facility Lease Agreements, each dated as of October 18, 2001 (the "RockGen Facility Leases"), between RockGen Energy LLC and each of the RockGen Owner Lessors.

83. In addition to the remedies for default under the RockGen Facility Leases, the RockGen Facility Lessee's obligations are secured by pledges of the ownership interest in the RockGen Facility Lessee pursuant to four separate Pledge and Security Agreements, each dated

as of September 30, 2003 (the “RockGen Pledge Agreements”), among Calpine Northbrook Project Holdings, LLC, Calpine Corporation (“Calpine”), the RockGen Facility Lessee and each of the RockGen Owner Lessors. Certain of the RockGen Facility Lessee’s obligations under the RockGen Facility Leases are guaranteed by Calpine under four separate Calpine Guaranty and Payment Agreements, each dated October 18, 2001, among Calpine, each of the Owner Lessors, each of four separate Owner Participants (SBR OP-1, LLC, SBR OP-2, LLC, SBR OP-3, LLC and SBR OP-4, LLC) and U.S. Bank National Association (as “Pass Through Trustee” and “Indenture Trustee”).

84. The RockGen Owner Lessors’ interest in the RockGen Facilities is subject to indebtedness issued by each of the RockGen Owner Lessors pursuant to four separate Indenture of Trust, Mortgage, Security Agreement and Fixture Filings, each dated as of October 18, 2001, by each of the RockGen Owner Lessors and the Indenture Trustee. The RockGen Facility Lessee, Calpine, the Indenture Trustee, the Pass Through Trustee and Wells Fargo Bank Northwest (as the “Lessor Manager”) are parties to four separate Participation Agreements, each dated as of October 18, 2001, with each of the respective RockGen Owner Lessors and the RockGen Owner Participants. The obligations of RockGen Facility Lessee are not secured by any collateral other than the ownership interest in the RockGen Facility Lessee, and related rights thereto, pledged to the Owner Lessors under the RockGen Pledge Agreements. There is no revenue control agreement at the RockGen Project.

O. The Acadia Project

85. Acadia Power Partners, LLC (“APP”) owns a nominally rated 1,000 megawatt natural gas-fire generating facility located in Acadia Parish, Louisiana (the “Acadia Facility”). APP is owned 50% by Calpine Acadia Holdings, LLC, a Delaware limited liability company (“Calpine Acadia”), and 50% by Acadia Power Holdings, LLC, a Louisiana limited liability

company (“APH,” and together with Calpine Acadia, the “Acadia Members”). The rights and obligations of the Acadia Members are set forth in that certain Second Amended and Restated Limited Liability Operating Agreement (the “Acadia LLC Agreement”) of Acadia Power Partners, LLC, dated as of May 9, 2003, among Calpine Acadia and APH.

86. Pursuant to the Acadia LLC Agreement, each year, from May 9, 2003 until June 30, 2022, APH is entitled to priority distributions of cash (“Acadia Priority Distributions”), after the payment of operating expense and liabilities of APP, reimbursable member expenses, and project management expenses, equal to \$14,000,000 (the “Acadia Priority Amount”) plus any undistributed Acadia Priority Amounts from previous years. Ordinary distributions are paid from time to time from available cash, after the payment of Acadia Priority Distributions and other liabilities and expenses of APP, to the Acadia Members pro-rata based on the ownership interests.

87. 3. APP’s obligation to make Acadia Priority Distributions to APH is not secured by the assets of APP. However, upon the liquidation of APP, after the payment of the creditors of APP, liquidating distributions are made first to the Acadia Members in accordance with their positive capital account balances, and then to the Acadia Members pro-rata based on the ownership interests. Since allocations of profit are made first to APH to the extent the cumulative Acadia Priority Amounts for all years (current and previous) exceed the cumulative profits allocated to APH, then pro rata to the Acadia Members, APH will receive priority liquidating distributions of unpaid Acadia Priority Amounts.

P. The Auburndale Project

88. Auburndale Power Partners, Limited Partnership (“APP”) owns a 150 megawatt natural gas-fired cogeneration power production facility in Auburndale, Florida (the “Auburndale Facility”). The construction of the Auburndale Facility was financed, in part,

through a project financing loan (the “Auburndale Loan”) pursuant to that certain Amended and Restated Project Loan and Letter of Credit Facility, dated as of June 29, 2001 (as amended from time to time, the “Auburndale Loan Agreement”) between APP and UFJ Bank Limited (successor to The Sanwa Bank Limited, New York Branch), as agent, standby LC issuer and the swap counterparty (the “Auburndale Lender”).

89. The Auburndale Loan was prepaid in full, except that the swap agreement (the “Auburndale Swap”) remains outstanding and the Auburndale Lender has extended a standby letter of credit commitment in the amount of approximately \$7,000,000 as of June 11, 2004 to secure certain project agreements.

90. The Auburndale Loan is secured by all of APP’s assets. Originally, the security documents relating to the Auburndale Loan established accounts into which revenues were deposited and project costs paid. The Auburndale Facility project manager advises that such APP accounts have been closed.

91. APP is indirectly owned by Auburndale Holdings, LLC (“Auburndale Holdings”). Auburndale Holdings is owned by Calpine Auburndale, LLC (“Calpine Auburndale”) and Pomifer Power Funding, LLC (the “ArcLight Member”). Pursuant to the Amended and Restated Limited Liability Company Operating Agreement of Auburndale Holdings, LLC, dated as of August 27, 2003, (as amended, supplemented and modified the “Auburndale LLC Agreement”) between Calpine Auburndale and the ArcLight Member, the ArcLight Member is entitled to preferential distributions of operating cash flow. The ArcLight Member’s original investment was \$88,000,000 (the “Auburndale Preferential Investment”). The Auburndale Preferential Investment was restructured on or about June 11, 2004 as a result of payments received by APP as a result of settlement of disputes relating to the fuel supply agreement.

92. Auburndale Holdings has established a bank account into which Auburndale Facility revenues and expenses are paid. The Auburndale LLC Agreement provides that upon the occurrence of certain events, including a bankruptcy of Calpine, Auburndale Holdings or the ArcLight Investor may establish a swap reserve account into which all amounts which would have distributed to Calpine Auburndale are to be deposited, with accounts therein to be used to pay, among other things, payments due under the Auburndale Swap.

93. The Auburndale LLC Agreement contains certain restrictions in respect of Calpine Auburndale, including an obligation to maintain its separate existence. The Auburndale LLC Agreement also contains transfer and change of control provisions, as well as purchase options in favor of the ArcLight Investor.

Relief Requested

94. By this Motion, pursuant to sections 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(e) and 365(a) of the Bankruptcy Code and Bankruptcy Rule 4001, the Debtors seek, among other things:

- (a) that the Court schedule an interim hearing (the “Interim Cash Collateral Hearing”) on the Motion pursuant to Bankruptcy Rule 4001 to consider entry of the Interim Cash Collateral Order;
- (b) authorization to use, on an interim basis, cash collateral of the Project Lenders, the Calpine First Lien Holders and the Calpine Second Lien Holders;
- (c) authorization to grant, on an interim basis, the adequate protection described herein to the Project Lenders, the Calpine First Lien Holders and the Calpine Second Lien Holders with respect to, *inter alia*, such use of their cash collateral;
- (d) that the Court schedule an interim hearing (the “Interim DIP Hearing”) on the Motion pursuant to Bankruptcy Rule 4001 to consider entry of the Interim DIP Order;
- (e) authorization to (i) obtain, on an interim basis, secured postpetition financing (the “DIP Financing”), pursuant to section 364(c) of the Bankruptcy Code from the DIP Lenders (as defined below) under the DIP Credit Agreement (as defined below) and related

documents (collectively with the DIP Credit Agreement, the “DIP Documents”) up to an aggregate principal or face amount not to exceed \$500,000,000 (subject to any limitations of borrowings under the DIP Documents) and (ii) execute and enter into the DIP Documents and to perform such other and further acts as may be required in connection with the DIP Documents;

- (f) authorization to grant superpriority claims to the DIP Lenders payable from, and having recourse to, all pre-petition and post-petition property of the Debtors’ estates and all proceeds thereof (including, upon entry of the Final DIP Order, any proceeds of Avoidance Actions (as defined below), in each case subject to the Carve Out (as defined below) and other exceptions;
- (g) that the Court schedule a final hearing (the “Final Cash Collateral Hearing”) to be held within 30 days of the entry of the Interim Cash Collateral Order to consider entry of the Final Cash Collateral Order;
- (h) authorization to use, on a final basis, cash collateral of the Project Lenders, the Calpine First Lien Holders and the Calpine Second Lien Holders;
- (i) authorization to grant, on a final basis, the adequate protection described herein to the Project Lenders, the Calpine First Lien Holders and the Calpine Second Lien Holders with respect to, *inter alia*, such use of their cash collateral;
- (j) that the Court schedule a final hearing (the “Final DIP Hearing” and, together with the Final DIP Hearing, the “DIP Hearings”) to be held within 30 days of the entry of the Interim DIP Order to consider entry of the Final DIP Order;
- (k) authorization to obtain the balance of the borrowings and letter of credit issuances under the DIP Documents on a final basis, as set forth in this Motion and the DIP Documents filed with this Court;
- (l) authorization to assume the Geyser Agreement and consummate the transactions contemplated thereby; and
- (m) authorization to assume the Agnews Lease Documents.

Basis For Emergency Relief

I. The Debtors Urgently Require Postpetition Financing And Access To Cash Collateral

95. This Motion is being brought on an emergency basis in light of the immediate and irreparable harm that will be suffered by the Debtors’ estates if the relief sought herein is not granted. The Debtors have an urgent need to obtain the DIP Financing and use Cash Collateral

(as defined below) in order to, among other things, (i) satisfy working capital and operational needs (including purchases of fuel), (ii) maintain their relationships with vendors, suppliers and customers, and (iii) continue to fund payroll and capital expenditures.

