



**Wire Transfer:**

BNK: Sterling Bank  
ABA: Routing [REDACTED]  
ACCT: [REDACTED]  
Confirmation: Superior Renewable Energy  
LLC  
FAX: (713) 520-5623

**Credit and Collections:**

N/A

**Wire Transfer:**

BNK: Union Bank of California  
for: San Diego Gas & Electric Company  
ABA: Routing [REDACTED]  
ACCT: [REDACTED]  
Confirmation: SDG&E, Major Markets  
FAX:(213) 244-8316

**Credit and Collections:**

San Diego Gas & Electric Company, Major  
Markets  
555 W. Fifth Street  
ML 10E3  
Los Angeles, CA 90013-1011  
Attn.: Major Markets, Credit and Collections  
Manager  
Fax No.: (213) 244-8316  
Phone: 1-866-313-6622 (toll-free)

With additional Notices of an Event of Default or  
Potential Event of Default to:

N/A

With additional Notices of an Event of Default or  
Potential Event of Default to:

Sempra Energy  
101 Ash Street  
San Diego, CA 92101  
Attn: Assistant General Counsel, Commercial Law  
Facsimile: (619) 696-4377

The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

Party A Tariff N/A

Party B Tariff First Revised Sheet No. 3 under FERC Electric Tariff, First Revised Volume No. 7 Effective July 1, 1999, 88 FERC P61,212 (September 10, 1999)

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**Article Two**

Transaction Terms and Conditions  Optional provision in Section 2.4. If not checked, inapplicable.

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**Article Four**

Remedies for Failure to Deliver or Receive  Accelerated Payment of Damages. If not checked, inapplicable.

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**Article Five**

Events of Default; Remedies

- Cross Default for Party A:
- Party A: N/A Cross Default Amount: N/A
- Other Entity: N/A Cross Default Amount: N/A
- Cross Default for Party B:
- Party B: N/A Cross Default Amount: N/A

Other Entity: N/A                      Cross Default Amount: N/A

5.6 Closeout Setoff

- Option A (Applicable if no other selection is made.)
- Option B – Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows:
- Option C (No Setoff)

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**Article 8**

Credit and Collateral Requirements

8.1 Party A Credit Protection:

(a) Financial Information:

- Option A
- Option B Specify: \_\_\_\_\_
- Option C Specify: \_\_\_\_\_

(b) Credit Assurances:

- Not Applicable
- Applicable

(c) Collateral Threshold:

- Not Applicable
- Applicable

If applicable, complete the following: N/A

(d) Downgrade Event:

- Not Applicable
- Applicable

If applicable, complete the following:

- Other:

(e) Guarantor for Party B: None

Guarantee Amount: N/A

8.2 Party B Credit Protection:

(a) Financial Information:

- Option A
- Option B Specify:
- Option C Specify: unaudited annual financial statements

(b) Credit Assurances:

- Not Applicable
- Applicable

(c) Collateral Threshold:

- Not Applicable

Applicable

If applicable, complete the following: N/A

(d) Downgrade Event:

Not Applicable

Applicable

If applicable, complete the following:

Other:

(e) Guarantor for Party A: in accordance with Section 8.3

Guarantee Amount: \$1,000,000

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**Article 10**

Confidentiality

Confidentiality Applicable      If not checked, inapplicable.

10.12 RPS Confidentiality

Option A: release immediately      If not checked, inapplicable

Option B: 6 months delay      If not checked, inapplicable

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**Schedule M**

Party A is a Governmental Entity or Public Power System

Party B is a Governmental Entity or Public Power System

Add Section 3.6. If not checked, inapplicable

Add Section 8.4. If not checked, inapplicable

**Schedule P**

Schedule P: Products and Related Definitions shall be deleted in its entirety.

**Other Changes**

Specify, if any: Yes, the following changes shall be applicable:

**Article One. General Definitions.**

(a) **Definitions.** The following definitions are amended as set forth below:

(2) Section 1.11 "Costs" shall be amended as follows:

At the end of the definition of "Costs", add the following sentence: "The Non-Defaulting Party shall use commercially reasonable efforts to mitigate and/or eliminate all such Costs."

(3) Section 1.23 "Force Majeure" shall be deleted in its entirety and replaced with the following:

"Force Majeure" means any cause or event beyond the reasonable control of the affected Party which was not anticipated as of the date of the Transaction and not due to the fault or negligence of the Party affected, and which could not have been avoided by due diligence and use of reasonable efforts, including but not limited to (but only to the extent that the following examples satisfy such definition): (a) acts of God such as extreme weather conditions, droughts, floods, earthquakes, (b) fires, explosions, accidents that could not have been prevented by acting in

accordance with Good Utility Practice (defined below), and (c) war (declared or undeclared), riots, insurrection, rebellion, acts of the public enemy, acts of terrorism and sabotage, blockades, embargoes, industry-wide strikes. Notwithstanding anything to the contrary in the foregoing, the following shall not constitute Force Majeure: (a) lack of finances; (b) mechanical breakdown or electrical breakdown or failure of any machinery or equipment of all or part of the Facility due to operation, design, or maintenance of such machinery or equipment in a manner that is inconsistent with Good Utility Practice; or (c) changes in governmental approvals or the conditions imposed thereunder or the failure to grant or renew such governmental approvals. “Good Utility Practice” means any practices, methods and acts (i) required by the National Electric Safety Code or NERC, whether or not Seller is a member thereof, or (ii) otherwise engaged in or approved by a significant portion of the utility electric generation industry during the relevant time period or any of the practices, methods and acts that in the exercise of commercially reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be the optimum practice, method or act to the exclusion of all others, but rather is intended to be any of the practices, methods and/or actions generally accepted in the region.”

- (4) Section 1.25 shall be modified by adding the following as the last sentence: “Guarantor shall issue a Guaranty in substantially the same format attached hereto as Exhibit C.”
- (5) Section 1.27 shall be modified by adding the words “and substantially in the same form as the Letter of Credit template attached hereto as Exhibit D” at the end of the first sentence.
- (6) Sections 1.35 and 1.36 shall be modified by deleting the phrase “as defined in Schedule P.” and replacing such phrase with “as defined in Section 7.0 of the Initial Confirmation.”
- (7) Section 1.45 shall be modified by including the words “acceptable to the requesting party” after the words “Letter(s) of Credit”.
- (8) Section 1.51 is amended by replacing the current definition with the following:

“Replacement Price” means the price at which Buyer, acting in a commercially reasonable manner, purchases for delivery at the Delivery Point (or, if replacement power is not available at the Delivery Point, any other delivery point where Buyer is able to purchase replacement product) a replacement for any Product that includes its associated California RECs (defined below) and meets the requirements of Section 10.2(ix) but was not delivered by Seller, plus (i) costs reasonably incurred by Buyer in purchasing such substitute Product and (ii) additional transmission charges, if any, reasonably incurred by Buyer to the Delivery Point, or absent a purchase, the market price at the Delivery Point for such Product not delivered as determined by Buyer in a commercially reasonable manner. The Replacement Price also shall include all charges and penalties calculated in dollars per megawatt hour with respect to the deviation from the scheduled supply resulting from Seller’s failure to deliver; provided, however, in no event shall such price include any ratcheted demand or similar charges, nor shall Buyer be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller’s liability. For the purposes of this definition, Buyer shall be considered to have purchased replacement Product to the extent Buyer shall have entered into one or more arrangements in a commercially reasonable manner whereby Buyer repurchases its obligation to sell and deliver the Product to another party at the Delivery Point. If for any reason a Replacement Price is unavailable at the Delivery Point during a Transaction when Seller fails to deliver Product (“Missing Hours”), then the Replacement Price for Missing Hours shall be the last available Replacement Price prior to the Missing Hours together with any charges and penalties allocated to Buyer for the Missing Hours.

“Renewable Energy Credit” or “REC” means any and all credits, benefits, emissions reductions, offsets, allowances, and Environmental Attributes howsoever entitled, directly attributable to the generation from the Facility. Environmental Attributes include but are not limited to: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>) and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; and (3) the reporting rights to these avoided emissions such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser’s discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on kWh basis and one Green Tag represents the Environmental Attributes associated with one (1) MWh of energy. Environmental Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) production tax credits associated with the construction or operation of the energy projects and other financial incentives in the form of credits, reductions, or allowances associated with the project that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular pre-existing pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits.

“California RECs” means any and all RECs that qualify for California Renewables Portfolio Standard.

“California Renewables Portfolio Standard” means the Renewables Portfolio Standard of California under California Senate Bill 1078 as codified in Sections 387, 390.1, and 399.25 and Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of Division 1 of, the California Public Utilities Code, as such code reference may be amended from time to time.

- (9) Section 1.53 is amended by replacing the current definition with the following:

“Sales Price” means the price at which Seller, acting in a commercially reasonable manner, resells any Product not received by Buyer, deducting from such proceeds any (i) costs reasonably incurred by Seller in reselling such Product including all costs charged by CAISO to deliver the Product into the CASIO System, and (ii) additional transmission charges, if any, reasonably incurred by Seller in delivering such Product to the third party purchasers, or absent a sale the market price at the Delivery Point for such Product not received as determined by Seller in a commercially reasonable manner. The Sales Price shall also be reduced by all costs, charges and penalties calculated in dollars per megawatt hour with respect to the deviation from the scheduled supply resulting from Buyer’s failure to take Product; provided, however, in no event shall such price include any ratcheted demand or similar charges, nor shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Buyer’s liability. The Sales Price may be less than zero. For purposes of this definition, Seller shall be considered to have resold such Product in a commercially reasonable manner to the extent it sells Product into the CAISO imbalance market. If the CAISO prohibits the Seller from selling into the imbalance market, Seller may enter into short-term Product sales with third parties for the duration of Buyer’s unexcused failure to perform.

