ICC INTERNATIONAL COURT OF ARBITRATION

CASE No. 19784/AGF/RD

1. SOUTHERN CALIFORNIA EDISON COMPANY
   (U.S.A.)

2. EDISON MATERIAL SUPPLY LLC
   (U.S.A.)

3. SAN DIEGO GAS & ELECTRIC COMPANY
   (U.S.A.)

4. CITY OF RIVERSIDE
   (U.S.A.)

vs/

1. MITSUBISHI NUCLEAR ENERGY SYSTEMS, INC.
   (U.S.A.)

2. MITSUBISHI HEAVY INDUSTRIES, LTD.
   (Japan)

This document is an original of the Addendum rendered in conformity with the Rules of Arbitration of the ICC International Court of Arbitration.
ICC ARBITRATION CASE NO. 19784/AGF/RD

In the matter of an arbitration
under the Rules of Arbitration of the International Chamber of Commerce ("ICC")
in force as from 1 January 2012
("ICC Rules")

between:

1. SOUTHERN CALIFORNIA EDISON COMPANY;
   (UNITED STATES OF AMERICA)

2. EDISON MATERIAL SUPPLY LLC;
   (UNITED STATES OF AMERICA)

3. SAN DIEGO GAS & ELECTRIC COMPANY; AND
   (UNITED STATES OF AMERICA)

4. CITY OF RIVERSIDE
   (UNITED STATES OF AMERICA)

   The Claimants

and

1. MITSUBISHI NUCLEAR ENERGY SYSTEMS, INC.; AND
   (UNITED STATES OF AMERICA)

2. MITSUBISHI HEAVY INDUSTRIES, LTD.
   (JAPAN)

   The Respondents

ADDENDUM

Arbitral Tribunal
Jonathan D. Schiller
John W. Hinchey
Professor Dr. Albert Jan van den Berg (President)

12 June 2017
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</thead>
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<tr>
<td><strong>2017 ICC Rules</strong></td>
<td>Arbitration Rules of the International Chamber of Commerce, as in force from 1 March 2017</td>
</tr>
<tr>
<td><strong>Addendum</strong></td>
<td>This present addendum to the Final Award in ICC Case 19784/AGF/RD</td>
</tr>
<tr>
<td><strong>Adjusted Purchase Order Price</strong></td>
<td>The Adjusted Purchase Order Price is the Purchase Order Price after adjustments for liquidated damages pursuant to the RSG Contract</td>
</tr>
<tr>
<td><strong>Award</strong></td>
<td>The Award in ICC Case 19784/AGF/RD</td>
</tr>
<tr>
<td><strong>Claimants</strong></td>
<td>Southern California Edison Company, Edison Material Supply LLC, San Diego Gas &amp; Electric Company and City of Riverside</td>
</tr>
<tr>
<td><strong>Claimants’ Corrections Request</strong></td>
<td>The Claimants’ Corrections Request of 12 April 2017</td>
</tr>
<tr>
<td><strong>Concurring and Dissenting Opinion</strong></td>
<td>The Concurring and Dissenting Opinion of Mr. Jonathan Schiller</td>
</tr>
<tr>
<td><strong>Counter-Memorial</strong></td>
<td>The Respondents’ Counter-Memorial and Counterclaims, filed on 11 May 2015</td>
</tr>
<tr>
<td><strong>$</strong></td>
<td>United States dollar</td>
</tr>
<tr>
<td><strong>Edison</strong></td>
<td>Southern California Edison Company and Edison Material Supply LLC</td>
</tr>
<tr>
<td><strong>EMS</strong></td>
<td>Edison Material Supply LLC</td>
</tr>
<tr>
<td><strong>Hearing</strong></td>
<td>Hearing held for the arbitration from 21 March 2016 through 29 April 2016 in San Francisco, USA</td>
</tr>
<tr>
<td><strong>ICC</strong></td>
<td>International Chamber of Commerce</td>
</tr>
<tr>
<td><strong>ICC Court</strong></td>
<td>International Court of Arbitration of the International Chamber of Commerce</td>
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<td><strong>ICC Rules</strong></td>
<td>Arbitration Rules of the International Chamber of Commerce, as in force from 1 January 2012</td>
</tr>
<tr>
<td><strong>Liability Cap</strong></td>
<td>Cap on Mitsubishi’s overall liability as agreed by Edison during contract negotiations and specified in Section 1.21.2 of the RSG Contract</td>
</tr>
<tr>
<td><strong>Mitsubishi or MHI</strong></td>
<td>Mitsubishi Heavy Industries, Ltd. and Mitsubishi Heavy Industries America, Inc. (or Mitsubishi</td>
</tr>
<tr>
<td>Term</td>
<td>Description</td>
</tr>
<tr>
<td>-------------------------------</td>
<td>---------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td><strong>Parties</strong></td>
<td>The Claimants and the Respondents collectively</td>
</tr>
<tr>
<td><strong>Party</strong></td>
<td>The Claimants and the Respondents individually</td>
</tr>
<tr>
<td><strong>Purchase Order</strong></td>
<td>The purchase order agreement between EMS and MHIA, including addendums thereto</td>
</tr>
<tr>
<td><strong>Purchase Order Price</strong></td>
<td>The Purchase Order Price is the purchase price for nuclear steam generators, as initially established in a Purchase Order between EMS and MHIA and as subsequently modified by various change orders</td>
</tr>
<tr>
<td><strong>Respondents</strong></td>
<td>Mitsubishi Nuclear Energy Systems, Inc. and Mitsubishi Heavy Industries, Ltd.</td>
</tr>
<tr>
<td><strong>Respondents’ Corrections</strong></td>
<td>The Respondents request for corrections, dated 3 April 2017</td>
</tr>
<tr>
<td><strong>Remaining Liability Cap</strong></td>
<td>The Remaining Liability Cap is the Adjusted Purchase Order Price after deductions on account of a partial payment by MHI to Edison for invoices related to the repair of the steam generators purchased under the RSG Contract</td>
</tr>
<tr>
<td><strong>Riverside</strong></td>
<td>City of Riverside</td>
</tr>
<tr>
<td><strong>RSG Contract</strong></td>
<td>Conformed Specification for Design and Fabrication of the Replacement Steam Generators for Unit 2 and Unit 3, San Onofre Nuclear Generating Station (Specification SO23-617-01), Revision 4 between MHIA and EMS, dated 9 November 2010</td>
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<tr>
<td><strong>SCE</strong></td>
<td>Southern California Edison Company</td>
</tr>
<tr>
<td><strong>SDG&amp;E</strong></td>
<td>San Diego Gas &amp; Electric Company</td>
</tr>
<tr>
<td><strong>SONGS</strong></td>
<td>San Onofre Nuclear Generating Station</td>
</tr>
<tr>
<td><strong>Transcript</strong></td>
<td>The Transcript of the Hearing held from 21 March through 29 April 2016 in San Francisco, USA</td>
</tr>
<tr>
<td><strong>Tribunal</strong></td>
<td>The Tribunal in ICC Case 19784/AGF/RD comprised of Professor Dr. Albert Jan van den Berg, Mr. Jonathan Schiller, and Mr. John Hinchey</td>
</tr>
</tbody>
</table>
I. **INTRODUCTION**

1. This Addendum to the Final Award in ICC Case No. 19784/AGF/RD (the “Award”) is issued pursuant to a request of 3 April 2017 from the Respondents and a request of 12 April 2017 from the Claimants under Article 35(2) of the ICC Rules for (i) in relation to the Respondents’ request, the correction of two computational errors and the correction of three typographical errors in the Award (the “Respondents’ Corrections Request”); and (ii) in relation to the Claimants’ request, for the replacement of the term “Claimants” in various instances of the Award with the term “SCE” or “Edison” (the “Claimants’ Corrections Request”).