96. A number of factors are responsible for the Debtors' current liquidity situation. First, the Debtors greatly increased the number of their power plants between 2001 and 2004. This rapid expansion was funded primarily by incurring additional secured and project financing. The Debtors' heavy reliance on debt financing to fund this growth, and the cost of servicing this debt is significant and not supported by cash flow from operations. During the first nine months of 2005, cash interest, rent, principal repayment and debt repurchase obligations exceeded cash flows from operations. The Debtors' significant leverage is likely to continue to be a factor during the Chapter 11 Cases.

97. Second, the price of natural gas, which is needed to fuel substantially all of the Debtors' plants, has risen substantially over the past 24 months. The Debtors' short natural gas position, its divestiture of its natural gas business in July 2005 (the "CNG Sale") and the current natural gas price environment has significantly increased the Debtors' liquidity needs both in terms of lower realized gross margin and additional collateral posting requirements.

98. Third, a significant portion of the Debtors' cash balance is restricted or otherwise unavailable for general corporate purposes. Of the \$843.0 million in unrestricted cash reported in the Debtors' 10-Q filing for the quarter ended September 30, 2005, less than \$400.0 million could be considered immediately available to fund general working capital and operational requirements at such time. The remaining amounts primarily resided at subsidiaries where project financing cash waterfall provisions prohibited the distribution of monies out of such subsidiaries other than at certain times during the year and only once certain conditions have

been met. Such restrictions on cash persist and significantly limit the Debtors' flexibility to move cash between its subsidiaries and affiliates.

99. Fourth, on November 22, 2005, the Delaware Chancery Court ruled that the Debtors' use of proceeds from the CNG Sale violated the indentures governing the Debtors' secured indebtedness and ordered the Debtors to repay into a trust account \$312.0 million (plus interest) by January 22, 2006. Furthermore, the Debtors are no longer able to utilize the remaining approximately \$400.0 million in proceeds from the CNG Sale as previously contemplated to invest in gas assets, effectively offsetting fuel expense.

100. For these reasons, the Debtors estimate that they will require significant and immediate financing to avoid disruption of operations. Based on the Debtors' current cash forecast, \$500.0 million of immediate postpetition financing for the period until February 8, 2006, and, ultimately, \$2.0 billion in financing during the pendency of the Chapter 11 Cases. The Debtors need this capital to fund working capital, including capital for the Debtors' vendors, suppliers and customers, and to fund debt service to the extent of adequate assurance.

II. The Debtors Conducted An Exhaustive Search For The Most Competitive Financing

101. As the Debtors' financial situation continued to deteriorate in the weeks leading up to the Petition Date, it became increasingly clear that the Debtors would need to obtain postpetition financing on an accelerated timetable. Given the tight timing requirements of the postpetition financing, the complexity of the Debtors' capital structure and the need to secure a financing commitment without material contingencies, it was not only prudent but ultimately necessary to focus on lenders with extensive knowledge of and familiarity with the Debtors' assets and operations. Accordingly, in early December 2005 the Debtors approached the following five potential postpetition lenders: Credit Suisse First Boston ("CS"), Deutsche Bank

Securities, Inc. (“DBSI”), Citigroup Global Markets Inc., GE Capital Markets, Inc. and Bear Stearns Corporate Lending Inc. All of these potential postpetition lenders had extensive knowledge of the Debtors and their assets. Furthermore, several of these potential postpetition lenders had performed due diligence and other analysis on the Geysers Project in connection with a previously contemplated transaction. This experience was particularly significant given that, as discussed more fully below, the Geysers Project was the core project that the Debtors planned to use to secure the DIP Financing. The Debtors subsequently received unsolicited proposals from Morgan Stanley Senior Funding, Inc., JPMorgan Securities Inc., Goldman Sachs Credit Partners L.P. and Lehman Brothers. Contemporaneous with these early contacts, Miller Buckfire, the Debtors’ financial advisors, approached approximately ten financial institutions, while Ken Derr, the Debtors’ interim CEO, approached five strategic buyers to discuss potential alternative transactions.

102. After intense review and negotiation, the Debtors determined that the proposals of CS and DBSI contained the most favorable pricing and other terms and effectively addressed the Debtors’ working capital and liquidity requirements. As a result of their familiarity with the Debtors’ collateral base, CS and DBSI were able to provide a firm and fully approved commitment for the \$2.0 billion of postpetition financing requested on an expedited basis. Ultimately, the Debtors decided that the best terms and the lowest syndication risk would be realized by combining the financing terms offered by CS and DBSI (collectively with the syndicate of lenders participating in the DIP Financing, the “DIP Lenders”) into a single postpetition financing.

The DIP Credit Agreement

103. The Debtors and the DIP Lenders engaged in good faith and extensive arms'-length negotiations that culminated in an agreement by the DIP Lenders to provide the Debtors with up to \$2.0 billion of secured postpetition financing, on the terms and subject to the conditions set forth in that certain Revolving Credit, Term Loan and Guaranty Agreement, substantially in the form attached hereto as **Exhibit C** (the "DIP Credit Agreement"), by and among Calpine, as Borrower; the domestic subsidiaries of Calpine named therein, as guarantors (collectively, the "Guarantors"); the lenders party thereto; Credit Suisse and Deutsche Bank Trust Company Americas ("DBTCA"), as Joint Administrative Agents, Joint Syndication Agents and Joint Documentation Agents; and Credit Suisse and DBSI, as Joint Lead Arrangers and Joint Bookrunners. The significant terms of the DIP Credit Agreement are as follows:⁴

<u>Borrower</u>	Calpine Corporation, a debtor and debtor-in-possession in a case pending under Chapter 11 of the Bankruptcy Code.
<u>Guarantors</u>	The direct and indirect domestic subsidiaries of Calpine that are debtors and debtors-in-possession in a case pending under Chapter 11 of the Bankruptcy Code designated as a Guarantor to the DIP Credit Agreement (together with the Borrower, the "Debtors").
<u>Agent and Banks</u>	A syndicate of financial institutions, including Credit Suisse and Deutsche Bank Securities, Inc., as joint syndication agents, Deutsche Bank Trust Company Americas and Credit Suisse as joint Administrative Agents.
<u>Commitment</u>	Up to \$2,000,000,000 of Commitments comprised as follows: (i) a revolving commitment of up to \$1,000,000,000 (the "Revolving Commitment"), of which a portion not in excess of \$300,000,000 shall be available for the issuance of letters of credit and a portion of which not in excess of \$10,000,000 shall be available for swing loans and a portion of which not in excess of \$500,000,000 shall be available to be drawn upon entry of the Interim Order, (ii) a term loan commitment of up to \$350,000,000 secured by a first priority security interest (the "First Priority Term Commitment") and (iii) a term loan commitment of up

⁴ This summary is qualified in its entirety by reference to the provisions of the DIP Documents.

	to \$650,000,000 secured by a second priority security interest, as further explained below (the “Second Priority Term Commitment” and together with the First Priority Term Commitment, the “Term Commitments”, and collectively with the First Priority Term Commitment and the Revolving Commitment, the “Commitments”).
<u>Purpose</u>	The Commitment shall be available for (i) in the case of Revolving Loans, working capital and other general corporate purposes of the Borrower and the Guarantors, (ii) in the case of Term Loans, to pay all of the Outstanding Revolving Loans on the Initial Term Draw Date and up to \$350,000,000 of Second Priority Term Loans to consummate the Geysers Transaction.
<u>Term</u>	Borrowings shall be repaid in full, and the Commitment shall terminate, at the earliest of (i) the date which is the two-year anniversary of the Petition Date, (ii) 45 days after the entry of the Interim Order (or such later date as the Administrative Agent may agree to) if the Final Order has not been entered prior thereto, (iii) the effective date of a Reorganization Plan confirmed by the Bankruptcy Court pursuant to the Confirmation Order in any of the Cases or (iv) the acceleration of the Loans and the termination of the Total Commitment in accordance with the DIP Credit Agreement (the earliest such date, the “Termination Date”).
<u>Closing Date</u>	the date on which the conditions precedent to the making of the initial Extension of Credit set forth in the DIP Credit Agreement and summarized in paragraph (p) below have been satisfied or waived.
<u>Priority and Liens</u>	<p>All direct borrowings and reimbursement obligations under Letters of Credit and other obligations under the DIP Financing (and all guaranties of the foregoing by the Guarantors), shall at all times, subject to the Carve-Out and certain other limitations described below:</p> <ul style="list-style-type: none"> (a) pursuant to section 364(c)(1) of the Bankruptcy Code, be entitled to joint and several superpriority claim status in the Chapter 11 Cases; (b) pursuant to section 364(c)(2) of the Bankruptcy Code, be secured by a perfected first priority lien on , and security interest in, all present and after-acquired property of the Borrower and the Guarantors’ respective estates in the Chapter 11 Cases that is not subject to a valid, perfected and non-avoidable lien or security interest in existence on the Petition Date or to a valid lien in existence on the Petition Date that is perfected subsequent to the Petition Date as permitted by Bankruptcy Code Section 546(b); and (c) pursuant to section 364(c)(3) of the Bankruptcy Code, be secured by a perfected junior lien on, and security interest in, all present and after-acquired property of the Borrower and the Guarantors’ respective estates in the Chapter 11 Cases, that is otherwise subject to a valid, perfected and

