
Master Power Purchase & Sale Agreement



Version 2.1 (modified 4/25/00)

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MASTER POWER PURCHASE AND SALES AGREEMENT

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MASTER POWER PURCHASE AND SALE AGREEMENT
COVER SHEET

This *Master Power Purchase and Sale Agreement* (Version 2.1; modified 4/25/00) ("Master Agreement") is made as of the following date: January 6, 2012 ("Effective Date"). The *Master Agreement*, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmations accepted in accordance with this Agreement) shall be referred to as the "Agreement." The Parties to this *Master Agreement* are the following:

Name: NaturEner Rim Rock Wind Energy, LLC
 ("Party A")

All Notices:

Street: 394 Pacific Avenue, Suite 300
City: San Francisco, CA 94111
Attn: Contract Administration
Phone: 415-217-5500
Facsimile: 1-877-288-1480

Invoices:

Attn: Energy Accounting Manager
Phone: 415 217 5500
Facsimile: 1-877-288-1480

Scheduling:

Attn: Asset Management
Phone: 415 217 5500
Facsimile: 1-877-288-1480

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

All Notices:

Street: 8315 Century Park Court
City: San Diego, CA Zip: 92123
Attn: Contract Administration
Phone: (858) 650-6176
Facsimile: (858) 650-6190
Duns: 006911457

Invoices:

San Diego Gas & Electric Company
8315 Century Park Ct.
San Diego, California 92123-1593
Attn: Energy Accounting Manager
Phone: (858) 650-6177
Facsimile: (858) 650-6190

Scheduling:

San Diego Gas & Electric Company
8315 Century Park Ct.
San Diego, California 92123-1593
Attn: Transaction Scheduling Manager
Phone: (858) 650-6160
Facsimile: (858) 650-6191

Payments:

Attn: Energy Accounting Manager
Phone: 415 217 5500
Facsimile: 1-877-288-1480

Wire Transfer:

BNK: Bank of America
ABA: ABA 026009593
ACCT: 0033568768
Confirmation: John Pomeroy
FAX: 415 986 1248
Beneficiary: NaturEner USA, LLC on behalf of
NaturEner Rim Rock Wind Energy, LLC

Credit and Collections:

Attn: Energy Accounting Manager
Phone: 415 217 5500
Facsimile: 1-877-288-1480

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

Attn: General Counsel
Phone: 415 217 5500
Facsimile: 1-877-288-1480

Payments:

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

Wire Transfer:

BNK: Union Bank of California
for: San Diego Gas & Electric Company
ABA: Routing # 122000496
ACCT: #4430000352
Confirmation: SDG&E, Major Markets
FAX:(213) 244-8316

Credit and Collections:

San Diego Gas & Electric Company, Major Markets
555 W. Fifth Street, ML 10E3
Los Angeles, CA 90013-1011
Attn.: Major Markets, Credit and Collections Manager
Fax No.: (213) 244-8316
Phone: (213) 244-4343

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

San Diego Gas & Electric Company
8330 Century Park Ct.
San Diego, California 92123
Attn: General Counsel
Phone: (858) 650-6141
Facsimile: (858) 650-6106

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

- Party A Tariff FERC market based rate authority to be obtained prior to the start of the Delivery Term.
- Party B Tariff FERC Electric Tariff, Original Volume No. 10, effective March 25, 2011, Docket No.

Article Two TO BE DETERMINED

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

Article Four TO BE DETERMINED

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

Article Five TO BE DETERMINED

Events of Default; Remedies

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

5.6 Closeout Setoff

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

Article 8 TO BE DETERMINED

Credit and Collateral Requirements

8.1 Party A Credit Protection:

- (a) Financial Information:
 - Option A
 - Option B Specify: _____
 - Option C Specify: _____
- (b) Credit Assurances:
 - Not Applicable
 - Applicable
- (c) Collateral Threshold:
 - Not Applicable

Applicable

If applicable, complete the following: N/A

Party B Collateral Threshold: \$ _____; provided, however, that Party B's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party B has occurred and is continuing.

Party B Independent Amount \$ _____

Party B Rounding Amount \$ _____

(d) Downgrade Event:

Not Applicable

Applicable

If applicable, complete the following: N/A

It shall be a Downgrade Event for Party B if Party B's Credit Rating falls below _____ from S&P or _____ from Moody's or if Party B is not rated by either S&P or Moody's

Other:

Specify: _____

(e) Guarantor for Party B: None

Guarantee Amount: None

8.2 Party B Credit Protection:

(a) Financial Information:

Option A

Option B Specify: Guarantor

Option C Specify:

(b) Credit Assurances:

Not Applicable

Applicable

(c) Collateral Threshold:

Not Applicable

Applicable

If applicable, complete the following: N/A

Party A Collateral Threshold: \$ _____; provided, however, that Party A's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party A has occurred and is continuing.

Party A Independent Amount \$ _____

Party A Rounding Amount \$ _____

(d) Downgrade Event:

Not Applicable

Applicable

If applicable, complete the following: N/A

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

Other:

Specify: _____

(e) Guarantor for Party A: Meeting the criteria set forth in Section 8.4, Grupo Naturener, S.A or a replacement Guarantor which is a U.S. entity and is otherwise reasonably acceptable to Party B

Guarantee Amount: \$6,458,225.00

(f) 8.4 If the parties elect as being applicable, Section 8.4 shall apply:

Not Applicable

Applicable

Article 10.11

Confidentiality

Option A: Confidentiality Applicable. If not checked, inapplicable.

Option B: Confidentiality Notification: If Option B is checked on the Cover Sheet, Party A has waived its right to notification in accordance with Section 10.11(iv).

Schedule M

Party A is a Governmental Entity or Public Power System

Party B is a Governmental Entity or Public Power System

Add Section 3.6. If not checked, inapplicable

Add Section 8.4. If not checked, inapplicable

Schedule P

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

Other Changes

Specify, if any: The following changes shall be applicable:

Article One. General Definitions.

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

(1) Section 1.11 “Costs” shall be deleted in its entirety and replaced with the following:

“Costs” means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace a Terminated Transaction; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with the termination of a Transaction.

(2) Section 1.23 “Force Majeure” shall be deleted in its entirety and replaced with the following:

“Force Majeure” means any cause or event beyond the reasonable control of the affected Party which was not anticipated as of the date of the Transaction and not due to the fault or negligence of the Party affected, and which could not have been avoided by due

diligence and use of reasonable efforts, including but not limited to (but only to the extent that the following examples satisfy such definition): (a) acts of God such as extreme weather conditions, droughts, floods, earthquakes, (b) fires, explosions, accidents that could not have been prevented by acting in accordance with Good Utility Practice (defined below), (c) war (declared or undeclared), riots, insurrection, rebellion, acts of the public enemy, acts of terrorism and sabotage, blockades, embargoes, industry-wide strikes (d) prior to Commercial Operation: high winds and low temperatures preventing the construction of turbines or wet soils preventing the construction of foundations and (e) delays in the construction of the MATL transmission line, including delays in energizing MATL for commercial operation, delays in the receipt of all regulatory approvals necessary for transmission on MATL, which approvals are no longer be subject to any appeal period (other than with respect to any regulatory approvals or appeals related to a “Final ATC Rule” under that certain Power Purchase Agreement dated as of December 30, 2011 between Party A and Morgan Stanley Capital Group, Inc.), and delays, to the extent not within the control of Party A in any interconnection with the MATL transmission line. Notwithstanding anything to the contrary in the foregoing, the following shall not constitute Force Majeure: (a) lack of finances; (b) breakage or malfunction of equipment (except to the extent that such failure was caused by an event that would otherwise satisfy the definition of a Force Majeure event as defined above or Serial Defect as defined in Section 1.65); (c) changes in governmental approvals or the conditions imposed thereunder or the failure to grant or renew such governmental approvals; or (d) Party A’s failure to obtain additional funds, including funds authorized by a state or the federal government or agencies thereof, to supplement the payments made by Party B pursuant to this Agreement.

“Good Utility Practice” means any practices, methods and acts (i) required by the National Electric Safety Code or NERC, whether or not Party A is a member thereof, or (ii) otherwise engaged in or approved by a significant portion of the utility wind electric generation industry during the relevant time period or any of the practices, methods and acts that in the exercise of commercially reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be the optimum practice, method or act to the exclusion of all others, but rather is intended to be any of the practices, methods and/or actions generally accepted in the region.

- (3) Section 1.24 “Gains” shall be deleted in its entirety and replaced with the following:

“Gains” means with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of a Terminated Transaction for the remaining term of such Transaction, determined in a commercially reasonable manner, solely with respect to Green Attributes. Factors used in determining economic benefit may include, without limitation, reference to information either available to it internally or supplied by one or more third parties, including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remaining term of the applicable Transaction.

- (4) Section 1.25 shall be modified by adding the following as the last sentence: “Guarantor shall issue a Guaranty in substantially the same format attached hereto as Exhibit B.”
- (5) Section 1.27 shall be modified by adding the words “, and substantially in the same form as the Letter of Credit template attached hereto as Exhibit C” at the end of the first sentence.
- (6) Section 1.28 “Losses” shall be deleted in its entirety and replaced with the following:

“Losses” means with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from the termination of a Terminated Transaction for the remaining term of such Transaction, determined in a commercially reasonable manner, solely with respect to Green Attributes. Factors used in determining the loss of economic benefit may include, without limitation, reference to information available to it internally or supplied by one or more third parties including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g. NYMEX), all of which should be calculated for the remaining term of the applicable Transaction.

- (7) Sections 1.35 and 1.36 shall be modified by deleting the phrase “as defined in Schedule P.” and replacing such phrase with “as defined in the Confirmation.”
- (8) Section 1.45 shall be modified by including the words “acceptable to the requesting Party” after the words “Letter(s) of Credit”.
- (9) Section 1.51 is amended by replacing the current definition with the following:

“Replacement Price” means the price at which a Party that is a Buyer, acting in a commercially reasonable manner, purchases for delivery a replacement for any Product that was not delivered by the Party that is the Seller of such Product, plus costs reasonably incurred by such Buyer in purchasing such substitute Product, or absent a purchase, the market price for such Product as determined by such Buyer in a commercially reasonable manner. In no event shall such price include any ratcheted demand or similar charges, nor shall such Buyer be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize such Seller’s liability. For the purposes of this definition, such Buyer shall be considered to have purchased replacement Product to the extent such Buyer shall have entered into one or more arrangements for purchase of replacement Product, and in a commercially reasonable manner.

“California Renewables Portfolio Standard” means the Renewables Portfolio Standard of California under California Senate Bills 1078 and 107 as codified in Sections 387, 390.1, and 399.25 and Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of Division 1 of, the California Public Utilities Code, as such code reference may be amended from time to time.

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

“Sales Price” means the price at which a Party that is a Seller, acting in a commercially reasonable manner, resells any Product not received by the Party that is the Buyer of such Product, deducting from such proceeds any costs reasonably incurred by such Seller in reselling such Product including all costs charged by the applicable independent system operator (“ISO”) to deliver the Product into the ISO System. In no event shall such price include any ratcheted demand or similar charges, nor shall such Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual

assets, or market positions to minimize such Buyer's liability. The Sales Price may be less than zero.

(11) Section 1.62 is added as follows:

"CPUC Approval" means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which contains the following terms:

(a) approves this Agreement in its entirety, including payments to be made by Party B, subject to CPUC review of Party B's administration of the Agreement; and

(b) finds that any procurement pursuant to this Agreement is procurement from an eligible renewable energy resource for purposes of determining Party B's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), Decision 03-06-071, or other applicable law.

CPUC Approval will be deemed to have occurred on the date that a CPUC decision containing such findings becomes final and non-appealable.

The Parties acknowledge that CPUC Approval has occurred on or prior to the Effective Date.

(12) Section 1.63 is added as follows:

"Green Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the

atmosphere¹; (3) the reporting rights to these avoided emissions such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser's discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Project, (ii) production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the project that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to Party A to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits. If the Project is a biomass or biogas facility and Party A receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Party B with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Project.

(13) Section 1.64 is added as follows:

"Law" means any statute, law, treaty, rule, regulation, ordinance, code, governmental approval, enactment, injunction, order, write, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or governmental authority of competent jurisdiction.

(14) Section 1.65 is added as follows:

¹ Avoided emissions may or may not have any value for GHG compliance purposes. Although avoided emissions are included in the list of Green Attributes, this inclusion does not create any right to use those avoided emissions to comply with any GHG regulatory program.

“Serial Defect” means (a) a defect in any Unit or component thereof causing impaired performance or failure, or requiring the removal from service of any Unit or component thereof (for replacement or otherwise) in accordance with Good Utility Practice, which results in a material reduction in the output of one or more Units comprising the Project to the extent attributable to a defect in any Unit or component thereof causing impaired performance or failure, or requiring the removal from service of any Unit or component thereof (for replacement or otherwise); (b) the component manufacturer has issued a bulletin regarding the defect; and (c) 25% or more of the same component or Units included in the Project contains the same defect in any six (6) month period. In this context, a component shall contain a “defect” if such component (i) breaks or ceases to perform the function for which it was designed or installed (exclusive of normal wear and tear) and is not free of material defects in material and workmanship, or (ii) fails to conform to applicable technical or design specifications.”

(15) Section 1.66 is added as follows:

“Renewable Energy Credit” has the meaning set forth in Public Utilities Code Section 399.12(g), as may be amended from time to time or as further defined or supplemented by Law. “

Article Two: Transaction Terms and Conditions

- (a) Amend Section 2.1 by deleting the phrase “orally, or if expressly required by either party with respect to a particular Transaction,”
- (b) Section 2.3 shall be deleted in its entirety.

Article Three: Obligations and Deliveries

- (a) Section 3.2 “Transmission and Scheduling” shall be deleted.
- (b) Force Majeure. Add the following paragraph at the end of Section 3.3:

“Before and after the date of Commercial Operation, this Agreement may be terminated by the non-Claiming Party with no further obligation to either Party if a Force Majeure event prevents the

performance of a material portion of the obligations hereunder and such Force Majeure is not resolved within ten (10) months after the notice given above or if Party A has not met Commercial Operation by the PPA Outside Date (as defined in the Confirmation Letter) by reason of Force Majeure.”

- (c) Green Attributes. The Parties agree to add the following new Section 3.4:

“Green Attributes. Party A hereby provides and conveys all Green Attributes associated with all electricity generation from the Project to Party B as part of the Product being delivered. Party A represents and warrants that Party A holds the rights to all Green Attributes from the Project, and Party A agrees to convey and hereby conveys all such Green Attributes to Party B as included in the delivery of the Product from the Project.”

- (d) Climate Action Registry. The Parties agree to add the following new Section 3.5:

“Climate Action Registry. Party A shall register the Facility with the Climate Registry as may be required by the CPUC pursuant to Decision 06-02-032 and any subsequent order, but in any event, no later than the date of Commercial Operation.”

- (e) WREGIS. The Parties agree to add the following new Section 3.6:

“WREGIS. Prior to the date of Commercial Operation, Party A shall register the Facility in the Western Renewable Energy Generating Information System or any successor renewable energy tracking program (“WREGIS”), and take all other action necessary to ensure that the Energy and Green Attributes produced from the Facility are tracked for purposes of satisfying the requirements of the California Renewable Portfolio Standard. In the event that WREGIS is not in operation as of the date of Commercial Operation, Party A shall perform its obligations as required per this subsection, as soon as WREGIS is in operation. Party A warrants that all necessary steps to allow the Renewable Energy Credits transferred to Party B to be tracked in WREGIS will be taken prior to the first delivery under the Agreement.”

