

## ATTACHMENT 7

Redlined Interconnection Agreement pages 14 and Appendix 7-1, First Revised Service Agreement No. 21, SDG&E FERC Electric Tariff, Second Revised Volume No. 6, between Kumeyaay Wind LLC and SDG&E, and conformed Second Revised Service Agreement No. 21, SDG&E FERC Electric Tariff, Second Revised Volume No. 6, reflecting proposed O&M Fixed Charge Rate

to the ISO Tariff and SDG&E's Transmission Owner Tariff, at KUMEYAAY's expense, to determine if additional facilities, including upgrades to the SDG&E transmission and distribution systems, are required to accommodate the increased Interconnection Capacity. If the Parties fail to agree within 30 calendar days after the initial meeting, that the Interconnection Capacity must be increased, the matter, at either Party's request, shall be resolved through the dispute resolution procedures set forth in Section 16.10. If either Party determines that additional facilities are required, then the Parties shall negotiate in good faith and execute an interconnection facilities agreement establishing the terms and conditions pursuant to which SDG&E may recover the costs of any such additional facilities. During any period SDG&E and KUMEYAAY have not reached an agreement as to whether the event of deliveries in excess of the Interconnection Capacity occurred and is likely to occur again in the future, KUMEYAAY agrees, in the event of material adverse effects resulting there from, that the Generating Facility shall be operated in a manner that is consistent with Good Utility Practice and is likely to ensure that energy and ancillary services are not delivered at any time into SDG&E's Electric System in excess of the Interconnection Capacity specified in Exhibit 5.

8.1.2 KUMEYAAY may, consistent with Good Utility Practice, Standard Operating Practices, and, if reasonably possible after consultation with the Designated SDG&E Switching Center, (a) shut down the Generating Facility during an Emergency without prior notification to SDG&E if KUMEYAAY reasonably believes that continued parallel operations is creating or contributing to the Emergency or (b) isolate or disconnect the Generating Facility from the SDG&E Electric System if KUMEYAAY reasonably believes an Emergency or abnormal condition may cause damage to the Generating Facility. KUMEYAAY will provide SDG&E's Switching Center with prompt oral notification or such other notice as is reasonable under the circumstances.

## 8.2 Obligation to Make Payments

### 8.2.1 Operation and Maintenance Charge.

Commencing with the In-Service Date, SDG&E shall bill annually, and KUMEYAAY shall pay over the term of this IA, a separate operation and maintenance charge to compensate SDG&E for the operation, maintenance, and applicable taxes associated with the Interconnection Facilities that are direct assignment facilities as described in Exhibit 5 and not related to network upgrades in an amount equal to ~~0.0051417~~ the currently effective Generation Interconnection O&M Fixed Charge Rate set forth in Appendix XI of SDG&E's Transmission Owner Tariff (as such rate may be modified from time to time) monthly rate times the following amount: The installed Cost of the direct assignment Interconnection Facilities. An example calculation of the formula is attached as Exhibit 7.

### 8.2.2 Other Charges

In accordance with the billing and payment procedures in Section 15, SDG&E shall issue to KUMEYAAY and KUMEYAAY shall pay a monthly bill for any reasonable costs that are incurred by SDG&E as set forth in Sections 6.2(ii) and 7.3.3.2 hereof.

## 8.3 Generating Facility Must Meet Standards

### 8.3.1 Generating Facility to Meet Applicable Laws and Good Utility Practice

KUMEYAAY shall be fully responsible for designing new generation facilities or additions to the existing Generating Facility in accordance with Good Utility Practice. KUMEYAAY shall be fully responsible for ensuring that the installation, ownership, operation and maintenance of the Generating Facility or any new generating facility

## EXHIBIT 7

### SAMPLE OPERATION AND MAINTENANCE CHARGE CALCULATION

When the Interconnection Facilities are placed In-Service, Section 8.2.1 of the IA provides for an annual O&M charge equal to “~~0.0051417~~the currently effective Generation Interconnection O&M Fixed Charge Rate set forth in Appendix XI of SDG&E’s Transmission Owner Tariff (as such rate may be modified from time to time) monthly rate times the following amount: the installed Cost of the Interconnection Facilities” that are identified as Direct Assignment Facilities.

