

CONFIRMATION LETTER –BETHEL SOLAR 1

This Confirmation Letter (“Confirmation”) is being provided pursuant to and in accordance with the Master Power Purchase and Sale Agreement–Bethel Solar 1, dated **October 31, 2006** (the “Master Agreement”), between **Bethel Energy, LLC** (“Seller”) and **San Diego Gas & Electric Company** (“Buyer”), and constitutes part of and is subject to the terms and provisions of such Master Agreement (collectively, the “Agreement”). Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

1.0 Effectiveness of Confirmation Letter.

1.1 CPUC Approval. The obligations of Buyer to purchase and Seller to deliver the Product, including the Output (as defined in Section 3 of this Confirmation), under this Agreement are expressly conditioned upon CPUC Approval. The Parties agree to cooperate and use all reasonable efforts to obtain the CPUC Approval as soon as is practicable. Should the CPUC issue an order approving this Agreement with conditions or modifications that materially alter the commercial aspects of this Agreement, the Parties shall have ten (10) Business Days from the mailing date of such order to provide the other Party written notice of the issuing Party’s acceptance or rejection of the CPUC order as issued; provided, however, if a Party fails to provide written notification of its acceptance or rejection to the other Party within such ten (10) day period, that Party’s silence shall be deemed to constitute acceptance of the CPUC order as issued and agreement by such Party that this condition has been satisfied, upon the CPUC Approval Date. If a notice of rejection is sent, the parties agree to use good faith efforts to renegotiate this Agreement. If, within sixty (60) days, no agreement is reached, either party may terminate this Agreement upon delivery of notice to the other party. For purposes of this Agreement, the “CPUC Approval Date” shall be defined as the first Business Day after the date on which the CPUC order approving this Agreement becomes final and no longer subject to any appeal.

1.2 Financing. No later than November 30, 2008, Seller shall have obtained legally binding commitments from a financial institution or institutions to finance the development, construction and ownership of the Facility on terms and conditions acceptable to Seller in Seller's sole and absolute discretion. In the event that Seller shall fail to give written notice to Buyer on or before January 1, 2009 that Seller has either satisfied or waived the condition precedent specified in this Section 1.2, then the condition precedent shall be deemed not to have been satisfied or waived and neither party shall have any further obligation under this Agreement.

2.0 Product. The term “Product” shall mean the Output (defined in Section 3.1) delivered on an As-Available basis which includes all associated Capacity Attributes and Environmental Attributes (as those terms are defined in the Cover Sheet). “As Available” means, with respect to a Transaction, that Seller shall deliver to Buyer and Buyer shall purchase at the Delivery Point the Product from the Units, in accordance with the terms of this Agreement and subject to the excuses for performance specified in this Agreement.

- 2.1 Firm Transmission. Seller shall obtain Firm Transmission service from the Imperial Irrigation District (IID) to deliver to the Delivery Point. Seller shall provide a copy of any executed Firm Transmission service agreement and any amendments thereto, by the earlier of (i) thirty (30) days after execution of such agreement or amendment or (ii) at Buyer's request.
- 3.0 Facility. The Output (defined below) will be supplied from the following generation assets only (collectively, the "Facility" or the "Units"):

Facility Name:	<u>Bethel Solar 1</u>
Site Name:	<u>Fillaree Ranch</u>
Facility Physical Address:	<u>Located Northwest of El Centro, in the Imperial Valley</u>
Technology Type:	<u>Solar Thermal Energy</u>
Specific Unit Description:	<u>Solar Parabolic Trough System, including steam generator and auxiliary boiler.</u>
Facility Total Net Capacity:	<u>49.4 MW</u>

- 3.1 "Output" means all electrical energy produced from the Facility, net of electrical energy used to operate the Facility, that is generated by the Facility, which may be greater or less than the total annual estimated Output of 168,086 MWh.
- 3.2 The Facility must satisfy the requirements for Commercial Operation (set forth in Section 3.3) by the Commercial Operation Deadline ("COD"). The "Commercial Operation Deadline" with respect to the Facility shall be no later than December 31, 2009, as extended by reason of Force Majeure, or as may otherwise be extended by written agreement signed by both parties.
- 3.3 "Commercial Operation" means that (a) Seller shall have satisfied the requirements set forth in the Commercial Operation Certificate attached as Exhibit D; (b) Seller shall have delivered and Buyer shall have accepted in its reasonable discretion a completed Commercial Operation Certificate from the Seller, the turbine supplier, the EPC Contractor and a Licensed Professional Engineer (defined below); (c) Seller shall have delivered a Letter of Credit as accepted by Buyer in accordance with Section 8 of the Master Agreement; and (d) Seller has received all local, state and federal licenses, permits and other approvals as may be required by law for the construction, operation and maintenance of the Facility, including approvals, if any, required under the California Environmental Quality Act for the Facility and related interconnection facilities.
- 3.4 "Date of Commercial Operation" means the date the requirements for Commercial Operation set forth in Section 3.3 are satisfied.
- 3.5 "Licensed Professional Engineer" means a person acceptable to Buyer in its reasonable judgment who (i) is licensed to practice engineering in California, (ii) has training and experience in the solar power industry, (iii) has no economic relationship, association, or nexus with the Seller, (iv) is not a representative of a consulting engineer, contractor, designer or other individual involved in the

development of the Facility, or of a manufacturer or supplier of any equipment installed in the Facility, and (v) is licensed in an appropriate engineering discipline for the required certification being made.

