

## AMENDED AND RESTATED CONFIRMATION LETTER

This Amended and Restated Confirmation Letter ("Confirmation") amends and restates in its entirety that certain Confirmation Letter between the Parties dated October 12, 2005, as amended from time to time, is being provided pursuant to and in accordance with the Amended and Restated Master Power Purchase and Sale Agreement, dated April 20, 2010 (the "Master Agreement"), between **Pacific Wind, LLC** ("Seller") and **San Diego Gas & Electric Company** ("Buyer"), and constitutes part of and is subject to the terms and provisions of such Master Agreement (collectively, the "Agreement"). Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

### 1.0 Effectiveness of Confirmation Letter and Bid Fee.

1.1 CPUC Approval. The obligation of either Party to perform its obligations under this Agreement is expressly conditioned upon CPUC Approval by November 30, 2010. The Parties agree to cooperate and use all reasonable efforts to obtain the CPUC Approval as soon as is practicable. Should the CPUC issue an order approving this Agreement with conditions or modifications that materially alter the commercial aspects of this Agreement, the Parties shall have five (5) Business Days from the mailing date of such order to provide the other Party written notice of the issuing Party's acceptance or rejection of the CPUC order as issued; provided, however, if a Party fails to provide written notification of its acceptance or rejection to the other Party within such five (5) day period, that Party's silence shall be deemed to constitute acceptance of the CPUC order as issued and agreement by such Party that this condition has been satisfied, upon the CPUC Approval date. If a notice of rejection is sent, the parties agree to use good faith efforts to renegotiate this Agreement. If, within sixty (60) days, no agreement is reached, either party may terminate this Agreement upon delivery of notice to the other party. For the avoidance of doubt, the Parties further agree that the commercially reasonable efforts of Seller to pursue development of the Project as set forth herein shall not include spending material amounts of money or incurring material amounts of financial obligations in an attempt to qualify for the beginning of construction safe harbor set forth in the investment tax credit cash grant program described in Section 48 of the Internal Revenue Code of 1986, as it may be amended from time to time, prior to the receipt of the CPUC Approval.

1.2 Seller's Condition Precedent and Right to Terminate. On or before December 31, 2011, Seller shall have the right to terminate this Agreement without further obligation on the part of either Party upon written notice to Buyer in the event Seller shall not have received legally binding commitments from unrelated third party financial institution(s) to fund the development, construction and ownership of the Facility on commercially reasonable terms and conditions or if such financing commitments contain funding conditions related to the New Transmission Line (as defined in Section 3.2) that are not reasonably likely to be met or waived by the financial institutions prior to the Commercial Operation Date, as determined by Seller in its reasonable discretion; *provided* that if by

December 31, 2011, the projected completion date for the New Transmission Line is later than March 31, 2012, as confirmed in the latest published schedule for the New Transmission Line issued by Transmission Owner, the deadline for Seller's receipt of the legally binding commitments shall be extended on a day for day basis up to June 30, 2012 for each day after March 31, 2012 that the New Transmission Line is estimated to be late in the most recent published schedule for the New Transmission Line issued by the Transmission Owner.

1.3 Bid Fee. Prior to the satisfaction of all conditions precedent, Seller shall use commercially reasonable efforts to pursue satisfaction of the conditions precedent set forth in the Agreement and diligently pursue development of the Project. If Buyer believes that Seller is not complying with the foregoing obligation, Buyer must provide Seller with written notice and a reasonable time to cure such non-compliance, not to exceed thirty (30) days. If Seller fails to cure within such thirty (30) days, Buyer shall be entitled to declare an Event of Default, and Buyer may terminate this Agreement in which case Seller shall owe Buyer liquidated damages in the amount of \$100,000 ("Bid Fee"). Buyer acknowledges that the Bid Fee was delivered by Seller to Buyer on December 31, 2008. In the case of such an Event of Default, Buyer shall retain the Bid Fee and provide written notice to Seller confirming such retention. Upon termination and retention of the Bid Fee, neither party shall have any further obligations to one another with respect to the Agreement. If no Seller Event of Default has occurred, Buyer shall be entitled to retain the Bid Fee until the Project Development Security as set forth in milestone number 1 set forth in Section 10.0 is provided to Buyer.

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

3.0 Facility. The Output (defined below) will be supplied from the following generation assets only (collectively, the "Facility" or the "Units" or the "Project").

|                                    |  |
|------------------------------------|--|
| Facility Name:                     | Pacific Wind, LLC  |
| Site Name:                         | Pacific Wind Project   |
| Facility Physical Address:         | Rosamond Boulevard, Antelope Valley, Kern County, California   |
| Technology Type:                   | Wind   |
| Specific Unit Descriptions:        | Up to 61 2.3MW Siemens or up to 70 2MW REpower wind turbines   |
| Facility Total Nameplate Capacity: | 140 MW (unless reduced to no less than 133 MWs on the Facility Total Nameplate Confirmation Date as set forth in Section 11.2.3) |

- 3.1 “Output” means all electrical energy produced from the Facility (net of electrical energy used to operate the Facility that is generated by the Facility) which may, on an instantaneous basis, be greater or less than the Facility Total Nameplate Capacity and an annual estimated Output of 392,448 MWh, as may be adjusted in accordance with Section 11.2.3 with an assumed capacity factor of 32%.
- 3.2 Seller shall use commercially reasonable efforts to meet Commercial Operation by April 30, 2012. The Facility must meet Commercial Operation by the Commercial Operation Deadline. The “Commercial Operation Deadline” with respect to the Facility shall be no later than August 31, 2012, as extended on a day-for-day basis for up to one hundred and eighty days (180) by Force Majeure or as may otherwise be extended by written agreement signed by both parties or as otherwise set forth below. The Commercial Operation Deadline shall also be extended if the New Transmission Line (defined below) is not fully complete and operational by April 1, 2012 as follows:

If the New Transmission Line is complete and operational between April 1, 2012 and November 1, 2012, the Commercial Operation Deadline shall be no later than three (3) months after the date that the New Transmission Line is complete and operational.

Thereafter, if Buyer sends written notice to Seller on or before October 1, 2012 of its election, in Buyer’s sole discretion, to continue extending the Commercial Operation Deadline (to no later than July 31, 2013) due to delays in the New Transmission Line, and the New Transmission Line is complete and operational between November 1, 2012 and April 30, 2013, the Commercial Operation Deadline shall be no later than three (3) calendar months after the date that the New Transmission Line is complete and operational. In such case, the Contract Price shall be amended to \$116.74 per MWh.

Thereafter, if Buyer sends written notice to Seller on or before March 31, 2013 of its election, in Buyer’s sole discretion, to continue extending the Commercial Operation Deadline (to no later than December 31, 2013) due to delays in the New Transmission Line, and the New Transmission Line is complete and operational between May 1, 2013 and November 30, 2013, the Commercial Operation Deadline shall be no later than one (1) calendar month after the date that the New Transmission Line is complete and operational. In such case, the Contract Price shall be amended to \$117.97 per MWh. Notwithstanding the foregoing, if the New Transmission Line is not fully completed and operational and Buyer does not elect to extend the Commercial Operation Deadline as stated above, or Buyer has elected to extend the Commercial Operation Deadline as stated above and the New Transmission Line remains incomplete, Seller shall be excused from achieving Commercial Operation of the Facility thereafter as a result of delay or failure to achieve completion of the New Transmission Line and either party may terminate this Agreement, without fault or penalty, upon delivery

of written notice to the other Party. For the avoidance of doubt, failure of Seller to achieve Commercial Operation by the Commercial Operation Deadline as a result of failure or delay beyond November 30, 2013 to achieve completion and operation of the New Transmission Line alone shall not (A) constitute an Event of Default hereunder or (B) result in Seller paying delay damages to Buyer during the extension periods set forth above.

The "New Transmission Line" shall be the new transmission lines of the Southern California Edison Company ("SCE") required for the reliable delivery of Output from the Facility generally described in the Tehachapi Transmission Project Plan of Service issued by the CAISO in January 2007.

- 3.3 "Commercial Operation" means that (a) Seller shall have satisfied the requirements set forth in the Certificate of Commercial Operation in the form attached as Exhibit E (Facility Commercial Operation) or Exhibit F (Capacity Shortfall Turbine Commercial Operation), as applicable; (b) Seller shall have delivered to Buyer completed Certificates of Commercial Operation from Seller, the turbine supplier, the EPC contractor and a Licensed Professional Engineer (defined below) in the form attached as Exhibit E or Exhibit F, as applicable; provided however that Buyer shall notify Seller within five (5) Business Days of receipt of such Certificates of Commercial Operation if such Certificates are incomplete in any manner, specifying such deficiency; (c) Seller shall have delivered a Letter of Credit in accordance with Section 8 of the Master Agreement; and (d) Seller has received all local, state and federal licenses, permits and other approvals as may be required by law for the construction, operation and maintenance of the Facility, including approvals, if any, required under the California Environmental Quality Act for the Facility and related interconnection facilities. The date that each of the foregoing requirements is met for at least 133MW of installed nameplate capacity shall be referred to herein as the "Commercial Operation Date."
- 3.4 "Licensed Professional Engineer" means a person acceptable to Buyer in its reasonable judgment who (i) is licensed to practice engineering in the state (ii) has training and experience in the wind power industry, (iii) has no economic relationship, association, or nexus with the Seller, other than as required to provide the certificate referred to in Section 3.3 above, (iv) is not a representative of a consulting engineer, contractor, designer or other individual involved in the development of the Facility, or of a manufacturer or supplier of any equipment installed in the Facility, and (v) is licensed in an appropriate engineering discipline for the required certification being made.
- 4.0 Delivery Point. The Delivery Point shall be the Transmission Provider's facilities at the 220kv busbar of the Whirlwind (a/k/a Sub5) Substation.
- 5.0 Delivery Term. The Delivery Term shall begin on the Commercial Operation Date and continue for a period of twenty (20) years unless terminated sooner pursuant to the

express provisions of this Agreement; provided that the Buyer and the Seller acknowledge and agree the Delivery Term for any Capacity Shortfall placed into Commercial Operation after the Commercial Operation Date shall be less than twenty (20) years.

