

02-042

**MASTER POWER PURCHASE AND SALE AGREEMENT-WIND PROJECT**

**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: October 31, 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:** PacifiCorp Power Marketing, Inc. ("Party A")

**Name:** San Diego Gas & Electric Company ("Party B")

**All Notices:**

**All Notices:**

Street: 650 N.E. Holladay, Suite 700

Street: 8306 Century Park Court

City: Portland, OR                      Zip: 97232

City: San Diego, CA                      Zip: 92123

Attn: Contract Administration

Attn: Contract Administration

Phone: (503) 813-6191

Phone: (858) 650-6176

Facsimile: (503) 813-5707

Facsimile: (858) 650-6190

Duns: 94-737-6422

Duns: 006911457

Federal Tax ID Number: [REDACTED]

Federal Tax ID Number: [REDACTED]

**Invoices:**

**Invoices:**

PacifiCorp Power Marketing, Inc.

San Diego Gas & Electric Company

650 N.E. Holladay, Suite 700

8306 Century Park Ct.

Portland, OR 97232

San Diego, California 92123-1593

Attn: Month-End Checkout

Attn: Energy Accounting Manager

Phone: (503) 813-7102

Phone: (858) 650-6177

Facsimile: (503) 813-5749

Facsimile: (858) 650-6190

**Scheduling:**

**Scheduling:**

PacifiCorp Power Marketing, Inc.

San Diego Gas & Electric Company

650 N.E. Holladay, Suite 700

8306 Century Park Ct.

Portland, OR 97232

San Diego, California 92123-1593

Attn: Scheduling

Attn: Transaction Scheduling Manager

Phone: (503) 813-5752

Phone: (858) 650-6160

Facsimile: (503) 813-5700

Facsimile: (858) 650-6191

**Payments:**

**Payments:**

PacifiCorp Power Marketing, Inc.

San Diego Gas & Electric Company

650 N.E. Holladay, Suite 700

PO Box 25110

Portland, OR 97232

Santa Ana, CA 92799-5110

Attn: Month-End Checkout

Attn: Mail Payments

Phone: (503) 813-7102

Phone: (619) 696-4521

Facsimile: (503) 813-5749

Facsimile: (619) 696-4899

**Wire Transfer:**

**Wire Transfer:**

BNK: Bank One, Chicago, IL

BNK: Union Bank of California

for: PacifiCorp Power Marketing

for: San Diego Gas & Electric Company

ABA: Routing [REDACTED]

ABA: Routing [REDACTED]

ACCT: [REDACTED]

ACCT: [REDACTED]

Confirmation: Month-End Checkout

Confirmation: SDG&E, Major Markets

Phone: (503) 813-7102

FAX:(213) 244-8316

**Credit and Collections:**

PacifiCorp Power Marketing, Inc.  
650 N.E. Holladay, Suite 700  
Portland, OR 97232  
Attn: Credit Manager  
Phone: (503) 813 6763  
Facsimile: (503) 813-5707

**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:**

Office of General Counsel  
825 N.E. Multnomah, Suite 1800  
Portland, OR 97232  
Attn: Andrew Haller, Esq. and Jeremy Weinstein, Esq.  
Facsimile: (503) 813-7262 and (925) 943-3105

**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	Tariff FERC Dated 2/1/99	Docket Number 74 FERC 61,139 (1996) as amended in ER99-0178-000
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      X Optional provision in Section 2.4. If not checked, inapplicable.

**Article Four**

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

**Article Five**

X Cross Default for Party A:

Events of Default; Remedies

- Party A:      Cross Default Amount: \_\_\_\_\_
- X Other Entity: PacifiCorp Holdings, Inc.      Cross Default Amount: \$50 Million Dollars.
- X Cross Default for Party B:
- X Party B: San Diego Gas & Electric Company      Cross Default Amount: \$50 Million Dollars.
- Other Entity: N/A      Cross Default Amount \$ N/A

5.6 Closeout Setoff

- Option A (Applicable if no other selection is made.)
- X 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:

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

(b) Credit Assurances:

- Not Applicable
- X Applicable

(c) Collateral Threshold:

- X 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
- X Applicable

If applicable, complete the following:

- X 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
- X Option B Specify: PacifiCorp Holdings, Inc.
- Option C Specify: \_\_\_\_\_

(b) Credit Assurances:

- Not Applicable
- X 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 Guarantor's Credit Rating falls below BBB- from S&P or Baa3 from Moody's or if Party A's Guarantor is not rated by either S&P or Moody's.

- Other:

Specify: \_\_\_\_\_

(e) Guarantor for Party A: PacifiCorp Holdings, Inc.

Guarantee Amount: \$10,000,000

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 1.12 is amended by replacing the word "issues" with the word "issuer" in the fourth line.
- (2) Section 1.25 shall be modified by adding the following as the last sentence: "Guarantor shall issue a Guarantee substantially in the format attached hereto as Exhibit A."
- (3) Section 1.27 shall be modified to read as follows: "Letter(s) of Credit" means one or more irrevocable, transferable standby letters of credit, substantially in the form as Exhibit B hereto, issued by a U.S. commercial bank with such bank having a credit rating of at least A+ from S&P or A1 from Moody's, having total assets of at least \$10,000,000,000 and otherwise being acceptable to the Party in whose favor the letter of credit is issued and in an amount acceptable to such Party. Costs of a letter of credit shall be borne by the applicant for such letter of credit.

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

(5) 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 reasonable 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 reasonable charges and penalties allocated to Buyer for the Missing Hours."

(6) 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 reasonable 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."

(7) Section 1.62 is added as follows:

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

(8) 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.

(9) 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).

(10) 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.

(11) "Specified Transaction" means any contract or transaction (whether or not documented under or effected pursuant to a master agreement) now existing or hereafter entered into between Party A (or any Guarantor of Party A) and Party B.

(b) **Prior Transactions.** The following is added as a separate second paragraph of Section 2.2:

"This Master Agreement supersedes and replaces all prior agreements between the Parties hereto with respect to the subject matter hereof, including the Western Systems Power Pool Agreement and any Power Sales Agreement. Any open Transactions thereunder, as evidenced by written confirmations with respect thereto, and are, as of the Effective Date, governed by this Master Agreement, and are part of the single integrated agreement between the Parties referenced above."

(c) **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) 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."

(d) **New Section 3.4 to be added for non-unit specific sales and renewables if the delivery location is SP-15:** "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) **Events of Default.**

(1) Section 5.1(f) is hereby amended by (a) adding "or its Guarantor" immediately after the word "Party" on the first line; and (b) inserting the following new subsection (i) at the end: "(i) the occurrence with respect to such Party of an Event of Default (howsoever defined) under a Specified Transaction."

(2) Section 5.1(h)(iv) is hereby amended by replacing the words "its terms" with "the Guaranty's and this Agreement's terms".

(f) **Declaration of an Early Termination Date and Calculation of Settlement Amount.** Section 5.2 is deleted in its entirety and replaced with the following:

"Effect of Event of Default.' If at any time an Event of Default with respect to a Defaulting Party has occurred and is continuing, the Non-Defaulting Party may do one or more of the following: (a) withhold any payments due to the Defaulting Party under this Agreement; (b) suspend performance due to the Defaulting Party under this Agreement; and/or (c) by giving not more than twenty (20) days' notice, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all outstanding Transactions (each referred to as a 'Terminated Transaction'). The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for each such Terminated Transaction as of the Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such Terminated Transactions are commercially impracticable to liquidate and terminate or may not be liquidated and terminated 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. The Termination Payment payable in connection with all such Transactions shall be calculated in accordance with Section 5.3 below."

(g) **Declaration of an Early Termination Date and Calculation of Settlement Amount.** The following shall be added to the end of Section 5.2: "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."

(h) **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."

(i) **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."

(j) **Timeliness of Payment.** Section 6.2 is amended by revising the second sentence to read: "The Party owing the lesser amount as determined in accordance with Section 6.4 will make payment by electronic funds transfer to the account designated by the other Party."

(k) [INTENTIONALLY OMITTED]

(l) **Limitation of Remedies, Liability and Damages.** Section 7.1 is amended by deleting "UNLESS EXPRESSLY HEREIN PROVIDED," from the fifteenth and sixteenth lines.

(m) **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".

(n) **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".