	<p>non-avoidable lien or security interest in existence on the Petition Date or to valid liens in existence on the Petition Date that is perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code.</p>								
<p><u>Carve-Out for Fees and Expenses of Retained Professionals</u></p>	<p>The claims and liens described above are subject and subordinate in each case only to, in the event of the occurrence and during the continuance of an Event of Default, the payment of (x) allowed and Unpaid professional fees and disbursements incurred by the Debtors and any statutory committees appointed in the Chapter 11 Cases in an aggregate amount not in excess of \$25,000,000 (plus all unpaid professional fees and disbursements incurred prior to the occurrence of an Event of Default to the extent allowed by the Court at any time), (y) in the event of conversion, reasonable fees and expenses of a chapter 7 trustee under § 726(b) not exceeding \$2,000,000 and (z) fees pursuant to 28 U.S.C. § 1930 ((x)(y) and (z) together, the “Carve-Out”), provided that no Debtor is required to pledge to the Collateral Agent (i) more than 65% of the voting Capital Stock of its direct Foreign Subsidiaries or any Capital Stock or Interest of indirect Foreign Subsidiaries if it would cause adverse tax consequences to the Borrower or (ii) Capital Stock of a Subsidiary of such Loan Party if such pledge is prohibited by the Leveraged Lease Documents. Notwithstanding the foregoing, so long as an Event of Default shall not have occurred and be continuing, the Borrower and the Guarantors shall be permitted to pay compensation and reimbursement of expenses allowed and payable under 11 U.S.C. §§ 330 and 331, as the same may be due and payable, and the same shall not reduce the Carve-Out. The Carve-Out shall not include fees or expenses incurred in challenging the Liens or Superpriority Claims of the Agent or Lenders, nor shall cash or other amounts on deposit in the L/C Cash Collateral be subject to the Carve-Out.</p>								
<p><u>Commitment Fee</u></p>	<p>A rate per annum equal to the percentage of utilization of the Revolving Facility (including letters of credit) as follows:</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th style="text-align: center;"><u>Total Commitment Usage</u></th> <th style="text-align: center;"><u>Commitment Fee (per annum)</u></th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">greater than or equal to 67%</td> <td style="text-align: center;">0.50%</td> </tr> <tr> <td style="text-align: center;">less than 67%</td> <td style="text-align: center;">0.75%</td> </tr> <tr> <td style="text-align: center;">less than 33%</td> <td style="text-align: center;">1.00%</td> </tr> </tbody> </table>	<u>Total Commitment Usage</u>	<u>Commitment Fee (per annum)</u>	greater than or equal to 67%	0.50%	less than 67%	0.75%	less than 33%	1.00%
<u>Total Commitment Usage</u>	<u>Commitment Fee (per annum)</u>								
greater than or equal to 67%	0.50%								
less than 67%	0.75%								
less than 33%	1.00%								
<p><u>Ticking Fee</u></p>	<p>A rate per annum of 2.50% on the undrawn Geysers Transaction Tranche from the fiftieth (50th) day after entry of the Interim Order until drawn or terminated.</p>								
<p><u>Letter of Credit Fees</u></p>	<p>A Letter of Credit Fee at the rate per annum of 2.25% on the face amount of each Letter of Credit, and a fronting fee of 0.25% on the face amount of such Letter of Credit.</p>								
<p><u>Nature of Fees</u></p>	<p>All Fees shall be paid on the dates due, in immediately available funds, to the Administrative Agent (for the respective accounts of the Administrative Agent, the applicable Fronting Banks and the Lenders), as provided in the DIP Credit Agreement. Once paid, none of the Fees shall be refundable under any</p>								

	circumstances
<u>Interest Rate</u>	For Base Rate Loans, the Base Rate plus (i) 1.25% in the case of Revolving Loans and Swingline Loans, (ii) 1.25% in the case of First Priority Term Loans and (iii) 3.50% in the case of Second Priority Term Loans. For Eurodollar Loans, the Eurodollar Rate plus (i) 2.25% in the case of Revolving Loans and Swingline Loan, (ii) 2.25% in the case of First Priority Term Loans and (iii) 4.50% in the case of Second Priority Term Loans. In Event of Default, interest is calculated at applicable rate plus 2%. Interest shall be payable monthly in arrears, except in Event of Default, in which case interest is payable on demand.
<u>Default Interest</u>	Upon the occurrence and during the continuance of any Event of Default under the DIP Credit Agreement (including, without limitation, in respect of Letters of Credit), interest shall be payable on demand at 2% above the then applicable rate.
<u>Conditions of Initial Extension of Credit</u>	<p>Subject to Section 1.3 of the DIP Credit Agreement and the waivers contained therein, the obligation to provide the initial Extension of Credit is subject to the satisfaction or waiver of the following conditions:</p> <ul style="list-style-type: none"> (i) The DIP Credit Agreement and the Security and Pledge Agreement shall have been duly executed and delivered; (ii) Not later than five (5) days following the Petition Date, the Administrative Agent shall have received a copy of the Interim Order that is reasonably satisfactory in form and substance to the Administrative Agent, approving the transactions contemplated in the DIP Credit Agreement and granting the superpriority claim status and other liens referred to in the DIP Credit Agreement, which Interim Order (x) shall authorize extensions of credit in respect of Loans in amounts not in excess of \$500,000,000, (y) shall approve the payment by the Borrower of all of the Fees and (z) shall not have been vacated, reversed, modified, amended, rescinded or stayed; (iii) All of the “first day orders” entered at the time of the Petition Date shall be reasonably satisfactory in form and substance to the Administrative Agent; (iv) Receipt of closing documents (including security documents granting the liens in favor of the Administrative Agent) reasonably satisfactory in form and substance to the Administrative Agent; (v) Legal opinion of counsel to the Borrower and the Guarantors in form reasonably satisfactory to the Administrative Agent; (vi) Receipt of UCC searches (including tax liens and judgments) conducted in the jurisdictions in which the Borrower and the Guarantors are organized and where assets are located, reasonably satisfactory to the

	<p>Administrative Agent (dated as of a date reasonably satisfactory to the Administrative Agent), reflecting the absence of liens and encumbrances on the assets of the Borrower and the Guarantors except as may be satisfactory to the Administrative Agent;</p>
	<p>(vii) The Borrower and the Guarantors shall have granted the Administrative Agent access to and the right to inspect all non-privileged reports, audits and other internal information of the Borrower and the Guarantors relating to environmental matters and any third party verification of certain matters relating to compliance with environmental laws and regulations requested by the Administrative Agent, and the Administrative Agent shall be reasonably satisfied that the Borrower and the Guarantors are in compliance in all material respects with all applicable environmental laws and regulations and be satisfied with the costs of maintaining such compliance;</p> <p>(viii) There shall have been paid to the Administrative Agent all Fees owed to the Administrative Agent and the Lenders as set forth in the Fee Letter entered into among the Borrower, Deutsche Bank Trust Company Americas, Deutsche Bank Securities, Inc. and Credit Suisse (the “Fee Letter”) and otherwise as referenced herein; and</p> <p>(ix) All corporate and judicial proceedings and all instruments and agreements in connection with the transactions among the Borrower, the Guarantors, the Administrative Agent and the Lenders contemplated by the DIP Credit Agreement shall be reasonably satisfactory in form and substance to the Administrative Agent and the Administrative Agent shall have received all information and copies of all documents or papers reasonably requested by the Administrative Agent.</p>
<p><u>Conditions of Each Extension of Credit</u></p>	<p>The obligation to provide each Extension of Credit (including the initial Extension of Credit) shall be subject to the satisfaction (or waiver) of the following conditions:</p> <p>(i) If as a result of such extension of credit usage of the Commitment would exceed in the aggregate the amount authorized by the Interim Order, the Administrative Agent and the Lenders shall have received a copy of the Final Order. In respect of the Geysers Transaction Tranche, (1) the Administrative Agent shall have received evidence that the Geysers Transaction has been or will be simultaneously be consummated, (2) each Geysers Entity which owns any of the Geysers Assets shall have become a debtor and debtor-in-possession under Chapter 11 and shall have complied with § 5.11(b) of the DIP Credit Agreement and (3) the Administrative Agent shall have received evidence that it has been granted a security interest in (including Superpriority Claims against) each Geysers Entity owning any Geysers Assets</p>

	(ii) The Interim Order or the Final Order, as the case may be, shall be in full force and effect, and shall not have been vacated, reversed, modified, amended or stayed, or modified or amended in a manner that the requisite lenders reasonably determine to be adverse to their interests;
	(iii) No Event of Default or Default shall exist; (iv) Representations and warranties shall be true and correct in all material respects at the date of each extension of credit except to the extent such representations and warranties relate to an earlier date; (v) Receipt of a notice of borrowing from the Borrower, and in the case of a Letter of Credit, the applicable Fronting Bank shall have received an L/C Application from the Borrower; and (vi) The Borrower shall have paid the balance of all Fees then payable as referenced in the Fee Letter and herein.
<u>Events of Default</u>	The DIP Credit Agreement contains the following Events of Default: (i) failure to make payments of principal and interest; (ii) representations and warranties proving materially incorrect when made; (iii) material provisions of any Loan Document ceasing to be valid and binding on the Debtors; (iv) default under the negative covenants and certain other provisions of the DIP Credit Agreement or certain provisions of the Security and Pledge Agreement; (v) unremedied default persisting for 15 days under any other provision of the Loan Documents; (vi) cross-default to certain other indebtedness; (vii) dismissal of Cases or conversion under Chapter 7; (viii) (i) Bankruptcy Court order granting another Superpriority Claim or Lien pari passu with or senior to that granted Lenders and Administrative Agent, (ii) Bankruptcy Court order reversing, staying for over 10 days, vacating or amending the Interim or Final Order without consent of the Agents, (iii) court order granting terminating the use of Cash Collateral, or (iv) Bankruptcy Court order under § 1106(b) of the Code appointing a trustee having enlarged powers over the operation of the business of the Loan Parties and such order continuing for 30 days; (ix) payment of pre-Petition obligations of any Debtor or certain material

	<p>subsidiaries, other than those (i) under Interim or Final Order, (ii) accrued payroll and related expenses; (iii) in accordance with orders satisfactory to Administrative Agent and (iv) pursuant to first day orders;</p>
	<ul style="list-style-type: none"> (x) order allowing third party to proceed against the property of any Loan Party valued in excess of \$5,000,000 in the aggregate; (xi) the filing of a pleading by any Global Entity seeking (viii), (ix) or (x) above; (xii) administrative expense claim(s) entered after the Petition Date against any Credit Party involving an aggregate liability of \$5,000,000 or more (after application of insurance proceeds) or a non-monetary judgment expected to cause a Material Adverse Effect; (xiii) any Credit Party is found liable for payment of claims related to Environmental Laws reasonably expected to have a Material Adverse Effect; (xiv) proceeding by any Loan Party seeking or consenting to (i) any challenge of the Superpriority Claims and Liens or (ii) any relief under § 506 of the Bankruptcy Code; (xv) any Loan Party files a Reorganization Plan not providing for the payment in full in cash of the Obligations on the effective date of such plan. (xvi) a default or similar event occurring and continuing under the Leveraged Lease Documents or any project finance documentation of a material subsidiary (resulting in acceleration of the indebtedness and the exercise of remedies by the relevant lenders and is not stayed within certain periods) or a “Voting Rights Trigger Event” or other default or similar event having occurred under the Preferred Equity Documents; (xvii) certain ERISA-related events expected to have a Material Adverse Effect; (xviii) change of control; or (xix) the guarantee under § 9 of the DIP Credit Agreement or any other material provision of any Loan Document shall cease to be in full force and effect or any Loan Party or Affiliate so asserts.