Article Five: Events of Default

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

Section 5.1(c) is amended by deleting the reference to “three (3) Business Days” and replacing it with “thirty (30) days.”

Amend Sections 5.1(b) and 5.1(h)(i) by adding the following at the end thereof: “or with respect to the representations and warranties made pursuant to Section 10.2 of this Agreement or any additional representations and warranties agreed upon by the Parties, any such representation and warranty becomes false or misleading in any material respect during the term of this Agreement or any Transaction entered into hereunder.”

Within Section 5.1, add the following new Events of Default:

“(i) if at any time during the Term of Agreement, Party A delivers or attempts to deliver to the Delivery Point for sale under this Agreement electrical power that was not generated by the Unit(s);

(j) failure to meet the performance requirements agreed to pursuant to Section 6.1 of the Confirmation Letter;

(k) a Guaranty Default as described in Section 8.4;

(l) a Letter of Credit Default as described in Section 8.4.or

(m) a termination by ‘Investor’ prior to the ‘Contribution Closing Date’ under Section 5.1(c) of that certain Equity Capital Contribution Agreement, dated as of the date hereof, by and among Party B, NaturEner Rim Rock Financing, LLC, a Delaware limited liability company, and NaturEner Montana Wind Rim Rock, LLC, a Delaware limited liability company.”

(b) Section 5 Declaration of an Early Termination Date and Calculation of Settlement Amount.

Section 5.2, 5.3, 5.4, and 5.5 shall be deleted in their entirety and replaced with the following:

“5.2 Declaration of Early Termination Date and Calculation of Settlement Amounts: If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (“Non-Defaulting Party”) shall have the right to (i) designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date (“Early Termination Date”) to accelerate all amounts owing between the Parties and to liquidate and terminate all, but not less than all, Transactions (each referred to as a “Terminated Transaction”) between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance. The Non-defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for each such Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information.

The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. The Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount.

5.3 Net Out of Settlement Amounts. The Non-Defaulting Party shall aggregate all Settlement Amounts into a single amount by: netting out (a) all Settlement Amounts that are due to the Defaulting Party, plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party pursuant to Article Eight, plus any or all other amounts due to the Defaulting Party under this Agreement against (b) all Settlement Amounts that are due to the Non-Defaulting Party, plus any or all other amounts due to the Non-Defaulting Party under this Agreement, so that all such amounts shall be netted out to a single liquidated amount (the “Termination Payment”). If the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the Termination Payment shall be zero.

5.4 Notice of Payment of Termination Payment. As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to the Non-Defaulting Party, as applicable, within two (2) Business Days after such notice is effective.

5.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party’s calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of Non-Defaulting Party’s calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer Performance Assurance to the Non-Defaulting Party in an amount equal to the Termination Payment.”

(c) Section 5.7 Suspension of Performance.

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

Further amend Section 5.7 by the deletion of the “(a)” preceding “an Event of Default” and

deletion of the following phrase in the first sentence “or (b) a Potential Event of Default”.

Article Six: Payment and Netting

(a) Section 6.2 Timeliness of Payment.

Section 6.2 shall be deleted in its entirety and replaced by the following:

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

(b) Section 6.7

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

Article Eight: Credit and Collateral Requirements

(a) Party A Credit Protection. The first three sentences in Section 8.1 shall be deleted in their entirety and replaced with the following:

“8.1 Party A Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet and shall only apply if marked as “Applicable” on the Cover Sheet.”

(b) Party B Credit Protection. The first three sentences in Section 8.2 shall be deleted in their entirety and replaced with the following:

“8.2 Party B Credit Protection. The applicable credit and collateral requirements shall be as

specified on the Cover Sheet and shall only apply if marked as “Applicable” on the Cover Sheet.”

- (c) **Performance Security.** Section 8.3 is amended by deleting “or deemed occurrence” from the beginning of the second sentence. If the Parties elect as being applicable on the Cover Sheet, the following new Section 8.4 shall be added:

“8.4 To secure its obligations under this Agreement, in addition to satisfying any credit terms pursuant to the terms of Section 8.2 to the extent marked applicable, Party A agrees to deliver to Party B (the “Secured Party”) (a) within thirty (30) days of the Effective Date, and Party A shall maintain in full force and effect until the Commercial Operation date, a Letter of Credit in the amount of \$6,458,225.00, the form of which shall be substantially similar to the form attached hereto as Exhibit C; and (c) from the Commercial Operation date until the end of the Term a Guaranty in the amount of \$6,458,225.00, the form of which shall be substantially similar to the form attached hereto as Exhibit B.

Except as expressly provided elsewhere in this Agreement, the security posted under this Section 8.4 shall not be deemed a limitation of damages. Party B shall return the unused portion of security posted under Section 8.4 to Party A promptly after the following have occurred: (a) the Term of the Agreement has ended; and (b) all payment obligations of Party A arising under this Agreement, including compensation for Penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting).

When cash is posted as security: Party B shall pay interest on cash held as security at the Collateral Interest Rate. On or before each Interest Payment Date, Party B shall transfer the Interest Amount due to Party A for such security in the form of cash by wire transfer to the bank account specified under “Wire Transfer” in the Cover Sheet.

“Collateral Interest Rate” shall mean the rate per annum equal to the “Monthly” Commercial Paper rate (Prime, 3 months) published the prior month in the Federal Reserve Statistical Release, or its successor publication.

“Interest Payment Date” shall mean the last Business Day of each calendar year.

“Interest Amount” shall mean, with respect to an Interest Period, the amount of interest derived from: (w) the sum of (i) the principal amount of security in the form of cash held by Party B during that Interest Period, and (ii) the sum of all accrued and

unpaid Interest Amounts accumulated prior to such Interest Period; multiplied by (x) the Collateral Interest Rate in effect on the first day of the Interest Period; multiplied by (y) the number of days in that Interest Period; (z) divided by 360.

“Interest Period” means the monthly period beginning on the first day of each calendar month and ending on the last day of each month.

When Letters of Credit are posted as security: all Letters of Credit shall be subject to the following provisions:

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

(b) “Letter of Credit Default” shall mean with respect to an outstanding Letter of Credit, the occurrence of any of the following events: (i) the issuer of such Letter of Credit shall fail to maintain a Credit Rating of at least “A-“ by S&P or “A3” by Moody’s; (ii) the issuer of the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit if such failure shall be continuing after the lapse of any applicable grace period; (iii) the issuer of such Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; or (iv) Party A shall fail to meet the requirements of this Section 8.4 after the applicable cure periods, if any.

(c) In all cases, the reasonable costs and expenses of establishing, renewing, substituting, canceling, increasing and reducing the amount of (as the case may be) one or more Letters of Credit shall be borne by Party A. Party A shall also be responsible for the reasonable costs, expenses and attorneys’ fees, including reasonably allocated costs of in-house counsel of Party B in an instance in which Party A is in default and Party B exercises its rights to enforce the Letter of Credit.

When a Guaranty is posted as security: all Guaranties shall be subject to the following provision:

“Guarantor Default” shall mean, with respect to an outstanding Guaranty, the occurrence of

any of the following events: (i) if the Guarantor's senior unsecured long term debt is rated and the Guarantor shall fail to maintain an unsecured credit rating of at least BBB- from Standard & Poor's or at least Baa3 from Moody's; (ii) if the Guarantor's senior unsecured long term debt is not rated and the Guarantor either (a) fails to have a tangible net worth of at least \$200 million or (b) fails to maintain a liability/equity ratio (calculated as total liabilities/ (total liabilities plus equity), as such terms are listed on Guarantor's balance sheets) that is less than 65%; or (iii) an Event of Default under Section 5.1(h) of this Agreement, and Party A fails to cure any Guarantor Default within fifteen (15) days by delivering to Party B cash or a Letter of Credit from an issuer and in a form acceptable to Party B.”

Article Ten: Miscellaneous

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

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

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

Section 10.2(xiii) shall be added as follows and such representations and warranties shall be contingent on Party B satisfying the California Energy Commission’s requirements imposed on a purchaser from out-of-state facilities, if any, as stated in the *Renewables Portfolio Standard Eligibility Guidebook* (or in any successor rule, regulation or guidebook) to re-bundle or match the Product delivered by Party A to and at the Delivery Point to an equal or greater volume of other energy sourced from within the WECC outside California that Party B imports into California in the same calendar year:

“(A) Party A, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource (“ERR”) as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project’s output delivered to Party B qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in Law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Party A has used commercially reasonable efforts to comply with such change in

Law.”

“(B) Party A and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in CPUC Decision 08-08-028, and as may be modified by subsequent decision of the CPUC or by subsequent legislation. To the extent a change in Law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Party A has used commercially reasonable efforts to comply with such change in Law.”

“(C) If at any time during the Delivery Term, Party A’s representations and warranties set forth in this Section 10.2(xiii) become materially false or misleading, Party A covenants that it shall provide prompt written notice to Party B describing such default along with a description of its efforts to cure such default.”

(c) Title and Risk of Loss.

Section 10.3 shall be deleted in its entirety and replaced with the following:

“Title to and risk of loss related to the Product A as defined in the Confirmation Letter shall transfer from Party A to Party B at the Delivery Point. Title to and risk of loss related to the Product B as defined in the Confirmation Letter shall transfer from Party B to Party A at the Delivery Point. Party A warrants that it will deliver to Party B the Quantity of Product A free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point. Party B warrants that it will deliver to Party A the Quantity of Product B free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point.”

(d) Assignment.

Section 10.5 shall be deleted in its entirety and replaced with the following:

“10.5 Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), transfer, sell, pledge, encumber or assign this Agreement or the

accounts, revenues or proceeds hereof to its financing providers and the financing provider(s) shall assume the payment and performance obligations provided under this Agreement with respect to the transferring Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request. Each Party agrees to execute a consent to assignment agreement for the collateral assignment of this Agreement to the other Party's financing provider(s) that contains customary and reasonable terms and conditions.”

- (e) **Governing Law/Venue/Waiver of Jury Trial.** Section 10.6 shall be deleted in its entirety and replaced by the following:

“This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement.”

Add the following to the end of Section 10.6:

“THE PARTIES HEREBY CONSENT TO CONDUCT ALL DISPUTE RESOLUTION, JUDICIAL ACTIONS OR PROCEEDINGS ARISING DIRECTLY, INDIRECTLY OR OTHERWISE IN CONJUNCTION WITH, OUT OF, RELATED TO OR ARISING FROM THIS AGREEMENT IN THE CITY OF SAN DIEGO, CALIFORNIA.

- (f) **Section 10.9 Audit.** Section 10.9 is modified by adding the following subsections at the end thereof:

10.9.1. Accounting principles generally accepted in the United States of America (“GAAP”) and Securities and Exchange Commission (“SEC”) rules require Party B and its independent auditor to evaluate whether Party B must consolidate Party A’s financial information (but not financial information of Party A’s constituent members unless deemed to be included in the entity under GAAP). Party B will require access to certain records, including but not limited to financial records, and personnel of Party A to determine if consolidated financial reporting is required. Notwithstanding anything to the contrary in this Agreement, if Party B and its independent auditor determine at any time that Party B

must consolidate Party A's financial statements to comply with GAAP and/or SEC rules regarding consolidated financial reporting, Party B shall require from Party A and Party A agrees to provide to Party B the following during the Term of this Agreement:

- (i) Unaudited financial statements of Party A prepared in accordance with GAAP as 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 15 calendar days of the end of the applicable reporting period (or the Business Day thereafter);
- (ii) Unaudited financial schedules of Party A, as deemed necessary for Party B 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 15 calendar days of the end of the applicable reporting period (or the Business Day thereafter);
- (iii) Unaudited financial statements of Party A prepared in accordance with GAAP as of the end of each calendar month. The financial statements provided with regard to this Section 10.9.1(iii) should only include the balance sheet and income statement for the current month to date and year to date period and are to be provided within 15 calendar days of the end of the applicable month end (or the Business Day thereafter);
- (iv) Access to Party A's records, accounting and other, and accounting and management personnel as reasonably determined by both Party B and Party A so that (i) Party B's independent auditor or its internal auditors 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 (ii) Party B can be provided analytical information, as needed, to enable Party B 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;" and
- (v) Upon the request of Party B, such certifications by a duly authorized

representative(s) of Party A as may be reasonably requested by Party B (which certifications shall presumptively be reasonable if the certifications are substantially identical to those required by Party B or its parent of business units of Party B or its parent).

10.9.2. Party B shall provide Notice to Party A, if, in the sole discretion of Party B, internal controls over financial reporting (directly or indirectly, alone or in combination with other factors) by Party A would be considered material to Party B or its parent company's financial statements, financial condition or internal controls over financial reporting.

10.9.3. If Party B determines Party A's internal controls over financial reporting are not operating effectively or have resulted in a control deficiency, Party B will notify Party A of such occurrence. Upon receipt of such notice Party A will have thirty (30) days to remediate any deficiency in Party A's internal controls over financial reporting identified by Party B, which Party B and Party B's independent auditor deem to be necessary to ensure Party A's internal controls over financial reporting are adequate, during or as a result of the audits permitted under Section 10.9.1(iv) or any other.

10.9.4. As soon as possible, but in no event later than two (2) Business Days following any occurrence that would affect Party A in any material way, Party A shall provide to Party B a Notice describing such occurrence in sufficient detail to permit Party B 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 Party B and its parent company at such time, including but not limited to the following events:

- (i) Acquisition or disposition of a material amount of assets;
- (ii) Creation of a material direct financial obligation or off-balance sheet financing arrangement;
- (iii) Existence of material litigation; and
- (iv) Entry into, or termination of, a material contract upon which Party A's business is substantially dependent.

10.9.5. Any information provided to Party B shall be treated as confidential and Party B shall limit disclosure of Party A's information under this Section 10.9.5 to Party B

Representatives, who have a need to know such information and each Party B Representative shall also agree to abide by the confidentiality terms contained herein, except that such information may be disclosed in connection with the preparation, review, certification and publication of Party B's consolidated financial statements as deemed necessary by Party B. Party B may also be required to provide Party A's financial information to the SEC and the Public Company Accounting Oversight Board in connection with any oversight of Party B or Party B's financial statements.

10.9.6. As reasonably requested by Party B, Party A agrees to provide Party B such information or schedules, similar to the items noted in Section 10.9.1 above, to enable Party B to prepare consolidated financial statements and schedules as may be required from Party B 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.

10.9.7. Party A shall notify Party B at any time during the term of this Agreement of any services provided or proposed to be provided to Party A by Party B's independent auditor. Party A is prohibited from engaging Party B's independent auditor for any services or in any consulting agreement without the express written consent of Party B, for which approval will not be unreasonably withheld; provided that Party A is authorized to continue to use throughout the term of this Agreement its current independent auditor to perform auditing services on its behalf.

