

TAG 2 02-061

**MASTER POWER PURCHASE AND SALE AGREEMENT  
COVER SHEET**

This *Master Power Purchase and Sale Agreement* (Version 2.1; modified 4/25/00) ("*Master Agreement*") is made as of the following date: November 1, 2002 ("Effective Date"). The *Master Agreement*, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any confirmations accepted in accordance with Section 2.3 hereto) shall be referred to as the "Agreement." The Parties to this *Master Agreement* are the following:

**Name:** MM Prima Deshecha Energy LLC  
("MM Prima")("Party A")  
  
**All Notices:** 3650 IDS Center, 80 So. 8<sup>th</sup> St.  
Minneapolis, Minnesota 55402-2219  
Attn: Manager  
Phone: (612) 349-6066  
Facsimile: (612) 349-6067  
Duns:  
Federal Tax ID Number: [REDACTED]

**Invoices:** MM Prima Deshecha Energy LLC  
3650 IDS Center, 80 So. 8<sup>th</sup> St.  
Minneapolis, Minnesota 55402-2219  
Attn: Manager  
Phone: (612) 349-6066  
Facsimile: (612)-349-6067

**Scheduling:** MM Prima Deshecha Energy LLC  
32250 LaPata Ave  
San Juan Capistrano, California 92675  
Attn: Operator  
Phone: (949) 728-1316  
Facsimile: (949) 728-1317

**Payments:** State Street Bank and Trust Company  
225 Asylum Street, 23rd Floor  
Hartford, Connecticut 06103  
Corporate Trust Department  
Attn: Keith McKenzie  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

**Wire Transfer:** State Street Bank and Trust Company  
ABA: Routing [REDACTED]  
ACCT: [REDACTED]  
Confirmation: MM Biogas Project Revenue  
Account  
Facsimile: \_\_\_\_\_

**Name:** San Diego Gas & Electric Company ("Party B")  
  
**All Notices:** 8306 Century Park Court  
San Diego, California 92123  
Attn: Contract Administration  
Phone: (858) 650-6176  
Facsimile: (858) 650-6190  
Duns: 006911457  
Federal Tax ID Number: [REDACTED]

**Invoices:** San Diego Gas & Electric Company  
8306 Century Park Ct.  
San Diego, California 92123-1593  
Attn: Energy Accounting  
Manager Phone: (858) 650-6177  
Facsimile: (858) 650-6190

**Scheduling:** San Diego Gas & Electric Company  
8306 Century Park Ct.  
San Diego, California 92123-1593  
Attn: Transaction Scheduling Manager  
Phone: (858) 650-6160  
Facsimile: (858) 650-6191

**Payments:** San Diego Gas & Electric Company  
PO Box 25110  
Santa Ana, California 92799-5110  
Attn: Mail Payments  
Phone: (619) 696-4521  
Facsimile: (619) 696-4899

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

**Credit and Collections:**

Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

**Credit and Collections:**

San Diego Gas & Electric Company,  
Major Markets  
555 W. Fifth Street ML 10E3  
Los Angeles, California 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:**

United Capital  
87 Post Road East  
Westport, Connecticut 06880  
Attn: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

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

Sempra Energy  
101 Ash Street  
San Diego, California 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	Dated _____	Docket Number _____
Party B Tariff	Tariff FERC	Dated 9/10/99 and accepted 10/25/99	Docket Number 88 FERC P61,212

**Article Two**

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

**Article Four**

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

**Article Five**

Events of Default; Remedies

Cross Default for Party A:  
 Party A: MM Prima Deshecha Energy      Cross Default Amount: \$25 Million Dollars  
 Other Entity:      Cross Default Amount:  
 Cross Default for Party B:  
 Party B: San Diego Gas & Electric Company      Cross Default Amount \$25 Million Dollars  
 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: Affiliates shall not include those of Party B.
- Option C (No Setoff)

**Article 6**

Party A and Party B agree to Transaction Netting as described in Article 6.8.

