

## GREEN ATTRIBUTE PURCHASE AND SALE AGREEMENT

This Green Attribute Purchase and Sale Agreement (the "Agreement"), dated as of July 3, 2012 ("Effective Date"), is entered into by and between San Diego Gas & Electric Company ("Buyer") and Whitewater Hill Wind Partners, LLC, a wholly-owned subsidiary of Shell WindEnergy Inc. and GS Wind III ("Seller"). Buyer and Seller may be referred to individually herein as "Party" and collectively as "Parties."

### RECITALS

WHEREAS, Buyer is required to procure eligible renewable energy resources pursuant to the California Public Utilities Commission ("CPUC") Renewable Portfolio Standard ("RPS");

WHEREAS, in D.02-09-053 the CPUC allocated energy to Buyer from the Amended and Restated Master Power Purchase and Sale Agreement dated January 10, 2003 ("Whitewater PPA") between Whitewater Hill Wind Partners, LLC and the California Department of Water Resources ("CDWR"), for the approximately 61.5 MW Whitewater Project in Riverside County, California ("Project") to the California Department of Water Resources; and

WHEREAS, Seller wishes to sell and Buyer wishes to purchase all of the Green Attributes (as defined below) generated by the Project during the term of this Agreement on an if, as, and when generated basis.

NOW THEREFORE, in consideration of the foregoing and the mutual promises and covenants hereinafter set forth and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree and intend to be legally bound as follows:

### ARTICLE 1 CONDITIONS TO EFFECTIVENESS

A. Condition Precedent. The effectiveness of this Agreement is conditioned upon the satisfaction or waiver of the following condition precedent ("Condition Precedent") by September 30, 2012, unless such date is extended in writing by mutual agreement of the Parties:

1. CPUC Approval. The obligations of either Party under this Agreement are expressly conditioned upon the satisfaction or waiver of the following conditions: (i) CPUC Approval (defined below) and (ii) the CPUC's approval of Buyer's requests in the related advice letter filing in substantially the same form as set forth in Exhibit A (the "Advice Letter"), including, specifically, Buyer's request in said letter of a finding that the Green Attributes purchased by Buyer pursuant to this Agreement meet the product content requirements of the portfolio content category set forth in Public Utilities Code ("PUC") Section 399.16(b)(3), but because of the direction provided in Decision 11-12-052 (Decision Implementing Portfolio Content Categories for the Renewables Portfolio Standard Program) regarding exceptional Department of Water Resources contracts, or for any other reason determined by the CPUC,

Buyer can, for RPS compliance purposes, apply the Green Attributes purchased by Buyer pursuant to this Agreement towards the portfolio content category set forth in PUC Section 399.16(b)(1).

2. The Parties agree to cooperate and use all reasonable efforts to obtain CPUC Approval as soon as is practicable. Should the CPUC issue one or more orders approving this Agreement (or the advice letter filing) with conditions or modifications that materially alter the commercial aspects of this Agreement, or the advice letter filing, the Parties shall have fifteen (15) days from the mailing date of any such order to provide the other Party written notice of the issuing Party's acceptance or rejection of the CPUC order as issued; provided, however, if a Party fails to provide written notification of its acceptance or rejection to the other Party within such fifteen (15) day period, that Party's silence shall be deemed to constitute rejection of the CPUC order as issued and agreement by such Party that this condition has not been satisfied, upon the CPUC Approval Date. If a notice of rejection is sent or a Party's silence was deemed to constitute rejection, each Party agrees to use good faith efforts to renegotiate this Agreement. If, within sixty (60) days, no agreement is reached, either Party may terminate this Agreement upon delivery of written notice to the other Party. Buyer has no obligation to seek rehearing or to appeal a CPUC decision which fails to approve either this Agreement or Buyer's requests in the Advice Letter or which contains findings required for CPUC Approval with conditions or modifications unacceptable to either Party. For purposes of this Agreement, the "CPUC Approval Date" shall be defined as the first Business Day after the date on which (i) the CPUC order approving this Agreement becomes final and no longer subject to any appeal and (ii) Buyer has received CPUC approval of its requests in the Advice Letter.

B. Termination. If the Condition Precedent is not satisfied or waived in writing by Buyer on or before September 30, 2012 (unless such date is extended in writing by mutual agreement of the Parties), then either of the Parties may terminate this Agreement with no further obligation to the other Party (other than any payment obligations which are accrued and payable at the time of termination) by delivery of notice to the other Party within fifteen (15) days after the date set forth above in this paragraph. If a Party has the right to terminate this Agreement pursuant to this Article 1(B) but fails to deliver notice of termination within such fifteen (15) day period after the deadline date, this Agreement shall be deemed terminated effective at the end of such fifteen (15) day period.

## **ARTICLE 2 TRANSACTION**

A. Term. The term of this Agreement shall commence on the Effective Date and shall continue until the later of (i) the expiration of the Delivery End Date, and (ii) satisfaction of all obligations of the Parties under this Agreement, unless terminated earlier pursuant to the terms hereof.

B. Transaction.

1. Definitions.

"Average Market Price" means the lower of (a) the average of the two (2) prices for Comparable Green Attributes quoted by two (2) independent third party brokerage services reasonably selected by the Non-Defaulting Party and that deal regularly in trading Comparable Green Attributes and (b) \$50/MWh (such part (b) being the "Liability Cap").

"Bankrupt" has the meaning in Article 5(A).

"Business Day" means a day on which banking institutions in San Diego, California are open for business.

"Whitewater PPA" has the meaning set forth in the Recitals.

"Claiming Party" has the meaning set forth in Article 6.

"Comparable Green Attributes" means Green Attributes generated by a facility located within California meeting the warranties contained in Article 4(B) of this Agreement and meeting the product content requirements and portfolio content category described in Public Utilities Code Section 399.16(b)(1), as adopted in California Senate Bill 2 (1x) (Stats. 2011, Ch. 1), and implemented by the California Public Utilities Commission.

"Condition Precedent" has the meaning set forth in Article 1.

"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:

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

(b) finds that any procurement pursuant to this Agreement is procurement of Renewable Energy Credits that conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation, for purposes of determining Buyer'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.

"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 general corporate credit rating or long-term issuer rating assigned by S&P or Moody's.

"Defaulting Party" has the meaning set forth in Article 5(A).

"Delivery Term" means the period commencing on January 1, 2012 if all Conditions Precedent have been satisfied or waived ("Delivery Start Date") and ending on December 31, 2013 ("Delivery End Date").

"Early Termination Date" has the meaning set forth in Article 5(B).

"Electricity Metering Point" has the meaning set forth in Article 8(D).

"Event of Default" has the meaning set forth in Article 5(A).

"Financing Agreement" has the meaning set forth in Article 3(B).

"Forecast Quantity" means the estimated quantity of Green Attributes to be generated by the Project during the remaining Delivery Term pursuant to Article 2(B)(4) of this Agreement.

"Governmental Approval" means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions and declarations of or with any governmental entity.

"Governmental Authority" means any federal, state, local or municipal government, governmental department, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory or administrative body, having jurisdiction as to the matter in question.

"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 (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), 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 atmosphere;<sup>1</sup> and (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

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<sup>1</sup> 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.

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 Seller 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 Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Project.

"Indemnified Party" has the meaning set forth in Article 8(B).

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"Interest Amount" means, with respect to an Interest Period, the amount of interest derived from: (1) the sum of (a) the principal amount of Performance Assurance in the form of cash held by Buyer during that Interest Period, and (b) the sum of all accrued and unpaid Interest Amounts accumulated prior to such Interest Period; (2) multiplied by the Interest Rate in effect on the first day of the Interest Period; (3) multiplied by the number of days in that Interest Period; and (3) divided by 360.

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"Interest Payment Date" means the date on which cash held as Performance Assurance is returned pursuant to the terms of this Agreement.

"Interest Period" means the monthly period beginning on the first day of each month and ending on the last day of each month or the shorter period during which Performance Assurance in the form of cash is held by Buyer.

"Interest Rate" means for any date, the rate per annum equal to the commercial paper (prime, 3 months) rate as published the prior month in the Federal Reserve Statistical Release, H.15. Should publication of the interest rate on commercial paper (prime, 3 months) be discontinued, then the interest rate on commercial paper, which most closely approximates the discontinued rate, published the prior month in the Federal Reserve Statistical Release, H.15, or its successor publication.

"Law" means any statute, law, treaty, rule, regulation, ordinance, code, Governmental Approval, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, including any of the foregoing that are enacted, amended, or issued after the Effective Date, and which become effective prior to the end of the Delivery Term; or any binding interpretation of the foregoing by a Governmental Authority.

"Lenders" has the meaning set forth in Article 3(B).

"Letter(s) of Credit" means one or more irrevocable 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 substantially the form as contained in Exhibit B to this Agreement.

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

"Non-Defaulting Party" has the meaning set forth in Article 5(B).

"Performance Assurance" means collateral provided to Buyer to secure Seller's obligations hereunder.

"Pre-CP Satisfaction Date Deliveries" has the meaning set forth in Article 3(B).

"Product" has the meaning set forth in Article 2(B)(2).

"Project" has the meaning set forth in the Recitals.

"Purchase Price" has the meaning set forth in Article 3.

"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.

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

"Security Agent" has the meaning set forth in Article 3(B).

"Seller's Parent" has the meaning set forth in Article 3(B).

"Settlement Amount" has the meaning set forth in Article 5(B).

"Undelivered Green Attributes" means the Forecast Quantity for the remainder of the Delivery Term following the Early Termination Date plus any Green Attributes generated by the Project during the Delivery Term but undelivered to Buyer.

"Whitewater PPA" has the meaning set forth in the Recitals.

"WREGIS" means the Western Renewable Energy Generating Information System or any successor renewable energy tracking program.

2. Purchase and Sale. The Parties enter into this Agreement for the purchase and sale of Green Attributes generated by the Project delivered and metered at the Electricity Metering Point as, if and when generated (not on a firm or volume guaranty basis) ("Product") during the Delivery Term at the Purchase Price if the associated energy generated, delivered and

metered at the Electricity Metering Point is sold to Buyer under the Whitewater PPA. Seller hereby provides and conveys all Green Attributes associated with all electricity generation from the Project to Buyer as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Project, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Project. It is acknowledged by the Parties that this is an "as, if and when generated" contract, and is not a firm volume or quantity sales obligation. Buyer agrees to purchase at the Purchase Price, accept and take delivery of all Green Attributes delivered by Seller each month during the Delivery Term.

3. Purchase Price: \$22.00/MWh.

4. Forecast Quantity. Each quarter, Seller shall provide Buyer with a good faith estimate of the Green Attributes to be generated over each upcoming quarter and for the remainder of the Delivery Term. Notwithstanding the provision of such estimate, the Parties understand and agree that there is no representation, warranty or obligation to deliver and sell or purchase any specific quantity of Green Attributes during the Delivery Term beyond 100% of the Green Attributes that are actually generated by the Project.

Seller's indicative estimate for each quarter of each year of the Delivery Term is 43,750 MWh per quarter.