(o) **Representations and Warranties.** (1) Section 10.2(vi) is amended to delete the phrase "or any of its Affiliates" and (2) Section 10.2(viii) is amended and by adding to the end: no communication (written or oral) received from the other Party shall be deemed to be an assurance or guarantee as to the expected results of a Transaction; and the other Party is not acting as a fiduciary for or an adviser to it in respect of that Transaction;"

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

(q) **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).

(r) **Confidentiality.** Section 10.11 is amended by (1) inserting "or the completed Cover Sheet" following "Master Agreement" in the third line; (2) inserting "or the Party's Affiliates" following "Party's" in the third line; (3) replacing "have agreed to" in the fifth line with "who the Party is satisfied will"; and (4) adding the following sentence at the end: "Notwithstanding the foregoing, it shall not be a breach of this Section 10.11 if a Party discloses the terms or conditions of a Transaction, provided that the name of and any other identifying information relating to the other Party, including unique attributes and requirements, is redacted and otherwise not disclosed."

(s) **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 15 Business 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 15 Business 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.

(t) **Waiver of Jury Trial.** The following new provision is added to the end of Section 10.6. "Each Party further waives any right to consolidate any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived."

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

**10.13 Change in Rates.** (a) "Absent the agreement of all Parties to the proposed change, the standard of review for changes to any section of this Agreement (including all transactions and/or confirmations) specifying the rate(s) or other material economic terms and conditions agreed to by the Parties herein, whether proposed by a Party, a non-party or FERC acting *sua sponte*, shall be the "public interest" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956)( the "Mobile-Sierra" doctrine).

(b) The Parties, for themselves and their successors and assigns, (i) agree that this "public interest" standard shall apply to any proposed changes in any other documents, instruments or other agreements executed or entered into by the Parties in connection with this Agreement and (ii) hereby expressly and irrevocably waive any rights they can or may have to the application of any other standard of review, including the "just and reasonable" standard."

(v) **Index Transactions.** Add a new section to Article 10 as follows:

**10.14 Index Transactions.**

(a) **Market Disruption.** If a Market Disruption Event has occurred and is continuing during the Determination Period, the Floating Price for the affected Trading Day shall be determined pursuant to the index specified in the Transaction for the first Trading Day thereafter on which no Market Disruption Event exists; *provided, however*, if the Floating Price is not so determined within three (3) Business Days after the first Trading Day on which the Market Disruption Event occurred or existed, then the Parties shall negotiate in good faith to agree on a Floating Price (or a method for determining a Floating Price), by selecting a mutually acceptable published index or, if none exists, by taking the average of two or more dealer quotes.

"Determination Period" means each calendar month during the term of the relevant Transaction; provided that if the term of the Transaction is less than one calendar month the Determination Period shall be the term of the Transaction.

"Floating Price" means the price specified in the Transaction as being based upon a specified index.

"Market Disruption Event" means, with respect to an index, any of the following events (the existence of which shall be determined mutually in good faith by the parties): (a) the failure of the index to announce or publish information necessary for determining the Floating Price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading in the relevant options contract or commodity on the exchange or market acting as the index; (c) the temporary or permanent discontinuance or unavailability of the index; (d) the temporary or permanent closing of any exchange acting as the index; or (e) a material change in the formula for or the method of determining the Floating Price.

"Trading Day" means a day in respect of which the relevant price source published the relevant price.

(b) **Corrections to Published Prices.** For purposes of determining the relevant prices for any day, if the price published or announced on a given day and used or to be used to determine a relevant price is subsequently corrected and the correction is published or announced by the person responsible for that publication or announcement, either Party may notify the other Party of (i) that correction and (ii) the amount (if any) that is payable as a result of that correction. If a Party gives notice that an amount is so payable, the Party that originally either received or retained such amount will, not later than three (3) Business Days after the effectiveness of that notice, pay, subject to any applicable conditions precedent, to the other Party that amount, together with interest at the Interest Rate for the period from and including the day on which payment originally was (or was not) made to but excluding the day of payment of the refund or payment resulting from that correction.

(c) **Calculation of Floating Price.** For the purposes of the calculation of a Floating Price, all numbers shall be rounded to three (3) decimal places. If the fourth (4<sup>th</sup>) decimal number is five (5) or greater, then the third (3<sup>rd</sup>) decimal number shall be increased by one (1), and if the fourth (4<sup>th</sup>) decimal number is less than five (5), then the third (3<sup>rd</sup>) decimal number shall remain unchanged.

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

**10.15 CPUC Approval.** The Parties hereby acknowledge and agree that SDG&E shall submit this Agreement to the CPUC for approval with a reasonable time after execution of this Agreement. This Agreement and the Parties' obligations under this Agreement 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 with conditions or modifications that materially alters the commercial aspects of this Agreement, 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, 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 in any way, at the CPUC. If called upon to do so, the Parties shall take reasonable actions to facilitate approval by (1) the CPUC or (2) other regulatory agencies.

**Part 2. SCHEDULE P**

The following definition is hereby added to Schedule P:

"CAISO Energy" means with respect to a transaction, a Product under which the Seller shall sell and the Purchaser shall purchase a quantity of energy equal to the hourly quantity without Ancillary Services (as defined in the Tariff) that is or will be scheduled as a schedule coordinator to schedule coordinator transaction pursuant to the applicable tariff and protocol provisions of the CAISO (as amended from time to time, the "Tariff") for which the only excuse for failure to deliver or receive is an "Uncontrollable Force" (as defined in the Tariff). A CAISO "Schedule Adjustment" (defined as a schedule change implemented by the CAISO that is neither caused by, or within the control of, either Party) shall not constitute an Uncontrollable Force (as defined in the Tariff). In the absence of such an Uncontrollable Force, the Party to which performance is owed shall be entitled to receive from the Party which failed to deliver/receive an amount determined pursuant to Article Four."

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

Party A - PACIFICORP POWER MARKETING, INC.

Party B - SAN DIEGO GAS & ELECTRIC COMPANY

By: *Peter Van Alderwerelt*

By: *Lad Lorenz*

Name: Peter Van Alderwerelt

Name: *Lad Lorenz*

Title: Vice President, Business Development & Origination

Title: *V.P. Electric & Gas Procurement*

APPROVED as to legal form *A.S.*

PPM  
Contract Administration  
*[Signature]*

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

**Wind Project  
Riverside County, California**

This confirmation letter shall confirm the Transaction agreed to on October 31, 2002 between PacifiCorp Power Marketing, Inc. ("**Party A**") and San Diego Gas and Electric Company ("**Party B**") regarding the sale and purchase of Product (as described below) under the following terms and conditions:

Seller: Party A

Buyer: Party B

Agreement: This confirmation letter is being entered into pursuant to and in accordance with the Master Power Purchase and Sale Agreement ( Wind Project) dated October 31, 2002 between Party A and Party B. If there is any conflict between the terms set forth in this confirmation letter and the Master Power Purchase and Sale Agreement (Wind Project), the terms set forth in this confirmation letter shall govern. The Master Power Purchase and Sale Agreement (Wind Project) as modified and supplemented by this confirmation letter (collectively, the "**Agreement**"), constitutes the complete and final agreement between the parties concerning the purchase and sale of Product from the Project (as defined below). References to "sections" and "articles" are to provisions appearing in the Master Power Purchase and Sale Agreement (Wind Project), and references to "paragraphs" are to provisions appearing in this confirmation letter.

Product: Product will be "As Available," which means that it will be supplied from the Project if, as and when it is generated by the Project. Party A's failure to deliver under this "As Available" Transaction shall be excused: (i) to the extent the Project 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 Project 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) to the extent that Party A's ability to perform is impaired by Party B's failure to perform, (iv) if there is insufficient wind for the Project's wind turbines to generate energy as determined by wind speed and direction standards comparable to those utilized by other wind producers or purchasers in the vicinity of the Project or if wind speeds exceed the technical specifications of wind turbines in the Project, or (v) by scheduled maintenance outages of the wind turbines. 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.

Specified Unit: A wind project to be constructed in Riverside County, California, near the existing Mountain View I and II wind projects, having an estimated installed capacity of 21.2 to 22.8 MW and consisting of approximately 31 to 39 wind turbines to be located in Riverside County, California (the “**Project**”).