Article 8

8.1 Party A Credit Protection:

Credit and Collateral Requirements

(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:

Party B Collateral Threshold: N/A

Party B Independent Amount: \$0

Party B Rounding Amount: \$100,000

(d) Downgrade Event:

- Not Applicable
- Applicable

If applicable, complete the following:

- It shall be a Downgrade Event for Party B if San Diego Gas & Electric Company's Credit Rating falls below BBB- from S&P or Baa3 from Moody's or if San Diego Gas & Electric Company is not rated by either S&P or Moody's.
- Other:  
Specify: \_\_\_\_\_

(e) Guarantor for Party B: None

Guarantee Amount: \$0

8.2 Party B 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:

Party A Collateral Threshold: N/A

Party A Independent Amount: 0

Party A Rounding Amount: \$100,000

(d) Downgrade Event:

- Not Applicable
- Applicable

If applicable, complete the following:

- It shall be a Downgrade Event for Party A if Party A's Credit Rating falls below BBB- from S&P or Baa3 from Moody's or if Party A is not rated by either S&P or Moody's.

(e) Guarantor for Party A: N/A

Guarantee Amount: N/A

Guarantee must be in full force and effect to guaranty the obligations of all Transactions. If notice to terminate such Guarantee is provided prior to the final and irrevocable satisfaction of all obligations, such notice shall be sufficient to trigger Party B's right to request Performance Assurance under Section 8.2(b) and shall only be effective upon provision of such Performance Assurance.

Article 10

Confidentiality

Confidentiality Applicable

If not checked, inapplicable.

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 8.6. If not checked, inapplicable

Other Changes

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

Part 1. GENERAL TERMS AND CONDITIONS.

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

- (1) Section 1.1 is amended by adding "more than" before "fifty percent" and delete "or more" after in the third line.
- (2) Section 1.23 is amended by inserting in the thirteenth line of this Subsection before the phrase "foregoing factors" the word "two."
- (3) Section 1.25 shall be modified by adding the following as the last sentence: "Guarantor shall issue a Guarantee in the format attached hereto as Exhibit A."
- (4) 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 B" at the end of the fist sentence.

- (5) Section 1.45 shall be modified by including the words "acceptable to the requesting party" after the words "Letter(s) of Credit".

- (6) 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 specified in a Transaction but 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."

- (7) 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 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 also shall include all 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. For purposes of this definition, Seller shall be considered to have resold such Product to the extent Seller shall have entered into one or more arrangements in a commercially reasonable manner whereby Seller repurchases its obligation to purchase and receive the Product from another party at the Delivery Point." If for any reason a Sales Price is unavailable at the Delivery Point during a Transaction when Buyer fails to purchase Product ("Missing Hours"), then the Sales Price for Missing Hours shall be the last available Sale Price prior to the Missing Hours together with any charges and penalties allocated to Buyer for the Missing Hours."

- (8) Section 1.62 is added as follows:

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

- (9) Section 1.63 is added as follows:

"CAISO Schedule Adjustment" means a schedule change implemented by the CAISO that is neither caused by nor within the control of either Party and that results in the CAISO applying Replacement Pricing to all or part of the Contract Quantity.

- (10) Section 1.64 is added as follows:

"ISO Protocol" means the rules protocols, procedures and standards attached to the ISO Tariff as Appendix L, promulgated by the ISO (as amended from time to time).

- (11) Section 1.65 is added as follows:

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

- (b) **Transmission and Scheduling.** Section 3.2, "Transmission and Scheduling" shall be amended by renaming it "Transmission, Scheduling and Imbalance Charges" and inserting the following sentences at the end thereof:

"In addition to the remedies provided under Article 4, Buyer shall assume all liability for and reimburse Seller within thirty (30) days of presentation of an invoice for any Penalties incurred as a result of Buyer's failure to (i) notify Seller of a failure to Schedule or a change in a Schedule or (ii) abide by a transmitting utility's tariff and scheduling policies. Seller shall assume all liability for and reimburse Buyer within thirty (30) days of presentation of an invoice for any Penalties incurred as a result of Seller's failure to (i) notify Buyer of a failure to Schedule or a change in a Schedule or (ii), if applicable, abide by the ISO Tariff and Protocols. The Parties shall promptly notify each other as soon as possible of any imbalance that is occurring or has occurred and shall cooperate to eliminate imbalances and minimize Penalties to the extent possible. "Penalties" shall be defined as any fees, liabilities, assessments or similar charges assessed by the ISO as a result of a Party's failure to comply with its obligations hereunder."