**ARTICLE 3**  
**TRANSFER, PAYMENT, COLLATERAL REQUIREMENTS, COOPERATION,**  
**DISPUTED INVOICES**

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A. Invoices. Except as stated in Article (3)(B), Seller shall invoice Buyer within fifteen (15) days following the transfer of all the Green Attributes to Buyer for such month, at the Purchase Price described in Article 2(B)(3), at the address below, as may be changed in writing from time to time by Buyer.

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

B. Payment: Payment for Certain Deliveries. All payments to be made by Buyer to Seller under this Agreement, including, but not limited to, payments made or to be made with respect to liquidated damages and warranties, shall be made in U.S. dollars and in immediately available funds, directly to BNP Paribas ("Security Agent"), in its capacity as security agent for the lenders under that certain Financing Agreement (as the same may be amended, modified or supplemented from time to time, the "Financing Agreement"), dated as of August 23, 2004, by and among Three Wind Holdings, LLC ("Seller's Parent"), certain lenders identified in the Financing Agreement ("Lenders"), and Security Agent as agent for the Lenders. Such payment

shall be made to the Security Agent, acting for the benefit of the Lenders for deposit into the account described immediately below or, after the occurrence of an Event of Default under the Financing Agreement, to such other Person and/or at such other address or account as the Security Agent may from time to time specify in writing to Buyer and shall be accompanied by a statement from Buyer specifying that the payment is being made pursuant to this Agreement. Seller hereby instructs Buyer, and Buyer accepts such instructions, to make all payments due and payable to Seller under this Agreement as set forth in the immediately preceding sentence. Buyer further agrees that it shall not follow any instructions from Seller requiring payment to an account or to a recipient other than as set forth below, unless Buyer receives explicit written instructions from Security Agent authorizing such alternate payment arrangements. Buyer shall make payment within ten (10) days after receipt of Seller's invoice, unless such due date is not a business day for Buyer, in which case payment shall be due on the next business day. Buyer shall remit the amount due Seller in immediately available funds by wire or electronic fund transfer to the account set forth below:

SunTrust Bank  
ABA No. 061000104  
Account No. 9443001321  
Account Name: Corporate Trust Division  
Beneficiary: Three Wind Operating  
Account: 70-02-200-7044885  
Attention: Carl Thompson (804) 782-7590

Notwithstanding the previous paragraph, if and when the Condition Precedent has been satisfied or waived, Seller shall deliver and Buyer shall pay for all Green Attributes generated, and available to be transferred in WREGIS, by the Project, from the Delivery Start Date to the date of CPUC Approval ("Pre-CP Satisfaction Date Deliveries") as follows: within five (5) Business Days of the date of CPUC Approval, Seller shall deliver title to all Green Attributes for Pre-CP Satisfaction Date Deliveries. Within thirty (30) Business Days of such delivery and invoice from Seller, Buyer shall pay in full for all Pre-CP Satisfaction Date Deliveries.

C. Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent Seller delivers Performance Assurance in the form of cash hereunder, Seller hereby grants to Buyer a present and continuing first priority 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, Buyer, and each Party agrees to take such action as the other Party reasonably requires in order to perfect the Buyer'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 and during the continuation of an Event of Default by Seller or an Early Termination Date as a result thereof, Buyer 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 such collateral and any and all proceeds resulting therefrom or from the liquidation thereof; (iii) draw on any outstanding Letter of Credit issued for its benefit; and (iv) liquidate all or any portion of any Performance Assurance then held by or for the benefit of Buyer free from any claim or right



of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller. Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Seller's obligations under the Agreement (Seller remaining liable for any amounts owing to Buyer after such application), subject to Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

D. Performance Assurance.

(1) To secure its obligations, which may or may not be capped under this Agreement, Seller agrees to deliver to Buyer and maintain in full force and effect security in the amount of \$1,750,000.00 in the form of cash or a Letter of Credit(s), or any combination of the two, from the Effective Date of this Agreement until the return date specified in Article 3 (D)(2). Any such Performance Assurance shall not be deemed a limitation of damages.

(2) Buyer shall promptly return to Seller the unused portion of the Performance Assurance after the following have occurred: (i) the Delivery Term has expired or terminated early; and (ii) all payment obligations of the Seller arising under this Agreement, including compensation for penalties, Settlement Amount, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting).

E. Interest on Cash. If Seller provides Performance Assurance in the form of cash, Buyer shall pay interest on such cash held as security at the Interest Rate. On or before each Interest Payment Date, Buyer shall transfer the sum of all accrued and unpaid Interest Amounts due to Seller for such security in the form of cash by wire transfer to the bank account specified by Seller.

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F. Costs of Letter of Credit. If Seller provides Performance Assurance in the form of a Letter of Credit, in all cases, the reasonable costs and expenses of (including but not limited to the reasonable costs, expenses, and attorneys' fees, including reasonably allocated costs of in-house counsel of the Buyer) 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 the Seller.

G. Taxes and Fees. Seller will be responsible for any taxes imposed on the creation, ownership, or transfer of Product under this Agreement up to and including the time and place of its delivery. Buyer will be responsible for any taxes imposed on the receipt or ownership of Product at or after the time and place of its delivery. All CPUC RPS certification fees and any related WREGIS fees are to be paid by Seller.

H. Title. Except as stated in Article 3 (B) for Pre- CP Satisfaction Date Delivery, no later than ninety-five (95) days following the last day of each calendar month during the Delivery Term, Seller shall deliver the WREGIS certificates for the Green Attributes into Buyer's WREGIS account during the month. Title and risk of loss to such Green Attributes shall transfer from Seller to Buyer upon that delivery, and upon such transfer, the Green Attributes shall be deemed delivered.

I. Cooperation. Each of the Parties hereto agrees to cooperate with the other and to

provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are consistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, in order to give full effect to this Agreement and to carry out the intent of this Agreement.

J. Disputed 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 an amount disputed in good faith shall not be required until the dispute is resolved, but payment of any undisputed amount or portion thereof shall be made in accordance to Article 3(A). Upon resolution of the dispute, any required payment shall be made within five (5) 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 invoices. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Article 3(F) 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 Seller delivered the Product, the right to payment for such delivery is waived. "Interest Rate" shall mean, 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.

#### **ARTICLE 4 REPRESENTATIONS AND WARRANTIES**

A. Mutual Representations and Warranties. Each Party represents and warrants to the other that: (i) it is duly organized and validly existing under the Laws of the jurisdiction of its incorporation or organization; (ii) it has the corporate and/or other legal capacity and authority to enter hereinto and to perform its obligations hereunder; (iii) such execution and performance do not violate or conflict with any provision of its constitutional documents or any of its assets or any contractual restriction binding on or affecting it or any of its assets; (iv) except as stated in Article 1, all governmental and other authorizations that are required to have been obtained or submitted by it with respect to this Agreement have been obtained or submitted and are in full force and effect or will be obtained or submitted prior to the commencement of the Delivery Term; (v) its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application regardless of whether enforcement is sought in a proceeding in equity or at Law); (vi) it is not relying upon any representations of the other Party other than those expressly

set forth in this Agreement; (vii) it has entered into this Agreement with a full understanding of the material terms and risks of the same, and it is capable of assuming those risks; (viii) it has made its trading and investment decisions based upon its own judgment and any advice from such advisors as it has deemed necessary and not in reliance upon any view expressed by the other Party; and (ix) it has not received from the other Party any assurances or promises regarding any financial results or benefits under this Agreement.

B. Warranties of Seller.

(1) Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (a) 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 (b) the Project's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in Law occurs after the 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 Seller has used commercially reasonable efforts to comply with such change in Law.

(2) Seller 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 California Public Utilities Commission 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 Seller has used commercially reasonable efforts to comply with such change in Law. If, at any time during the Delivery Term, Seller's representations and warranties set forth in this Article 4(B)(2) become materially false or misleading, then Seller covenants that it shall provide notice to Buyer as soon as reasonably practical after such discovery that such representation or warranty no longer complies with CPUC Decision 08-08-028, describing the circumstances which make Seller's representation and warranties in Article 4(B)(2) materially false and misleading and the efforts that Seller has undertaken and will undertake so that Seller's representation and warranties in this Article 4(B)(2) are no longer materially false and misleading.

(3) Seller and, if applicable, its successors, hereby represents and warrants to Buyer on the date that the Green Attributes are transferred hereunder that it has good title to such Green Attributes, has not sold the Green Attributes to any other person or entity, and that such Green Attributes shall be free and clear of any liens, taxes, claims, security interests or other encumbrances.

C. LIMITATION OF LIABILITY. NOTWITHSTANDING ARTICLE 5(D), THE LIABILITY OF SELLER, WITH RESPECT TO ANY AND ALL CLAIMS AND COSTS ARISING OUT OF OR INCURRED BY BUYER FOR SELLER'S UNINTENTIONAL FAILURE TO DELIVER THE PRODUCT AS REQUIRED BY ARTICLE 2 OF THIS AGREEMENT SHALL NOT, IN THE AGGREGATE, EXCEED THE AVERAGE MARKET PRICE MINUS THE PURCHASE PRICE, TIMES THE UNDELIVERED GREEN ATTRIBUTES.

D. CONSEQUENTIAL DAMAGES. THE PARTIES AGREE THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED HEREIN SATISFY THE ESSENTIAL PURPOSES HEREOF FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGE IS PROVIDED, SUCH REMEDY OR MEASURE SHALL BE THE SOLE AND EXCLUSIVE REMEDY THEREOF. IF NO REMEDY OR MEASURE OF DAMAGE IS EXPRESSLY PROVIDED, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY AS THE SOLE AND EXCLUSIVE REMEDY. UNLESS EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, THE PARTIES AGREE THAT NO PARTY SHALL BE REQUIRED TO PAY OR BE LIABLE FOR SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES, LOST PROFIT OR BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT, CONTRACT OR OTHERWISE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE DEEMED LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT TO DETERMINE, AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

E. NO WARRANTY OF QUANTITY. SELLER MAKES NO REPRESENTATION OR WARRANTY THAT ANY SPECIFIC QUANTITY OF GREEN ATTRIBUTES WILL BE GENERATED BY THE PROJECT FOR SALE AND DELIVERY TO BUYER HEREUNDER.

F. NO IMPLIED WARRANTIES. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, SELLER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE IN CONNECTION WITH THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY. FURTHER, SELLER EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, CUSTOM, USAGE OR OTHERWISE. THERE ARE NO OTHER WARRANTIES, AGREEMENTS, ORAL OR WRITTEN, OR UNDERSTANDINGS THAT EXTEND BEYOND THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT.

G. NO OTHER WARRANTY OF QUALIFICATION. EXCEPT AS EXPRESSLY PROVIDED IN ARTICLE 4(B), SELLER MAKES NO REPRESENTATION OR WARRANTY THAT THE GREEN ATTRIBUTES TO BE SOLD AND DELIVERED HEREUNDER WILL SATISFY THE REQUIREMENTS OF ANY RENEWABLE PORTFOLIO STANDARDS OF ANY STATE OTHER THAN CALIFORNIA OR SIMILAR RENEWABLE ENERGY MANDATES OR THE REQUIREMENTS OF ANY INDEPENDENT CERTIFICATION BOARD OR GROUP.