- (10) Section 1.62 is added as follows:

“CAISO” is the California Independent System Operator, or its successor in interest.

(11) Section 1.65 is added as follows:

“CAISO Tariff” means the CAISO Operating Agreement and Tariff, as it may be modified from time to time.

(12) Section 1.66 is added as follows:

“EIRP” means the Eligible Intermittent Resources Protocol, as in effect on the date of execution of this Agreement and as may be amended from time to time, which is part of the CAISO Tariff.

(13) Section 1.67 is added as follows:

“PTC” and “Production Tax Credit” mean the renewable electricity production tax credit described in Section 45 of the Internal Revenue Code of 1986, as amended.

(14) Section 1.68 is added as follows:

“Amendment 42” means Amendment 42 to the CAISO Tariff filed in Docket No. ER02-922-000 (Intermittent Resources; CT 487; Intra zonal Congestion; Real Time Pricing) as in effect on the date hereof and as may be amended from time to time.

**(b) Definitions.** (Deletions to Existing Terminology) The following definitions are deleted from Article 1:

“Cross Default Amount”

“Party A Collateral Threshold”

“Party B Collateral Threshold”

“Party A Independent Amount”

“Party B Independent Amount”

“Party A Rounding Amount”

“Party B Rounding Amount”

“Party A Tariff”

“Potential Event Of Default”

“Put Option”

#### **Article Two: Transaction Terms and Conditions**

Amend Section 2.1 by deleting the phrase “orally, or if expressly required by either party with respect to a particular Transaction,”

Section 2.3 shall be deleted in its entirety.

#### **Article Three: Obligations and Deliveries**

**(a)** Within Section 3.1 Seller's and Buyer's Obligations, the last sentence of Section 3.1 shall be amended by adding the following:

“except that Seller shall be responsible for the following costs or charges necessary to schedule and deliver Output into the CAISO controlled grid, imposed on or associated with the Output (i) imbalance penalties and (ii) electrical losses or gains at and from the Delivery Point as determined by utilizing the GMM (as defined below).

As used herein Generator Meter Multiplier(s) or GMM(s) as determined by the CAISO means the calculation of all electrical line losses (or gains) associated with the transmission of power delivered by the Facility over the CAISO controlled grid and including any generation tie meter multipliers applying to generating facilities located outside the CAISO control area.

(b) Section 3.2 “Transmission and Scheduling” shall be deleted in its entirety.

(c) **Force Majeure.** Add the following at the end of Section 3.3:

“After the Commercial Operation Date, this Agreement may be terminated by the non-Claiming party with no further obligation to either party if a Force Majeure event prevents the performance of a material portion of the obligations hereunder and such Force Majeure is not resolved within twelve (12) months after the notice given above.”

#### **Article Five: Events of Default**

(a) **Section 5.1 Events of Default.**

Amend Section 5.1 (c), by deleting “if such failure is not remedied within three (3) Business Days after written notice” and by adding the following clause “if such default has not been cured by the Defaulting Party within thirty (30) days after receiving written notice from the Non-Defaulting Party setting forth, in reasonable detail, the nature of such material default; provided, however, that in the case of a material default that is not reasonably capable of being cured within such thirty-day cure period, the Defaulting Party shall have additional time to cure the default if it commences to cure the default within such thirty-day cure period, it diligently pursues such cure, and such default is capable of being cured by the Defaulting Party within no more than an additional sixty (60) days after receiving such notice.

Within Section 5.1(a), delete the reference to “three (3)” and replace with “ten (10)”.

Within Section 5.1, add the following Events of Default:

“(k) failure of the Buyer to schedule all or a material portion of the Product for more than thirty (30) consecutive days or more than ninety (90) days during any 365-day period, and such failure is not excused by as provided by the last two sentences of the definition of the Product;”

“(l) failure of the Seller to schedule and/or deliver to the Buyer all or a material portion of the Product for more than ninety (90) days during any 365-day period if (i) such failure is not excused by the definition of the Product.”

Within Section 5.1, add the following Event of Default:

“(i) a Letter of Credit Default as described in Section 8.3.”

(b) **Section 5.2 Declaration of an Early Termination Date and Calculation of Settlement Amount.**

Section 5.2 is amended to include the following phrase “and the cure periods therefore have expired,” after the words “be continuing”.

Section 5.2 is amended to delete the following phrase from the last two lines: “under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable”.



The following shall be added to the end of Section 5.2: "under applicable law on the Early Termination Date, then each such Transaction (individually, an "Excluded Transaction" and collectively, the "Excluded Transactions") shall be terminated as soon thereafter as reasonably practicable, and upon termination shall be deemed to be a Terminated Transaction and the Termination Payment payable in connection with all such Transactions shall be calculated in accordance with Section 5.3 below. The Gains and Losses for each Terminated Transaction shall be determined by calculating the amount that would be incurred or realized to replace or to provide the economic equivalent of the remaining payments or deliveries in respect of that Terminated Transaction. The Non-Defaulting Party (or its agent) may determine its Gains and Losses in a commercially reasonable manner by reference to information either available to it internally or supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads, credit quality (assuming sufficient credit support for the proposed transaction), market reference prices established by the California Energy Commission or other relevant market data in the relevant markets. Third parties supplying such information may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. Notwithstanding the other provisions of this Agreement, if the Non-Defaulting Party has the right to liquidate or terminate all obligations arising under the Transactions under the provisions of this Article 5 because the Defaulting Party either (a) is the subject of a bankruptcy, insolvency, or similar proceeding, or (b) applies for, seeks, consents to, or acquiesces in the appointment of a receiver, custodian, trustee, liquidator, or similar official for all or a substantial portion of its assets, then this Agreement and all associated transactions shall automatically terminate, without notice, as if the Early Termination Date was the day immediately preceding the events listed in Section 5.1.

5.3 Add the following at the end of the last sentence "Notwithstanding anything in this Agreement, if the Termination Payment is due to Defaulting Party, the Settlement Amount shall be deemed to be zero."

**(e) Section 5.7 Suspension of Performance.**

Section 5.7 is amended by deleting the phrase "ten (10) NERC Business Days" and replacing it with "five (5) NERC Business Days."

Further amend Section 5.7 by the deletion of the following phrase in the first sentence "or (b) a Potential Event of Default".

**Article Six: Payment and Netting**

**(a) Section 6.2 Timeliness of Payment.**

Section 6.2 shall be replaced by the following: "Timeliness of Payment. Unless otherwise agreed by the Parties in a Transaction, all invoices under this Master Agreement shall be due and payable in accordance with each Party's invoice instructions thirty (30) days after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full. Seller shall submit a monthly invoice via fax and email during the Delivery Period. Buyer has 30 days to pay the invoice. Invoice shall be itemized, identifying all component charges and unit prices. Invoice shall identify the Output scheduled and delivered during all hours of the month. The invoice shall describe in reasonable detail the calculations used to arrive at invoiced amounts."

**(b) Sections 6.7 and 6.8.**

Section 6.7 Payment for Options is amended by deleting the text and substituting therefore "Intentionally omitted."

#### Article Eight: Credit and Collateral Requirements

- (a) **Performance Security.** Section 8.3 is amended by replacing the first sentence in such section with the following:

“To secure its obligations under this Agreement, Seller agrees to deliver to Buyer (the “Secured Party”) within thirty (30) days of the date on which all of the conditions precedent set forth in Section 1.0 of the Initial Confirmation are either satisfied or waived, and Seller shall maintain in full force and effect a) until the Commercial Operation Date a Letter of Credit in the amount of US\$500,000 as “Completion Security” and (b) from to the Commercial Operation Date until the end of the Delivery Period, a Letter of Credit, or Guaranty from an entity reasonably acceptable to Buyer, in the amount not to exceed US\$1,000,000 plus attorneys fees and other costs as stated in the Guaranty. The security listed in subsection (a) and (b) above shall not be deemed limitations of liability.

All Letters of Credit shall be subject to the following provisions:

- (a) The Seller shall (i) renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and in accordance with this Agreement, (ii) if the issuer has indicated its intent not to renew such Letter of Credit, provide a substitute Letter of Credit at least sixty (60) days prior to the expiration of the outstanding Letter of Credit, and (iii) if an issuer of a Letter of Credit shall fail to honor the Buyer’s properly documented request to draw on an outstanding Letter of Credit, provide for the benefit of the Buyer a substitute Letter of Credit, that is issued by an alternate issuer acceptable to the Buyer within five (5) Business Days after the Seller receives notice of such refusal.

- (b) “Letter of Credit Default” shall mean with respect to an outstanding Letter of Credit, the occurrence of any of the following events: (i) the issuer of such Letter of Credit shall fail to maintain a Credit Rating of at least “A-“ by S&P or “A3” by Moody’s; (ii) the issuer of the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit if such failure shall be continuing after the lapse of any applicable grace period; (iii) the issuer of such Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; or (iv) Seller shall fail to meet the requirements of this Section 8.3 after the applicable cure periods, if any.