- (c) **Force Majeure.** Section 3.3 shall be amended by adding the following paragraph at the end of the section:

"In the event that the Federal Energy Regulatory Commission or its successor imposes obligations or restrictions due to standard market design restructuring that directly or indirectly alter the relative economic positions of the Parties hereunder in a material detrimental way, then a Party so affected may, by written notice to the other Party, require that the Parties meet promptly to discuss in good faith whether the Transaction can be modified so as to re-impose the relative economic positions of the Parties held hereunder prior to such governmental action. Such notice shall describe the action taken, and shall provide reasonable particulars as to the manner and extent to which the economic position of the Party giving notice has been affected adversely. The Parties shall meet thereafter as soon as mutually convenient, using all commercially reasonable efforts during the thirty (30) day period following the initial meeting to consider appropriate changes to the Transaction. In the event that the Parties are unable to agree upon the modifications necessary to restore the relative economic balance between them by the end of such period, the affected party may terminate the Transaction under this Section 3.3 --Force Majeure."

- (d) **New Section 3.4 to be added:**

"In the event the current definition of the Delivery Point set forth in the Transaction is modified by CAISO or a successor control area operator/regional transmission operator, deliveries of Product by Seller shall continue but will be divided among the replacement nodes based on the proportion of former zonal retail load, regardless of supplier, that is located in each replacement zone or node, or as mutually agreed to by the Parties."

- (e) **Section 4.3 is added to Section 4 as follows:**

**Duty to Mitigate.** Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

- (f) **Events of Default.**

- (1) Section 5.1(g) Events of Default: Cross Default is amended by deleting in lines 7 and 8 thereof, "or becoming capable at such time of being declared,"
- (2) Section 5.1(g), Subsection (i) is amended by deleting the words "event of default" and replacing them with the words "Event of Default" in the second and third lines.
- (3) Section 5.1(h)(ii) is hereby amended to delete the following phrase from the third and fourth line thereof: "and such failure shall not be remedied within three (3) Business Days after written notice".

- (g) **Declaration of an Early Termination Date and Calculation of Settlement Amount.**

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".

- (h) **Declaration of an Early Termination Date and Calculation of Settlement Amount.**

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 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 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."

(i) **Notice of Payment of Termination Payment. The following shall be added to the end of Section 5.4:**

"Notwithstanding any provision to the contrary contained in this Agreement, the Non-Defaulting Party shall not be required to pay to the Defaulting Party any amount under Article 5 until the Non-Defaulting Party receives confirmation satisfactory to it in its reasonable discretion (which may include an opinion of its counsel) that all other obligations of any kind whatsoever of the Defaulting Party to make any payments to the Non-Defaulting Party or any of its Affiliates under this Agreement or otherwise which are due and payable as of the Early Termination Date (including for these purposes amounts payable pursuant to Excluded Transactions) have been fully and finally performed."

(j) **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."

(k) **Downgrade Event.**

Section 8.1(d) is amended to add the following phrase "or fails to maintain such Performance Assurance or guaranty or other credit assurance for so long as the Downgrade Event is continuing" immediately after the phrase "or other credit assurance acceptable to Party B within two (2) Business Days of receipt of notice".

(l) **Downgrade Event.**

Section 8.2(d) is amended to add the following phrase "or fails to maintain such Performance Assurance or guaranty or other credit assurance for so long as the Downgrade Event is continuing" Immediately after the phrase "or other credit assurance acceptable to Party A within two (2) Business Days of receipt of notice".

(m) **Representations and Warranties.**

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

(n) **Assignment.**

Article 10.5 shall be amended by placing a period after the word "arrangements" and deleting the remainder of the paragraph.

(o) **Governing Law/Venue.**

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."

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

**10.12 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 an 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.

(c) 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.

(g) **Change in Rates.** Add a new section to Article 10 as follows:

**"10.13 Changes in Rates.** If applicable, each Party expressly retains all of its rights under Section 206 of the Federal Power Act. The standard of review for any Section 206 filing shall be the "just and reasonable" standard of review for any such filing. Each Party expressly retains its rights to protest or otherwise challenge any such filing."

(r) **CPUC Approval.** Add a new section to Article 10 as follows:

**"10.14 CPUC Approval.** The Parties hereby acknowledge and agree that SDG&E shall submit this Agreement or any amendment thereto resulting from the negotiation process described in Section 3.3 hereof (a "Section 3.3 Amendment"), to the CPUC for approval with a reasonable time after execution of this Agreement or a Section 3.3 Amendment. This Agreement and any Section 3.3 Amendment thereto and the Parties' obligations under this Agreement or a Section 3.3 Amendment are subject to SDG&E first receiving CPUC Approval. "CPUC Approval" shall mean: (1) the issuance by the CPUC of a decision that does not materially alter the commercial aspects of this Agreement; (2) a finding by the CPUC that the payments under this Agreement are reasonable; and (3) SDG&E is authorized to recover the full amount of any payment made to Seller under this Agreement from SDG&E's customers in rates through any existing or future cost recovery mechanism that may be developed or instituted by the CPUC."