H. Releases Valid in All Events. The Parties intend that the waivers and disclaimers of liability, releases from liability, limitations and apportionments of liability, and indemnity and hold harmless provisions expressed throughout this Agreement shall apply even in the event of the fault, negligence (in whole or in part), strict liability, tort liability or breach of contract (including other legal bases of responsibility such as fundamental breach), of the Party released or whose liability is waived, disclaimed, limited, apportioned or fixed by any such provision, and shall extend to such Party's affiliates and its and their partners, shareholders, directors, officers,

employees and agents. The Parties also intend and agree that such provisions shall continue in full force and effect notwithstanding the completion, termination, suspension, cancellation or rescission of this Agreement.

I. Survival. Except as may be expressly limited by this Agreement, the Parties intend and agree that provisions which by their nature are intended to survive termination of this Agreement, including, without limitation representations, warranties, indemnification, payment and settlement, confidentiality, shall so survive.

## ARTICLE 5 EVENTS OF DEFAULT; REMEDIES

A. Events of Default. An "Event of Default" shall mean, with respect to a Party (the "Defaulting Party"):

- (i) the failure of the Defaulting Party to pay any amount due and payable under this Agreement within three (3) Business Days of receipt of notice given by the other Party of such non-payment if such failure is not remedied within thirty (30) days after notice thereof;
- (ii) the failure of the Defaulting Party to perform any other material covenant or obligation under this Agreement where such failure is not cured within ten (10) days following receipt of a notice from the other Party demanding cure (provided that this Article 5(A)(ii) shall not apply to any failure to make payments (which is covered by Article 5(A)(i));

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- (iii) if any representation or warranty of the Defaulting Party material to the transactions contemplated hereby shall prove to have been incorrect in any material respect when made;
- (iv) if the Defaulting Party meets the following criteria ("Bankrupt") (i) ceases or fails to be solvent, or generally fails to pay, or admits in writing its inability to pay, its debts as they come due, (ii) voluntarily ceases to conduct its business in the ordinary course, (iii) commences any insolvency proceeding with respect to itself, or (iv) takes any action to effectuate or authorize any of the forgoing; or in the event that (a) any involuntary insolvency proceeding is commenced or filed against the Defaulting Party, or a writ, judgment, warrant of attachment, execution or similar process is issued or levied against a substantial part of the Defaulting Party's properties (b) the Defaulting Party admits the material allegations of a petition against it in any insolvency proceeding, or an order for relief (or similar order under non-U.S. Law) is ordered in any insolvency proceeding; or (c) the Defaulting Party acquiesces in the appointment of a receiver, trustee, custodian, liquidator, mortgagee in possession (or agent therefore), or other similar person for itself or a substantial portion of its property or business;

- (v) Seller sells any Green Attributes generated by the Project to any third party(ies) during the Delivery Term except in the Event of Default by Buyer;
- (vi) 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.
- (vii) failure by Seller to satisfy the collateral requirements pursuant to Article 3(D) of this Agreement and such failure is not remedied within seven (7) days after notice thereof; or
- (viii) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within five (5) Business Days after Seller receives notice of the occurrence of any of the following events:
  - a. the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least "A-" by S&P or "A3" by Moody's;
  - b. the issuer of such Letter of Credit becomes Bankrupt;
  - c. the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;
  - d. the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;
  - e. the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;
  - f. such Letter of Credit fails or ceases to be in full force and effect at any time; or
  - g. Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter

of Credit and as provided in accordance with this Agreement, and in no event less than sixty (60) days prior to the expiration of the outstanding Letter of Credit.

B. Remedies Upon Event of Default. Upon the occurrence of an Event of Default by a Party and for so long as the Event of Default is continuing, the non-defaulting Party (the "Non-Defaulting Party") shall have the right to do any or all of the following: (1) establish a date (which date shall be no less than thirty (30) Days after the Non-Defaulting Party delivers notice) (the "Early Termination Date") for the termination and liquidation of this Agreement; (2) withhold any payments or deliveries due in respect of this Agreement; and/or (3) exercise such other remedies as may be available at Law or in equity or as otherwise provided for in this Agreement. The Non-Defaulting party shall calculate, in accordance with Subsections C and D below, a settlement amount for the termination of this Agreement as of the Early Termination Date (the "Settlement Amount:"). The Non-Defaulting Party shall not have to enter into a replacement transaction to establish a settlement amount.

C. Buyer's Liability. In the event that Buyer is the Defaulting Party, and Seller declares an Early Termination Date, Buyer shall be obligated to pay Seller each of the following amounts (i) the Purchase Price for any Green Attributes that meet the warranties under Article 4(B) which have been delivered to Buyer prior to termination, but for which Seller has not been paid; (ii) liquidated damages in an amount equal to the Purchase Price minus the Average Market Price, if such number is positive, for any Undelivered Green Attributes, plus (iii) any broker costs incurred in entering into any replacement transaction for the Undelivered Green Attributes and the reasonable attorney's fees, if such fees are necessary, and expenses incurred in connection with the termination of the Agreement, plus (iv) any other amounts due under this Agreement.

D. Seller's Liability. In the event that Seller is the Defaulting Party and Buyer elects to declare an Early Termination Date, Seller shall be obligated to pay Buyer, subject to the limitation of liability in Article 4(C) each of the following amounts (i) liquidated damages in an amount equal to the Average Market Price minus the Purchase Price for any Undelivered Green Attributes, if such number is positive, plus (ii) any broker costs incurred in entering into any replacement transactions for the Undelivered Green Attributes and the reasonable attorney's fees, if such fees are necessary, and expenses incurred in connection with the termination of the Agreement, plus (iii) any other amounts due under this Agreement.

E. Payment of Damages. Any amounts due under Article 5 (C) or (D) shall be paid within fifteen (15) days of the Defaulting Party's receipt of the Non-Defaulting Party's written termination notice setting forth the termination payment due.

## ARTICLE 6 FORCE MAJEURE

Except with regard to a Party's obligation to make payments for obligations incurred under this Agreement, in the event either Party hereto is rendered unable, wholly or in part, by Force Majeure to carry out its obligations with respect to this Agreement, it is agreed that upon

such Party's (the "Claiming Party") giving notice and full particulars, including expected duration, of such Force Majeure as soon as reasonably possible after the occurrence of the cause relied upon, such notice to be confirmed in writing or by facsimile to the other Party, then the obligations of the Claiming Party shall, to the extent they are affected by such Force Majeure, be suspended during the continuance of said inability, but for no longer period, and the Claiming Party shall not be liable to the other Party for, or on account of, any loss, damage, injury or expense resulting from, or arising out of such event of Force Majeure. The Party receiving such notice of Force Majeure shall have five (5) Business Days following such receipt to notify the Claiming Party that it objects to or disputes the existence of an event of Force Majeure. "Force Majeure" means an event or circumstance which prevents one Party from performing its obligations under one or more transactions hereunder, which event or circumstance was not anticipated as of the date such 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 Green Attributes purchased hereunder; or (iii) Seller's ability to sell the product sold pursuant to the transaction at a price greater than the Purchase Price.

#### **ARTICLE 7 FORWARD CONTRACT**

The Parties agree that the transaction subject to this Agreement for the sale and purchase of Green Attributes shall constitute a "forward contract," and that the Parties shall constitute "forward contract merchants," within the meaning of the United States Bankruptcy Code.

#### **ARTICLE 8 MISCELLANEOUS**

A. Recordings. 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 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.

B. Indemnification. Each Party (the "Indemnifying Party") shall indemnify, defend and hold harmless the other Party (the "Indemnified Party") from and against any third party losses, damages, and claims to the extent caused by the Indemnifying Party's gross, active or passive negligence, willful misconduct, breach of contract, or violation of the law, and such indemnification obligation excludes losses, damages, and claims to the extent caused by the negligence or willful misconduct of the Indemnified Party. For the avoidance of doubt, Seller's failure to deliver Green Attributes in accordance with the term of this Agreement shall not give rise to any claim by Buyer for indemnification under this Article 8(B); Buyer's exclusive remedy for Seller's failure to deliver Green Attributes is set forth in Articles 5(D) and 5(E).



C. WREGIS. On or before the commencement of the Delivery Term, Seller shall register the Project in WREGIS, and take all other actions necessary to ensure that the Green Attributes produced from the Project are issued and tracked for purposes of satisfying the requirements of the California Renewable Portfolio Standard and transferred to Buyer, including payment of all fees required to register the facility in WREGIS, issue WREGIS certificates, and transfer such certificates to Buyer. Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in WREGIS will be taken prior to the first delivery under the Agreement.

D. Meter Reads. The energy and Green Attributes shall be measured by the CAISO's electricity metering devices with a CASIO meter system ID WHTWTR\_1\_WINDA-1 at the "Delivery Point" as such term is defined in the Whitewater PPA ("Electricity Metering Points"). Seller hereby agrees to provide all meter data to Buyer in a form acceptable to Buyer, and consents to Buyer obtaining from the California Independent System Operator ("CAISO") meter data applicable to the Project and all inspection, testing and calibration data and reports. Seller shall grant Buyer the right to retrieve the meter reads from the CAISO Operational Meter Analysis and Reporting (OMAR) web and/or directly from the CAISO meter(s) at the Project site. If the CAISO makes any adjustment to any CAISO meter data for a given time period, Seller agrees that it shall submit revised monthly invoices, covering the entire applicable time period in order to conform fully such adjustments to the meter data. Seller shall submit any such revised invoice no later than thirty (30) days from the date on which the CAISO provides to Seller such binding adjustment to the meter data.

E. Notices. All notices, requests, statements or payments shall be made as specified below. ~~Notices 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.~~

**To Buyer:**

**Notices:**

San Diego Gas & Electric Company  
8315 Century Park Court  
San Diego, CA 92123  
Attn: Contract Administration  
Phone: (858) 650-6176  
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:**

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

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

Sempra Energy  
101 Ash Street  
San Diego, CA 92101  
Attn: Assistant General Counsel, Commercial Law  
Facsimile: (619) 696-4377

**To Seller:**

Whitewater Hill Wind Partners,  
LLC c/o Shell WindEnergy Inc.  
777 Walker  
Houston, TX 77002  
Attn: Asset Manager

**With a copy of material notices and requests to:**

BNP Paribas  
787 7th Avenue  
28th Floor  
New York, NY 10019  
Attention: Julie C. Lee  
Phone: (212) 340-5398  
Facsimile: (212) 841-2555

F. Confidentiality/Publicity

1. Neither Party shall disclose the non-public terms or conditions of this Agreement to a third-party, other than (i) the Party's employees, members, affiliates, lenders, 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 Buyer's Procurement Review Group, as defined in CPUC Decision (D) 02-08-071, subject to a confidentiality agreement, (iii) to the CPUC under seal for purposes of review or to comply with RPS reporting requirements, (iv) disclosure of terms specified in and pursuant to Article 8(F)(2) of this Agreement; (v) in order to comply with any applicable Law, regulation, or any exchange, control area or CAISO rule, or order issued by a court or entity with competent jurisdiction over the disclosing Party ("Disclosing Party"), other than to those entities set forth in subsection (vi); or (vi) in order to comply with any applicable regulation, rule, or order of the CPUC, CEC, or the Federal Energy Regulatory Commission. In connection with requests made pursuant to clause (v) of this Article 8(F)(1) ("Disclosure Order") each Party shall use reasonable efforts: (i) to notify the other Party prior to disclosing the confidential information and (ii) prevent or limit such disclosure. After using such reasonable efforts, the Disclosing Party 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, 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.