4.0 Delivery Point. The Delivery Point shall be Buyer's facilities at the 230 kV bus of the Imperial Valley Substation.

5.0 Delivery Term. The Parties shall specify the period of Product delivery for the "Delivery Term," as defined herein, by checking one of the following boxes:

(Check one)

_____ delivery shall be for a period of ten (10) years.

_____ delivery shall be for a period of fifteen (15) years.

X _____ delivery shall be for a period of twenty (20) years.

_____ delivery shall be for a period of _____ years.

5.1 The "Delivery Term" shall begin on the date of Commercial Operation and continue for the time period specified above.

5.2 "Contract Year" shall mean any of the twelve (12) consecutive months starting with the first day of the month following the Date of Commercial Operation.

6.0 Output.

6.1 Contract Quantity. During the Delivery Term, Seller shall deliver, and Buyer shall receive and pay for, the energy from the Facility as more fully described in Section 9. In no event shall Seller have the right to procure electric energy from sources other than the Facility for sale and delivery pursuant to this Agreement. Station Service Power--Retail (defined below) shall be provided by the local service provider and the electrical usage shall be metered separately from the Output.

6.2 "Station Service Power--Retail" means electrical energy used to operate the Facility other than electrical energy that is generated by the Facility.

7.0 Performance Guarantees / Excuses for Failure to Perform.

7.1 Energy Production Guarantees. The Buyer shall in its sole discretion have the right to declare an Event of Default if Seller fails to achieve the Guaranteed Energy Production in any rolling 24 month period described below and such failure is not excused by the reasons set forth in sub-sections (ii), (iii), or (v) of Section 7.2 of this Confirmation Letter, "Excuses for Failure to Perform."

Guaranteed Energy Production equals 235,320 MWh, subject to adjustment, as set forth in the following sentence. If Seller is otherwise capable of generating Output from the Facility but is excused from performance under sub-section (ii), (iii) or (v) of Section 7.2, then the Guaranteed Energy Production shall be adjusted downward for each day or part thereof that such performance is excused

in accordance with the Adjustments to Guaranteed Energy Production schedule provided below.

Adjustments to Guaranteed Energy Production

<u>Month</u>	<u>MWh/Day</u>
January	285
February	418
March	503
April	552
May	541
June	559
July	541
August	536
September	532
October	494
November	325
December	240

7.2 Seller Excuses. Seller shall not be liable to Buyer for any damages determined pursuant to Article Four of the Agreement in the event that Seller fails to deliver the Product to Buyer for any of the following reasons:

- i. if the specified generation asset(s) are unavailable as a result of a Forced Outage (as defined in the NERC Generating Unit Availability Data System (GADS) Forced Outage reporting guidelines) and such Forced Outage is not the result of Seller's negligence or willful misconduct;
- ii. Force Majeure;
- iii. by the Buyer's failure to perform;
- iv. by Scheduled Maintenance Outages of the specified Units; or
- v. a reduction in Output as ordered under the Curtailment provisions (including CAISO, or Buyer's system emergencies); or
- vi. insufficient solar energy resources for the specified Units to generate energy as determined by the best solar resource standards utilized by other solar producers or purchasers in the vicinity of the Facility.

7.3 Buyer Excuses. The performance of the Buyer to receive the Product may be excused only (i) during periods of Force Majeure, (ii) by the Seller's failure to perform or (iii) during dispatch down periods.

7.4 Curtailment/Dispatch Down. For purposes of Section 7.3, curtailment periods will be treated as resulting from curtailments described in Section 17, clause (a),

of this Confirmation Letter, and dispatch down periods will be treated as resulting from dispatch downs described in Section 17, clause (b), of this Confirmation Letter.

8.0 Exclusivity/Option to Purchase.

8.1 Exclusivity. At no time shall Seller sell or otherwise dispose of Output or Environmental Attributes from the Facility to any third party except (i) to the IID in the imbalance market if Seller is unable to deliver Output to the Delivery Point or (ii) in the case of an Event of Default of Buyer.