(g) **Section 10.11 Confidentiality.** Section 10.11 shall be deleted in its entirety and replaced with the following:

10.11 Confidentiality.

(a) General. Neither Party shall disclose the non-public terms and conditions of this Agreement, or any Transaction hereunder to a third party, other than, and with respect to Party B subject to the further restrictions set forth in Section 10.11(d) (i) Party A's Affiliates, SDG&E Affiliates (as defined below in Section 10.11(e)) and its and their officers, directors, employees, lenders, investors, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential, (ii) for disclosure to the Procurement Review Group, as defined in CPUC Decision (D) 02-08-071, subject to a confidentiality agreement, (iii) for disclosure to "non-market participants", as defined in CPUC D.08-04-023 and as limited and

subject to the procedures and protections established in CPUC D.08-04-023, or to "reviewing representatives" of market participants, as provided in CPUC D.09-03-046 and as limited and subject to the procedures, eligibility criteria and protections established with respect to disclosure to such reviewing representatives in CPUC D. 09-30-046; and with respect to any disclosure in accordance with this subsection (iii) subject to the recipient executing a confidentiality agreement, (iv) in order to comply with any applicable law, regulation or any exchange, control area or CAISO rule, (v) in order to comply with any order issued by a court or entity with competent jurisdiction over the disclosing party, other than to the CPUC or FERC, (vi) to the CPUC under seal and FERC subject to a request for confidential treatment pursuant to 18 CFR Section 388.112 for purposes of procuring approval from the CPUC or FERC of the transactions contemplated hereby, (vii) in order to comply with any applicable regulation, rule or order of the CPUC or FERC, other than as described in clause (vi) above, or (viii) disclosure of terms specified in and pursuant to Section 10.11(b) of this Participation Agreement. Notwithstanding any of the foregoing, prior to its compliance with Section 10.11(d), Party B shall not disclose NaturEner Confidential Information (as defined below in Section 10.11(e)) to any of the entities set forth in clauses (ii), (iii) or (vi). Subject to compliance with Section 10.11(d), in connection with requests made pursuant to clauses (iv), (v) or (viii) of this Section 10.11(a) ("Disclosure Order") each Party shall use Commercially Reasonable Efforts (as defined below in Section 10.11(e)) to notify the other Party prior to disclosing any non-public term or condition of any of this Agreement, or any NaturEner Confidential Information and use Commercially Reasonable Efforts to prevent or limit such disclosure. After providing notification and using such Commercially Reasonable Efforts to prevent or limit such disclosure, the Party so obligated to disclose such information shall not be (i) prohibited from complying with a Disclosure Order or (ii) liable to the other Party for monetary or other damages incurred in connection with the disclosure of the confidential information. Except as provided in the preceding sentence, Party B and Party A shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

(b) CPUC Approvals. Notwithstanding Section 10.11(a) of this Agreement, at any time on or after the date on which Party B makes its filing seeking CPUC Approval, either Party shall be permitted to disclose the following terms with respect to this Agreement: Party names, resource type, delivery term, Project location, contract capacity, anticipated commercial operation date, contract quantity and delivery point.

(c) Use of Confidential Information. Nothing in Sections 10.11(a) and (b) shall be construed as prohibiting a party hereunder from using any confidential information in connection with

(i) any claim against another Party hereunder, (ii) any exercise by a Party hereunder of any of its rights hereunder.

(d) Confidential Treatment.

(i) Submissions under Seal/Request for Confidential Treatment. Notwithstanding Section 10.11(a), Party B's submission to the FERC or CPUC of any application, advice letter, response to a data request or for other information or documentation in connection with Party B seeking approval of this Agreement, and the Transactions contemplated hereunder, shall be submitted to the FERC or CPUC under seal consistent with and to the fullest extent permitted by the restrictions, protections and procedures of the FERC or the CPUC.

(ii) NaturEnerg Confidential Information. For NaturEnerg Confidential Information eligible for confidential treatment pursuant to the restrictions, protections, and procedures set forth in the CPUC's rulemakings to implement Senate Bill No. 1488, which include, but are not limited to, the restrictions, protections, and procedures set forth in R.05-06-40 and further decisions arising out of such proceedings, Party B shall request that the CPUC provide confidential treatment for such information pursuant to such restrictions, protections, and procedures. In connection with its submission of any NaturEnerg Confidential Information not covered by such restrictions, protections and procedures pursuant to Senate Bill No. 1488, Party B shall request that the CPUC accord the NaturEnerg Confidential Information confidential treatment in accordance with CPUC General Order 66-C and P.U. Code Section 583. Party B shall request that upon the withdrawal by Party B of the CPUC request for approval requiring the submission of NaturEnerg Confidential Information or a decision by the CPUC on the Party B request for approval, any recipient of such NaturEnerg Confidential Information shall be obligated to (i) return the NaturEnerg Confidential Information to Party B; and/or (ii) provide a certification to Party B and Party A that the recipient has destroyed all written versions and deleted all electronic versions of the NaturEnerg Confidential Information. In the event such recipient elects option (i) immediately above, Party B provide a certification to Party A that the recipient has returned all NaturEnerg Confidential Information to Party B and that Party B shall destroy all such information received from such recipient. Party B shall similarly request that FERC provide confidential treatment to NaturEnerg Confidential Information pursuant to the restrictions, protections and procedures set forth in 18 CFR section 338.12, and Party B shall establish procedures comparable to those set forth above with respect to the termination of the CPUC proceedings and to the extent

permitted for the return and/or destruction of any confidential information by third party recipients of any confidential information upon the termination of any FERC proceeding in which Party B seeks any of the FERC approvals requiring the submission of NaturEner Confidential Information.

(e) Defined Terms. For purposes of this Section 10.11, the following terms shall have the meanings set forth below:

“Commercially Reasonable Efforts” means the exercise of commercially reasonable and diligent efforts consistent with prudent management practices, provided that the applicable party shall not be required to provide any of its own funds or bear any liability in addressing the matter in issue, it being understood that this proviso does not limit any express funding obligation of the Parties set forth in this Agreement.

“NaturEner Confidential Information” means any information relating to (1) the proprietary, nonpublic inputs to Party A’s base case model for the Project, (2) the developer base case target (as defined in such base case model), (3) the project budget, (4) material Project contracts other than this Agreement, (5) any developer’s fee payable to Party A’s Affiliate.

“SDG&E Affiliate” means (i) any other “public utility” regulated by the CPUC that directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, Investor, (ii) any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls or is controlled by such public utilities.

(h) **Publicity.** Add a new Section 10.12 to Article 10 as follows:

“**10.12 Publicity.** Except as otherwise agreed to above or allowed in Section 10.11, no announcement, publicity, advertising, press release, promotional or marketing materials regarding the arrangements contemplated under this Agreement, including the existence hereof, shall be made by either Party without the prior written approval of the other Party which approval shall not be unreasonably withheld or delayed.”

(i) **Dispute Resolution.** Add a new Section 10.13 to Article 10 as follows:

“10.13 Dispute Resolution.

- (a) If a dispute shall arise between the Parties relating to the interpretation of this Agreement or to performance of any Transaction under it, the Party desiring resolution of the dispute shall notify the other Party in writing. The notice shall set forth the matter in dispute in reasonable detail and a proposed solution.

- (b) The Parties shall attempt to resolve any dispute within 30 calendar days after delivery of the written notice referred to above. Any disputes not so resolved shall be referred by each Party to a senior officer (or the officer's designee) for resolution. If the Parties fail to reach an agreement within 30 days after such referral, each Party shall have the right to pursue any and all remedies provided in this Agreement and as afforded by law.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be duly executed.

NATURENER RIM ROCK WIND ENERGY, LLC,
a Delaware limited liability company

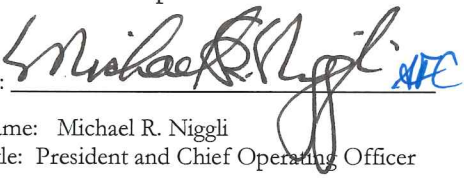
BY: NATURENER USA, LLC,
ITS GENERAL MANAGER

BY: 

NAME: José Maria Sánchez Seara

TITLE: President and Chief Executive Officer

SAN DIEGO GAS & ELECTRIC COMPANY,
a California corporation

By: 

Name: Michael R. Niggli
Title: President and Chief Operating Officer

GENERAL TERMS AND CONDITIONS

ARTICLE ONE: GENERAL DEFINITIONS

1.1 “Affiliate” means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

1.2 “Agreement” has the meaning set forth in the Cover Sheet.

1.3 “Bankrupt” means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

1.4 “Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party’s principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

1.5 “Buyer” means the Party to a Transaction that is obligated to purchase and receive, or cause to be received, the Product, as specified in the Transaction.

1.6 “Call Option” means an Option entitling, but not obligating, the Option Buyer to purchase and receive the Product from the Option Seller at a price equal to the Strike Price for the Delivery Period for which the Option may be exercised, all as specified in the Transaction. Upon proper exercise of the Option by the Option Buyer, the Option Seller will be obligated to sell and deliver the Product for the Delivery Period for which the Option has been exercised.

1.7 “Claiming Party” has the meaning set forth in Section 3.3.

1.8 “Claims” means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys’ fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

1.9 “Confirmation” has the meaning set forth in Section 2.3.

1.10 “Contract Price” means the price in \$U.S. (unless otherwise provided for) to be paid by Buyer to Seller for the purchase of the Product, as specified in the Transaction.

1.11 “Costs” means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace a Terminated Transaction; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with the termination of a Transaction.

1.12 “Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issues rating by S&P, Moody’s or any other rating agency agreed by the Parties as set forth in the Cover Sheet.

1.13 “Cross Default Amount” means the cross default amount, if any, set forth in the Cover Sheet for a Party.

1.14 “Defaulting Party” has the meaning set forth in Section 5.1.

1.15 “Delivery Period” means the period of delivery for a Transaction, as specified in the Transaction.

1.16 “Delivery Point” means the point at which the Product will be delivered and received, as specified in the Transaction.

1.17 “Downgrade Event” has the meaning set forth on the Cover Sheet.

1.18 “Early Termination Date” has the meaning set forth in Section 5.2.

1.19 “Effective Date” has the meaning set forth on the Cover Sheet.

1.20 “Equitable Defenses” means any bankruptcy, insolvency, reorganization and other laws affecting creditors’ rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.

1.21 “Event of Default” has the meaning set forth in Section 5.1.

1.22 “FERC” means the Federal Energy Regulatory Commission or any successor government agency.

1.23 “Force Majeure” means an event or circumstance which prevents one Party from performing its obligations under one or more Transactions, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Buyer’s markets; (ii) Buyer’s inability economically

to use or resell the Product purchased hereunder; (iii) the loss or failure of Seller's supply; or (iv) Seller's ability to sell the Product at a price greater than the Contract Price. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider unless (i) such Party has contracted for firm transmission with a Transmission Provider for the Product to be delivered to or received at the Delivery Point and (ii) such curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the Transmission Provider's tariff; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred. The applicability of Force Majeure to the Transaction is governed by the terms of the Products and Related Definitions contained in Schedule P.

1.24 "Gains" means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of a Terminated Transaction, determined in a commercially reasonable manner.

1.25 "Guarantor" means, with respect to a Party, the guarantor, if any, specified for such Party on the Cover Sheet.

1.26 "Interest Rate" means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

1.27 "Letter(s) of Credit" means one or more irrevocable, transferable standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a credit rating of at least A- from S&P or A3 from Moody's, in a form acceptable to the Party in whose favor the letter of credit is issued. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

1.28 "Losses" means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of a Terminated Transaction, determined in a commercially reasonable manner.

1.29 "Master Agreement" has the meaning set forth on the Cover Sheet.

1.30 "Moody's" means Moody's Investor Services, Inc. or its successor.

1.31 "NERC Business Day" means any day except a Saturday, Sunday or a holiday as defined by the North American Electric Reliability Council or any successor organization thereto. A NERC Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

1.32 “Non-Defaulting Party” has the meaning set forth in Section 5.2.

1.33 “Offsetting Transactions” mean any two or more outstanding Transactions, having the same or overlapping Delivery Period(s), Delivery Point and payment date, where under one or more of such Transactions, one Party is the Seller, and under the other such Transaction(s), the same Party is the Buyer.

1.34 “Option” means the right but not the obligation to purchase or sell a Product as specified in a Transaction.

1.35 “Option Buyer” means the Party specified in a Transaction as the purchaser of an option, as defined in Schedule P.

1.36 “Option Seller” means the Party specified in a Transaction as the seller of an option , as defined in Schedule P.

1.37 “Party A Collateral Threshold” means the collateral threshold, if any, set forth in the Cover Sheet for Party A.

1.38 “Party B Collateral Threshold” means the collateral threshold, if any, set forth in the Cover Sheet for Party B.

1.39 “Party A Independent Amount” means the amount , if any, set forth in the Cover Sheet for Party A.

1.40 “Party B Independent Amount” means the amount , if any, set forth in the Cover Sheet for Party B.

1.41 “Party A Rounding Amount” means the amount, if any, set forth in the Cover Sheet for Party A.

1.42 “Party B Rounding Amount” means the amount, if any, set forth in the Cover Sheet for Party B.

1.43 “Party A Tariff” means the tariff, if any, specified in the Cover Sheet for Party A.

1.44 “Party B Tariff” means the tariff, if any, specified in the Cover Sheet for Party B.

1.45 “Performance Assurance” means collateral in the form of either cash, Letter(s) of Credit, or other security acceptable to the Requesting Party.

1.46 “Potential Event of Default” means an event which, with notice or passage of time or both, would constitute an Event of Default.

1.47 “Product” means electric capacity, energy or other product(s) related thereto as specified in a Transaction by reference to a Product listed in Schedule P hereto or as otherwise specified by the Parties in the Transaction.

1.48 “Put Option” means an Option entitling, but not obligating, the Option Buyer to sell and deliver the Product to the Option Seller at a price equal to the Strike Price for the Delivery Period for which the option may be exercised, all as specified in a Transaction. Upon proper exercise of the Option by the Option Buyer, the Option Seller will be obligated to purchase and receive the Product.

1.49 “Quantity” means that quantity of the Product that Seller agrees to make available or sell and deliver, or cause to be delivered, to Buyer, and that Buyer agrees to purchase and receive, or cause to be received, from Seller as specified in the Transaction.

1.50 “Recording” has the meaning set forth in Section 2.4.

1.51 “Replacement Price” means the price at which Buyer, acting in a commercially reasonable manner, purchases at the Delivery Point a replacement for any Product specified in a Transaction but not delivered by Seller, plus (i) costs reasonably incurred by Buyer in purchasing such substitute Product and (ii) additional transmission charges, if any, reasonably incurred by Buyer to the Delivery Point, or at Buyer’s option, the market price at the Delivery Point for such Product not delivered as determined by Buyer in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Buyer be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller’s liability. For the purposes of this definition, Buyer shall be considered to have purchased replacement Product to the extent Buyer shall have entered into one or more arrangements in a commercially reasonable manner whereby Buyer repurchases its obligation to sell and deliver the Product to another party at the Delivery Point.

1.52 “S&P” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) or its successor.

1.53 “Sales Price” means the price at which Seller, acting in a commercially reasonable manner, resells at the Delivery Point any Product not received by Buyer, deducting from such proceeds any (i) costs reasonably incurred by Seller in reselling such Product and (ii) additional transmission charges, if any, reasonably incurred by Seller in delivering such Product to the third party purchasers, or at Seller’s option, the market price at the Delivery Point for such Product not received as determined by Seller in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Buyer’s liability. For purposes of this definition, Seller shall be considered to have resold such Product to the extent Seller shall have entered into one or more arrangements in a commercially reasonable manner whereby Seller repurchases its obligation to purchase and receive the Product from another party at the Delivery Point.

1.54 “Schedule” or “Scheduling” means the actions of Seller, Buyer and/or their designated representatives, including each Party’s Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity and type of Product to be delivered on any given day or days during the Delivery Period at a specified Delivery Point.

1.55 “Seller” means the Party to a Transaction that is obligated to sell and deliver, or cause to be delivered, the Product, as specified in the Transaction.

1.56 “Settlement Amount” means, with respect to a Transaction and the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in U.S. Dollars, which such party incurs as a result of the liquidation of a Terminated Transaction pursuant to Section 5.2.