2. RPS Confidentiality. Notwithstanding Article 8(F)(1) of this Agreement, no later than six months after the CPUC's approval of this Agreement, the following information about the Agreement may be disclosed by the CPUC: party names, resource type, project location, project capacity, online date, delivery point, expected energy deliveries and length of contract.

3. Publicity. Except as otherwise agreed to above in Articles 8(F)(1) and 8(F)(2) above, no announcement, publicity, advertising, press release, promotional or marketing materials regarding the arrangement 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.

G. 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 or delayed; 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 so long as the transferring Party, delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.

H. Successors and Assigns. This Agreement inures to the benefit of and is binding

upon the Parties and their respective successors and permitted assigns.

I. Severability. If any provision of this Agreement is determined to be invalid, void or unenforceable by any court of competent jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Agreement, provided the basic purposes of this Agreement and the benefits to the Parties are not substantially impaired.

J. No Prior Agreements. This Agreement completely and fully supersedes all other prior understandings or agreements, both written and oral, between the Parties relating to the subject matter hereof.

K. No Waiver. Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default, nor shall any delay by a Party in the exercise of any right under this Agreement be considered as a waiver or relinquishment thereof.

L. Headings. The headings used herein are for convenience and reference purposes only.

M. Governing Law/Waiver of Jury Trial/Venue. 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.

N. Rules of Construction. "Hereof," "herein," "hereunder" and similar words refer to this Agreement in its entirety. All accounting terms used herein shall be interpreted, all accounting determinations hereunder shall be made, and all financial statements required to be delivered hereunder shall be prepared, in accordance with generally accepted accounting principles consistently applied ("GAAP"). "Or" is not necessarily exclusive.

O. No Third Party Beneficiaries. Both Parties acknowledge and agree that this Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement, except as may be expressly stated in any arrangement with a Financing Party as such term is defined in Article 8(R). For avoidance of doubt, both Parties acknowledge that this Article 8(O) is a material term under this Agreement.

P. Negotiated Agreement. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties. Therefore, doubtful or ambiguous provisions, if any, contained in this Agreement shall not be construed against either Party as a drafter.

Q. Entire Agreement; Counterparts. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof. This Agreement may not be amended, changed, modified, or altered unless such amendment, change, modification, or alteration is in writing and signed by both Parties. This Agreement may be executed in counterparts, including by a facsimile transmission thereof, each of which is an original and all of which constitute one and the same instrument.

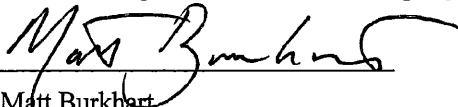
R. Financing Cooperation. Buyer agrees to (a) cooperate with Seller in responding to or complying with the reasonable requirements of any third party providing financing to the Project ("Financing Party") with respect to the obligations of Buyer hereunder, (b) provide reasonable assistance to Seller in complying with the reporting requirements set forth in any third party financing agreements of a Financing Party, and (c) execute and deliver an estoppel certificate to the Project and consent to assignment of this Agreement as collateral security to the extent required by Financing Party and in a form consistent with industry standards for similar projects.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the Effective Date.

**Seller: Whitewater Hill Wind Partners, LLC**

**Buyer: San Diego Gas & Electric Company**

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

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

Name:

Name: Matt Burkhart

Its:

Its: Vice President E&FP

Approved as to legal form A.S.

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**Seller: Whitewater Hill Wind Partners, LLC**

**Buyer: San Diego Gas & Electric Company**

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

By: 

Name:

Name: Matt Burkhardt

Its:

Its: Vice President E&FP

Approved as to legal form A.S.


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IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

Seller: Whitewater Hill Wind Partners, LLC

Buyer: San Diego Gas & Electric Company

By: 

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

Name: Alan R. Foster

Name: Matt Burkhart

Its: Vice President, Operations

Its: Vice President E&FP

Approved as to legal form \_\_\_\_\_

Q. Entire Agreement; Counterparts. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof. This Agreement may not be amended, changed, modified, or altered unless such amendment, change, modification, or alteration is in writing and signed by both Parties. This Agreement may be executed in counterparts, including by a facsimile transmission thereof, each of which is an original and all of which constitute one and the same instrument.

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IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

**Seller: Whitewater Hill Wind Partners, LLC      Buyer: San Diego Gas & Electric Company**

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

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

Name:

Name: Matt Burkhardt

Its: \_\_\_\_\_

Its: Vice President E&FP

Approved as to legal form A.S.



Exhibit A



Advice Letter

Clay Faber - Director  
Regulatory Affairs  
8330 Century Park Court  
San Diego, CA 92123-1548

Tel: 858-654-3563  
Fax: 858-654-1788  
CFaber@semprautilities.com

May , 2012

ADVICE LETTER -E  
(U 902-E)

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

SUBJECT: REQUEST FOR APPROVAL OF GREEN ATTRIBUTE PURCHASE AND SALE  
AGREEMENTS WITH WHITEWATER HILL WIND LLC AND CABAZON  
WIND PARTNERS LLC

I. INTRODUCTION

A. PURPOSE OF THE ADVICE LETTER

San Diego Gas & Electric Company ("SDG&E") herein seeks California Public Utilities Commission ("CPUC" or "Commission") approval of two short term Green Attribute Purchase and Sale Agreements (together the "GAPSAs" or "Proposed Agreements"), executed on May , 2012, with Cabazon Wind Partners, LLC ("Cabazon") and Whitewater Hill Wind Partners, LLC ("Whitewater") (together, the "Projects"), both wholly-owned subsidiaries of a joint venture of Shell Wind Energy Incorporated ("Shell Wind") and Goldman Sachs ("Goldman"). As discussed in more detail herein, the GAPSAs allow SDG&E to acquire unbundled renewable energy credits ("RECs") to be "re-united" with underlying generation delivered by the Projects pursuant to contracts between the California Department of Water Resources ("CDWR") and Cabazon and Whitewater, respectively, administered by SDG&E on behalf of CDWR. Accordingly, pursuant to Commission Decision ("D.") 11-12-052, SDG&E requests that it receive RPS credit for the GAPSAs as though the RECs and underlying generation had been purchased together.<sup>2</sup> Specifically, it requests that the "re-united" generation be deemed a "Category 1" product for purposes of compliance with § 399.16(c).<sup>3</sup>

The Proposed Agreements are for a two year term and involve delivery of RECs from Projects that are existing California Energy Commission ("CEC")-certified wind renewable resource generating facilities located near Palm Springs, California. The Projects have been operating since 2002. SDG&E currently receives the electric generation produced by the Projects pursuant to two contracts administered

<sup>2</sup> D.11-12-053, *mimeo*, p. 58.

<sup>3</sup> See D.11-12-053, *mimeo*, pp. 18-43. A "Category 1" transaction is deemed to have met the criteria set forth in Public Utilities Code § 399.16(b)(1) for purposes of compliance with § 399.16(c).

by SDG&E on behalf of the CDWR.<sup>4</sup> The CDWR contracts with Cabazon and Whitewater expressly provide that all rights and interests in the renewable attributes, emissions reductions or credit (offsets) associated with the wind generation delivered under these CDWR contracts is retained by the seller. Accordingly, the Proposed Agreements are intended to reunite the RECs associated with renewable electric generation currently received by SDG&E pursuant to the CDWR contracts and apply this “re-united” generation toward SDG&E’s RPS procurement obligation as a “Category 1” bundled product. The Projects were offered into, and shortlisted, in SDG&E’s 2011 Renewable Portfolio Standard (“RPS”) request for offers (“RFO”) as RECs that could be re-united with the underlying energy to equate to a Category 1 product (shown on Confidential Appendix G, “Up-Front Showing”). The proposed transaction is identical to the transactions that the Commission approved in Resolution No. E-4335 and addressed in D.11-12-052.<sup>5</sup>

The Commission concluded in D.11-12-052 that under the new framework adopted under Senate Bill (“SB”) 2 (1X),<sup>6</sup> unbundled REC transactions fit within the product category established pursuant to Public Utilities Code § 399.16(b)(3) for purposes of RPS compliance (“Category 3”).<sup>7</sup> It further determined, however, that an exception from this classification was warranted for “the unique and limited circumstance of the contracts signed by the Department of Water Resources during the energy crisis with [Cabazon] and [Whitewater] and assigned to [SDG&E].”<sup>8</sup> In the case of these contracts, the Commission found that SDG&E “may be allowed to acquire the unbundled renewable energy credits separately from the energy conveyed under the contracts, but receive credit for compliance with the California renewables portfolio standard as though they had been purchased together.”<sup>9</sup>

The Proposed Agreements will contribute to SDG&E’s ability to meet the 20% RPS requirement during compliance period (“CP”) 1 established by SB 2 (1X). This purchase will also help to balance the development risk already embedded in SDG&E’s 2012-2013 RPS portfolio and contribute to reducing and containing ratepayer costs, given the short-term nature of the transactions.

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## **B. SUBJECT OF THE ADVICE LETTER**

1. **PROJECT NAME:** Whitewater Hill Wind and Cabazon Wind Partners
2. **TECHNOLOGY (INCLUDING LEVEL OF MATURITY):** Wind turbine technology, which is a mature technology that continues to develop improved designs and greater capacity. According to the California Wind Energy Association, more than 3,141 MW of wind capacity is operating in California alone.<sup>10</sup>
3. **GENERAL LOCATION AND INTERCONNECTION POINT:** The Projects are located at the western end of the Coachella Valley, on private lands, approximately 10 miles from Palm Springs and south of Interstate 10 in Riverside County. The Projects are currently connected to the Devers-Banning-Garnet 115 kV line, through connections to the Transwind and Sandwind substations.

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<sup>4</sup> The underlying Cabazon and Whitewater CDWR contracts expire on December 31, 2013.

<sup>5</sup> Ordering Paragraph 14, page 79.

<sup>6</sup> Senate Bill (SB) x1 2 (Stats. 2011, Ch. 1).

<sup>7</sup> D.11-12-052,

<sup>8</sup> D.11-12-052, *mimeo*, Ordering Paragraph 14.