The following example using hypothetical costs illustrates how the formula would work. Assume the following:

|  |            |
|--|------------|
| Cost of the Direct Assignment Interconnection Facilities | \$ 550,000 |
|--|------------|

The resulting annual O&M charge would be calculated as follows:

the currently effective Generation Interconnection O&M Fixed Charge Rate set forth in Appendix XI of SDG&E’s Transmission Owner Tariff (as such rate may be modified from time to time)~~0.0051417~~ x (\$550,000) x 12 = ~~\$33,935.22~~

**EXECUTION COPY**

**San Diego Gas & Electric Company  
FERC Electric Tariff, First Revised Volume No. 6**

Second Revised **Service Agreement No. 21**

**INTERCONNECTION AGREEMENT**

**BY AND BETWEEN**

**SAN DIEGO GAS & ELECTRIC COMPANY**

**AND**

**KUMEYAAY WIND, LLC**

**DATED:**

**February 14, 2005**

**Issued by: Lee Schavrien, VP-Regulatory Affairs  
Issued on: February 16, 2005**

**Effective Date: February 16, 2005**

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## EXHIBIT 7

### SAMPLE OPERATION AND MAINTENANCE CHARGE CALCULATION

When the Interconnection Facilities are placed In-Service, Section 8.2.1. of the IA provides for an annual O&M charge equal to "0.0037583 0.0051417 monthly rate times the following amount: the installed Cost of the Interconnection Facilities that are identified as Direct Assignment Facilities.

The following example using hypothetical costs illustrates how the formula would work. Assume the following:

Cost of the Direct Assignment Interconnection Facilities                      \$ 550,000

The resulting annual O&M charge would be calculated as follows:

$$0.0037583 \text{ } \underline{0.0051417} \times (\$550,000) \times 12 = \cancel{\$24,806} \text{ } \underline{\$33,935.22}$$

INTERCONNECTION AGREEMENT

1. PREAMBLE

This Interconnection Agreement ("IA"), dated February 14, 2005, between KUMEYAAY WIND, LLC ("KUMEYAAY") and SAN DIEGO GAS & ELECTRIC COMPANY ("SDG&E"), hereinafter sometimes referred to individually as "Party" or collectively as "Parties", is as follows:

2. RECITALS

2.1 Whereas, SDG&E is a public utility engaged, among other things, in the business of owning and operating an electric system consisting of transmission and distribution facilities in Southern California;

2.2 Whereas, KUMEYAAY, intends to connect up to 50 MW of wind generation to SDG&E's 69 kV transmission system in a remote location in eastern San Diego County, with a planned commercial operation date of December 31, 2005. The Project site is located north of Interstate-8 and is approximately 8 miles northeast of Campo, CA as described in Exhibit 5, for the purpose of generating electric energy for its own use, selling electric power at wholesale, or both and has requested permission from SDG&E to integrate the Project into SDG&E's transmission system;

2.3 Whereas, SDG&E is willing to permit such interconnection and parallel operation under the terms and conditions contained in this IA;

2.4 Whereas, KUMEYAAY understands that this IA does not provide any transmission or distribution services or ancillary services;

2.5 Whereas, this IA obligates KUMEYAAY to operate and maintain the Generating Facility consistent with Good Utility Practice;

2.6 Whereas, this IA establishes interconnection and operating responsibilities and associated procedures for communications between KUMEYAAY and SDG&E Electric System operators. The IA also establishes procedures for safe work practices on the Interconnection Facilities and the SDG&E Electric System and routine test procedures;

2.7 Whereas KUMEYAAY understands that it will be subject to the ISO Tariff and protocols and operating procedures there under and that it is responsible for making any arrangements necessary with the ISO.

3. AGREEMENT

Now, therefore, in consideration of the mutual covenants herein set forth, the Parties agree as follows:

#### 4. DEFINITIONS

Terms and expressions when used in this IA with the initial letters capitalized, whether in the singular, plural or possessive, shall have the meanings set forth in this IA.