Should the CPUC issue a decision approving this Agreement or a Section 3.3 Amendment with conditions or modifications that materially alters the commercial aspects of this Agreement or a Section 3.3 Amendment, the Parties shall have ten (10) Business Days from the mailing date of such decision to provide the other Party written notice of the issuing Party's acceptance or rejection of the CPUC conditions or modifications; 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 condition or modification and agreement by such Party, upon the CPUC Approval Date (as defined below).

"CPUC Approval Date" means the first Business Day after the date on which the CPUC issues an approval of this Agreement or any Section 3.3 approval, whether or not relevant and applicable time periods for rehearing or judicial review expire..

Each of the Parties shall use its commercially reasonable efforts to obtain CPUC Approval. Neither Party shall oppose or protest the Agreement or any previously agreed to Section 3.3 Amendment in any way, at the CPUC. If called upon to do so, the Parties shall take reasonable actions to facilitate initial approval by (i) the CPUC or (2) other regulatory agencies."

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

Party A - MM PRIMA DESHECHA ENERGY LLC

Party B - SAN DIEGO GAS & ELECTRIC COMPANY

By: Ben Heuser

By: Had Lorenz

Name: Ben Heuser

Name: Had Lorenz

Title: Manager

Title: VP Electric and Gas Procurement



02-061

TMO3

**MASTER POWER PURCHASE AND SALE AGREEMENT  
CONFIRMATION LETTER**

This amended and restated Confirmation Letter ("Confirmation") shall confirm the transaction agreed to on October 31, 2002 between MM Prima Deshecha Energy LLC ("Party A") and San Diego Gas and Electric Company ("Party B"), sometimes referred to as "Party" or "Parties" regarding the sale/purchase of the Product under the terms and conditions as follows:

Seller: Party A

Buyer: Party B

Product: "As Available," which means that the Product subject to this Confirmation is intended to be supplied from a generation asset or assets specified in this Confirmation. Party A's failure to deliver under an "As Available" Confirmation shall be excused: (i) if the specified generation asset(s) are unavailable as a result of a Forced Outage (as defined in the NERC Generating Unit Availability Data System (GADS) Forced Outage reporting guidelines); (ii) by an event or circumstance that affects the specified generation asset(s) so as to prevent Party A from performing its obligations, and which is not within the reasonable control of, or the result of the negligence of, Party A, (iii) by Party B's failure to perform, (iv) by the unavailability of landfill gas, which was not anticipated as of the date this Confirmation was agreed to, which is not within the reasonable control of, or the result of negligence of, Party A or the party supplying such landfill gas to the Project, and which by the exercise of due diligence, such Party A or the party supplying the gas is unable to overcome or avoid or causes to be avoided and by deleting Master Purchase and Sale Agreement ("Master Agreement") Section 1.23 (iii), or (v) by scheduled maintenance outages of the specified units, or (vi) a reduction in Output as ordered under terms of Curtailments. In any of such events, Party A shall not be liable to Party B for any damages, including any amounts determined pursuant to Article Four of the Master Agreement.

Energy Production Guarantees: Subject to the excuses enumerated above, commencing from the Initial Delivery Date of this Confirmation and continuing for the Contract Term of this Confirmation, Party A, estimates an annual Net Energy production from the Project each calendar year of approximately 14,235 megawatt hours ("MWh). Party A guarantees to produce an annual average minimum MWh production of 10,676 MWh at a typical annual capacity factor of 75%. Further Party A estimates that its annual production shall not exceed (Gross MW x 8760 hr/yr x 75%) 35,040 MWh. Party B shall in its sole discretion have the right to terminate this Confirmation without any further obligations under the Master Power Purchase and Sales Agreement

("Master Agreement") in the event Party A fails to achieve the average minimum MWh production in any 12 month period and that failure is not excused.