8.2 Right of First Offer. If, at any time during the term of this Agreement, Seller or any of its affiliates intends to install new facilities within a five (5) mile radius of the Facility or any expansion thereof to produce additional energy beyond that produced by the Facility (the "New Facilities Energy"), it shall first offer, or shall cause its affiliate to offer, the New Facilities Energy to Buyer by delivering notice to Buyer setting forth the terms and conditions of the offer in writing and in reasonable detail (each, an "Option Election Notice"). Except to the extent otherwise noted in the Option Election Notice, any such New Facilities Energy shall be purchased and sold pursuant to a power purchase agreement in form and substance (other than price) substantially the same as this Agreement (with the security requirements adjusted). Seller shall, or shall cause its affiliate to, promptly answer any questions that Buyer may have concerning the offered terms and conditions and shall meet with Buyer to discuss the offer. If Buyer does not accept in writing the offered terms and conditions within thirty (30) days after receiving the Option Election Notice, Seller or its affiliate may enter into an agreement to sell the New Facilities Energy to a third party on terms and conditions no more favorable to the third party than those offered to Buyer. If Buyer accepts an offer made under this Section 8.2, Seller shall, or shall cause its affiliate to, within a further sixty (60) days enter into with Buyer a power purchase agreement in substantially the same form as this Agreement, but incorporating such changes as are expressly identified in the terms and conditions in the Option Election Notice.

9.0 Monthly Payments.

9.1 Contract Price. The Contract Price to be paid by Buyer shall be as follows:

	Summer Prices in \$/MWH				Winter Prices in \$/MWH		
Contract Year	On-Peak	Semi-Peak	Off-Peak		On-Peak	Semi-Peak	Off-Peak
Year 1	\$110.52	\$77.82	\$61.83		\$107.84	\$77.87	\$55.50
Year 2	\$110.52	\$77.82	\$61.83		\$107.84	\$77.87	\$55.50
Year 3	\$110.52	\$77.82	\$61.83		\$107.84	\$77.87	\$55.50
Year 4	\$110.52	\$77.82	\$61.83		\$107.84	\$77.87	\$55.50
Year 5	\$110.52	\$77.82	\$61.83		\$107.84	\$77.87	\$55.50
Year 6	\$110.52	\$77.82	\$61.83		\$107.84	\$77.87	\$55.50
Year 7	\$110.52	\$77.82	\$61.83		\$107.84	\$77.87	\$55.50
Year 8	\$110.52	\$77.82	\$61.83		\$107.84	\$77.87	\$55.50
Year 9	\$110.52	\$77.82	\$61.83		\$107.84	\$77.87	\$55.50
Year 10	\$110.52	\$77.82	\$61.83		\$107.84	\$77.87	\$55.50
Year 11	\$112.34	\$79.08	\$62.89		\$109.66	\$79.18	\$56.45
Year 12	\$114.19	\$80.37	\$63.96		\$111.51	\$80.51	\$57.41
Year 13	\$116.08	\$81.67	\$65.06		\$113.40	\$81.86	\$58.40
Year 14	\$117.99	\$83.00	\$66.17		\$115.31	\$83.24	\$59.39
Year 15	\$119.94	\$84.35	\$67.30		\$117.26	\$84.64	\$60.41
Year 16	\$121.92	\$85.72	\$68.45		\$119.24	\$86.07	\$61.44
Year 17	\$123.94	\$87.12	\$69.62		\$121.26	\$87.51	\$62.49
Year 18	\$125.99	\$88.54	\$70.81		\$123.31	\$88.99	\$63.56
Year 19	\$128.08	\$89.99	\$72.02		\$125.40	\$90.49	\$64.65
Year 20	\$130.20	\$91.46	\$73.25		\$127.52	\$92.01	\$65.76

	Summer July 1 – October 31	Winter November 1 – June 30
On-Peak	Weekdays 11am – 7pm	Weekdays 1pm - 9pm
Semi-Peak	Weekdays 6am – 11am; Weekdays 7pm - 10pm	Weekdays 6am – 1pm; Weekdays 9pm – 10pm
Off-Peak*	All other hours	All other hours
*All hours during NERC holidays are off-peak.		

On the Date of Commercial Operation, the On-Peak Contract Prices (not Off-Peak or Semi-Peak Contract Prices) shall be adjusted in accordance with Exhibit E based on the amount of federal tax incentives under applicable federal law that the Facility is eligible for, if any, and if and only if the price determined under Exhibit E is greater than the On-Peak Contract Price listed above in this Section 9.1. If, within twenty-four (24) months after the Date of Commercial Operation, the Facility becomes eligible retroactively for the federal tax incentives listed in Exhibit E (or additional amounts of the federal tax incentives listed in Exhibit E), the On-Peak Contract Price shall be reduced for the remainder of the Delivery Term in accordance with Exhibit E. The On-Peak Contract Prices shall not be reduced to a price lower than the prices in this Section 9.1. Subsequent payments to Seller hereunder shall be reduced by means of setoff in twelve (12) monthly equal installments to reimburse Buyer for the difference, if any, between the On-Peak Contract Prices paid during such period and the final adjusted On-Peak Contract Prices. No further Contract Price adjustments shall be made.