## 6.0 Output Requirements.

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

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

## 7.0 Performance Guarantees / Excuses for Failure to Perform.

7.1 Energy Production Guarantees. The Buyer shall in its sole discretion have the right to declare an Event of Default if Seller fails to achieve the Guaranteed Energy Production in any rolling 27 month period and such failure is not excused by the reasons set forth in sub-sections (ii), (iii) or (v) of Section 7.2 of this Agreement, “Excuses for Failure to Perform.” For the purposes of this Agreement, Guaranteed Energy Production shall be 70% of the Facility Total Nameplate Capacity times 19,710 hours times 32%.

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

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

Project or if wind speeds exceed the specified units' technical specifications.

- 7.3 Buyer Excuses. The performance of the Buyer to receive the Product may be excused only (i) during periods of Force Majeure, (ii) by the Seller's failure to perform or (iii) during dispatch down periods.
- 7.4 Dispatch down periods from 7.2 and 7.3 will be treated in accordance with Section 16 of this Confirmation Letter.
- 8.0 Exclusivity. At no time, before or during the Delivery Term, shall Seller sell or otherwise dispose of Output or Green Attributes from the Facility to any third party except in the case of an Event of Default of Buyer and except to the CAISO as imbalance energy in accordance with the scheduling provisions of this Agreement.

9.0 Monthly Payments.

9.1 Contract Price.

Phase I: The Contract Price during testing and before the Commercial Operation Date shall be: the rate paid by the CAISO to Buyer (as Seller's SC) as set forth in Section 15.1.8 for the Output.

Phase II: The Contract Price after the Commercial Operation Date if the Facility has not certified as a Participating Intermittent Resource by the CAISO, as defined by in the CAISO Tariff, shall be \$86.60/MWh (or 75% of the Phase III Contract Price if the Contract Price is adjusted pursuant to Section 3.2).

Phase III: Phase III: The Contract Price after the Commercial Operation Date and after the Facility has been certified as a Participating Intermittent Resource until the end of the Delivery Term shall be \$115.47/MWh, as may be adjusted pursuant to Section 3.2.

- 9.2 Energy Payment. For each month before and during the Delivery Term, Buyer shall pay Seller for the Product an amount equal to the sum of the Delivered Energy in each hour in the month multiplied by the then applicable Contract Price.

$$\text{Monthly Energy Payment} = \sum \text{applicable Contract Price} \times \text{Delivered Energy}$$

"Delivered Energy" means all Energy produced from the Project and delivered to Buyer at the Delivery Point as measured in MWh at the CAISO revenue meter of the Project based on a power factor of precisely one (1) and net of all Electrical Losses.

- 10.0 Facility Schedule. The Facility Milestones are the following:

| No. | Task   | Milestone Date          |
|-----|--|-------------------------|
| 1   | Submit Project Development Security from 8.4(a) of the | Fifteen (15) days after |

|   |   |   |
|---|---|---|
|   | Cover Sheet   | date on which all conditions precedent set forth in Section 1 are either satisfied or waived. |
| 2 | Submit Application for Interconnection Agreement  | Completed in June 2005  |
| 3 | Pre Certification as an eligible renewable supplier for the RPS issued by the California Energy Commission  | T – 6 months  |
| 4 | Land Rights sufficient for Seller to commence construction of the Facility and evidencing Seller's valid leasehold and/or real property interest in the Facility Site, except for transmission easements, access easements and other related easements and rights-of-way (but not with respect to the physical location of the turbines), for a term of at least 20 years from the Commercial Operation Date. | T – 6 months  |
| 5 | Application for all Local, State and Federal Permits  | T – 6 months  |
| 6 | Commencement of Construction  | T – 6 months  |
| 7 | Application for Certification as a Participating Intermittent Resource by the CAISO   | T – 3 months  |

For purposes of this Section 10, "T" refers to the Commercial Operation Deadline, as the same may be amended, from time to time, in accordance with the provisions of this Confirmation or as otherwise agreed by the Parties.

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

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

10.1.2 Buyer may inspect the Facility's construction site or on-site Seller data and information pertaining to the Facility during business hours upon reasonable notice. Buyer agrees to comply with all safety and security rules at Seller's site.

10.1.3 Within seven (7) days after the close of each calendar quarter (or more frequently upon reasonable request of Buyer) until the Facility Total Nameplate Confirmation Date, Seller shall provide Quarterly Progress reports similar in form and content of Exhibit G: Quarterly Progress Reports to Buyer (as may be modified, by written notice to Seller in a timely fashion, from time to time to meet the applicable CPUC requirements). Regularly scheduled meetings shall be held between representatives of Seller and Buyer for the purpose of reviewing Quarterly Progress Reports and Seller's construction progress.

10.2 Milestone Completion Notice. No later than seven (7) days after completion of each milestone set forth in Section 10.0, Seller shall submit written notice to inform Buyer of milestone completion. Seller must provide accompanying documentation (including copies of applicable agreements redacted, permits and certificates) sufficient to demonstrate evidence of such milestone completion.

11.0 Facility Delays.

11.1 Missed Milestones. If Seller misses three or more milestones set forth in Section 10.0 by more than 90 days except as a result of Force Majeure, Seller shall submit to Buyer, within ten (10) days of such missed milestone date, a Remedial Action Plan (the remedial action plan set forth in this Section 11.1, and the additional remedial action plans set forth in Sections 11.2.1 and 11.2.2 shall be referred to herein as a “Remedial Action Plan”).

11.2 Missed Commercial Operation Deadline/Delay Damages. Seller shall cause the Facility, as the capacity of the Facility may be adjusted pursuant to Section 11.2.3 below, to achieve Commercial Operation on or before the Commercial Operation Deadline. If Commercial Operation of any portion of the Facility occurs after the Commercial Operation Deadline, as such deadline may be extended in accordance with Section 3.2, Seller shall pay Buyer delay damages for each day or portion of a day up to a total of one hundred and eighty (180) days, as set forth below.

11.2.1 If Seller does not achieve Commercial Operation for at least 133MW by the Commercial Operation Deadline, Seller shall pay Buyer an amount equal to \$21,803 per day as delay damages. Seller shall also submit a Remedial Action Plan within ten (10) days of the missed Commercial Operation Deadline.

11.2.2 If Seller achieves Commercial Operation for at least 133MW by the Commercial Operation Deadline but does not achieve Commercial Operation for the entire 140MW, Seller shall pay Buyer delay damages for each turbine that did not achieve Commercial Operation by the Commercial Operation Deadline (the “Capacity Shortfall”) in an amount equal to \$3,667 per turbine per day after the Commercial Operation Deadline until the earlier of (i) such turbine is placed into Commercial Operation by accomplishing clauses (a) and (b) of Section 3.3; or (ii) Seller has notified Buyer that such turbine is incapable of achieving Commercial Operation in accordance with Section 11.2.3 below. Seller shall submit a Remedial Action Plan with respect to all MWs in the Capacity Shortfall within ten (10) days of the missed Commercial Operation Deadline.

11.2.3 If, at any time after the Commercial Operation Date and within the 180 day cure period permitted in Section 11.2, Seller is unable to achieve Commercial Operation of all or a portion of the Capacity Shortfall due to a cause or event beyond the reasonable control of Seller which is not due to



the fault or negligence of Seller and could not have been avoided by due diligence and use of reasonable efforts, Seller shall send written notice to Buyer in accordance with Section 10.7 of the Master Agreement stating the amount, in MWs, of Capacity Shortfall for which Seller is unable to achieve Commercial Operation. The last of such notices received within the 180 day cure period in Section 11.2 shall set forth the final Facility Total Nameplate Capacity of the Facility. The date on which Buyer receives such final notice shall be deemed the "Facility Total Nameplate Confirmation Date." Seller shall, within five (5) business days of delivering each notice required by this Section, pay Buyer an amount equal to \$168,527 per MW of Capacity Shortfall that such notice declares will not be placed into Commercial Operation (the "Capacity Shortfall Termination Damages").

11.2.4 Each Party agrees and acknowledges that (a) the actual damages that Buyer would incur due to delay in achieving Commercial Operation on or before the Commercial Operation Deadline or for failing to achieve Commercial Operation of the Capacity Shortfall would be difficult or impossible to predict with certainty, (b) the daily delay damages and the Capacity Shortfall Termination Damages set forth in this section are a reasonable and appropriate approximation of such damages, (c) the daily delay damages set forth in this section are the exclusive remedy for Seller's delay in achieving Commercial Operation by the Commercial Operation Deadline but shall not, unless otherwise specifically set forth herein, otherwise act to limit any of Buyer's right or remedies arising from any Event of Default by Seller, including, without limitation, the failure by Seller to achieve Commercial Operation after the expiration of the above-referenced delay, and (d) the payment of Capacity Shortfall Termination Damages set forth in this section are, unless otherwise stated herein, including the delay damages, if any, under Section 11.2.2, the exclusive remedy for Seller's failure to achieve Commercial Operation of the Shortfall Capacity, but shall not otherwise act to limit any of Buyer's right or remedies arising from any other Event of Default by Seller.

11.3 Remedial Action Plan/Additional Event of Default. At a minimum, a Remedial Action Plan shall set forth a detailed description of Seller's course of action and plan to remedy any missed milestone or deadline. Approval of a Remedial Action Plan shall not relieve Seller of its obligation to meet any subsequent milestones and Commercial Operation by the Commercial Operation Deadline.

11.3.1 Buyer at its sole discretion may reject any Remedial Action Plan submitted under Section 11.1 and declare an Event of Default;

11.3.2 Buyer at its sole discretion may reject any Remedial Action Plan submitted under Section 11.2.1 after the one hundred and eighty (180)

days referred to in Section 11.2 has passed and declare an Event of Default if the Event of Default still persists as of such date; and

11.3.3 Buyer shall have the right to a Remedial Action Plan in connection with any Capacity Shortfall under Section 11.2.2 but any Remedial Action Plan submitted pursuant to Section 11.2.2 for the Capacity Shortfall shall be for Buyer's information purposes only and Buyer shall not have the right to reject such Remedial Action Plan or declare an Event of Default in connection with such Remedial Action Plan unless otherwise entitled to hereunder.

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

13.0 Outages.

13.1 Scheduled Maintenance Outages. Seller shall operate, maintain, and arrange Scheduled Maintenance Outages for the Facility in accordance with Good Utility Practices. Seller shall be limited to fifty (50) hours per turbine of Scheduled Maintenance Outages per year.

13.1.1 No later than forty-five (45) days before the start of each calendar year, Seller shall provide Buyer with a timetable of Scheduled Maintenance Outages for the following twelve (12) months. Buyer shall promptly respond to such notice and may request reasonable modifications in the schedule for the outage. Seller shall use best efforts in accordance with Good Utility Practices not to schedule Scheduled Maintenance Outages during Summer Months (as defined below). "Summer Months" shall be defined as July, August, September and October.