<sup>9</sup> *Id.*

<sup>10</sup> <http://www.calwea.org/>

4. OWNER(S) / DEVELOPER(S):

a. **Name(s):** Whitewater Hill Wind, LLC and Cabazon Wind Partners, LLC, which are owned by Three Wind Holding, LLC. The equity owners of Three Wind Holdings are Shell WindEnergy Inc. (a subsidiary of Shell Oil Company) and GS Wind Power II (a subsidiary of Goldman Sachs) at 50% each.

b. **Type of entity(ies) (e.g. LLC, partnership):** Limited liability companies

c. **Business Relationships between seller/owner/developer:** N/A: existing Projects.

5. PROJECT BACKGROUND, E.G., EXPIRING OF CONTRACT, PHASED PROJECT, PREVIOUS POWER PURCHASE AGREEMENT, CONTRACT AMENDMENT

SDG&E currently receives the electric generation produced by the Cabazon and Whitewater renewable wind facilities pursuant to two contracts administered by SDG&E on behalf of the CDWR. The CDWR contracts with Cabazon and Whitewater expressly provide that all rights and interests in the renewable attributes, emissions reductions or credit (offsets) associated with the wind generation delivered under these CDWR contracts is retained by the seller. The Projects were bid into SDG&E's 2011 RPS RFO and was shortlisted by SDG&E.

6. SOURCE OF AGREEMENT, I.E., RPS SOLICITATION YEAR OR BILATERAL NEGOTIATION

The Agreements are a product of SDG&E's 2011 Renewable RFO.

C. GENERAL PROJECT(S) DESCRIPTION

PROJECT NAME	Whitewater Hill Wind Partners Cabazon Wind Partners
TECHNOLOGY	Wind
CAPACITY (MW)	61.5 MW installed capacity (Whitewater) 40.9 MW installed capacity (Cabazon)
CAPACITY FACTOR	Approx. 33.3%
EXPECTED GENERATION (GWH/YEAR)	175,000 GWh (Whitewater) 119,000 GWh (Cabazon)
INITIAL ENERGY DELIVERY DATE <sup>11</sup>	January 1, 2012
GUARANTEED COMMERCIAL OPERATION DATE	Existing
DATE CONTRACT DELIVERY TERM BEGINS	January 1, 2012
DELIVERY TERM (YEARS)	2 years
VINTAGE (NEW / EXISTING / REPOWER)	Existing
LOCATION (CITY AND STATE)	Near Palm Springs, CA
CONTROL AREA (E.G., CAISO, BPA)	CAISO SP 15
NEAREST COMPETITIVE RENEWABLE ENERGY ZONE (CREZ) <sup>12</sup>	CREZ 32

<sup>11</sup> As defined in the Proposed Agreement. Details are provided in Confidential Appendix D, Section D (1), "Energy Delivery Requirements" in the Matrix of Major Contract Provisions of this Advice Letter.

TYPE OF COOLING, IF APPLICABLE	Not applicable
PRICE <sup>13</sup> RELATIVE TO MPR (I.E. ABOVE/BELOW)	Not applicable. REC only. Below 2011 MPR

**D. GENERAL DEAL STRUCTURE**

*CHARACTERISTICS OF CONTRACTED DEAL (I.E. PARTIAL/FULL OUTPUT OF FACILITY, DELIVERY POINT (E.G. BUSBAR, HUB, ETC.), ENERGY MANAGEMENT (E.G. FIRM/SHAPE, SCHEDULING, SELLING, ETC.), DIAGRAM AND EXPLANATION OF DELIVERY STRUCTURE*

The Proposed Agreements provide for the purchase of all the RECs, to be re-united with the associated energy generated from the Project, for a 2-year term.



**E. RPS STATUTORY GOALS**

*THE PROJECT IS CONSISTENT WITH AND CONTRIBUTES TOWARDS THE RPS PROGRAM'S STATUTORY GOALS SET FORTH IN PUBLIC UTILITIES CODE §399.11.*

Public Utilities Code § 399.11 declares that increasing California's reliance on eligible renewable energy resources is intended to displace fossil fuel consumption within the state, promote stable

<sup>12</sup> As identified by the Renewable Energy Transmission Initiative ("RETI"). Information about RETI is available at: <http://www.energy.ca.gov/reti/>

<sup>13</sup> Refers to the maximum price under the Proposed Agreements.

electricity prices, reduce greenhouse gas (“GHG”) emissions, improve environmental quality and promote the goal of a diversified and balanced energy generation portfolio. The Proposed Agreement involves renewable resources that will generate clean energy with zero fuel costs, will create zero need for foreign fuel imports, will produce little if any GHG emissions directly associated with energy production and will help to maintain a diversified and balanced energy generation portfolio.

**F. CONFIDENTIALITY**

- Appendix A: Consistency with Commission decisions and Rules and Project Development Status
- Appendix B: Solicitation Overview
- Appendix C: Final RPS Project-Specific Independent Evaluator Report
- Appendix D: Contract Summaries
- Appendix E: Green Attribute Purchase and Sale Agreements
- Appendix F: Projects’ Contributions Toward RPS Goals
- Appendix G: Up-front Showing for Category 1 Products

These appendices contain market sensitive information protected pursuant to Commission Decision D.06-06-066, *et seq.*, as detailed in the concurrently-filed declaration. The following table presents the type of information contained within the confidential appendices and the matrix category under which D.06-06-066 permits the data to be protected.

Type of Information	D.06-06-066 Confidential Matrix Category
Analysis and Evaluation of Proposed RPS Projects	VII.G
Contract Terms and Conditions	VII.G
Raw Bid Information	VIII.A
Quantitative Analysis	VIII.B
Net Short Position	V.C
IPT/APT Percentages	V.C

**II. CONSISTENCY WITH COMMISSION DECISIONS**

SDG&E’s RPS procurement process complies with the Commission’s RPS-related decisions, as discussed in more detail in the following sections.

**A. RPS PROCUREMENT PLAN**

1. **THE COMMISSION APPROVED SDG&E’S 2011 RPS PROCUREMENT PLAN AND SDG&E ADHERED TO COMMISSION GUIDELINES FOR FILING AND REVISIONS.**

On December 18, 2009 SDG&E filed its draft 2011 Renewable Procurement Plan (the 2011 RPS Plan).<sup>14</sup> On April 14, 2011, the CPUC issued D.11-04-030 (“the Decision”)

<sup>14</sup> The draft Plan submitted by SDG&E was originally submitted as its 2010 draft Plan. D.11-04-030 refers to the draft Plan as the “2011” Plan since the decision was issued in 2011 and the solicitation resulting from the final decision was held in 2011.

conditionally approving SDG&E's 2011 RPS Plan. In compliance with the direction set forth in the Decision, SDG&E filed a revised 2011 RPS Plan to incorporate changes required by the Commission. The Decision authorized SDG&E to proceed with its amended Plan, unless suspended by the Energy Division Director. No such suspension was issued by the Energy Division; therefore, on May 12, 2011, SDG&E issued the 2011 RPS RFO.

Below SDG&E demonstrates the reasonableness of the Proposed Agreements through comparison of the terms and conditions of the Proposed Agreements against the results of its 2011 RPS RFO.

2. **THE PROCUREMENT PLAN'S ASSESSMENT OF PORTFOLIO NEEDS.**

The 2011 RPS Plan expresses SDG&E's commitment to meet the goal of serving 33% of its retail sales with renewable resources by 2020. SB-2 (1x) requires SDG&E to purchase 20% of its retail sales, on average, for the 2011-2013 period; 25% by 2016, and 33% by 2020 from eligible renewable sources. Because of its 2012-2013 term, the Projects are expected to contribute materially to SDG&E's renewable energy portfolio during the first (2011-2013) compliance period.

SDG&E's goal is to comply with applicable RPS legislation by developing and maintaining a diversified renewable portfolio, selecting from offers using the Least-Cost, Best-Fit ("LCBF") evaluation criteria. The 2011 RPS RFO sought offers from all technologies of renewable projects that meet the requirements for eligible facilities as specified in applicable statute and as established by the CEC. The 2011 RPS RFO sought unit firm or as-available deliveries. SDG&E's 2011 RPS Plan also stated that, to the extent a bilateral offer complies with RPS program requirements, fits within SDG&E's resource needs, is competitive when compared against recent RFO offers and provides benefits to SDG&E customers, SDG&E will pursue such an agreement. Amended contracts, as with bilateral offers, will be compared to alternatives presented in the most recent RPS solicitation.

3. **THE PROJECT IS CONSISTENT WITH SDG&E'S PROCUREMENT PLAN AND MEETS SDG&E'S PROCUREMENT AND PORTFOLIO NEEDS (E.G. CAPACITY, ELECTRICAL ENERGY, RESOURCE ADEQUACY, OR ANY OTHER PRODUCT RESULTING FROM THE PROJECT).**

The Proposed Agreements conform to SDG&E's Commission-approved 2011 RPS Plan by delivering re-united RECs that fill a portion of SDG&E's RPS net short position. The transaction complies with RPS program requirements, meets the portfolio needs outlined by the 2011 RPS Plan and is competitive when compared to the other bids submitted in the 2011 RFO.

4. **THE PROJECT MEETS REQUIREMENTS SET FORTH IN THE SOLICITATION.**

The minimum requirements established in the 2011 RPS RFO were as follows:

- a. Commence deliveries in 2011, 2012, 2013, 2014 or 2015
- b. Short term agreements of up to 4 years in duration
- c. The project must be RPS-eligible
- d. The Net Contract Capacity must be  $\geq 1.5\text{MW}$ , net of all auxiliary and station parasitic loads; (if within SDG&E service area)
- e. The Net Contract Capacity must be  $\geq 5\text{MW}$ , net of all auxiliary and station parasitic loads; (if outside of SDG&E service area)

- f. All green attributes must be tendered to SDG&E

The Proposed Agreements fulfill these minimum requirements; the Proposed Agreements cover all RECs generated from two existing RPS-eligible facilities for two years with installed capacity greater than 1.5 MW.

**B. BILATERAL CONTRACTING – IF APPLICABLE**

1. **THE CONTRACT COMPLIES WITH D.06-10-019 AND D.09-06-050.**

The Proposed Agreements were not procured through bilateral negotiations.

2. **THE PROCUREMENT AND/OR PORTFOLIO NEEDS NECESSITATING SDG&E TO PROCURE BILATERALLY AS OPPOSED TO A SOLICITATION.**

The Proposed Agreements were not procured through bilateral negotiations.

3. **WHY THE PROJECT DID NOT PARTICIPATE IN THE SOLICITATION AND WHY THE BENEFITS OF THE PROJECT CANNOT BE PROCURED THROUGH A SUBSEQUENT SOLICITATION.**

The Proposed Agreements were not procured through bilateral negotiations.

**C. LEAST COST BEST FIT (LCBF) METHODOLOGY AND EVALUATION – IF APPLICABLE**

The following sections review SDG&E's 2011 RPS RFO process. The offers into the 2011 RPS RFO were used to benchmark the Proposed Agreements.