1.57 “Strike Price” means the price to be paid for the purchase of the Product pursuant to an Option.

1.58 “Terminated Transaction” has the meaning set forth in Section 5.2.

1.59 “Termination Payment” has the meaning set forth in Section 5.3.

1.60 “Transaction” means a particular transaction agreed to by the Parties relating to the sale and purchase of a Product pursuant to this Master Agreement.

1.61 “Transmission Provider” means any entity or entities transmitting or transporting the Product on behalf of Seller or Buyer to or from the Delivery Point in a particular Transaction.

ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS

2.1 Transactions. A Transaction shall be entered into upon agreement of the Parties orally or, if expressly required by either Party with respect to a particular Transaction, in writing, including an electronic means of communication. Each Party agrees not to contest, or assert any defense to, the validity or enforceability of the Transaction entered into in accordance with this Master Agreement (i) based on any law requiring agreements to be in writing or to be signed by the parties, or (ii) based on any lack of authority of the Party or any lack of authority of any employee of the Party to enter into a Transaction.

2.2 Governing Terms. Unless otherwise specifically agreed, each Transaction between the Parties shall be governed by this Master Agreement. This Master Agreement (including all exhibits, schedules and any written supplements hereto), , the Party A Tariff, if any, and the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmations accepted in accordance with Section 2.3) shall form a single integrated agreement between the Parties. Any inconsistency between any terms of this Master Agreement and any terms of the Transaction shall be resolved in favor of the terms of such Transaction.

2.3 Confirmation. Seller may confirm a Transaction by forwarding to Buyer by facsimile within three (3) Business Days after the Transaction is entered into a confirmation (“Confirmation”) substantially in the form of Exhibit A. If Buyer objects to any term(s) of such Confirmation, Buyer shall notify Seller in writing of such objections within two (2) Business Days of Buyer’s receipt thereof, failing which Buyer shall be deemed to have accepted the terms as sent. If Seller fails to send a Confirmation within three (3) Business Days after the Transaction is entered into, a Confirmation substantially in the form of Exhibit A, may be forwarded by Buyer to Seller. If Seller objects to any term(s) of such Confirmation, Seller shall notify Buyer of such objections within two (2) Business Days of Seller’s receipt thereof, failing

which Seller shall be deemed to have accepted the terms as sent. If Seller and Buyer each send a Confirmation and neither Party objects to the other Party's Confirmation within two (2) Business Days of receipt, Seller's Confirmation shall be deemed to be accepted and shall be the controlling Confirmation, unless (i) Seller's Confirmation was sent more than three (3) Business Days after the Transaction was entered into and (ii) Buyer's Confirmation was sent prior to Seller's Confirmation, in which case Buyer's Confirmation shall be deemed to be accepted and shall be the controlling Confirmation. Failure by either Party to send or either Party to return an executed Confirmation or any objection by either Party shall not invalidate the Transaction agreed to by the Parties.

2.4 Additional Confirmation Terms. If the Parties have elected on the Cover Sheet to make this Section 2.4 applicable to this Master Agreement, when a Confirmation contains provisions, other than those provisions relating to the commercial terms of the Transaction (e.g., price or special transmission conditions), which modify or supplement the general terms and conditions of this Master Agreement (e.g., arbitration provisions or additional representations and warranties), such provisions shall not be deemed to be accepted pursuant to Section 2.3 unless agreed to either orally or in writing by the Parties; provided that the foregoing shall not invalidate any Transaction agreed to by the Parties.

2.5 Recording. Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording ("Recording") of all telephone conversations between the Parties to this Master Agreement, and that any such Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees. The Recording, and the terms and conditions described therein, if admissible, shall be the controlling evidence for the Parties' agreement with respect to a particular Transaction in the event a Confirmation is not fully executed (or deemed accepted) by both Parties. Upon full execution (or deemed acceptance) of a Confirmation, such Confirmation shall control in the event of any conflict with the terms of a Recording, or in the event of any conflict with the terms of this Master Agreement.

ARTICLE THREE: OBLIGATIONS AND DELIVERIES

3.1 Seller's and Buyer's Obligations. With respect to each Transaction, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Quantity of the Product at the Delivery Point, and Buyer shall pay Seller the Contract Price; provided, however, with respect to Options, the obligations set forth in the preceding sentence shall only arise if the Option Buyer exercises its Option in accordance with its terms. Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product or its receipt at and from the Delivery Point.

3.2 Transmission and Scheduling. Seller shall arrange and be responsible for transmission service to the Delivery Point and shall Schedule or arrange for Scheduling services

with its Transmission Providers, as specified by the Parties in the Transaction, or in the absence thereof, in accordance with the practice of the Transmission Providers, to deliver the Product to the Delivery Point. Buyer shall arrange and be responsible for transmission service at and from the Delivery Point and shall Schedule or arrange for Scheduling services with its Transmission Providers to receive the Product at the Delivery Point.

3.3 Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under the Transaction and such Party (the “Claiming Party”) gives notice and details of the Force Majeure to the other Party as soon as practicable, then, unless the terms of the Product specify otherwise, the Claiming Party shall be excused from the performance of its obligations with respect to such Transaction (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE

4.1 Seller Failure. If Seller fails to schedule and/or deliver all or part of the Product pursuant to a Transaction, and such failure is not excused under the terms of the Product or by Buyer’s failure to perform, then Seller shall pay Buyer, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if “Accelerated Payment of Damages” is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

4.2 Buyer Failure. If Buyer fails to schedule and/or receive all or part of the Product pursuant to a Transaction and such failure is not excused under the terms of the Product or by Seller’s failure to perform, then Buyer shall pay Seller, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if “Accelerated Payment of Damages” is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Sales Price from the Contract Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES

5.1 Events of Default. An “Event of Default” shall mean, with respect to a Party (a “Defaulting Party”), the occurrence of any of the following:

- (a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice;

- (b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated;
- (c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party's obligations to deliver or receive the Product, the exclusive remedy for which is provided in Article Four) if such failure is not remedied within three (3) Business Days after written notice;
- (d) such Party becomes Bankrupt;
- (e) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Article Eight hereof;
- (f) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;
- (g) if the applicable cross default section in the Cover Sheet is indicated for such Party, the occurrence and continuation of (i) a default, event of default or other similar condition or event in respect of such Party or any other party specified in the Cover Sheet for such Party under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet), which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable or (ii) a default by such Party or any other party specified in the Cover Sheet for such Party in making on the due date therefor one or more payments, individually or collectively, in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet);
- (h) with respect to such Party's Guarantor, if any:
 - (i) if any representation or warranty made by a Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated;
 - (ii) the failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any guaranty made in connection with this Agreement and such failure shall not be remedied within three (3) Business Days after written notice;

- (iii) a Guarantor becomes Bankrupt;
- (iv) the failure of a Guarantor's guaranty to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of such Party under each Transaction to which such guaranty shall relate without the written consent of the other Party; or
- (v) a Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any guaranty.

5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right (i) to designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date ("Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate all, but not less than all, Transactions (each referred to as a "Terminated Transaction") between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for each such Terminated Transaction as of the Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such Terminated Transactions are commercially impracticable to liquidate and terminate or may not be liquidated and terminated under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable).

5.3 Net Out of Settlement Amounts. The Non-Defaulting Party shall aggregate all Settlement Amounts into a single amount by: netting out (a) all Settlement Amounts that are due to the Defaulting Party, plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party pursuant to Article Eight, plus any or all other amounts due to the Defaulting Party under this Agreement against (b) all Settlement Amounts that are due to the Non-Defaulting Party, plus any or all other amounts due to the Non-Defaulting Party under this Agreement, so that all such amounts shall be netted out to a single liquidated amount (the "Termination Payment") payable by one Party to the other. The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate.

5.4 Notice of Payment of Termination Payment. As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Party that owes it within two (2) Business Days after such notice is effective.

5.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within two (2) Business Days of receipt of Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written

explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer Performance Assurance to the Non-Defaulting Party in an amount equal to the Termination Payment.

5.6 Closeout Setoffs.

Option A: After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

Option B: After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party or any of its Affiliates to the Non-Defaulting Party or any of its Affiliates under any other agreements, instruments or undertakings between the Defaulting Party or any of its Affiliates and the Non-Defaulting Party or any of its Affiliates and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

Option C: Neither Option A nor B shall apply.

5.7 Suspension of Performance. Notwithstanding any other provision of this Master Agreement, if (a) an Event of Default or (b) a Potential Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right (i) to suspend performance under any or all Transactions; provided, however, in no event shall any such suspension continue for longer than ten (10) NERC Business Days with respect to any single Transaction unless an early Termination Date shall have been declared and notice thereof pursuant to Section 5.2 given, and (ii) to the extent an Event of Default shall have occurred and be continuing to exercise any remedy available at law or in equity.

ARTICLE SIX: PAYMENT AND NETTING

6.1 Billing Period. Unless otherwise specifically agreed upon by the Parties in a Transaction, the calendar month shall be the standard period for all payments under this Agreement (other than Termination Payments and, if “Accelerated Payment of Damages” is specified by the Parties in the Cover Sheet, payments pursuant to Section 4.1 or 4.2 and Option premium payments pursuant to Section 6.7). As soon as practicable after the end of each month,

each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month.

6.2 Timeliness of Payment. Unless otherwise agreed by the Parties in a Transaction, all invoices under this Master Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each month, or tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

6.3 Disputes and Adjustments of Invoices. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.3 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance of a Transaction occurred, the right to payment for such performance is waived.

6.4 Netting of Payments. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date pursuant to all Transactions through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Products during the monthly billing period under this Master Agreement, including any related damages calculated pursuant to Article Four (unless one of the Parties elects to accelerate payment of such amounts as permitted by Article Four), interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

6.5 Payment Obligation Absent Netting. If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, including, but not limited to, any related damage amounts calculated pursuant to Article Four, interest, and payments or credits, that Party shall pay such sum in full when due.

6.6 Security. Unless the Party benefiting from Performance Assurance or a guaranty notifies the other Party in writing, and except in connection with a liquidation and termination in accordance with Article Five, all amounts netted pursuant to this Article Six shall not take into account or include any Performance Assurance or guaranty which may be in effect to secure a Party's performance under this Agreement.

6.7 Payment for Options. The premium amount for the purchase of an Option shall be paid within two (2) Business Days of receipt of an invoice from the Option Seller. Upon exercise of an Option, payment for the Product underlying such Option shall be due in accordance with Section 6.1.

6.8 Transaction Netting. If the Parties enter into one or more Transactions, which in conjunction with one or more other outstanding Transactions, constitute Offsetting Transactions, then all such Offsetting Transactions may by agreement of the Parties, be netted into a single Transaction under which:

- (a) the Party obligated to deliver the greater amount of Energy will deliver the difference between the total amount it is obligated to deliver and the total amount to be delivered to it under the Offsetting Transactions, and
- (b) the Party owing the greater aggregate payment will pay the net difference owed between the Parties.

Each single Transaction resulting under this Section shall be deemed part of the single, indivisible contractual arrangement between the parties, and once such resulting Transaction occurs, outstanding obligations under the Offsetting Transactions which are satisfied by such offset shall terminate.

ARTICLE SEVEN: LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages. EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR

OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS

8.1 Party A Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.1(a) is specified on the Cover Sheet, Section 8.1(a) Option C shall apply exclusively. If none of Sections 8.1(b), 8.1(c) or 8.1(d) are specified on the Cover Sheet, Section 8.1(b) shall apply exclusively.

(a) Financial Information. Option A: If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party B's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Party B's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as Party B diligently pursues the preparation, certification and delivery of the statements.

Option B: If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for the party(s) specified on the Cover Sheet and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the party(s) specified on the Cover Sheet. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

Option C: Party A may request from Party B the information specified in the Cover Sheet.

(b) Credit Assurances. If Party A has reasonable grounds to believe that Party B's creditworthiness or performance under this Agreement has become unsatisfactory, Party A will provide Party B with written notice requesting Performance Assurance in an amount determined by Party A in a commercially reasonable manner. Upon receipt of such notice Party B shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party A. In the event that Party B fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default under Article Five will be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

(c) Collateral Threshold. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to Party A plus Party B's Independent Amount, if any, exceeds the Party B Collateral Threshold, then Party A, on any Business Day, may request that Party B provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party B's Independent Amount, if any, exceeds the Party B Collateral Threshold (rounding upwards for any fractional amount to the next Party B Rounding Amount) ("Party B Performance Assurance"), less any Party B Performance Assurance already posted with Party A. Such Party B Performance Assurance shall be delivered to Party A within three (3) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Party B, at its sole cost, may request that such Party B Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment plus Party B's Independent Amount, if any, (rounding upwards for any fractional amount to the next Party B Rounding Amount). In the event that Party B fails to provide Party B Performance Assurance pursuant to the terms of this Article Eight within three (3) Business Days, then an Event of Default under Article Five shall be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

For purposes of this Section 8.1(c), the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by Party A as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party B to Party A, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions.

(d) Downgrade Event. If at any time there shall occur a Downgrade Event in respect of Party B, then Party A may require Party B to provide Performance Assurance in an amount determined by Party A in a commercially reasonable manner. In the event Party B shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default shall be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

(e) If specified on the Cover Sheet, Party B shall deliver to Party A, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party A.

8.2 Party B Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.2(a) is specified on the Cover Sheet, Section 8.2(a) Option C shall apply exclusively. If none of Sections 8.2(b), 8.2(c) or 8.2(d) are specified on the Cover Sheet, Section 8.2(b) shall apply exclusively.

(a) Financial Information. Option A: If requested by Party B, Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party A's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Party's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as such Party diligently pursues the preparation, certification and delivery of the statements.

Option B: If requested by Party B, Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for the party(s) specified on the Cover Sheet and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the party(s) specified on the Cover Sheet. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

Option C: Party B may request from Party A the information specified in the Cover Sheet.

(b) Credit Assurances. If Party B has reasonable grounds to believe that Party A's creditworthiness or performance under this Agreement has become unsatisfactory, Party B will provide Party A with written notice requesting Performance Assurance in an amount determined by Party B in a commercially reasonable manner. Upon receipt of such notice Party A shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party B. In the event that Party A fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, then an Event of Default under Article Five will be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

(c) Collateral Threshold. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to Party B plus Party A's Independent Amount, if any, exceeds the Party A Collateral Threshold, then Party B, on any Business Day, may request that Party A provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party A's Independent Amount, if any, exceeds the Party A Collateral

Threshold (rounding upwards for any fractional amount to the next Party A Rounding Amount) (“Party A Performance Assurance”), less any Party A Performance Assurance already posted with Party B. Such Party A Performance Assurance shall be delivered to Party B within three (3) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Party A, at its sole cost, may request that such Party A Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment plus Party A’s Independent Amount, if any, (rounding upwards for any fractional amount to the next Party A Rounding Amount). In the event that Party A fails to provide Party A Performance Assurance pursuant to the terms of this Article Eight within three (3) Business Days, then an Event of Default under Article Five shall be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

For purposes of this Section 8.2(c), the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by Party B as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party A to Party B, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions.

(d) Downgrade Event. If at any time there shall occur a Downgrade Event in respect of Party A, then Party B may require Party A to provide Performance Assurance in an amount determined by Party B in a commercially reasonable manner. In the event Party A shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, then an Event of Default shall be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

(e) If specified on the Cover Sheet, Party A shall deliver to Party B, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party B.