13.1.2 A "Scheduled Maintenance Outage" means a planned shut down of any part of the Facility scheduled by Seller in accordance with this Section that affects Seller's ability to provide Output from the Facility to Buyer under this Agreement.

13.2 Emergency Periods. At Buyer's request, Seller shall use commercially reasonable efforts to deliver Output during CAISO declared electrical or transmission emergency periods. In the event the Seller has previously scheduled a Scheduled

Maintenance Outage coincident with an emergency, Seller shall use commercially reasonable efforts to reschedule the Scheduled Maintenance Outage.

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

13.4 Forced Outages. Within twenty (20) minutes of any Forced Outage, as defined in Section 7.2, Seller shall submit a completed Outage Notification Form to the Buyer in accordance with the instructions shown on the form and shall submit outage information to the CAISO in accordance with the CAISO Tariff, including using SLIC.

14.0 Participating Intermittent Resources. On or before thirty (30) days after the Commercial Operation Date, Seller shall cause the Project to become certified as a Participating Intermittent Resource including executing all necessary documents to become a Participating Intermittent Resource. Seller shall be responsible for all CAISO forecasting fees and related charges associated with the Project becoming a Participating Intermittent Resource and participating in EIRP. Seller and Buyer shall comply with EIRP, and all additional protocols issued by the CAISO relating to Participating Intermittent Resources, including the EIRP. Seller shall provide Buyer with a copy of the notice from the CAISO certifying the Project as a Participating Intermittent Resource prior to thirty (30) days after the Commercial Operation Date. In the event that EIRP or the CAISO Tariff and/or any protocols relating thereto are changed, amended, modified replaced or terminated, Seller and Buyer agree to comply with such revisions and, to the extent practical, to implement such revisions in a manner that maintains the relative economic positions of the parties as of the date of this Agreement.

15.0 Scheduling and Scheduling Coordinator.

15.1 Scheduling Coordinator.

15.1.1 Buyer as Scheduling Coordinator for the Project. Upon initial synchronization of the Project to the CAISO Grid, Buyer shall be the SC or designate a qualified third party to provide SC services with the CAISO for the Project for delivery of the Product at the Delivery Point. At least thirty (30) days prior to the initial synchronization of the Project to the CAISO Grid, Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer as Seller's SC for the Project effective as of initial synchronization of the Project to the CAISO Grid. On and after initial synchronization of the

Project to the CAISO Grid, Seller shall not authorize or designate any other party to act as Seller's SC, nor shall Seller perform for its own benefit the duties of SC, and Seller shall not revoke Buyer's authorization to act as Seller's SC unless agreed to by Buyer or unless there is a Buyer's Event of Default and Seller has declared an Early Termination Date. Buyer (as Seller's SC) shall submit Schedules to the CAISO based on the final Schedule developed in accordance with this Agreement, the operating procedures developed by the Parties pursuant to Section 12, and the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, or real time basis, as determined by Buyer. Buyer (as Seller's SC) shall submit Schedules and any updates to such Schedules to the CAISO based on the most current forecast of scheduled energy consistent with EIRP whenever EIRP is applicable, and consistent with Buyers' best estimate based on the information reasonably available to Buyer including Buyer's forecast whenever EIRP is not applicable.

15.1.2 Notices. Buyer (as Seller's SC) shall provide Seller with access to a web based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Project's status, including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. In accordance with Article 13, Seller will cooperate with Buyer to provide such notices and updates. If the web based system is not available, Seller shall promptly submit such information to Buyer and the CAISO (in order of preference) telephonically, by electronic mail, or facsimile transmission to the personnel designated to receive such information.

15.1.3 CAISO Costs and Revenues. Except as otherwise set forth below and elsewhere in this Agreement, including Section 15.1.8 relating to test energy, Buyer (as Seller's SC) shall be responsible for CAISO costs (including uninstructed deviations, penalties, and other charges) and shall be entitled to all CAISO revenues (including uninstructed deviations, credits and other payments) as the SC (but not as such costs, penalties or other charges relate to Resource Adequacy) for the Project, including revenues associated with CAISO dispatches, bid cost recovery, inter-SC trade credits, or other credits in respect of the Product Scheduled or delivered from the Project. Notwithstanding the foregoing, Seller shall be responsible for all CAISO uninstructed deviations, costs, penalties and other charges resulting from: (a) Seller's failure to notify the CAISO and/or Buyer (as Seller's SC) of outages in a timely manner (in accordance with the CAISO Tariff and/or as set forth in Article 13), (c) Seller's negligence or willful misconduct, or (d), any other failure by Seller to abide by the CAISO Tariff, EIRP, and the SC's instructions in accordance with Section 15.1.1 (when EIRP is not available). In addition,

if after the Effective Date, the CAISO implements any new sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Project or to Buyer as SC due to the actions or inactions of Seller, the new cost of the sanctions or penalties shall be the Seller's responsibility.

- 15.1.4 CAISO Settlements. Buyer (as Seller's SC) shall be responsible for all settlement functions with the CAISO related to the Project.
- 15.1.5 Dispute Costs. Buyer (as Seller's SC) may dispute CAISO settlements in respect of the Project. In the event that Buyer reasonably believes that such dispute was caused by Seller, then Seller agrees to pay Buyer's costs and expenses (including reasonable attorneys' fees, including reasonably allocated costs of in-house counsel of the Buyer) associated with its involvement with such CAISO disputes.
- 15.1.6 Terminating Buyer's Designation as Scheduling Coordinator. At least thirty (30) days prior to expiration of this Agreement or as soon as reasonably practicable upon an earlier termination of this Agreement, the Parties will take all actions necessary to terminate the designation of Buyer as SC for the Project as of 11:59 p.m. on such expiration date.
- 15.1.7 Master Data File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master Data File and Resource Data Template (or successor data systems) for this Project consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent.
- 15.1.8 Test Energy Imbalances. Before the Commercial Operation Date, Seller shall be responsible to pay Buyer for CAISO costs (including uninstructed deviations, penalties, and other charges) and shall be entitled to all CAISO revenues (including uninstructed deviations, credits and other payments) for the Delivered Energy. All energy delivered prior to the Commercial Operation Date shall be scheduled through the CAISO outage desk and identified as test energy. Notwithstanding the foregoing, Buyer shall be responsible for all CAISO uninstructed deviations, costs, penalties and other charges resulting from Buyer's negligence or willful misconduct.
- 15.2 Annual Forecast of Delivery Schedules. No later than forty-five (45) days before (A) the first day of the first Contract Year of the Delivery Term and (B) the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide a non-binding forecast of each month's average-day availability, by hour, for the following calendar year.
- 15.3 Monthly Forecast. Ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide a non-binding forecast of each day's average availability, by hour, for the following month.

15.4 Daily Delivery Availability Notices. By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, Seller shall provide Buyer with a non-binding forecast of the availability for each hour of the immediately succeeding day in a format to be mutually agreed upon by Buyer and Seller in connection with the development of the operating procedures set forth in Section 12 (“Day Ahead Availability Notice”). Buyer shall submit a Schedule to the CAISO consistent with such Day-Ahead Availability Notice. A Day-Ahead Availability Notice provided in a day prior to any non-Business Day(s) shall include availability for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Availability Notice shall clearly identify, for each hour, Seller’s best estimate of all amounts of Energy to be delivered by Seller and sold to Buyer pursuant to this Agreement. Seller shall endeavor to deliver Energy in accordance with its Day-Ahead Availability Notice. Seller shall accurately reflect on such notice the expected generation of the Project, subject to the applicable CAISO Tariff, and Seller may not change such Day-Ahead Availability Notice past the deadlines provided in this section except in the event of a Forced Outage or Schedule change imposed directly or indirectly by the CAISO, in which case Seller shall promptly provide Buyer with a copy of any and all updates to such Day-Ahead Availability Notice indicating changes from the then-current Schedule.

15.5 Hourly Delivery Schedules. Notwithstanding anything to the contrary herein, in the event Seller makes a change to its availability on the actual date of delivery for any reason including Forced Outages (other than a scheduling change imposed by Buyer or CAISO) which results in a change to its deliveries (whether in part or in whole), Seller shall notify Buyer immediately by calling Buyer’s on-duty SC. Seller shall notify Buyer and the CAISO of Forced Outages in accordance with Article 13. Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Project during or after the end of the outage.

16.0 Dispatch Down/Curtailment.

16.1 Both parties shall be excused from performing their obligations under this Agreement during dispatch down periods that shall consist of (a) curtailments ordered directly by the CAISO (or indirectly by Buyer, as Seller’s Scheduling Coordinator when initiated by CAISO) that prevent delivery at the Delivery Point or (b) scheduled and unscheduled maintenance on SCE’s facilities that prevents delivery at the Delivery Point or pursuant to the terms of Project’s large generator interconnection agreement. Curtailments downstream of the Delivery Point that do not prevent delivery at the Delivery Point shall not be an excuse hereunder.

16.2 Dispatch down periods shall not include periods of curtailment of delivery of Product from the Project resulting from economic curtailment where Buyer (as a Scheduling Coordinator) fails to submit bid that is awarded in the applicable CAISO market for an otherwise available Product due to pricing reasons only, and not due to Section 16.1 above.