- 9.2 Energy Payment. Energy payment shall be only for Delivered Energy, delivered by the Seller and received by the Buyer during the Delivery Term at the Delivery Point. Buyer shall receive all Environmental Attributes for all Output regardless of whether the Output was sold to the IID for delivery to Buyer’s Facilities at the Delivery Point. The energy payment shall be calculated as follows:

$$\text{Energy Payment} = \sum_1^H (\text{Delivered Energy}_h \times \text{Contract Price}_y)$$

where: h = hour in a month

H = number of hours in a month

y = Contract Year of applicable month

- 9.2.1 Imperial Irrigation District Agreement. Seller shall assume all liability and pay for all imbalance charges associated with the failure to properly schedule Output to the Delivery Point. Seller shall also assume all liability and reimburse Buyer for any Penalties (as defined below) incurred by Buyer as a result of Seller’s failure to abide by the CAISO Tariff or the IID equivalent of the CAISO Tariff (the “IID Tariff”) and all applicable protocols. Both parties shall cooperate to eliminate imbalances and minimize Penalties to the extent possible. Seller shall promptly notify

Buyer as soon as possible of any material imbalance that is occurring or has occurred. Such notification shall not impact Seller’s responsibilities for payment for such imbalance charges. Notwithstanding anything to the contrary which may be contained herein, Seller shall be entitled to any and all credits and/or payments made by the CAISO or the IID to Seller or its Scheduling Coordinator in accordance with the IID Tariff and all applicable protocols.

9.2.2 “Penalties” shall be defined as any fees, liabilities, assessments, or similar charges assessed by the CAISO or the IID.

9.2.3 “Delivered Energy” means the lower of a) metered output or b) scheduled energy, in each case less Delivery Losses. “Delivery Losses” means all electrical losses occurring between the revenue meter and the Delivery Point and electrical losses occurring over the IID grid as such losses are assigned by the IID to the Facility.

9.3 Test Energy. Before the Delivery Term, Seller shall schedule, sell and deliver the Output to Buyer at the Delivery Point as test energy, so long as such test energy exceeds 1MW. With respect to such test energy, Buyer shall receive and pay for the lower of scheduled or Delivered Energy and associated Environmental Attributes delivered to the Delivery Point at the price of 90% of at the Contract Price applicable to the hour of delivery.

10.0 Reserved.

11.0 Facility Schedule. The Facility Milestones, unless extended due to a Force Majeure, are the following:

No.	Task	Milestone Date
1	Submit Project Development Security per Section 8.4 (a) of the Cover Sheet	Within 30 days after date on which all conditions precedent set forth in Section 1 are either satisfied or waived
2	Submit application for pre-certification as an eligible renewable supplier for the Renewable Portfolio Standard issued by the California Energy Commission (“Pre-Certification”)	COD minus 24 months
3	Receive Pre-Certification from the California Energy Commission	COD minus 12 months
4	Execute a Transmission Service Agreement with the IID	COD minus 12 months
5	Execute an Interconnection Agreement, if required by IID	COD minus 12 months
6	Land Rights. Delivery to Buyer documentation in form and substance acceptable to Buyer evidencing Seller’s good and marketable title in fee simple to the Facility site free and clear of all liens	COD minus 12 months

	and encumbrances except for customary exceptions which are acceptable to Buyer in its sole judgment or a valid leasehold interest in the Facility site for the duration of the Term of this Agreement. Any lease of the Facility site shall be subject to the prior review and approval of Buyer, which approval may not be unreasonably withheld or delayed.	
7	Receipt of all Federal, State and Local Permits and Approvals	COD minus 12 months
8	Issue an unconditional Notice to Proceed to its EPC Contractor	COD minus 10 months
9	Scheduling Services Agreement executed if required IID	COD minus 6 months
10	Complete Construction and Testing of Facility	COD minus 2 months

11.1 Buyer's Right to Monitor. Buyer may exercise its due diligence responsibilities via the following:

11.1.1 Buyer shall have the right to review Facility design drawings and documents.

11.1.2 Buyer may inspect the Facility's construction site or on-site Seller data and information pertaining to the Facility during business hours upon reasonable notice.

11.1.3 After the Effective Date and within seven (7) days after the close of each calendar quarter (or more frequently upon request by Buyer) until the Date of Commercial Operation, Seller shall provide Quarterly Progress reports similar in form and content of Exhibit F: Quarterly Progress Reports to Buyer as may be modified from time to time to meet applicable CPUC requirements. Regularly scheduled meetings shall be held between representatives of Seller and Buyer for the purpose of reviewing Quarterly Progress Reports and Seller's construction progress.