2. The defined terms used in this Addendum are used by reference to the defined terms used in the Award.

II. **THE PARTIES**

The Claimants

3. The first claimant is Southern California Edison Company (“SCE”), a regulated public utility incorporated under the laws of the State of California. SCE is a 78.21% co-owner and operating agent of the San Onofre Nuclear Generating Station (“SONGS”). SCE’s address is as follows:

   **SOUTHERN CALIFORNIA EDISON COMPANY**
   
   2244 Walnut Grove Avenue
   
   Rosemead, CA 91770
   
   U.S.A.

4. The second claimant is Edison Material Supply LLC (“EMS”), a Delaware limited liability company with its principal place of business in California. EMS is a subsidiary of SCE. EMS’ address is as follows:
5. SCE and EMS shall be jointly referred to as “Edison.”

6. The third claimant is San Diego Gas & Electric Company (“SDG&E”), a regulated public utility incorporated under the laws of the State of California. SDG&E is engaged in the business of generating, transmitting and distributing electric energy to approximately 3.4 million people located in San Diego and Southern Orange county. SDG&E is a 20% co-owner of SONGS. SDG&E’s address is:

   SAN DIEGO GAS & ELECTRIC COMPANY
   8326 Century Park Court
   San Diego, CA 92123
   U.S.A.

7. The fourth claimant is the City of Riverside (“Riverside”), a California charter city and municipal corporation organized and existing under the laws of the State of California. Riverside, through its public utilities department, owns and operates an electricity generating, transmitting and distribution system providing electricity and other services to the approximately 304,000 residents and other customers within Riverside. Riverside is a 1.79% co-owner of SONGS. Riverside’s address is as follows:

   CITY OF RIVERSIDE
   3900 Main Street
   Riverside, CA 92522
   U.S.A.

8. SCE, EMS, SDG&E and Riverside shall be jointly referred to as the “Claimants.”
9. The Claimants are represented in this arbitration by their duly authorized attorneys, mentioned at page 2 above.

The Respondents

10. The first respondent is Mitsubishi Nuclear Energy Systems, Inc. ("MNES"), a Delaware corporation organized and existing under the laws of the State of Delaware. MNES is the successor-in-interest to Mitsubishi Heavy Industries America, Inc. ("MHIA"). The address of MNES’ principal place of business is as follows:

   **MITSUBISHI NUCLEAR ENERGY SYSTEMS, INC.**  
   13860 Ballantyne Corporate Place, Suite 250  
   Charlotte, North Carolina 28277  
   U.S.A.

11. The second respondent is Mitsubishi Heavy Industries, Ltd., a corporation organized under the laws of Japan. The address of its principal place of business is as follows:

   **MITSUBISHI HEAVY INDUSTRIES, LTD.**  
   16-5 Konan 2-chome  
   Minato-ku  
   Tokyo 108-8215  
   Japan

12. MNES and Mitsubishi Heavy Industries shall be jointly referred to as “MHI,” “Mitsubishi,” or the “Respondents.”

13. The Respondents are represented in this arbitration by their duly authorized attorneys, mentioned at page 2 above.

14. The Claimants and the Respondents are jointly referred to as the “Parties.” The Claimants and the Respondents are individually referred to as “Party.”
III. THE ARBITRAL TRIBUNAL

15. In the present case, the Arbitral Tribunal is constituted as follows:

Jonathan D. Schiller, Co-Arbitrator (nominated jointly by the Claimants)
BOIES, SCHILLER & FLEXNER LLP
575 Lexington Avenue
New York, NY 10022
U.S.A.

John W. Hinchey, Co-Arbitrator (nominated jointly by the Respondents)
JAMS INTERNATIONAL
555 13th Street NW
Suite 400 West
Washington, DC 20004
U.S.A.

Professor Dr. Albert Jan van den Berg, President (nominated by the co-arbitrators)
HANOTIAU & VAN DEN BERG
IT Tower, 9th Floor
Avenue Louise 480 – Bte 9
1050 Brussels
Belgium

IV. PROCEDURE

16. The Final Award in ICC Case No. 19784/AGF/RD is dated 10 March 2017.

17. The Award was notified to the Parties by the Secretariat of the International Court of Arbitration of the International Chamber of Commerce (“ICC Court”) on 13 March 2017 and was deemed received by the Parties on 14 March 2017.

18. On 3 April 2017, the Respondents, in their Respondents’ Corrections Request, requested, “a correction of two computational errors” in the Award and the correction of “a number of typographical errors in both the Award and Concurring and Dissenting Opinion.” The Respondents noted that the “Claimants have
informed [the] Respondents in writing that all [the] Claimants consent to the correction of both computational errors” and that the Claimants had made submissions to the California Public Utilities Commission that “the SONGS Owners have reviewed the relevant computations and find no basis to disagree with MHI’s proposed corrections.”

19. The Respondents’ Corrections Request, dated 3 April 2017, was submitted to the ICC Court within the 30 day limit from the date of notification of the Award as required by Article 35(2) of the ICC Rules, i.e., prior to 14 April 2017.

20. Also on 3 April 2017, the Tribunal invited the Claimants to confirm their consent to the Respondents’ Corrections Request.

21. Also on 3 April 2017, the Secretariat requested that the Tribunal submits its decision on the Respondents’ Corrections Request “within 30 days following” the Claimants’ comment on the Respondents’ Corrections Request, i.e., by 6 May 2017.

22. On 5 and 6 April 2017, the Claimants confirmed their consent to the Respondents’ Corrections Request.

23. On 12 April 2017, the Claimants, in their Claimants’ Corrections Request, requested “that the Award should be corrected to be consistent with the record evidence submitted in this case as reflected by the factual findings in the Award.” The Claimants noted that “Respondents Mitsubishi Nuclear Energy Systems, Inc. and Mitsubishi Heavy Industries Ltd., have reviewed this application and have consented in writing to the correction of the clerical and/or typographical errors included herein.”
24. The Claimants’ Corrections Request, dated 12 April 2017, was submitted to the ICC Court within the 30 day limit from the date of notification of the Award as required by Article 35(2) of the ICC Rules, i.e., prior to 14 April 2017.

25. On 13 April 2017, the Tribunal invited the Respondents to confirm their consent to the Claimants’ Corrections Request.

26. Also on 13 April 2017, the Secretariat requested that the Tribunal submits its decision on the Claimants’ Corrections Request “within 30 days following” the Respondents’ comment on the Claimants’ Corrections Request, i.e., by 14 May 2017.