Contingencies: Party A may terminate this Agreement by giving notice to Party B if, for any reason:

- (A) Party A has not by February 28, 2003, closed the transaction by which Party A will acquire the Project Entity (as defined below) from SeaWest WindPower, Inc. (“**SeaWest**”); or
- (B) Party A has not by October 1, 2003 obtained or entered into any of the following in a form satisfactory to Party A: (i) land rights required to construct the Project, (ii) permits required to construct and operate the Project, (iii) an agreement with Southern California Edison Company sufficient to allow the Project to interconnect and deliver all of the Project’s output at the Delivery Point, (iv) a participating generator agreement with the California Independent System Operator or its successor (collectively, “**CAISO**”), (v) a determination by the Federal Energy Regulatory Commission (“**FERC**”) that the Project Entity is an exempt wholesale generator, or (vi) FERC authorization to charge market-based rates for the Output.

“**PTCs**” means production tax credits under Section 45 of the Internal Revenue Code as in effect from time to time during the term of this Agreement or any successor or other provision providing for a federal tax credit determined by reference to renewable electric energy produced from wind resources and any correlative state tax credit determined by reference to renewable electric energy produced from wind resources for which the Project is eligible.

If Party A terminates this Agreement pursuant to this provision, neither Party shall have any liability to the other under this Agreement.

Excluded  
Turbines:

Party A may by notice to Party B exclude affected wind turbines from the Project and adjust the Project’s installed capacity accordingly if.

(A) In the circumstances contemplated by subparagraph (B) of the “**Contingencies**” paragraph, Party A concludes that it is able to cause some but not all of the Project’s wind turbines to achieve Commercial Operation;

or

(B) Party A concludes that one or more wind turbines or the Project as a whole will not achieve Commercial Operation (as defined below) before December 31, 2003.

If Party A excludes wind turbines pursuant to this provision, neither Party shall have any obligation or liability to the other under this Agreement with respect to the excluded wind turbines.

**Contract Quantity:** During the Delivery Period, except as specified in the "Curtailments" paragraph below, 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 Transaction, "**Output**" means all electrical energy produced by the Project, which may, on an instantaneous basis, be greater or less than the total estimated capacity of 22.8 MW of the Project, as metered at the Delivery Point. However, Party B's obligation to purchase shall be limited to 25 MWs as measured and metered hourly at the Delivery Point. 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 Agreement.

Pursuant to Amendment 42 of the CAISO tariff, Party A shall use commercially reasonable efforts to match schedules to actual generation on a monthly basis. Party B shall pay on a monthly basis the Contract Price for the lower of the monthly aggregate quantity of Output scheduled or actually metered in each calendar month.

**Delivery Point:** The high side of the transformers at the MountWind Substation (the "**Delivery Point**"). The Project Entity (as defined below) intends to improve the MountWind Substation to allow the Project to interconnect to the CAISO Devers-Farrell-Eisenhower 115 kV transmission line.

**Contract Price:** During the Delivery Period: \$49.15/MWh. Responsibility for CAISO charges with respect to uninstructed energy is addressed in the "Scheduling" paragraph.

**Delivery Period:** Beginning on the date on which the first turbine completed for the Project (regardless of its rated capacity) has been "placed in service" as contemplated by Internal Revenue Code Section 45 and ending fifteen (15) years thereafter (the "**Delivery Period**"); *provided, however*, Party B will accept deliveries of test energy before the beginning of the Delivery Period, with the Contract Price of such test energy to be \$40/MWh..

Party A shall provide periodic construction status updates to Party B at such

times as reasonably requested by Party B.

**Forecast:** For Party B's planning purposes, Party A shall, by December 1 of each year during the Delivery Period (except for the last year thereof), provide a forecast of each month's average-day output energy production, by hour for the following calendar year. This forecast (a) shall include an expected range of uncertainty based on historical operating experience, (b) shall be updated on a monthly basis, and (c) shall be a non-binding, good faith estimate only. Party A shall not be liable for inaccuracies in the forecast.

**Scheduling:** By 6:00 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, Party A shall provide Party B with a non-binding hourly forecast of deliveries for each hour of the immediately succeeding day; *provided, however*, that such information provided on a day prior to any non-Business Day shall include non-binding forecasts for each day to and including the immediately succeeding Business Day. Party A shall update such forecast on a non-binding basis any time information becomes available indicating a change in forecast Output from the then current forecast.

Party A shall prepare such non-binding forecasts and updates by utilizing a wind speed and direction prediction model or service that is commercially available and comparable in accuracy to models or services utilized by other wind producers or purchasers in the vicinity of the Project, so long as such model or service is available at a commercially reasonable cost and is satisfactory to Party B in the exercise of its reasonable discretion. On or prior to May 1 during each year of the Delivery Period, Party A shall determine in good faith which such model or service to utilize after consultation with Party B. Party A shall not be required to update such forecasts more frequently than once per hour. To the extent commercially reasonable, the Parties shall cooperate to implement and use automatic forecast updates and shall seek to integrate the forecast updates with any automated forecasting system that is implemented pursuant to Amendment 42 of the CAISO tariff.

Party A or its qualified designee shall be the designated Scheduling Coordinator (as defined in the CAISO tariff) for the Project and shall be responsible for scheduling the forecast of Output to the Delivery Point during the Delivery Period. Party A shall submit, or cause its qualified designee to 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. 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 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 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 costs and economic benefit or detriment from such changes shall be shared equally by the Parties.

The forecasts called for by this Agreement shall be non-binding, good faith estimates only, and Party A shall not be liable for inaccuracies in the forecast.

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 a change to its Output (whether in part or in whole), Party A shall use commercially reasonable 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 a Scheduling Coordinator.

Party A 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 schedule. If, at any time and from time to time, there is any increase in the charges payable by Party A to CAISO or any other party above those that would be payable by Party A as of the date of this Agreement because of differences between actual generation and schedule or otherwise (including taxes levied on the Project, its generation or the sale of Output after the date of this Agreement that would be paid by Party A), Party A may send Party B a notice describing the charges in reasonable detail. Within twenty (20) days after Party B receives such a notice, the Parties shall meet and negotiate in good faith to reach a mutual agreement concerning the allocation of such charges and any methods by which such charges can be minimized. If the Parties do not enter into such an agreement within forty-five (45) days after Party B receives the notice from Party A, Party A may terminate this Agreement by notice to Party B. If the Parties do reach agreement within forty-five (45) days after Party B receives the notice, Party B shall file with the CPUC an amendment to this Agreement that reflects the Parties' agreement. If CPUC Approval of such amendment is not obtained within a further sixty (60) days (*i.e.*, 105 days from the date on which Party B receives the notice), Party A may terminate this Agreement by notice to Party B. Upon termination under this paragraph, neither Party will have any further liabilities or obligations under this Agreement (other than Party B's duty to pay for Output delivered before the date of termination).

Operating  
Procedures:

Prior to the Commercial Operation Date and from time to time as reasonably determined necessary by the Parties, Party A shall propose written operating procedures (“**Operating Procedures**”) addressing how the Parties will perform their respective obligations under this Transaction with respect 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; (6) scheduling procedures, and (7) procedures for verifying the accuracy of the Project’s meter, resolving disputes concerning the meter, and measuring the Project’s Output if the meter is not functioning. Party B shall have the right to approve such Operating Procedures, but its approval shall not be unreasonably withheld, conditioned or delayed. If Party B does not notify Party A of the reason why it disapproves of the proposed Operating Procedures within thirty (30) days after receiving them, the Operating Procedures shall be deemed approved. In addition, any portion of the Operating Procedures that Party B does not disapprove shall be deemed to be approved. If Party B disapproves of all or part of the proposed Operating Procedures within the thirty (30) day period, the parties shall negotiate in good faith to modify the Operating Procedures or disapproved portions thereof in a commercially reasonable manner consistent with the Parties’ intent as set forth in this Agreement; *provided, however*, that the failure to approve or agree on Operating Procedures shall not relieve the Parties of their respective obligations under this Agreement.

Party A shall operate and maintain, and arrange Scheduled Maintenance Outages for, the Project in accordance with Prudent Industry Practices. By December 1 of the each year during the Delivery Period, Party A shall provide an annual schedule for Scheduled Maintenance for the following year to Party B for approval, which approval shall not be unreasonably withheld, conditioned or delayed. If Party B does not send Party A a notice stating its reasons for disapproving a proposed annual schedule within thirty (30) days after receiving it, the schedule shall be deemed approved. If Party B sends a timely notice disapproving of the proposed annual schedule, the Parties shall negotiate in good faith to mutually agree upon the schedule no later than two (2) months prior to the proposed Scheduled Maintenance Outage. Absent mutual agreement, Party A shall use commercially reasonable efforts to schedule Scheduled Maintenance Outages during the months of November and December at Party A’s option.