- 17.0 Delivery and Metering. All deliveries of Output shall be metered in real-time basis to reflect the delivery of energy to the Delivery Point. A copy of hourly metered and hourly scheduled information shall be included in each monthly invoice. All meters and equipment used for the measurement of Output shall be provided, owned, maintained, inspected, tested and read at no cost to Buyer by the Seller.
- 17.1 CAISO Agreements. Seller shall enter into a Participating Generator Agreement and a Meter Service Agreement with the CAISO and shall comply with the CAISO Tariff and standards applicable to metering. All meters and equipment used for the measurement of deliveries shall be provided, owned, maintained, inspected and tested at no cost to Buyer. To facilitate monthly settlement processes, Seller shall authorize Buyer to view the Facility's CAISO on-line meter data by identifying Buyer as an authorized user with "read only" privileges on Schedule 3 of Seller's Meter Service Agreement with the CAISO.
- 17.2 Testing and Calibration. Seller shall perform or cause to be performed, at its expense, annual testing and calibration of the electric meters in accordance with Good Utility Practice and the CAISO Tariff. Seller shall give Buyer reasonable advance notice of any inspection, testing or calibration of the electric meters. Buyer shall have the right to have a representative or designee present at such inspection, test or calibration of the electric meters. Buyer shall have the right to require, at Buyer's expense, except as required below, a test of any of the electric meters not more often than two (2) times every twelve (12) months.
- 17.3 Inaccurate Meters. If any of the electric meters is deemed to be inaccurate under the Meter Service Agreement, deliveries shall be measured by reference to Seller's check-meters, if installed and registering accurately, or the meter readings for the period of inaccuracy shall be adjusted as far as can be reasonably ascertained by Seller from the best available data, subject to review and approval by Buyer. If the period of the inaccuracy cannot be ascertained reasonably, any such adjustment shall be for a period equal to one-half of the time elapsed since the preceding test by applying the percentage of inaccuracy so found. Seller shall promptly cause such electric meters to be corrected and, where such inaccuracy was determined pursuant to a test required by Buyer, Seller shall bear the expense of any such test.
- 17.4 Delivered MWh Adjustments. In the event that, due to correction for inaccurate electric meters deemed to be inaccurate under the Meter Service Agreement, the amount of Output is increased or decreased, the revised quantity of Output shall be used for purposes of calculating the Energy Payment. If any of such amounts for any period have already been calculated using the previous quantity of Output, they shall be recalculated using the revised quantity of Output. If the recalculation increases any amount payable by Seller to Buyer or decreases any amount payable by Buyer to Seller, Seller shall pay to Buyer the amount of such increase or decrease. If the recalculation increases any amount payable by Buyer

to Seller or decreases any amount payable by Seller to Buyer, Buyer shall pay to Seller the amount of such increase or decrease.

18.0 Sarbanes-Oxley and Securities and Exchange Commission Requirements.

- (a) The Parties acknowledge that accounting principles generally accepted in the United States of America (“GAAP”) and Securities and Exchange Commission (“SEC”) rules require Buyer and its independent auditor to evaluate whether Buyer must consolidate Seller’s financial information (but not financial information of Seller’s constituent members unless deemed to be included in the entity under GAAP). Buyer will require access to certain records, including but not limited to financial records, and personnel of Seller to determine if consolidated financial reporting is required. If Buyer and its independent auditor determine at any time that the Buyer must consolidate the Seller’s financial statements to comply with GAAP and/or SEC rules regarding consolidated financial reporting, Buyer shall require from Seller and Seller agrees to provide to Buyer the following during the Term of this Agreement:
- (i) Unaudited financial statements of the Seller prepared in accordance with GAAP or International Financial Reporting Standards as defined by the International Accounting Standards Boards of the end of the quarterly period. The financial statements should include quarter to date and year to date information and are to be provided within twenty (20) calendar days of the end of the applicable reporting period (or the Business Day thereafter);
  - (ii) Unaudited financial schedules of the Seller, as deemed necessary for Buyer to prepare its consolidated financial statements and related footnotes to the financial statements in accordance with GAAP as of the end of the quarterly period. The financial schedules should include quarter to date and year to date information underlying the financial statements and footnotes to the financial statements and are to be provided within twenty (20) calendar days of the end of the applicable reporting period (or the Business Day thereafter);
  - (iii) Access to Seller’s records, accounting and other, and accounting and management personnel as reasonably determined by both Buyer and Seller so that (A) Buyer’s independent auditor or its internal auditors, at Buyer’s cost, may conduct financial audits (in accordance with the standards of the Public Company Accounting Oversight Board (United States)) as well as internal control audits (in accordance with Section 404 of the Sarbanes-Oxley Act of 2002) and (B) Buyer can be provided analytical information, as needed, to enable Buyer to meet its SEC filing requirements, including but not limited to those under Item 2 on Form 10-Q, and



Item 7 on Form 10-K, "Management's Discussion and Analysis of Financial Condition and Results of Operations;"

- (iv) Upon the request of Buyer, such certifications by a duly authorized representative(s) of Seller as may be reasonably requested by Buyer (which certifications shall presumptively be reasonable if the certifications are substantially identical to those required by Buyer or its parent of business units of Buyer or its parent); provided however, if Seller is not subject to SEC rules or Sarbanes-Oxley Act of 2002 and any successor legislation, Seller shall certify its compliance with GAAP or International Financial Reporting Standards, as applicable to Seller; and
  - (v) As reasonably requested by Buyer, such information or schedules, similar to the items noted in clauses (i)-(iii) above, to enable Buyer to prepare consolidated financial statements and schedules as may be required for Buyer to obtain financing or to prepare other reports as required by regulatory bodies, such as the SEC, for periods other than as of the end of the monthly, quarterly or year to date periods then ended.
- (b) If Buyer (i) in its sole discretion determines that the financial statements of the Seller would be considered material to the Buyer or its parent company's financial statements, financial condition, or internal controls over financial reporting, and (ii) reasonably determines Seller's internal controls over financial reporting are not operating effectively or have material weaknesses and significant deficiencies, as defined by the Audit Standards Board from time to time, Buyer shall provide Notice to Seller accompanied by a written confirmation of Buyer's determinations from Buyer's independent auditors. Seller may contest such determinations by requesting immediate confirmation from Buyer's independent auditor. Seller shall pay for Buyer's independent auditor costs if Buyer's independent auditor confirms both of Buyer's determinations. Upon receipt of such Notice and at Seller's expense, Seller will have thirty (30) days to remediate any deficiency in Seller's internal controls over financial reporting identified by the Buyer, which Buyer and Buyer's independent auditor deem to be necessary to ensure Seller's internal controls over financial reporting are adequate, during or as a result of the audits permitted under Section 18(a)(iii) or any other;
- (c) As soon as possible, but in no event later than two (2) Business Days following any occurrence that would affect Seller in any material way, Seller shall provide to Buyer a Notice describing such occurrence in sufficient detail to permit the Buyer to file a report on SEC Form 8-K. Such occurrences include all reportable events on the then current Form 8-K that applies to Buyer and its parent company at such time, including but not limited to a material acquisition or disposition of assets, a material direct financial obligation or off-balance sheet financing arrangement, material litigation, and the execution or termination of a material contract.

- (d) Any information provided to Buyer shall be treated as confidential except that it may be disclosed in connection with the preparation, review, certification and publication of Buyer's financial statements.
- (e) Seller shall notify Buyer at any time during the term of this Agreement of any services provided or proposed to be provided to Seller by Buyer's independent auditor. Seller, and any of Seller's Affiliates, are prohibited from engaging Buyer's independent auditor for any consulting agreement without the express written consent of partner in charge of Buyer's independent audit.

*[Remainder of page intentionally left blank]*

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

Seller: Pacific Wind, LLC

Buyer: San Diego Gas & Electric Company

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

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

By: Tristan Grimbert

By: James Avery

President and CEO of enXco  
Development Corporation, its

Title: Sole Member and Manager

Title: Senior Vice President – Power Supply

APPROVED as to legal form 9.5.

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

Seller: Pacific Wind, LLC

Buyer: San Diego Gas & Electric Company

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

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

By: Tristan Grimbart  
President and CEO of enXco  
Development Corporation, its  
Title: Sole Member and Manager

By: James Avery  
Title: Senior Vice President – Power Supply

**EXHIBIT A  
LETTER OF CREDIT**

**DRAWING CERTIFICATE**

Credit Industriel et Commercial  
520 Madison Avenue  
New York, NY 10022

Attn: Standby Letter of Credit Department

Ladies and Gentlemen:

The undersigned, a duly authorized representative of San Diego Gas & Electric Company, as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. \_\_\_\_\_ (the "Letter of Credit") issued by Credit Industriel et Commercial, New York (the "Bank") for the account of Pacific Wind, LLC (the "Applicant"), hereby certifies to the Bank as follows:

1. Applicant has provided this Letter of Credit as \_\_\_\_\_ security to the Beneficiary and pursuant to the Amended and Restated Master Power Purchase and Sale Agreement dated \_\_\_\_\_ (the "Agreement").

2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$\_\_\_\_\_ due to a Seller Event of Default (as such term is defined in the Agreement) or other failure to pay amounts due and owing.

or

Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$\_\_\_\_\_, which equals the full available amount under the Letter of Credit, because as of [date – not less than 60 days prior to the current expiration date of the Letter of Credit] Issuer has provided Beneficiary of written notice indicating Issuer's election not to permit extension of the Letter of Credit beyond its current expiry date and Applicant has failed to provide Beneficiary with a replacement Letter of Credit or other security acceptable to Beneficiary in its sole discretion. .

3. The undersigned is a duly authorized representative of San Diego Gas & Electric Company and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to San Diego Gas & Electric Company or assignee by wire transfer in immediately available funds to the following account:

[Specify account information]

San Diego Gas & Electric Company

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Name:  
Title of Authorized Representative:  
Date:

**EXHIBIT B**

**FORM OF LETTER OF CREDIT**

**[DATE]**

Our Ref.:  
Amount: US\$

Expiry:

San Diego Gas & Electric Company  
8315 Century Park Court, CP21D  
San Diego, CA 92123

**Re: Pacific Wind**

By order of our client, Pacific Wind, LLC, ("Applicant"), 700 La Terraza Boulevard, Suite 200, Escondido, CA 92025 and for the account of EDF Energies Nouvelles ("Account Party"), we, Credit Industriel et Commercial, 520 Madison Avenue, New York, NY 10022 ("Issuer") hereby issue our Irrevocable Letter of Credit No. \_\_\_\_\_ in favor of San Diego Gas and Electric Company, ("Beneficiary"), 8315 Century Park Court CP21D, San Diego, CA 92123, for an amount not to exceed US\$ \_\_\_\_\_ (United States Dollars \_\_\_\_\_ and 00/100) provided as \_\_\_\_\_ security to the Beneficiary and pursuant to the Amended and Restated Master Power Purchase and Sale Agreement ("Agreement") dated \_\_\_\_\_. This Letter of Credit shall become effective on \_\_\_\_\_ and shall expire \_\_\_\_\_.

Funds under this Letter of Credit are available to you against your draft(s) drawn on us at sight, mentioning thereon our Letter of Credit No. \_\_\_\_\_ accompanied by your statement signed by your duly authorized representative, in the form attached hereto as Exhibit A containing one of the two alternative paragraphs set forth in paragraph 2 therein.