1. **THE SOLICITATION WAS CONSISTENT WITH SDG&E'S COMMISSION-APPROVED REQUEST FOR OFFERS (RFO) BIDDING PROTOCOL.**

As specified by the Commission-approved RFO bidding protocol, the 2011 RPS RFO was issued on May 12, 2011. Responses were due July 11, 2011. SDG&E solicited bids from all RPS-eligible technologies.

SDG&E sought proposals for peaking, baseload, dispatchable (unit firm) or as-available deliveries. Such proposals could include capacity and energy from:

- a) Re-powering of existing facilities;
- b) Incremental capacity upgrades of existing facilities;
- c) New facilities;
- d) Existing facilities that are scheduled to come online during the years specified in the RFO that have excess or uncontracted quantities of power for a short time frame;
- e) Existing facilities with expiring contracts; or
- f) Eligible resources currently under contract with SDG&E. SDG&E shall consider offers to extend terms of or expand contracted capacities for existing agreements.

SDG&E solicited two types of projects:

- a) Power purchase agreements for short-term deliveries up to four years and long-term deliveries up to thirty years;
- b) Tradable Renewable Energy Credits ("TRECs").

SDG&E established an open, transparent, and competitive process for the procurement effort. The following protocols were established within its solicitation:

- a) An RFO website was created, allowing respondents to download solicitation documents, participate in a Question and Answer forum and see updates or revisions associated with the process;
- b) Two bidders conference were held, one in San Diego, CA and the other in El Centro, CA with more than 150 people in attendance. The San Diego conference included a webinar available for interested parties who could not attend in person.
- c) Internet upload capabilities were available to accept electronic offers;
- d) The Independent Evaluator participated in the selection process, including the direct evaluation of bids; and

e) SDG&E adhered to the following RFO schedule:

<u>DATE</u>	<u>EVENT</u>
May 12, 2011	RFO Issued
June 2, 2011	Pre-Bid Conference (in San Diego, California)
June 8, 2011	Pre-Bid Conference (in El Centro, California)
July 11, 2011	Offers Due
August 10, 2011	Briefed PRG on all offers received, preliminary LCBF ranking, preliminary list of highest ranked offers and preliminary shortlist.
August 19, 2011	Briefed PRG and sought PRG feedback on SDG&E's need determination, selection criteria based on the need, final LCBF ranking and final shortlist based on the selection criteria.
September 7, 2011	Notified Energy Division of final shortlist.
November 7, 2011	Final LCBF Report to the CPUC

**2. THE LCBF BID EVALUATION AND RANKING WAS CONSISTENT WITH COMMISSION DECISIONS ADDRESSING LCBF METHODOLOGY; INCLUDING SDG&E'S APPROACH TO/APPLICATION OF:**



SDG&E evaluated all offers, in accordance with the LCBF process outlined in D.03-06-071, D.04-07-029, and its approved 2011 RPS Plan. The Commission established in D.04-07-029 a process for evaluating “least-cost, best-fit” renewable resources for purposes of IOU compliance with RPS program requirements. SDG&E has adopted such a process in its renewable procurement plan. In D.06-05-039, the Commission observed that “the RPS project evaluation and selection process within the LCBF framework cannot ultimately be reduced to mathematical models and rules that totally eliminate the use of judgment.”<sup>15</sup> It determined, however, that each IOU should provide an explanation of its “evaluation and selection model, its process, and its decision rationale with respect to each bid, both selected and rejected,” in the form of a report to be submitted with its short list of bids (the “LCBF Report”). In addition, SDG&E authorized the Independent Evaluator to perform the LCBF analysis to determine the least-cost best-fit ranking of projects in the 2011 RPS RFO.

#### A. MODELING ASSUMPTIONS AND SELECTION CRITERIA

To incorporate a “best-fit” element into evaluation of offers, instead of simply comparing prices for all offers (“least-cost”), SDG&E calculated an “All-In Bid Ranking Price” for each offer. Elements of the All-In Bid Ranking Price are described below.

SDG&E compared bids from the 2011 RPS RFO by sorting all projects by the All-In Bid Ranking Price, from lowest to highest. Those projects with the lowest All-In Bid Ranking Price that passed through qualitative filters for location and viability were short listed. From a “best-fit” perspective for 2011, projects that fit SDG&E’s portfolio needs best were in-state projects that would be served by the Sunrise Powerlink.

The All-In Bid Ranking Price of the Proposed Agreements, as calculated and presented in Confidential Appendix A – Consistency with Commission Decisions and Rules, is economically justifiable because it is consistent with other selected projects and thus it a crucial component of SDG&E’s renewable portfolio.

#### B. QUANTITATIVE FACTORS

Market valuation (the “All-In Bid Ranking Price”) - The following discussion describes how SDG&E calculated an all-in price that included the factors listed. Included in *Confidential Appendix D – Contract Summary* is a detailed description of how each of these factors applied to the specific calculation of the Projects’ All-In Bid Ranking Prices.

Levelized Contract Cost: The offered bundled energy or TREC prices were multiplied by deliveries over the life of the proposed contract (and time-of-day factors, if applicable) and discounted back to the beginning of the contract to form Levelized Contract Cost.

Above Market Cost: For power purchase agreement bids in the 2011 RPS RFO, a project-specific MPR was calculated based upon a set of baseload price referents calculated using the 2009 MPR model and forward prices for natural gas in June and July of 2011. The project-specific Price Referent was then subtracted from the Levelized Contract Cost as offered in the bid to produce the Above Market Cost. All other adders were added to the Above Market Cost to form the Bid Ranking Price, which was used to rank bids in the RFO. TREC offers are automatically considered Above Market Costs

<sup>15</sup> See D.06-05-039, *mimeo*, p. 42.

and are ranked with the Above Market Costs from power purchase agreement bids, as modified with the adders below.

Transmission Cost Adder: Typically SDG&E calculates costs for transmission network upgrades or additions, using the information provided through the Transmission Ranking Cost Report ("TRCR") approved by the CPUC. To be as inclusive as possible, SDG&E uses TRCR-based transmission costs even for offers that were not submitted to the TRCR rather than considering those offers to be non-conforming. The total amount of contemplated generation interconnections studied in the TRCR always exceeded the amount of generating capacity that SDG&E would consider short-listing.

Deliverability Adder: In order to comply with resource adequacy requirements issued by the Commission and the CAISO, SDG&E assumes that new generating resources can meet the CAISO's requirements for full deliverability within SDG&E's service territory. For projects that are unable or unwilling to meet deliverability requirements for generation in SDG&E's service territory, an adder was assessed to estimate the cost of additional full-deliverability capacity that SDG&E will have to procure that would otherwise have been provided. Projects outside of SDG&E's territory but within California were assessed a System Deliverability Adder; projects outside of California that are subject to CAISO's import allocation criteria, or projects that elected to have an "energy-only" interconnection, were assessed the Full Deliverability Adder. The value of the deliverability adder is set by differences between the project's project-specific Market Price Referent calculated with SDG&E's all-in time-of-day factors, and the project-specific Market Price Referent calculated with SDG&E's energy-only time-of-day factors and adjusted by the ratio of system to local resource adequacy costs for projects with a System Deliverability Adder.

Congestion cost adders: Congestion analysis was performed using a model which provided hourly Locational Marginal Prices ("LMP") for specific years for each of the shortlisted bids. Due to the large number of bids, congestion costs were calculated at major Locational Marginal Pricing nodes within the CAISO system that were located at or near interconnections for bids offered into the RFO for solar, wind, and baseload delivery profiles. Congestion costs (\$/MWh) were then calculated based on the difference between the hourly LMP at each major LMP node and the hourly LMP values for SDG&E's Load Aggregation Point ("LAP"). The LMP values in the LAP were weighted for all bus points within SDG&E's service territory using approved CAISO allocation factors.

## 1. PORTFOLIO FIT

SDG&E's RPS Procurement Plan states that SDG&E does not have a preference for a particular product or technology type and that SDG&E has latitude in the resources that it selects. However, as explained above, time of delivery factors, transmission cost, congestion costs, commercial operations date and deliverability adders were evaluated to determine the impact to SDG&E's portfolio. These portfolio fit factors were valued and included in the economic comparison of options in order to ensure the least-cost projects were also best-fit selections for the portfolio. Given the short-term nature, the Proposed Agreements both balance the development risk already embedded in SDG&E's 2011-2013 RPS portfolio and contain procurement costs

See Section C "Least Cost Best-Fit" in the Confidential Appendix A – Consistency With

Commission Decisions And Rules for details on the Proposed Agreements' costs and benefits in the context of SDG&E's portfolio needs.

## 2. TRANSMISSION ADDER

See Section C "Least Cost Best-Fit" in the Confidential Appendix A – Consistency With Commission Decisions And Rules for details on the Proposed Agreements' application of the transmission cost adder.

## 3. APPLICATION OF TIME OF DELIVERY FACTORS (TODS)

TOD factors were used to compute Levelized Contract Costs for bids where TOD pricing was requested, and was used to compute Deliverability Adders in its LCBF evaluation. The Levelized Contract Cost, and project-specific Price Referents, were computed using projected delivery profiles provided by the respondents. Application of TOD factors in the evaluation of the Proposed Agreements are explained in Section C "Least Cost Best-Fit" in the Confidential Appendix A – Consistency With Commission Decisions And Rules.

SDG&E's standard "all-in" TOD factors from the 2011 RFO:

	<u>SUMMER</u> July 1 – October 31	<u>WINTER</u> November 1 – June 30
<b>ON-PEAK</b>	Weekdays 11am – 7pm <b>2.501</b>	Weekdays 1pm - 9pm <b>1.089</b>
<b>SEMI-PEAK</b>	Weekdays 6am – 11am; Weekdays 7pm - 10pm <b>1.342</b>	Weekdays 6am – 1pm; Weekdays 9pm – 10pm <b>0.947</b>
<b>OFF-PEAK*</b>	All other hours <b>0.801</b>	All other hours <b>0.679</b>

\*All hours during NERC holidays are off-peak.

SDG&E's "energy-only" TOD factors for Deliverability Adder computations::

	<u>SUMMER</u> July 1 – October 31	<u>WINTER</u> November 1 – June 30
<b>ON-PEAK</b>	Weekdays 11am – 7pm <b>1.531</b>	Weekdays 1pm - 9pm <b>1.192</b>
<b>SEMI-PEAK</b>	Weekdays 6am – 11am; Weekdays 7pm - 10pm <b>1.181</b>	Weekdays 6am – 1pm; Weekdays 9pm – 10pm <b>1.078</b>
<b>OFF-PEAK*</b>	All other hours <b>0.900</b>	All other hours <b>0.774</b>

\*All hours during NERC holidays are off-peak.

## 4. OTHER FACTORS CONSIDERED

Aside from the above considerations no other quantitative factors were considered by SDG&E in determining the All-In Bid Ranking Price.