“**Commercial Operation**” means, with respect to any Portion (as defined in this Agreement) of the Project, that Party A shall have completely installed and commissioned the applicable electrical generating equipment and control systems including, but not limited to the process of starting up, testing and normalization of all operating systems of the installed wind

turbines with the transmission system grid, and each installed wind turbine is available to generate and deliver power to the electrical transmission grid in accordance with any applicable operating permits. Notwithstanding the foregoing, a Turbine shall be deemed to have achieved Commercial Operation as soon as it is "placed in service" as contemplated by Internal Revenue Code Section 45. Upon achieving Commercial Operation with respect to a Portion of the Project, Party A shall certify to Party B in writing that Commercial Operation is achieved with respect to such Portion of the Project and shall deliver to Party B a copy of the commissioning certificate for the turbines in such Portion of the Project executed by the turbine manufacturer (collectively, a "**Commercial Operation Certificate**") and Party B shall either accept such Commercial Operation Certificate (such acceptance not to be unreasonably withheld, conditioned or delayed) or deliver to Party A written notice stating in detail the reasons for rejecting such Commercial Operation Certificate (a "**Rejection Notice**") within five (5) days after receipt thereof. In the event that Party B fails to deliver such notice within five (5) days after receipt of a Commercial Operation Certificate, the Commercial Operation Certificate shall be deemed accepted and approved by Party B. Commercial Operation will be deemed to have been achieved with respect to a Portion of the Project (a) in the event Party B accepts or is deemed to have accepted the applicable Commercial Operation Certificate, on the date specified in the Commercial Operation Certificate as the date on which the Portion achieved Commercial Operation, or (b) in the event Party B timely delivers a rejection notice and the applicable Portion of the Project is ultimately determined not to have achieved Commercial Operation as represented in the applicable Commercial Operation Certificate, on the date on which Party A and Party B agree in writing or the date on which it is otherwise determined that Commercial Operation has been achieved with respect to such Portion of the Project, or (c) in the event Party B timely delivers a rejection notice and the applicable Portion of the Project is ultimately determined to have achieved Commercial Operation as represented in the applicable Commercial Operation Certificate, on the date specified in the Commercial Operation Certificate as the date on which the Portion achieved Commercial Operation.

**"Commercial Operation Date"** with respect to any Portion of the Project means the date on which Commercial Operation is achieved with respect to such Portion of the Project in accordance with the immediately preceding sentence. As expeditiously as possible, but in any event on or before March 31, 2003, Party A shall propose to Party B a draft set of written acceptance procedures addressing how the Parties will determine whether Commercial Operation has been achieved. The acceptance procedures shall be subject to Party's B's approval, which shall not be unreasonably withheld, conditioned or delayed. If Party B does not send Party A a notice stating the reasons why Party B does not approve of the acceptance procedures within thirty



(30) days after receiving them, Party B shall be deemed to have accepted such procedures. After Project construction commences, Party B may, at its sole risk and expense, inspect the Project's construction site during business hours upon reasonable notice to Party A. During business hours and upon reasonable notice, Party B may also inspect Party A's data and information pertaining to the Project (except to the extent that Party A is bound by a duty of confidentiality not to disclose such information).

**"Portion of the Project"** shall mean the number of units installed and having achieved Commercial Operation divided by the total number of units in the Project. For example, if the total number of units in the Project equals 100 units and Party B reasonably determines that only 50 units have achieved Commercial Operation, then the Portion of the Project that is completed is 50 units or 50 percent (50%) of the total Project. With respect to the "Portion of the Project" reasonably excluded by Party B, this term shall mean the number of units which Party B deems have failed to achieve Commercial Operation divided by the total number of units in the Project.

**"Prudent Industry Practice"** means any practices, methods and/or acts (i) required by the National Electric Safety Code or 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.

Exhibit C--Operation and Maintenance Obligations of Seller (for Unit Contingent Capacity) does not apply to the Project and is not included in this Agreement.

**Curtailments:** At the request of Party B, Party A shall reduce the Project's Output during any hour provided that the CAISO has directed the scheduling coordinator for the Project to reduce the Output of the Project to manage an overgeneration 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.

During such curtailments, Party B shall pay Party A the Contract Price for the Output that would have been generated without such curtailment based upon the product of (i) the number of hours of curtailment, and (ii) the

hourly forecast relating to each hour of curtailment; *provided, however*, that the Output relating to any curtailment less than one (1) hour shall be calculated based on the actual Output for the sixty (60) minutes immediately preceding such curtailment. To the extent that Party A is unable to resell curtailed Output, Party B shall also pay Party A for lost PTCs as provided in the "Damages" paragraph of this Agreement. Party B shall not be required to pay the amounts contemplated by this provision to the extent that the Output reductions or curtailments imposed by CAISO (a) are not caused or requested by Party B, and (b) are otherwise beyond Party B's control.

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 at the MountWind Substation. Party A shall meter the Output at the low side of the transformer immediately prior to the Delivery Point; *provided, however*, that Party A's meter shall be adjusted to account accurately for substation transformer losses. A copy of such meter information and adjustment 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 Party B by Party A.

Billing:

Party A shall submit a monthly invoice during the Delivery Period to Party B for the amount payable based on the "Contract Price" paragraph of this Agreement (as well as any additional charges permitted by the "Scheduling" paragraph) for each month (including the initial partial month, if applicable). The invoice for the last month of the Delivery Period will be delivered in the month following the end of the Delivery Period.

Party B shall pay Party A the Contract Price for all Output delivered on a monthly basis as set forth in Article Six of this Agreement.

Environmental

Credits:

All rights and interests in the renewable attributes, emission reductions or credits (offsets) relating to the Project shall be the property of Party B, including all environmental attributes and rights to qualify the Project Output under the requirements of the California Renewable Portfolio Standard.

Party A represents and warrants that the Project will qualify as of the commencement of the Delivery Period as an "Eligible renewable energy resource", as defined in Section 399.12(a) of the California Public Utilities Code; *provided, however*, that Party A shall be relieved of this representation and warranty to the extent that a change in law between the

date of this Agreement and the commencement of the Delivery Period prevents Party A from accurately making this representation and warranty as of the commencement of the Delivery Period.

Party A shall retain all PTCs (as defined below) and associated benefits.

Exclusion:

(A) Party B may exclude from this Transaction any Portion of the Project that has not achieved a Commercial Operation Date on or before December 31, 2003. If Party B exercises this right by notice given to Party A in compliance with this provision, the term "Project" shall exclude the Portion of the Project that (i) has not achieved Commercial Operation on or before December 31, 2003, and (ii) that Party B excludes in its notice to Party A. Party B must exercise its right to exclude a portion of the Project, if at all, no later than January 31, 2004. Upon an exclusion or termination under this provision, neither Party shall have any obligation or liability to the other with respect to the wind turbines excluded or terminated (except that Party B shall pay when due for Output received from any such excluded or terminated wind turbines before the date of such exclusion or termination).

(B) Party B shall in its sole discretion have the right to terminate this Transaction without any further obligations under this Agreement if (i) at any time during the Delivery Period no energy is generated and delivered to the Delivery Point for a period of six (6) consecutive months for reasons other than weather related conditions, and (ii) the failure to deliver was not caused by the act or omission of Party B. Party A shall have no liability for such termination except to the extent allowed by this Agreement where the failure to generate and deliver is caused by Party A's breach of this Agreement.

(C) Party B shall have the right to terminate this Transaction without any further obligations under this Agreement if the Project fails to achieve a Mechanical Availability Percentage of at least 75% based on the rolling average of its mechanical availability during the preceding two calendar years. The first such Mechanical Availability Percentage test shall occur as of January 1 of the year following the first two calendar years after the Commercial Operation Date. Party A shall have no liability for such termination except to the extent allowed by this Agreement where the failure to generate and deliver is caused by Party A's breach of this Agreement. For purposes of this provision, the following definitions apply:

**"Mechanical Availability Percentage"** shall be calculated, for all wind turbines that have achieved Commercial Operation and are part of the Project, as a percentage in accordance with the following formula:

$$100 \times \frac{\text{(total Operational Hours during the prior two calendar years for all wind turbines that have achieved Commercial Operation and are part of the Project)}}{\text{(total Base Hours during the prior two calendar years for all wind turbines that have achieved Commercial Operation and are part of the Project)}}$$

**“Operational Hours”** for each wind turbine that has achieved Commercial Operation and is part of the Project and for each period shall mean the number of hours during the period in which such wind turbine is capable of producing power as measured by such turbine’s internal turbine controller, including, without limitation, during any period in which deliveries of Output from such wind turbines are being curtailed or otherwise adjusted pursuant to the “Curtailed” or “Contract Quantity” paragraphs of this Agreement. Operational Hours specifically exclude any hours during which a wind turbine is (i) in an emergency, stop, service mode or pause state; (ii) in “run” status and faulted; or (iii) not operational as a result of scheduled maintenance, a system emergency (other than a system emergency caused by Party A’s act or failure to act), or a Force Majeure event.