We hereby agree with the drawers, endorsers and bonafide holders of all drafts drawn under and in compliance with the terms of this Letter of Credit, that such drafts will be duly honored upon presentation to the drawee at 520 Madison Avenue, New York, NY 10022. Payment shall be made by Issuer in U.S. dollars with Issuer's own immediately available funds. Partial draws are permitted under this Letter of Credit.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period beginning on the present expiry date hereof and upon each anniversary of such date, unless at least ninety (90) days prior to any such expiry date we have sent you written notice by regular and registered mail or courier service that we elect not to permit this Letter of Credit to be so extended beyond, and will expire on its then current expiry date. No presentation made under this Letter of Credit after such expiry date will be honored.

Notwithstanding any reference in this Letter of Credit to the Agreement or any other documents, instruments or agreements, this Letter of Credit contains the entire agreement between the Beneficiary and Issuer relating to the obligations of Issuer hereunder.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credit (2007 Revision) International Chamber of Commerce Publication No. 600 (the "UCP"), or any subsequent revision thereto, except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. With respect to Article 14(b) of the UCP, Issuer shall have a reasonable amount of time, not to exceed three (3) banking days following the date of Issuer's receipt of documents from the Beneficiary (to the extent required herein), to examine the documents and determine whether to take up or refuse the documents and to inform Beneficiary accordingly.

In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer's control (as defined in Article 36 of the UCP) that interrupts Issuer's business and causes the place for presentation of the Letter of Credit to be closed for business on the last day for presentation, the expiry date of the Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department located at 520 Madison Avenue, New York, NY 10022, referring specifically to Issuer's Letter of Credit No. \_\_\_\_\_. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at (212) 715-4690 and have this Letter of Credit available.

Credit Industriel et Commercial

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Name:  
Title:

## EXHIBIT C

### FORM OF CONSENT AND AGREEMENT

This CONSENT AND AGREEMENT ("Consent") is entered into as of [Date] among San Diego Gas & Electric Company ("SDG&E"), Pacific Wind, LLC, a Delaware limited liability company (the "Assignor"), and [Name of Lender/Agent for the Financing Parties] (the "Assignee").

### RECITALS

WHEREAS, pursuant to the Amended and Restated Master Power Purchase and Sale Agreement, the Master Power Purchase and Sale Agreement Cover Sheet and the Confirmation Letter, each dated as of \_\_\_\_\_ (including the Operating Procedures agreed between SDG&E and the Assignor to comply with the "Operating Procedures" section in the Confirmation Letter), entered into between SDG&E and the Assignor (as amended, modified and supplemented from time to time, the "Assigned Agreement"), SDG&E has agreed to purchase Energy from the Assignor pursuant to the terms and conditions of the Assigned Agreement (as further specified in the Assigned Agreement);

WHEREAS, pursuant to a [Security Agreement] dated as of [Date] (the "Security Agreement"), the Assignor has granted to the Assignee a lien on and a security interest in, to and under all of its right, title and interest in the Assigned Agreement, as collateral security for the Assignor's obligations under that certain [Credit Agreement], dated as of the date of the Security Agreement and the related financing documents (the "Credit Agreement" and collectively, the "Financing Documents").

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

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

Section 2. Consent to Assignment.

(a) Under the terms and conditions set forth in this Consent, SDG&E hereby consents to (i) the assignment by the Assignor of all its right, title and interest in, to and under the Assigned Agreement to the Assignee, as collateral security for the obligations as and to the extent provided in the Security Agreement, (ii) the assignment by the Assignor to any transferee or assignee of, or successor to, the Assignee (provided that any transferee or nominee satisfies the requirements of Article 8 [*credit support*] of the Assigned Agreement and otherwise satisfies the requirements of Article 10.5 [*assignment consent and mechanics*] of the Assigned Agreement); and (iii) the subsequent transfer of the Assigned Agreement to any person in connection with the Assignee's or any successor transferee's exercise of its rights and remedies under the Credit Agreement and Financing Documents following the occurrence of an Event of Default by the Assignor under the Credit Agreement.



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

(c) If the Assignee elects to exercise its remedies under the Security Agreement to foreclose on its lien in the Assigned Agreement, the Assignee shall notify SDG&E pursuant to Section 6(f) of this Consent. Upon receipt by SDG&E of such notice, the Assignee (or its permitted assignee or transferee or successor thereof) shall assume in writing and be liable for each and every duty, obligation and liability of the Seller (as that term is defined in the Assigned Agreement), including but not limited to the duties and obligations that arose or accrued prior to the date of execution of this Consent.

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

(a) The execution and delivery by SDG&E of the Assigned Agreement and this Consent, and the performance by SDG&E of its obligations under the Assigned Agreement and this Consent, have been duly authorized by all necessary corporate action, and do not and will not require any further consents or approvals which have not been obtained, or violate any provision of any law, regulation, order, judgment, injunction or similar matters or breach any material agreement presently in effect with respect to or binding upon SDG&E.

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

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

(d) To the knowledge of SDG&E, the Assignor is not in default under any material covenant or obligation under the Assigned Agreement, and no such default has occurred prior to or as of the date hereof, and the Assigned Agreement is in full force and effect and has not been amended.

#### Section 4. Consent and Agreement.

SDG&E and the Assignor hereby agree that, so long as any obligations of the Assignor under the Credit Agreement and the Security Agreement remain outstanding:

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

(b) Notices of Default and Right to Cure.

(i) SDG&E shall deliver to the Assignee at the address set forth on the signature pages hereof, or at such other address as the Assignee may designate in writing from time to time to SDG&E, concurrently with the delivery thereof to the Assignor, a copy of each notice of default under the Assigned Agreement. Notwithstanding anything to the contrary contained in the Assigned Agreement, such notice is to be coupled with an opportunity to cure any such default within thirty (30) days after the last day of the cure period available to the Assignor in the Assigned Agreement (except with respect to payment defaults, which cure must be made within fifteen (15) Business Days after receipt of notice by the Assignee) such cure period to commence upon receipt of notice by the Assignee); provided that the aggregate cure period available to the Assignee under this Section 4(b), together with the cure period available to the Assignor in the Assigned Agreement, shall not exceed one hundred eighty (180) days (or, in the case of payment defaults, fifteen (15) Business Days after notice is given to the Assignee). If possession of the Facility is necessary to cure any Default by the Assignor under the Assigned Agreement, and the Assignee commences foreclosure proceedings against the Assignor, the Assignee will be allowed an additional sixty (60) days to complete such proceedings. **[Alternative #1:** If the Assignee is prohibited by court order or bankruptcy, insolvency or similar proceedings from curing any Default under the Assigned Agreement, the foregoing time periods will be extended by the period of such prohibition, but in no event more than an additional three (3) month period.] **[Or Alternative #2:** In order for the Assignee to cure a default under Section 5.1(d) of the Assigned Agreement, the Assignee shall secure, as soon as reasonably practical after such default, an order from the court (the "Bankruptcy Court") administering the proceeding under which the Assignor is a debtor in a proceeding under Title 11 of the United States Code, as amended (the "Bankruptcy Code") in a form reasonably acceptable to SDG&E which authorizes (a) the Assignor to pledge collateral to secure the Assignor's obligations under the Assigned Agreement (whether by the maintenance or provision of a Letter of Credit or otherwise) whether such obligations arose prior or following the Section 5.1(d) default of the Assigned Agreement, (b) the right of SDG&E to terminate the Assigned Agreement upon a subsequent default and expiration of cure periods described herein with respect to the Assignor (including, without limitation, the conversion of a case under Chapter 11 of the Bankruptcy Code to a case under Chapter 7 of the Bankruptcy Code), and to exercise rights of netting or setoff of obligations upon such termination, in each case without regard to

Section 362 of the Bankruptcy Code and without regard to whether the amounts to be netted or setoff were incurred pre-petition or post-petition and (c) that the rights of SDG&E specified in the foregoing clause (b) not be subject to being modified, stayed, avoided or otherwise limited by any further order of the Bankruptcy Court or any court proceeding under the Bankruptcy Code (a "Bankruptcy Order"). It being further understood that if such Bankruptcy Order is not timely obtained, Buyer shall have the right to declare an Early Termination Date in accordance with Article 5 of the Assigned Agreement.]

(ii) No cancellation, suspension or termination of the Assigned Agreement by SDG&E, shall be binding upon the Assignee without such notice and the opportunity to cure during the applicable extended cure periods specified in this Section 4(b). If the Assignee fails to cure or rectify the effect of a default within the extended cure periods specified in this Section 4(b) (except defaults under the Assigned Agreement relating to a breach of any representations or covenants that by their nature cannot be cured by Assignee relating to the personal identity, corporate, company or partnership nature of the Assignor or its other unique attributes), SDG&E shall have all its rights and remedies with respect to such default, action or omission as set forth in the Assigned Agreement.

**[Delete and renumber if using Alternative #2: (c) New Agreement upon a Rejection or Termination of the Assigned Agreement.** In the event the Assigned Agreement is rejected or terminated as a result of any bankruptcy or insolvency proceeding, SDG&E will, at the option of the Assignee, exercised within forty-five (45) days after such rejection or termination, enter into a new agreement with the Assignee having identical terms as the Assigned Agreement (subject to any conforming changes necessitated by the substitution of parties and other changes as the parties may mutually agree); provided that (i) the term under such new agreement shall be no longer than the remaining balance of the term specified in the Assigned Agreement, and (ii) the Assignee agrees to perform all of the Assignor's duties and obligations as set forth in such Assigned Agreement, and (iii) the new agreement shall be drafted in such a manner that the Assignee shall be subject to any and all of the breaches, defaults and inchoate defaults of the Assignor under the Assigned Agreement that was terminated (except defaults under the Assigned Agreement relating to a breach of any representations or covenants that by their nature cannot be cured by Assignee due to the personal identity, corporate, company, company or partnership nature of the Assignor or its other unique attributes) and the Assignee may cure such breaches, defaults and inchoate defaults to the extent, if any, a cure would still have been available to the Assignor under the Assigned Agreement that was terminated or to the extent, if any, a cure period would still have been available to the Assignee under Section 4(b) of this Consent, with SDG&E having all rights and remedies in respect thereof, including the right to terminate the new agreement if such breaches, defaults and inchoate defaults have not been cured after the expiration of those original cure periods granted to the Assignor in the Assigned Agreement that was terminated and those granted to the Assignee under Section 4(c) of this Consent as they relate to the Assigned Agreement that was terminated.]