##### 4.1 Business Day

A day other than Saturday, Sunday or a day on which: (i) banks are legally closed for business in the State of California; or (ii) SDG&E is closed for business, which days are listed as follows and may change from time to time:

New Years Day  
Martin Luther King Jr. Birthday  
Presidents Day  
Memorial Day  
Independence Day  
Labor Day  
Thanksgiving Day  
Day After Thanksgiving  
Christmas Eve  
Christmas Day

##### 4.2 Clearance Point

The point(s) that electrically isolate(s) SDG&E's equipment from possible sources of energy from the Generating Facility and Generator Step-up Facilities. Clearance Points may be requested by SDG&E from time to time as provided in Section 8.8, so that work can be safely performed on the SDG&E Electric System. The Clearance Point is normally located at the Disconnect Device.

##### 4.3 CPUC

The California Public Utilities Commission, or its successor.

##### 4.4 Designated Representative

"Designated Representative" shall mean those persons referenced in Section 9.1 of this IA.

##### 4.5 Designated SDG&E Switching Center

The SDG&E location, identified in Section 9.1 of this IA.

##### 4.6 Disconnect Device

A device used to isolate the Generating Facility from the SDG&E Electric System. The Generating Facility must have a Disconnect Device that shall be clearly marked "GENERATOR TIE LINE DISCONNECT SWITCH".



#### **4.7 Emergency**

An abnormal condition or situation that adversely affects, or potentially may adversely affect, the *Generating Facility* or the *SDG&E System Integrity*. Such an event may result from, but is not limited to, an ISO declared system emergency.

#### **4.8 FPA**

The Federal Power Act, as it may be amended or superseded.

#### **4.9 FERC**

The Federal Energy Regulatory Commission, or its successor.

#### **4.10 Generating Facility**

The generating and associated facilities of KUMEYAAY, which shall include, but not be limited to: 25 wind turbine generators, collection and step-up transformer facilities equipment equipped with a high side 69kV circuit breaker, electrical equipment connecting to Substation and protective devices.

#### **4.11 Generator Step-up Facilities**

Electric facilities owned and operated by KUMEYAAY to step-up the generator voltage to the voltage of the interconnection.

#### **4.12 Good Utility Practice**

Any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods, and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and expedition. Good Utility Practice is not intended to be any one of a number of the optimum practices, methods, or acts to the exclusion of all others, but rather to be any one of acceptable practices, methods, or acts generally accepted in the region.

#### **4.13 Governmental Authority**

Any federal, state, local or other governmental, regulatory or administrative agency, governmental commission, department, board, subdivision, court, tribunal, or other governmental arbitrator, arbitral body or other authority having jurisdiction over the Parties, their respective facilities, or the respective services they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power.

#### **4.14 In-Service**

In-Service for the Interconnection Facilities is when such facilities are available for energization, so that KUMEYAAY testing of the Generating Facility can begin.

#### **4.15 In-Service Date**

The In-Service Date for the Interconnection Facilities shall be October 1, 2005, or such other date as may be established pursuant to the terms of this IA.

#### **4.16 Interconnection Capacity**

The amount of net electric capacity up to which the Generating Facility may deliver energy and ancillary services into the SDG&E Electric System through the Interconnection Facilities, as specified in Section 5.2.2 of Exhibit 5 and modified, if necessary, through technical studies conducted or approved by SDG&E, pursuant to the ISO Tariff in consultation with KUMEYAAY.

#### **4.17 Interconnection Facilities**

The facilities described in Section 5.6 of Exhibit 5.

#### **4.18 Interconnection Facilities Agreement or "IFA"**

The Interconnection Facilities Agreement dated February 14, 2005, between KUMEYAAY and San Diego Gas & Electric Company.

#### **4.19 Interconnection Service**

Interconnection Service refers to KUMEYAAY's ability, through the Interconnection Facilities, to deliver at the Point(s) of Interconnection the energy and ancillary services produced by the Generating Facility to and, if necessary, to receive facility station service requirements for the Generating Facility, including the capacity or energy necessary for the start-up, testing or commissioning of the Generating Facility or for other requirements, through the SDG&E Electric System under the terms and conditions of this IA when (i) the Generating Facility is interconnected with the SDG&E Electric System; and (ii) the operation of the SDG&E Electric System is not suspended, interrupted or interfered with as a result of Uncontrollable Force. The term "Interconnection Service" as used in this IA shall not refer to any right to transmit power over SDG&E's transmission and/or distribution system. The interconnection plan of service is described in Exhibit 5.

