

# CALPINE CORPORATION

## AUDIT COMMITTEE CHARTER

### I. MEMBERSHIP

There shall be a committee of the Board to be known as the Audit Committee (“the Committee”). The Committee shall be comprised of at least three members, each of whom shall be a member of the Board. The members of the Committee shall be elected by the Board for a term of one year or, if any such member shall be elected to fill the remaining term of a prior member, until the expiration of such term. At least one member of the Committee shall be a “financial expert”, as defined by SEC regulations. Each member of the Committee shall:

- Qualify as an “independent director” as defined by the rules of the NYSE and by Section 10A(m)(3) of the Securities Exchange Act of 1934 (the “Exchange Act”) and the regulations of the SEC promulgated thereunder; and
- Be financially literate, as interpreted by the Board in its business judgment, or shall become financially literate within a reasonable period of time following his or her appointment.

The Board shall have sole authority to appoint and remove members of the Committee. Any such appointment shall be based upon the recommendation of the Nominating and Governance Committee of the Board. A chairperson of the Committee shall be designated by the Board from among the members of the Committee.

### II. PURPOSE

The Committee shall provide assistance to the Board in fulfilling the Directors’ fiduciary responsibilities relating to:

- The integrity of the Corporation’s financial statements;
- The Corporation’s compliance with legal and regulatory requirements;
- The qualifications, independence and performance of the Corporation’s independent auditors; and
- The performance of the Corporation’s internal audit function.

All actions taken by the Committee shall be in its capacity as a committee of the Board, and no member of the Committee shall be deemed to have assumed any liability beyond that of a member of the Board by virtue of becoming a member of the Committee. The Committee shall seek to maintain free and open communication among directors, independent auditors, internal auditors and management of the Corporation in carrying out its responsibilities pursuant to this Charter. All expenses of the Committee that are necessary or appropriate in carrying out its duties shall be borne by the Corporation.

### III. AUTHORITY AND RESPONSIBILITIES

The Committee may form, and delegate authority to, one or more subcommittees consisting of one or more members of the Committee when appropriate and as otherwise permitted by the By-laws of the Corporation as in effect at the time of such formation and/or delegation, including the authority to grant preapprovals of audit and permitted non-audit services as described below, provided that decisions of any such subcommittee to grant preapprovals shall be presented to the full Committee at its next meeting.

In carrying out its responsibilities under this Charter, the Committee shall:

A. Be solely responsible for the appointment (subject, if applicable, to shareholder ratification), termination, compensation, and oversight of the work of the independent auditors undertaken in connection with preparing or issuing an audit report or related services, including resolution of disagreements between management of the Corporation and the independent auditors with respect thereto. The independent auditors shall report directly to the Committee. Funding for the compensation of the independent auditors, as determined by the Committee, shall be provided by the Corporation.

B. Preapprove all audit and permitted non-audit services to be provided by the independent auditors (including the fees and other terms thereof), subject to the de minimus exceptions for non-audit services provided by Section 10A(i)(1)(B) of the Exchange Act, which services shall be subsequently approved by the Committee prior to the completion of the audit. Funding for the compensation of the auditors in respect of all preapproved services, as determined by the Committee, shall be provided by the Corporation. The Committee shall not engage the independent auditors to perform any of the specific non-audit services proscribed by law or regulation.

C. Receive reports not less frequently than annually from the independent auditors regarding:

- The critical accounting policies and estimates and other significant accounting practices of the Company;
- All alternative treatments of financial information within generally accepted accounting principles that have been discussed with management of the Corporation, identifying in each instance the ramifications of the use of each such alternative disclosure and the treatment preferred by the independent auditors; and
- All material written communication between the independent auditors and management of the Corporation (including writings transmitted by email), such as any management letter or schedule of unadjusted differences.
- Review on an annual basis a report by the independent auditors describing the independent audit firm's internal quality controls and procedures for financial reporting and any material issues raised by the most recent internal quality-control review or by any inquiry or

investigation by governmental or professional authorities, respecting one or more independent audits carried out by the independent audit firm.

D. Review quarterly with the independent auditors and appropriate members of management of the Corporation the adequacy and effectiveness of the internal controls and procedures for financial reporting and disclosure controls and procedures of the Corporation as required by relevant laws and regulations, as well as proposed disclosures and certifications with respect thereto.

E. Evaluate the qualifications, performance and independence of the independent auditors, including considering whether the independent auditors' quality controls are adequate and whether the provision of permitted non-audit services by the independent auditors is compatible with maintaining the independent auditors' independence under relevant laws and regulations as well as applicable accounting literature. The committee shall, not less frequently than annually, present its conclusions with respect to the independent auditors to the Board.