(d) Payments to Designated Account. The Assignor and SDG&E acknowledge and agree that all payments to be made by SDG&E to the Assignor (if any) under

the Assigned Agreement shall be made in lawful money of the United States of America in immediately available funds, to the following account:

[name and details for account designated by the Assignee]

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

Section 5. Damages Limitation. **NO PARTY SHALL BE LIABLE TO ANY OTHER PARTY UNDER THIS CONSENT AND AGREEMENT FOR ANY CONSEQUENTIAL, EXEMPLARY, PUNITIVE, REMOTE, OR SPECULATIVE DAMAGES OR LOST PROFITS.**

Section 6. Miscellaneous.

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

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

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

(d) **EACH OF SDG&E, THE ASSIGNEE AND THE ASSIGNOR HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY**

**LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS CONSENT AND AGREEMENT.**

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

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

(g) This Consent shall terminate in its entirety upon written notice by the Assignor to the Assignee and SDG&E of the earlier of (i) the indefeasible payment in full in cash of all obligations of the Assignor under the Credit Agreement, and (ii) the termination of the Credit Agreement in accordance with the terms thereof and the terms of this Consent.

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

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

SAN DIEGO GAS & ELECTRIC  
COMPANY

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

[Address for Notices:]

PACIFIC WIND, LLC

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

[Address for Notices:]

[ASSIGNEE]

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

[Address for Notices:]

## EXHIBIT D

### FORM OF ESTOPPEL CERTIFICATE

TO: Pacific Wind, LLC (the "Company")

[Date]

Reference is made to that certain Master Power Purchase and Sale Agreement, the Amended and Restated Master Power Purchase and Sale Agreement Cover Sheet and the Amended and Restated Confirmation Letter, each dated as of \_\_\_\_\_ (including the Operating Procedures agreed by the Company and SDG&E to comply with the "Operating Procedures" section in the Master Purchase and Sale Confirmation Letter) by and between San Diego Gas & Electric Company, a California corporation ("SDG&E"), and the Company (collectively, as amended, modified and supplemented from time to time, the "Agreement"). Any capitalized terms used herein without definition shall have the meanings ascribed to such terms in the Agreement.

In conjunction with the financing arrangements for the Facility, SDG&E hereby represents, warrants and certifies to the Company as of the date hereof that:

1. The execution, delivery and performance by SDG&E of the Agreement has been duly authorized by all necessary corporate action, and does not and will not require any further consents or approvals which have not been obtained, or violate any provision of any law, regulation, order, judgment, injunction or similar matters or breach any material agreement presently in effect with respect to or binding on SDG&E.
2. All government approvals necessary for the execution, delivery and performance by SDG&E of its obligations under the Agreement have been obtained and are in full force and effect.
3. The Agreement is a legal, valid and binding obligation of SDG&E enforceable against SDG&E in accordance with its respective terms, except as may be limited by bankruptcy, reorganization, insolvency, moratorium or similar laws of general application relating to the enforcement of creditors' rights generally or by general principles of equity, regardless of whether such enforceability is considered in a proceeding in equity or at law, or by principles of public policy.
4. The Agreement is in full force and effect and has not been amended, supplemented or modified since the date of execution of the Agreement.
5. To the best of SDG&E's knowledge, there are no breaches, defaults or unsatisfied conditions presently existing (or which would exist after the passage of time and/or giving of notice) that would allow SDG&E to terminate the Agreement.

6. To SDG&E's knowledge, there is no pending or threatened legal proceeding that could materially adversely affect SDG&E's ability to perform its obligations under the Agreement.

**SAN DIEGO GAS & ELECTRIC COMPANY,  
a California corporation**

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



## EXHIBIT E

### FORM OF FACILITY COMMERCIAL OPERATION CERTIFICATE

---

The undersigned, \_\_\_\_\_ (the "EPC Contractor"), \_\_\_\_\_ (the "Turbine Supplier"), \_\_\_\_\_ ("Licensed Professional Engineer") and \_\_\_\_\_ ("Owner") make the following certifications to San Diego Gas & Electric Company ("SDG&E"), dated as of \_\_\_\_\_. All capitalized terms not otherwise defined herein shall have the meaning given to them in the Amended and Restated Master Power Purchase and Sale Agreement dated \_\_\_\_\_ between Owner and SDG&E (the "Agreement").

#### **Turbine Supplier hereby certifies that:**

1. \_\_\_\_\_ turbines, as set forth in Attachment A hereto, have been erected and installed at the project site and have been commissioned as required under the Turbine Supply Agreement (the "Turbine Supply Agreement") dated as of \_\_\_\_\_, by and between the Turbine Supplier and [*an affiliate of enXco, Inc.*] and each such turbine has passed the performance testing as required to be performed prior to commercial operation pursuant to the Turbine Supply Agreement.

#### **EPC Contractor hereby certifies that:**

1. All requirements necessary to achieve ["Substantial Completion"] as set forth in the agreement between the EPC Contractor and [*an affiliate of enXco, Inc.*] dated \_\_\_\_\_ ("EPC Contract") have been completed and the installed turbines and related balance of plant facilities (the "Facility"), has successfully passed all performance tests at a level that demonstrates that the turbines have been commissioned and can operate safely for the purpose intended.

#### **Owner hereby certifies that:**

1. Except for punch list items that would not materially affect the performance, reliability or safe operation of the Facility, and the Capacity Shortfall, if any, the Facility has been completed in accordance with all applicable specifications and is ready for continuous commercial operation in compliance with all applicable laws and governmental approvals. The Facility has successfully passed all performance tests at a level that demonstrates that the turbines have been commissioned and can operate safely for the purpose intended.

2. The Operation and Maintenance Agreement, by and between Owner and \_\_\_\_\_ dated as of \_\_\_\_\_ has commenced.
3. Owner has a valid leasehold or real property interest in the Facility Site for a term of at least [ ] years from the Commercial Operation Date.
3. The interconnection facilities of Owner have been completed in accordance with applicable specifications, tariffs, laws and governmental approvals to enable power generated by the Facility to be received at the Delivery Point. To the best of Owner's knowledge, the interconnection facilities of Southern California Edison have been completed in accordance with applicable specifications, tariffs, laws and governmental approvals to enable power generated by the Facility to be received at the Delivery Point.
4. Owner has obtained all governmental approvals reasonably necessary for the continuous commercial operation of the Facility and the Facility is in compliance with all such governmental approvals and all other applicable laws.

**Licensed Professional Engineer certifies that:**

1. The individual executing the Certificate is a duly authorized representative of [ ], authorized to execute and deliver this Certificate on behalf of [ ]
2. We have performed our review of the Facility in a professional manner using sound project management and supervisory principles and procedures and in accordance with the standards of care practiced by leading consulting engineers in performing similar tasks on like projects. We represent that we have the required skills and capacity to perform our services in the foregoing manner.
3. We have read the Agreement, the Turbine Supply Agreement and the EPC Contract and we understand the requirements for Commercial Operation under the Agreement, the specifications and performance testing requirements under the Turbine Supply Agreement and the requirements for ["Substantial Completion"] under the EPC Contract.
4. To the extent practical, we have reviewed the engineering, procurement, construction and performance testing for the Facility and in the course of this review we have not discovered any material errors or omissions in the work performed to date that would materially impair the continuous commercial operation of the Facility for a term of 20 years.
5. All of the physical components (including any interconnection facilities) necessary for the Facility to operate in a manner sufficient to achieve the Guaranteed Energy Production as defined in the Agreement for a 20 year term have been substantially completed and each of the wind turbine generators in the Facility has been commissioned and the Facility has achieved ["Substantial Completion"] as set forth in EPC Contract.

6. We have reviewed all governmental approvals and permits identified by the Owner as being required for the construction and operation of the Facility and are of the opinion that the Facility as completed is in compliance in all material respects with the technical requirements contained therein.
7. Based on our review of the aforementioned information and of information provided to us by others which we have not independently verified, we are of the opinion that, as of the date hereof, Commercial Operation has occurred as defined in the Agreement.

Executed this \_\_\_ day of \_\_\_, 200\_

**TURBINE SUPPLIER**

a \_\_\_\_\_ corporation

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

Name:

Title:

**EPC CONTRACTOR**

a \_\_\_\_\_ corporation

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

Name:

Title:

**OWNER**

a \_\_\_\_\_ limited liability company

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

Name:

Title:

**LICENSED PROFESSIONAL ENGINEER:**

a \_\_\_\_\_ corporation

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

Name:

Title:

ACCEPTED BY SDG&E

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

**ATTACHMENT A TO EXHIBIT E**

**[List installed turbines]**

## EXHIBIT F

### FORM OF CAPACITY SHORTFALL TURBINE COMMERCIAL OPERATION CERTIFICATE

---

The undersigned, \_\_\_\_\_ (the “EPC Contractor”), \_\_\_\_\_ (the “Turbine Supplier”), \_\_\_\_\_ (“Licensed Professional Engineer”) and \_\_\_\_\_ (“Owner”) make the following certifications to San Diego Gas & Electric Company (“SDG&E”), dated as of \_\_\_\_\_. All capitalized terms not otherwise defined herein shall have the meaning given to them in the Amended and Restated Master Power Purchase and Sale Agreement dated \_\_\_\_\_ between Owner and SDG&E (the “Agreement”).

#### **Turbine Supplier hereby certifies that:**

2. \_\_\_\_\_ turbine(s), as set forth in Attachment A hereto, have been erected and installed at the project site since the Commercial Operation Date (the “Installed Shortfall Turbines”) and have been commissioned as required under the Turbine Supply Agreement (the “Turbine Supply Agreement”) dated as of \_\_\_\_\_, by and between the Turbine Supplier and [*an affiliate of enXco, Inc.*] and each such turbine has passed the performance testing as required to be performed prior to commercial operation pursuant to the Turbine Supply Agreement.

#### **EPC Contractor hereby certifies that:**

1. All requirements necessary to achieve [“Substantial Completion” for the Installed Shortfall Turbines and the related balance of plant facilities (the “Additional Facilities”)] as set forth in the agreement between the EPC Contractor and [*an affiliate of enXco, Inc.*] dated \_\_\_\_ (“EPC Contract”) have been completed and the Additional Facilities have successfully passed all performance tests at a level that demonstrates that the turbine(s) have been commissioned, integrated into the Facility as it existed at the Commercial Operation Date (the “Initial Facility”) and can operate safely for the purpose intended.