11.2 Milestone Completion Notice. No later than seven (7) days after completion of each milestone set forth in Section 11.0, Seller shall submit written notice to inform Buyer of milestone completion. Seller must provide accompanying documentation (including copies of applicable agreements redacted, permits and certificates) sufficient to demonstrate evidence of such milestone completion.

12.0 Facility Delays.

12.1 Missed Milestones. If Seller misses three or more milestones set forth in Section 11.0 or misses any one by more than 90 days except as a result of Force Majeure, Seller shall submit to Buyer, within ten (10) Business Days of such missed milestone date, a remedial action plan (the "Remedial Action Plan").

12.2 Missed Commercial Operation Deadline. Seller shall cause the Facility to achieve Commercial Operation on or before the scheduled Commercial Operation Deadline. If Commercial Operation occurs after the scheduled Commercial Operation Deadline, Seller shall pay Buyer delay damages equal to \$5,580 for each day or portion of a day that the Commercial Operation occurs after the scheduled Commercial Operation Deadline, up to a total of one hundred and

eighty (180) days. Seller shall also submit a Remedial Action Plan within ten (10) days of a missed Commercial Operation Deadline. Each Party agrees and acknowledges that (a) the actual damages that Buyer would incur due to delay in achieving Commercial Operation on or before the scheduled Commercial Operation Deadline would be difficult or impossible to predict with certainty, (b) the daily delay damages set forth in this section are a reasonable and appropriate approximation of such damages, and (c) the daily delay damages set forth in this section are the exclusive remedy for Seller's delay in achieving Commercial Operation by the scheduled Commercial Operation Deadline but shall not otherwise act to limit any of Buyer's rights or remedies arising from any other Event of Default by Seller, including, without limitation, the failure by Seller to achieve Commercial Operation altogether.

12.3 Remedial Action Plan/Additional Event of Default. For purposes of Section 12.1 and Section 12.2, at a minimum, a Remedial Action Plan shall set forth a detailed description of Seller's course of action and plan to achieve all milestones set forth in Section 11.0 and Commercial Operation by the Commercial Operation Deadline. Approval of a Remedial Action Plan shall not relieve Seller of its obligation to meet any subsequent milestones and Commercial Operation by the Commercial Operation Deadline. Buyer at its sole discretion may reject any Remedial Action Plan submitted under Section 12.1 or 12.2 and declare an Event of Default.

13.0 Operating Procedures. No later than forty-five (45) days before the Date of Commercial Operation, and from time to time as reasonably determined necessary by the Parties, the Parties shall meet to address how each Party will perform its respective obligations under this Agreement, including, but not limited to: (1) the method of day-to-day communications; (2) key personnel lists for each Party; (3) procedures for Forced Outage and Scheduled Maintenance Outage reporting; (4) procedures for delivery forecasting; (5) procedures for record keeping; (6) scheduling procedures if applicable; and (7) invoicing and payment procedures; provided, that the failure to agree on Operating Procedures will not relieve the Parties of their respective obligations under this Agreement.

14.0 Maintenance.

14.1 Scheduled Maintenance Outages. Seller shall operate, maintain, and arrange Scheduled Maintenance Outages for the Facility in accordance with Good Utility Practices. Seller shall be limited to 336 hours of Scheduled Maintenance Outages per year.

14.1.1 No later than forty-five (45) days before the start of each calendar year, Seller shall provide Buyer with a timetable of Scheduled Maintenance Outages for the following twelve (12) months. Buyer may accept or reject such schedules but shall not unreasonably withhold or delay approval. If Seller reasonably determines that it is necessary to change a Scheduled Maintenance Outage, Seller shall notify Buyer of the proposed change at least ten (10) days before the outage begins. Buyer shall promptly respond to such notice and may request reasonable modifications in the schedule for the outage. Seller shall use best efforts in accordance with Good

Utility Practices not to schedule Scheduled Maintenance Outages during Summer Months (as defined below). "Summer Months" shall be defined as July, August, September and October.

14.1.2 A "Scheduled Maintenance Outage" means a planned shut down of any part of the Facility scheduled by Seller in accordance with this Section that affects Seller's ability to provide Output from the Facility to Buyer under this Agreement. Scheduled Maintenance Outage includes periodic longer term outages more fully described in Section 14.1.3 below ("Long-Term Scheduled Maintenance Outage").

14.1.3 Every 3rd and 5th year starting from the first Contract Year, Seller may also schedule up to an additional 336 hours for a Long-Term Scheduled Maintenance Outage. These hours cannot be scheduled to occur during the Summer Months for any reason. The Long-Term Scheduled Maintenance Outage hours must be used consecutively and any unused hours will be forfeited. Available regularly Scheduled Maintenance Outage as described in 14.1 may be used to extend the length of the total outage as long as it does not extend the outage into the Summer Months. Seller will provide Seller with a thirty (30) day advanced written notice prior to starting the Long-Term Scheduled Maintenance showing starting date/time and ending date/time. Seller will coordinate the maintenance outage with the Buyer.