104. Under the Fee Letter, Calpine has agreed to pay certain fees to DBTCA and CS, including an arrangement and underwriting fee to be shared by them equally in the aggregate amount of \$30 million (1.5% of the \$2 Billion DIP Commitment), payable as follows: (i) \$12

million upon execution of the Fee Letter, (ii) \$10 million upon the entry of the Interim Orders and (iii) \$8 million upon entry of the Final Orders. The Fee Letter also provides for the payment to DBTCA and CS of an annual administrative fee in the aggregate amount of \$300,000, to be shared by them in such proportion as they may determine. Finally, the Fee Letter provides that if the Bankruptcy Court has approved the DIP Credit Agreement at the interim hearing, but during the period ending June 30, 2006 Calpine obtains other debtor-in-possession financing (any such transaction, an “Alternate Financing”) in lieu of the DIP Credit Agreement, then Calpine will pay to DBTCA and DB at the time of consummation of such Alternate Financing an amount equal to the arrangement and underwriting fees at the maximum amount that would have been payable to them and to Deutsche Bank Securities, Inc. if the DIP Credit Agreement had been consummated.

Extraordinary Provisions

105. The General Order No. M-274 of the United States Bankruptcy Court for the Southern District of New York (the “General Order”) requires the Debtors to highlight any Extraordinary Provisions (as defined in the General Order) included in the DIP Credit Agreement.

106. The only Extraordinary Provisions included in the DIP Loan Agreement are as follows:

- (a) the Debtors seek authority at the Final DIP Hearing to waive the right to charge, pursuant to section 506 of the Bankruptcy Code, any costs of administration of the Chapter 11 Cases (except as permitted by the Carve-Out) against the Collateral provided to the DIP Lenders; and
- (b) For the purposes of the Final DIP Order, the DIP Credit Agreement provides for the DIP Lenders to be provided a lien on proceeds of all causes of action, including those arising under sections 502(d), 544, 545, 547, 548, 549 and 550 of the Bankruptcy Code, or any other avoidance actions under the Bankruptcy Code (collectively, “Avoidance Actions”). However, the DIP Lenders have agreed to permit the Interim DIP Order to exclude Avoidance Actions from the scope of the liens granted thereunder.

107. These Extraordinary Provisions are typically found in debtor-in-possession financing agreements, and the DIP Lenders would have refused to provide financing to the Debtors absent such provisions.

Applicable Authority

108. As described above, the Debtors' reorganization efforts depend critically on immediate access to sufficient postpetition financing and cash collateral. Absent granting of the relief requested in this Motion, the Debtors' ability to successfully and expeditiously reorganize will be seriously jeopardized.

I. Incurrence Of Secured Superpriority Debt Pursuant To Section 364(c) Of The Bankruptcy Code

109. Section 364 of the Bankruptcy Code "provides bankruptcy courts with the power to authorize postpetition financing for a Chapter 11 debtor-in-possession," See In re Defender Drug Stores, Inc., 126 B.R. 76, 81 (Bankr. D. Ariz. 1991). "Having recognized the natural reluctance of lenders to extend credit to a company in bankruptcy, Congress designed [section] 364 to provide 'incentives to the creditor to extend post-petition credit'" Id. In particular, section 364(c) of the Bankruptcy Code establishes the conditions under which a debtor can obtain certain types of secured credit. Section 364(c) of the Bankruptcy Code provides, in pertinent part, as follows:

- (c) If the trustee is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt —
 - (1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of this title;
 - (2) secured by a lien on property of the estate that is not otherwise subject to a lien; or

- (3) secured by a junior lien on property of the estate that is subject to a lien.

11 U.S.C. § 364(c).

110. Generally, courts apply a three-part test to determine whether a debtor may obtain secured credit pursuant to section 364(c) of the Bankruptcy Code. Specifically, the debtor must demonstrate that (i) it cannot obtain credit unencumbered or without superpriority status, (ii) the credit transaction is necessary to preserve the assets of the debtor's estates and (iii) the terms of the credit transaction are fair, reasonable and adequate given the particular circumstances of the debtor and the proposed lender. See In re Crouse Group, Inc., 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987), *aff'd*, 75 B.R. 553 (E.D. Pa. 1987) (debtor must show that it has made a reasonable effort to seek other sources of financing under sections 364(a) and (b) of the Bankruptcy Code).

111. Against this statutory backdrop, courts will evaluate the facts and circumstances of a debtor's case and accord significant weight to the necessity for obtaining the financing. See In re Ames Dep't Stores, Inc., 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990). Debtors are generally permitted to exercise their basic business judgment consistent with their fiduciary duties when evaluating the necessity of proposed protections for a party extending credit under section 364 of the Bankruptcy Code. See, e.g., In re Trans World Airlines, Inc., 163 RR. 964, 974 (Bankr. D. Del. 1994) (noting that an interim loan, receivables facility and asset-based facility were approved because they "reflect[ed] sound and prudent business judgment. . . [were] reasonable under the circumstances and in the best interest of [the debtor] and its creditors").

A. The Debtors Could Not Obtain Postpetition Financing On An Unsecured Basis

112. As set forth in the Buckfire Declaration, and as the evidence at the Interim DIP Hearing and the Final DIP Hearing will demonstrate, the Debtors could not have obtained a postpetition financing facility on the terms and of the type and magnitude required in the Chapter

11 Cases on an unsecured basis or, indeed, without offering terms substantially similar to those of the DIP Financing. Prior to the Petition Date, the Debtors discussed postpetition financing with eight potential lenders, including DBSI and CS. None of these potential lenders was willing to make a postpetition loan on an unsecured basis.

113. To show that the credit required is not obtainable on an unsecured basis, a debtor need only demonstrate “by a good faith effort that credit was not available” without the protections afforded to potential lenders by section 364(c) of the Bankruptcy Code. See In re Snowshoe Co., 789 F.2d 1085, 1088 (4th Cir. 1986). The Debtors’ efforts to seek postpetition financing from a large group of sophisticated lending institutions satisfy the statutory requirements of section 364(c) of the Bankruptcy Code. See, e.g., Ames, 115 B.R. at 40 (approving section 364(c) financing facility and holding that the debtor made reasonable efforts to obtain less onerous terms where it approached four lending institutions, was rejected by two, and selected the least onerous financing option from the remaining two lenders); In re 495 Cent. Park Ave. Corp., 136 B.R. 626,630 (Bankr. S.D.N.Y. 1992) (debtor “must make an effort to obtain credit without priming a senior lien”); In re Reading Tube Indus., 72 B.R. 329, 332 (Bankr E.D. Pa. 1987) (requiring demonstration that less onerous financing was unavailable); In re Phoenix Steel Corp., 39 B.R. 218,222 and n.9 (D. Del. 1984) (same).

B. The DIP Financing Is Necessary To Preserve The Assets Of The Debtors’ Estates

114. As described above, the Debtors urgently require the DIP Financing to satisfy working capital and operational needs (including purchases of fuel); maintain their relationships with vendors, suppliers and customers; fund payroll and make necessary capital expenditures. Without immediate access to sufficient liquidity and working capital via the DIP Financing, the Debtors’ business operations will be severely disrupted and their going concern value

jeopardized, to the detriment of the Debtors' creditors, employees and other parties in interest in the Chapter 11 Cases. As described above, the Debtors' liquidity crisis was caused by a combination of factors including significant leverage, which increased the Debtors' fixed costs and significantly limited the Debtors' flexibility to move cash between its subsidiaries and affiliates; rising natural gas prices; and adverse litigation. For these reasons, the Debtors estimate that they will require significant and immediate financing to continue their operations and preserve estate value.

C. The Terms Of The DIP Financing Are Fair, Reasonable And Adequate

115. The terms and conditions of the DIP Financing are fair, reasonable and adequate and were negotiated by the parties in good faith and at arms'-length. The Debtors, in the reasonable exercise of their business judgment, have determined that the DIP Financing is the best financing option available to them under the present circumstances and that its pricing and other economic terms are fair, reasonable and consistent with market practice. Likewise, the various fees and charges required by the DIP Lenders under the DIP Financing are reasonable and appropriate under the circumstances. Indeed, courts routinely authorize similar lender incentives beyond the explicit liens and rights specified in section 364 of the Bankruptcy Code. See In re Defender Drug Stores, 145 B.R. 312, 316 (9th Cir. BAP 1992) (approving financing facility pursuant to section 364 of the Bankruptcy Code that included a lender "enhancement fee").

II. The Debtors Are Not Seeking Relief Pursuant To Section 364(d) Of The Bankruptcy Code

116. Section 364(d) of the Bankruptcy Code provides that a debtor may obtain credit secured by a lien on collateral senior or equal to an existing secured creditor's lien on such collateral only if the existing secured creditor's interest is adequately protected. See 11 U.S.C. §

364(d)(1). For purposes of clarification, the Debtors are *not* seeking relief under section 364(d) of the Bankruptcy Code, as the DIP Credit Agreement will not result in the priming of any prepetition lenders. Rather, to secure performance of its obligations under the DIP Credit Agreement, Calpine has agreed to provide the DIP Lenders with (i) first priority liens only on those assets that either have not been pledged to any prepetition lender or will not be encumbered when first priority liens are granted, and (ii) junior liens on all encumbered assets of the Debtors.