**“Base Hours”** for each wind turbine that has achieved Commercial Operation and for each period shall mean the number of hours in the period, less without duplication any hours during such period that any of the following have occurred: (i) Party B is unable for any reason other than due to action or inaction by Party A (e.g., a failure of the Transmission Provider), to accept delivery of any Output that such Turbine is otherwise capable of generating, or (ii) such wind turbine is not operational as a result of scheduled maintenance (not to exceed 109.5 hours per wind turbine per calendar year), a system emergency (other than a system emergency caused by Party A’s act or failure to act), or a Force Majeure event.

Credit  
Support

(A) Party A shall not be required to post any guaranty or other credit support under this Agreement until Party A has received the approvals contemplated by the “Approvals” paragraph, including the approval of the board of directors of PacifiCorp Holdings, Inc. (“**Party A Guarantor**”), authorizing the execution and delivery of the guaranty.

(B) Collateral thresholds shall not apply to the Transaction contemplated by this Agreement. If Party B or the Party A Guarantor experience a Downgrade Event, the affected party shall deliver Performance Assurance as required by this Agreement; *provided, however*, that (a) the aggregate amount of the Performance Assurance shall not exceed \$10 million, and (b) the Performance Assurance shall no longer be required upon the termination

of the Downgrade Event.

Assignment: (A) Party A shall have the right, without the approval of Party B, to assign this Agreement to the entity that will own the Project (the "**Project Entity**"), if (a) the Project Entity agrees in writing to be bound by the terms and conditions of this Agreement, (b) Party A or an Affiliate of Party A owns the Project Entity, and (c) any credit support posted on behalf of Party A shall remain in effect. When Party A notifies Party B of the assignment to the Project Entity, Party A shall be automatically released from this Agreement and the Project Entity shall thereupon become Party A for all purposes under this Agreement. .

(B) If the Project Entity is owned by a party other than Party A or an Affiliate of Party A, Party A shall not assign this Agreement to the Project Entity without Party B's consent (which shall not be unreasonably withheld, conditioned or delayed and which may be conditioned on receipt of satisfactory credit support from or on behalf of the Project Entity and on Party B's satisfaction with the experience of assignee or its owner in the wind energy industry). When Party B's consent to such assignment is given, Party A shall be automatically released from this Agreement and all credit support provided by or on behalf of Party A or an Affiliate of Party A shall automatically terminate. If Party B does not consent to such an assignment within sixty (60) days of Party A's request for consent, Party A may terminate this Agreement by notice to Party B. In the event of such termination, neither Party shall have any liability to the other under this Agreement.

Project Finance: (A) "**Lender**" means the individuals or entities or successors in interest thereof (and any agent or trustee for any of the foregoing) lending money or extending credit (including any financing lease): (i) to Party A for construction, term or permanent financing of the Project; (ii) to Party A for working capital or other ordinary business requirements of the Project (including maintenance, repair, replacement or improvement of the Project); or (iii) to Party A for any development financing, bridge financing, credit support, credit enhancement or interest rate protection in connection with the Project.

(B) Party A, without the approval of Party B, may assign to any Lender its interest under this Agreement as security for financing provided for the construction and/or operation of the Project. Promptly after making such encumbrance, Party A shall notify Party B in writing of the name, address, and telephone and facsimile numbers of each Lender to which Party A's interest under this Agreement has been encumbered. Such notice shall include the names of the account managers or other representatives of each Lender to whom all written and telephonic communications may be

addressed. After giving Party B such initial notice, Party A shall promptly give Party B notice of any change in the information provided in the initial notice or any revised notice.

Force Majeure: Sections 1.23 (“Force Majeure”) and 3.3 of this Agreement apply to the Transactions contemplated by this Agreement.

Damages: (A) Notwithstanding any other provision of this Agreement, under no circumstances will a Non-Defaulting Party be required to pay a Defaulting Party (as part of a Settlement Amount or otherwise) upon any liquidation or termination of this Agreement or the Transaction contemplated by this Agreement.

(B) In addition to the remedies provided in Section 4.2 of this Agreement and notwithstanding any other provision of this Agreement (including Section 7.1), if Party A is not able (despite acting in a commercially reasonable manner) to resell at the Delivery Point any Output that Party B fails to take in breach of this Agreement, Party B shall pay to Party A, as provided in Section 4.2 of the Agreement, the sum of (i) the Contract Price for such Output, plus (ii) an amount equal to the dollar value of the PTCs that would have been associated with such Output, in each case calculated on an After-Tax Basis (as defined below) with respect to Party A (or any of its Affiliates or other entities who utilize such PTCs through Party A).

“**After-Tax Basis**” shall mean, with respect to any payment received or deemed to have been received by any Party, the amount of such payment (the “**Base Payment**”) supplemented by a further payment (the “**Additional Payment**”) to such Party so that the sum of the Base Payment plus the Additional Payment shall, after deduction of the amount of all taxes required to be paid by such Party in respect of the receipt or accrual of the Base Payment and the Additional Payment (taking into account any current or previous credits or deductions arising from the underlying event giving rise to the Base Payment and the Additional Payment), be equal to the amount required to be received. Such calculations shall be made on the assumption that the recipient is subject to Federal income taxation at the highest applicable statutory rate applicable to corporations for the relevant period or periods, is subject to state and local income taxation at the highest applicable statutory rates applicable to corporations doing business in Riverside County, California, and shall take into account the deductibility (for Federal income tax purposes) of state and local income taxes.

Confidentiality: Party B acknowledges that Party A submitted a joint bid with SeaWest and that Party A is negotiating with SeaWest to acquire the Project Entity (including the Project’s assets) from SeaWest. Accordingly,

notwithstanding Section 10.11 of this Agreement, Party A may disclose the terms and conditions of this Transaction to SeaWest.

Approvals:

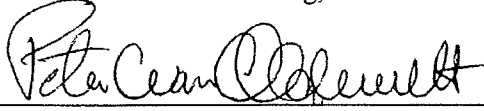
(A) Party A's duty to perform the Transaction contemplated by this Agreement is contingent upon the approval of Party A's board of directors and receipt of all other corporate approvals that Party A determines in its sole discretion are required in order to enter into this Agreement and perform the Transaction (including but not limited to the approval of the board of directors of Party A Guarantor with respect to the guaranty contemplated by Exhibit A of this Agreement and the "Credit Support" paragraph). Party B acknowledges that the decisions whether or not to grant such approval are in the sole, unreviewable discretion of the board of directors of Party A and the members of such other governing bodies from whom Party A determines in its sole discretion that approval is required. Party B further acknowledges that Party A's management has not had any conversation with Party A's board of directors, the board of directors of Party A Guarantor or any other such governing body about this Agreement, the guaranty or the Transaction contemplated by this Agreement. If Party A has not obtained all such approvals by January 31, 2003, Party A may in its sole discretion terminate this Agreement upon ten (10) days prior written notice to Party B. In addition, if Party A has not obtained all such approvals by December 31, 2002, Party B may in its sole discretion terminate this Agreement upon ten (10) days prior written notice to Party A. Upon such termination, neither Party shall have any liability to the other under this Agreement. Without limiting the generality of the foregoing, upon such termination there shall be no contract between the parties and no contractual obligations shall be deemed to have been created by estoppel, detrimental reliance or otherwise.

(B) Each Party's duty to perform the Transaction contemplated by this Agreement is contingent upon receipt of CPUC Approval (as defined in Section 10.14 of this Agreement). In addition to the provisions of Section 10.14 of this Agreement, if the CPUC Approval Date has not occurred on or before January 31, 2003, Party A may in its sole discretion terminate this Agreement upon ten (10) days prior written notice to Party B. Upon such termination, neither Party shall have any liability to the other under this Agreement.