8.3 Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent either or both Parties deliver Performance Assurance hereunder, each Party (a “Pledgor”) hereby grants to the other Party (the “Secured Party”) a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, such Secured Party, and each Party agrees to take such action as the other Party reasonably requires in order to perfect the Secured Party’s first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, the Non-Defaulting Party may do any one or more of the following: (i) exercise any of the rights and remedies of a Secured Party with respect to all Performance Assurance, including any such rights and remedies under law then in effect; (ii) exercise its rights of setoff against any and all property of the Defaulting Party in the possession of the Non-Defaulting Party or its agent; (iii) draw on any outstanding

Letter of Credit issued for its benefit; and (iv) liquidate all Performance Assurance then held by or for the benefit of the Secured Party free from any claim or right of any nature whatsoever of the Defaulting Party, including any equity or right of purchase or redemption by the Defaulting Party. The Secured Party shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Pledgor's obligations under the Agreement (the Pledgor remaining liable for any amounts owing to the Secured Party after such application), subject to the Secured Party's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

ARTICLE NINE: GOVERNMENTAL CHARGES

9.1 Cooperation. Each Party shall use reasonable efforts to implement the provisions of and to administer this Master Agreement in accordance with the intent of the parties to minimize all taxes , so long as neither Party is materially adversely affected by such efforts.

9.2 Governmental Charges. Seller shall pay or cause to be paid all taxes imposed by any government authority("Governmental Charges") on or with respect to the Product or a Transaction arising prior to the Delivery Point. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or a Transaction at and from the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product and are, therefore, the responsibility of the Seller). In the event Seller is required by law or regulation to remit or pay Governmental Charges which are Buyer's responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by law or regulation to remit or pay Governmental Charges which are Seller's responsibility hereunder, Buyer may deduct the amount of any such Governmental Charges from the sums due to Seller under Article 6 of this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law.

ARTICLE TEN: MISCELLANEOUS

10.1 Term of Master Agreement. The term of this Master Agreement shall commence on the Effective Date and shall remain in effect until terminated by either Party upon (thirty) 30 days' prior written notice; provided, however, that such termination shall not affect or excuse the performance of either Party under any provision of this Master Agreement that by its terms survives any such termination and, provided further, that this Master Agreement and any other documents executed and delivered hereunder shall remain in effect with respect to the Transaction(s) entered into prior to the effective date of such termination until both Parties have fulfilled all of their obligations with respect to such Transaction(s), or such Transaction(s) that have been terminated under Section 5.2 of this Agreement.

10.2 Representations and Warranties. On the Effective Date and the date of entering into each Transaction, each Party represents and warrants to the other Party that:

- (i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

- (ii) it has all regulatory authorizations necessary for it to legally perform its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (iii) the execution, delivery and performance of this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;
- (iv) this Master Agreement, each Transaction (including any Confirmation accepted in accordance with Section 2.3), and each other document executed and delivered in accordance with this Master Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any Equitable Defenses.
- (v) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;
- (vi) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (vii) no Event of Default or Potential Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (viii) it is acting for its own account, has made its own independent decision to enter into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) and as to whether this Master Agreement and each such Transaction (including any Confirmation accepted in accordance with Section 2.3) is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (ix) it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code;

- (x) it has entered into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all Products referred to in the Transaction to which it is a Party;
- (xi) with respect to each Transaction (including any Confirmation accepted in accordance with Section 2.3) involving the purchase or sale of a Product or an Option, it is a producer, processor, commercial user or merchant handling the Product, and it is entering into such Transaction for purposes related to its business as such; and
- (xii) the material economic terms of each Transaction are subject to individual negotiation by the Parties.

10.3 Title and Risk of Loss. Title to and risk of loss related to the Product shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Quantity of the Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point.

10.4 Indemnity. Each Party shall indemnify, defend and hold harmless the other Party from and against any Claims arising from or out of any event, circumstance, act or incident first occurring or existing during the period when control and title to Product is vested in such Party as provided in Section 10.3. Each Party shall indemnify, defend and hold harmless the other Party against any Governmental Charges for which such Party is responsible under Article Nine.

10.5 Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an affiliate of such Party which affiliate's creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.

10.6 Governing Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

10.7 Notices. All notices, requests, statements or payments shall be made as specified in the Cover Sheet. Notices (other than scheduling requests) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service or facsimile. Notice by facsimile or hand delivery shall be effective at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. A Party may change its addresses by providing notice of same in accordance herewith.

10.8 General. This Master Agreement (including the exhibits, schedules and any written supplements hereto), the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmation accepted in accordance with Section 2.3) constitute the entire agreement between the Parties relating to the subject matter. Notwithstanding the foregoing, any collateral, credit support or margin agreement or similar arrangement between the Parties shall, upon designation by the Parties, be deemed part of this Agreement and shall be incorporated herein by reference. This Agreement shall be considered for all purposes as prepared through the joint efforts of the parties and shall not be construed against one party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Except to the extent herein provided for, no amendment or modification to this Master Agreement shall be enforceable unless reduced to writing and executed by both Parties. Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment will not in any way affect outstanding Transactions under this Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as "Regulatory Event") will not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided, further, that if a Regulatory Event occurs, the Parties shall use their best efforts to reform this Agreement in order to give effect to the original intention of the Parties. The term "including" when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights shall survive the termination of this Agreement for twelve (12) months. This Agreement shall be binding on each Party's successors and permitted assigns.

10.9 Audit. Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Master Agreement. If requested, a Party shall provide to the other Party statements evidencing the Quantity delivered at the Delivery Point. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be

made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

10.10 Forward Contract. The Parties acknowledge and agree that all Transactions constitute “forward contracts” within the meaning of the United States Bankruptcy Code.

10.11 Confidentiality. If the Parties have elected on the Cover Sheet to make this Section 10.11 applicable to this Master Agreement, neither Party shall disclose the terms or conditions of a Transaction under this Master Agreement to a third party (other than the Party’s employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS

“Ancillary Services” means any of the services identified by a Transmission Provider in its transmission tariff as “ancillary services” including, but not limited to, regulation and frequency response, energy imbalance, operating reserve-spinning and operating reserve-supplemental, as may be specified in the Transaction.

“Capacity” has the meaning specified in the Transaction.

“Energy” means three-phase, 60-cycle alternating current electric energy, expressed in megawatt hours.

“Firm (LD)” means, with respect to a Transaction, that either Party shall be relieved of its obligations to sell and deliver or purchase and receive without liability only to the extent that, and for the period during which, such performance is prevented by Force Majeure. In the absence of Force Majeure, the Party to which performance is owed shall be entitled to receive from the Party which failed to deliver/receive an amount determined pursuant to Article Four.

“Firm Transmission Contingent - Contract Path” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product in the case of the Seller from the generation source to the Delivery Point or in the case of the Buyer from the Delivery Point to the ultimate sink, and (ii) such interruption or curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the applicable transmission provider’s tariff. This contingency shall excuse performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of “Force Majeure” in Section 1.23 to the contrary.

“Firm Transmission Contingent - Delivery Point” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission to the Delivery Point (in the case of Seller) or from the Delivery Point (in the case of Buyer) for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product, in the case of the Seller, to be delivered to the Delivery Point or, in the case of Buyer, to be received at the Delivery Point and (ii) such interruption or curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the applicable transmission provider’s tariff. This transmission contingency excuses performance for the duration of the interruption or curtailment, notwithstanding the provisions of the definition of “Force Majeure” in Section 1.23 to the contrary. Interruptions or curtailments of transmission other than the transmission either immediately to or from the Delivery Point shall not excuse performance

“Firm (No Force Majeure)” means, with respect to a Transaction, that if either Party fails to perform its obligation to sell and deliver or purchase and receive the Product, the Party to which performance is owed shall be entitled to receive from the Party which failed to perform an

amount determined pursuant to Article Four. Force Majeure shall not excuse performance of a Firm (No Force Majeure) Transaction.

“Into _____ (the “Receiving Transmission Provider”), Seller’s Daily Choice” means that, in accordance with the provisions set forth below, (1) the Product shall be scheduled and delivered to an interconnection or interface (“Interface”) either (a) on the Receiving Transmission Provider’s transmission system border or (b) within the control area of the Receiving Transmission Provider if the Product is from a source of generation in that control area, which Interface, in either case, the Receiving Transmission Provider identifies as available for delivery of the Product in or into its control area; and (2) Seller has the right on a daily prescheduled basis to designate the Interface where the Product shall be delivered. An “Into” Product shall be subject to the following provisions:

1. Prescheduling and Notification. Subject to the provisions of Section 6, not later than the prescheduling deadline of 11:00 a.m. CPT on the Business Day before the next delivery day or as otherwise agreed to by Buyer and Seller, Seller shall notify Buyer (“Seller’s Notification”) of Seller’s immediate upstream counterparty and the Interface (the “Designated Interface”) where Seller shall deliver the Product for the next delivery day, and Buyer shall notify Seller of Buyer’s immediate downstream counterparty.

2. Availability of “Firm Transmission” to Buyer at Designated Interface; “Timely Request for Transmission,” “ADI” and “Available Transmission.” In determining availability to Buyer of next-day firm transmission (“Firm Transmission”) from the Designated Interface, a “Timely Request for Transmission” shall mean a properly completed request for Firm Transmission made by Buyer in accordance with the controlling tariff procedures, which request shall be submitted to the Receiving Transmission Provider no later than 30 minutes after delivery of Seller’s Notification, provided, however, if the Receiving Transmission Provider is not accepting requests for Firm Transmission at the time of Seller’s Notification, then such request by Buyer shall be made within 30 minutes of the time when the Receiving Transmission Provider first opens thereafter for purposes of accepting requests for Firm Transmission.

Pursuant to the terms hereof, delivery of the Product may under certain circumstances be redesignated to occur at an Interface other than the Designated Interface (any such alternate designated interface, an “ADI”) either (a) on the Receiving Transmission Provider’s transmission system border or (b) within the control area of the Receiving Transmission Provider if the Product is from a source of generation in that control area, which ADI, in either case, the Receiving Transmission Provider identifies as available for delivery of the Product in or into its control area using either firm or non-firm transmission, as available on a day-ahead or hourly basis (individually or collectively referred to as “Available Transmission”) within the Receiving Transmission Provider’s transmission system.

3. Rights of Buyer and Seller Depending Upon Availability of/Timely Request for Firm Transmission.

A. Timely Request for Firm Transmission made by Buyer, Accepted by the Receiving Transmission Provider and Purchased by Buyer. If a Timely Request for Firm Transmission is made by Buyer and is accepted by the Receiving Transmission Provider

and Buyer purchases such Firm Transmission, then Seller shall deliver and Buyer shall receive the Product at the Designated Interface.

i. If the Firm Transmission purchased by Buyer within the Receiving Transmission Provider's transmission system from the Designated Interface ceases to be available to Buyer for any reason, or if Seller is unable to deliver the Product at the Designated Interface for any reason except Buyer's non-performance, then at Seller's choice from among the following, Seller shall: (a) to the extent Firm Transmission is available to Buyer from an ADI on a day-ahead basis, require Buyer to purchase such Firm Transmission from such ADI, and schedule and deliver the affected portion of the Product to such ADI on the basis of Buyer's purchase of Firm Transmission, or (b) require Buyer to purchase non-firm transmission, and schedule and deliver the affected portion of the Product on the basis of Buyer's purchase of non-firm transmission from the Designated Interface or an ADI designated by Seller, or (c) to the extent firm transmission is available on an hourly basis, require Buyer to purchase firm transmission, and schedule and deliver the affected portion of the Product on the basis of Buyer's purchase of such hourly firm transmission from the Designated Interface or an ADI designated by Seller.

ii. If the Available Transmission utilized by Buyer as required by Seller pursuant to Section 3A(i) ceases to be available to Buyer for any reason, then Seller shall again have those alternatives stated in Section 3A(i) in order to satisfy its obligations.

iii. Seller's obligation to schedule and deliver the Product at an ADI is subject to Buyer's obligation referenced in Section 4B to cooperate reasonably therewith. If Buyer and Seller cannot complete the scheduling and/or delivery at an ADI, then Buyer shall be deemed to have satisfied its receipt obligations to Seller and Seller shall be deemed to have failed its delivery obligations to Buyer, and Seller shall be liable to Buyer for amounts determined pursuant to Article Four.

iv. In each instance in which Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI pursuant to Sections 3A(i) or (ii), and Firm Transmission had been purchased by both Seller and Buyer into and within the Receiving Transmission Provider's transmission system as to the scheduled delivery which could not be completed as a result of the interruption or curtailment of such Firm Transmission, Buyer and Seller shall bear their respective transmission expenses and/or associated congestion charges incurred in connection with efforts to complete delivery by such alternative scheduling and delivery arrangements. In any instance except as set forth in the immediately preceding sentence, Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI under Sections 3A(i) or (ii), Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with such alternative scheduling arrangements.

B. Timely Request for Firm Transmission Made by Buyer but Rejected by the Receiving Transmission Provider. If Buyer's Timely Request for Firm Transmission is rejected by the Receiving Transmission Provider because of unavailability of Firm Transmission from the Designated Interface, then Buyer shall notify Seller within 15 minutes after receipt of the Receiving Transmission Provider's notice of rejection ("Buyer's Rejection Notice"). If Buyer timely notifies Seller of such unavailability of Firm Transmission from the Designated Interface, then Seller shall be obligated either (1) to the extent Firm Transmission is available to Buyer from an ADI on a day-ahead basis, to require Buyer to purchase (at Buyer's own expense) such Firm Transmission from such ADI and schedule and deliver the Product to such ADI on the basis of Buyer's purchase of Firm Transmission, and thereafter the provisions in Section 3A shall apply, or (2) to require Buyer to purchase (at Buyer's own expense) non-firm transmission, and schedule and deliver the Product on the basis of Buyer's purchase of non-firm transmission from the Designated Interface or an ADI designated by the Seller, in which case Seller shall bear the risk of interruption or curtailment of the non-firm transmission; provided, however, that if the non-firm transmission is interrupted or curtailed or if Seller is unable to deliver the Product for any reason, Seller shall have the right to schedule and deliver the Product to another ADI in order to satisfy its delivery obligations, in which case Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with Seller's inability to deliver the Product as originally prescheduled. If Buyer fails to timely notify Seller of the unavailability of Firm Transmission, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface, and the provisions of Section 3D shall apply.

C. Timely Request for Firm Transmission Made by Buyer, Accepted by the Receiving Transmission Provider and not Purchased by Buyer. If Buyer's Timely Request for Firm Transmission is accepted by the Receiving Transmission Provider but Buyer elects to purchase non-firm transmission rather than Firm Transmission to take delivery of the Product, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface. In such circumstances, if Seller's delivery is interrupted as a result of transmission relied upon by Buyer from the Designated Interface, then Seller shall be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for amounts determined pursuant to Article Four.

D. No Timely Request for Firm Transmission Made by Buyer, or Buyer Fails to Timely Send Buyer's Rejection Notice. If Buyer fails to make a Timely Request for Firm Transmission or Buyer fails to timely deliver Buyer's Rejection Notice, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface. In such circumstances, if Seller's delivery is interrupted as a result of transmission relied upon by Buyer from the Designated Interface, then Seller shall be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for amounts determined pursuant to Article Four.

4. Transmission.

A. Seller's Responsibilities. Seller shall be responsible for transmission required to deliver the Product to the Designated Interface or ADI, as the case may be. It is expressly agreed that Seller is not required to utilize Firm Transmission for its delivery obligations hereunder, and Seller shall bear the risk of utilizing non-firm transmission. If Seller's scheduled delivery to Buyer is interrupted as a result of Buyer's attempted transmission of the Product beyond the Receiving Transmission Provider's system border, then Seller will be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for damages pursuant to Article Four.