III. The Debtors Should Be Authorized To Assume The Geyser Agreement And The Agnews Lease Documents

A. The Geysers Assets And The Search For Postpetition Financing

117. As described above, in early December 2005 Calpine's management determined that Calpine would need approximately \$2.0 billion of postpetition financing to support a restructuring should it be forced to seek bankruptcy protection. Accordingly, Calpine's management began to scour Calpine's capital structure to locate potential sources of collateral to support such a financing. Calpine's management quickly concluded that, save for one exception, Calpine's assets either were not sufficiently valuable or were substantially encumbered by existing liens. The exception was the Geysers Project, which forms the core of the collateral package the Debtors are providing to the DIP Lenders.

118. The Geysers Project comprises a group of nineteen geothermal electric generating facilities (as defined above, the "Geysers Facilities") and related geothermal assets and sites (as defined above, the "Steamfield Assets") and other real estate (as defined above, the "Geysers Plant Sites") located in Northern California. Calpine owns the equity in the Geysers Project through its first-tier subsidiary Calpine Power Company, which directly owns all of the equity of Anderson Springs Energy Company ("Anderson Springs"), which directly owns all of the equity of Thermal Power Company ("Thermal"), which directly owns all of the equity of GP I and all of

the membership interests in GP II. GPI and GP II, in turn, together own all of the limited liability company interests in GPC.

119. Pursuant to a series of sale-leaseback transactions between 1999 and 2001, GPC sold the Geysers Facilities to Geysers Statutory Trust, which in turn leased the Geysers Facilities back to GPC pursuant to the Geysers Facility Lease. The Geysers Statutory Trust, which is controlled by Steam Heat, financed the purchase of the Geysers Facilities via the issuance of the Geysers Lessor Notes and currently is indebted the Geysers Lenders in an amount of approximately \$103.9 million. To secure GPC's obligations under the Geysers Facility Lease, GP I and GP II pledged all of their interests in GPC to the Geysers Statutory Trust. In addition, to provide collateral for the Lessor Notes, the Geysers Statutory Trust collaterally assigned its interests in the Geysers Facilities and its rights as pledgee of GP I's and GP II's interests in GPC to a trustee for the benefit of the Geysers Lenders.

120. The Steamfield Assets, which produce the steam required for operation of the Geysers Facilities, have little economic utility other than as a source of fuel for the Geysers Facilities. Likewise, the Geysers Facilities cannot generate electricity, and thus economic value, without the steam provided by the Steamfield Assets. As a result, the Steamfield Assets, on the one hand, and the Geysers Facilities, on the other hand, are of limited value on a stand-alone basis. However, when combined with the Geysers Plant Sites and other assets comprising the Geysers Project, these assets become extremely valuable and are estimated to have a market value of in excess of \$2.5 billion.

121. Unfortunately, with the Geysers Facility Lease in place, the Geysers Project does not provide an overly attractive collateral package. While GPC can pledge its valuable long-term leasehold interests in the Steamfield Assets, which are unencumbered, GPC cannot pledge

the Geysers Facilities, which it does not own and which have been pledged to the Geysers Lenders. Furthermore, although the Debtors can grant liens on the unencumbered equity of Anderson Springs, Thermal, GP I and GP II, such liens cannot provide a lender with complete security. The Geysers Facility Lease entitles the Geysers Statutory Trust, upon the occurrence of an event of default under the Geysers Facility Lease, to prevent cash from flowing out of it to GPC and GPC's affiliates. Because the liens on the equity give the lender a claim only against the cash flowing from GPC upwards through GPI and GPII, Thermal and Anderson Springs, the Geysers Statutory Trust could destroy the value of the equity pledges merely by declaring an event of default and preventing cash from reaching GPC.

122. Not surprisingly, all of the potential postpetition lenders indicated to the Debtors and Miller Buckfire that the terms of a postpetition financing would be most favorable if the Geysers Facility Lease was unwound, ownership of the Geysers Facilities reverted to GPC and all of the assets comprising the Geysers Project were pledged as collateral. Moreover, some potential postpetition lenders indicated that they would be unwilling to lend on *any* terms absent such a pledge. In the course of these discussions, it became abundantly clear to Calpine's management that Calpine could obtain the required amount of postpetition financing on favorable terms only if it first acquired full and unencumbered ownership of the Geysers Facilities.

123. To achieve this result, Calpine's management commenced negotiations with (i) Steam Heat to acquire the right to purchase Steam Heat, LLC's beneficial interest in the Geysers Statutory Trust (the "Geysers Interest") for consideration totaling approximately \$165.0 million, thereby transferring ownership of the Geysers Facilities to Calpine, and (ii) the Geysers Lenders, to repay the approximately \$114.0 in principal, accrued interest and make-whole amounts due

under the Project Debt, thereby releasing the liens on the Geysers Facilities (such purchase and repayment transactions, collectively with any related transactions, the “Geysers Transactions”).

B. The Geysers Agreement

124. Steam Heat had no contractual obligation under the sale-leaseback transactions to sell the Geysers Interest to the Debtors. Given this fact, the Debtors reasonably feared that Steam Heat would raise the price of the Geysers Interest dramatically once it discovered, via the Debtors’ disclosures at the outset of their reorganization cases, that the Debtors urgently needed to consummate the Steam Heat Transactions in order to obtain postpetition financing on favorable terms. As a precaution, the Debtors decided to enter into a purchase agreement with Steam Heat to lock-in the price of the Geysers Interest. On December 20, 2005, Thermal entered into the Agreement, by and between Thermal and Steam Heat, LLC (the “Geysers Agreement”), granting it the right to designate a purchaser of the Geysers Interest. A copy of the Geysers Agreement is attached hereto as **Exhibit D**. Pursuant to the Geysers Agreement, Thermal acquired the exclusive right to designate a purchaser of the Geysers Interest for a purchase price of \$165.0 million.

125. Significantly, Steam Heat indicated that it would not enter into the Geysers Agreement unless Calpine agreed to enter into amendments to certain documents governing the Agnews Facility Lease, including the Project Revenues Agreement (the Agnews Facility Lease transaction documents, as amended thereby, the “Agnews Lease Documents”). Ultimately, Steam Heat conditioned Calpine’s right to purchase the Geysers Interest upon the amendment and assumption of the Agnews Lease Documents. Indeed, pursuant to Section 4.4.3 of the Geysers Agreement, Calpine’s bankruptcy court-authorized assumption of the Agnews Lease Documents is a condition precedent to Steam Heat’s obligations under the Geysers Agreement.

From Calpine's perspective, there is no question that assumption of the Agnews Lease Documents is more than justified given the benefits of the Geysers Agreement.

126. As discussed above, in order to take the Geysers Facilities free and clear of all encumbrances notwithstanding their purchase of the Geysers Interest, the Debtors must discharge the indebtedness under the Geysers Lessor Notes. Accordingly, by this Motion, the Debtors are requesting authority to use DIP Financing proceeds to redeem the Geysers Lessor Notes at a price equal to the outstanding principal and accrued interest on the Lessor Notes plus the Make-Whole Amount (as defined under the Geysers Lease Indenture).

C. Standard Governing Assumption of Executory Contracts

127. Section 365(a) of the Bankruptcy Code provides that a debtor in possession, "subject to the court's approval, may assume or reject any executory contract ... of the debtor." See 11 U.S.C § 365(a). The standard to be applied by a court in determining whether the assumption or rejection of an executory contract or unexpired lease pursuant to section 365(a) should be approved is the "business judgment" test, which requires that the debtor have determined that the requested assumption or rejection would be beneficial to its estate. See In re Orion Pictures Corp., 4 F.3d 1095, 1099 (2d Cir. 1993); In re Gucci, 193 B.R. 411, 415 (S.D.N.Y. 1996). Upon finding that the debtor has exercised its sound business judgment in determining that the assumption or rejection of an executory contract or unexpired lease is in the best interests of the debtors, its creditors and all parties in interest, the court should approve such assumption or rejection under section 365(a) of the Bankruptcy Code. See, e.g., In re Riodizio, Inc., 204 B.R. 417, 424 (Bankr. S.D.N.Y. 1997); In re Bradlees Stores, Inc., 194 B.R. 555, 558 n.1 (Bankr. S.D.N.Y. 1996); In re G Survivor Corp., 171 B.R. 755, 757 (Bankr. S.D.N.Y. 1994); In re Ionosphere Clubs, Inc., 100 B.R. 670, 673 (Bankr. S.D.N.Y. 1989). Some courts have

defined the elements of the business judgment standard in the context of an assumption of an executory contract or unexpired lease as (a) whether the contract or lease is profitable or advantageous to the debtor, and (b) whether the estate will be able to perform its contractual obligations under the contract or lease. See In re National Sugar Refining Co., 26 B.R. 765, 767 (Bankr. S.D.N.Y. 1983); In re Del Grosso, 115 B.R. 136, 138 (Bankr. N.D. Ill. 1990).

D. Standard Governing Authorization For Use Of Estate Property Outside The Ordinary Course Of Business

128. Section 363(b)(1) of the Bankruptcy Code provides that “[t]he trustee, after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). The purpose of requiring notice and a hearing if a transaction is outside of the ordinary course of business is so that creditors, who have a vital interest in maximizing realization from assets of the estate, have an opportunity to review the terms of the proposed transaction and to object if they believe that the terms and conditions are not in their best interest. See In re Caldor, Inc., 193 B.R. 182, 186 (Bankr. S.D.N.Y. 1996).

129. Although section 363 of the Bankruptcy Code does not specify a standard for determining when it is appropriate for a court to authorize the use, sale or lease of property of the estate, the Second Circuit has required that such use, sale or lease be based upon the sound business judgment of the debtor. See In re Chateaugay Corp., 973 F.2d 141, 143 (2d Cir. 1992); In re Lionel Corp., 722 F.2d 1063, 1070 (2d Cir. 1983) (requiring “some articulated business justification” to approve the use, sale or lease of property outside the ordinary course of business). In that regard, “[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” See In re Johns-Manville Corp., 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986).