*[signature page follows]*

[Party A]

PacifiCorp Power Marketing, Inc.

 *Peter Van Alderwerelt* *pc*


By: Peter Van Alderwerelt  
Title: Vice President, Business Development  
& Origination

Phone No: 503.813.6262

Fax: 503.813.5722

[Party B]

San Diego Gas & Electric Company

 *Lad Lorenz*

By: Lad Lorenz  
Title: Vice President, Electric and Gas

Fax: 858 650 6191

Phone No: 858 650 6150

APPROVED as to legal form AS

PPM  
Contract Administration  
DAE



\$49,151/MWh

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

**Wind Project  
Riverside County, California  
Phoenix Wind Turbines (2.1 MW)**

PPM

This Confirmation Letter shall confirm the Transaction agreed to on November 7, 2003 between Phoenix Wind Power LLC, an Oregon limited liability company in which PPM Energy, Inc. is the sole member ("**Party A**") and San Diego Gas & Electric Company ("**Party B**") regarding the sale and purchase of Product (as described below) under the following terms and conditions:

**Agreement:**

This confirmation letter is being entered into pursuant to and in accordance with the Master Power Purchase and Sale Agreement (Wind Project) dated October 31, 2002 between PPM Energy, Inc. (formally know as PacifiCorp Power Marketing, Inc.) and Party B, the terms and conditions of which are hereby incorporated by this reference, and all references therein to "PacifiCorp Power Marketing, Inc.", "Party A", or "Seller" shall now also be deemed references to Phoenix Wind Power LLC (except that the confirmation letter dated October 31, 2002 between Party B and PPM Energy, Inc., with respect to an approximately 22.8 MW wind project shall not apply to this 2.1 MW transaction, which shall instead be governed by this confirmation letter). If there is any conflict between the terms set forth in this confirmation letter and the Master Power Purchase and Sale Agreement (Wind Project), the terms set forth in this confirmation letter shall govern. The Master Power Purchase and Sale Agreement (Wind Project) as modified and supplemented by this confirmation letter (collectively, the "**Agreement**"), constitutes the complete and final agreement between the parties concerning the purchase and sale of Product from the Project (as defined below). References to "sections" and "articles" are to provisions appearing in the Master Power Purchase and Sale Agreement (Wind Project), and references to "paragraphs" are to provisions appearing in this confirmation letter. This confirmation letter is in addition to and not in lieu of the confirmation letter dated October 31, 2002, as amended between Party B and PPM Energy Inc.

**Product:**

Product will be "As Available," which means that it will be supplied from the Project if, as and when it is generated by the Project. Party A's failure to deliver under this "As Available" Transaction shall be excused: (i) to the extent the Project 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 Project 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) to the extent that Party A's ability to perform is impaired by Party B's failure to perform, (iv) if there is insufficient wind for the Project's wind turbines to generate energy as determined by wind speed and direction standards comparable to those utilized by other wind producers or purchasers in the vicinity of the Project or if wind speeds exceed the technical specifications of wind turbines in the Project, (v) by scheduled maintenance outages of the wind turbines; or (vi) by constraints in interconnection capacity at the Delivery Point. 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.

**Specified Unit:** An existing wind project in Riverside County, California near the existing San Geronio Wind Farm, having an estimated installed capacity of 2.1 MW and consisting of three (3) wind turbines (the "**Project**"). The Parties acknowledge that the Project achieved Commercial Operation in 1999.

**Contract Quantity:** During the Delivery Period, except as specified in the "Curtailements" paragraph below, 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 Transaction, "**Output**" means all electrical energy produced by the Project, which may, on an instantaneous basis, be greater or less than the total estimated capacity of 2.1 MW of the Project, as metered at the Delivery Point. However, Party B's obligation to purchase shall be limited to 2.5 MWs as measured and metered hourly at the Delivery Point. 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 Agreement.

Pursuant to Amendment 42 of the CAISO tariff, Party A shall use commercially reasonable efforts to match schedules to actual generation on a monthly basis. Party B shall pay on a monthly basis the Contract Price for the lower of the monthly aggregate quantity of Output scheduled or actually metered in each calendar month. For Output delivered on or after the later of January 1, 2004 or the CPUC Approval date, Party B shall pay on a monthly basis the Contract Price for the lower of 1) the sum of the Output scheduled from the 2.1 MW Project under this confirmation letter or 2) the sum of the monthly aggregate of the actually metered quantity from the 2.1 MW Project under this confirmation letter. The quantity determined in the preceding sentence will be aggregated with the quantity determined under the separate confirmation letter dated October 31, 2002 between PPM Energy, Inc., and Party B for an approximately 22.8 MW Project. Party A shall cause PPM Energy, Inc., to send Party B a single monthly invoice for both this Project and the 22.8 MW project. Party A hereby designates PPM as its agent for purposes of invoicing and receipt of payment.

Delivery Point: The 115 Kv bus at Garnet Substation

Contract Price: During the Delivery Period: \$49.15/MWh. Responsibility for CAISO charges with respect to uninstructed energy is addressed in the "Scheduling" paragraph.

Delivery Period: The later of January 1, 2004 or the CPUC Approval Date through the expiration or termination of the Master Power Purchase and Sale Agreement Confirmation Letter between PPM Energy, Inc. (formally PacifiCorp Power Marketing, Inc.) and San Diego Gas & Electric Company dated October 31, 2002, as modified by the First Amendment dated November 7, 2003.

Forecast: For Party B's planning purposes, Party A shall, by December 1 of each year during the Delivery Period (except for the last year thereof), provide a forecast of each month's average-day output energy production, by hour for the following calendar year. This forecast (a) shall include an expected range of uncertainty based on historical operating experience, (b) shall be updated on a monthly basis, and (c) shall be a non-binding, good faith estimate only. Party A shall not be liable for inaccuracies in the forecast.

Scheduling: By 6:00 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, Party A shall provide Party B with a non-binding hourly forecast of deliveries for each hour of the immediately succeeding day; *provided, however*, that such information provided on a day prior to any non-Business Day shall include non-binding forecasts for each day to and including the immediately succeeding Business Day. Party A shall update such forecast on a non-binding basis any time information becomes available indicating a change in forecast Output from the then current forecast.

Party A shall prepare such non-binding forecasts and updates by utilizing a wind speed and direction prediction model or service that is commercially available and comparable in accuracy to models or services utilized by other wind producers or purchasers in the vicinity of the Project, so long as such model or service is available at a commercially reasonable cost and is satisfactory to Party B in the exercise of its reasonable discretion. On or prior to May 1 during each year of the Delivery Period, Party A shall determine in good faith which such model or service to utilize after consultation with Party B. Party A shall not be required to update such forecasts more frequently than once per hour. To the extent commercially reasonable, the Parties shall cooperate to implement and use automatic forecast updates and shall seek to integrate the forecast updates with any automated forecasting system that is implemented pursuant to Amendment 42 of the CAISO tariff.

Party A or its qualified designee shall be the designated Scheduling Coordinator (as defined in the CAISO tariff) for the Project and shall be responsible for scheduling the forecast of Output to the Delivery Point during the Delivery Period. Party A shall submit, or cause its qualified designee to 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. 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 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 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 costs and economic benefit or detriment from such changes shall be shared equally by the Parties.

The forecasts called for by this Agreement shall be non-binding, good faith estimates only, and Party A shall not be liable for inaccuracies in the forecast.

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 a change to its Output (whether in part or in whole), Party A shall use commercially reasonable 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 a Scheduling Coordinator.

Party A 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 schedule. If, at any time and from time to time, there is any increase in the charges payable by Party A to CAISO or any other party above those that would be payable by Party A as of the date of this Agreement because of differences between actual generation and schedule or otherwise (including taxes levied on the Project, its generation or the sale of Output after the date of this Agreement that would be paid by Party A), Party A may send Party B a notice describing the charges in reasonable detail. Within twenty (20) days after Party B receives such a notice, the Parties shall meet and negotiate in good faith to reach a mutual agreement concerning the allocation of such charges and any methods by which such charges can be minimized. If the Parties do not enter into such an agreement within forty-five (45) days after Party B

receives the notice from Party A, Party A may terminate this Agreement by notice to Party B. If the Parties do reach agreement within forty-five (45) days after Party B receives the notice, Party B shall file with the CPUC an amendment to this Agreement that reflects the Parties' agreement. If CPUC Approval of such amendment is not obtained within a further sixty (60) days (*i.e.*, 105 days from the date on which Party B receives the notice), Party A may terminate this Agreement by notice to Party B. Upon termination under this paragraph, neither Party will have any further liabilities or obligations under this Agreement (other than Party B's duty to pay for Output delivered before the date of termination).