Specified Units: MM Prima Deshecha Energy LLC having available Gross Output of approximately 5 MW ("MW") (the "Project"), depending on landfill gas availability consisting of Two (2) Caterpillar 3616 Prime Mover Type: Spark Ignited Reciprocating Engines located in San Juan Capistrano, California.

Contract Quantity: During the Product Delivery Periods & Contract Term, Party A shall deliver, and Party B shall receive and pay for, all of the Output (as defined below) of the Project.

For the purposes of this Confirmation, "Output" means all electrical energy produced, which may, on an instantaneous basis, be greater or less than the total estimated capacity MW of the Project, as metered at the Delivery Point. However, Party B's obligation to purchase shall be limited to the MW as measured and metered hourly at the Delivery Point. All energy deliveries are subject to CAISO, State, Federal or other regulatory agency adjustments if applicable. In addition, in no event shall Party A have the right to procure electric energy from sources other than the Project for sale and delivery pursuant to this Confirmation.

Delivery Point: 3220 La Pata Ave., San Juan Capistrano, CA; SDG&E Electric meter number: 01575822

Contract Price: During the Product Delivery Periods & Contract Term: 46.00 \$/MWh Escalated annually on July 1<sup>st</sup> at 2.5%, resulting in a July 1, 2004 price of \$46.92 /MWH, a July 1, 2005 price of \$47.86/MWH, a July 1, 2006 price of \$48.82/MWH, a July 1, 2007 price of \$49.79/MWH and a July 1, 2008 price of \$50.79/MWH.

Party B shall be responsible for all charges with respect to uninstructed energy as applied to this Confirmation by the CAISO or other regulatory agency, all as further provided under the caption "Scheduling."

Product Delivery Period & Contract Term: Beginning July 1, 2003 (the "Initial Delivery Date") and ending at hour ending midnight five (5) years after the Initial Delivery Date, provided that the Initial Delivery Date shall not be later than December 31, 2003.

Forecast: For Party B's planning purposes, Party A shall, by December 1 of the

current year, provide a forecast of energy production and scheduled maintenance, by month, for the following year.

Scheduling:

Party B shall be Party A's designated Scheduling Coordinator (SC) (as defined in the CAISO tariff) for the Project and schedule the forecast of the Project Output to the Delivery Point during the Product Delivery Periods & Contract Term. If during the Delivery Period, Party B imposes a charge associated with providing SC services, Party A and Party B will negotiate an amount, at such time, which shall not exceed \$2,000/month. Such fee(s) may be required to be filed with the CPUC. If Party B imposes a fee for providing SC services and the Parties are unable to mutually agree on a charge for such services, Party A may elect to be an SC or designate an SC (as defined in the CAISO tariff) for the remainder of the Delivery Period. Party A shall thereafter be responsible for scheduling the forecast of Output to the Delivery Point during the Delivery Period. Party A shall submit schedules and any updates to such schedules to the CAISO based on the most current forecast of Output consistent with all scheduling protocols of the CAISO and communicate those Schedules to Party B in a timely manner. In the event of imbalanced situations, Party B will have the right to instruct Party A to either (1) adjust its Project output to match its schedule or (2) adjust its schedule to match its Project output.

If Party A chooses not to contract with another entity for SC services, either Party may terminate this agreement by providing the other Party thirty (30) days prior written notice.

In the event that CAISO modifies or amends its scheduling protocols in the future, Party A hereby agrees to adhere to such changes to scheduling procedures with Party B so as to effect the changes necessary and any economic benefit from such changes shall inure on an equal basis to both Party A and Party B.

Because Party B initially is the SC, Party A shall submit schedules and any updates to such schedules to Party B based on the most current forecast of Output consistent with all scheduling protocols of the CAISO and communicate those Schedules to Party B in a timely manner. In the event of imbalanced situations, Party B shall have the right to adjust Party A's schedules of energy deliveries. All generation scheduling and transmission services shall be performed in accordance with all applicable operating policies, criteria, guidelines and tariff of CAISO or its successor, and any other generally accepted operational requirements. Party A, at its own expense, shall also fulfill contractual, metering and interconnection requirements as set forth in Party B's Electric Rule 21, the existing IFA Agreement between the Parties or other applicable tariffs, 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 energy to the CAISO controlled grid. In the event that CAISO modifies or amends its scheduling protocols in the future, Party A hereby agrees to adhere to such changes to scheduling procedures with Party B so as to effect the changes necessary and any economic benefit from such changes shall inure solely for the benefit of Party B.