- (c) In all cases, the reasonable costs and expenses of (including but not limited to the reasonable costs, expenses, and attorneys’ fees, including reasonably allocated costs of in-house counsel of the Buyer for enforcing) establishing, renewing, substituting, canceling, increasing and reducing the amount of (as the case may be) one or more Letters of Credit shall be borne by the Seller.”

- (b) **Performance Security.** Section 8.3 is amended by deleting “or deemed occurrence” from the beginning of the second sentence.

#### Article Ten: Miscellaneous

- (a) **Term of Master Agreement.** Add the following sentence to Section 10.1: “The Transaction shall terminate on the day following the last day of the Delivery Period, unless terminated sooner pursuant to the express provisions of this Agreement”.

- (b) **Representations and Warranties.**

Section 10.2(vi) is amended to delete the phrase “or any of its Affiliates.”

Section 10.2(ix) is deleted in its entirety and replaced with the following: “The Seller represents and warrants that during the Delivery Period (i) the Output qualifies as an ‘Eligible Renewable Energy

Resource,' as defined in Section 399.12(a) of the California Public Utilities Code, and (ii) the Output will qualify under the requirements of the California Renewables Portfolio Standard.”

Article 10.2(vii) shall be amended by deleting the words “or Potential Event of Default”.

(c) **Assignment.**

Article 10.5 shall be amended by adding the words “with respect to all or any portion of the Facility (and in connection therewith, Buyer shall use reasonable efforts to negotiate a Consent and Agreement with Financing Parties that is consistent with industry standards.)” after “financial arrangements”.

Section 10.5(ii) shall be deleted in its entirety.

Add a new sentence at the end of Section 10.5 as follows: “The foregoing restrictions shall not prohibit the sale of membership interests in Seller to third parties.”

(d) **Governing Law/Venue/Waiver of Jury Trial.** The first sentence of Article 10.6 shall be replaced with the following:

**“THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAWS OF THE STATE OF CALIFORNIA (NOTWITHSTANDING OTHERWISE APPLICABLE CONFLICTS OF LAW PRINCIPLES). THE PARTIES HEREBY CONSENT TO CONDUCT ALL DISPUTE RESOLUTION, JUDICIAL ACTIONS OR PROCEEDINGS ARISING DIRECTLY, INDIRECTLY OR OTHERWISE IN CONJUNCTION WITH, OUT OF, RELATED TO OR ARISING FROM THIS AGREEMENT IN THE CITY OF SAN DIEGO, CALIFORNIA.**

**EACH PARTY HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY TRANSACTION.”**

(e) **Section 10.8 General.** Amend Section 10.8 by deleting the phrase “Except to the extent herein provided for,” in the fourth sentence.

(f) **Section 10.11 Confidentiality.** Within the first sentence of Section 10.11, (i) add the words “Affiliates, to the extent not specifically prohibited by legal or regulatory requirement” immediately after the word “employees”, (ii) add the words “applicable to such Party or any of its Affiliates” immediately after the word “proceeding”, and (iii) delete the phrase “or advisors” and replace with the following: “, advisors, actual and prospective Financing Parties, landowners of actual or prospective real property on which the Facility is or may be constructed and prospective investors in and purchasers of the Facility or the equity interests in Seller”.

(g) **RPS Confidentiality.** Add a new section to Article 10 as follows:

**“10.12 RPS Confidentiality.** In compliance with reporting requirements of the California Renewables Portfolio Standard and notwithstanding Article 10.11, the Buyer may disclose limited contract information to the public. The information to be reported to the public will be limited to: Seller name, resource type, project location, project output, contract duration. If Option B is checked on the cover sheet, Seller may delay the release of Seller name and project location by six months after the date of the Agreement is filed with the CPUC for CPUC Approval (as defined in the Confirmation).

(h) **Publicity.** Add a new Section to Article 10 as follows:

**“10.13 Publicity.** No announcement, publicity, advertising, press release, promotional or marketing materials regarding the arrangement contemplated under this Agreement, including the existence hereof,

shall be made by either Party without the prior written approval of the other Party which approval shall not be unreasonably withheld or delayed.”

- (i) **Dispute Resolution.** Add a new section to Article 10 as follows:

**“10.14 Dispute Resolution.**

- (a) If a dispute shall arise between the Parties relating to the interpretation of this Agreement or to performance of any Transaction under it, the Party desiring resolution of the dispute shall notify the other Party in writing. The notice shall set forth the matter in dispute in reasonable detail and a proposed solution.
- (b) The Parties shall attempt to resolve any dispute within 30 calendar days after delivery of the written notice referred to above. Any disputes not so resolved shall be referred by each Party to a senior officer (or the officer's designee) for resolution. If the Parties fail to reach an agreement within 30 days after such referral, each Party shall have the right to pursue any and all remedies provided in this Agreement and as afforded by law, provided however, that disputes arising before the declaration of the Commercial Operation Date shall be submitted to binding arbitration in accordance with Section 10.14(c)
- (c) If either Party requests arbitration under this Agreement, the dispute may be submitted to binding arbitration by one arbitrator qualified by education, experience or training to render a decision upon the issues in dispute, and who has not been employed by either Party and does not have a direct or indirect interest in either Party or the subject matter of the arbitration. Such arbitrator shall either be mutually agreed to by the Parties within thirty (30) days after written notice from either Party requesting arbitration, or failing agreement, the arbitration shall be conducted by a panel of three arbitrators having the qualifications set forth in the preceding sentence, one to be selected by each Party and the third arbitrator to be selected by the two arbitrators. If either Party fails to notify the other Party of the arbitrator selected by it within ten (10) days after receiving notice of the other Party's arbitrator, or if the two arbitrators selected fail to select a third arbitrator, then such arbitrator shall be selected under the expedited rules of the American Arbitration Association (the “AAA”). Such arbitration shall be held in San Diego, California. The arbitrator shall be bound by the terms of this Agreement and may not detract or add to its terms. Each Party shall divide equally the cost of the hearing, and each shall be responsible for its own expenses and those of its counsel or other representative. Unless otherwise agreed to by the Parties, the commercial arbitration rules of the AAA shall apply to the extent not inconsistent with the rules specified above. The Parties agree not to bring a lawsuit concerning any dispute covered by this arbitration provision, except that any monetary award of the arbitrator may be enforced by the Party in whose favor such monetary award is made in any court of competent jurisdiction.
- (d) The existence of any dispute or controversy under this Agreement or the pendency of the dispute settlement or resolution procedures set forth herein shall not in and of themselves relieve or excuse either Party from its ongoing duties and obligations under this Agreement.”

- (j) **Financing Liens.** Add a new section to Article 10 as follows:


**“10.15 Financing Liens.** Pursuant to Section 10.5, Seller, without approval of Buyer, may, by security, charge or otherwise, assign all of its rights, interests and obligations under this Agreement to a Financing Party(ies) under this Agreement in accordance with the consent agreement. Within ten (10) days after making such encumbrance, Seller shall notify Buyer in writing of the names, address, and telephone and facsimile numbers of the Financing Parties to which Seller's interest under this Agreement has been encumbered. Such notice shall include the names of the account managers or other representatives of the Financing Parties to whom all written and telephonic communications may be addressed. After giving Buyer such initial notice, Seller shall promptly give Buyer written notice of any change in the information provided in the initial notice or any


revised notice. If Seller encumbers its interest in this Agreement as permitted by this Section 10.15, the Buyer shall, upon request by Seller, execute statements certifying that this Agreement is unmodified (or, modified and stating the nature of the modification), in full force, and effect and the absence or existence (and the nature thereof) of defaults hereunder by Seller.

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

Party A – KUMEYAAW WIND LLC

Party B – SAN DIEGO GAS & ELECTRIC COMPANY

By:   
Name: John Calaway  
Title: Managing Member

By:   
Name: EDWIN A. GUILLES  
Title: CHAIRMAN/CEO

APPROVED as to legal form a.s.

## CONFIRMATION LETTER

This Confirmation Letter (this "Confirmation Letter") is being provided pursuant to and in accordance with the Master Power Purchase and Sale Agreement, dated May 31, 2004 (the "Master Agreement"), between **Kumeyaay Wind LLC**, a Delaware limited liability company ("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. The obligation of Buyer to purchase the Product, including the Output (as defined in Section 4 of this Confirmation Letter), under this Agreement is expressly conditioned upon satisfaction of each of the following:

- a. CPUC Approval. Buyer shall have received a final, non-appealable order (the "CPUC Order") from the California Public Utilities Commission (the "CPUC") (i) approving the terms and conditions of this Agreement without material alteration of the commercial aspects described herein in form and substance acceptable to Buyer in its sole discretion, (ii) allowing Buyer full rate recovery of the costs associated under this Agreement through any existing or future cost recovery mechanism that may be developed or instituted by the CPUC, in form and substance acceptable to Buyer in its sole discretion, (iii) a finding by the CPUC that the payments for the Product under this Agreement are just and reasonable, (iv) a finding by the CPUC that this Agreement complies with California Renewables Portfolio Standard Program requirements under California Senate Bill 1078 and the Product delivered will count toward Buyer's annual procurement target, and (v) a finding by the CPUC that the Output purchased by Buyer pursuant to Section 8.2 includes the associated Renewable Energy Credits whether or not the Output entered the CAISO imbalance market. The Parties agree to cooperate and use all reasonable efforts to obtain the CPUC Order 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 or if the CPUC Order does not provide, in Buyer's reasonable discretion, for the matters in (ii), (iii), (iv) or (v) above, 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 (as defined below). 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 issues a final, non-appealable order approving this Agreement.