27. On 14 April 2017, the Respondents confirmed their consent to the Claimants’ Corrections Request.

28. On 2 May 2017, the Tribunal submitted this Addendum for scrutiny to the ICC Court.

V. **CORRECTIONS UNDER THE ICC RULES**

29. Pursuant to Article 35(2) of the ICC Rules, parties to an arbitration may apply for correction of a clerical, computational or typographical error, or any errors of similar nature contained in an award:

(2) Any application of a party for the correction of an error of the kind referred to in Article 35(1), or for the interpretation of an award, must be made to the Secretariat within 30 days of the receipt of the award by such party, in a number of copies as stated in Article 3(1). After transmittal of the application to the arbitral tribunal, the latter shall grant the other party a short time limit, normally not exceeding 30 days, from the receipt of the application by that party, to submit any comments thereon. The arbitral tribunal shall submit its decision on the application in draft form to the Court not later than 30 days following the expiration of the time limit for the receipt of any comments from the other party or within such other period as the Court may decide.
30. The Respondents’ Corrections Request explicitly refers to a correction request under Article 35(2) of the ICC Rules. In contrast, the Claimants’ Corrections Request refers to Article 36(2) of the **2017 ICC Rules**. The Tribunal understands the Claimants to have mistakenly referred to the 2017 ICC Rules, considering that these arbitral proceedings are governed by the 2012 ICC Rules. The 2017 ICC Rules apply to arbitration commenced on 1 March 2017 and later. The Tribunal’s understanding appears to be shared by the ICC Secretariat, who makes reference to Article 35(2) of the ICC Rules, when acknowledging receipt of the Claimants’ Correction Request in its letter of 13 April 2017.

31. Accordingly, the Tribunal shall decide the respective Parties’ Corrections Requests under Article 35(2) of the ICC Rules. Below, the Tribunal will deal with the Respondents’ Corrections Request, followed by the Claimants’ Corrections Request.

**VI. RESPONDENTS’ CORRECTIONS REQUEST**

32. As mentioned above, in the Respondents’ Corrections Request, the Respondents request that two computational be corrected and three typographical corrections be made to the Award.\(^1\) The Claimants have expressed their consent to the Respondents’ Corrections Request.\(^2\)

33. In addition, the Respondents request that two typographical corrections be made to the **Concurring and Dissenting Opinion**. As this Addendum concerns only the corrections to the Award pursuant to Article 35(2) of the ICC Rules, corrections to the Concurring and Dissenting Opinion, which does not form a part of the Award, may not be made by the Tribunal, but only by the concurring and dissenting arbitrator. Accordingly, no decision will be taken by the Tribunal in relation to the

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\(^1\) See ¶ 18 above.

\(^2\) See ¶¶ 18 and 22 above.
Respondents’ Corrections Request concerning the Concurring and Dissenting Opinion.

34. A description of the content of each request and the Tribunal’s determination thereof are provided below.

A. **Computational Corrections to the Award**

35. The Respondents’ Corrections Request identifies two computational errors in the Award. The first error relates to the limitation of liability under Section 1.21.2 of the RSG Contract between EMS and MHIA (the “Liability Cap”). The second error relates to the calculation of interest on the principal amount above the Liability Cap.

36. As determined in the Award, the **Purchase Price** is to be adjusted by the amount of the liquidated damages awarded, such that the Purchase Price under the Liability Cap, i.e., Section 1.21.2 of the RSG Contract, equals the price actually paid.\(^3\)

37. The Respondents request corrections to the (i) **Purchase Order Price**; (ii) **Adjusted Purchase Order Price**; and (iii) the **Remaining Liability Cap**.

38. In addition, they request further adjustments to be made to the (i) pre-award interest calculations; and (ii) the damages awarded.

   (a) **Limitation of Liability Cap**

39. In the Respondents’ Corrections Request, the Respondents request that corrections are made to the Purchase Order Price provided in the Award and to additional values derived from the Purchase Order Price, including the Adjusted Purchase Order Price and the Remaining Liability Cap, on account of computational errors arising from the use of an erroneous Purchase Order Price.

\(^3\) See Award, ¶ 2782.
(i) Purchase Order Price

40. In the Respondents’ Corrections Request, the Respondents submit that:

In paragraphs 2751, 2752 and 2759 of the Award, the Tribunal properly identifies the total contract amount (which is also the LOL amount) as $137,453,131. However, in paragraphs 2781 - 2786 of the Award, in which the amount of the unpaid LOL amount is computed, it appears that an incorrect value is used for the total contract amount – using $137,065,305 instead of $137,453,131. (. . . .)4

41. The Tribunal agrees. The basis of this error is found in ¶ 2776 of the Award, which reads:

As of 21 February 2008, the purchase price had been adjusted to $137,065,305.

42. The “purchase price” of $137,065,305 in ¶ 2776 of the Award is a transcription error from the record. As provided in the Respondents’ Counter-Memorial, the original Purchase Order Price was modified to $137,453,131:

The initial amount to be paid to Mitsubishi under the Contract was $136,990,000. This amount was adjusted by a number of Change Orders to $137,453,131, which therefore, was the Purchase Order Price.5

43. Indeed, the correct Purchase Order Price of $137,453,131 was used in ¶¶ 2751, 2752, and 2759 of the Award.

44. The erroneous Purchase Order Price was used in ¶¶ 2776, 2781, 2782 and 2808 of the Award.

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4 Respondents’ Corrections Request, page 2.
5 Respondents’ Counter-Memorial, ¶ 558; see also the Respondents’ Post-Hearing Memorial at ¶ 178 where this is confirmed.
45. By this Addendum, ¶¶ 2776, 2781, 2782 and 2808 of the Award are corrected to change the Purchase Order Price of $137,065,305 to $137,453,131.

46. As correctly pointed out by the Respondents, by consequence of the use of the erroneous Purchase Order Price, further corrections are required to the calculation of (i) the Adjusted Purchase Order Price; and (ii) the Remaining Liability Cap.

(ii) **Adjusted Purchase Order Price**

47. From the corrected Purchase Order Price of $137,453,131, liquidated damages of $7,459,765 are to be deducted to provide a corrected Adjusted Purchase Order Price of $129,993,366. On account of the erroneous calculation of the Purchase Order Price, an erroneous Adjusted Purchase Order Price of $129,605,540 was calculated in the Award.

48. Specifically, the erroneous Adjusted Purchase Order Price was used in ¶¶ 2781, 2782, 2786, and 2808 of the Award.

49. By this Addendum, ¶¶ 2781, 2782, 2786, and 2808 of the Award are corrected to change the Adjusted Purchase Order Price of $129,605,540 to $129,993,366.

(iii) **Remaining Liability Cap**

50. From the Adjusted Purchase Order Price of $129,993,366, a further deduction should be made on account of the Respondents’ prior payment of $45,361,816.94, to determine the Remaining Liability Cap of $84,631,549.06.

51. On account of the erroneous calculation of the Adjusted Purchase Order Price, an erroneous Remaining Liability Cap of $84,243,723.06 was calculated. An

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6 Award, ¶ 2781.
7 Award, ¶ 2790.
erroneous Remaining Liability Cap was used in ¶¶ 2752, 2755, 2759, 2762, 2768, 2786, 2790, 2808, 2809, 2858 and 2915 of the Award.