Notwithstanding anything to the contrary herein, in the event Party A makes a change to its schedule on the actual date of delivery for any reason (other than an adjustment imposed by CAISO) which results in an increase to its Output (whether in part or in whole), Party A shall use its best efforts to notify Party B at least one (1) hour prior to the deadline for Party B to submit hour-ahead schedules to CAISO in its capacity as an SC

Party B shall be responsible for any uninstructed energy charges payable to, and will receive any credits and revenues from, the CAISO as the result of differences between actual generation and scheduled generation

Operating Procedures: Prior to the Initial Delivery Date and from time-to-time as reasonably determined necessary by the Parties, the Parties shall agree upon written operating procedures ("Operating Procedures") addressing how the Parties will perform their respective obligations under this Confirmation, 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 daily capacity level and energy output reporting; (5) procedures for record keeping; and (6) scheduling Project maintenance; provided that the failure to agree on Operating Procedures will not relieve the Parties of their respective obligations under this Confirmation.

Party A shall operate and maintain, and arrange Scheduled Maintenance Outages for the Project in accordance with Prudent Industry Practices. Scheduled Maintenance for the Generating Facility shall not exceed 876 hours (10% yearly hours or 36.5 days) in any 12-month period except for one 12 month period when Major Maintenance is required on the two generators when Scheduled Maintenance will not exceed 52 days or 1248 hours. Major outages of more than one (1) day shall not be scheduled during the peak hours, peak days or peak months. "Peak hours" are 6 a.m. to hour ending 10:00 p.m. "Peak days" are Monday through Saturday, except NERC Holidays. "Peak months" are May through September. Scheduled maintenance shall not exceed three (3) peak days (hour beginning 6:00 a.m. to hour ending 10:00 p.m.) during the peak months in any calendar year. Scheduled maintenance shall be scheduled such that a maximum percentage of unavailability occurs during Off-Peak hours. Party A shall notify Party B by 6:00 a.m. Pacific Prevailing Time two days prior to the date of scheduled outage for an outage of 24 hours or less, and one week

prior to a scheduled outage of more than 24 hours. Party A shall adhere to the requirements of the CAISO or other regulatory agency scheduled maintenance requirements if applicable.

"Prudent Industry Practice" means any practices, methods and/or acts required or recommended by NERC, whether or not Party A is a member thereof, or (ii) otherwise engaged in or approved by a significant portion of the non-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. Prudent Industry 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.

For Projects interconnected to Party B's electric grid, Party A shall operate the Project in accordance with the CAISO tariff, the IFA, Party B's Electric Department Rule 21 and other applicable Rules and Tariffs

**Curtailments:**

At the request of Party B, Party A shall reduce the Project's Output during any hour provided that Party B incurs a system emergency or the CAISO has directed the SC or Party B (if different) for the Project to reduce the Output of the Project to manage an over-generation condition in the CAISO control area (due to a lack of decremental bids from other generation resources). In addition, Party A shall reduce the Project's Output if notified by the CAISO to curtail deliveries, or if deliveries are otherwise curtailed by the CAISO.

**Delivery & Metering:** All Output shall be delivered to Party B at the Delivery Point and such delivered Output shall be metered in real-time basis by Party B at the Delivery Point.

Since this Project is located inside Party B's service territory, all interconnection and metering requirements are provided in the IFA.

**Billings:** Because this Project is located in Party B's service territory, Party B shall prepare a monthly invoice for Party A for the amount Party B owes Party A based on the Contract Price section of this Confirmation for each month (including the initial partial month, if applicable).

**Special Conditions:** Party B shall be entitled to ownership and unrestricted use of all Renewable Energy Credits related to the Project, and Party A shall assign any interest Party A may have in such Renewable Energy Credits to Party B at no additional cost to Party B.

Party A represents and warrants that (i) the Project will qualify as an "eligible renewable energy resource", as defined in Section 399.12(a) of the California Public Utilities Code, and (ii) the Project Output will qualify under the requirements of the California Renewable Portfolio Standard.