- b. Seller's Conditions; Right to Terminate. Seller shall have the right upon thirty (30) days written notice to terminate this Agreement on or before March 31, 2005 without further obligation on the part of either Party if any of the events related to 1.0 b. (i) have not occurred. Seller shall have the right upon thirty (30) days written notice to terminate this Agreement on or before June 30, 2005 without further obligation on the part of either Party if any of the following events related to 1.0 b. (ii), 1.0 b. (iii) or 1.0 b. (iv) have not occurred.
- (i) Section 45(c)(3)(A) of the Internal Revenue Code of 1986, as amended, is not amended such that the latest date on which a "qualified facility" may be placed in service (as such terms are defined therein) is extended from December 31, 2003 to at least December 31, 2005 and all other terms and conditions of the Production Tax Credit (excluding inflation adjustment terms and conditions which are addressed in Section 8.1) are materially no less favorable to the taxpayer as those in effect on December 31, 2003;
  - (ii) Financial Closing. As used herein, "Financial Closing" means the date on which (a) binding commitments to provide the financing on terms and conditions satisfactory to Seller in its sole discretion for the estimated cost to complete construction of the Facility are issued by the Financing Parties (as defined below) and are effective, (b) conditions on initial borrowings under such commitments are satisfied, and (c) amounts become available for initial borrowing from the Financing Parties for the construction of the Facility. "Financing Parties" means any entity (including any trustee or agent on behalf of such entity) providing debt financing or refinancing to Seller for the acquisition, development, construction, ownership, operation, maintenance or leasing of the Facility.
  - (iii) Receipt by Seller of all necessary approvals from the Bureau of Indian Affairs in form and substance acceptable to Seller;
  - (iv) Receipt by Seller of all environmental permits in form and substance acceptable to Seller; and
- 2.0 Product: "As Available Output" which means all of the Output (as defined below) and RECs to be supplied from the Facility. Seller's failure to deliver an "As Available" Product shall be excused: (i) if the Facility is unavailable as a result of a Forced Outage (as defined in the NERC Generating Unit Availability Data System ("GADS") Forced Outage reporting guidelines); (ii) by an event or circumstance that affects the Facility so as to prevent Seller from performing its obligations, and which is not a) within the reasonable control of Seller or b) the result of a failure of Seller to comply with Section 13.4 and such failure is not cured within ten (10) Business Days of receiving written notice from Buyer; (iii) by Buyer's failure to perform; (iv) if there is insufficient wind for the Facility to generate energy as determined by the best wind speed and direction standards utilized by other wind producers or purchasers in the vicinity of the Facility or if wind speeds exceed the Facility's technical specifications; (v) by Scheduled Maintenance Outages (defined in Section 13.1) of the Facility; or (vi) any Delivery

Excuse (as defined below in Section 4.2) is outstanding and continuing. Except as otherwise expressly provided herein in Section 4.2, in any of such events, Seller shall neither be liable to Buyer for damages under this Agreement nor deemed in breach of this Agreement. Buyer's failure to receive an "As Available Product shall be excused due to Force Majeure, Seller's failure to perform, and a Curtailment pursuant to Section 17 of this Confirmation. In any of such events, Buyer shall be neither liable to Seller for damages under this Agreement nor deemed in breach of this Agreement.

3.0 Delivery Period/Commercial Operation. The Delivery Period of this Agreement shall be twenty (20) years from the Commercial Operation Date.

"Commercial Operation Date" with respect to the Facility means the date on which Commercial Operation (as defined herein) of at least 70% of the wind turbines (rounded up to the next whole number) is achieved but shall be no later than December 31, 2005, as extended pursuant to Section 11 of this Confirmation or as may otherwise be extended by written agreement signed by both parties.

"Commercial Operation" means that (a) Seller shall have delivered a completed Certificate of Commercial Operation (described below) in the form attached as Exhibit E addressed to Buyer; and (b) Seller has delivered a Letter of Credit or an executed Guaranty as accepted by Buyer in accordance with Section 8.3 of the Master Agreement. Seller shall deliver a Certificate of Commercial Operation which incorporates a certificate from the wind turbine supplier, the balance of plant construction contractor and a Licensed Professional Engineer (defined below) and the Commercial Operation Date shall be deemed to occur upon the date of Seller's delivery of a Certificate that is accepted by Buyer. Buyer shall not unreasonably withhold, condition or delay acceptance of the Certificate. Buyer shall be deemed to have accepted such Certificate in the event it does not deliver written notice of objection within five (5) Business Days after delivery of the Certificate by Seller. "Licensed Professional Engineer" means a person acceptable to Buyer in its reasonable judgment who (i) is licensed to practice engineering in the state of California (ii) has training and experience in the wind 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; provided, however, that Buyer agrees that the independent engineer designated by the Financing Parties fitting the above description shall be acceptable. Buyer shall determine using its reasonable discretion whether the Certificate of Commercial Operation delivered by Seller complies as to form with the requirements of Exhibit E and whether the other requirements of this section have been met.



#### 4.0 Output Requirements.

- 4.1 Contract Quantity. Prior to and during the Delivery Period, Seller shall deliver, and Buyer shall receive and pay for, all of the Output (as defined below) of the Facility. 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 metered at the Delivery Point.

“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, on an instantaneous basis, be greater or less than the total nameplate rated Output of 49.5 MW (minimum) to 51.0 MW (maximum) and an annual estimated Output of 167,900 MWh/year, both as metered at the Delivery Point.

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

- 4.2. Energy Production Guarantee and Remedies. Commencing from the start of the Delivery Period and continuing to the end of the Delivery Period, Seller estimates that annual Output for each Contract Year (defined below) shall be approximately 167,900 MWh. Commencing from the first Contract Year, Seller guarantees that during the Delivery Period the Facility will produce an annual average minimum Output of 100,740 MWh (“Guaranteed Energy Production”) in a Contract Year. In the event that actual annual Output (“Actual Output”) in the first Contract Year and every Contract Year thereafter is below the Guaranteed Energy Production for such period, Seller will credit Buyer in the invoice immediately following the end of the Contract Year just passed an amount equal to the difference between Guaranteed Energy Production and the Actual Output for that Contract Year, multiplied by \$20/MWh as liquidated damages for failure to meet the Guaranteed Energy Production for such Contract Year. The liquidated damages described above shall be Buyer’s sole remedy for Seller’s failure to meet the Guaranteed Energy Production for such Contract Year; provided, that such limitation of damages shall not apply in the case of an Event of Default of Seller, gross negligence or willful misconduct. In the event that the Actual Output is less than the Guaranteed Energy Production for any Contract Year during the Delivery Period, Seller shall provide Buyer, within thirty (30) days, a detailed remedial plan proposing commercially reasonable measures to increase Output to the minimum Guaranteed Energy Production. Seller shall implement such remedial plan in good faith in the shortest practical timeframe. Notwithstanding the remedial plan, if the Output remains below the Guaranteed Energy Production for two (2) consecutive years, Buyer shall in its sole discretion have the right to declare an Event of Default and recover damages under Article 5 of the Master Agreement.

“Contract Year” shall mean any of the twenty (20) consecutive twelve-month periods starting with the first day of the month following the Commercial Operation Date.

“Delivery Excuse” means, at any time during the Delivery Period any of the following: (A) any Event of Default of Buyer; (B) any delay or failure by Buyer in performing any obligation under this Agreement that is not the result of Force Majeure affecting the performance of Buyer; (C) any failure of Buyer to have adequate transmission rights to take delivery of the Output at the Delivery Point; (D) curtailments ordered either directly or indirectly by the CAISO or (E) curtailments pursuant to Section 17.1.

“SDG&E Interconnection Facilities” means the interconnection facilities and network upgrades required to be constructed and maintained by Buyer pursuant to the Interconnection Agreement between Seller and Buyer (the “Interconnection Agreement”).

5.0 Facility. The Output will be supplied from the following generation asset only:

Facility Name: Kumeyaay Wind Energy Facility  
Site Name: Campo Wind Power  
Facility Physical Address: Immediately north of Interstate 8 and generally west of Campo Creek and Williams road Live Oak Springs, CA 91905  
Technology Type: Wind Turbine Generator  
Specific Unit Description: 51MW consisting of 1MW to 3MW wind turbine generators of various manufacturers.

6.0 Interconnection. The Delivery Point is described as follows:

Distribution Area: SDG&E  
Congestion Zone: SP15  
Demand Zone: SDG1  
Load Group: SDSD  
Delivery Point: The high side of the transformer at the Crestwood Substation  
Delivery Point Address: Crestwood Substation  
Additional Information: Meter shall be located at the Delivery Point

7.0 Exclusivity/Option to Purchase. At no time shall Seller sell or otherwise dispose of Output or RECs from the Facility to any third party without Buyer’s prior written consent other than to the CAISO imbalance market in accordance with this Agreement or as

contemplated in the definition of “Sales Price” in Section 1.53 of the Cover Sheet. Upgrades of existing units to the Facility which are designed to increase the estimated annual Output for each Contract Year to more than 184,690 MWh must be pre-approved by both Parties in writing. If, at any time during the Delivery Period, Seller causes the Facility to produce additional Output due to the installation of additional units, Seller shall deliver notice (each, an “Option Election Notice”) to Buyer setting forth the terms and conditions of the offer in writing and in reasonable detail. Except to the extent otherwise noted in the Option Election Notice, any such additional Output 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 promptly answer any questions that Buyer may have concerning the offered terms and conditions and shall meet with Buyer to discuss the offer. Buyer shall have the exclusive option to purchase such additional Output. Such option may be exercised by countersigning such Option Election Notice and delivering the same to Seller within thirty (30) days after Seller sends Buyer an Option Election Notice. Such option shall terminate with respect to the units included in the Option Election Notice if it is not exercised within the 30-day period referred to in the immediately preceding sentence.

