

## **CHARTER OF THE AUDIT COMMITTEE OF CALPINE CORPORATION**

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### **Purpose and Primary Objectives and Responsibilities**

The purpose of the Audit Committee (the “Committee”) of the Board of Directors of Calpine Corporation (the “Company”) is to assist the Board of Directors in fulfilling its responsibilities to the Company and its shareholders, particularly with respect to the oversight of the accounting and financial reporting practices of the Company.

The primary objectives and direct responsibilities of the Committee are to:

- (a) assist the Board of Directors in the oversight of:
  - (i) the integrity of the Company’s financial statements;
  - (ii) the Company’s compliance with legal and regulatory requirements;
  - (iii) the qualifications and independence of the independent auditor of the Company; and
  - (iv) the performance of the internal audit function and independent auditors of the Company;
- (b) prepare an audit committee report as required by the Securities and Exchange Commission for inclusion in the Company’s proxy statement distributed in connection with the annual meeting of shareholders;
- (c) retain and terminate the independent auditor of the Company;
- (d) at least annually, obtain and review a report by the independent auditor describing:
  - (i) the internal quality-control procedures of the independent auditor;
  - (ii) any material issues raised by the most recent internal quality-control review, or peer review, of the independent auditor, or by any inquiry or investigation by governmental or professional authorities, within the preceding five (5) years, respecting one or more independent audits, carried out by the independent auditor, and any steps taken to deal with any such issues; and
  - (iii) all relationships between the independent auditor and the Company;
- (e) discuss the annual audited financial statements and quarterly financial statements with management and the independent auditor, including the Company’s

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disclosures under “Management’s Discussion and Analysis of Financial Condition and Results of Operations”;

- (f) discuss earnings press releases, as well as financial information and earnings guidance provided to analysts and rating agencies;
- (g) obtain advice and assistance from outside legal, accounting and/or other advisers, as deemed appropriate by the Committee;
- (h) discuss policies with respect to risk assessment and risk management;
- (i) meet separately and periodically, with management, with internal auditors (or other personnel responsible for the internal audit function) and with independent auditors of the Company;
- (j) review with the independent auditors of the Company any audit problems or difficulties and management’s response;
- (k) set clear hiring policies for employees or former employees of the independent auditors of the Company;
- (l) report regularly to the Board of Directors; and
- (m) perform an annual performance evaluation of the Committee and the members of the Committee.

### **Committee Composition**

The Committee shall consist of no fewer than three members.

Each member of the Committee shall be appointed by the Board of Directors, considering the recommendations of the Nominating and Governance Committee of the Board of Directors. No member of the Committee may be removed except by a majority of independent directors (as defined in the Corporate Governance Guidelines) then in office. The Board of Directors may fill vacancies on the Committee by a majority vote of the Board of Directors.

Each member of the Committee must qualify as an independent director under the Corporate Governance Guidelines and otherwise meet any qualifications for membership on an audit committee imposed by any exchange or market on which the Company’s common stock may be listed (the “Exchange”) and any other laws and regulations applicable to the Company. Without limiting the generality of the foregoing, each member of the Committee must be financially sophisticated, as such qualification is determined by the Board of Directors.

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One member of the Committee must qualify as an audit committee financial expert under the rules promulgated by the Securities and Exchange Commission pursuant to Section 407 of the Sarbanes-Oxley Act of 2002.

The Board of Directors shall designate one member of the Committee as its chairperson (the “Chairman”). Except as may be expressly provided to the contrary in the by-laws of the Company, this charter or the Corporate Governance Guidelines of the Company, the Committee shall determine the rules of procedure under which it shall operate.

### **Committee Structure and Operation**

The Committee will meet no less than four times per year.

The Chairman shall preside over the meetings of the Committee and shall appoint a secretary (who need not be a member of the Committee) to take written minutes of the meetings.

The Chairman, in consultation with the other members of the Committee, will determine the frequency and duration of the meetings of the Committee and the agenda of items to be addressed at each meeting. In advance of each meeting, the Chairman shall circulate the agenda for each meeting to each member of the Committee. In addition, if requested by the Board of Directors, the Chairman shall call a meeting of the Committee and place on the agenda such items as may be requested by the Board of Directors.

The Committee may invite to its meetings other members of the Board of Directors, members of the Company’s management and such other persons as the Committee deems appropriate. The Committee may exclude any person (other than a member of the Committee) from a meeting as the Committee deems appropriate.

The Committee may form and delegate any of its authority and/or responsibilities to one or more subcommittee(s) as deemed appropriate by the Committee; provided, however, that no subcommittee shall consist of fewer than two members; and provided further that the Committee shall not delegate to a subcommittee any power or authority required by any applicable law, regulation or listing standard to be exercised by the Committee as a whole.

### **Authority**

The Committee shall have the authority to

- (a) obtain, at the expense of the Company, the advice and assistance of outside advisers, including legal and accounting advisers, as reasonably necessary to fulfill its responsibilities; and
- (b) perform all acts necessary or appropriate to fulfill its responsibilities and achieve its objectives under this charter and as otherwise directed by the Board of Directors, provided such acts are not in violation of the by-laws and certificate of

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incorporation of the Company, this charter, the Corporate Governance Guidelines, the Company's Code of Conduct or any laws and regulations applicable to the Company.

### **Independent Auditors**

The Committee shall have the sole authority to:

- (a) appoint and replace the independent auditors of the Company, subject to shareholder ratification if deemed appropriate by the Committee or required by the by-laws or certificate of incorporation of the Company, the Corporate Governance Guidelines or any laws and regulations applicable to the Company;
- (b) approve, in advance of their provision, any audit services to be provided by the independent auditors of the Company;
- (c) approve, in advance of their provision, any non-audit services to be provided by the independent auditors of the Company; and
- (d) approve all engagement fees and terms of the independent auditors of the Company.

