



ORION ASSET MANAGEMENT

**OPERATING EXPENSE VS. CAPITAL LEASE TREATMENT: SUMMARY
INTERPRETATION OF RELEVANT ACCOUNTING GUIDANCE FOR ORION'S
VIRTUAL POWER PLANT™ SUPPLY AGREEMENT**

Issue: Whether monthly payments by a customer of Orion's Virtual Power Plant™ Supply Agreement (the "Orion Agreement") should for accounting purposes be treated as operating lease payments or capital lease payments.

Conclusion: Based on the structure of the Orion Agreement and relevant accounting guidance of FASB#13, we believe customer payments under the Orion Agreement should be treated as an operating or utility expense.

Background: The Orion Agreement is structured as an ANNUAL agreement that is automatically renewable, subject, however, to the customer's right to terminate (on an annual basis) upon proper notice. If terminated, any technology that was installed by Orion in the facility to deliver the contracted kWh of energy savings shall be returned to Orion, the owner of the assets. If, and only if, all the renewal terms are completed will the technology transfer to the customer. Normally, any company providing "leasing" does not allow unilateral cancellations of long term "leases" without penalty. The relevant paragraph in FASB#13 is paragraph 5f, where "lease term" is defined. Please refer to section 2 in the OVPP terms and conditions, where the initial term, renewal term and right of termination are set forth.

The accounting classification rules for determining the proper lease accounting under US GAAP are the four criteria contained in paragraph 7a-d of FASB#13. When determining the term of the "lease" contract, one year is what would be used for a lease term, for the reasons discussed in the previous paragraph. Under any of the four criteria, using the one year lease term, the conclusion that the Orion Agreement should be treated as an "operating lease", rather than a capital lease, is supportable. Under paragraph 15 of FASB#13, operating lease payments are to be classified as an operating (or utility) expense. The next step is then to determine if disclosure is required for an "operating lease". Since the commitment is for twelve months, none is required, as noted in paragraph 16b. of FASB#13.

Orion is not qualified to provide legal or accounting advice. Please check with your own tax and legal advisors.

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