B. Buyer's Responsibilities. Buyer shall be responsible for transmission required to receive and transmit the Product at and from the Designated Interface or ADI, as the case may be, and except as specifically provided in Section 3A and 3B, shall be responsible for any costs associated with transmission therefrom. If Seller is attempting to complete the designation of an ADI as a result of Seller's rights and obligations hereunder, Buyer shall co-operate reasonably with Seller in order to effect such alternate designation.

5. Force Majeure. An "Into" Product shall be subject to the "Force Majeure" provisions in Section 1.23.

6. Multiple Parties in Delivery Chain Involving a Designated Interface. Seller and Buyer recognize that there may be multiple parties involved in the delivery and receipt of the Product at the Designated Interface or ADI to the extent that (1) Seller may be purchasing the Product from a succession of other sellers ("Other Sellers"), the first of which Other Sellers shall be causing the Product to be generated from a source ("Source Seller") and/or (2) Buyer may be selling the Product to a succession of other buyers ("Other Buyers"), the last of which Other Buyers shall be using the Product to serve its energy needs ("Sink Buyer"). Seller and Buyer further recognize that in certain Transactions neither Seller nor Buyer may originate the decision as to either (a) the original identification of the Designated Interface or ADI (which designation may be made by the Source Seller) or (b) the Timely Request for Firm Transmission or the purchase of other Available Transmission (which request may be made by the Sink Buyer). Accordingly, Seller and Buyer agree as follows:

A. If Seller is not the Source Seller, then Seller shall notify Buyer of the Designated Interface promptly after Seller is notified thereof by the Other Seller with whom Seller has a contractual relationship, but in no event may such designation of the Designated Interface be later than the prescheduling deadline pertaining to the Transaction between Buyer and Seller pursuant to Section 1.

B. If Buyer is not the Sink Buyer, then Buyer shall notify the Other Buyer with whom Buyer has a contractual relationship of the Designated Interface promptly after Seller notifies Buyer thereof, with the intent being that the party bearing actual responsibility to secure transmission shall have up to 30 minutes after receipt of the Designated Interface to submit its Timely Request for Firm Transmission.

C. Seller and Buyer each agree that any other communications or actions required to be given or made in connection with this “Into Product” (including without limitation, information relating to an ADI) shall be made or taken promptly after receipt of the relevant information from the Other Sellers and Other Buyers, as the case may be.

D. Seller and Buyer each agree that in certain Transactions time is of the essence and it may be desirable to provide necessary information to Other Sellers and Other Buyers in order to complete the scheduling and delivery of the Product. Accordingly, Seller and Buyer agree that each has the right, but not the obligation, to provide information at its own risk to Other Sellers and Other Buyers, as the case may be, in order to effect the prescheduling, scheduling and delivery of the Product

“Native Load” means the demand imposed on an electric utility or an entity by the requirements of retail customers located within a franchised service territory that the electric utility or entity has statutory obligation to serve.

“Non-Firm” means, with respect to a Transaction, that delivery or receipt of the Product may be interrupted for any reason or for no reason, without liability on the part of either Party.

“System Firm” means that the Product will be supplied from the owned or controlled generation or pre-existing purchased power assets of the system specified in the Transaction (the “System”) with non-firm transmission to and from the Delivery Point, unless a different Transmission Contingency is specified in a Transaction. Seller’s failure to deliver shall be excused: (i) by an event or circumstance which prevents Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Seller; (ii) by Buyer’s failure to perform; (iii) to the extent necessary to preserve the integrity of, or prevent or limit any instability on, the System; (iv) to the extent the System or the control area or reliability council within which the System operates declares an emergency condition, as determined in the system’s, or the control area’s, or reliability council’s reasonable judgment; or (v) by the interruption or curtailment of transmission to the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Seller’s performance. Buyer’s failure to receive shall be excused (i) by Force Majeure; (ii) by Seller’s failure to perform, or (iii) by the interruption or curtailment of transmission from the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Buyer’s performance. In any of such events, neither party shall be liable to the other for any damages, including any amounts determined pursuant to Article Four.

“Transmission Contingent” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is unavailable or interrupted or curtailed for any reason, at any time, anywhere from the Seller’s proposed generating source to the Buyer’s proposed ultimate sink, regardless of whether transmission, if any, that such Party is attempting to secure and/or has purchased for the Product is firm or non-firm. If the transmission (whether firm or non-firm) that Seller or Buyer is attempting to secure is from source to sink is unavailable, this contingency excuses performance for the entire Transaction. If the transmission (whether firm or non-firm) that Seller

or Buyer has secured from source to sink is interrupted or curtailed for any reason, this contingency excuses performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of “Force Majeure” in Article 1.23 to the contrary.

“Unit Firm” means, with respect to a Transaction, that the Product subject to the Transaction is intended to be supplied from a generation asset or assets specified in the Transaction. Seller’s failure to deliver under a “Unit Firm” Transaction shall be excused: (i) if the specified generation asset(s) are unavailable as a result of a Forced Outage (as defined in the NERC Generating Unit Availability Data System (GADS) Forced Outage reporting guidelines) or (ii) by an event or circumstance that affects the specified generation asset(s) so as to prevent Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, and which is not within the reasonable control of, or the result of the negligence of, the Seller or (iii) by Buyer’s failure to perform. In any of such events, Seller shall not be liable to Buyer for any damages, including any amounts determined pursuant to Article Four.

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

This confirmation letter shall confirm the Transaction agreed to on _____, _____
between _____ (“Party A”) and _____ (“Party B”)
regarding the sale/purchase of the Product under the terms and conditions as follows:

Seller: _____

Buyer: _____

Product:

Into _____, Seller’s Daily Choice

Firm (LD)

Firm (No Force Majeure)

System Firm

(Specify System: _____)

Unit Firm

(Specify Unit(s): _____)

Other _____

Transmission Contingency (If not marked, no transmission contingency)

FT-Contract Path Contingency Seller Buyer

FT-Delivery Point Contingency Seller Buyer

Transmission Contingent Seller Buyer

Other transmission contingency

(Specify: _____)

Contract Quantity: _____

Delivery Point: _____

Contract Price: _____

Energy Price: _____

Other Charges: _____

Delivery Period: _____
Special Conditions: _____
Scheduling: _____
Option Buyer: _____
Option Seller: _____
Type of Option: _____
Strike Price: _____
Premium: _____
Exercise Period: _____

This confirmation letter is being provided pursuant to and in accordance with the Master Power Purchase and Sale Agreement dated _____ (the "Master Agreement") between Party A and Party B, and constitutes part of and is subject to the terms and provisions of such Master Agreement. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

[Party A]

[Party B]

Name: _____
Title: _____
Phone No: _____
Fax: _____

Name: _____
Title: _____
Phone No: _____
Fax: _____

**EXHIBIT B
FORM OF GUARANTY**

GUARANTY

In consideration of San Diego Gas & Electric Company (“Company”) entering into a power purchase agreement with [*Insert name of Rim Rock Project Company*] (hereinafter referred to as “Applicant”), [NAME OF GUARANTOR], a [TYPE OF LEGAL ENTITY i.e. California corporation], (hereinafter referred to as “Guarantor”) agrees with Company as follows:

1. The term “Obligations” shall mean all obligations, liabilities and indebtedness of any kind whatsoever arising in connection with the Master Power Purchase and Sale Agreement, including related Cover Sheet and Confirmation dated [_____, 20__] (the “PPA”) or arising in connection with or under any security agreement or other agreement between the Company and Applicant with respect to the PPA. The amount of Obligations existing from time to time shall be calculated after giving effect to all contractual netting arrangements between Applicant and the Company. Subject to paragraph 7, the liability of Guarantor hereunder shall not exceed \$ _____ in the aggregate.

2. Guarantor unconditionally and irrevocably guarantees to Company the full, prompt and faithful payment and performance when due of each and all of the Obligations. Upon the failure or refusal by Applicant to pay all or any portion of the Obligations, the Company may make a written demand upon Guarantor. Such demand shall be in writing and shall state the amount Applicant has failed to pay and an explanation of why such payment is due, with a specific statement that Company is calling upon Guarantor to pay under this Guaranty. Guarantor shall promptly, but in no event more than five (5) days following demand by the Company, pay such Obligations in immediately available funds.

3. This is a continuing guaranty relating to the Obligations until all of the Obligations have been performed or paid in full. Guarantor acknowledges that there is a continuing consideration to Guarantor for this Guaranty and therefore Guarantor waives and relinquishes the right to revoke or terminate this Guaranty as provided in California Civil Code Section 2815.

4. Any of the Obligations may be amended, modified, waived, or increased (whether or not beyond any dollar limitation hereunder and without affecting such dollar limitation), further agreements may be entered into between Company and Applicant, Company may provide additional goods or services or credit to Applicant or increase or decrease the dollar value of such goods, services or credit, and further obligations (including, without limitation, the provision or pledging of security to Company for any obligation), indebtedness and liabilities may be entered into or incurred from time to time by Applicant and without further authorization from or notice to Guarantor and no such action shall terminate, release, impair, reduce, discharge, diminish or in any way affect any of the obligations of Guarantor hereunder or any security furnished by Guarantor or give Guarantor any recourse or defense against Company. Company need not inquire into the power of Applicant or the authority of its officers, directors, partners or agents acting or purporting to act on its behalf for the purposes of this Guaranty.

5. With respect to all Obligations, this is a guaranty of payment and performance and not of collection, and Guarantor waives and agrees not to assert or take advantage of:

(a) any right to require Company to proceed against Applicant or any other person or to resort to, proceed against or exhaust any security held by it at any time or to pursue any other remedy in its power before proceeding against any Guarantor;

(b) other than a demand for payment as set forth in paragraph 2 above, demand, presentment, protest and notice of any kind including, without limiting the generality of the foregoing,

notice of nonperformance, protest, dishonor and acceptance of this Guaranty, notice under Section 9611 of the California Commercial Code, and notice of the existence, creation or incurring of any new or additional indebtedness or obligation or of any action or non-action on the part of Applicant, Company, a guarantor under this or any other instrument, or creditor of Applicant or any other person whomsoever, in connection with any of the Obligations or any collateral for any of the Obligations or in connection with any of the Obligations; and

(c) any suretyship defenses and suretyship rights of every nature otherwise available under California law and the laws of any other state or jurisdiction, including, without limitation, all defenses and rights arising under Sections 2787 through 2855 of the California Civil Code (the "Suretyship Provisions") and any successor provisions to those Sections. Without limiting the generality of the foregoing, Guarantor acknowledges his, her or its understanding that the Suretyship Provisions provide various partial or complete defenses to the recovery by Company from Guarantor and/or grant Guarantor rights the enforcement of which could reduce or eliminate entirely Guarantor's liability hereunder to Company. Among the defenses and rights contained in the Suretyship Provisions are the following: (1) Section 2809 of the Civil Code, which provides, in part, that the obligation of a surety must not be either larger in amount or in other respects more burdensome than that of the principal; (2) Section 2810 of the Civil Code, which provides, in part, that a surety is not liable if for any reason other than the mere personal disability of the principal there is no liability upon the part of the principal at the time of execution of the contract, or the liability of the principal thereafter ceases; (3) Section 2819 of the Civil Code, which provides, in part, that a surety is exonerated if the creditor alters the original obligation of the principal without the consent of the surety; (4) Section 2845 of the Civil Code, which provides, in part, that a surety is exonerated to the extent that the creditor fails to proceed against the principal, or to pursue any other remedy in the creditor's power which the surety cannot pursue and which would lighten the surety's burden; (5) Section 2846 of the Civil Code, which provides that a surety may compel his principal to perform the obligation when due; (6) Section 2847 of the Civil Code, which provides, in part, that if a surety satisfies the principal obligation, or any part thereof, the principal is obligated to reimburse the surety for the amounts paid by the surety; (7) Section 2848 of the Civil Code, which provides, in part, that a surety, upon satisfaction of the obligation of the principal is entitled to enforce remedies which the creditor then has against the principal; (8) Section 2849 of the Civil Code, which provides, in part, that a surety is entitled to the benefit of security held by the creditor for the performance of the principal obligation held by the creditor; (9) Section 2850 of the Civil Code, which provides, in part, that whenever the property of a surety is hypothecated with property of the principal, the surety is entitled to have the property of the principal first applied to the discharge of the obligation; and (10) Section 2822 of the Civil Code, which provides, in part, for a right to have the principal designate the portion of any obligation to be satisfied by the surety in the event that the principal provides partial satisfaction of such obligation. None of the foregoing waivers of Suretyship Provisions shall diminish, affect or impair the limitation on Guarantor's liability set forth in paragraph 1 above.

6. All existing and future indebtedness of Applicant to Guarantor ("Intercompany Obligations") is subordinated to all Obligations hereby guaranteed. All of Guarantor's right, title and interest in and to the Intercompany Obligations and rights to receive any payments of the Intercompany Obligations are hereby granted and assigned to Company as continuing security for the Obligations hereby guaranteed, and, in the event of any default in the payment of any of the Obligations when due and until the Obligations guaranteed hereby have been paid in full (a) at the Company's request, Applicant shall forthwith pay to the Company all or any part of such Intercompany Obligations and any capital which Guarantor is entitled to withdraw until all of the Obligations guaranteed hereby have been paid in full, and (b) Guarantor shall pay to Company immediately any payments of such Intercompany Obligations received by Guarantor.

7. Guarantor agrees to pay all reasonable attorneys' fees (including without limitation, reasonably allocated fees of in-house counsel) and all other reasonable costs and expenses which may be

incurred by Company in the enforcement of this Guaranty against Guarantor. Any costs for which Guarantor becomes liable pursuant to this paragraph 7 shall not be subject to, and shall not count toward, the guaranty limit set forth in paragraph 1 above.

8. This Guaranty is not assignable by Guarantor without Company's consent. This Guaranty shall inure to the benefit of Company and its successors and assigns, including the assignees of any Obligations, and bind the heirs, executors, administrators, successors and permitted (if any) assigns of Guarantor. This Guaranty is assignable by Company with respect to all or any portion of the Obligations, and when so assigned Guarantor shall be liable to the assignees under this Guaranty without in any manner affecting the liability of Guarantor hereunder with respect to any Obligations retained by Company; provided, however, that no such assignment by the Company shall be binding upon Guarantor until it receives written notice of such assignment from the Company.

9. This Guaranty shall be governed by and construed in accordance with the laws of the State of California, without reference to its choice of law provisions. Guarantor hereby irrevocably and unconditionally agrees that any legal action or proceeding against Guarantor or any of Guarantor's property with respect to this Guaranty may be brought in the courts of the State of California in the County of San Diego or the courts of the United States in the County of San Diego, as Company may elect, and by executing and delivering this Guaranty Guarantor hereby submits to and accepts with regard to any such action or proceeding for himself, herself or itself and in respect of his, her or its property, generally, irrevocably and unconditionally, the jurisdiction of the above mentioned courts. Guarantor hereby irrevocably appoints the Secretary of State of the State of California as his, her or its agent for service of process in any suit or proceeding if the Guarantor is located outside the State of California at the time of service or cannot reasonably be located by Company. The foregoing, however, shall not limit the right of Company as it may elect to bring any legal action or proceeding or to obtain execution of judgment in any other appropriate jurisdiction including but not limited to any other jurisdiction in which Guarantor or his, her or its property is located.

10. Except as provided in any other written agreement now or at any time hereafter in force between Company and Guarantor, this Guaranty shall constitute the entire agreement of Guarantor with Company with respect to the subject matter hereof and no representation, understanding, promise or condition concerning the subject matter hereof shall be binding upon Company unless expressed herein.