14.2 Emergency Periods. At Buyer's request, Seller shall use commercially reasonable efforts to deliver Output during CAISO declared emergency periods. In the event the Seller has previously scheduled a Scheduled Maintenance Outage coincident with an emergency, Seller shall use commercially reasonable efforts to reschedule the Scheduled Maintenance Outage.

14.3 Maintenance Log. Seller shall maintain a maintenance log for the Facility. The log shall include but not be limited to information on power production, fuel consumption and efficiency (if applicable), availability, maintenance (both breakdown and preventative) performed, outages, changes in operating status, inspections, manufacturer recommended services and replacement, electrical characteristics of the generators, control settings or adjustments of equipment and protective devices. Information maintained pursuant to this paragraph shall be kept for two years and provided to Buyer electronically, within 30 days of Buyer's request.

15.0 Reserved.

16.0 Scheduling Services. Seller shall contract with the IID for services to schedule the forecast of Output to the Delivery Point for export to Buyer into the CAISO system in accordance with the CAISO Tariff during the Delivery Term. Seller shall submit schedules, and any updates to such schedules, to the IID based on the most current forecast of Output. All generation scheduling and transmission services shall be performed in accordance with all applicable operating policies, criteria, guidelines and IID Tariff or its successor, and any other generally accepted operational requirements.

Seller shall also fulfill contractual, metering and interconnection requirements set forth in the IID Tariff and implementing IID standards and requirements so as to be able to deliver Output to the Delivery Point in accordance with the CAISO Tariff. Subject to Article 9, in the event that the CAISO Tariff and/or any protocols relating thereto in the future are changed, amended, modified, replaced or terminated (collectively, the “Program Modifications”), Seller and Buyer hereby agree to comply with such Program Modifications and, to the extent practical, to implement the necessary Program Modifications in a manner that maintains the relative economic positions of the Parties as of the Effective Date.

Notwithstanding anything to the contrary herein, in the event Seller makes a change to its schedule on the actual date of delivery for any reason including Forced Outages (other than a scheduling change imposed by Buyer or CAISO) which results in a change to its deliveries (whether in part or in whole), Seller shall notify Buyer immediately by calling Buyer’s on-duty scheduling coordinator. Within two hours of the scheduling change due to Forced Outage, Seller shall submit Exhibit G: Outage Notification Form to the Buyer in accordance with the instructions shown on the form. Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Facility during or after the end of the outage.

- 16.1 Annual Delivery Schedules. No later than forty-five (45) days before the beginning of each calendar year, Seller shall provide a non-binding forecast of each month’s average-day deliveries of Output, by hour, for the following calendar year.
- 16.2 Monthly Delivery Schedules. Ten (10) Business Days before the beginning of each month, Seller shall provide a non-binding forecast of each day’s average deliveries of Output, by hour, for the following month (“Monthly Delivery Forecast”).
- 16.3 Daily Delivery Schedules. By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, Seller shall provide, or cause the IID to provide, Buyer with a copy of a binding hourly schedule of deliveries of Output to the Delivery Point for each hour of the immediately succeeding day concurrent with delivery of the same to the CAISO. A schedule provided in a day prior to any non-Business Day(s) shall include schedules for the immediate day, each succeeding non-Business Day and the next Business Day. Seller shall provide Buyer with a copy of any and all updates to such schedule indicating a change in scheduled Output from the then current schedule which is provided to CAISO.
- 17.0 Curtailment and Dispatch Down. Both parties shall be excused from their performance under this Agreement if any of the following occurs (a) curtailments are ordered directly or indirectly by the CAISO that prevent either party from performing their obligations under this Agreement or (b) there is a dispatch down resulting from scheduled or unscheduled maintenance on Buyer’s facilities that prevents receipt or delivery at the Delivery Point.

18.0 Delivery and Metering. All deliveries of Output shall be metered in real-time basis to reflect delivery to the Delivery Point. A copy of hourly metered and hourly scheduled information shall be included in each monthly invoice. All meters and equipment used for the measurement of Output shall be provided, owned, maintained, inspected, tested and read at no cost to Buyer by the Seller.

18.1 Meter Agreements. All meters and equipment used for the measurement of deliveries shall be provided, owned, maintained, inspected and tested at no cost to Buyer. To facilitate monthly settlement processes, Seller shall authorize Buyer to view the Facility's IID on line meter data by identifying Buyer as an authorized user with "read only" privileges on Seller's meter agreement with the IID.