#### **4.20 ISO**

The California Independent System Operator Corporation or its successor, which exercises operational control over that portion of the ISO Controlled Grid comprising as of the execution of this IA SDG&E's transmission facilities.

#### **4.21 ISO Controlled Grid**

The system of transmission lines and associated facilities of the participating transmission owners that have been placed under the ISO's operational control.

#### **4.22 ISO Tariff**

The FERC-approved and effective tariff and protocols of the ISO, as modified or superseded from time to time.

#### 4.23 Local Furnishing Bonds

Conduit revenue bonds to finance or refinance a portion of SDG&E's costs of improvements to its local electric system in the approximate aggregate principal amount of approximately \$686 million that financed transmission facilities and approximately \$518 million that financed distribution facilities, comprised of the following series of bonds, as refunded from time to time:

| City of Chula Vista | City of San Diego |
|---------------------|-------------------|
| Series 1992 A       | Series 1992 A     |
| Series 1992 B       | Series 1993 A     |
| Series 1992 C       | Series 1993 C     |
| Series 1992 D       | Series 1995 A     |
| Series 1996 A       | Series 1995 B     |
| Series 1996 B       |                   |
| Series 1997 A       |                   |

#### 4.24 OK-On-Or-Near Authorization

A procedure used by SDG&E in connection with work on a live electric line or near an energized circuit. In an OK-On-Or-Near Authorization, SDG&E will request that KUMEYAAAY contact the Designated SDG&E Switching Center before re-energizing a circuit following an automatic trip.

#### 4.25 Person

An individual, partnership, joint venture, corporation, limited liability company, trust, association or unincorporated organization, or any Governmental Authority.

#### 4.26 Point(s) of Interconnection

The "Point(s) of Interconnection" are the points where the Generating Facility connects with the Interconnection Facilities and the ISO Controlled Grid, as shown schematically in Exhibit 5.6.

#### 4.27 Responsible Meter Party

The Party having the responsibility for providing, installing, owning, operating, testing, servicing and maintaining meters and associated recording or telemetering equipment for the Point of Interconnection. Currently, the Responsible Meter Party is KUMEYAAAY.

#### **4.28 SDG&E Electric System**

All properties and other assets, other than the Interconnection Facilities, now or hereafter existing, which are owned or controlled by SDG&E or its successors or assigns, and used for or directly associated with the generation, transmission, transformation, distribution or sale of electric power, including all additions, extensions, expansions, and improvements thereto.

#### **4.29 SDG&E Interconnection Handbook**

SDG&E Interconnection Handbook shall have the meaning set forth in Section 13.2 hereof.

#### **4.30 SDG&E System Integrity**

The state of operation of the SDG&E Electric System in a manner that, when exercised in a manner consistent with Good Utility Practice and Standard Operating Procedures, is deemed by SDG&E in its reasonable discretion necessary or desirable to minimize the risk of injury to persons and/or property and enable SDG&E to provide adequate and reliable electric service to its customers.

#### **4.31 Significant Regulatory Change**

A "Significant Regulatory Change" occurs when the FERC, the CPUC, the California Legislature, or the United States Congress, or any other governmental, regulatory or judicial body having jurisdiction over either Party issues an order or decision, or adopts or enacts a law that: (i) significantly and substantially changes the structure or function of the California electric utility industry in a way that materially affects this IA (including the creation of a market for the supply of reactive power); or (ii) substantially prevents either Party from performing its material functions under this IA. Provided, however, a Significant Regulatory Change shall not be deemed to have occurred if such order or decision or adopted or modified tariff or enacted law by its terms cause any resulting change not to apply to any interconnection agreement executed prior to the effective date of such action.

#### **4.32 Substation**

The Crestwood Substation, including its site, is described in Exhibit 5.6.

#### **4.33 Standard Operating Procedures**

The established standard operating procedures which all SDG&E personnel involved in the operation, construction and maintenance of the SDG&E Electric System and the Interconnection Facilities are required to follow on a non-discriminatory and comparable basis, as they may be modified or superseded from time to time.