130. The business judgment rule shields a debtor’s management from judicial second-guessing. See Johns-Manville, 60 B.R. at 615-16 (“a presumption of reasonableness attaches to a Debtor's management decisions.”). Once a debtor articulates a valid business justification, “[t]he business judgment rule ‘is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company.’” In re Integrated Res., Inc., 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting Smith v. Van Gorkom, 488 A.2d 858, 872 (Del. 1985)). Thus, if a debtor's actions satisfy the business judgment rule, then the transaction in question should be approved under section 363(b)(1).

131. Further, pursuant to section 105(a) of the Bankruptcy Code, “the court may issue any order, process or judgment that is necessary to carry out the provisions of this title.” 11 U.S.C. § 105(a). Under section 105(a) of the Bankruptcy Code, the Court has expansive equitable powers to fashion any order or decree that is in the interest of preserving or protecting the value of the Debtors’ assets. See In re Croton River Club, Inc., 52 F. 3d 41 (2d Cir. 1995).

E. The Debtors Should Be Authorized To Assume The Geysers Agreement And Consummate The Steam Heat Transactions

132. As demonstrated below, there are numerous compelling reasons why the Debtors should be authorized to assume the Geysers Agreement and use of a portion of the proceeds of the DIP Financing Proceeds to consummate the Steam Heat Transactions.

(1) The Geysers Agreement Will Maximize the Value Of The Debtors’ Bankruptcy Estates

133. The Geysers Agreement will enable the Debtors to consummate a critical step of the Steam Heat Transactions — the purchase of the Geysers Interest. Consummation of the Steam Heat Transactions, in turn, will provide the Debtors’ bankruptcy estates with very

substantial economic benefits by generating additional liquidity and lowering the cost of borrowing under the DIP financing.

(a) Greater Availability Under The DIP Financing

134. As described above, the Steam Heat Transactions would dramatically improve the credit quality of the DIP Financing. If the Steam Heat Transactions are consummated, the first priority security interests of the DIP Lenders will be able to attach to the Geysers Facilities, rather only the equity of Anderson Springs, Thermal, GPI and GPII.

135. In light of this benefit, the DIP Lenders have agreed to provide more than dollar-for-dollar value to fund the Steam Heat Transactions. Indeed, the DIP Lenders have committed to provide \$350.0 million of financing under the assumption that approximately \$271.0 million will be required to consummate the Steam Heat Transactions. As such, the DIP Financing contemplates an additional approximately \$79.0 million of availability over and above the expected buyout price for Steam Heat, providing additional liquidity that is critical to an effective and expeditious reorganization of the Debtors.

(b) More Favorable Loan Pricing

136. The DIP Lenders have indicated that the DIP financing would be significantly more expensive to the Debtors absent consummation of the Steam Heat Transactions. In a loan of the size (assuming a fully drawn commitment) and term of the DIP Financing, each 50 basis point increase of interest rate will increase total interest expense by up to \$10.0 million.

(c) Elimination of Cash Traps and Waterfall

137. The Geysers Facility Lease requires that the Debtors maintain cash reserves at GPC on account of rent and working capital (which reserves currently total approximately \$40.0 million) and restricts GPC's ability to dividend cash to the Debtors. In addition, the cash flow

waterfall in the Geysers Facility Lease only permits cash distributions on a quarterly basis. Upon consummation of the Steam Heat Transactions, however, such amounts would no longer be reserved or restricted and would immediately be available to the Debtors as additional liquidity. Finally, Calpine's purchase of the Geysers Interest will eliminate the very real threat, discussed more fully below, that Steam Heat or a potentially hostile transferee of the Geysers Interest could declare a default under the Geysers Facility Lease and block cash flow out of GPC.

(d) Cash Flow Savings

138. Consummation of the Steam Heat Transactions will also eliminate almost \$100.0 million in cash rent expense over the next two years. Although the Debtors will borrow under the DIP Credit Agreement to finance the Steam Heat Transactions, the implied cost of borrowing under the DIP Credit Agreement is significantly lower than that under the Geysers Facility Lease. Based on current LIBOR rates, the weighted average interest rate under the DIP Credit Agreement (assuming the amounts are fully drawn) is approximately 7.5% as compared to an implied interest rate under the Geysers Facility Lease of approximately 8.5%. As a result, the Debtors will pay a lower cost of financing if they are authorized to assume the **Geysers** Agreement and consummate the Steam Heat Transactions.

139. As demonstrated above, the Steam Heat Transactions will provide a significant net economic benefit to the Debtors' bankruptcy estates — especially when one subtracts the above-market lease payments the Debtors will no longer have to make — and more than compensates for the price paid to Steam Heat and the Geysers Lenders to consummate the Steam Heat Transactions. Assuming the cost of borrowing projected under the DIP Financing, the net present value of future cash rent payments under the Geysers Facility Lease is approximately \$220.0 million. As identified above, in addition to avoided cash rent payments, the Debtors will benefit from (i) approximately \$79.0 million in incremental borrowing, (ii) more favorable loan

pricing, (iii) \$40.0 million in released reserve amounts and (iv) the present value benefit of removing restrictions on cash distributions from GPC. Taken together, the benefits of the Steam Heat Transactions far outweigh its costs.

(2) Absent Assumption Of The Geysers Agreement, The Debtors' Reorganization Will Be Jeopardized

140. As described above, the Geysers Agreement will enable GPC to purchase the Geysers Interest and terminate the Geysers Facility Lease. Termination of the Geysers Facility Lease, in turn, will remove two potentially serious threats to the Debtors' successful reorganization. First, pursuant to Section 7(p)(i) of the DIP Credit Agreement, a default under the Geysers Facility Lease would trigger a default under the DIP Credit Agreement, entitling the DIP Lenders to enforce a number of remedies including, without limitation, terminating all commitments under the DIP Credit Agreement and accelerating all indebtedness thereunder. Clearly, such a result would inflict immeasurable damage on the Debtors' bankruptcy estates and imperil the Debtors' efforts to reorganize. Thus, so long as the Geysers Facility Lease remains in effect, the Geysers Statutory Trust has the power to unilaterally trigger a cross-default under the DIP Credit Agreement, with all of the attendant consequences for the Debtors. To put this threat in perspective, it must be noted that Steam Heat, which indirectly controls the Geysers Statutory Trust through its ownership of Steam Heat, LLC, has repeatedly indicated that it would exercise any and all remedies it may have against GPC in the event Calpine filed for chapter 11. While the Debtors believe that there currently is no contractual or other basis for the Geysers Statutory Trust to declare a default under the Geysers Facility Lease, the Debtors must take Steam Heat's warning very seriously.

141. Second, so long as the Geysers Agreement is not assumed, Steam Heat has an essentially unfettered right to sell or transfer the Geysers Interest to a third party. This dynamic

could create an opportunity for a large member of creditor constituency to hijack the Chapter 11 Cases. As noted above, a default under the Geysers Facility Lease would trigger a default under the DIP Credit Agreement, entitling the DIP Lenders to terminate all commitments under the DIP Credit Agreement and accelerate all indebtedness thereunder, paralyzing the Debtors' reorganization and threatening the Debtors' ability to continue as a going concern. Thus, if a large member of a creditor constituency were to obtain the Geysers Interest, such member would be able to exert massive leverage over the Debtors and other interested parties by threatening to declare defaults under the Geysers Facility Lease. Absent the Steam Heat Transaction, therefore, a third party could acquire effective control of an approximately \$18.0 billion reorganization case for a mere \$271.0 million.

142. In light of the foregoing substantial benefits of the Geysers Agreement to the Debtors and their bankruptcy estates, the Debtors submit that the Court should authorize the Debtors to assume the Geysers Agreement.

F. The Debtors Should Be Authorized To Assume The Agnews Lease Documents

143. As referenced above, O.L.S. Energy-Agnews, Inc. ("Agnews") currently leases a 28.5 megawatt combined cycle cogeneration facility located in Santa Clara County, California, from an owner trust controlled by Steam Heat. Prior to the Petition Date, in order to resolve certain defaults (including failure to renew the Agnews Operation and Maintenance Agreement, failure to provide certain notices and failure to make certain cash deposits for maintenance reserves) by Agnews under the Agnews Facility Lease and certain other Agnews Lease Documents, Calpine and Steam Heat amended certain Agnews Lease Documents, which amendments were approved by Credit Suisse, New York Branch ("Credit Suisse"), in its

capacity as lender, agent and depository. Specifically, the parties amended the Project Revenues Agreement to modify the cash flow waterfall so that any payments for past or future fuel procurement (which were payable at the first tier level of the cash flow waterfall prior to such amendment) would be subordinated to a priority level immediately above the last level of the cash flow waterfall where distributions to Agnews are made. Such subordination of the fuel procurement payments would be effective to the extent necessary to maintain a 1.20 to 1.0 trailing 12-month rent coverage ratio.

144. Copies of the Agnews Lease Documents, as amended, are attached hereto as **Exhibit E**. The basic lease term under the Agnews Facility Lease expires on February 28, 2013. Calpine's payments under the Agnews Facility Lease are projected to total approximately \$4.9 to \$5.2 million per year through 2010 and then decrease to approximately \$3.0 million per year through 2013.

145. The Debtors' assumption of the Agnews Facility Lease and related documents is critical to their successful reorganization. As noted above, under Section 4.4.3 of the Geysers Agreement, Calpine's bankruptcy court-authorized assumption of the Agnews Lease Documents is a condition precedent to Steam Heat's obligations under the Geysers Agreement. If the Debtors are not permitted to assume the Agnews Lease Documents, the Debtors will not be able to assume the Geysers Agreement and consummate the Steam Heat Transactions and will not be able to secure favorable postpetition financing terms. Moreover, although the amendments to the Agnews Facility Lease are projected to cost the Debtors approximately \$1.0 million per year, the Debtors estimate that the Agnews Facility Lease will continue to generate positive cash flows, and thereby provide an economic benefit to the Debtors' estates.