18.2 Testing and Calibration. Seller shall perform or cause to be performed, at its expense, annual testing and calibration of the electric meters in accordance with Good Industry Practice. Seller shall give Buyer reasonable advance notice of any inspection, testing or calibration of the electric meters. Buyer shall have the right to have a representative or designee present at such inspection, test or calibration of the electric meters. Buyer shall have the right to require, at Buyer's expense, except as required below, a test of any of the electric meters not more often than two (2) times every twelve (12) months.

18.3 Inaccurate Meters. If any of the electric meters is deemed to be inaccurate, deliveries shall be measured by reference to Seller's check-meters, if installed and registering accurately, or the meter readings for the period of inaccuracy shall be adjusted as far as can be reasonably ascertained by Seller from the best available data, subject to review and approval by Buyer. If the period of the inaccuracy cannot be ascertained reasonably, any such adjustment shall be for a period equal to one-half of the time elapsed since the preceding test by applying the percentage of inaccuracy so found. Seller shall promptly cause such electric meters to be corrected and, where such inaccuracy was determined pursuant to a test required by Buyer, Seller shall bear the expense of any such test.

18.4 Delivered MWh Adjustments. In the event that, due to correction for inaccurate electric meters deemed to be inaccurate, the amount of Output is increased or decreased, the revised quantity of Output shall be used for purposes of calculating the Energy Payment. If any of such amounts for any period have already been calculated using the previous quantity of Output, they shall be recalculated using the revised quantity of Output. If the recalculation increases any amount payable by Seller to Buyer or decreases any amount payable by Buyer to Seller, Seller shall pay to Buyer the amount of such increase or decrease. If the recalculation increases any amount payable by Buyer to Seller or decreases any amount payable by Seller to Buyer, Buyer shall pay to Seller the amount of such increase or decrease.

19. SEP Awards, Contingencies.

Seller Termination Right

- (a) If Seller's Bid Price exceeds the Market Price Referent, Seller may seek a PGC Funding Award from the California Energy Commission, or its successor agency ("CEC"), for an amount (in \$ per MWh) equal to the positive difference derived by subtracting (a) the Market Price Referent (in \$ per MWh) from (b) the Bid Price (in \$ per MWh) ("PGC Fund Amount"). To the extent that Seller seeks such PGC Fund Award, Seller shall use best efforts to comply with all funding criteria and obtain the PGC Fund Amount and Buyer shall reasonably support Seller's efforts. If Seller does not obtain a PGC Funding Confirmation or PGC Funding Award by 11:59 p.m. Pacific Standard Time on the 120th day from the date on which Buyer files this Transaction for CPUC Approval ("Funding Termination Deadline"), then Seller may unilaterally terminate this Transaction prior to the Funding Termination Deadline effective as of the date on which Buyer receives Seller's written notice of termination. If Seller exercises this termination right, neither Buyer nor Seller shall be subject to liability of any kind.
- (b) At any time prior to the Funding Termination Deadline, if applicable, Seller shall send to Buyer within ten (10) days of (i) obtaining a PGC Funding Confirmation or PGC Funding Award, written notice of such confirmation or award and a copy of the final funding award agreement entered into by the California Energy Commission, or its successor agency ("CEC") and Seller, if the funding award agreement has been granted at that time, or (ii) receiving written notice from the CEC denying Seller's application for the requested PGC Fund Amount, a copy of such notice and a written statement from Seller, in which Seller shall (A) waive its termination rights under this Section 19 or (B) notify Buyer that the Transaction is terminated, pursuant to the terms of this Confirmation. If Seller has the right to terminate this Transaction, but fails to send written notice of termination by the Funding Termination Deadline, then Seller's termination right per this Section 19 shall be deemed waived in its entirety

"Bid Price" means the price as bid by Seller in response to the RFP or such other price as may be arrived at through negotiation.

"Market Price Referent" means the market price referent applicable to this Agreement, as determined by the CPUC in accordance with Public Utilities Code Section 399.15(c).

"Public Goods Charge Funding" or "PGC Funds" means any supplemental energy payments, pursuant to Public Utilities Code Section 399.15, as shall be modified or amended from time to time.

"PGC Funding Award" means the final award of allocated PGC Funds from the CEC to Seller, pursuant to Section [25743(a) of the Public Resource Code], as shall be modified or amended from time to time.

"PGC Funding Confirmation" means a written notice from the CEC to the Seller acknowledging Seller's request for PGC Funds and the availability of such funds for Seller in a future PGC Funding Award.