**C. QUALITATIVE FACTORS (E.G., LOCATION, BENEFITS TO MINORITIES, ENVIRONMENTAL ISSUES, ETC.)**

As stated in the RFO, SDG&E differentiates offers of similar cost or may establish preferences for projects by reviewing, if applicable, qualitative factors including the following:

- a) Project viability
- b) Local reliability
- c) Benefits to low income or minority communities
- d) Resource diversity
- e) Environmental stewardship

Due to the changes in law made by SB 2 (X1), flexible compliance mechanisms contained in the original RPS legislation have been removed and compliance targets have changed, requiring SDG&E to focus entirely upon projects coming online and providing RPS deliveries within the years 2011 to 2013 in order to meet the new RPS compliance targets. Due to this change in need, the large number of bids that were received in the 2011 RPS RFO, and the limited number of Commission meetings scheduled to consider new RPS agreements between late 2011 and mid-year 2013, qualitative rules were imposed during the bid evaluation process to consider only those bids that could reasonably meet SDG&E's near term RPS needs. Projects eligible for short listing were limited to those bids with deliveries of 90,000 MWh or more from the period 2011 to 2013; in particular, low priced projects were considered if they were able to generate more than 45,000 MWh in the same period as long as they were among the five lowest-cost bids.

SDG&E also considered viability factors included in the Commission's Project Viability Calculator, such as the degree of experience of the developer, ability to achieve interconnection, technical feasibility, site control, and resource quality in the vicinity of the project site.

**D. COMPLIANCE WITH STANDARD TERMS AND CONDITIONS**

**1. THE PROPOSED CONTRACT COMPLIES WITH D.08-04-009, D.08-08-028 AND D.11-01-025**

The Proposed Agreements contain standard terms and conditions as authorized by the Commission in D.04-06-014, D.08-04-009, D.08-08-028 and D.11-01-025. A side-by-side comparison of the standard terms and conditions is located in Section D – Standard terms and Conditions of Confidential Appendix A – Consistency with Commission Decisions and Rules found in Part 2 of this Advice Letter. Also a summary of major contract provisions is provided in Confidential Appendix D – Contract Summary. Copies of the Proposed Agreements and supporting documentation are also provided in Confidential Appendix F – Power Purchase Agreements.

**2. SPECIFIC PAGE AND SECTION NUMBER WHERE THE COMMISSION'S NON-MODIFIABLE TERMS ARE LOCATED IN THE PPA:**

The locations of non-modifiable terms are indicated in the table below:

WHITEWATER HILL WIND CONTRACT

NON-MODIFIABLE TERM	PPA SECTION; PPA PAGE #
STC 1: CPUC Approval	Definitions; Page 3
STC 2: Green Attributes & RECs	Definitions; Pages 4-5
STC 6: Eligibility	Article 10: Representations and Warranties; Covenants; Sec. 10.2, Page 11
STC 17: Applicable Law	Article 13 Miscellaneous, Section Governing Law, Page 19
STC REC-1 Transfer of renewable energy credits	Article 10: Representations and Warranties; Covenants; Section 10.2, page 11
STC REC-2 Tracking of RECs in WREGIS	Article 3, Section 3.1 (l), page 16

CABAZON WIND PARTNERS CONTRACT

NON-MODIFIABLE TERM	PPA SECTION; PPA PAGE #
STC 1: CPUC Approval	Definitions; Page 3
STC 2: Green Attributes & RECs	Definitions; Pages 4-5
STC 6: Eligibility	Article 10: Representations and Warranties; Covenants; Sec. 10.2, Page 11
STC 17: Applicable Law	Article 13 Miscellaneous, Section Governing Law, Page 19
STC REC-1 Transfer of renewable energy credits	Article 10: Representations and Warranties; Covenants; Section 10.2, page 11
STC REC-2 Tracking of RECs in WREGIS	Article 3, Section 3.1 (l), page 16

3. REDLINE OF THE CONTRACT AGAINST SDG&E'S COMMISSION-APPROVED PRO FORMA RPS CONTRACT.

See Confidential Appendix E – Comparison of Contract with SDG&E's Pro Forma Power Purchase Agreement of this Advice Letter.

E. UNBUNDLED RENEWABLE ENERGY CREDIT (REC) TRANSACTIONS

As defined under D.10-03-021, *et seq.*, the Proposed Agreements are for unbundled RECs to be re-united with the underlying associated energy generation.

F. MINIMUM QUANTITY

MINIMUM CONTRACTING REQUIREMENTS APPLICABLE TO SHORT TERM CONTRACTS WITH EXISTING FACILITIES

1. THE PROPOSED AGREEMENT TRIGGERS THE MINIMUM QUANTITY REQUIREMENT SET FORTH IN D.07-05-028.

In D.07-05-028, the Commission established that an IOU's ability to count short term contracts (less than ten years) toward its RPS compliance goal is dependent upon satisfaction of Commission-established requirements for procurement of minimum quantities through long-term contracts (with new or existing facilities) and/or short-term contracts with newer facilities. The Proposed Agreements trigger the minimum quantity requirement.

2. **THE EXTENT TO WHICH SDG&E HAS SATISFIED THE MINIMUM QUANTITY REQUIREMENT**

SDG&E's 2011 retail sales were 16,249,031 MWh. Thus, the minimum 0.25% quantity is 40,623 MWh. SDG&E executed two long term contracts in 2012 that provide for aggregate deliveries that far exceed this minimum quantity.

The listing below illustrates SDG&E's 2012 executed contracts which demonstrate compliance with the 0.25% threshold:

<u>Project</u>	<u>Execution Date</u>	<u>Annual MWh</u>
82LV 8MW Mt. Signal Solar	2/3/2012	469,900
Manzana Wind (Iberdrola)	2/14/2012	259,296
		-----
	Total MWh	729,196

G. **TIER 2 SHORT-TERM CONTRACT "FAST TRACK" PROCESS**

SDG&E is not seeking approval via a Tier 2 Advice Letter and the "fast track" process.

H. **MARKET PRICE REFERENCE (MPR)**

1. **CONTRACT PRICE RELATIVE TO THE MPR.**

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In the context of this unbundled REC product, the MRP pricing is not a meaningful measure. The exact pricing and relation to the MPR is discussed in detail in *Confidential Appendix D – Contract Summary*.

2. **TOTAL COST RELATIVE TO THE MPR.**

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Even though an unbundled REC purchase is considered above MPR, the total contract cost of each contract when added to the underlying energy and how it compares to the MPR is discussed in more detail within *Confidential Appendix D – Contract Summary*.

I. **ABOVE MPR FUNDS (AMFs)**

1. **ELIGIBILITY FOR AMFs UNDER PUBLIC UTILITIES CODE 399.15(D) AND RESOLUTION E- 4199**

The Proposed Agreements are from the 2011 RPS RFO and may be eligible for AMFs.

2. **THE STATUS OF THE UTILITY'S AMFs LIMIT.**

SB 1036 establishes five explicit criteria for the award of AMFs and states that once AMFs reach a cap that is equal to the maximum SEPs that would have been allotted to SDG&E, SDG&E is no longer required to procure renewable energy at above MPR prices. SDG&E's Commission-approved contracts have exhausted SDG&E's AMFs and, therefore, SDG&E is no

longer required to procure renewable energy at above MPR prices. SDG&E's AMF limit has been exhausted.<sup>16</sup>

3. **EXPLAINING WHETHER SDG&E VOLUNTARILY CHOOSES TO PROCURE AND INCUR THE ABOVE-MPR COSTS.**

N/A.

J. **INTERIM EMISSIONS PERFORMANCE STANDARD**

COMPLIANCE WITH D.07-01-039, WHERE THE COMMISSION ADOPTED A GREENHOUSE GAS EMISSIONS PERFORMANCE STANDARD (EPS) APPLICABLE TO CONTRACTS FOR BASELOAD GENERATION, AS DEFINED, WITH DELIVERY TERMS OF FIVE YEARS OR MORE.

1. **EXPLAIN WHETHER OR NOT THE CONTRACT IS SUBJECT TO THE EPS.**

The Proposed Agreements are not subject to the EPS as they have a delivery term of less than five years.

2. **HOW THE CONTRACT IS IN COMPLIANCE WITH D.07-01-039**

N/A. The term is less than 5 years.

3. **HOW SPECIFIED BASELOAD ENERGY USED TO FIRM/SHAPE MEETS EPS REQUIREMENTS (ONLY FOR PPAS OF FIVE OR MORE YEARS AND WILL BE FIRMED/SHAPED WITH SPECIFIED BASELOAD GENERATION.)**

N/A. The term is less than 5 years.

4. **UNSPECIFIED POWER USED TO FIRM/SHAPE WILL BE LIMITED SO THE TOTAL PURCHASES UNDER THE CONTRACT (RENEWABLE AND NONRENEWABLE) WILL NOT EXCEED THE TOTAL EXPECTED OUTPUT FROM THE RENEWABLE ENERGY SOURCE OVER THE TERM OF THE CONTRACT. (ONLY FOR PPAS OF FIVE OR MORE YEARS.)**

N/A

5. **SUBSTITUTE SYSTEM ENERGY FROM UNSPECIFIED SOURCES**

a. **A SHOWING THAT THE UNSPECIFIED ENERGY IS ONLY TO BE USED ON A SHORT-TERM BASIS**

N/A.

b. **THE UNSPECIFIED ENERGY IS ONLY USED FOR OPERATIONAL OR EFFICIENCY REASONS;**

N/A.

<sup>16</sup> See correspondence dated May 28, 2009 from CPUC Energy Division Director, Julie Fitch, advising SDG&E that its AMF balance is zero.

- c. THE UNSPECIFIED ENERGY IS ONLY USED WHEN THE RENEWABLE ENERGY SOURCE IS UNAVAILABLE DUE TO A FORCED OUTAGE, SCHEDULED MAINTENANCE, OR OTHER TEMPORARY UNAVAILABILITY FOR OPERATIONAL OR EFFICIENCY REASONS

N/A.

- d. THE UNSPECIFIED ENERGY IS ONLY USED TO MEET OPERATING CONDITIONS REQUIRED UNDER THE CONTRACT, SUCH AS PROVISIONS FOR NUMBER OF START-UPS, RAMP RATES, MINIMUM NUMBER OF OPERATING HOURS.

N/A.

**K. PROCUREMENT REVIEW GROUP (PRG) PARTICIPATION**

**1. PRG PARTICIPANTS (BY ORGANIZATION/COMPANY).**

SDG&E's PRG is comprised of over fifty representatives from the following organizations:

- a. California Department of Water Resources
- b. California Public Utilities Commission – Energy Division
- c. California Public Utilities Commission – Division of Ratepayers Advocates
- d. The Utility Reform Network
- e. Union of Concerned Scientists
- f. Coalition of California Utility Employees

**2. WHEN THE PRG WAS PROVIDED INFORMATION ON THE CONTRACT**

Along with proposals received in the 2011 RPS RFO, the Proposed Agreements, as part of SDG&E's short-list, were presented to the PRG on August 10, September 16, October 21, November 18, and December 16, 2011.

**3. SDG&E CONSULTED WITH THE PRG REGARDING THIS CONTRACT**

SDG&E consulted with the PRG regarding these Proposed Agreements at the meetings cited above. The slides used at these Meetings are provided in Section J – PRG Participation and Feedback of the *Confidential Appendix A – Consistency with Commission Decisions and Rules* contained in this Advice Letter.