52. By this Addendum, ¶¶ 2752, 2755, 2759, 2762, 2768, 2786, 2790, 2808, 2809, 2858 and 2915 of the Award are corrected to change the Remaining Liability Cap of $84,243,723.06 to $84,631,549.06.

(iv) Conclusion

53. The corrections to the Purchase Order Price, Adjusted Purchase Order Price, and Remaining Liability Cap increase the damages awarded to the Claimants, as correctly set forth by the Respondents, by $387,826.

54. The Respondents’ Corrections Request details that damages are to be further corrected on account of the erroneous calculation of pre-award interest in the Award. The Tribunal concurs, for the reasons mentioned below.

(b) Pre-Award Interest

55. In the Respondents’ Corrections Request, the Respondents submit:

Rather than computing pre-award interest on the remaining LOL amount, the Tribunal appears to have applied its interest computation to the entire $103,268,389 of invoices RSG-002 through RSG-007 which are the unpaid SGIR amounts.

56. The Respondents’ Corrections Request identifies the consequence of this as follows:

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8 Award, ¶¶ 2763 - 2769.
9 Respondents’ Corrections Request, page 2.
Since the Tribunal computed interest on nearly $20 million of additional “principal” over 3½ years, its computation results in a $7,035,805 overstatement of the amount of pre-award interest.  

57. In the Award, the Tribunal determined that the Claimants’ invoices RSG-002 through RSG-007 are only claimable up to the amount of the Remaining Liability Cap, i.e., $84,631,549.06. Accordingly, it follows that pre-award interest can only be claimed on invoices RSG-002 through RSG-007 up to the amount of the Remaining Liability Cap of $84,631,549.06.

58. Consequently, by this Addendum, the Tribunal corrects the Award by eliminating the calculation of interest on invoices RSG-006 and RSG-007 and on the portion of invoice RSG-005 in excess of the Remaining Liability Cap.

59. Therefore, the table following ¶ 2768 of the Award is corrected as follows:

---

10 Respondents’ Corrections Request, page 2.
11 Award, ¶ 2755.
12 See ¶ 50 above.
(c) **Damages Awarded**

60. By consequence of the above determinations on the limitation of Liability Cap and on pre-award interest, the Tribunal’s calculations of damages and allocation of such amongst the Claimants are to be corrected.

61. A summary of the damages awarded is set forth in ¶ 2915 of the Award. Applying the above corrections,\(^{15}\) the accompanying table to ¶ 2915 of the Award is corrected as follows:

\[
\begin{array}{|c|c|c|c|c|}
\hline
\text{Invoice} & \text{Amount}^{13} & \text{Date of Invoice} & \text{Date of Breach} & \text{Interest (at 10\%)} \\
\hline
\text{RSG-002} & $8,187,324 & 05.12.2012 & 05.01.2013 & $3,420,731.26 \\
\text{RSG-003} & $52,343,892 & 07.02.2013 & 09.03.2013 & $20,966,238.38 \\
\text{RSG-004} & $20,386,928 & 25.03.2013 & 24.04.2013 & $7,909,010.97 \\
\text{RSG-005}^{14} & $3,713,405 & 10.04.2013 & 10.05.2013 & $1,424,319.75 \\
\hline
\text{Sub-Total} & & & & $33,720,300.36 \\
\text{Principal} & & & & $84,631,549.06 \\
\text{Total} & & & & $118,351,849.42 \\
\hline
\end{array}
\]

2915. Accordingly, the damages awarded, including pre-award simple interest, are to be paid by MNES in the following proportion (see also table at ¶ 2768 above):

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\(^{13}\) Exh. JX-2179.

\(^{14}\) Up to Remaining Liability Cap.

\(^{15}\) See ¶ 59 table.
<table>
<thead>
<tr>
<th>Claimant</th>
<th>Share</th>
<th>Amount ($)</th>
<th>Interest ($)</th>
<th>Total ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>SCE</td>
<td>78.21%</td>
<td>66,190,334.52</td>
<td>26,372,646.91</td>
<td>92,562,981.43</td>
</tr>
<tr>
<td>SDG&amp;E</td>
<td>20.00%</td>
<td>16,926,309.81</td>
<td>6,744,060.07</td>
<td>23,670,369.88</td>
</tr>
<tr>
<td>Riverside</td>
<td>1.79%</td>
<td>1,514,904.73</td>
<td>603,593.38</td>
<td>2,118,498.10</td>
</tr>
<tr>
<td>EMS</td>
<td>0.00%</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>100%</td>
<td><strong>84,631,549.06</strong></td>
<td><strong>33,720,300.36</strong></td>
<td><strong>118,351,849.42</strong></td>
</tr>
</tbody>
</table>

62. Two changes are required to the operative section of the Award, adjusting the damages awarded to the Claimants.\(^{16}\)

63. Accordingly, the Tribunal corrects the determination of the total award of damages in ¶ 2930(3) of the Award from $124,999,828.78 to $118,351,849.42 as follows:

(3) DETERMINES that MNES owes to the Claimants in total $118,351,849.42, which comprises the principal amount plus simple pre-award simple interest at 10% per annum until the date of the Award, as a consequence of its breach of Section 1.17.1.3 of the RSG Contract, referred to in Decision No. (1), for costs associated with the investigation of the causes and extent of damage to the RSGs, the efforts to restore Unit 2 to service at reduced power, and interim and permanent repair work.

64. Finally, the Tribunal’s order in ¶ 2930(4) of the Award is adjusted as follows:

(4) ORDERS MNES to pay SCE, SDG&E, and Riverside the sum mentioned in Decision No. (3) as follows:

SCE (78.21%): $92,562,981.43

SDG&E (20%): $23,670,369.88

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\(^{16}\) Award, ¶¶ 2930(3) and 2930(4).
Riverside (1.79%): $2,118,498.10

B. **Typographical Corrections to the Award**

65. The Respondents’ Corrections Request identifies three requested typographical corrections to the Award.

66. The first typographical error is described in the Respondents’ Corrections Request as follows:

Award, page 231, paragraph 645: The phrase “as MHI had rejected that repair” should read “as SCE had rejected that repair.”

67. The Tribunal concurs. The context of ¶ 645 of the Award, including the cited exhibit JX-1571 is such that the Award erroneously states “MHI” where it should have stated “SCE.” Accordingly, by this Addendum, ¶ 645 of the Award is corrected to state “as SCE had rejected that repair.”

68. The second typographical error is described in the Respondents’ Corrections Request as follows:

Award page 934, paragraph 2567: The phrase “…testimony of Mr. Denton, for the Claimants, who confirmed …” should read “testimony of Mr. Denton, for the Respondents, who confirmed …”

69. The Tribunal agrees. As specified in Annex A of the Award, Mr. Robert Denton was an expert witness who testified on behalf of the Respondents, not the Claimants. Therefore, ¶ 2567 of the Award is corrected to read in relevant parts “testimony of Mr. Denton, for the Respondents, who confirmed.”