8.0 Monthly Payments.

8.1 Contract Price. The Contract Price shall be as follows:

| Contract Year 1 | Contract Year 2 | Contract Year 3 | Contract Year 4 | ContractYear 5 - 20 |
|-----------------|-----------------|-----------------|-----------------|---------------------|
| \$49.00 MWh     | \$49.75 MWh     | \$50.50 MWh     | \$51.50 MWh     | \$51.75 MWh         |

**In the event the inflation adjustment portion of the Production Tax Credit is not included as part of the renewal of the Production Tax Credit, and so long as the network upgrades costs to Buyer do not exceed \$1,000,000 the Contract Price shall be adjusted as follows:**

| Contract Year 1 | Contract Year 2 | Contract Year 3 | Contract Year 4 | ContractYear 5 - 20 |
|-----------------|-----------------|-----------------|-----------------|---------------------|
| \$49.75 MWh     | \$50.50 MWh     | \$51.50 MWh     | \$52.25 MWh     | \$52.50 MWh         |

**If the Production Tax Credit is renewed without the inflation adjustment and the Production Tax Credit is increased from its current form, as of December 31, 2003, the price adjustment will be reduced by the same amount.**

8.2 Energy Payment. As long as Amendment 42 is in effect or has not materially changed, Buyer shall pay for all Output on a monthly basis in accordance with the following: On or about the 5th day of each month, the Parties will compare metered energy to scheduled energy for the preceding month. In the event that metered energy for such month is equal to or greater than scheduled energy for such month, Buyer shall pay for the scheduled energy at the Contract Price. In the event that scheduled energy for such month is greater than metered energy for such month, Buyer shall pay for (i) the metered energy at the Contract Price, and (ii) the incremental amount of energy equal to the scheduled energy minus

metered energy (“Incremental Energy”) at (a) the lower of the Contract Price or the average of the inc and dec prices for all hours in such month as posted on the CAISO OASIS until such time as Seller is certified as a Participating Intermittent Resource in accordance with the EIRP and begins scheduling pursuant to Amendment 42 or (b) the lower of the Contract Price or the monthly average imbalance price applied by the CAISO with respect to imbalance charges for Participating Intermittent Resources for the period commencing on the date that Seller is certified as a Participating Intermittent Resource in accordance with the EIRP and begins scheduling in accordance with Amendment 42 (in either case “the Imbalance Price”). Monthly billing for the Incremental Energy will be done using the last available Imbalance Price. Beginning with the first months’ invoice following the month in which the actual Imbalance Price becomes available for the applicable month, there shall be a true-up of the Imbalance Price payable in the monthly invoice. Notwithstanding the foregoing provisions of this paragraph, if either, (a) Amendment 42 is no longer in effect or (b) Amendment 42 is materially changed, subject to the next three sentences, each of Seller or Buyer shall have the right at its sole discretion to discontinue the settlement arrangements as described in this paragraph. In the event that either Party discontinues settlement arrangements as described above, Seller and Buyer will use commercially reasonable efforts to modify this Agreement to arrive at a mutually agreeable amendment that will provide a scheduling or other arrangement for the delivery of energy from the Facility to Buyer. Regardless of whether such an amendment is agreed upon, each of the Parties’ obligations hereunder shall continue in force and effect and until such time as a mutually agreeable amendment is reached. Seller shall continue to provide scheduling in accordance with the same scheduling protocol as Amendment 42 and Buyer shall continue to pay on a monthly basis the Contract Price for the scheduled Output and any Incremental Energy as described above. Buyer shall have the right to verify Seller’s scheduling protocol and may suspend the Incremental Energy Payment during any period that Seller’s scheduling protocol is not in compliance with Amendment 42.

The payment for Output (the “Energy Payment”) shall be paid on a monthly basis for the Scheduled Output delivered by the Seller and received by the Buyer. The Energy Payment shall be calculated as follows:

Energy Payment = (Scheduled Output x Contract Price) + Incremental Energy  
 Payment where:

Scheduled Output = MWH scheduled in each hour in the month;

Contract Price = As provided in Section 8.1 above;

Incremental Energy Payment = Incremental Energy x Imbalance Price

8.3 Imbalances. Seller shall 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 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 Penalties under this Agreement. "Penalties" shall be defined as any fees, liabilities, assessments, imbalances or similar charges assessed by the CAISO. Notwithstanding anything to the contrary which may be contained herein, Seller shall be entitled to any and all credits and/or payments made by CAISO to Seller or its Scheduling Coordinator in accordance with the CAISO Tariff and all applicable protocols.

9.0 Renewable Energy Credits (REC's). All rights and interests in REC's associated with Output purchased by Buyer under the terms of this Agreement from the Facility shall be the property of Buyer before and after Commercial Operation. Seller shall transfer all such REC's to Buyer at no additional cost and in its entirety without unbundling of any component attributes.

10.0 Facility Schedule. The Facility Milestones are the following:

| <u>Milestone</u>   | <u>Milestone Date</u>  |
|--|--|
| Submit Completion Security in the amount of \$500,000 in the form of a Letter of Credit pursuant to Section 8.3 of the Cover Sheet.  | Within 30 days from which all the conditions precedent set forth in Section 1.0 of this Confirmation are either satisfied or waived. |
| Completion of Design   | 3/31/05  |
| Pre Certification as a renewable supplier eligible for the RPS issued by the California Energy Commission  | 3/31/05  |
| Execute Participating Generator Agreement with CAISO.  | 4/30/05  |
| Execute Meter Service Agreement with CAISO.  | 4/30/05  |
| Execute an Interconnection Agreement with Buyer  | 5/31/05  |
| Land Rights. Seller shall have delivered to Buyer documentation in form and substance acceptable to Buyer evidencing Seller's valid leasehold and or real property interest in the Facility Site for a term of at least 20 years from the last possible Commercial Operation Date. Any lease of the Facility Site shall be subject to the prior review and approval of Buyer with all commercial terms redacted, which approval may not be unreasonably withheld or delayed. | 6/30/05  |

|  |          |
|--|----------|
| Issuance of approval of the construction and operation of the Facility by the Bureau of Indian Affairs   | 6/30/05  |
| Issuance of Environmental Permits  | 6/30/05  |
| Financial Closing. Financial Closing means that date on which (a) binding commitments to provide the financing for the estimated cost to complete construction of the Facility are issued by the financing parties and are effective, (b) conditions on initial borrowings under such commitments are satisfied, and (c) amounts become available for initial borrowing from the financing parties for the construction of the Facility. | 6/30/05  |
| Certification as a Participating Intermittent Resource by the CAISO  | 12/31/05 |
| Commercial Operation Date  | 12/31/05 |

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

- a. Buyer shall have the right to review Facility design drawings and documents.
- b. 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.
- c. Within seven (7) days after the close of each calendar quarter until the Commercial Operation Date, Seller shall provide Quarterly Progress reports similar in form and content of Exhibit F: Quarterly Progress Reports to Buyer. 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.

10.2 Milestone Completion Notice. No later than seven (7) days after completion of each milestone set forth in Section 10.0, 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.

11.0 Facility Delays.

- a. Missed Milestones. If Seller misses three or more milestones set forth in Section 10.0 or misses any one by more than 90 days except as a result of Force Majeure, Seller shall submit to Buyer, within ten (10) days of such missed milestone date, a remedial action plan (the "Remedial Action Plan").
- b. Missed Commercial Operation Date. If the Commercial Operation Date is not met for reasons not attributable to Force Majeure, Exhibit G: The Late Commercial Operation Date Payment Concessions shall apply to the Energy Payment beginning on January 1, 2006. In the event the Commercial Operation

Date is not met for reasons attributable to Force Majeure, the Commercial Operation Date is extended on a day for day basis for up to 180 days, but the Late Commercial Operation Date Payment Concessions shall start to apply to the Energy Payment on June 30, 2006. Seller shall also submit a Remedial Action Plan within ten (10) days of a missed Commercial Operation Date. If the Commercial Operation Date is not achieved by June 30, 2006 (as may be delayed on a day for day basis by Force Majeure for up to 180 days), then Buyer shall have the right in its sole discretion to declare an Event of Default. Notwithstanding the foregoing, in the event the Commercial Operation Date is not achieved by June 30, 2006 as a result of a Delivery Excuse or inability of the SDG&E Interconnection Facilities to accept delivery of the Output, then (i) the Commercial Operation Date shall continue to be delayed on a day for day basis until the Delivery Excuse or such inability no longer exists and (ii) the late Commercial Operation Date Payment Concessions shall not apply.

- c. Remedial Action Plan. For purposes of Section 11.0a and Section 11.0b, 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 10.0 and Commercial Operation Date. Seller shall obtain approval from Buyer (such approval not to be unreasonably withheld or delayed) with respect to remedial efforts detailed in Seller's Remedial Action Plan; provided, however, that such approval or withholding of approval shall not relieve Seller of its obligation to meet any subsequent milestones and Commercial Operation Date. Buyer at its sole discretion may reject any Remedial Action Plan and declare an Event of Default if the Commercial Operation Date has not been met by June 30, 2006 (as may be delayed as provided in Section 11.0(b)).