Operating  
Procedures:

From time to time as reasonably determined necessary by the Parties, Party A shall propose written operating procedures ("**Operating Procedures**") addressing how the Parties will perform their respective obligations under this Transaction with respect 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; (6) scheduling procedures, and (7) procedures for verifying the accuracy of the Project's meter, resolving disputes concerning the meter, and measuring the Project's Output if the meter is not functioning. Party B shall have the right to approve such Operating Procedures, but its approval shall not be unreasonably withheld, conditioned or delayed. If Party B does not notify Party A of the reason why it disapproves of the proposed Operating Procedures within thirty (30) days after receiving them, the Operating Procedures shall be deemed approved. In addition, any portion of the Operating Procedures that Party B does not disapprove shall be deemed to be approved. If Party B disapproves of all or part of the proposed Operating Procedures within the thirty (30) day period, the parties shall negotiate in good faith to modify the Operating Procedures or disapproved portions thereof in a commercially reasonable manner consistent with the Parties' intent as set forth in this Agreement; *provided, however*, that the failure to approve or agree on Operating Procedures shall not relieve the Parties of their respective obligations under this Agreement.

Party A shall operate and maintain, and arrange Scheduled Maintenance Outages for, the Project in accordance with Prudent Industry Practices. By December 1 of the each year during the Delivery Period, Party A shall provide an annual schedule for Scheduled Maintenance for the following year to Party B for approval, which approval shall not be unreasonably withheld, conditioned or delayed. If Party B does not send Party A a notice stating its reasons for disapproving a proposed annual schedule within thirty (30) days after receiving it, the schedule shall be deemed approved. If Party B sends a timely notice disapproving of the proposed annual schedule, the

Parties shall negotiate in good faith to mutually agree upon the schedule no later than two (2) months prior to the proposed Scheduled Maintenance Outage. Absent mutual agreement, Party A shall use commercially reasonable efforts to schedule Scheduled Maintenance Outages during the months of November and December at Party A's option.

**"Prudent Industry Practice"** means any practices, methods and/or acts (i) required by the National Electric Safety Code or 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.

"Exhibit C--Operation and Maintenance Obligations of Seller" (for Unit Contingent Capacity) does not apply to the Project and is not included in this Agreement.

**Curtailments:**

At the request of Party B, Party A shall reduce the Project's Output during any hour provided that the CAISO has directed the scheduling coordinator for the Project to reduce the Output of the Project to manage an overgeneration 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.

During such curtailments, Party B shall pay Party A the Contract Price for the Output that would have been generated without such curtailment based upon the product of (i) the number of hours of curtailment, and (ii) the hourly forecast relating to each hour of curtailment; *provided, however*, that the Output relating to any curtailment less than one (1) hour shall be calculated based on the actual Output for the sixty (60) minutes immediately preceding such curtailment. To the extent that Party A is unable to resell curtailed Output, Party B shall also pay Party A for lost PTCs as provided in the "Damages" paragraph of this Agreement. Party B shall not be required to pay the amounts contemplated by this provision to the extent that the Output reductions or curtailments imposed by CAISO (a) are not caused or requested by Party B, and (b) are otherwise beyond Party B's control.

**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 at the Garnet Substation. Party A shall meter the Output at the low side of the transformer immediately prior to the Delivery Point; *provided, however*, that Party A's meter shall be adjusted to account accurately for substation transformer losses. A copy of such meter information and adjustment 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 Party B by Party A.

**Billing:** Party A shall submit a monthly invoice during the Delivery Period to Party B for the amount payable based on the "Contract Price" paragraph of this Agreement (as well as any additional charges permitted by the "Scheduling" paragraph) for each month (including the initial partial month, if applicable). The invoice for the last month of the Delivery Period will be delivered in the month following the end of the Delivery Period.

Party B shall pay Party A the Contract Price for all Output delivered on a monthly basis as set forth in Article Six of this Agreement.

**Credit**

**Support:** Notwithstanding any other provision of this Agreement, Party A shall not be required to post any guaranty or other collateral or credit support with respect to the transactions contemplated by this confirmation letter.

**Environmental**

**Credits:** All rights and interests in the renewable attributes, emission reductions or credits (offsets) relating to the Project shall be the property of Party B, including all environmental attributes and rights to qualify the Project Output under the requirements of the California Renewable Portfolio Standard.

Party A represents and warrants that the Project will qualify as of the commencement of the Delivery Period as an "Eligible renewable energy resource", as defined in Section 399.12(a) of the California Public Utilities Code; *provided, however*, that Party A shall be relieved of this representation and warranty to the extent that a change in law between the date of this Agreement and the commencement of the Delivery Period prevents Party A from accurately making this representation and warranty as of the commencement of the Delivery Period.

Party A shall retain all PTCs (as defined below) and associated benefits.

Exclusion:

(A) Party B shall in its sole discretion have the right to terminate this Transaction without any further obligations under this Agreement if (i) at any time during the Delivery Period no energy is generated and delivered to the Delivery Point for a period of six (6) consecutive months for reasons other than weather related conditions, and (ii) the failure to deliver was not caused by the act or omission of Party B. Party A shall have no liability for such termination except to the extent allowed by this Agreement where the failure to generate and deliver is caused by Party A's breach of this Agreement.

(B) Party B shall have the right to terminate this Transaction without any further obligations under this Agreement if the Project fails to achieve a Mechanical Availability Percentage of at least 75% based on the rolling average of its mechanical availability during the preceding two calendar years. The first such Mechanical Availability Percentage test shall occur as of January 1, 2006. Party A shall have no liability for such termination except to the extent allowed by this Agreement where the failure to generate and deliver is caused by Party A's breach of this Agreement. For purposes of this provision, the following definitions apply:

**"Mechanical Availability Percentage"** shall be calculated, for all wind turbines and are part of the Project and shall be aggregated with the results of all wind turbines in the 22.8 MW wind project referenced above, as a percentage in accordance with the following formula:

$$100 \times \frac{\text{(total Operational Hours during the prior two calendar years for all wind turbines that are part of the Project)}}{\text{(total Base Hours during the prior two calendar years for all wind turbines that are part of the Project)}}$$

**"Operational Hours"** for each wind turbine that is part of the Project and for each period shall mean the number of hours during the period in which such wind turbine is capable of producing power as measured by such turbine's internal turbine controller, including, without limitation, during any period in which deliveries of Output from such wind turbines are being curtailed or otherwise adjusted pursuant to the "Curtailed" or "Contract Quantity" paragraphs of this Agreement. Operational Hours specifically exclude any hours during which a wind turbine is (i) in an emergency, stop, service mode or pause state; (ii) in "run" status and faulted; or (iii) not operational as a result of scheduled maintenance, a system emergency (other than a system emergency caused by Party A's act or failure to act), or a Force Majeure event.

**"Base Hours"** for each wind turbine that is part of the Project and for each



period shall mean the number of hours in the period, less without duplication any hours during such period that any of the following have occurred: (i) Party B is unable for any reason other than due to action or inaction by Party A (e.g., a failure of the Transmission Provider), to accept delivery of any Output that such Turbine is otherwise capable of generating, or (ii) such wind turbine is not operational as a result of scheduled maintenance (not to exceed 109.5 hours per wind turbine per calendar year), a system emergency (other than a system emergency caused by Party A's act or failure to act), or a Force Majeure event.

Project Finance: (A) "**Lender**" means the individuals or entities or successors in interest thereof (and any agent or trustee for any of the foregoing) lending money or extending credit (including any financing lease): (i) to Party A for construction, term or permanent financing of the Project; (ii) to Party A for working capital or other ordinary business requirements of the Project (including maintenance, repair, replacement or improvement of the Project); or (iii) to Party A for any development financing, bridge financing, credit support, credit enhancement or interest rate protection in connection with the Project.

(B) Party A, without the approval of Party B, may assign to any Lender its interest under this Agreement as security for financing provided for the construction and/or operation of the Project. Promptly after making such encumbrance, Party A shall notify Party B in writing of the name, address, and telephone and facsimile numbers of each Lender to which Party A's interest under this Agreement has been encumbered. Such notice shall include the names of the account managers or other representatives of each Lender to whom all written and telephonic communications may be addressed. After giving Party B such initial notice, Party A shall promptly give Party B notice of any change in the information provided in the initial notice or any revised notice.