146. As set forth above, prior to the assumption of an executory contract or unexpired lease, a debtor must cure outstanding defaults under such contract or lease. The Debtors and Agnews Owner Lessor have agreed that there are no defaults under the Agnews Facility Lease other than a default under Section 12.01(h)(2) thereof triggered by the commencement of the Chapter 11 Cases. Therefore, there are no defaults under the Agnews Facility Lease to be cured by the Debtors prior to assuming the Agnews Facility Lease. For the foregoing reasons and in the exercise of their sound business judgment, the Debtors believe that assumption the Agnews Lease Documents is in the best interests of the Debtors, their creditors and their chapter 11 estates.

IV. The Debtors Should Be Authorized To Use Cash Collateral

147. In addition to obtaining access to postpetition financing, the Debtors urgently need to use certain cash collateral pledged to the Project Lenders, Calpine First Lien Holders and Calpine Second Lien Holders. Specifically, the Debtors need to be able to (i) use the Restricted Cash (as defined below) of the Project Debtors in accordance with the applicable Cash Waterfall Provisions (as defined below) and (ii) use the Unrestricted Cash (as defined below) of the Project Debtors, in each case notwithstanding the existence of an event of default under the Project Loan Documents triggered by the commencement of the Chapter 11 Cases.

148. In addition, the Debtors need to use the Calpine Corp. Cash Collateral securing the Debtors' obligations to the Calpine First Lien Holders and the Calpine Second Lien Holders. The Calpine Corp. Cash Collateral, Restricted Cash and Unrestricted Cash are hereinafter referred to collectively as the "Cash Collateral." Except as provided herein, the Debtors intend to use Cash Collateral to, among other things, (x) pay present operating expenses (including payroll), (y) pay vendors on a going-forward basis to ensure a continued supply of materials,

including fuel, essential to the Debtors' continued viability and (z) fund working capital requirements. Accordingly, the Debtors by this Motion request authority to use all Cash Collateral existing on or after the Petition Date.

G. Adequate Protection For Use of Cash Collateral

149. Pursuant to section 363(c)(2) of the Bankruptcy Code, a debtor-in-possession may not use a secured party's cash collateral without the consent of the secured party or court approval. See 11 U.S.C. § 363(c)(2). However, section 363(e) of the Bankruptcy Code provides that, upon request of an entity that has an interest in property to be used by a debtor, the court shall prohibit or condition use of such property as is necessary to provide adequate protection of such interest. See 11 U.S.C. §363(e).

150. What constitutes adequate protection must be decided on a case-by-case basis. See In re Mosello, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996); In re Realty Southwest Assocs., 140 B.R. 360 (Bankr. S.D.N.Y. 1992); In re Beker Indus. Corp., 58 B.R. 725 (Bankr. S.D.N.Y. 1986). See also In re O'Connor, 808 F.2d 1393, 1396 (10th Cir. 1987); In re Martin, 761 F.2d 472 (8th Cir. 1985). The focus of the requirement is to protect a secured creditor from diminution in the value of its interest in the particular collateral during the period of use. See In re 495 Central Park Avenue Corp., 136 B.R. 626, 631 (Bankr. S.D.N.Y. 1992); In re Beker Indus. Corp., 58 B.R. at 736; In re Hubbard Power & Light, 202 B.R. 680 (Bankr. E.D.N.Y. 1996).

(i) Adequate Protection For Use of The Project Lenders' Cash Collateral

151. As is customary in project financings, the Project Loan Documents impose certain restrictions on the Project Debtors' use of revenues (such restrictions, the "Cash Waterfall Provisions"). Generally, the Cash Waterfall Provisions require that project revenues be allocated

in a specified order of priority to various purposes including, without limitation, to fund (a) operations and maintenance (including fuel payments), (b) payment of principal and interest under the Project Loan Documents and (c) various reserve accounts, in each case prior to becoming available for dividending to parent entities or other allocation (all cash other than the cash available for dividending or other allocation after compliance with the Cash Waterfall Provisions, the “Restricted Cash,” and the cash available for dividending or other allocation, the “Unrestricted Cash”).

152. Under certain of the Project Loan Documents, upon the occurrence of an event of default, a Project Debtor may be required to allocate all revenues to repayment of outstanding indebtedness or may lose the right to allocate revenues in accordance with the Cash Waterfall Provisions or otherwise without the prior consent of the Project Lenders. In such a circumstance, the Project Debtor may lose the ability to fund operations and maintenance and make other critical payments necessary to continue its operations. In addition, under certain of the Project Loan Documents, upon the occurrence of an event of default, including an event of default triggered by the bankruptcy filing of the Project Debtor or an affiliate of the Project Debtor, a Project Debtor may lose the right to dividend Unrestricted Cash up to its parent entities. Moreover, under certain of the Project Loan Documents, upon the occurrence of an event of default, the right of the Project Debtor to make payments to its affiliates for goods or services (typically operations and maintenance fees and services, but sometimes also payments for power or gas) may be restricted or eliminated entirely.

153. In order to continue their operations and preserve liquidity, the Project Debtors need to be able to (a) allocate revenues in accordance with any applicable Cash Waterfall Provisions and (b) dividend or otherwise allocate Unrestricted Cash, in each case

notwithstanding the existence of an event of default under the Project Loan Documents triggered by the commencement of the Chapter 11 Cases.

154. As adequate protection to protect the Project Lenders' interest in collateral pledged by the Project Debtors to secure the applicable Project Debtor's obligations under the applicable Project Loan Documents (the "Project Lender Collateral"), including the use of the Restricted Cash and the Unrestricted Cash, and to protect the Project Lenders from any diminution in value of the Project Lender Collateral, including, without limitation, the use of the Restricted Cash in accordance with the applicable Cash Waterfall Provisions and the use of the Unrestricted Cash, and the use, sale, lease, depreciation, decline in market price or otherwise of the Project Lender Collateral, the Debtors propose the following:

- (a) Interest: Each Project Lender shall receive (i) immediate cash payment of all accrued and unpaid interest due under the applicable Project Loan Documents at the non-default rates provided for under the applicable Project Loan Documents, and (ii) current payment of all accrued but unpaid interest under the applicable Project Loan Documents at the non-default contract rate set forth under the applicable Project Loan Documents.
- (b) Adequate Protection Liens: The Project Lenders shall receive valid, binding and enforceable security interests in and liens on all Project Lender Collateral under the applicable Project Loan Documents (exclusive of any avoidance actions available to the bankruptcy estates of the Debtors pursuant to sections 544, 545, 547, 548, 549, 550, 553(b) or 724(a) of the Bankruptcy Code or the proceeds thereof), and such liens and security interests (collectively, the "Project Lender Liens," and with the First Replacement Liens and the Second Replacement Liens, the "Replacement Liens") shall be equal to the extent of the aggregate diminution in value, if any, after the Petition Date, of a Project Lender's particular Project Lender Collateral, whether by use, sale, lease, depreciation, decline in market price or otherwise or the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code.
- (c) Compliance With Project Loan Documents: The Debtors shall continue to comply with all provisions of the applicable Project Loan Documents, including the Cash Waterfall Provisions, other than provisions that impose restrictions on the use of Restricted Cash or Unrestricted Cash solely as a consequence of the insolvency or bankruptcy filing of a Project Debtor or affiliate of the Project Debtor.
- (d) Fees. Each Project Lender shall receive legal fees to the extent provided for under the applicable Project Loan Documents.

(ii) Adequate Protection For Use of Calpine First Lien Holders' Cash Collateral

155. As discussed above, the Debtors propose to use Calpine Corp. Cash Collateral.

As adequate protection to protect the Calpine First Lien Holders from diminution, if any, in the value of their interest in the Calpine Corp. Cash Collateral, the Debtors propose the following:

- (a) Interest: The Debtors shall pay to the First Lien Trustee, for the benefit of the Calpine First Lien Holders, (i) immediate cash payment of all accrued and unpaid interest on the Calpine First Lien Indenture at the non-default contract rate provided for in the Calpine First Lien Indenture, and all other accrued and unpaid fees and disbursements (including, but not limited to, fees owed to the First Lien Trustee and incurred prior to the Petition Date), and (ii) current payment of all accrued but unpaid interest on the Calpine First Lien Indenture at the non-default contract rate set forth in the Calpine First Lien Indenture.
- (b) Adequate Protection Liens: The Calpine First Lien Holders shall receive (i) valid, binding and enforceable first priority security interests in and liens on the Calpine Corp. Collateral (exclusive of any avoidance actions available to the bankruptcy estates of the Debtors pursuant to sections 544, 545, 547, 548, 549, 550, 553(b) or 724(a) of the Bankruptcy Code or the proceeds thereof), and such liens and security interests (collectively, the "First Replacement Liens") shall be equal to the extent of the aggregate diminution in value, if any, after the commencement of the Debtors chapter 11 cases (the "Petition Date"), of the Calpine Corp. Collateral, including the Calpine Corp. Cash Collateral, whether by use, sale, lease, depreciation, decline in market price or otherwise or the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code.
- (c) Fees and Expenses. The Debtors shall pay all reasonable fees and disbursements of counsel for and the financial advisor to the First Lien Trustee.
- (d) Equity Cushion. As of the Petition Date, the Debtors estimate that value of the Calpine Corp. Collateral is sufficient to provide the Calpine First Lien Holders with a very meaningful equity cushion.
- (e) Application of Designated Assets Sale Proceeds. As of the Petition Date, approximately \$400.0 million of Cash Collateral (the "Designated Asset Sale Proceeds") was on deposit in a blocked account (the "Designated Asset Sale Proceeds Account") at Union Bank of California, N.A. pursuant to the Designated Asset Sale Proceeds Account Control Agreement, dated as of July 16, 2003, among Calpine, Union Bank of California, N.A. and The Bank of New York. Prior to the Final Hearing and the Court's entry of the Final Cash Collateral Order, the Debtors shall not be authorized to use the Designated Asset Sale Proceeds. At the Final Cash Collateral Hearing, the Debtors shall seek authority to apply the Designated Asset Sale Proceeds to repay \$400.0 million in principal of the Calpine First Lien Debt; provided, however, that (i) the Debtors and the Calpine First Lien Trustee shall reserve for a latter date all rights, arguments and objections with

respect to the Calpine First Lien Holders' entitlement to receive any makewhole payment under the Calpine First Lien Indenture as a result of the payment of \$400.0 million in principal and (ii) the Calpine First Lien Trustee reserves all claims with respect to the order entered on December 16, 2005, by the Delaware Supreme Court directing restoration of \$312 million in sale proceeds to the Designated Asset Sale Proceeds Account and the Debtors reserve their rights to oppose (or to take any other action with respect to) any such actions or claims of the Calpine First Lien Trustee.

