

FIRST AMENDMENT

to

POWER PURCHASE AGREEMENT

between

SAN DIEGO GAS & ELECTRIC COMPANY

and

OCOTILLO EXPRESS LLC

This First Amendment ("First Amendment") to the Agreement (as defined below), effective as of September 28, 2011 (the "First Amendment Effective Date"), is made and entered into by San Diego Gas & Electric Company ("Buyer"), a California corporation, and Ocotillo Express LLC ("Seller"), a California limited liability company. Any capitalized term used but not defined herein has the meaning ascribed to it in the Agreement.

RECITALS

- A. Seller and Buyer are Parties to that certain Power Purchase Agreement, dated as of February 1, 2011 ("Agreement"), under which, among other things, Seller will sell to Buyer, and Buyer will purchase from Seller, the Product.
- B. Seller and Buyer now desire to amend the Agreement as set forth in this First Amendment.

AGREEMENT

In consideration of the promises, mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration, as set forth herein, the Parties agree to amend the Agreement as follows:

1. Amendments.

- (a) The defined term "Guaranteed Commercial Operation Date" or "GCOD" in Section 1.1 of the Agreement is deleted in its entirety and replaced with the following:

"Guaranteed Commercial Operation Date' means the earlier of: (a) the date that is six (6) months after the Initial Delivery Date; or (b) December 31, 2012, as each date may be extended pursuant to Section 3.9(c)(ii)."

- (b) Section 2.3(a) of the Agreement is amended by replacing the phrase “No later than nine (9) months after the Execution Date” in the first line of the section with the phrase “No later than twelve (12) months after the Execution Date”.
- (c) Section 2.3(b)(ii) of the Agreement is deleted in its entirety.
- (d) Section 2.3(c) of the Agreement is amended by replacing the date “July 1, 2013” in the first line of the section with the date “July 1, 2012”.
- (e) Section 2.3(d) of the Agreement is amended by replacing the date “September 30, 2013” in the first line of the section with the date “September 30, 2012”.
- (f) Section 3.9(c)(ii)(B) of the Agreement is amended by adding the following language to the end of the section:

“provided, however, that if: (Y) Seller exhausts its extension days under this Section 3.9(c)(ii)(B); and (Z) the Condition Precedent set forth in Section 2.3(d) (Material Governmental Approvals) is not satisfied, Seller may, notwithstanding any other provision in this Agreement, extend the Guaranteed Commercial Operation Date for up to an additional one hundred eighty (180) days by paying to Buyer fifty percent (50%) of the Daily Delay Damages for each such extension day requested by Seller;”

- (g) Section 4.1(a) of the Agreement is amended by replacing such section in its entirety with the following:

“(a) Energy Price. The price for each MWh of Delivered Energy in each Contract Year shall be as follows (“Energy Price”):

Contract Year	Energy Price (\$/MWh)
1-20	105.00

provided, however, that if the actual costs of the Network Upgrades on the CAISO Grid that are: (i) identified in the Project’s Phase II Interconnection Study; (ii) necessary to maintain the Full Capacity Deliverability Status of the Project; and (iii) required to be funded by Seller (or by the CAISO or any Participating Transmission Owner on Seller’s behalf) in respect of the Project (which shall in no event exceed the cost cap established in the Phase I Interconnection Study for the Project) exceed Sixty-Five Million Dollars (\$65,000,000), then the Energy Price shall be equal to the Energy Price as set forth in the table above less an amount determined by the formula below at the time such Network Upgrades are placed in service:

$$\text{Energy Price Reduction} = \frac{A \times \frac{R \times (1 + R)^T}{[(1 + R)^T] - 1}}{C \times H \times CF}$$

Where,

- A = Actual costs of the Network Upgrades on the CAISO Grid that are: (i) identified in the Project’s Phase II Interconnection Study; (ii) necessary to maintain the Full Capacity Deliverability Status of the Project; (iii) required to be funded by Seller (or by the CAISO or any Participating Transmission Owner on Seller’s behalf) in respect of the Project (which shall in no event exceed the cost cap established in the Phase I Interconnection Study for the Project); and (iv) in excess of the sum of: (A) Sixty-Five Million Dollars (\$65,000,000); plus (B) the aggregate total of such Network Upgrade costs for which an Energy Price Reduction is already being applied;
- R = 8.4%;
- T = The greater of: (i) time (in years) remaining in the Delivery Term (not to exceed 20 years) at the time such Network Upgrades are placed in service; or (ii) 14 years;
- C = Contract Capacity of the Project as certified by Seller in the final Commercial Operation Certificate;
- H = 8760 hours;
- CF = 34% (Capacity Factor).