20. PGC Funding Termination Event

- (a) PGC Funding Revocation. If at any time after Seller obtains a PGC Funding Confirmation or PGC Funding Award, (i) the PGC Funding Confirmation or PGC Funding Award is revoked in whole or in part by the CEC for reasons not caused by Seller's action or inaction, (ii) such revocation occurs prior to the issuance of a PGC Funding Award or during the term of the PGC Funding Award, and (iii) Seller has not received a financial benefit in the form of tax credits or any other source of public funding or credit directly related to the Product sold under this Confirmation, which benefit would offset the loss incurred from the revocation of the PGC Funding Confirmation or PGC Funding Award, then Seller shall have the right to terminate this Transaction, subject to Buyer's Right of First Refusal Option. If Seller exercises this termination right neither Buyer nor Seller shall be subject to liability arising from such termination.

Not more than ten (10) days from the Seller's receipt of written notification regarding revocation of the PGC Funding Confirmation or PGC Funding Award in whole or part, Seller shall notify Buyer in writing of the revocation of the PGC Funding Confirmation or PGC Funding Award, certify it has not received an offsetting financial benefit per clause (iii) above, and certify that such revocation is not due to Seller's action or inaction. Seller shall also provide Buyer with a copy of such CEC notification. ("Revocation Notice"). Seller shall specify in its Revocation Notice what percentage of lost PGC funding it is willing to accept to continue to perform under this Transaction (not exceeding 100%).

(b) Right of First Refusal Option.

(i) Option. Buyer, in its sole discretion, shall have the right, but not the obligation, to pay to Seller the percentage of lost PGC funding specified in its Revocation Notice ("Lost PGC Funds") and Seller shall continue performing under the Transaction for the remaining term of the Transaction (the "Option"). Buyer shall have 30 days from its receipt of the Revocation Notice to exercise the Option ("Exercise Period"), subject to Option Approval, as defined below.

(ii) Exercise of Option. If Buyer chooses to exercise the Option, Buyer shall send written notice to Seller stating that Buyer is exercising the Option, conditioned upon Buyer's receipt of Option Approval, as defined below, within 180 days of date on which Buyer received the Revocation Notice. The effectiveness of the Option exercise shall be subject to Buyer's receipt of a final, non-appealable order issued by the CPUC, satisfactory to Buyer, approving Buyer's exercise of the Option and recovery of costs associated with the payment of the percentage of lost PGC Funding ("Option Approval"). The date on which Buyer provides written notice of its Option exercise to Seller shall be the "Exercise Date." Buyer shall file an advice filing or application seeking the Option Approval within 30 days of the Exercise Date.

(iii) Payment. Prior to Buyer's receipt of Option Approval, Buyer shall pay Seller the Lost PGC Funds, which would have been due to Seller on a monthly basis for the period between the Exercise Date and the next invoice following the date on which the Option Approval is issued. Upon receipt of Option Approval Buyer shall continue paying Seller's Lost PGC Funds on a monthly basis until the expiration of the term of Seller's PGC Funding Award, or Reinstatement of Seller's PGC funding, whichever comes first.


(iv) Seller's Termination Right. Seller may terminate the Transaction in accordance with subSection (a) above upon the occurrence of any of the following events: (A) Buyer provides written notice to Seller rejecting the exercise of the Option, (B) the Option expires without being exercised, (C) Buyer fails to seek Option Approval within 30 days of the Exercise Date, or (D) Buyer fails to obtain Option Approval within 180 days of Buyer's receipt of the Revocation Notice. If Seller then terminates the Transaction, such termination shall be effective 30 days from the date on which Seller notifies Buyer of such termination. Both Parties shall continue to perform under this Transaction until the effectiveness of any such termination by Seller.


(c) Reinstatement of PGC Funding. If the PGC Funding Award is reinstated in its entirety, including retroactive payments for lost PGC Funds, at anytime before (i) Seller's termination of this Transaction or (ii) Buyer's exercise of the Option, then Seller shall no longer be permitted to terminate this Transaction, pursuant to Section 20(a), and both Parties shall continue to perform under this Transaction. If the PGC Funding Award is reinstated in whole or in part at anytime after Buyer has exercised the Option, then Buyer shall be relieved of all further obligations to pay any of Seller's lost PGC Funds, which will be covered by the reinstated PGC Funding Award. If PGC Funding Award is reinstated in whole or in part on a retroactive basis after Buyer has exercised the Option, then Buyer shall have the right to offset against payments due to Seller that portion of such award amount equivalent to the lost PGC Funds paid by Buyer to Seller between the period in which the PGC Funds were revoked and reinstated. Seller shall notify Buyer in writing of any such reinstatement of PGC Funds within 10 days of receiving notice of such reinstatement from the CEC, CPUC, or other regulatory agency responsible for the PGC Funds program, which notice shall include a copy of such notice.

IN WITNESS WHEREOF, the Parties have caused this Confirmation Letter to be duly executed as of the date first above written.

Seller: Bethel Energy, LLC

Buyer: San Diego Gas & Electric Company

Signature: 
By: Len P. Daniel

Signature: 
By: Terry C. Farrelly

Title: Manager

Vice President-
Title: Electric and Gas Procurement

A.S.
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