

RESOLUTION NO. 1996-8

RESOLUTION AUTHORIZING THE SCPPA EXECUTIVE DIRECTOR TO EXECUTE AND DELIVER AGREEMENTS WITH PACIFICORP ENERGY AND WITH O'MELVENY & MYERS FOR ASSESSMENT AND DEVELOPMENT OF A JOINT PROPOSAL TO PURCHASE, OR PURSUE OTHER ECONOMICALLY VIABLE ALTERNATIVES TO THE PURCHASE OF, COAL PROPERTIES

WHEREAS, the Board of Directors of the Southern California Public Power Authority (SCPPA) is aware of the continued emergence of the deregulated energy marketplace developing in California and elsewhere in the United States; and

WHEREAS, the Board desires to improve the competitive position of its members by enabling interested members to jointly review feasible methods for implementing prudent cost reductions for projects involving its members; and

WHEREAS, the Board desires to improve the financial performance of its members by ensuring that SCPPA evaluates methods of reducing costs and/or enhancing revenues for projects involving its members; and

WHEREAS, the City of Los Angeles Department of Water and Power (LADWP), as Operating Agent for the Intermountain Power Project (IPP), has a responsibility to evaluate methods of reducing the costs of operation of the Intermountain Generating Station (IGS); and

WHEREAS, a significant portion of the cost of operation of IGS is the cost of coal used at IGS; and

WHEREAS, one or more subsidiaries of the Coastal Corporation (Coastal) owns two of the mines (Mines) supplying a significant portion of the coal for IGS; and

WHEREAS, Coastal has announced the impending sale of their domestic coal properties, including the Mines; and

WHEREAS, it may be economically feasible for LADWP, and for other Southern California municipal utilities who purchase power from IGS and are members of SCPPA, to enter into contractual arrangements associated with the purchase of the Mines, or to pursue other economical alternatives such as the purchase of the Mines by others in return for restructuring of the coal supply contracts relating to the Mines; and

WHEREAS, PacifiCorp Energy, Inc. also desires to improve its financial position by a possible joint acquisition of the Coastal Mines or by other economical alternatives; and

WHEREAS, developing and evaluating such potential contractual arrangements will require specialty expertise, management flexibility, and mutual cooperation among any interested parties; and

WHEREAS, SCPPA desires to facilitate the developing and evaluating of such potential contractual arrangements relating to the Mines; and

WHEREAS, the agreements referred to in Section 1 of this Resolution constitute agreements for personal or professional services; and

WHEREAS, the Board hereby finds and determines that it would not be advantageous to SCPPA to contract with the entities referred to in Section 1 of this Resolution through a sealed competitive proposal process given, among other reasons, the nature of the services to be rendered by such entities and the limited time available for the possible purchase of the Mines; and

WHEREAS, until such time as other SCPPA members elect in writing to pay a portion of the costs of studying such potential contractual arrangements, LADWP will pay 100 percent of the costs relating thereto (including all amounts payable to legal counsel, consultants and others retained or used by SCPPA as contemplated by, or in connection with, this Resolution).

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Southern California Public Power Authority as follows:

1. Upon written request by the General Manager or an Assistant General Manager of LADWP, the Executive Director (after consultation with the President of SCPPA) and the President of SCPPA are each hereby authorized and directed to execute and deliver agreements with such entities as the Executive Director (after consultation with the President of SCPPA) or the President of SCPPA deems appropriate for the assessment and development of a joint proposal to purchase, or pursue other economically viable alternatives to the purchase of, coal properties, including properties located in the State of Utah, including agreements with PacifiCorp Energy, Inc. and with O'Melveny & Myers in substantially the form attached hereto.

2. Each of the President, Vice President, Secretary, any Assistant Secretary, the Executive Director and any other officer of SCPPA is hereby authorized to execute and deliver any and all documents and instruments, and to do and cause to be done any and all acts and things necessary or proper for carrying out the transactions relating to the Mines contemplated by this Resolution.