- 12.0 Operating Procedures. No later than forty-five (45) days before the Commercial Operation Date, 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.

13.0 Maintenance.

- 13.1 Scheduled Maintenance Outages. Seller shall operate, maintain, and arrange Scheduled Maintenance Outages for the Facility in accordance with Good Utility Practices. 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. Seller shall be limited to the number of hours of Scheduled Maintenance Outages per wind turbine per year recommended by the manufacturer of the wind turbines in its service and maintenance manual, as

amended and supplemented from time to time by the wind turbine manufacturer. 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. Seller shall use Good Utility Practices not to schedule Scheduled Maintenance Outages during Summer Months (as defined below). "Summer Months" shall be defined as May, June, July, August and September.

13.2 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.

13.3 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 2 years and provided to Buyer electronically, within 30 days of Buyer's request.

13.4 General Maintenance. Seller shall operate and maintain the Facility in accordance with Prudent Wind Industry Practice and the turbine manufacturer's operating and service and maintenance manuals. Prudent Wind Industry Practice means any practices, methods and acts otherwise engaged in or approved by a significant portion of the wind power electric generation industry during the relevant time period or any of the practices, methods and acts that in the exercise of commercially reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition.

#### 14.0 Forecasts.

14.1 Annual Delivery Forecast. 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.

14.2 Monthly Delivery Forecast. Ten 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"). Buyer shall expect daily deliveries of Output based on the Monthly Delivery Forecast unless otherwise revised per Sections 15 and/or 16.



- 15.0 Participating Intermittent Resource; Daily Forecasts. Seller shall cause the Facility to become a Participating Intermittent Resource (as defined in the CAISO Tariff) including negotiating and executing a CAISO Participating Generator Agreement, Meter Service Agreement for ISO Metered Entities and a Letter of Intent to become a Participating Intermittent Resource (collectively, the “Program Agreements”). Seller and Buyer shall comply with Amendment 42 and all applicable protocols issued by CAISO relating to Participating Intermittent Resources, including the EIRP, for the term of the Delivery Period.

By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, Seller shall cause the Facility’s Scheduling Coordinator (as defined in the CAISO Tariff) to provide Buyer with a copy of a non-binding hourly forecast of deliveries of Output for each hour of the immediately succeeding day concurrent with delivery of the same to CAISO. A forecast provided in a day prior to any non-Business Day(s) shall include forecasts for the immediate day and each succeeding non-Business Day. Seller shall provide Buyer with a copy of any and all updates to such forecast indicating a change in forecasted Output from the then current forecast which is provided to CAISO under Amendment 42 and any and all scheduling protocols issued by CAISO.

- 16.0 Scheduling and Scheduling Coordinator. Seller or Seller’s designee shall be the Scheduling Coordinator for the Facility and shall be responsible for scheduling the forecast of Output to the Delivery Point during the Delivery Period in accordance with Amendment 42 and the EIRP. Seller shall submit schedules, and any updates to such schedules, to the CAISO based on the most current forecast of Output consistent with Amendment 42 and the EIRP. All generation scheduling and transmission services shall be performed in accordance with all applicable operating policies, criteria, guidelines and CAISO tariff or its successor, and any other generally accepted operational requirements. Seller shall also fulfill contractual, metering and interconnection requirements set forth in the CAISO Tariff and implementing CAISO standards and requirements, including but not limited to executing a CAISO Participating Generator Agreement, so as to be able to deliver Output to the CAISO controlled grid. Subject to Section 8.2, in the event that Amendment 42 or 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 implement the necessary Program Modifications. Any economic benefit from the Program Modifications shall inure solely to Buyer; provided that such benefit does not cause a detriment to Seller; and provided, further, that Seller shall be entitled to any and all benefit resulting from such Program Modifications which reduce, minimize and/or eliminate Penalties resulting from generation or energy imbalances so long as such benefit does not cause a detriment to Seller.

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, Seller shall submit Exhibit H: 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 Deliveries of Output prior to Certification of the Facility as a Participating Intermittent Resource. Seller, or its Scheduling Coordinator, shall submit schedules and any updates to such schedules, to the CAISO based on the most current forecast of Output. Notwithstanding anything to the contrary contained in this Agreement, provided that Seller has executed the Program Agreements, during the period in which the Facility is undergoing the certification process of becoming a Participating Intermittent Resource but no longer than sixty (60) days after the Commercial Operation Date, Seller may operate without a schedule, in which case the Output will be sold by Seller into the CAISO imbalance market.
- 17.0 CAISO Ordered Curtailments and System Emergencies. Seller shall reduce deliveries if notified directly by the CAISO or if CAISO orders Buyer to curtail deliveries from the Facility for system emergencies.
- 17.1 Curtailment. Seller shall reduce deliveries for (a) system emergencies, (b) scheduled maintenance on Buyer's facilities that prevents Buyer from taking Output at the Delivery Point or (c) unscheduled outages on Buyer's system that affect Buyer's ability to accept deliveries under this Agreement. Buyer shall be excused from paying the Energy Payment under Section 17.1, (a) and (b). Buyer shall pay Seller an Energy Payment based on scheduled Output for subsection (c).
- 17.2 Economic Curtailment. Buyer shall not interrupt deliveries pursuant to this Section 17 in order to take advantage, or make purchases of, less expensive energy elsewhere.
- 18.0 Delivery and Metering. All deliveries of Output shall be metered in real-time basis at the Delivery Point. A copy of such meter 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 CAISO Agreements. Seller shall enter into a Participating Generator Agreement and a Meter Service Agreement with the CAISO and shall comply with the CAISO Tariff and standards applicable to metering. 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 CAISO on-line meter data by identifying Buyer as an authorized user with "read only" privileges on Schedule 3 of Seller's Meter Service Agreement with the CAISO.
- 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 and the CAISO Tariff. 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 under the Meter Service Agreement, 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 under the Meter Service Agreement, 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.

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

Seller

Kumeyaay Wind LLC

Buyer

San Diego Gas & Electric Company

Signature: \_\_\_\_\_

*John Calaway*  
By: John Calaway  
Title: Managing Member

Signature: \_\_\_\_\_

*Edwin A. Guivel*  
By: EDWIN A. GUIVEL  
Title: CHAIRMAN/CEO

APPROVED as to legal form *A.S.*

**FIRST AMENDMENT TO THE MASTER  
POWER PURCHASE AND SALE AGREEMENT**

This FIRST AMENDMENT TO THE MASTER POWER PURCHASE AND SALE AGREEMENT (this "Amendment") is made and entered into as of 6/23, 2004 by and between San Diego Gas & Electric Company, a California corporation ("Buyer"), and Kumeyaay Wind LLC, a Delaware limited liability company ("Seller"), Buyer and Seller each a ("Party") and collectively the ("Parties") to amend the EEI Master Power Purchase and Sale Agreement dated May 31, 2004, including the Confirmation Letter and Cover Sheet both dated May 31, 2004 by and between Buyer and Seller (the "PPA").

**RECITALS**

WHEREAS, the Parties desire to amend certain provisions of the PPA as set forth herein.

NOW THEREFORE, in consideration of the foregoing and for good and valuable consideration including the covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1) Section 9.0: Renewable Energy Credits (REC's) of the Confirmation Letter shall be amended by adding the following sentence to the end of such paragraph:

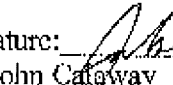
"Both Parties further agree that the transfer of RECs provided by the preceding sentence shall include all electric energy generated by the Facility, including electric energy generated in excess of the amounts scheduled by Seller (or its Scheduling Coordinator) regardless of whether the electric energy was scheduled for, delivered to, or received by Buyer."

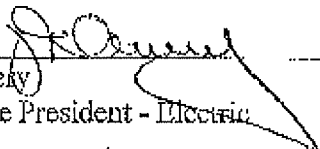
2) Except as modified and amended herein, all other terms and conditions of the PPA shall remain unchanged and in full force and effect.

IN WITNESS HEREOF, the Parties have executed and delivered this Amendment as of the date first written above.

KUMEYAAY WIND LLC

SAN DIEGO GAS & ELECTRIC COMPANY

Signature:   
By: John Caraway  
Its: Managing Member

Signature:   
By: James Avery  
Its: Senior Vice President - Electric

APPROVED as to legal form 9.5.

EXECUTION VERSION

SECOND AMENDMENT TO THE  
MASTER POWER PURCHASE AND SALE AGREEMENT

This SECOND AMENDMENT TO THE MASTER POWER PURCHASE AND SALE AGREEMENT (this "Amendment") is made and entered into as of May 4, 2005 by and between San Diego Gas & Electric Company, a California corporation ("Buyer"), and Kumeyaay Wind LLC, a Delaware limited liability company ("Seller", and Buyer and Seller each a "Party" and collectively, the "Parties"), to amend the EEI Master Power Purchase and Sale Agreement, dated May 31, 2004, including the Confirmation Letter and Cover Sheet, both dated May 31, 2004, and as amended by the First Amendment to the Master Power Purchase and Sale Agreement, dated December 23, 2004, by and between Buyer and Seller (collectively, the "PPA"). All capitalized terms used herein and not otherwise defined shall have their respective meanings set forth in the PPA.