For example, if the actual costs of the Network Upgrades on the CAISO Grid that are: (i) identified in the Project’s Phase II Interconnection Study; (ii) necessary to maintain the Full Capacity Deliverability Status of the Project; and (iii) required to be funded by Seller (or by the CAISO or any Participating Transmission Owner on Seller’s behalf) in respect of the Project were Seventy-Five Million Dollars (\$75,000,000) for Network Upgrades placed in service on or before the Commercial Operation Date and Ten Million Dollars (\$10,000,000) for Network Upgrades placed in service at the end of Contract Year 5 (fifteen years remaining in the Delivery Term) and the Contract Capacity were 299 MW, then the Energy Price Reduction under the formula above would be \$1.18/MWh until the end of Contract Year 5, and thereafter the Energy Price Reduction under the formula above would be \$2.52/MWh (\$1.18/MWh + \$1.34/MWh) until the end of the Delivery Term.”

- (h) Section 11.2(a) of the Agreement is amended by replacing the amount “Forty Million Dollars (\$40,000,000)” in the final sentence of the section with the amount “Sixty-Five Million Dollars (\$65,000,000)”.
- (i) Exhibit B to the Agreement is amended by replacing the Milestone Schedule contained therein with the following Milestone Schedule:

<i>No.</i>	<i>Date</i>	<i>Milestones</i>
1.	07/2009	Submits interconnection application.
2.	09/2009	Files request for BLM Type 3 Right-of-Way Grant.

3.	12/2009	Files application for Conditional Use Permit from the Imperial County Board of Supervisors.
4.	06/2010	Receives a completed CAISO Phase I Interconnection Study.
5.	12/01/2011	Files a CEC Pre-Certification application.
6.	12/01/2011	Executes a CAISO Large Generator Interconnection Agreement.
7.	12/01/2011	Executes a turbine supply contract.
8.	12/01/2011	Executes an Engineering, Procurement and Construction (“EPC”) contract.
9.	06/01/2012	Receives BLM Type 3 Right-of-Way Grant.
10.	06/01/2012	Receives Conditional Use Permit from the Imperial County Board of Supervisors.
11.	06/15/2012	Completes financing.
12.	12/31/2012	Commercial Operation Date.

2. Miscellaneous

- (a) Each Party expressly reserves all of its respective rights and remedies under the Agreement.
- (b) Except as expressly set forth in this First Amendment, the Agreement remains unchanged and in full force and effect.
- (c) The terms and provisions hereof shall be binding on, inure to the benefit of, and be enforceable by, the successors and assigns of the Parties, whether so expressed or not. Notwithstanding the foregoing, neither Party shall assign any rights or delegate any duties under the Agreement, as modified by this First Amendment, except as provided in Section 13.2 of the Agreement.
- (d) If any provision of this First Amendment is held invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions hereof will not in any way be affected or impaired thereby.
- (e) THIS FIRST AMENDMENT 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.
- (f) This First Amendment may be executed in one or more counterparts, each of which will be deemed to be an original of this First Amendment and all of which, when taken together, will be deemed to constitute one and the same agreement.


The exchange of copies of this First Amendment and of signature pages by facsimile transmission or by other electronic means shall constitute effective execution and delivery of this First Amendment as to the Parties and may be used in lieu of the original First Amendment for all purposes. Signatures of the Parties transmitted by facsimile or by other electronic means shall be deemed to be their original signatures for all purposes.

- (g) Each Party represents and warrants that the execution, delivery and performance of this First Amendment 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, and that the person who signs below on behalf of that Party has authority to execute this First Amendment on behalf of such Party and to bind such Party to this First Amendment.
- (h) This First Amendment sets forth the entire agreement of the Parties with respect to the subject matter herein, and supersedes all previous understandings, written or oral, with respect thereto.
- (i) This First Amendment may not be amended, modified, abrogated or superseded by a subsequent agreement unless such subsequent agreement is in the form of a written instrument executed by the Parties.
- (j) This First Amendment is the result of negotiation and each Party has participated in its preparation and negotiation. Accordingly, any rules of construction to the effect that an ambiguity is to be resolved against the drafting Party shall not be employed in the interpretation of this First Amendment.
- (k) Other than as expressly set forth herein with respect to the Agreement, each of Seller and Buyer acknowledges and agrees that nothing in this Agreement is intended to abrogate, amend or modify the terms of any other agreement between Seller and Buyer, including any electric interconnection agreement. Except as may be set forth in such electrical interconnection agreement, Buyer has made and makes no, and Seller is not relying on any, representations or warranties of any kind or nature, express or implied, with respect to the electrical interconnection, including, but not limited to, any representations or warranties concerning the costs, construction schedule, or permitting of, or any other matter related to, the electric interconnection for the Project. Seller's sole and exclusive remedy against Buyer under this Agreement for any delay by Buyer in completing any interconnection facilities is an extension of the Guaranteed Commercial Operation Date in accordance with the Section 3.9(c)(ii).


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IN WITNESS WHEREOF the Parties hereto have caused this First Amendment to be duly executed as of the First Amendment Effective Date.

**SAN DIEGO GAS
& ELECTRIC COMPANY**

By: 
Name: Michael R. Niggi
Title: President + CEO

OCOTILLO EXPRESS LLC

By: 
Name: **Daniel M. Elkort**
 Authorized Signatory
Title: _____