11. All notices, demands, requests and other communications required or permitted hereunder shall be in writing and shall be given personally, by certified or registered mail, postage prepaid, return receipt requested, or by reliable overnight courier to the address below (or to such new address as Company may designate hereafter in a notice to Guarantor) in the case of a communication to the Company and to the address appearing next to Guarantor's signature on this Guaranty (or to such new address as Guarantor may designate hereafter in a notice to Company) in the case of a communication to Guarantor. Any notice served personally shall be deemed delivered upon receipt, and any notice served by certified or registered mail or by reliable overnight courier shall be deemed delivered on the date of receipt as shown on the addressee's registry or certification of receipt or on the date receipt is refused as shown on the records or manifest of the U.S. Postal Service or such courier.

San Diego Gas & Electric Company
555 W. Fifth Street
Attn: Major Markets 10E3, Credit
Manager
Los Angeles, CA 90013
Fax No.: (213) 244-8316

12. Until all of the Obligations guaranteed hereby have been satisfied in full, Guarantor shall have no right of subrogation or reimbursement from the Applicant which Guarantor may have as a result of any payment by Guarantor under this Guaranty, and waives any right to enforce any remedy which Company now has or may hereafter have against the Applicant as a result of such payment by Guarantor under this Guaranty and waives any right under section 2849 of the California Civil Code and any other benefit of or right to participate in any security now or hereafter held by Company.

13. All amounts payable by Guarantor hereunder shall be paid without set-off or counterclaim and without any deduction or withholding whatsoever unless and to the extent that Guarantor shall be prohibited by law from doing so, in which case Guarantor shall pay to Company such additional amount as shall be necessary to ensure that Company receives the full amount it would have received if no such deduction or withholding had been made.

14. If any portion of this Guaranty is held to be unenforceable by a court of competent jurisdiction, the remainder of this Guaranty shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned Guarantor has executed this Guaranty on [MONTH AND DAY], 20[___].

GUARANTOR: [NAME OF GUARANTOR]

Signature

Title

Printed Name of Person Signing for Guarantor

Guarantor's Address

City, State, Zip

Guarantor's Phone No.

EXHIBIT C

FORM OF LETTER OF CREDIT

[DATE]

To: [Name and Address of Secured Party]

Re: Our Irrevocable Standby Letter of Credit No. _____
In the Amount of US _____

Gentlemen:

We hereby open our irrevocable standby Letter of Credit Number _____ in favor of [name of Secured Party] (“Secured Party”), by order and for account of [name of Account Party] (“Account Party”), [address of Account Party], available at sight upon demand at our counters, at [location] for an amount of US\$ _____ [amount spelled out and xx/100 U.S. Dollars] against presentation one of the following documents:

1- Statement signed by a person purported to be an authorized representative of Secured Party stating that: “[*Insert name of Rim Rock Project Company*] (“Account Party”) is in default, or the amount listed below is otherwise due and owing, under the Master Power Purchase and Sale Agreement between Secured Party and Account Party dated [_____, 20__] (the “Agreement”). The amount due to Secured Party is US \$_____.”

or

2- Statement signed by a person purported to be an authorized representative of Secured Party stating that: “as of the close of business on _____[insert date, which is less than 60 days prior to the expiration date of the Letter of Credit] you have provided written notice to us indicating your election not to permit extension of this Letter of Credit beyond its current expiry date. The amount due to Secured Party, whether or not a default has occurred, is U.S. \$_____.”

Special Conditions:

- All costs and banking charges pertaining to this Letter of Credit are for the account of Account Party.
- Partial and multiple drawings are permitted.
- Fax of Document 1 or 2 above acceptable.

This Letter of Credit expires on _____ at our counters.

We hereby engage with Secured Party that upon presentation of a document as specified under and in compliance with the terms of this Letter of Credit, this Letter of Credit will be duly honored in the amount stated in Document 1 or 2 above. If a document is so presented by 1:00 pm on any New York banking day, we will honor the same in full in immediately available New York funds on that day and, if so presented after 1:00 pm on a New York banking day, we will honor the same in full in immediately available New York funds by noon on the following New York banking day.

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.

We agree that if this Letter of Credit would otherwise expire during, or within 30 days after, an interruption of our business caused by an act of god, riot, civil commotion, insurrection, act of terrorism, war or any other cause beyond our control or by any strike or lockout, then this Letter of Credit shall expire on the 30th day following the day on which we resume our business after the cause of such interruption has been removed or eliminated and any drawing on this Letter of Credit which could properly have been made but for such interruption shall be permitted during such extended period.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce, Publication No. 600 (“UCP”), 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. Matters not covered by the UCP shall be governed and construed in accordance with the laws of the State of California.

[Name of Bank]

Authorized Signature(s)

EXHIBIT D

COMMERCIAL OPERATION CERTIFICATE from Seller

The undersigned [*Insert name of Rim Rock Project Company*] (“Seller”) makes 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 Master Power Purchase & Sale Agreement dated [_____, 20__] between Seller and SDG&E (the “Agreement”).

Seller hereby certifies that:

1. Except for punch list items that would not materially affect the performance, reliability or safe operation of the Facility, 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 a performance test which demonstrates that each Wind Turbine Generator (“WTG”) for the entire Facility Total Nameplate Capacity completed a reliability test over a period of 200 hours, evidencing consecutive availability for the same period, and these test reports have been submitted to SDG&E. Power curve test results will be forwarded once completed on site. The warranty period under the turbine supply agreement with Acciona Windpower North America LLC (“Acciona”) is in effect. All requirements necessary for the Facility to achieve substantial completion under the construction services agreement have been met.
2. The Operation and Maintenance Agreement (O&M Agreement), by and between Acciona and Naturener USA, LLC, dated as of [insert] has commenced.
3. Seller has a valid leasehold or real property interest in the Facility Site for a term of at least 20 years from the Commercial Operation date.
4. The interconnection facilities 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.
5. To the Seller’s knowledge, MATL has been fully constructed and commissioned, MATL is fully operational and energized for commercial operation, all regulatory approvals necessary for transmission on MATL have been received and no longer are subject to any appeal period (other than with respect to any regulatory approvals or appeals related to a “Final ATC Rule” under that certain Power Purchase Agreement dated as of December 30, 2011 between Seller and Morgan Stanley Capital Group, Inc.), and the Facility has been fully interconnected with MATL.

6. Seller has obtained all governmental approvals 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.

SELLER

[Insert name of Rim Rock Project Company]
a Delaware limited liability company

By: _____

Name:

Title:

ACCEPTED BY SDG&E

BY: _____

NAME: _____

TITLE: _____

DATE: _____

COMMERCIAL OPERATION CERTIFICATE
by Licensed Professional Engineer

The undersigned, _____ (“Licensed Professional Engineer”) makes 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 Master Power Purchase & Sale Agreement dated [_____, 20__] between Seller and SDG&E (the “Agreement”).

Licensed Professional Engineer certifies that:

1. We have read the Agreement, the Construction Services Agreement dated [insert] (the “BOP Contract”) between [*Insert name of Rim Rock Project Company*] and [insert name], and the Contract for the Supply, Assembly and Commissioning of AW Technology WTG Generators dated [insert] (the “TSA”) between the Seller and Acciona WindPower North America, LLC (“Acciona”) and we understand the requirements for Commercial Operation under the Agreement.
2. We have reviewed the material and data made available to us by the Seller for the Facility.
3. To the extent practical, we have reviewed the relevant (as deemed by us) engineering and performance testing data 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.
4. We have reviewed the certifications of the Seller, and based on our review of and reliance on these certifications and other information provided, we find:
 - a. Except for punch list items that would not materially affect the performance, reliability or safe operation of the Facility, the Facility has been completed in accordance with all applicable specifications and is ready for continuous commercial operation;
 - b. The Facility has successfully passed a performance test which demonstrates that each Wind Turbine Generator (“WTG”) for the entire Facility Total Nameplate Capacity has completed a reliability test over a period of 200 hours, evidencing consecutive availability for the same period, and, as of the date of this Certificate, these test reports have been submitted to SDG&E;
 - c. The warranty period under the TSA is in effect;
 - d. All requirements necessary for the Facility to achieve substantial completion under the BOP Contract have been met;

- e. All technical requirements necessary for the interconnecting utility to accept electricity from the WTGs has been met;
 - f. The WTGs have been synchronized to the utility grid; and
 - g. The Operation and Maintenance (“O&M Agreement”) between [*Insert name of Rim Rock Project Company*] and Acciona dated [insert] has commenced pursuant to Section 7.1 thereof.
5. 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 Commercial Operation has occurred as defined in the Agreement.

LICENSED PROFESSIONAL ENGINEER:

a _____ corporation

By: _____

Name:

Title:

ACCEPTED BY SDG&E

BY: _____

NAME: _____

TITLE: _____

DATE: _____

EXHIBIT E

FORM OF QUARTERLY PROGRESS REPORT

**Quarterly Progress Report
of**

[_____]

(“Seller”)

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

[Date]

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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 Master Power Purchase and Sale Agreement by and between [*Insert name of Rim Rock Project Company*] ("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 10.0 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 Major¹ 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

3.0 Permitting.

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

¹ 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.

3.1 State and/or federal Governmental Approvals.

Please describe each of the Major state and/or federal Governmental Approval 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

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/ SUBCONTRACTOR	SCHEDULED COMPLETION DATE	ACTUAL COMPLETION 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/ SUBCONTRACTOR	SCHEDULED COMPLETION DATE	ACTUAL COMPLETION DATE

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:

EQUIPME NT DESCRIPT ION	MANUFACTU RER	MOD EL	CONTRAC TED DELIVERY DATE	ACTUAL DELIVER Y DATE	PROJECTE D INSTALLA TION DATE	ACTUAL INSTALLA TION DATE

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/ SUBCONTRACTOR	SCHEDULED COMPLETION DATE	ACTUAL COMPLETION DATE
Civil Progress			
Structural Progress			
Turbine Installation 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

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: _____

RPS Project Development Status Report

Project Name
Date

Date of Latest Construction Progress Report from Counterparty:

Project Owner/Counterparty:

Technology:

Capacity (MW):

Annual Energy (GWh/year):

On-Line Date:

Term/Duration (years):

Construction Start Date:

Point of Delivery:

Location:

Status At-A-Glance

The below to be filled in w/ either: Completed, Acceptable, Unknown, or Concern. See Section B for a description of milestones. When the answer is "Concern" the milestone should be flagged with a notation number where additional detail is provided in Section A.

Milestones	Status	Initial Completion Date	Projected Completion Date
Fuel/Resource Supply:			
Financing:			
Corporate Financing			
Project Financing			
Site Control (100%):			
Permitting:			
Engineering:			
Major Equipment Procurement:			
Construction:			
Startup Testing and Commissioning:			
Transmission:			

Transmission - Detail (see Section C)

Dependent Transmission Upgrade(s):

Scheduled Completion:

Point of Interconnection:

Early Interconnection:

Gen-Tie Length:

Gen-Tie Voltage:

ISO Queue Position:

Feasibility Study (FS):

System Impact Study (SIS):

Facilities Study (FAS):

Remedial Action Plan:

Additional Comments:

Date of Preparation:

**CONFIRMATION LETTER
FOR RENEWABLE POWER**

This Confirmation Letter for Renewable Power (“Confirmation”) dated as of January 6, 2012 is being provided pursuant to and in accordance with the Master Power Purchase and Sale Agreement dated January 6, 2012 (the “Master Agreement”), between **NaturEner Rim Rock Wind Energy, LLC** (“Party A”) and **San Diego Gas & Electric Company** (“Party B”), and constitutes part of and is subject to the terms and provisions of such Master Agreement (collectively, the “Agreement”). The Parties have agreed to this Agreement in good faith and shall implement it in good faith. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

1.0 Scope of Transaction. The Parties agree that the intent of this Confirmation is for Party A to sell and deliver and for Party B to purchase and receive at the Delivery Point Product A, as defined below, which contains Green Attributes, and immediately upon such delivery, for Party B to sell and deliver and for Party A to purchase and receive at the Delivery Point Product B, as defined below, which does not contain such Green Attributes. The Parties agree that if Party A sells and delivers Product A to Party B at the Delivery Point, Party B’s sale and delivery to Party A of Product B at the Delivery Point shall be automatic, continuous and unconditional. Party A has the sole right to schedule the Output to the Delivery Point.

1.1 Product A. With respect to sales by Party A to Party B: Output (defined in Section 2.1) including all associated Green Attributes (as defined in the Cover Sheet) delivered on an As-Available basis. “As- Available” means, with respect to a Transaction, that Party A shall deliver to Party B and Party B shall purchase at the Delivery Point the Product from the Facility, in accordance with the terms of this Agreement and subject to the excuses for performance specified in this Agreement. Such sales by Party A to Party B shall be known as Product A.

1.2 Product B. With respect to sales by Party B to Party A: Output (defined in Section 2.1) excluding all associated Green Attributes (as defined in the Cover Sheet) delivered only if Product A is delivered to Party B. Such sales by Party B to Party A shall be known as Product B.

2.0 Facility. The Output (defined below) will be supplied from the following generation assets only (collectively, the “Facility” or the “Units”):

Facility Name:	Rim Rock Wind Energy
Site Name:	Rim Rock
Facility Physical Address:	Toole and Glacier County, Montana
Technology Type:	Wind
Specific Unit Description:	Acciona AW77 1500 kW
Facility Total Nameplate Capacity:	189 MW

2.1 “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 678,812 MWh.

- 2.2** The Facility must meet Commercial Operation by the Commercial Operation Deadline. “Commercial Operation Deadline” with respect to the Facility shall be no later than December 31, 2012, as extended on a day for day basis by reason of Force Majeure as described in Section 10.2 or as may otherwise be extended by written agreement signed by both Parties. “Commercial Operation” means that (a) Party A shall have satisfied the requirements set forth in the Certificate of Commercial Operation in the form attached as Exhibit D for the Facility Total Nameplate Capacity; (b) Party A shall have delivered and Party B shall have reviewed and accepted the completed Certificate of Commercial Operation as complete and meeting the requirements set forth therein from Party A and a Licensed Professional Engineer (defined below) after Party B shall have entered into a reasonable use of work agreement if required by such Licensed Engineer; (c) Party A shall have delivered a Guaranty (or cash or a Letter of Credit) as accepted by Party B in accordance with Section 8 of the Master Agreement, and (d) MATL shall have been fully constructed and commissioned, MATL shall be fully operational and energized for commercial operation, all regulatory approvals necessary for transmission on MATL shall have been received and no longer be subject to any appeal period (other than with respect to any regulatory approvals or appeals related to a “Final ATC Rule” under that certain Power Purchase Agreement dated as of December 30, 2011 between Party A and Morgan Stanley Capital Group, Inc.), and the Facility shall have been fully interconnected with MATL. For purposes of this section, “MATL” shall mean the proposed 230kV transmission line (and all associated equipment and facilities) known as the Montana Alberta Tie Line to be constructed between a substation in Great Falls, Montana and a substation northwest of Lethbridge, Alberta.
- 2.3** “Licensed Professional Engineer” means a person acceptable to Party B 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 Party A, (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.
- 3.0** Delivery Point. The Delivery Point for both Product A and Product B is the point of interconnection as agreed to in the Facility’s interconnection agreement which shall be on the high voltage side of the transformer located at the substation at which the Facility interconnects to the MATL transmission line.
- 4.0** Delivery Term. Delivery shall be for a period of twenty (20) years (“Delivery Term”). “Delivery Term” shall begin on the date of Commercial Operation, and continue for the time period specified above; provided however, the Parties shall also purchase and pay

for Product A and Product B as provided in Section 8.0 herein prior to the commencement of the Delivery Term.