**4. WHY THE PRG COULD NOT BE INFORMED (FOR SHORT-TERM CONTRACTS ONLY)**

As listed above, the PRG was informed of the RFO shortlist.

**L. INDEPENDENT EVALUATOR (IE)**

THE USE OF AN IE IS REQUIRED BY D.04-12-048, D.06-05-039, 07-12-052, AND D.09-06-050

1. **NAME OF IE:** PA Consulting Group
2. **OVERSIGHT PROVIDED BY THE IE**



PA Consulting Group was involved in all aspects of SDG&E's 2011 RPS RFO process including, but not limited to: reviewing RFO document development and creation of evaluation criteria, reviewing and monitoring of all received bids, involvement in bid evaluation for conformance and ranking, conducting the LCBF analysis, as well as monitoring of communications and negotiations with affiliated parties.

SDG&E worked with its IE on evaluation of the Proposed Agreements. The IE has reviewed the major contract terms and SDG&E's method of comparing the project to bids received from the 2011 RFO and has spot-checked relevant calculations. A confidential Independent Evaluator Report was issued on the Proposed Agreements and is attached as *Confidential Appendix C – Final RPS Project Specific IE Report* in this Advice Letter. Below is a public version of that same report.

**3. IE MADE ANY FINDINGS TO THE PROCUREMENT REVIEW GROUP**

The IE did not provide any specific findings related to the Proposed Agreements to the PRG.

**4. PUBLIC VERSION OF THE PROJECT-SPECIFIC IE REPORT<sup>17</sup>**

**III. PROJECT DEVELOPMENT STATUS**

The Projects are already commercially operational so this section is not applicable according to the Advice Letter Template.

**IV. CONTINGENCIES AND/OR MILESTONES**

**A. MAJOR PERFORMANCE CRITERIA AND GUARANTEED MILESTONES.**

Not applicable. Existing facilities.

**B. OTHER CONTINGENCIES AND MILESTONES  
(I.E. 500 KV LINE, INTERCONNECTION COSTS, GENERATOR FINANCING, PERMITTING)**

Not Applicable. Existing facilities.

**V. PROCEDURAL MATTERS**

**A. REQUESTED RELIEF**

SDG&E respectfully requests that the Commission approve the Proposed Agreements through the adoption of a final Resolution approving this Advice Letter no later than September 30, 2012.

As detailed in this Advice Letter, SDG&E's entry into the Proposed Agreements and the terms of such agreements are reasonable; therefore, all costs associated with the Proposed Agreements, including RECs, should be fully recoverable in rates.

The Proposed Agreements are conditioned upon "CPUC Approval." Therefore, SDG&E requests that the Commission include the following findings in its Resolution approving the agreements:

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<sup>17</sup> A full printed copy of this public IE Report is located at the end of Part 2 of this Advice Letter

1. The Proposed Agreements are consistent with SDG&E's CPUC-approved RPS Plan and procurement from the Proposed Agreements will contribute towards SDG&E's RPS procurement obligation.

2. SDG&E's entry into the Proposed Agreements and the terms of such agreements are reasonable; therefore, the Proposed Agreements are approved in their entirety and all administrative and procurement costs associated with the Proposed Agreements, including the RECs, are fully recoverable in rates over the term of the Proposed Agreements, subject to Commission review of SDG&E's administration of the Proposed Agreements.

3. RECs procured pursuant to the Proposed Agreements constitute RECs from generation from eligible renewable energy resources for purposes of determining SDG&E's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewable Portfolio Standard program (Public Utilities Code §§ 399.11, et seq. and/or other applicable law) and relevant Commission decisions.

4. The RECs purchased pursuant to the Proposed Agreements (i) are deemed to have satisfied the product content requirements set forth in Public Utilities Code Section 399.16(b)(1) ("Category 1"), as adopted in California Senate Bill 2 (1x) (Stats. 2011, Ch. 1) and implemented by the California Public Utilities Commission in D.11-12-053; and (ii) will be counted as a Category 1 product for purposes of compliance with the requirements of the California Renewables Portfolio Standard Program and other applicable Law.

#### **B. PROTEST**

Anyone may protest this Advice Letter to the California Public Utilities Commission. The protest must state the grounds upon which it is based, including such items as financial and service impact, and should be submitted expeditiously. The protest must be made in writing and received no later than May, 2012, which is 20 days from the date this Advice Letter was filed with the Commission. There is no restriction on who may file a protest. The address for mailing or delivering a protest to the Commission is:

CPUC Energy Division  
Attention: Tariff Unit  
505 Van Ness Avenue  
San Francisco, CA 94102

Copies should also be sent via e-mail to the attention of Honesto Gatchallian (honesto@cpuc.ca.gov) and Maria Salinas (mas@cpuc.ca.gov) of the Energy Division. It is also requested that a copy of the protest be sent via electronic mail and facsimile to SDG&E on the same date it is mailed or delivered to the Commission (at the addresses shown below).

Attn: Megan Caulson  
Regulatory Tariff Manager  
8330 Century Park Court, Room 32C  
San Diego, CA 92123-1548  
Facsimile No. 858-654-1788  
E-Mail: Mcaulson@semprautilities.com

**C. EFFECTIVE DATE**

This Advice Letter is classified as Tier 3 (effective after Commission approval) pursuant to GO 96-B. As discussed above, the ability to secure the RECs associated with underlying generation delivered pursuant to CDWR contracts for 2012 and 2013 is critical to SDG&E's RPS compliance effort. Accordingly, SDG&E requests approval of Advice Letter -E, at the earliest possible date, but in no event later than September 30, 2012.

**D. NOTICE**

In accordance with General Order No. 96-B, a copy of this filing has been served on the utilities and interested parties shown on the attached list, including interested parties in R.11-05-005, by either providing them a copy electronically or by mailing them a copy hereof, properly stamped and addressed.

Address changes should be directed to SDG&E Tariffs by facsimile at (858) 654-1788 or by e-mail to SDG&ETariffs@semprautilities.com.

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CLAY FABER  
Director – Regulatory Affairs

(cc list enclosed)

**Exhibit B**

**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] (the "Stated Amount") against presentation of a completed drawing certificate, in the form of Annex A or B attached hereto, executed by an authorized representative of Secured Party, as identified by Secured Party to Bank in writing from time to time ("Drawing Certificate"), accompanied by a copy of this Letter of Credit.

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Special Conditions:

- All costs and banking charges pertaining to this Letter of Credit are for the account of Account Party.

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- Partial and multiple drawings are permitted. Immediately upon the honoring of any draft drawn hereunder, the Stated Amount shall be reduced, without any further action required by Secured Party or the issuing bank, to the same extent.
- A fax of the Drawing Certificate is 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 the Drawing Certificate. 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.

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]

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Authorized Signature(s)

**ANNEX A  
TO  
IRREVOCABLE STAND-BY LETTER OF CREDIT  
No. \_\_\_\_\_  
FORM OF EVENT OF DEFAULT DRAWING CERTIFICATE**

[Date]

[Bank Address]

Re: Irrevocable Stand-by Letter of Credit No. \_\_\_\_\_, dated [\_\_\_\_\_]

Ladies and Gentlemen:

The undersigned, the duly authorized representative of Secured Party of the above-referenced letter of credit (the "Letter of Credit"), hereby certifies to you, as follows:

1. An Event of Default of [name of Account Party] ("Account Party") under the Green Attributes Purchase and Sale Agreement between Secured Party and Account Party dated \_\_\_\_\_ or under any transaction contemplated thereby has occurred or is occurring, and all applicable cure periods, if any, have lapsed. (The amount due to Secured Party is U.S. \$\_\_\_\_\_).

2. Secured Party is making a drawing under the Letter of Credit in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) [insert amount of accompanying sight draft] in accordance with the provisions of the Letter of Credit, as amended or supplemented from time to time.

Capitalized terms used and not defined herein have the meanings given to such terms in the Letter of Credit.

Secured Party has executed and delivered this Certificate on this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Sincerely,

SAN DIEGO GAS & ELECTRIC COMPANY

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

**ANNEX B  
TO  
IRREVOCABLE STAND-BY  
LETTER OF CREDIT No. \_\_\_\_\_  
FORM OF NON-RENEWAL DRAWING CERTIFICATE**

[Date]

[Bank Address]

Re: Irrevocable Stand-by Letter of Credit No. \_\_\_\_\_, dated [\_\_\_\_\_]

Ladies and Gentlemen:

The undersigned, the duly authorized representative of Secured Party of the above-referenced letter of credit (the "Letter of Credit"), hereby certifies to you, as follows:

1. 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] the Account Party has not received written notice from [insert name of bank] indicating its election 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. \$\_\_\_\_\_.

2. Secured Party is making a drawing under the Letter of Credit in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) [entire Stated Amount] in accordance with the provisions of the Letter of Credit, as amended or supplemented from time to time.

Capitalized terms used and not defined herein have the meanings given to such terms in the Letter of Credit.

Secured Party has executed and delivered this Certificate on this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Sincerely,

SAN DIEGO GAS & ELECTRIC COMPANY

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

**FIRST AMENDMENT  
TO THE GREEN ATTRIBUTE PURCHASE AND SALE AGREEMENT**

This FIRST AMENDMENT TO THE GREEN ATTRIBUTE PURCHASE AND SALE AGREEMENT ("First Amendment") is entered into effective as of August 6, 2012 ("Amendment Effective Date") between San Diego Gas & Electric Company ("Buyer") and Whitewater Hill Wind Partners, LLC ("Seller") (Buyer and Seller may be individually referred to herein as "Party" or collectively as "Parties").

WHEREAS, the Parties entered into the Green Attribute Purchase and Sale Agreement, dated July 3, 2012 (the "Agreement") and now desire to amend the Agreement, under the terms and conditions set forth in this First Amendment.

NOW, THEREFORE, for mutual and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

All capitalized terms not otherwise defined herein shall have the meanings attributed to them in the Agreement.


**1.0 Article 1.** Section 1(A) and Section 1(B) of the Agreement shall be modified by replacing the date "September 30, 2012" with "November 30, 2012".

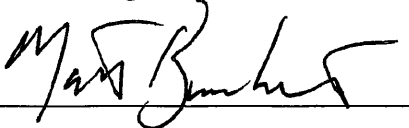
**2.0 No Other Modification.** Except as modified and amended herein, all other terms and conditions of the Agreement shall remain unchanged and in full force and effect. This First Amendment shall be subject to all of the terms and conditions of the Agreement, as amended, as if it were a part thereof, including, without limitation, any provision with respect to choice of law, venue, and/or jurisdiction.

IN WITNESS WHEREOF, the Parties have read this First Amendment, understand it and agree to be bound by its terms.

**Seller: Whitewater Hill Wind Partners, LLC**

**Buyer: San Diego Gas & Electric Company**

By:   
Name: Alan R. Forster

By:   
Name: Matt Burkhart

Its: Vice President

Its: Vice President E&FP

Approved as to legal form AS.