(iii) Adequate Protection For Use of Calpine Second Lien Holders' Cash Collateral

156. As discussed above, the Debtors propose to use Calpine Corp. Cash Collateral.

As adequate protection to protect the Calpine Second Lien Holders from diminution, if any, in the value of their interest in the Calpine Corp. Cash Collateral, the Debtors propose the following:

- (a) Interest. The Debtors shall pay to the trustee of the Calpine Second Lien Debt (the "Second Lien Trustee"), for the benefit of the Calpine Second Lien Holders, the payment of \$75,000,000 on March 31, 2006.
- (b) Fees and Expenses. The Debtors shall pay all reasonable fees and disbursements of counsel for the ad hoc committee of the Calpine Second Lien Holders and the financial advisor to the Calpine Second Lien Holders.
- (c) Adequate Protection Liens: The Calpine Second Lien Holders shall receive valid, binding and enforceable second priority security interests in and liens on the Calpine Corp. Collateral (exclusive of any avoidance actions available to the bankruptcy estates of the Debtors pursuant to sections 544, 545, 547, 548, 549, 550, 553(b) or 724(a) of the Bankruptcy Code or the proceeds thereof), and such liens and security interests (collectively, the "Second Replacement Liens") shall be equal to the extent of the aggregate diminution in value, if any, after the Petition Date, of the Calpine Corp. Collateral, including the Calpine Corp. Cash Collateral, whether by use, sale, lease, depreciation, decline in market price or otherwise or the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code; provided, however, that the Second Replacement Liens shall be subordinate and junior to the First Replacement Liens.

157. Significantly, the Debtors made concerted efforts to negotiate a consensual cash collateral order with the Calpine Second Lien Holders. Indeed, the Debtors are prepared to pay interest to the Calpine Second Lien Holders to the extent permitted by their financial situation and contractual obligations. With respect to the latter, as a condition to providing the DIP

Financing, the DIP Lenders required, and Section 7(i) of the DIP Credit Agreement provides, that a default is triggered if the Debtors make interest or adequate protection payments to other creditors without the DIP Lenders' consent. The DIP Lenders explicitly stated that they would not consent to any adequate protection payment to the Calpine Second Lien Holders in excess of \$75.0 million, and thus the Debtors were constrained to offer this amount.

158. Finally, the Project Lenders, Calpine First Lien Holders and Calpine Second Lien Holders are also adequately protected as a result of the continuation of the Debtors' business operations. Without the use of the Cash Collateral as proposed herein and in the Interim Cash Collateral Order, the Debtors would experience a severe disruption of their businesses. The Debtors and their financial advisors believe that the going concern value of the Debtors' businesses is significantly greater than their liquidation value. Accordingly, the continued operation of the Debtors' businesses protects the Project Lenders', Calpine First Lien Holders' and Calpine Second Lien Holders' interests. Id., 123 B.R. 192 at 196.

159. In light of the foregoing, the Debtors believe that the protections to be provided to the Project Lenders, the Calpine First Lien Holders and the Calpine Second Lien Holders, as described above, are sufficient to protect any diminution in the value of their interest during the period the Cash Collateral is used by the Debtors, and are fair and reasonable.

V. Interim Approval Should Be Granted

160. The Debtors request that the Court conduct an expedited preliminary hearing on the Motion and authorize the Debtors from and after the entry of the Interim DIP Order until the Final DIP Hearing to obtain credit under the DIP Credit Agreement in the amount of not more than \$500.0 million, which shall be used to, among other things, provide working capital for the Debtors and to pay interest, fees and expenses in accordance with the Interim DIP Order and the

DIP Credit Agreement. In addition, the Debtors request that the Court authorize the Debtors from and after the entry of the Interim Cash Collateral Order to use Cash Collateral as provided for herein and in the Interim Cash Collateral Order. This will ensure that the Debtors maintain ongoing operations and avoid immediate and irreparable harm and prejudice to their estates and all parties in interest pending the Final Hearing.

161. Absent this Court's approval of the interim relief sought in this Motion, the Debtors face a substantial risk of severe disruption to their business operations and irreparable damage to their relationships with their vendors and service providers. Simply put, the relief sought herein is necessary for the Debtors to continue meeting their financial obligations to their employees, vendors and service providers, among others.

162. Bankruptcy Rule 4001(c) permits a court to approve a debtor's request for financing during the 15-day period following the filing of a motion requesting authorization to obtain postpetition financing "only to the extent necessary to avoid immediate and irreparable harm to the estate pending a final hearing." Fed. R. Bankr. P. 4001(c)(2). In examining requests under this Bankruptcy Rule, courts apply the same business judgment standard as is applicable to other business decisions. See, e.g., Ames, 115 B.R. at 38. After the 15-day period, the request for financing is not limited to those amounts necessary to prevent the destruction of the debtor's business, and the debtor is entitled to borrow those amounts that it believes are prudent to the operation of its business. Id. at 36. The Debtors submit that, for the reasons set forth herein, the immediate obtaining of credit up to the \$500.0 million amount and the use of cash collateral on an interim basis as requested in this Motion is necessary to avert immediate and irreparable harm to the Debtors' businesses.

VI. Request For Final Hearing

163. Pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), the Debtors respectfully request that the Court set a date for the Final DIP Hearing and the Final Cash Collateral Hearing that is no later than thirty (30) days following entry of the Interim Orders.

164. Under the DIP Credit Agreement, if the Debtors do not consummate the Steam Heat Transactions by the date that falls on the later of (i) five (5) days after the Final Order Date and (ii) fifty (50) days after entry of the Interim Order, or such later date as the Administrative Agents may agree which shall not be later than March 31, 2006 (the “Steam Heat Funding Deadline”), then the portion of DIP Financing proceeds committed for funding the Steam Heat Transactions will no longer be available, and the Debtors will not be able to consummate the Steam Heat Transactions. As described below, a failure by the Debtors to consummate the Steam Heat Transactions would severely diminish the value of the Debtors’ estates and expose their reorganization to substantial risk.

165. Significantly, on February 8, 2006, the Federal Energy Regulatory Commission (the “FERC”) will assume jurisdiction over transfers of generation assets between entities that do not qualify as “passive investors” under the FERC rules. As a result, the FERC likely would have jurisdiction over — and would be required to review and approve — the transfer of the Geysers Interest to Calpine, a critical piece of the Steam Heat Transactions. Unfortunately, the FERC review process could take up to ninety (90) days. If the FERC’s review period extends through the Steam Heat Funding Deadline, the portion of DIP Financing proceeds committed for funding the Steam Heat Transactions might no longer be available, and the Debtors would not be able to consummate the Steam Heat Transactions, to the severe detriment of their estates. Accordingly, as the FERC jurisdictional rules will become effective on February 8, 2006, the Debtors respectfully request that the Court schedule the Final Hearing sufficiently in advance of

February 8, 2006 to permit the Debtors a reasonable period of time to consummate the Steam Heat Transactions, and in no event later than thirty (30) days following entry of the Interim Orders.

166. The Debtors respectfully request that they be authorized to serve copies of the signed Interim Orders, which fix the time and date for the filing of objections, if any, by first class mail upon (a) the United States Trustee for the Southern District of New York; (b) the Debtors' 80 largest unsecured creditors on a consolidated basis, as identified in their Chapter 11 petitions; (c) counsel to the administrative agents for the Debtors' prepetition secured lenders; (d) counsel to the ad hoc committees; (e) the indenture trustees pursuant to the Debtors' secured indentures; (f) counsel to the Debtors' proposed postpetition lenders; (g) the Securities and Exchange Commission; (h) the Internal Revenue Service and (i) the United States Department of Justice. The Debtors request that the Court consider such notice of the Final Hearing to be sufficient notice under Bankruptcy Rule 4001.

Memorandum of Law

167. This Motion includes citations to the applicable authorities and a discussion of their application to this Motion. Accordingly, the Debtors respectfully submit that such citations and discussion satisfy the requirement that the Debtors submit a separate memorandum of law in support of this Motion pursuant to Rule 9013-1(b) of the Local Bankruptcy Rules for the Southern District of New York.

Notice

168. No trustee, examiner or creditors' committee has been appointed in these Chapter 11 cases. Notice of this Motion has been provided to: (a) the United States Trustee for the Southern District of New York; (b) the Debtors' 80 largest unsecured creditors on a consolidated basis, as identified in their Chapter 11 petitions; (c) counsel to the administrative agents for the

Debtors' prepetition secured lenders; (d) counsel to the ad hoc committees; (e) the indenture trustees pursuant to the Debtors' secured indentures; (f) counsel to the Debtors' proposed postpetition lenders; (g) the Securities and Exchange Commission; (h) the Internal Revenue Service; and (i) the United States Department of Justice. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is required. A copy of the Motion is also available on the website of the Debtors' notice and claims agent, Kurtzman Carson Consultants LLC, at <http://www.kccllc.net/calpine>.

No Prior Request

169. No prior application for the relief requested herein has been made to this or any other Court.

WHEREFORE, the Debtors respectfully request the entry of orders, substantially in the form attached hereto as **Exhibit A** and **Exhibit B** granting the relief requested herein and granting such other any further relief as is just and proper.

Dated: December 20, 2005
New York, New York

Respectfully submitted,

/s/ Richard M. Cieri
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EXHIBIT A

EXHIBIT B

EXHIBIT C

EXHIBIT D

EXHIBIT E