#### **Owner hereby certifies that:**

1. Except for punch list items that would not materially affect the performance, reliability or safe operation of the Additional Facilities, and the Capacity Shortfall, if any, the Additional Facilities has been completed in accordance with all applicable specifications and is ready for continuous commercial operation in compliance with all applicable laws and governmental approvals. The Additional Facilities has successfully passed all performance tests at a level that demonstrates that the turbine(s) have been

commissioned, integrated into the Initial Facility and can operate safely for the purpose intended.

2. The interconnection facilities of Owner have been completed in accordance with applicable specifications, tariffs, laws and governmental approvals to enable power generated by the Additional Facilities combined with the Initial Facility to be received at the Delivery Point. To the best of Owner's knowledge, the interconnection facilities of Southern California Edison have been completed in accordance with applicable specifications, tariffs, laws and governmental approvals to enable power generated by the Additional Facilities combined with the Initial Facility to be received at the Delivery Point.
3. Owner has obtained all governmental approvals reasonably necessary for the continuous commercial operation of the Additional Facilities, including when combined with the Initial Facility, and the Additional Facilities, including when combined with the Initial Facility, are in compliance with all such governmental approvals and all other applicable laws.

**Licensed Professional Engineer certifies that:**

1. The individual executing the Certificate is a duly authorized representative of [\_\_\_\_\_] , authorized to execute and deliver this Certificate on behalf of [\_\_\_\_\_]
2. We have performed our review of the Additional Facilities in a professional manner using sound project management and supervisory principles and procedures and in accordance with the standards of care practiced by leading consulting engineers in performing similar tasks on like projects. We represent that we have the required skills and capacity to perform our services in the foregoing manner.
3. We have read the Agreement, the Turbine Supply Agreement and the EPC Contract and we understand the requirements for Commercial Operation under the Agreement, the specifications and performance testing requirements under the Turbine Supply Agreement and the requirements for ["Substantial Completion" for the Additional Facilities] under the EPC Contract.
4. To the extent practical, we have reviewed the engineering, procurement, construction and performance testing for the Additional Facilities and in the course of this review we have not discovered any material errors or omissions in the work performed to date that would materially impair the continuous commercial operation of the Additional Facilities as integrated into the Initial Facility for a term of 20 years.
5. All of the physical components (including any interconnection facilities) necessary for the Additional Facilities as integrated into the Initial Facility to operate in a manner sufficient to achieve the Guaranteed Energy Production as defined in the Agreement for a

20 year term have been substantially completed and each of the wind turbine generators in the Additional Facilities has been commissioned and the Installed Capacity has achieved ["Substantial Completion" of the Additional Facilities] as set forth in EPC Contract.

6. We have reviewed all governmental approvals and permits identified by the Owner as being required for the construction and operation of the Additional Facilities as integrated into the Initial Facility and are of the opinion that the Additional Facilities as integrated into the Initial Facility as completed is in compliance in all material respects with the technical requirements contained therein.
7. Based on our review of the aforementioned information and of information provided to us by others which we have not independently verified, we are of the opinion that, as of the date hereof, Commercial Operation of the Additional Facilities has occurred as defined in the Agreement.

Executed this \_\_\_ day of \_\_\_, 200\_

**TURBINE SUPPLIER**

a \_\_\_\_\_ corporation

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

Name:

Title:

**EPC CONTRACTOR**

a \_\_\_\_\_ corporation

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

Name:

Title:

**OWNER**

a \_\_\_\_\_ limited liability company

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

Name:

Title:

**LICENSED PROFESSIONAL ENGINEER:**

a \_\_\_\_\_ corporation



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

ACCEPTED BY SDG&E

BY: \_\_\_\_\_  
NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
DATE: \_\_\_\_\_

**ATTACHMENT A TO EXHIBIT F**

[List installed turbines]

**EXHIBIT G**

**FORM OF QUARTERLY PROGRESS REPORT**

**Quarterly Progress Report  
of**

[ \_\_\_\_\_ ]

**(“Seller”)**

**provided to  
San Diego Gas & Electric Company**

[Date]

|       |   |    |
|-------|---|----|
| 1.0   | INSTRUCTIONS.....   | 26 |
| 2.0   | EXECUTIVE SUMMARY.....  | 28 |
| 2.1   | Major activities to be performed for each aspect of the Project during the current calendar quarter.....        | 28 |
| 2.1.1 | Design.....   | 28 |
| 2.1.2 | Engineering.....  | 28 |
| 2.1.3 | Major Equipment procurement.....  | 28 |
| 2.1.4 | Construction.....   | 28 |
| 2.1.5 | Milestone report.....   | 28 |
| 2.1.6 | Permitting (See Section 3.0).....   | 28 |
| 2.2   | Major activities scheduled to be performed in the previous calendar quarter but not completed as scheduled..... | 28 |
| 2.2.1 | Design.....   | 28 |
| 2.2.2 | Engineering.....  | 28 |
| 2.2.3 | Major Equipment procurement.....  | 28 |
| 2.2.4 | Construction.....   | 28 |
| 2.2.5 | Milestone report.....   | 28 |
| 2.2.6 | Permitting.....   | 28 |
| 3.0   | PERMITTING.....   | 29 |
| 3.1   | State and/or federal Governmental Approvals.....  | 29 |
| 3.2   | Local and/or county Governmental Approvals.....   | 29 |
| 3.3   | Permitting activities which occurred during the previous calendar quarter.....                                  | 29 |
| 3.4   | Permitting activities occurring during the current calendar quarter.....  | 30 |
| 4.0   | DESIGN ACTIVITIES.....  | 30 |
| 4.1   | Table of design schedule to be followed by Seller and its subcontractors.....                                   | 30 |
| 4.2   | Design activities to be performed during the current calendar quarter.....                                      | 30 |
| 5.0   | ENGINEERING ACTIVITIES.....   | 31 |
| 5.1   | Table of engineering schedule to be followed by Seller and its subcontractors.....                              | 31 |
| 5.2   | Engineering activities to be performed during the current calendar quarter.....                                 | 31 |
| 5.3   | Engineering activities completed during the previous calendar month.....  | 31 |
| 5.4   | Three-month look-ahead engineering schedule.....  | 31 |
| 6.0   | MAJOR EQUIPMENT PROCUREMENT.....  | 31 |
| 6.1   | Table of major equipment to be procured by Seller and its subcontractors.....                                   | 31 |
| 6.2   | Major Equipment procurement activities to be performed during the current calendar quarter.....                 | 32 |
| 6.3   | Major Equipment procurement activities completed during the previous calendar quarter.....                      | 32 |

|       |   |    |
|-------|---|----|
| 7.0   | CONSTRUCTION ACTIVITIES.....  | 32 |
| 7.1   | Table of construction activities to be performed by Seller and its subcontractors. ....           | 32 |
| 7.2   | Construction activities to be performed during the current calendar quarter. ....                 | 32 |
| 7.3   | Construction activities completed during the previous calendar quarter. ....                      | 33 |
| 7.4   | EPC Contractor Monthly Progress Report.....   | 33 |
| 7.5   | Three-month look-ahead construction schedule. ....  | 33 |
| 8.0   | MILESTONES.....   | 33 |
| 8.1   | Milestone schedule.....   | 33 |
| 8.2   | Remedial Action Plan (applicable if Seller fails to achieve Milestone by the Milestone Date)..... | 33 |
| 8.2.1 | Missed Milestone .....  | 33 |
| 8.2.2 | Plans to achieve missed Milestone .....   | 33 |
| 8.2.3 | Plans to achieve subsequent Milestone.....  | 33 |
| 8.2.4 | Delays in engineering schedule .....  | 33 |
| 8.2.5 | Delays in Major Equipment procurement.....  | 33 |
| 8.2.6 | Delays in construction schedule.....  | 34 |
| 9.0   | SAFETY AND HEALTH REPORTS .....   | 34 |
| 9.1   | Please list all accidents from the previous calendar quarter: .....                               | 34 |
| 9.2   | Any work stoppage from the previous calendar quarter:.....  | 34 |
| 9.3   | Work stoppage impact on construction of the Facility: .....                                       | 34 |

## 1.0 Instructions.

All capitalized terms used in this report shall have the meanings set forth below and any capitalized terms used in this report which are not defined below shall have the meanings ascribed thereto in the Amended and Restated Master Power Purchase and Sale Agreement by and between Pacific Wind, LLC (“Seller”) and San Diego Gas & Electric Company dated \_\_\_\_\_ (the “Agreement”).

Seller shall review the status of each significant element of the Facility Schedule provided pursuant to Section 11 of the Confirmation and Seller shall identify such matters referenced in clauses (i)-(v) below as known to Seller and which in Seller’s reasonable judgment are expected to adversely affect the Project or the Facility Schedule, and with respect to any such matters, shall state the actions which Seller intends to take to ensure that Conditions and the Milestones will be attained by their required dates. Such matters may include, but shall not be limited to:

(i) Any material matter or issue arising in connection with a Governmental Approval, or compliance therewith, with respect to which there is an actual or threatened dispute over the interpretation of a law or regulation, actual or threatened opposition to the granting of a necessary Governmental Approval, any organized public opposition, any action or expenditure required for compliance or obtaining approval that Seller is unwilling to take or make, or in each case which could reasonably be expected to materially threaten or prevent financing of the Project, attaining any Condition or Milestone, or obtaining any contemplated agreements with other parties which are necessary for attaining any Condition or Milestone or which otherwise reasonably could be expected to materially threaten Seller’s ability to attain any Condition or Milestone;

(ii) Any development or event in the financial markets or the independent power industry, any change in taxation or accounting standards or practices or in Seller’s business or prospects which reasonably could be expected to materially threaten financing of the Project, attainment of any Condition or Milestone or materially threaten any contemplated agreements with other parties which are necessary for attaining any Condition or Milestone or could otherwise reasonably be expected to materially threaten Seller’s ability to attain any Condition or Milestone;

(iii) A change in, or discovery by Seller of, any legal or regulatory requirement which would reasonably be expected to materially threaten Seller’s ability to attain any Condition or Milestone;

(iv) Any material change in the Seller’s schedule for initiating or completing any material aspect of Project;

(v) The status of any matter or issue identified as outstanding in any prior Quarterly Report and any material change in the Seller’s proposed actions to remedy or overcome such matter or issue.

Seller shall complete, certify, and deliver this form Quarter Quarterly Progress Report to [\_\_\_\_\_], together with all attachments and exhibits, with [3] copies of the Report delivered to [\_\_\_\_\_] and [\_\_\_\_\_].