3. This Resolution shall become effective immediately.

THE FOREGOING RESOLUTION is approved and adopted by  
SCPPA, this 16th day of May, 1996.

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President  
Southern California Public  
Power Authority

ATTEST:



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Assistant Secretary  
Southern California Public  
Power Authority

# DRAFT

Executive Director  
225 South Lake Avenue, Suite 1410  
Pasadena, California 91101

Subject: Engagement Letter for Consulting Services  
from O'Melveny & Myers

Dear Mr. Waters:

This proposal for consulting services is submitted based on several discussions over the past few weeks regarding the potential acquisition of certain coal properties currently owned by subsidiaries of The Coastal Corporation. The proposed sale of these properties was noticed for sale in late February 1996. As these properties provide over 2,000,000 tons/year to Intermountain Generating Station (IGS), I understand that LADWP, as well as SCPPA or some of its other members with partial interests in IGS, may be interested in bidding for the properties as part of an overall strategy to lower IGS fuel costs. In this connection there is also consideration as to strategic proposals for alliances relating not only to fuel strategy but also to external generation asset management and power marketing which may involve participation by LADWP and SCPPA or some of its members.

### Services Provided

The scope of services provided under this agreement shall be those necessary and appropriate to pursue and/or effectuate the activities described in SCPPA Resolution 1996-8, directed toward the assessment and development of a joint proposal to purchase, or pursue other economically viable alternatives to the purchase of, coal properties, including properties located in the State of Utah. These activities will include consideration and effectuation of IGS-related fuel strategies, as well as strategic alliance strategies. These activities may involve, among others, restructuring of existing utility and financial arrangements and the formulation of new utility and financial arrangements. Guidance and advice for restructuring associated with alliance

and acquisition activities and participation as required in the development, negotiation and effectuation of such arrangements will be provided through this agreement.

In connection with the ensuing discussion, negotiation and implementation associated with these matters, our services will include, but not be limited to, the following: assistance in the development of project, contract and operational strategies; assessment of issues; participation in negotiation and preparation of contractual arrangements; analysis and advice with respect to responses to proposals; and providing advice and counsel as appropriate.

Fees and Expenses

Services under this agreement will be provided at the following hourly rates:

Partner	\$315
Associates	\$150-\$285
Paralegals	\$45-\$120

A separate accounting will be provided for the fees and expenses hereunder.

The total cost of service, including reimbursement for travel and other out-of-pocket expenses, will not exceed \$150,000 without prior authorization.

SCPPA will be billed monthly for actual hours worked and travel and other out-of-pocket expenses incurred. Actual expenses will be billed at cost in accordance with SCPPA's Out-of-Pocket Travel and Personal Expenses Guidelines.

We hereby acknowledge and agree that amounts to be paid by SCPPA under this agreement are to be made only from any moneys received from LADWP (and any other members of SCPPA which decide to pay a portion of such amounts) for the purpose of paying such amounts.

Duration

This agreement shall become effective as of April 19, 1996 and remain in effect for twelve (12) months thereafter, unless earlier terminated by either party giving thirty (30) calendar days' advance written notice to the other party.

In the execution of our services rendered under this agreement, we understand that we will be working directly with and under the direction of Thomas H. McGuinness of the Los Angeles Department of Water and Power (LADWP). Subject to any confidentiality agreements, we will provide to LADWP and SCPA copies of all correspondence and work products arising from work performed under this agreement.

Thank you for the opportunity to be of service to SCPA.