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17 Respondents’ Corrections Request, page 3.
18 Respondents’ Corrections Request, page 3.
70. The third typographical error is described in the Respondents’ Corrections Request as follows:

Award, page 994, paragraph 2681: The penultimate sentence reads: “The Respondents have submitted that calculating under this assumption is \textit{not} improper, as the AVBs are physically present in the RSGs as built.” The “not” should be deleted, so that the phrase reads: “…calculating under this assumption is improper, as the AVBs are physically present in the RSGs as built.”

71. The Tribunal considers that this correction should be made. The inclusion of the term “not” is an erroneous double negative which does not reflect the Respondents’ submissions and the evidence. Consequently, by this Addendum, ¶ 2681 of the Award is corrected to read in relevant parts “calculating under this assumption is improper, as the AVBs are physically present in the RSGs as built.”

VII. CLAIMANTS’ CORRECTIONS REQUEST

72. As submitted in the Claimants’ Corrections Request, “certain portions of the Award reference ‘Claimants’ instead of ‘SCE’ or ‘Edison’ (which the [A]ward defines as SCE and EMS).”

73. In particular, the Claimants submit that:

The corrections included in this application do not seek to change the Tribunal’s substantive findings. Instead, in each of the instances listed below, Claimants respectfully submit that the Award should be corrected to be consistent with the record evidence submitted in this case as reflected by the factual findings in the Award.

\begin{itemize}
  \item[19] Respondents’ Corrections Request, page 4.
  \item[20] Hearing Transcript, p. 3213 \text{ and } pp. 4719, 4335, and 4359 (Dr. Begley).
  \item[21] Claimants’ Corrections Request, page 1.
\end{itemize}
74. The Claimants’ Corrections Request lists 45 paragraphs of the Award where they request that the word “Claimants” be changed to the word “SCE” or “Edison.”

75. The reason provided by the Claimants in each of these requests is that the change of “Claimants” to SCE (or Edison) corrects the Award such that the paragraphs in question are consistent with the facts as set forth in the Award.

76. As mentioned above, the Respondents confirmed their consent to the Claimants’ Corrections Request.

77. In light of the Parties’ agreement to the Claimants’ Corrections Request, the Tribunal grants the Claimants’ Corrections Request in its entirety. The Tribunal considers the requested corrections to fall under the category of clerical or errors of similar nature contained in the Award, in accordance with Article 35(2) of the ICC Rules.

VIII. CORRECTED PARAGRAPHS IN THE AWARD

78. The corrected paragraphs to the Award, as made by this Addendum, are set forth below:

645. On 20 December 2012, MHI responded to Mr. Avella’s letter of 19 December, stating that while it believed its thicker AVB repair option was technically viable, as SCE had rejected that repair, given the need for a mutually agreed repair option, it was recommending a replacement option, subject to the negotiation of mutually acceptable terms and conditions.

22 Claimants’ Corrections Request, ¶¶ 735, 1169, 1206, 1375, 1384, 1501, 1799, 1846, 1847, 1865, 1899, 2006, 2114, 2119, 2120, 2132, 2143, 2172, 2251, 2252, 2253, 2317, 2342, 2368, 2376, 2382, 2396, 2439, 2451, 2555, 2567, 2573, 2576, 2583, 2584, 2589, 2595, 2615, 2617, 2618, 2634, 2684, 2720, 2734, and 2788 of the Award.

23 See ¶ 27 above.
735. The economic viability of SCE’s decision to shut down SONGS was admitted by the Respondents’ expert, Mr. Robert Denton, as well. Particularly, he stated:

1169. As further discussed in the issues surrounding the Claimants’ misrepresentations and fraud allegations, the Claimants allege that they were not aware of FIT-III’s validation. This is despite the validation history of FIT-III and MHI’s other codes having been provided to SCE as part of MHI’s Technical Proposal bid to design the RSGs.

1206. SCE was aware of MHI’s response to the NRC on this issue. Having such knowledge, during the repair era, SCE nonetheless was of the view that Unit 2 could be safely restarted despite this issue – albeit at an initially lower power level with corresponding lower velocities.

1375. The Claimants submit that the Respondents had the design responsibility for SONGS, while the Respondents submit that SCE was heavily involved in the design process and established the main design variables.

1384. For greater clarity, the Tribunal notes however that the determination of this Issue B.3 is taken while noting that SCE nonetheless had an active role in the development of RSG specifications and in design choices, as further considered in Issue D below.

1501. Furthermore, the Claimants have submitted evidence that MHI’s internal documents are critical of its own QA. It is worthwhile noting that SCE’s evaluation of the bids for the RSG Replacement Project awarded the Respondents the highest QA score of any of the competitors.

1799. In the Tribunal’s view, SCE, therefore, developed two burdensome and unnecessary criteria for the Respondents’ repair, which required the Respondents to either (i) markedly improve T/H conditions to some unspecified value, which SCE knew was not possible absent a replacement design; or (ii) prove that the repair would function in the same operating conditions as SONGS, which may not have been possible absent a SONGS RSG replica of sufficient scale to replicate the T/H conditions.
1846. There is nothing inherently improper in SCE’s development of a negotiating position or litigation position, as provided in Mr. Dietrich’s letter. The Claimants had acquired RSGs they expected to operate for some 40 years, two of which had failed without even a complete year of operation and two others displaying wear after the initial scheduled operation. It is reasonable that the Claimants would seek to obtain the maximum compensation for their losses. However, the RSG Contract’s terms limited the Claimants’ ability to recover for many of the heads of damages and amount of those losses. These are considered in Issue H, below.

1847. A consequence of SCE’s litigation position is that it calls into question contemporary criticisms of the Respondents’ repair efforts and the requirements that SCE imposed on that repair. SCE’s four warranty criteria and screening criteria are set out in ¶ 573 - 575 and 628 above.

1865. Other aspects of the proposed repair, set out in a letter of SCE of 8 November 2012, such as whether it would meet SCE’s four repair criteria and the evaluation of the proposed repair according to SCE’s four screening criteria categories set forth by SCE on 13 November 2012 are considered, but are not determinative of whether the repair is effective.

1899. Considering the above, the Tribunal finds nothing significant in SCE’s comments that would call into question the viability of the thicker AVB repair. It is however clear that the U-Bend Repair Report was not a complete repair proposal. Thus, it is technically accurate, consistent with the Claimants’ case that the Respondents never provided a complete repair proposal for SCE’s review.

2006. The Tribunal notes from the above passage that (i) the Defect in this case is the tube wear and associated leak; (ii) in resolving this Defect, SCE considered it paramount that a repair provide certainty as to the duration of the repair; and (iii), in the Claimants submission, the means that certainty was to be achieved was the return of T/H conditions to those allegedly bargained for, as provided in the PAR. The Tribunal emphasizes that there is a distinction between the Defect and SCE’s desired remedy of that Defect. There is a further distinction between a repair which addresses the problem in the now and then (what the Claimants may characterize as an interim repair) and the question of whether that repair is effective in the long term.
2114. It would have been open to SCE to provide initial support to a repair proposal by the Respondents, with the understanding that the normal evaluation process would be undertaken to refine and approve that repair. Mr. Olszewski further convincingly opined that:

2119. From one perspective, the Parties appear to have found themselves in a catch-22. The Claimants submit that in order to approve a Type 1 repair, SCE required a developed repair plan, more than the PowerPoint presentations that MHI provided in April/May 2012. The Respondents, while developing such a plan, as submitted for 4 April 2013, also had to focus on developing alternative repair models, investigating T/H improvements, and developing a replacement option, all at the SCE’s request. Accordingly, the Respondents do not appear to have received sufficient direction from SCE as to whether SCE was genuinely interested in a Type 1 repair.