The Committee shall be directly responsible for the oversight of the work of the independent auditors of the Company, including the resolution of disagreements between management and the independent auditors of the Company regarding financial reporting.

The Committee shall, on a periodic basis as deemed appropriate by the Committee, review the qualifications and independence of the independent auditor of the Company.

The independent auditors of the Company shall report directly to the Committee.

The Committee shall:

- (a) ensure that the independent auditors of the Company and its partners are in compliance with the provisions of the Sarbanes-Oxley Act of 2002 and the rules promulgated thereunder relating to required rotation of audit partners;
- (b) discuss with the independent auditors of the Company any communications between the audit team members and the independent auditor's "national office" regarding auditing or accounting issues presented by the engagement;
- (c) discuss with management and the independent auditors of the Company any accounting adjustments that were noted or proposed by the independent auditors of the Company; and

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- (d) review any reports of the independent auditors of the Company required under the Sarbanes-Oxley Act of 2002 and obtain from the independent auditors of the Company any information with respect to illegal acts in accordance with Section 10A of the Securities Exchange Act of 1934 and the rules promulgated thereunder.

### **Internal Audit Function**

The committee shall ensure the Company maintains an internal audit function.

The Director of Internal Audit shall report directly to the Committee.

The Committee shall be responsible, on a periodic basis as deemed appropriate by the Committee, for reviewing and evaluating:

- (a) the internal audit function of the Company, including the independence, competence, staffing adequacy and authority of the internal auditor, the reporting relationship among the internal auditor, financial management and the Committee, the internal audit reporting obligations, the proposed internal audit plans and the coordination of such plans with the independent auditors of the Company;
- (b) the findings of the internal audit staff from completed audits; and
- (c) the appointment, reassignment or dismissal of the director of internal audit.

### **Reviews and Evaluations**

The Committee shall be responsible, at least on an annual basis, for reviewing and evaluating

- (a) the performance of the Committee and the members of the Committee; and
- (b) the performance of the independent auditors of the Company.

The Committee shall be responsible, on a periodic basis as deemed appropriate by the Committee, for reviewing and evaluating:

- (a) with management and the independent auditors of the Company, the annual audited financial statements and quarterly financial statements, including the Company's disclosures under "Management's Discussion and Analysis of Financial Condition and Results of Operations," prior to the filing of the annual report on Form 10-K and the quarterly report on Form 10-Q, as applicable;
- (b) with management and the independent auditors of the Company, as applicable

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- (i) significant issues regarding accounting principles and financial statement presentations, including any significant changes in the Company's selection or application of accounting principles, and significant issues regarding the adequacy of the Company's disclosure controls and procedures;
  - (ii) analyses prepared by management or the independent auditors of the Company setting forth significant financial reporting issues and judgments made in connection with the preparation of the financial statements, including analyses of the effects of alternative methods under generally accepted accounting principles on the financial statements;
  - (iii) any management letter provided by the independent auditors of the Company and the Company's response to such management letter;
  - (iv) any difficulties or issues encountered in the course of the audit work performed by the independent auditors of the Company, including any disagreements with management or restrictions in the scope of the independent auditors to the Company activities or on access to requested information and management's response thereto;
  - (v) the effect of regulation and accounting initiatives on the financial disclosures of the Company; and
  - (vi) earnings press releases, as well as financial information and earnings guidance provided to analysts and rating agencies;
- (c) with management, the Company's major financial risk exposures and the steps management has taken to monitor and control such exposures, including the Company's risk assessment and risk management policies; and
- (d) with management and legal counsel, the Company's system for assessing whether the Company's financial statements, reports and other financial information required to be filed with the Securities and Exchange Commission and other governmental organizations comply with all applicable laws and regulations.

The Committee shall make any necessary changes, or recommend that the Board of Directors make any necessary changes, required to correct any deficiencies noted by the Committee in performing the reviews and evaluations set forth above.

### **Funding**

The Board of Directors shall ensure that the Company provides appropriate funding, as determined by the Committee, in order for the Committee to fulfill its responsibilities and achieve its objectives under this charter and as otherwise directed by the Board of Directors,

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including the payment of compensation to the independent auditors of the Company and to any advisers engaged by the Committee pursuant to this charter.

### **Additional Responsibilities**

The Committee shall, on a periodic basis as deemed appropriate by the Committee, discuss

- (a) with management and the independent auditors of the Company, any correspondence with regulators or governmental agencies and any employees complaints or published reports which raise material issues regarding the Company's financial statements or accounting policies; and
- (b) with the Company's chief counsel, legal or regulatory matters that may have a material impact on the Company's financial statements or its compliance and reporting policies.

The Committee shall establish procedures for:

- (a) the receipt, retention and treatment of complaints received by the Company regarding accounting, internal accounting controls or auditing matters; and
- (b) the confidential, anonymous submission by employees of the Company of concerns regarding questionable accounting and auditing matters.

Review disclosures made by the principal executive officer and principal financial officer of the Company regarding compliance with the certifications requirements under the Sarbanes-Oxley Act of 2002 and the rules promulgated thereunder, including with respect to the Company's disclosure controls and procedures.

### **Limitations of Committee's Roles**

Although the Committee has the responsibilities and powers set forth in this charter, it is not the duty of the Committee to prepare financial statements, plan or conduct audits or to determine that the Company's financial statements and disclosures are complete and accurate and are in accordance with generally accepted accounting principles and applicable rules and regulations. These are the responsibilities of management and the independent auditors of the Company.

### **Disclosure of Charter**

This charter shall be made available on the Company's website.

### **Date of Adoption**

This charter was adopted by the Board of Directors effective January 31, 2008, and amended on February 26, 2009.