Sincerely,

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ROBERT E. FERDON  
O'Melveny & Myers  
Citicorp Center  
152 East 53rd Street  
New York, New York 10022-4611  
Tel: (212) 326-2000

Accepted By:

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

By: \_\_\_\_\_  
Daniel W. Waters, Executive Director

Date: \_\_\_\_\_

(rfltr1.doc)



May 3, 1996

**DRAFT**

Mr. Daniel W. Waters  
Executive Director  
Southern California Public Power Authority  
225 South Lake Avenue, Suite 1410  
Pasadena, CA 91101

Dear Mr. Waters:

Coal Project Evaluation Cost Sharing/SCPPA Alliance Studies

This letter agreement between SCPPA and PacifiCorp Energy, Inc. ("PE") will enable both parties to share the associated costs required in the assessment and development of a joint proposal to purchase, or pursue other economically viable alternatives to the purchase of, coal properties, including properties located in the State of Utah (the "Coal Project"). These coal properties and other assets, currently owned by Coastal Corporation and its subsidiaries, are part of Coastal's extensive coal operations which were noticed for sale in late-February 1996 and currently provide over 2,000,000 tons/year to Intermountain Generating Station ("IGS"). In order to maximize the value of the Coal Project to all parties and to enhance the viability and attractiveness of any offer to purchase the coal properties, the assessment will identify, evaluate and include as part of the Coal Project other energy transactions or assets arising from or relating to the Coal Project as a means of reducing operating expenses chargeable to or increasing revenues received by SCPPA members. It is the objective of both parties to this agreement to work together to identify, evaluate, and develop terms of a joint project to maximize the inherent mutual benefits which this opportunity presents.

Expenses to be Shared

The expenses to be shared under this agreement shall include the following:

- The services of a mining specialist for valuation of the Coal Project.
- The services of a financial consultant to assess alternative financial strategies and arrangements required in the Coal Project.
- Other professional services, office arrangements, and other expenses as may be determined necessary or appropriate by the parties.

### Cost-Sharing Arrangements

In the execution of our services rendered under this agreement, we understand that we will be working directly with Mr. Thomas H. McGuinness of the Los Angeles Department of Water and Power ("LADWP"). Subject to any confidentiality agreements with third parties, PE and LADWP will provide SCPPA copies of all correspondence and work products produced under this Agreement.

SCPPA agrees that PE shall execute all agreements with service providers for expenses to be shared by PE and SCPPA. Prior to executing any such agreement, however, PE shall obtain the written concurrence of Mr. McGuinness. On a monthly basis, PE will bill SCPPA's 50 percent share of costs and expenses so incurred. This Agreement does not authorize or empower PE to ~~otherwise~~ enter into any agreement or contract that binds SCPPA in any manner.  
*otherwise*

PE will submit an original bill each month to you at SCPPA's Pasadena address. PE will send a copy of each billing to LADWP's Michael J. Nosanov, Coal Supply Manager, 111 North Hope Street, Room 1107, Los Angeles, CA 90012. SCPPA will remit payment based on PE's original bill in the due course of business. Subsequently, such billings will be subject to SCPPA and/or LADWP's usual and customary audit review.

PE understands and acknowledges that as of the date of this letter, LADWP is the only member of SCPPA that has agreed to pay SCPPA's 50% share of the joint costs to be incurred under this Agreement. Accordingly, the parties acknowledge that SCPPA will remit payment for monthly billings from PE only after receipt of payment from LADWP of funds sufficient to cover those monthly charges. PE acknowledges that LADWP is currently the sole source of funds available to SCPPA for the payment of its obligations under this Agreement and that neither SCPPA funds nor the funds of other SCPPA members are currently available for the payment of SCPPA's obligations under this Agreement. If and when other members of SCPPA elect to participate with LADWP this Agreement shall be amended, in writing, to include the participation of such additional SCPPA members and their respective participation percentage. Such amendment shall not require approval by the SCPPA Board of Directors.