## **2.0 Executive Summary.**

### **2.1 Major activities to be performed for each aspect of the Project during the current calendar quarter.**

Please provide a brief summary of the Major<sup>1</sup> activities to be performed for each of the following aspects of the Project during the current calendar quarter:

- 2.1.1 Design
- 2.1.2 Engineering
- 2.1.3 Major Equipment procurement
- 2.1.4 Construction
- 2.1.5 Milestone report
- 2.1.6 Permitting (See Section 3.0)

### **2.2 Major activities scheduled to be performed in the previous calendar quarter but not completed as scheduled.**

Please provide a brief summary of the Major activities which were scheduled to be performed in the previous calendar quarter and their status, including those activities that were not completed as scheduled:

- 2.2.1 Design
- 2.2.2 Engineering
- 2.2.3 Major Equipment procurement
- 2.2.4 Construction
- 2.2.5 Milestone report
- 2.2.6 Permitting

---

<sup>1</sup> For Purposes of this Report, "Major" shall mean any activity, event, or occurrence which may have a material adverse impact on the construction of the Facility or completion of the Project on a timely basis if such activity, event, or occurrence occurs or if such activity, event, or occurrence fails to occur as anticipated or scheduled, which material adverse impact includes, but is not limited to, Seller's inability to achieve a Milestone Date.



**3.0 Permitting.**

The following describes each of the Major Governmental Approvals required for the construction of the Facility and the status of each:

**3.1 State and/or federal Governmental Approvals.**

Please describe each of the Major state and/or federal Governmental Approval (including the Permit to Construct issued by the San Diego County Air Pollution Control District) to be obtained by Seller (or EPC Contractor) and the status of each.

| DESCRIPTION | STATUS |
|-------------|--------|
|             |        |
|             |        |
|             |        |
|             |        |
|             |        |
|             |        |
|             |        |
|             |        |
|             |        |
|             |        |

**3.2 Local and/or county Governmental Approvals.**

Please describe each of the Major local and/or county Governmental Approvals to be obtained by Seller and the status of each.

| DESCRIPTION | STATUS |
|-------------|--------|
|             |        |
|             |        |
|             |        |
|             |        |
|             |        |
|             |        |
|             |        |
|             |        |
|             |        |
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**3.3 Permitting activities which occurred during the previous calendar quarter.**

Please list all permitting activities which occurred during the previous calendar quarter.

**3.4 Permitting activities occurring during the current calendar quarter.**

Please list all permitting activities which are expected to occur during the current calendar quarter.

**3.5 Permitting Notices received from EPC Contractor.**

Please attach to this Quarterly Progress Report copies of any notices related to permitting activities received from EPC Contractor during the previous calendar quarter.

**4.0 Design Activities.**

**4.1 Table of design schedule to be followed by Seller and its subcontractors.**

The following table lists the design schedule to be followed by Seller and its subcontractors.

| ACTIVITY | CONTRACTOR/<br>SUBCONTRACTOR | SCHEDULED<br>COMPLETION<br>DATE | ACTUAL<br>COMPLETION<br>DATE |
|----------|------------------------------|---------------------------------|------------------------------|
|          |                              |                                 |                              |
|          |                              |                                 |                              |
|          |                              |                                 |                              |
|          |                              |                                 |                              |
|          |                              |                                 |                              |
|          |                              |                                 |                              |
|          |                              |                                 |                              |
|          |                              |                                 |                              |
|          |                              |                                 |                              |

**4.2 Design activities to be performed during the current calendar quarter.**

Please explain in detail the design activities which are expected to be performed during the current calendar quarter.

**4.3 Table of design activities completed during the previous calendar quarter.**

Please explain in detail the design activities which were completed during the previous calendar quarter.

**5.0 Engineering Activities.**

**5.1 Table of engineering schedule to be followed by Seller and its subcontractors.**

The following table lists the engineering schedule to be followed by Seller and its subcontractors:

| ACTIVITY | CONTRACTOR/<br>SUBCONTRACTOR | SCHEDULED<br>COMPLETION<br>DATE | ACTUAL<br>COMPLETION<br>DATE |
|----------|------------------------------|---------------------------------|------------------------------|
|          |                              |                                 |                              |
|          |                              |                                 |                              |
|          |                              |                                 |                              |
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|          |                              |                                 |                              |
|          |                              |                                 |                              |
|          |                              |                                 |                              |

**5.2 Engineering activities to be performed during the current calendar quarter.**

Please explain in detail the engineering activities which are expected to be performed during the current calendar quarter.

**5.3 Engineering activities completed during the previous calendar month.**

Please explain in detail the engineering activities which were completed during the previous calendar quarter.

**5.4 Three-month look-ahead engineering schedule.**

Please provide a three-month look ahead engineering schedule.

**6.0 Major Equipment Procurement.**

**6.1 Table of major equipment to be procured by Seller and its subcontractors.**

The following table lists major equipment to be procured by Seller and its subcontractors:

| EQUIPMENT<br>DESCRIPTION | MANUFACTURER | MODEL | CONTRACTED<br>DELIVERY | ACTUAL<br>DELIVERY | PROJECTED<br>INSTALLATION | ACTUAL<br>INSTALLATION |
|--------------------------|--------------|-------|------------------------|--------------------|---------------------------|------------------------|
|--------------------------|--------------|-------|------------------------|--------------------|---------------------------|------------------------|

|  |  |  |      |      |      |      |
|--|--|--|------|------|------|------|
|  |  |  | DATE | DATE | DATE | DATE |
|  |  |  |      |      |      |      |
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|  |  |  |      |      |      |      |

**6.2 Major Equipment procurement activities to be performed during the current calendar quarter.**

Please explain in detail the major equipment procurement activities which are expected to be performed during the current calendar quarter.

**6.3 Major Equipment procurement activities completed during the previous calendar quarter.**

Please explain in detail the major equipment procurement activities which were completed during the previous calendar quarter.

**7.0 Construction Activities.**

**7.1 Table of construction activities to be performed by Seller and its subcontractors.**

The following tables lists construction activities to be performed by Seller and its subcontractors:

| ACTIVITY                   | CONTRACTOR/<br>SUBCONTRACTOR | SCHEDULED<br>COMPLETION DATE | ACTUAL<br>DATE | COMPLETION |
|----------------------------|------------------------------|------------------------------|----------------|------------|
| Civil Progress             |                              |                              |                |            |
| Structural Progress        |                              |                              |                |            |
| [Steam] Generator Progress |                              |                              |                |            |
| Piping Progress            |                              |                              |                |            |
| IC and Electrical Progress |                              |                              |                |            |
| Subcontractor Progress     |                              |                              |                |            |

**7.2 Construction activities to be performed during the current calendar quarter.**

Please explain in detail the construction activities which are expected to be performed during the current calendar quarter.

**7.3 Construction activities completed during the previous calendar quarter.**

Please explain in detail the construction activities which are expected to be performed during the previous calendar quarter.

**7.4 EPC Contractor Monthly Progress Report.**

Please attach a copy of the Monthly Progress Reports received during the previous calendar quarter from the EPC Contractor pursuant to the EPC Contract, certified by the EPC Contractor as being true and correct as of the date issued.

**7.5 Three-month look-ahead construction schedule.**

Please provide a three-month look ahead construction schedule.

**8.0 Milestones.**

**8.1 Milestone schedule.**

Please state the status and progress of each Milestone and identify any completed Milestone(s) for the previous calendar quarter.

**8.2 Remedial Action Plan (applicable if Seller fails to achieve Milestone by the Milestone Date).**

Please explain in detail each of the following aspects of Seller's remedial action plan:

8.2.1 Missed Milestone

8.2.2 Plans to achieve missed Milestone

8.2.3 Plans to achieve subsequent Milestone

8.2.4 Delays in engineering schedule

Please explain in detail any delays beyond the scheduled Milestone Dates stated in Section 5.1, any impact from the delays on the engineering schedule, and Seller's plans to remedy such impact.

8.2.5 Delays in Major Equipment procurement

Please explain in detail any delays beyond the contracted delivery date and/or the projected installation date stated in Section 6.1, any impact from the delays on Major Equipment procurement schedule, and Seller's plans to remedy such impact.

#### 8.2.6 Delays in construction schedule

Please explain in detail any delays beyond the scheduled completion dates stated in Section 7.1, any impact from the delays on the construction schedule, and Seller's plans to remedy such impact.

### 9.0 Safety and Health Reports

**9.1 Please list all accidents from the previous calendar quarter:**

**9.2 Any work stoppage from the previous calendar quarter:**

**9.3 Work stoppage impact on construction of the Facility:**

I, \_\_\_\_\_, on behalf of and as an authorized representative of, do hereby certify that any and all information contained in the attached Seller's Quarterly Progress Report is true and accurate, and reflects, to the best of my knowledge, the current status of the construction of the Facility as of the date specified below.

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

EXHIBIT I

OUTAGE NOTIFICATION FORM

**OUTAGE NOTIFICATION FORM**

This form may be used to comply with CAISO's outage notification requirements for both planned and forced outages. Report outages as soon as possible by submitting form via email to [TSched@SempraUtilities.com](mailto:TSched@SempraUtilities.com) or via fax at (858) 650-6191.

Request Type:

New Scheduled Maintenance Outage

Previous Notification (if applicable)

Date Sent: mm/dd/yyyy

Time Sent: hh:mm

Generator Name: \_\_\_\_\_

Location Code: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Contact Name: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Email: \_\_\_\_\_

Alternate Name: \_\_\_\_\_

Alternate Number: \_\_\_\_\_

Email: \_\_\_\_\_

(For times, use 24hr format)

Today's Date: mm/dd/yyyy

Current Time: hh:mm

Outage Start Date: mm/dd/yyyy

Outage Start Time: hh:mm

Outage End Date: mm/dd/yyyy

Outage End Time: hh:mm

Outage Duration: \_\_\_\_\_

MW Available During Outage: \_\_\_\_\_

MW Unavailable During Outage: \_\_\_\_\_

RMR Unit? Yes/No

**System** (Select One)

Boiler  
Codes 0010-1999

Generator  
Codes 4500-4899

Regulatory, Safety, Environmental  
Codes 9504-9720

Balance of Plant  
Codes 3110-3999

Pollution Control Equipment  
Codes 8000-8835

Others  
Codes 9900-9999

Steam Turbine  
Codes 4000-4499

External  
Codes 9000-9040

**Cause Code Ranges / Affected Component**

(Select One)

**Cause Code / Component Problem**

(Select One)

**Comments**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_