F. Review and discuss the interim financial statements, the Management's Discussion and Analysis section and other disclosure with management of the Corporation and the independent auditors prior to the filing by the Corporation of any Quarterly Report on Form 10-Q. Further, the Committee shall discuss with the independent auditors the results of their quarterly review and any other matters required to be communicated to the Committee by the independent auditors under generally accepted auditing standards.

G. Review and discuss the audited financial statements, the Management's Discussion and Analysis section and other disclosure with management of the Corporation and the independent auditors prior to the filing by the Company of any Annual Report on Form 10-K, including in the review with the independent auditors a discussion of their judgment about the quality and acceptability of accounting principles, the reasonableness of significant judgments and the clarity of the disclosures in the financial statements. Further, the Committee shall discuss with the independent auditor (i) the results of the annual audit, (ii) any audit problems or difficulties encountered in the course of performing the annual audit and management's response thereto, and (iii) any other matters required to be communicated to the Committee by the independent auditors under generally accepted auditing standards.

H. Recommend to the Board whether to include the audited financial statements and Management's Discussion and Analysis in the Corporation's Annual Report on Form 10-K.

I. Meet with the independent auditors and financial management of the Corporation to review the scope of the proposed audit for the current year and the audit procedures to be used, and at the conclusion thereof review such audit, including any comments or recommendations of the independent auditors.

J. Prepare an audit committee report as required by the SEC to be included in the Corporation's annual proxy statement

K. Review and evaluate the performance of the lead partner of the independent auditor team.

L. Discuss with management of the Corporation the Corporation's major financial risk exposures and the steps management has taken to monitor and control such exposures, including a discussion of the Corporation's risk assessment and risk management policies.

M. Ensure the rotation of the lead partner of the independent auditor team and the audit partner responsible for reviewing the audit as required by laws or regulations.

N. Recommend to the Board policies for the Corporation's hiring of employees or former employees of the independent auditors who have participated in any capacity in a prior audit of the Corporation.

O. Obtain from the independent auditors assurance that Section 10A(b) of the Exchange Act (relating to discovery by the independent auditors in the course of its audit or related work for the Corporation of any illegal act) has not been implicated.

P. Discuss with management of the Corporation and the independent auditors the effect on the Corporation's financial statements and related disclosures of:

- Proposed regulatory and accounting measures that could affect the Corporation; and
- Off-balance sheet structures utilized by the Corporation.

Q. Review the internal audit function of the Corporation, including the performance of the senior internal auditing executive, the scope of responsibilities of the internal audit department and the staffing and budget of the internal audit department.

R. Review summaries of findings from completed internal audits and a progress report on the proposed internal audit plan, with explanations for any deviations from the original plan.

S. Review with management of the Corporation the policies and practices of the Corporation concerning, and the general content of, earnings press releases and financial information and guidance, if any, provided or to be provided by the Corporation to analysts and rating agencies.

T. Exercise oversight responsibility with respect to the Corporation's Code of Conduct.

U. Retain independent legal, accounting or other advisors, all to be funded by the Corporation.

V. Investigate any matter brought to the Committee's attention within the scope of its duties.

W. Establish procedures for the receipt, retention, and treatment of confidential complaints or other submissions received by the Corporation regarding accounting, internal controls and procedures for financial reporting, disclosure controls and procedures, or other auditing matters.

X. Review and reassess the adequacy of this Charter at least on an annual basis, and present any proposed amendments or revisions of this Charter deemed by the Committee to be necessary or appropriate to the Board for approval.

#### **IV. MEETINGS**

The Committee shall meet no less frequently than quarterly. In addition, or as part of its regularly scheduled meetings, the Committee shall meet with representatives of the Corporation's management and representatives of the independent auditors. As part of the Committee's responsibility to foster open communication in fulfilling its responsibilities under this Charter, the Committee should meet at least annually with management of the Corporation, the director of internal audit, and the independent auditors in separate executive sessions to discuss any matters that the Committee or any of these groups believe should be discussed privately. The Committee shall make regular reports to the Board.

#### **V. MINUTES**

Minutes shall be kept of each meeting of the Committee and shall be provided to each member of the Board as promptly as practicable.

#### **VI. ANNUAL PERFORMANCE EVALUATION**

The Committee shall annually review its own performance, and shall provide a report of such review to the Board.

#### **VII. LIMITATION OF COMMITTEE'S ROLE**

It is not the duty of the Committee to plan or conduct audits or to determine that the Corporation's financial statements are in accordance with generally accepted accounting principles or that the Corporation's disclosures are accurate in all material respects. These are the responsibilities of management of the Corporation and the independent auditors. In addition, it is the responsibility of the Board to determine whether to include audited financial statements and related disclosure regarding the Corporation in the related Annual Report on Form 10-K of the Corporation. Nothing contained in this Charter shall be read to directly or indirectly impose any such responsibility upon the Committee.