RECITALS

WHEREAS, the Parties desire to amend certain provisions of the PPA as set forth herein;

NOW, THEREFORE, in consideration of the foregoing and for good and valuable consideration including the covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Section 4.2: Energy Production Guarantee and Remedies of the Confirmation Letter shall be amended by adding the following sentence to the end of such paragraph:

"Energy that could have been delivered to the Delivery Point but was not delivered due to a Delivery Excuse shall be added to the annual average Output for the purposes of calculating the Guaranteed Energy Production.

2. Section 6.0: Interconnection of the Confirmation Letter shall be amended as follows:

- a. by deleting the phrase "The high side of the transformer at the Crestwood Substation", which appears opposite the term "Delivery Point", and replacing it with the following:

"The point of interconnection to the 69kV bus at the Crestwood Substation."

- b. by deleting the phrase "Meter shall be located at the Delivery Point", which appears opposite the term "Additional Information", and replacing it with the following:

"The Meter shall be located at Seller's switchyard, but it shall be adjusted to measure Output at the Delivery Point."

3. Except as modified and amended herein, all other terms and conditions of the PPA shall remain unchanged and in full force and effect.

IN WITNESS HEREOF, the Parties have executed and delivered this Amendment as of the date first written above.

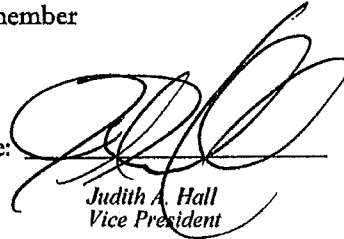
**KUMEYAAY WIND LLC**

By: BABCOCK & BROWN HOLDINGS INC.,  
its sole member

Signature: \_\_\_\_\_


By:

Its:



*Judith A. Hall*  
*Vice President*

**SAN DIEGO GAS & ELECTRIC COMPANY**

Signature:   
By: James P. Avery  
Its: Senior Vice President - Electric

APPROVED as to legal form A.S.

CONSENT TO ASSIGNMENT

This CONSENT TO ASSIGNMENT ("Consent") is entered into as of May 4, 2005 among San Diego Gas & Electric Company ("SDG&E"), Kumeyaay Wind LLC (the "Assignor"), a limited liability company, and Bayerische Landesbank, acting through its New York Branch, as Administrative Agent, Collateral Agent and Issuing Bank (the "Assignee").

RECITALS

WHEREAS, pursuant to the Master Power Purchase and Sale Agreement made as of May 31, 2004 (as supplemented by that certain Confirmation Letter dated May 31, 2004 and the Master Power Purchase and Sale Agreement Cover Sheet dated May 31, 2004, and as amended by that certain First Amendment to Master Power Purchase and Sale Agreement dated as of December 23, 2004, and as further amended by that certain Second Amendment to Master Power Purchase and Sale Agreement dated as of May 4, 2005) between the Assignor and SDG&E, (the "Assigned Agreement"), SDG&E has agreed to purchase the electricity generated from the Assignor's 50 MW wind power generating project (the "Project") pursuant to the terms and conditions of the Assigned Agreement (as further specified in the Assigned Agreement);

WHEREAS, the Assignor has entered into that certain Financing Agreement, dated as of even date herewith, among the Assignor, the Lenders from time to time parties thereto (collectively, the "Lenders"), Bayerische Landesbank, acting through its New York Branch, as Administrative Agent ("Administrative Agent") and Collateral Agent ("Collateral Agent"), HSH Nordbank acting through its New York Branch, as Documentation Agent and UFJ Bank Limited acting through its New York Branch, as Syndication Agent (as amended, modified, supplemented from time to time, the "Financing Agreement") pursuant to which the Lenders have agreed to loan funds to the Assignor in connection with the construction of the Project and it is a requirement under the Financing Agreement that SDG&E and the other parties hereto shall have executed this Consent.

WHEREAS, as security for all obligations of the Assignor under the Financing Agreement, pursuant to that certain Security Agreement, dated as of even date herewith (as amended, modified or supplemented from time to time, the "Security Agreement"), between the Assignor and Agent, the Assignor has granted to the Agent, for the benefit of the Agent and the Lenders, a first-priority security interest (subject to the Intercreditor Agreement, as defined below) in all of the Assignor's right, title and interest in, to, and under the Assigned Agreement (such rights, the "Assigned Rights").

WHEREAS, the Assignor has entered into a Security Fund Letter of Credit and Reimbursement Agreement, dated as of even date herewith, among the Assignor and Bayerische Landesbank, acting through its New York Branch, as Issuing Bank (the "Issuing Bank") (as the same may be amended, modified or supplemented from time to time, the "LC Facility") pursuant to which the Issuing Bank has agreed to extend a letter of credit facility to the Assignor for the purpose of issuing a letter of credit to SDG&E in connection with the Assigned Agreement.



WHEREAS, as security for all obligations of the Assignor under the LC Facility, the Assignor has entered into that certain Security Agreement dated as of even date herewith (as amended and in effect from time to time, the "LC Security Agreement") with the Agent, pursuant to which the Assignor has collaterally assigned and granted to the Issuing Bank a first-priority security interest (subject to the Intercreditor Agreement) in the Assigned Rights.

WHEREAS, the Assignor, the Collateral Agent, and the Issuing Bank, dated as of even date herewith, have entered into that certain Intercreditor Agreement (the "Intercreditor Agreement") regarding the relation and priority of the liens pursuant to the Financing Agreement and the LC Facility."

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the parties hereto agree as follows:

Section 1. Definitions. Any capitalized term used but not defined herein shall have the meaning specified for such term in the Assigned Agreement.

Section 2. Consent to Assignment.

(a) Under the terms and conditions set forth in this Consent, SDG&E hereby consents to (i) the assignment by the Assignor of all its right, title and interest in, to and under the Assigned Agreement to the Assignee, as collateral security for the obligations as and to the extent provided in the Security Agreement, and (ii) the assignment by the Assignor to any transferee or assignee of, or successor to, the Assignee (provided that any transferee or nominee satisfies the requirements of Article 8 of the Assigned Agreement and is otherwise approved by SDG&E pursuant to Section 10.5 of the Assigned Agreement).

(b) The Assignor agrees that it shall remain liable to SDG&E for all obligations of the Assignor under the Assigned Agreement, notwithstanding the collateral assignment contemplated in the Security Agreement.

(c) If the Assignee elects to exercise its remedies under the Security Agreement to foreclose on its lien in the Assigned Agreement, the Assignee shall notify SDG&E pursuant to Section 5(f) of this Consent. Upon receipt by SDG&E of such notice, the Assignee (or its permitted assignee or transferee or successor thereof) shall assume in writing and be liable for each and every duty, obligation and liability of the Assignor under the Assigned Agreement, including but not limited to the duties and obligations that arose or accrued prior to the date of execution of this Consent.

Section 3. Representations and Warranties. SDG&E hereby represents and warrants to the Assignee that, as of the date of this Consent:

(a) The execution and delivery by SDG&E of the Assigned Agreement and this Consent, and the performance by SDG&E of its obligations under the Assigned Agreement and this Consent, have been duly authorized by all necessary corporate action, and do not and will not require any further consents or approvals which have not been obtained, or violate any

provision of any law, regulation, order, judgment, injunction or similar matters or breach any material agreement presently in effect with respect to or binding upon SDG&E.

(b) All government approvals necessary for the execution and delivery by SDG&E of the Assigned Agreement and this Consent, and the performance by SDG&E of its obligations under the Assigned Agreement and this Consent, have been obtained and are in full force and effect.

(c) This Consent and the Assigned Agreement have been duly executed and constitute legal, valid and binding obligations of SDG&E, enforceable against it in accordance with their respective terms, except as such enforcement may be limited by bankruptcy, insolvency or similar laws of general application relating to the enforcement of creditors' rights generally or by general principles of equity, regardless of whether such enforceability is considered in a proceeding in equity or at law, or by principles of public policy.

(d) To the knowledge of SDG&E, the Assignor is not in default under any material covenant or obligation under the Assigned Agreement, and no events have occurred that, with the giving of notice or the passage of time, would constitute a default by the Assignor under the Assigned Agreement, and the Assigned Agreement is in full force and effect and has not been amended.

Section 4. Consent and Agreement. SDG&E and the Assignor hereby agree that, so long as any obligations of the Assignor under the Financing Agreement, the Security Agreement, the LC Facility and the LC Security Agreement remain outstanding:

(a) No Material Amendments. SDG&E and the Assignor will not enter into any material amendment, supplement or other modification of the Assigned Agreement (an "Amendment") until after the Assignee has been given at least fifteen (15) Business Days' prior written notice of the proposed Amendment by the Assignor (a copy of which notice will be provided to SDG&E by the Assignor), and will not then enter into such Amendment if SDG&E has, within such fifteen (15) Business Day period, received a copy of (a) the Assignee's objection to such Amendment or (b) the Assignee's request to the Assignor for additional information with respect to such Amendment.

(b) Notices of Default and Right to Cure.