2120. As determined by the Tribunal in Section XIV.A above, SCE imposed T/H repair conditions that could not be met by any repair, only a replacement. In the Tribunal’s determination, SCE was not interested in a Type 1 repair, or at least, it were only interested in a Type 1 repair as an interim repair while also pushing forward for a long term replacement option.

2132. With respect to the question of whether the Respondents had any intention of conducting additional testing or analysis to demonstrate to SCE the viability of the thicker AVB repair, the Tribunal considers the following.

2143. Moreover, the Claimants’ contentions appear to be contradictory in this respect. For example, the Claimants object that the “Respondents did not assemble their field implementation team until late 2013 and did not conduct any testing until mid-2014 – all for this arbitration only.” Given SCE’s developing focus in late 2012 on having the Respondents develop a replacement proposal and given the decision to shut down SONGS, it appears rather reasonable that the Respondents did not have an implementation team established to implement a repair that SCE had neither approved, nor shown sufficient interest in.

2172. Further, SCE retained peer reviews of the Respondents’ repair proposals, and it was open to SCE to request that the Respondents cooperate in developing a repair with other suppliers. AREVA submitted
bids to further refine the repair. Other suppliers, such as Westinghouse and B&W were equally available to assist with the SONGS repair effort. Indeed, a substantial portion of the invoices that SCE sent to the Respondents concerned costs incurred for third party expertise in an effort to restore SONGS to service.

2251. Delays in proceeding with a Type 1 Repair were incurred on account of SCE’s lack of interest, demonstrated by taking unreasonable positions, in preference for pushing the Respondents into proposing a replacement option which SCE rejected and, potentially, developing a stronger litigation/negotiation position.

2252. Had SCE adopted an iterative design review process, the Tribunal considers that the Respondents could have more quickly developed a viable repair plan, such that any concerns regarding new forms of degradation raised in a review could have been reviewed sooner. SCE’s actions were, thus, crucial.

2253. Accordingly, the Tribunal answers Issue C.3(b)(ii) in the affirmative. MHI was excused from having developed answers to these technical issues during the repair era on account of SCE’s actions.

2317. Two further factual elements are determinative of this matter:

i. That SCE expected to be able to restart Unit 2;

ii. That SCE was willing to consider a Type 1 Repair as an interim repair.

2342. The Claimants do not dispute that a redesigned RSG could address in-plane FEI from a technical perspective. The Tribunal sees no evidence to demonstrate that the Respondents would not be capable of developing a new design for the RSGs that avoided in-plane FEI. The Respondents had submitted an initial design proposal to this effect to SCE.

2368. In Section XIV above, the Tribunal set forth its factual determinations as to SCE’s behavior regarding the repair and replacement options.
2376. In Section XIV above the Tribunal set forth its factual determinations as to SCE’s behavior regarding the repair and replacement options.

2382. In Section XIV above the Tribunal set forth its factual determinations as to SCE’s behavior regarding the repair and replacement options.

2396. In Section XIV above the Tribunal set forth its factual determinations as to SCE’s behavior regarding the repair and replacement options.

2439. Further, the Tribunal does not consider that MHI’s statement is false. The FIT-III code was validated in a number of tests and experiments as part of its development. The Claimants’ expert, Exponent, has identified five such validation tests for FIT-III. While the Claimants, through their expert Exponent, have submitted that other codes, such as ATHOS, have had more such tests, the Tribunal is convinced that the Claimants’ submission is imprecise as some of those additional tests for ATHOS related to functions that FIT-III does not perform, such as the calculation of circulation ratios which was calculated by MHI’s SSPC. Further, Edison was not justified in relying on upon the Respondents’ general statement that “FIT-III was verified very well” as the Respondents provided Edison with the actual validation background of FIT-III in their technical proposal.

2451. The Respondents submit that SCE’s own post-Incident investigations indicate that FEI was not at issue regarding the TSP and AVB vibration wear and that the document in question is a study that post-dates the technical proposal.

2555. To recall, in relation to Issue C above, the Tribunal has previously determined that MHI did not deny, ignore or repudiate its warranty obligations. Further, the Tribunal considers that MHI offered a viable repair, which was rejected as unsatisfactory by SCE. In addition, the Tribunal found that MHI formally recommended replacement under the Warranty, but SCE also effectively declined that option by virtue of the shut-down decision. Moreover, the Tribunal determined that both the repair and replacement proposals were pursued by MHI with “due diligence and dispatch” within the context of the RSG Contract and the circumstances presented by the Incident.
2567. For example, the Parties’ ultimate agreement on the Purchase Price of the RSG Contract was in the context of a careful risk allocation and reflected Edison’s willingness to bear more of the risk in exchange for a lower Purchase Price. This willingness to accept greater risk was evidenced by the testimony of [redacted], for the Respondents, who explained that the limitation of liability made it possible to negotiate a lower Purchase Price, and the testimony of Mr. Denton, for the Respondents, who confirmed that a vendor of nuclear powered steam generators cannot take on the risk of a plant’s shutdown, where “a day’s outage can be up to a million dollars” in losses. Indeed, the evidence is not disputed that SCE chose not to pay an extra $6 million to extend the warranty period.

2573. The Tribunal has previously determined that MHI did not ignore or repudiate its warranty obligations. The Tribunal found that MHI offered a viable repair, which was rejected as insufficient by SCE. Further, the Tribunal determined that MHI formally recommended replacement under the Warranty, but that SCE effectively declined that option by a decision to shutdown SONGS following the ASLB decision. Also the Tribunal considered that both the repair and replacement proposals were pursued by MHI with “due diligence and dispatch” within the context of the RSG Contract and the circumstances presented by the Incident. Notwithstanding those findings, the Tribunal will proceed to address the specific issues raised by the Parties with respect to Issue F.2(a)(ii) with reference to Section 2719 of the Commercial Code.

2576. It is undisputed that SCE never attempted to pursue the alternative options under Section 1.17.1.3, which included the back charge and default provisions. In other words, the Claimants were not deprived of the multiple Warranty remedies in Section 1.17.1.3, but rather elected not to avail themselves of those options. While SCE did solicit and review repair proposals from other vendors, including AREVA, Westinghouse, and B&W, these alternative options were not pursued by SCE. Given these circumstances, the Warranty cannot be said to have failed of its essential purpose.

2583. In this present dispute, SCE refused or failed to give MHI the necessary approval to continue to pursue or implement the Type 1 Repair, as the Claimants had the right to do because of the “in a mutually agreeable manner” requirement in Section 1.17.1.3. This fact
alone distinguishes this case from the cases relied on by Claimants. Accordingly, The Type 1 Repair, and therefore the Warranty, cannot be said to have failed its essential purpose under these circumstances.