Force Majeure: Sections 1.23 ("Force Majeure") and 3.3 of this Agreement apply to the Transactions contemplated by this Agreement.

Damages: (A) Notwithstanding any other provision of this Agreement, under no circumstances will a Non-Defaulting Party be required to pay a Defaulting Party (as part of a Settlement Amount or otherwise) upon any liquidation or termination of this Agreement or the Transaction contemplated by this Agreement.

(B) In addition to the remedies provided in Section 4.2 of this Agreement

and notwithstanding any other provision of this Agreement (including Section 7.1), if Party A is not able (despite acting in a commercially reasonable manner) to resell at the Delivery Point any Output that Party B fails to take in breach of this Agreement, Party B shall pay to Party A, as provided in Section 4.2 of the Agreement, the sum of (i) the Contract Price for such Output, plus (ii) an amount equal to the dollar value of the PTCs that would have been associated with such Output, in each case calculated on an After-Tax Basis (as defined below) with respect to Party A (or any of its Affiliates or other entities who utilize such PTCs through Party A).

**“After-Tax Basis”** shall mean, with respect to any payment received or deemed to have been received by any Party, the amount of such payment (the **“Base Payment”**) supplemented by a further payment (the **“Additional Payment”**) to such Party so that the sum of the Base Payment plus the Additional Payment shall, after deduction of the amount of all taxes required to be paid by such Party in respect of the receipt or accrual of the Base Payment and the Additional Payment (taking into account any current or previous credits or deductions arising from the underlying event giving rise to the Base Payment and the Additional Payment), be equal to the amount required to be received. Such calculations shall be made on the assumption that the recipient is subject to Federal income taxation at the highest applicable statutory rate applicable to corporations for the relevant period or periods, is subject to state and local income taxation at the highest applicable statutory rates applicable to corporations doing business in Riverside County, California, and shall take into account the deductibility (for Federal income tax purposes) of state and local income taxes.

**“PTCs”** means production tax credits under Section 45 of the Internal Revenue Code as in effect from time to time during the term of this Agreement or any successor or other provision providing for a federal tax credit determined by reference to renewable electric energy produced from wind resources and any correlative state tax credit determined by reference to renewable electric energy produced from wind resources for which the Project is eligible.

Confidentiality: Notwithstanding Section 10.11 of this Agreement, for purposes of 26 CFR 1.6011-4(b)(3)(iii), each Party, its employees, representatives, consultants or agents may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the instant transaction and all materials of any kind (including opinions or other tax analyses) that have been or will be provided to such Party relating to such tax treatment or tax structure.

Approvals: The Parties hereby acknowledge and agree that SDG&E shall submit this Agreement to the CPUC for approval within a reasonable time after execution of this Agreement. This Agreement and the Parties' obligations

under this Agreement are subject to SDG&E first receiving CPUC Approval. "CPUC Approval" shall mean: Party B shall have received a final, non-appealable order from 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 Party B in its sole discretion, (ii) allowing Party B 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 Party B in its sole discretion, (iii) a finding by the CPUC that the payments under this Agreement are just and reasonable, and (iv) a finding by the CPUC that this Agreement complies with California state's RPS requirements and the energy delivered will count toward Party B's annual procurement target. The Parties agree to cooperate and use all reasonable efforts to obtain the CPUC order as soon as is practicable. Should the CPUC issue a decision approving this Agreement with conditions or modifications that materially alter the commercial aspects of this Agreement, the Parties shall have ten (10) Business Days from the mailing date of such 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, effective as of the CPUC Approval Date. If a notice of rejection is sent, the parties agree to use good faith efforts to renegotiate the agreement. 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.

Phoenix Wind Power LLC,

By;  
PPM Energy, Inc.,  
its sole member

*ECB*  
*RTV*  
*Peter C. van Alderwerelt*  
By: Peter C. van Alderwerelt  
Title: Sr. Vice President  
Phone No: 503-796-7090  
Fax: 503-796-6901

San Diego Gas & Electric Company

*Lad Lorenz*  
By: Lad Lorenz  
Title: V.P. Electric and Gas Procurement  
Phone No: (858) 650-6150  
Fax: (858) 650-6191

*AS*

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

This First Amendment dated November 7, 2003 to the Master Power Purchase and Sale Agreement ("**First Amendment**") shall confirm changes to the Master Power Purchase and Sale Agreement (Wind Project), including all exhibits and confirmations thereto dated October 31, 2002 between PPM Energy, Inc (formerly known as PacifiCorp Power Marketing, Inc.) ("**Party A**") and San Diego Gas & Electric Company ("**Party B**") ("**the Agreement**")

**Defined**

**Terms:** Unless otherwise noted, defined terms (as indicated by initial capitalization) shall have the meaning given to them in the Agreement.

**Contract**

**Quantity:** Delete the third paragraph under Contract Quantity and replace with the following:

Pursuant to Amendment 42 of the CAISO tariff, Party A shall use commercially reasonable efforts to match schedules to actual generation on a monthly basis. Party B shall pay on a monthly basis the Contract Price for the lower of the monthly aggregate quantity of Output scheduled or actually metered in each calendar month. For Output produced by the Project, Party B shall pay on a monthly basis the Contract Price for the lower of 1) the Output scheduled from this Project or 2) the actually metered quantity from this Project. The quantity determined in the preceding sentence will be aggregated with the quantity determined under the separate confirmation letter with respect to the Phoenix Wind Turbines (2.1 MW) dated November 7, 2003. Party A shall send Party B a single monthly invoice for both this Project and the 2.1 MW project, and Party A shall act as the agent of Phoenix Wind Power LLC for purposes of invoicing and receipt of payment.

**Date**

**Change:** In the paragraph labeled "**Exclusion**" in the confirmation letter dated October 31, 2002, the date "December 31, 2003" is hereby amended to "March 31, 2004," and the date "January 31, 2004" is hereby amended to "April 30, 2004."

**CPUC**

**Approval:** The Parties hereby acknowledge and agree that SDG&E shall submit this First Amendment to the CPUC for approval within a reasonable time after execution of this First Amendment. This First Amendment and the Parties' obligations under

this First Amendment are subject to SDG&E first receiving CPUC Approval. "CPUC Approval" shall mean: Party B shall have received a final, non-appealable order from the CPUC (i) approving the terms and conditions of this First Amendment without material alteration of the commercial aspects described herein in form and substance acceptable to Party B in its sole discretion, (ii) allowing Party B full rate recovery of the costs associated under this First Amendment through any existing or future cost recovery mechanism that may be developed or instituted by the CPUC, in form and substance acceptable to Party B in its sole discretion, (iii) a finding by the CPUC that the payments under this First Amendment are just and reasonable, and (iv) a finding by the CPUC that this First Amendment complies with California state's RPS requirements and the energy delivered will count toward Party B's annual procurement target. The Parties agree to cooperate and use all reasonable efforts to obtain the CPUC order as soon as is practicable. Should the CPUC issue a decision approving this First Amendment with conditions or modifications that materially alter the commercial aspects of this First 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, effective as of the CPUC Approval Date. If a notice of rejection is sent, the parties agree to use good faith efforts to renegotiate the First Amendment. For purposes of this First Amendment, 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 First Amendment. The CPUC approval process contemplated by this paragraph applies only to this First Amendment, the underlying Agreement having already received CPUC Approval. If CPUC Approval is not obtained for this First Amendment, the Agreement shall remain in full force and effect.

Effect of  
First Amendment  
On

Agreement: Except as modified by this First Amendment, all terms and conditions of the Agreement shall remain in full force and effect. This First Amendment shall be subject to all of the terms and conditions of the Agreement as if it were a part thereof, including, without limitation, any provision with respect to choice of law, venue, and/or jurisdiction.

*[signature page follows]*

PPM Energy, Inc.

*Peter C. van Alderwerelt*

*By  
PSL*

By: Peter C. van Alderwerelt

Title: Sr. Vice President

Phone No: 503-796-7090

Fax: 503-796-6901

San Diego Gas & Electric Company

*Lad Lorenz*

By: Lad Lorenz

Title: V.P. Electric and Gas Procurement

Phone No: (858) 650-6150

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*(A.S.)*