Party A shall provide such documentation as may be reasonably requested by Party B in order to qualify the Project Output under the requirements of the California Renewable Portfolio Standard. However, as between the Parties hereto and their respective affiliates, successors and assigns, Party A and its affiliates, successors and assigns shall have all right, title and interest in or to any claims for air emissions rights, allowances, offsets, credits or other instruments created by the collection, production, sale, destruction or use of landfill gas or the generation of electricity or other forms of energy therefrom at the Prima Deshecha Landfill, including but not limited to any credits, allowances, offsets or other instruments resulting from the registration of methane emissions restrictions with the U.S. Department of Energy or the U.S. Environmental Protection Agency. The Parties also recognize that Party A and its affiliates, successors and assigns shall have the sole right to claim any tax credits under Sections 29 and 45 or any other sections of the Internal Revenue Code resulting from the sale and beneficial use of landfill gas at the Prima Deshecha Landfill.

**Termination:** (a) Party B may terminate this Confirmation if Party A has not commenced deliveries of energy to Party B by December 31, 2003.

(b) In addition, in the event that during the Contract Term no energy is generated and delivered to the Delivery Point for a period of six (6) months, either Party shall in its sole discretion have the right to terminate this Confirmation without any further obligations or liability under the Master Agreement or further obligations under this Confirmation, except for Party B paying for any electric energy that Party A has already delivered to Party B or that Party A has already had scheduled for delivery to Party B.

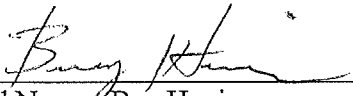
This Confirmation is being provided pursuant to and in accordance with the Master Agreement dated October 31, 2002 between Party A and Party B, and constitutes part of and is subject to the terms and provisions of such Master Agreement. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement. The Parties agree that where the terms of this Confirmation conflicts with the terms of the Master Agreement that the terms of this Confirmation shall override the terms of the Master Agreement.

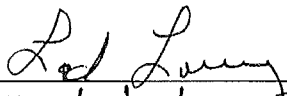
[Party A]

[Party B]

MM Prima Deshecha Energy LLC

San Diego Gas & Electric Company

By:   
Printed Name: Ben Heuser  
Title: Manager  
Phone No.: 612-436-4125  
Fax: 612-349-6067

By:   
Printed Name: Chad Lorenz  
Title: VP Electric and Gas Procurement  
Fax: \_\_\_\_\_  
Phone No: (858) 650-6150

APPROVED as to legal form A.S.

FIRST AMENDMENT TO THE MASTER POWER PURCHASE AND SALE  
AGREEMENT ("First Amendment")  
DATED OCTOBER 31, 2002  
BETWEEN  
MM PRIMA DESHECHA ENERGY LLC ("Party A")  
AND  
SAN DIEGO GAS AND ELECTRIC COMPANY ("Party B")

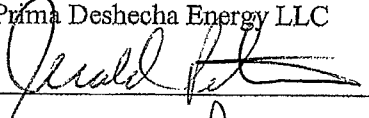
Agreement: Master Power Purchase and Sale Agreement dated October 31, 2002, as modified and supplement by the confirmation letter dated October 31, 2002 (the "Agreement").

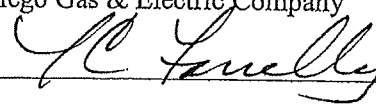
Whereas: The Parties recognize and acknowledge that the resulting contract prices as stated in the Contract Price segment of the Agreement do not correspond with the stated annual escalation of 2.5%. Parties agree that the original bid submittal accepted by SDG&E, subsequent bid analyses performed by SDG&E and information submitted to the Commission for review and approval included an annual escalation of 2.5%. Accordingly, the resulting contract prices stated in the Agreement should be modified to reflect a 2.5% annual escalation.

Contract

Price: *(Delete the 1<sup>st</sup> paragraph and replace with):* During the Product Delivery Periods & Contract Term: 46.00 \$/MWh Escalated annually on July 1<sup>st</sup> at 2.5%, resulting in a July 1, 2004 price of \$47.15 /MWH, a July 1, 2005 price of \$48.33/MWH, a July 1, 2006 price of \$49.54/MWH, a July 1, 2007 price of \$50.78/MWH.

Signatures:

MM Prima Deshecha Energy LLC  
By:   
Name: JERALD PETERSON  
(print or type)  
Title: MANAGER  
(print or type)  
Date: 5/21/04

San Diego Gas & Electric Company  
By:   
Name: Terry Farrelly  
(print or type)  
Title: Elect and Gas Procurement VP  
(print or type)  
Date: 6-8-04

Approved as to form: A.S.  
A. Snyder