5.0 Output Requirements.

5.1 Contract Quantity--Product A. During the Delivery Term, Party A shall deliver, and Party B shall receive and pay for, Product A from the Facility as more fully described in Section 8.0. In no event shall Party A have the right to procure electric energy from sources other than the Facility for sale and delivery pursuant to this Agreement. Station Service Power - Retail (defined in Section 5.3) shall be provided by a local service provider and the electrical usage shall be metered separately from the Output metered at the Delivery Point.

5.2 Contract Quantity--Product B. During the Delivery Term, upon immediate receipt of Product A from Party A, Party B shall deliver, and Party A shall receive and pay for, Product B from the Facility as more fully described in Section 8.0.

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

6.0 Performance Guarantees / Excuses for Failure to Perform.

6.1 Energy Production Guarantees. Party B shall in its sole discretion have the right to declare an Event of Default if Party A fails to achieve the Guaranteed Energy Production in any 24 month period during the Delivery Term and such failure is not excused by the reasons set forth in subsections (b), (c), (e), or (f) of Section 6.2.1 of this Agreement. “Guaranteed Energy Production” shall be calculated in accordance with the following formula:

Guaranteed Energy Production = 950,337 MWh per 24 month period.

6.2 Party A Excuses.

6.2.1 Product A - Party A as Seller. Party A as a Seller shall not be liable to Party B as a Buyer for any damages determined pursuant to Article Four of the Master Agreement in the event that Party A fails to deliver and sell Product A to Party B for any of the following reasons:

(a) 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 Party A’s negligence or willful misconduct;

(b) Force Majeure;

(c) by Party B’s failure to perform;

- (d) by Scheduled Maintenance Outages of the specified units;
- (e) a curtailment ordered directly or indirectly by either MATL, NorthWestern, or the Alberta Electric System Operator, to comply with Western Electric Coordinating Council reliability requirements; or
- (f) as determined by meteorological towers at the site of the Facility and calculated pursuant to Acciona's warranted power curves for the Facility, insufficient wind power for the specified units to generate energy or if wind speeds exceed the specified units' technical specifications.

6.2.2 Product B - Party A as Buyer. Party A as a Buyer shall not be liable to Party B as a Seller for any damages determined pursuant to Article Four of the Master Agreement in the event that Party A fails to receive and purchase Product B from Party B for any of the following reasons:

- (a) Force Majeure; or
- (b) Party B's failure to perform (including as a result of Party A's failure to deliver Product A).

6.3 Party B Excuses.

6.3.1 Product A - Party B as Buyer. Party B as a Buyer shall not be liable to Party A as a Seller for any damages determined pursuant to Article Four of the Master Agreement in the event that Party B fails to receive and purchase Product A from Party A for any of the following reasons:

- (a) Force Majeure; or
- (b) Party A's failure to perform (including Party A's failure to deliver Product A).

6.3.2 Product B - Party B as Seller. Party B as a Seller shall not be liable to Party A as a Buyer for any damages determined pursuant to Article Four of the Master Agreement in the event that Party B fails to deliver and sell Product B to Party A for any of the following reasons:

- (a) Force Majeure; or
- (b) Party A's failure to perform (including Party A's failure to deliver Product A).

7.0 Exclusivity. At no time shall Party A sell or otherwise dispose of Product A from the Facility to any third party except in the case of an Event of Default of Party B or termination of this Confirmation in accordance with the terms of this Agreement;

provided, however, that Party A may resell Product B received from Party B to any third party.

8.0 Monthly Payments.

8.1 Contract Price.

8.1.1 The Contract Price for Product A shall be the sum of sixty-two dollars per megawatt-hour (\$62/MWh) plus \$43.99.

8.1.2 The Contract Price for Product B shall be sixty-two dollars per megawatt-hour (\$62/MWh).

8.2 Energy Payment. Before the Delivery Term and during the Delivery Term, Party B shall pay Party A for all metered Product A Output delivered each month at the Contract Price for Product A, and Party A shall pay Party B for all metered Product B Output delivered each month at the Contract Price for Product B. Notwithstanding the foregoing, if the Delivery Term commences after December 31, 2012, then Party B shall pay Party A for all metered Product A Output delivered each day from January 1, 2013 until but not including the first date of the Delivery Term at a price equal to the Contract Price for Product A minus \$10.00/MWh.

8.3 Contract Year. Contract Year means each twelve month period commencing on the date of Commercial Operation and each twelve month period thereafter.

8.4 Netting of Payments. All payments for Product A Output and Product B Output shall be netted, and Party B shall pay the netted amount to Party A on a monthly basis for Output delivered from the Facility in a month.

9.0 Construction Milestones. The construction milestones are the following; provided, however, that each milestone date specified herein shall be extended on a day for day basis to the extent the Commercial Operation Deadline is extended on a day for day basis in the event of Force Majeure:

Task	Milestone Date
Issuance of Notice to Proceed to EPC Contractor and Turbine Supplier	01/7/2012
Start wind turbine generator deliveries	06/15/2012
Civil Works Complete (all Circuits)	10/15/2012
Mechanical and electrical completion (all circuits)	11/01/2012
Substantial Completion under EPC Contract	12/31/2012
COD	Commercial Operation Deadline

9.1 Party B's Right to Monitor. Party B may exercise its due diligence responsibilities via the following:

- 9.1.1** Party B shall have the right to review Facility design drawings and documents.
- 9.1.2** Party B may inspect the Facility's construction site or on-site Party A data and information pertaining to the Facility during business hours upon reasonable notice.
- 9.1.3** Within seven (7) days after the close of each calendar quarter (or more frequently upon request by Party B) until the date of Commercial Operation, Party A shall provide Quarterly Progress reports similar in form and content of Exhibit E: Quarterly Progress Reports to Party B as may be modified from time to time to meet applicable CPUC requirements. Regularly scheduled meetings shall be held between representatives of Party A and Party B for the purpose of reviewing Quarterly Progress Reports and Party A's construction progress.

9.2 Milestone Completion Notice. No later than seven (7) days after completion of each milestone set forth in Section 9.0, Party A shall submit written notice to inform Party B of the milestone completion. Party A must provide accompanying documentation (including copies of applicable agreements that may have price and costs elements redacted, permits and certificates) sufficient to demonstrate evidence of such milestone completion. In the event that Party A is prohibited from disclosing an agreement due to confidentiality requirements of a counterparty, the Parties agree that Party A may submit to Party B a letter from the counterparty confirming the completion of the relevant milestone.

10.0 Facility Delays.

10.1 Missed Milestones. If Party A misses three or more milestones set forth in Section 9.0 or misses any one by more than 90 days except as a result of Force Majeure, Party A shall submit to Party B, within ten (10) days of such missed milestone date, a remedial action plan (the "Remedial Action Plan").

10.2 Missed Commercial Operation Deadline.

10.2.1 Party A shall cause the Facility to achieve Commercial Operation on or before the Commercial Operation Deadline as such date may be extended without the imposition of delay damages on a day for day basis by reason of Force Majeure for no more than, subject to subsection 10.2.5, one hundred eighty (180) days (at which time Party A shall be obligated to pay delay damages to Party B pursuant to the following sentence). If Commercial Operation occurs after the Commercial Operation Deadline for any reason other than Force Majeure (except in the case where Force Majeure has resulted in extensions of the Commercial Operation Deadline of one hundred eighty (180) days pursuant to the preceding sentence), and subject to subsection 10.2.2 below, Party A shall pay Party B delay damages equal to \$20,000 for each day or portion of a day that

Commercial Operation has not occurred after the Commercial Operation Deadline, up to a maximum total of, subject to subsection 10.2.5, one hundred and eighty (180) days.

- 10.2.2** Notwithstanding subsection 10.2.1, if Party A has demonstrated at least 126 MW of Installed Capacity (as defined in subsection 10.2.3) on or before the Commercial Operation Deadline, but Commercial Operation of the Facility Total Nameplate Capacity has not been met, Party A shall pay Party B delay damages equal to \$20,000 times the Shortfall Fraction (as defined in subsection 10.2.3) for each day or portion of each day after the Commercial Operation Deadline, up to a maximum total (aggregated together with any days of delay paid under subsection 10.2.1 above and subject to subsection 10.2.5) of one hundred and eighty (180) days.
- 10.2.3** “Installed Capacity” means the capacity of the Facility that has been installed, tested, and is operating and delivering to the Delivery Point. The “Shortfall Fraction” means the difference between 126 MW and the Installed Capacity as of the Commercial Operation Deadline (as such Installed Capacity may be increased by the addition of wind capacity meeting the definition of Installed Capacity following the Commercial Operation Deadline) divided by the Facility Total Nameplate Capacity. For example, if the Facility Total Nameplate Capacity is 200 MW and Party A installs 150 MW as of the Commercial Operation Deadline, then the Shortfall Fraction would be: $(200-150)/200 = 0.25$. Party A shall also submit a Remedial Action Plan within ten (10) days of a missed Commercial Operation Deadline.
- 10.2.4** Each Party agrees and acknowledges that (i) the actual damages that Party B would incur due to delay in achieving Commercial Operation on or before the Commercial Operation Deadline would be difficult or impossible to predict with certainty, (ii) the daily delay damages set forth in this Section 10.2 are a reasonable and appropriate approximation of such damages, and (iii) the daily delay damages set forth in this Section 10.2 are the exclusive remedy for Party A’s delay in achieving Commercial Operation by the Commercial Operation Deadline, but shall not otherwise act to limit any of Party B’s rights or remedies arising from any other Event of Default by Party A, including, without limitation, the failure by Party A to achieve Commercial Operation altogether.
- 10.2.5** Notwithstanding anything to the contrary herein, Party B shall have the right to terminate this Agreement upon written notice delivered to Party A no later than thirty (30) days after October 31, 2013 (the “PPA Outside Date”) if Party A has not caused the Facility to achieve Commercial Operation on or before the PPA Outside Date. Such PPA Outside Date shall not be subject to extension as a result of Force Majeure or any other reason. Any termination made by a Party under this section shall be

without liability or obligation to the other Party except for payment of obligations incurred before notice of such termination.

- 10.3** Remedial Action Plan/Additional Event of Default. For purposes of Section 10.1 and Section 10.2, at a minimum, a Remedial Action Plan shall set forth a detailed description of Party A's course of action and plan to achieve all milestones set forth in Section 9.0 and Commercial Operation by the Commercial Operation Deadline. Approval of a Remedial Action Plan shall not relieve Party A of its obligation to meet any subsequent milestones and achieving Commercial Operation by the Commercial Operation Deadline. If Party B, in its reasonable discretion, rejects any Remedial Action Plan submitted under Section 10.1 or 10.2, Party B may declare an Event of Default.
- 11.0** Operating Procedures. No later than forty-five (45) days before the Commercial Operation, and from time to time as reasonably determined necessary by the Parties, the Parties shall meet to address how each Party will perform its respective obligations under this Agreement, including, but not limited to: (1) the method of day-to-day communications; (2) key personnel lists for each Party; (3) procedures for Forced Outage and Scheduled Maintenance Outage reporting; (4) procedures for delivery forecasting; (5) procedures for record keeping; (6) scheduling procedures if applicable; and (7) invoicing and payment procedures; provided, that the failure to agree on Operating Procedures will not relieve the Parties of their respective obligations under this Agreement.
- 12.0** Maintenance.
- 12.1** Scheduled Maintenance Outages. Party A shall operate, maintain, and arrange Scheduled Maintenance Outages for the Facility in accordance with Good Utility Practices. No later than forty-five (45) days before the start of each calendar year, Party A shall provide Party B with a timetable of Scheduled Maintenance Outages for the following twelve (12) months. "Scheduled Maintenance Outage" means a planned shutdown of any part of the Facility scheduled by Party A in accordance with this Section that affects Party A's ability to provide Output from the Facility to Party B under this Agreement.
- 12.2** Maintenance Log. Party A shall maintain a maintenance log for the Facility. The log shall include but not be limited to information on power production, wind speeds, power curves, 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 Section 12.2 shall be kept for two years and provided to Party B electronically, within 30 days of Party B's request.
- 13.0** Forecasts and Metering.

- 13.1** Annual Delivery Forecasts. No later than forty-five (45) days before the beginning of each calendar year, Party A shall provide a non-binding forecast of each month's average-day deliveries of Output for the following calendar year.
- 13.2** Monthly Delivery Forecasts. Ten (10) Business Days before the beginning of each month, Party A shall provide a non-binding forecast of each day's average deliveries of Output for the following month ("Monthly Delivery Forecast").
- 13.3** Metering. All deliveries of Output shall be metered in real-time basis without adjustment for any losses, including line losses. A copy of hourly metered data shall be included in each monthly invoice. All meters and equipment used for the measurement of Output shall be provided, owned, maintained, inspected, tested and read at no cost to Party B by Party A.
- 14.0** Conditions Subsequent. Notwithstanding anything to the contrary herein, Party B shall have the right to terminate this Agreement upon written notice delivered to Party A no later than ten (10) days after the Commercial Operation Deadline, as such date may be extended under Section 2.3, if any of the events in the following subsections fails to occur by such Commercial Operation Deadline. Any termination made by a Party under this section shall be without liability or obligation to the other Party except for payment of obligations incurred before notice of such termination:
- 14.1** FERC Approval. The FERC order issued on December 21, 2011 in FERC Docket Nos. EC12-18-000 and ER12-304-000 approving the execution of this Agreement under Section 205 of the Federal Power Act shall be final and no longer subject to rehearing or appeal, and with respect to the amendments to the transaction documents that Party B shall submit to FERC for purposes of notification under the aforementioned FERC order (related solely to FERC approval under Section 205 of the Federal Power Act), either (i) Party B shall have received no response from FERC, or (ii) Party B shall be reasonably satisfied with any such response(s) that were received. Notwithstanding any representation or warranty by either Party to the contrary, both Parties acknowledge that depending on the response from FERC under clause (ii) above, further filings or approvals may be required, **which filing or approvals the Parties shall promptly make or seek.**
- 14.2** Avian and Bat Protection Plan. Party A shall have (1) a final Avian and Bat Protection Plan ("ABPP") developed in consultation with the United States Fish & Wildlife Service ("USFW") that (a) describes the steps Party A has taken or will take to avoid, minimize and/or mitigate the effects of the Facility to birds and bats, including Bald and Golden Eagles, and the post-construction monitoring and reporting efforts Party A intends to undertake in connection with the Facility, and (b) is reasonably satisfactory in form and substance to Party B, and (2) a written record of consultation with USFW demonstrating to the reasonable satisfaction of Party B that an eagle permit under the Bald and Golden Eagle Protection Act will not be required or recommended for the Project by USFW.

15.0 Amendment and Restatement. For the avoidance of doubt, the Parties intend that this Agreement shall amend, restate, and supersede, in its entirety, that certain Master Power Purchase and Sale Agreement and the Confirmation Letter for Renewable Power, each dated as of May 5, 2009, between Party A and Party B.

[Remainder of Page is Blank]

IN WITNESS WHEREOF, the Parties have caused this Confirmation Letter to be duly executed.

Party A:

NaturEner Rim Rock Wind Energy, LLC,

a Delaware limited liability company

By: NaturEner USA, LLC,
its General Manager

By: 

Name: José Maria Sánchez Seara

Title: President and Chief Executive Officer

Party B:

San Diego Gas & Electric Company,
a California corporation

By: 

Name: Michael R. Niggli
Title: President and Chief Operating
Officer