(i) SDG&E shall deliver to the Assignee at the address set forth on the signature pages hereof, or at such other address as the Assignee may designate in writing from time to time to SDG&E, concurrently with the delivery thereof to the Assignor, a copy of each notice of default under the Assigned Agreement. Notwithstanding anything to the contrary contained in the Assigned Agreement, such notice shall be coupled with an opportunity to cure any such default within the longer of the cure period available to the Assignor in the Assigned Agreement or thirty (30) days after notice thereof (except with respect to payment defaults, which cure must be made within five (5) Business Days after the last day of the cure period available to the Assignor in the Assigned Agreement with respect to payment defaults), such cure period shall commence upon receipt of notice by the Assignee). If possession of the Facility is necessary to cure any Default by

the Assignor under the Assigned Agreement, and the Assignee commences foreclosure proceedings against the Assignor, the Assignee will be allowed an additional ninety (90) days to complete such proceedings. In order for the Assignee to cure a default under Section 5.1(d) of the Assigned Agreement, the Assignee shall secure, as soon as reasonably practical after such default, an order from the court (the "Bankruptcy Court") administering the proceeding under which the Assignor is a debtor in a proceeding under Title 11 of the United States Code, as amended (the "Bankruptcy Code") in a form reasonably acceptable to SDG&E which authorizes (a) the Assignor to pledge collateral to secure the Assignor's obligations under the Assigned Agreement (whether by the maintenance or provision of a Letter of Credit or otherwise) whether such obligations arose prior or following the Section 5.1(d) default of the Assigned Agreement, (b) the right of SDG&E to terminate the Assigned Agreement upon a subsequent default and expiration of cure periods described herein with respect to the Assignor (including, without limitation, the conversion of a case under Chapter 11 of the Bankruptcy Code to a case under Chapter 7 of the Bankruptcy Code), and to exercise rights of netting or setoff of obligations upon such termination, in each case without regard to Section 362 of the Bankruptcy Code and without regard to whether the amounts to be netted or setoff were incurred pre-petition or post-petition and (c) that the rights of SDG&E specified in the foregoing clause (b) not be subject to being modified, stayed, avoided or otherwise limited by any further order of the Bankruptcy Court or any court proceeding under the Bankruptcy Code (a "Bankruptcy Order"). It being further understood that if such Bankruptcy Order is not timely obtained, Buyer shall have the right to declare an Early Termination Date in accordance with Article 5 of the Assigned Agreement.

(ii) Except to the extent that automatic cancellation, suspension or termination occurs pursuant to the Assigned Agreement, no cancellation, suspension or termination of the Assigned Agreement by SDG&E, shall be binding upon the Assignee without such notice and the opportunity to cure during the applicable cure periods specified in this Section 4(b). If the Assignee fails to cure or rectify the effect of a default within the cure periods specified in this Section 3(b), SDG&E shall have all its rights and remedies with respect to such default, action or omission as set forth in the Assigned Agreement.

(c) Payments to Designated Account. The Assignor and SDG&E acknowledge and agree that all payments to be made by SDG&E to the Assignor (if any) under the Assigned Agreement shall be made in lawful money of the United States of America in immediately available funds, to the following account:

Account # [REDACTED] Kumeyaay Revenue Subaccount

Maintained by: Union Bank of  
California, as Securities  
Intermediary

until the Assignee has delivered written notice to SDG&E that all of the liens under the Security Agreement are released, and then such payment shall be made to the Assignor or to such other person or entity and/or at such other address as the Assignee may from time to time specify in

writing to SDG&E. In making such payments, SDG&E shall be entitled to rely conclusively on instructions that it may receive from time to time from the Assignee without any duty to make inquiry into the authority of the Assignee to give such instructions or the authenticity of any signatures placed upon such instructions.

(d) SDG&E agrees to deliver to Assignor an estoppel certificate, upon the Assignor's request, in the form attached hereto as Exhibit A, in connection with the equity financing of the Assignor's facility at the termination of construction of such facility.

Section 5. Miscellaneous (a) This Consent shall be binding upon the successors and permitted assigns of each party and shall inure, together with the rights and remedies of the Assignee hereunder, to the benefit of the successors and permitted assigns of the parties hereto, including the Financing Parties and their respective permitted successors, transferees and assigns.

(b) No amendment or waiver of any provisions of this Consent or consent to any departure by any party hereto from any provisions of this Consent shall in any event be effective unless the same shall be in writing and signed by the Assignee and SDG&E.

(c) This Consent shall be governed by, and construed under, the laws of the State of California applicable to contracts made and to be performed in such State and without reference to conflicts of laws. The parties hereto agree that any legal action or proceeding arising out of this Consent may be brought in the courts of the State of California, in and for the County of San Diego, or of the United States of America for the Southern District of California. By execution and delivery of this Consent, the parties hereto accept, for themselves and in respect of their property, generally and unconditionally, the jurisdiction of the aforesaid courts. The parties hereto irrevocably consent to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified airmail, postage prepaid, to the Assignee, SDG&E and the Assignor, as the case may be, at their respective addresses for notices as specified herein and that such service shall be effective five (5) business days after such mailing. Nothing herein shall affect the right to serve process in any other manner permitted by law or the right of the Assignee or SDG&E to bring legal action or proceedings in any other competent jurisdiction. The parties hereto hereby waive any right to stay or dismiss any action or proceeding under or in connection with any or all of this Consent or the transactions contemplated hereby brought before the foregoing courts on the basis of *forum non-conveniens*.

(d) **EACH OF SDG&E, THE ASSIGNEE AND THE ASSIGNOR HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS CONSENT AND AGREEMENT.**

(e) This Consent may be executed in one or more counterparts with the same effect as if such signatures were upon the same instrument. This Consent may be delivered by facsimile transmission.

(f) All notices to be given under this Consent shall be in writing and shall be delivered personally, sent by certified mail return receipt requested or registered first-class mail, postage prepaid, or sent by facsimile, or courier to the intended recipient at its address as set forth on the signature pages below, and all payments to be made under this Consent shall be made by wire transfer of immediately available funds or check representing immediately collectible funds to the account or address of the intended recipient as set forth on the signature pages hereto, unless the recipient has given notice of another address or account for receipt of notices or payments.

(g) This Consent shall terminate in its entirety upon the earlier of (i) the indefeasible payment in full in cash of all obligations of the Assignor under the Financing Agreement and the LC Facility, and (ii) the termination of the Credit Agreement and the LC Facility in accordance with the terms thereof and the terms of this Consent. The Assignee agrees to give prompt written notice to the Assignor and SDG&E of the occurrence of such event.

(h) The captions or headings at the beginning of each Section of this Consent are for convenience only and are not a part of this Consent.

IN WITNESS WHEREOF, each of SDG&E, the Assignee and the Assignor has duly executed this Consent and Agreement as of the date first above written.

SAN DIEGO GAS & ELECTRIC  
COMPANY

By: \_\_\_\_\_

Name: James P. Avery

Title: Senior Vice President - Electric

Address for Notices:

8306 Century Park Court, MS 41D

San Diego, CA 92123-1593

APPROVED as to legal form \_\_\_\_\_

Accepted and agreed:

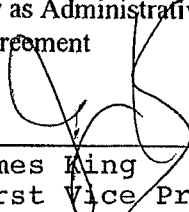
KUMEYAAY WIND LLC,  
a Delaware limited liability company

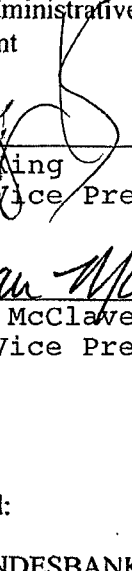
By: BABCOCK & BROWN HOLDINGS INC.,  
a Delaware corporation, its sole member

By:   
Name: *Judith A. Hall*  
Title: *Vice President*

Accepted and agreed:


BAYERISCHE LANDESBANK,  
in its capacity as Administrative Agent and as Collateral Agent under the  
Financing Agreement

By:   
Name: James King  
Title: First Vice President

By:   
Name: Norman McClave  
Title: First Vice President

Accepted and agreed:

BAYERISCHE LANDESBANK,  
in its capacity as Issuing Bank  
under the LC Facility

By:   
Name: James King  
Title: First Vice President


By:   
Name: Norman McClave  
Title: First Vice President



EXHIBIT A

**Form Power Purchaser Estoppel Certificate**

**ESTOPPEL CERTIFICATE**

**Re: That certain Master Power Purchase and Sale Agreement made as of May 31, 2004 (as supplemented by that certain Confirmation Letter dated May 31, 2004 and the Master Power Purchase and Sale Agreement Cover Sheet dated May 31, 2004, and as amended by that certain First Amendment to Master Power Purchase and Sale Agreement dated as of December 23, 2004, and as further amended by that certain Second Amendment to Master Power Purchase and Sale Agreement dated as of May 4, 2005) (as amended, the "Agreement") between Kumeyaay Wind LLC, a Delaware limited liability company (the "Obligor") and San Diego Gas & Electric Company, a California corporation (the "Counterparty").**

The Obligor owns and operates an approximately 50MW wind power generating project for electric generation approximately 70 miles east of San Diego, California (the "Project"). In connection with equity investments in the Obligor, the Counterparty hereby certifies to the Obligor as of the date set forth below as follows:

1. The Agreement is in full force and effect. The Agreement has not been amended or modified since the date when the Agreement was executed, as set forth above.

2. To the best knowledge of the Counterparty, there are no disputes between the Obligor and the Counterparty under the Agreement, no defaults on the part of the Obligor or the Counterparty under the Agreement, and no events have occurred that, with the giving of notice or the passage of time, would constitute a default under the Agreement.

Dated: [ \_\_\_\_\_ ]

SAN DIEGO GAS & ELECTRIC COMPANY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_