PE acknowledges that SCPPA has entered into this agreement for the benefit of LADWP and any other SCPPA members that may elect to share costs and expenses in the future (together with LADWP, the "Participating Members"). Notwithstanding anything to the contrary in this agreement, PE hereby acknowledges and agrees that SCPPA and its members (other than the Participating Members) shall not incur any liability of any nature as a result of or relating to SCPPA entering into this agreement, and neither PE nor any of its affiliates or agents shall commence or prosecute any lawsuit, action or other proceeding against SCPPA or any of its members (other than the Participating Members) for monetary damages in connection with or relating to this agreement, except to enforce their obligations of confidentiality contained herein.

Each party shall, however, bear 100 percent of the costs for their respective staff assigned to this project, including but not limited to in-house professional staff, independent outside consultants, and legal counsel, other than those jointly retained under this agreement.

Neither party shall institute, pursue or engage in a proposal for the Coal Project, either on its own behalf or with any affiliate or third party, without the concurrence and participation, or prior written consent, of the other party.

In the course of the evaluation, development and implementation of the Coal Project, either party may provide the other with proprietary and internal information. This information is the product of time, effort, money and creative skills. Some or all of this information, including but not limited to oral information, data, reports, interpretations, contract terms and conditions, prices, forecasts and records, may be confidential. If oral information is confidential, the party providing the information shall indicate this fact at the time it is provided. If certain written information is confidential, it will be labeled as "confidential" or "proprietary." Except to the extent required by applicable law or judicial or administrative process, the party receiving this information shall hold it in confidence and shall limit access to this information only to those employees, consultants, agents or attorneys having a specific need for such information in the performance of their duties. The party receiving confidential information shall protect this information from unauthorized copying, use or disclosure without the prior written consent of the party providing the information and shall return any written materials containing confidential information upon request. If any information identified as confidential is requested or required by any court or administrative body, the party who originally provided the information shall be promptly notified and shall have the right to seek a protective order preventing or limiting the disclosure of the information. The party receiving the confidential information shall cooperate with the reasonable requests and efforts of the party seeking to protect any confidential information. Confidential information shall not include information: a) that is or becomes known or available to the public, other than by the breach of this agreement; b) that was already known to the other party; c) authorized to be disclosed by the party that was provided the information; d) that was independently developed without use of or reference to the confidential information, as evidenced by records kept in the ordinary course of business; or (e) information provided by either party without being labeled "confidential" or "proprietary."

Notwithstanding the foregoing, the parties recognize that SCPPA is acting on behalf of LADWP and its other members. Accordingly, the parties understand and agree that PE may disclose confidential information to LADWP or SCPPA, and that SCPPA may disclose confidential information both to LADWP and to SCPPA's other members (including members desiring to evaluate their own participation in the Coal Project). In each case, however, confidential information will be disclosed by SCPPA only if and to the extent appropriate to carry out the responsibilities of SCPPA to its members and only pursuant to further agreements and arrangements to maintain the confidentiality of such information, which shall be in a form acceptable to the parties and at least as restrictive as the terms of this Agreement. The parties further recognize that in order to obtain the approvals necessary to implement specific transactions in connection with the Coal Project or to comply with their responsibilities or the responsibilities of SCPPA's members to third parties, it may be necessary to make additional

disclosures of confidential information. The parties agree to cooperate with each other in identifying such situations and in developing agreements and arrangements appropriate to each situation for maintaining the confidentiality of such information on terms at least as restrictive as the terms of this Agreement.

Term

This agreement shall become effective on the date of signature below and remain effective until terminated for any reason by either party giving ten (10) calendar days' advance written notice to the other party. ~~Thereafter, this agreement shall continue on a month to month basis until terminated~~ Termination of this Agreement shall not relieve either party of its obligations to pay ( as provided herein) for shared expenses incurred or committed prior to termination or of its non-competition or confidentiality obligations.

We look forward to working with you in developing a mutually beneficial relationship.

Sincerely,

PACIFICORP ENERGY, INC.

\_\_\_\_\_  
J. BRETT HARVEY  
President

ACCEPTED BY:

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

By: \_\_\_\_\_  
DANIEL W. WATERS  
Executive Director

\_\_\_\_\_  
Date