

**THIRD AMENDMENT**

to

**POWER PURCHASE AGREEMENT**

between

**SAN DIEGO GAS & ELECTRIC COMPANY**

and

**OCOTILLO EXPRESS LLC**

This Third Amendment ("Third Amendment") to the Agreement (as defined below), effective as of September 14, 2012 (the "Third Amendment Effective Date"), is made and entered into by San Diego Gas & Electric Company ("Buyer"), a California corporation, and Ocotillo Express LLC ("Seller"), a Delaware 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, as amended by that certain First Amendment to Power Purchase Agreement, dated as of September 28, 2011 and that certain Second Amendment to Power Purchase Agreement, dated as of February 14, 2012 (as amended, modified, or supplemented from time to time, the "Agreement").
- B. Seller and Buyer now desire to amend further the Agreement as set forth in this Third 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. Amendment.
  - a. The definition of "CP Satisfaction Date" in Section 1.1 shall be modified by deleting the words "that is thirty-one (31) days after" and replacing them with the words "on which".
  - b. The definition of "Daily Delay Damages" in Section 1.1 shall be modified by amending and restating the definition in its entirety with the following:

"Daily Delay Damages" means an amount equal to (1) for the first one hundred eighty (180)

days of the Project Cure Period, if any, the product of: (a) the quotient of: (i) the Construction Period Security amount required hereunder, divided by (ii) one hundred eighty (180) days; times (b) the quotient of: (i) the Capacity Deficiency, divided by (ii) the Minimum Contract Capacity, and (2) for the period, if any, beginning on the one hundred eighty first (181<sup>st</sup>) day of the Project Cure Period until the last day of the Project Cure Period, \$49,475 per day."

- c. The second sentence of Section 3.9(c)(i) shall be modified by adding, at the end thereof, the following:

"; provided, however, that if, within the one hundred eighty (180) days of the Project Cure Period, (X) Seller achieves Commercial Operation with respect to at least 104 MW of Contract Capacity by satisfying the definition of Commercial Operation with respect thereto, (Y) Seller delivers to Buyer a true, correct, and complete Commercial Operation Certificate with respect thereto, and (Z) Seller delivers to Buyer additional Construction Period Security in the additional amount of Four Million Four Hundred Fifty-Two Thousand Seven Hundred Ten Dollars (\$4,452,710) in the form of cash or a Letter of Credit or a Guaranty such that the aggregate amount of Construction Period Security that Seller shall have then delivered to Buyer is equal to Thirteen Million Three Hundred Fifty-Eight Thousand One Hundred Thirty Dollars (\$13,358,130), then the Project Cure Period may be extended by Seller for an additional ninety (90) days (for an aggregate Project Cure Period of two hundred seventy (270) days) and Seller shall pay Buyer Daily Delay Damages during the extended Project Cure Period for each day or portion of a day that the Commercial Operation Date is not achieved."

- d. The first sentence of Section 3.9(d) shall be modified by deleting the words "the Project capacity specified in the definition of Initial Delivery Date" and replacing them with "104 MW."

- e. Section 8.4(a)(ii) shall be modified by adding after the words "Section 8.4(b)(ii) below;" the following:

"provided, however, that the amount of Construction Period Security shall be increased by Four Million Four Hundred Fifty-Two Thousand Seven Hundred Ten Dollars (\$4,452,710) to an aggregate amount equal to Thirteen Million Three Hundred Fifty-Eight Thousand One Hundred Thirty Dollars (\$13,358,130) if Seller makes the election to extend the Project Cure Period as provided in Section 3.9(c)(i);"

## 2. Acknowledgements

- a. Each of Buyer and Seller acknowledges and agrees that (i) the critical path for construction of the Project requires that the in-service interconnection date for the Project's Electrical Interconnection Upgrades (excluding the Deliverability Network Upgrades, which may have a later in-service date) must be five (5) months prior to the Commercial Operation Date; and (ii) the in-service interconnection date for the Project's Electrical Interconnection Upgrades (excluding the Deliverability Network Upgrades) has not occurred as of July 31, 2012 (the date that is currently five (5) months prior to the Guaranteed Commercial Operation Date) due to no fault or negligence of Seller. Accordingly, each of Buyer and Seller acknowledges and agrees that, consistent with and pursuant to Section 3.9(c)(ii)(D), the Guaranteed

Commercial Operation Date and the deadline dates for the impacted Milestones are hereby extended on a day-for-day basis without imposition of any Daily Delay Damages for the number of days that the date on which the CAISO or the Participating Transmission Owner achieves the in-service interconnection date for the Project's Electrical Interconnection Upgrades (excluding the Deliverability Network Upgrades, which may have a later in-service date) is delayed beyond July 31, 2012 (the date that is currently five (5) months prior to the Guaranteed Commercial Operation Date), but only to the extent such delay to the in-service interconnection date is not the direct or indirect result of the fault or negligence of the Seller arising after the Third Amendment Effective Date; provided however that such extension of the Guaranteed Commercial Operation Date and the deadline dates for the impacted Milestones may not exceed seven hundred thirty (730) calendar days in the aggregate.

- b. Each of Buyer and Seller acknowledges and agrees that Section 3.9(c)(ii)(B) remains in full force and effect and in particular, each of Buyer and Seller acknowledges and agrees to all of the dates and time periods referenced in Section 3.9(c)(ii)(B).

3. Miscellaneous

- a. Each Party expressly reserves all of its respective rights and remedies under the Agreement.
- b. Except as expressly set forth in this Third 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 Third Amendment, except as provided in Section 13.2 of the Agreement.
- d. If any provision of this Third 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 THIRD 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 Third Amendment may be executed in one or more counterparts, each of which will be deemed to be an original of this Third Amendment and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Third Amendment and of signature pages by facsimile transmission or by other electronic means shall constitute effective execution and delivery of this Third Amendment as to the Parties and may be used in lieu of the original Third Amendment for all purposes. Signatures of the Parties transmitted by facsimile or by other electronic means shall be deemed to be

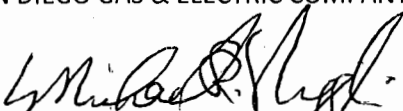
their original signatures for all purposes.

- g. Each Party represents and warrants that the execution, delivery and performance of this Third 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 Third Amendment on behalf of such Party and to bind such Party to this Third Amendment.
- h. This Third 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 Third 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 Third 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 Third Amendment.

*[Remainder of page intentionally left blank]*

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

SAN DIEGO GAS & ELECTRIC COMPANY

By: 

Name: Michael R. Niggli

Title: President

Approved as to legal form: etc

OCOTILLO EXPRESS LLC

By: 

Name: **Andrew Murray**

Title: **Authorized Signatory**