2584. The Tribunal also finds that the Warranty did not fail of its essential purpose, considering MHI’s recommendation, and SCE’s rejection of, the replacement option. As the Tribunal discussed in Sections XIV.D and XV.D above, the Warranty provision in Section 1.17.1.3 of the RSG Contract expressly anticipates that replacement might be of the entire “Apparatus,” which term is defined in the RSG Contract as including both “RSG Units.” Consequently, the explicit terms of the RSG Contract itself make clear that the Claimants should have appreciated that the Warranty includes the option of a total replacement of both Units 2 and 3 within a normal time frame of 3 to 5 years.

2589. The Tribunal also took note of the lack of evidence offered by the Claimants about what length of time would have constituted “due diligence and dispatch” with regard to the replacement option. Given the absence of a reasonable time standard for replacement, coupled with SCE’s rejection of the replacement option, the Warranty cannot be said to have failed its essential purpose. It is noteworthy that not one of the other vendors retained by the Claimants offered evidence that a replacement of the RSGs could have occurred in substantially less time than estimated by MHI.

2595. Accordingly, the Tribunal concludes that the freely bargained-for Warranty remedies under Section 1.17 of the RSG Contract did not fail their essential purpose under Section 2719(2) of the Commercial Code; but rather SCE for its own economic reasons declined to pursue those remedies.

2615. As considered in relation to Issue F.2(a)(ii) above, SCE unilaterally placed unreasonable limitations on MHI’s proposed Type 1 Repair, then later refused to pursue the replacement option suggested by MHI, and further elected not to pursue in any way the default or back charge options in the Warranty. It cannot, therefore, be credibly contended that any failure of the Warranty was “total and fundamental” within the meaning of California law.
2617. Further, the Claimants have not convincingly established that the mutual waiver has become “oppressive by change of circumstances” based on the facts and circumstances of this case. In fact, the “change of circumstances” was SCE placing unreasonable requirements on the Type 1 repair option and refusal to pursue replacement of the RSGs. Moreover, Edison itself included the mutual waiver as one of its own standard terms, so as to protect itself from consequential damages SCE would want to avoid if claimed by a supplier. Indeed, the potential of extraordinarily large exposures to unexpected losses are one of the main reasons for inserting waivers of consequential damages in commercial contracts.

2618. Given the Parties’ extensive negotiations on the proper allocation of risk with respect to the Purchase Price of the RSG Contract, MHI’s extensive efforts to perform under the Warranty, and SCE’s own actions and decisions related to MHI’s ability to perform under the Contract, the Tribunal concludes that the mutual waiver did not become oppressive simply because it would work in MHI’s favor.

2634. The Tribunal finds that the mutual waiver was neither procedurally nor substantially unconscionable in this case, given the undisputed evidence that (i) the mutual waiver was included by Edison as one of its own standard terms; and (ii) the fact that neither Party could be said to be in an unequal bargaining position at the time of contracting. Such a provision, benefitting both parties and agreed upon after extensive contractual negotiations between sophisticated parties, cannot be found to be unconscionable.

2681. With regard to the admitted Gap Velocity Error, i.e., the FIT-III Post-Processor conversion error, the Tribunal is not convinced that this error resulted in the Incident at SONGS. As set out above, the Claimants have calculated that, assuming one support point to be inactive, accounting for the Gap Velocity Error results in Stability Ratios that exceed 1.0, indicating instability. The Respondents have submitted that calculating under this assumption is improper, as the AVBs are physically present in the RSGs as built. The Tribunal accepts the Respondents' submission.

2684. Further, there is evidence that out of the approximately 19,000 tubes in Unit 2, two tubes experienced out-of-plane TTW. The investigations into those tubes concluded that one possible explanation
was out-of-plane FEI. Another explanation was that those two tubes were poorly manufactured or assembled such that they were in close proximity. Despite the TTW in these two tubes, SCE found that Unit 2 was safe to restart and petitioned that the NRC authorize a restart. Given the severe consequences of FEI on tube wear, the Tribunal interprets SCE’s intention to restart Unit 2 as indicative of those two tubes not having suffered from classic out-of-plane FEI.

2720. As the Tribunal has determined above, SCE, by its actions, frustrated the fulfillment of the various contractual remedies available to it, following discovery of the causes of the Incident. When SCE decided to shut down the plant without pursuing the proposed Type 1 repair or a replacement option, it must be deemed to have elected, on its own, to forego the consideration for which Edison had bargained.

2734. With respect to the warranty repair option presented by the Respondents, the Tribunal previously determined that SCE developed unreasonable and unnecessary criteria for the Respondents’ repair - requiring the Respondents to either markedly improve T/H conditions to some unspecified value, which SCE knew was not possible absent a replacement design, or prove that the repair would function in the same operating conditions as SONGS, which was equally not possible, absent a SONGS RSG replica of sufficient scale to replicate the T/H conditions. These choices, coupled with the time constraints imposed by SCE on the repair options, appear to have left the Respondents with no choice but to transition to a replacement recommendation.

2752. Further, as has been explained in greater detail in the Tribunal’s determinations on the Respondents’ Counterclaim, i.e., Issue I below, this liability cap is reduced by $7,459,765, in light of the adjustments made to the Purchase Order Price, and $45,361,816.94, which is the amount of SGIR costs that were admittedly paid by the Respondents on 26 December 2012 towards the first invoice issued by the Claimants, i.e., RSG-001. After these deductions from $137,453,131, the liability cap stands at $84,631,549.06.

2755. Accordingly, the contractually agreed limitation of liability provision in Section 1.21.2 of the RSG Contract stands, as reduced by the adjustments determined above. The Claimants may recover the damages that they have proven up to the adjusted liability cap of $84,631,549.06.
2759. Considering the above, the Tribunal answers Issues H and H.1(a) to conclude that the Claimants are entitled to damages, as a consequence of the Respondents’ breach of non-payment of the invoiced SGIR costs, in an amount up to the liability cap, i.e., $137,453,131, as reduced by $7,459,765, i.e., the adjustments made to the Purchase Order Price, and $45,361,816.94, i.e., the amount of SGIR costs that were admittedly paid by the Respondents on 26 December 2012 towards the first invoice issued by the Claimants, i.e., RSG-001, after which adjustments the total sum amounts to $84,631,549.06. Further, with respect to Issue H.1(b), the Tribunal considers that the Claimants have proven these damages with reasonable certainty as to their occurrence.

2762. Consequently, the Tribunal awards damages to the Claimants in an amount up to the limitation of liability as adjusted above, in the sum total of $84,631,549.06.

2768. Further, for each invoice, in order to calculate the date of breach, Section 1.9.4 of the RSG Contract provides: “the Supplier shall pay invoices from EMS for backcharges, pursuant to Section 1.17.1.3(b) within thirty (30) days after receipt of such invoice.” Taking into account this provision of the Contract, the date of breach of non-payment of each of the invoices is represented in the following table in which the interest is calculated:

<table>
<thead>
<tr>
<th>Invoice</th>
<th>Amount</th>
<th>Date of Invoice</th>
<th>Date of Breach</th>
<th>Interest (at 10%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>RSG-002</td>
<td>$8,187,324</td>
<td>05.12.2012</td>
<td>05.01.2013</td>
<td>$3,420,731.26</td>
</tr>
<tr>
<td>RSG-003</td>
<td>$52,343,892</td>
<td>07.02.2013</td>
<td>09.03.2013</td>
<td>$20,966,238.38</td>
</tr>
<tr>
<td>RSG-004</td>
<td>$20,386,928</td>
<td>25.03.2013</td>
<td>24.04.2013</td>
<td>$7,909,010.97</td>
</tr>
<tr>
<td>RSG-005</td>
<td>$3,713,405</td>
<td>10.04.2013</td>
<td>10.05.2013</td>
<td>$1,424,319.75</td>
</tr>
</tbody>
</table>

Sub-Total $33,720,300.36
Principal $84,631,549.06
Total $118,351,849.42

2776. As of 21 February 2008, the Purchase Price had been adjusted to $137,453,131.
2781. Addressing first the Respondents’ position on the liquidated damages paid at the time of delivery, the Tribunal considers that the Purchase Price is to be adjusted by the amount of the liquidated damages awarded, such that the Purchase Price under the limitation of liability, Section 1.21.2 of the RSG Contract, equals the price actually paid:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Original Purchase Price</td>
<td>$137,453,131</td>
</tr>
<tr>
<td>Liquidated Damages</td>
<td>- $7,459,765</td>
</tr>
<tr>
<td>Adjusted Purchase Price</td>
<td>$129,993,366</td>
</tr>
</tbody>
</table>

2782. Accordingly, the limitation of liability cap is adjusted downwards from $137,453,131 to $129,993,366.

2786. Thus, the Tribunal has reduced the total payment that could be awarded of $129,993,366 downwards by $45,361,816.94 to an amount of $84,631,549.06.

2788. The Respondents never completed the warranty work. While completion was impossible, given SCE’s shutdown of the RSGs, it remains the case that the contractual conditions for this deduction was not met. Further, the Respondents did not submit their expenses to the Claimants for a determination as to their reasonableness, as required by the above cited Section 1.17.11.2 of the RSG Contract.

2790. Considering the above, the Tribunal answers Issue I.1 by reducing the damages that can be awarded to the Claimants under the limitation of liability provision to an amount of $84,631,549.06.

2808. As determined in Issue I.1 above, the Tribunal reduces the limitation of liability cap on account of the liquidate damages payment adjustment to the Purchase Price. Further on account of the Parties’ agreement under the MOU, MHI’s prior payment of $45,361,816.94 should be deducted from any damages awarded under the RSG Contract:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Original Purchase Price</td>
<td>$136,990,000.00</td>
</tr>
</tbody>
</table>
Updated Purchase Price: $137,453,131.00
Liquidated Damages: $7,459,765.00
Adjusted Purchase Price: $129,993,366.00
MOU Payment: $45,361,816.94
Allowable Damages: $84,631,549.06

2809. Consequently, the Tribunal answers Issue I.4 by reducing the damages that may be awarded to the Claimants under the limitation of liability provision to an amount of $84,631,549.06.

2858. On the basis of this test, the Tribunal considers that the Respondents have persuasively shown that “should Claimants be awarded any amount that is substantially less than the approximately $7 billion in damages sought by Claimants, then Respondents should be regarded as the prevailing party for the purposes of the Tribunal’s assessment of fees and costs.” The Claimants have been awarded $84,631,549.06 plus interest, which is substantially less compared to the Claimants’ claim of damages amounting to approximately $7 billion. Moreover, the amount awarded to the Claimants arose out of a breach that was in concept accepted, and in amount partially admitted, by the Respondents, insofar as the supported SGIR costs that were invoiced to the Respondents, but remained unpaid, were concerned. The partial success of the Respondents’ counter-claims also puts the Respondents in a comparatively better position, regardless of how this success compares to the amounts awarded to the Claimants in absolute terms.

2915. Accordingly, the damages awarded, including pre-award simple interest, are to be paid by MNES in the following proportion (see also table at ¶ 2768 above):
<table>
<thead>
<tr>
<th>Claimant</th>
<th>Share</th>
<th>Amount ($)</th>
<th>Interest ($)</th>
<th>Total ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>SCE</td>
<td>78.21%</td>
<td>66,190,334.52</td>
<td>26,372,646.91</td>
<td>92,562,981.43</td>
</tr>
<tr>
<td>SDG&amp;E</td>
<td>20.00%</td>
<td>16,926,309.81</td>
<td>6,744,060.07</td>
<td>23,670,369.88</td>
</tr>
<tr>
<td>Riverside</td>
<td>1.79%</td>
<td>1,514,904.73</td>
<td>603,593.38</td>
<td>2,118,498.10</td>
</tr>
<tr>
<td>EMS</td>
<td>0.00%</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>100%</td>
<td><strong>84,631,549.06</strong></td>
<td><strong>33,720,300.36</strong></td>
<td><strong>118,351,849.42</strong></td>
</tr>
</tbody>
</table>

2930. FOR THE FOREGOING REASONS, the Tribunal renders the following decisions:

2930(3) DETERMINES that MNES owes to the Claimants in total $118,351,849.42, which comprises the principal amount plus simple pre-award simple interest at 10% per annum until the date of the Award, as a consequence of its breach of Section 1.17.1.3 of the RSG Contract, referred to in Decision No. (1), for costs associated with the investigation of the causes and extent of damage to the RSGs, the efforts to restore Unit 2 to service at reduced power, and interim and permanent repair work.

2930(4) ORDERS MNES to pay SCE, SDG&E, and Riverside the sum mentioned in Decision No. (3) as follows:

- **SCE (78.21%)**: $92,562,981.43
- **SDG&E (20%)**: $23,670,369.88
- **Riverside (1.79%)**: $2,118,498.10

IX. **DECISIONS**

79. FOR THE FOREGOING REASONS, the Tribunal renders the following decisions:

(1) **GRANTS** the Respondents’ Corrections Request in relation to the Award.

(2) **GRANTS** the Claimants’ Corrections Request in relation to the Award.
(3) DETERMINES that the Award is to be corrected as provided in this Addendum.

(4) CORRECTS the Award as provided in ¶ 78 above.

(5) CORRECTS the decisions at ¶¶ 2930(3) and 2930(4) of the Award’s as follows:

2930. FOR THE FOREGOING REASONS, the Tribunal renders the following decisions:

2930(3) DETERMINES that MNES owes to the Claimants in total $118,351,849.42, which comprises the principal amount plus simple pre-award simple interest at 10% per annum until the date of the Award, as a consequence of its breach of Section 1.17.1.3 of the RSG Contract, referred to in Decision No. (1), for costs associated with the investigation of the causes and extent of damage to the RSGs, the efforts to restore Unit 2 to service at reduced power, and interim and permanent repair work.

2930(4) ORDERS MNES to pay SCE, SDG&E, and Riverside the sum mentioned in Decision No. (3) as follows:

SCE (78.21%): $92,562,981.43

SDG&E (20%): $23,670,369.88

Riverside (1.79%): $2,118,498.10

Place of arbitration: San Francisco, State of California, United States of America.
Date: 12 June 2017
THE ARBITRAL TRIBUNAL

Mr. Jonathan D. Schiller
Arbitrator

Mr. John W. Hinchey
Arbitrator

Professor Albert Jan van den Berg
President