#### **4.34 TCA**

The Transmission Control Agreement, between the ISO and participating transmission owners, including SDG&E, as it may be modified from time to time, establishing the terms and conditions under which each participating transmission owner will discharge its respective duties and responsibilities.

#### **4.35 Third Party**

**A Person other than SDG&E or KUMEYAAY.**

#### **4.36 Uncontrollable Force**

**Any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm, flood, earthquake, explosion, any curtailment, order regulation or restriction imposed by governmental, military or lawfully established civilian authorities or any other cause beyond the reasonable control of the ISO or Market Participant which could not be avoided through the exercise of Good Utility Practice.**

#### **4.37 WECC**

**The Western Electricity Coordinating Council, or its successor. WECC is the successor in interest to the Western System Coordinating Council.**

### **5. PRE-COMMENCEMENT OBLIGATIONS**

#### **5.1 Interconnection Facilities Agreement**

**SDG&E and KUMEYAAY shall have entered into a separate IFA providing for the design, engineering, construction and installation of, and the recovery of costs associated with, the facilities that are necessary for KUMEYAAY's Generating Facility to interconnect with the SDG&E Electric System and allow the Generating Facility to deliver energy and ancillary services up to the Interconnection Capacity into the SDG&E Electric System. SDG&E shall have the right to terminate this IA in the event that the IFA terminates prior to the Interconnection Facilities being In-Service pursuant to the terms and conditions of the IFA.**

### **6. TERM**

#### **6.1 Effective Date and Termination of the IA**

**6.1.1 This IA shall become effective on the date it is executed by both Parties ("Effective Date"), subject to acceptance of this IA for filing by FERC without the addition of any material condition that is unacceptable to either Party. SDG&E shall file this IA with FERC as soon as possible following execution of this IA by the Parties but in no event later than 20 Business Days after such execution. SDG&E also agrees to request a waiver of the FERC 60-day notice filing requirement to enable the Interconnection Facilities to commence service on or before the In-Service Date. In the event FERC (i) fails to accept this IA without suspension or (ii) finds that this IA is not just and reasonable or imposes conditions that are not acceptable to either Party, the Parties will use commercially reasonable efforts to agree upon amendments or modifications of this IA that would eliminate any such conditions or result in a just and reasonable finding by FERC. The term of this IA shall continue in full force and effect until the date of termination based on reasons specified in Sections 5.1 or 6.1.2.**

**6.1.2 In addition to termination rights provided to the Parties by applicable law, this IA may be terminated in accordance with Section 6.1.3 hereof for any of the following reasons:**

- (i) by SDG&E if the Generating Facility permanently ceases operation for any reason; provided, however, that the Parties first comply with Section 7.1.5 of this IA;
- (ii) by KUMEYAAY for any reason;
- (iii) by either Party, in accordance with the terms of Section 16.9.2 of this IA; or
- (iv) in the event of the occurrence of an Uncontrollable Force if after 12 months following a notice to the other Party of the occurrence of such event, the Parties are unable to identify a means of overcoming such Uncontrollable Force.

6.1.3 To effect termination resulting from an event set forth in Sections 6.1.2 (i) and 6.1.2(iv), a Party seeking to terminate shall provide at least 30 calendar days' prior written notice specifying the termination date to the other Party in accordance with Section 16.21. However, if KUMEYAAY cures the event giving rise to the right to termination under Sections 6.1.2(i) or 6.1.2(iv) prior to the specified termination date or more time is reasonably required to effect the cure, and KUMEYAAY is acting to achieve such cure, this IA shall remain in full force and effect. A termination by KUMEYAAY in accordance with Section 6.1.2 (ii) shall become effective within 5 calendar days after KUMEYAAY provides SDG&E with written notice of its intent to terminate.

#### 6.1.4 [Reserved]

6.1.5 Notwithstanding the foregoing, no termination shall become effective until the Parties have complied with all applicable laws and regulations applicable to such termination, including the filing with FERC of a notice of termination of this Agreement, which notice has been accepted for filing by FERC.

## 6.2 Effect of Termination

(i) Upon termination of this IA, SDG&E may, at its option, alter, rearrange, or retain in place, or purchase any portion of the Interconnection Facilities paid for by KUMEYAAY that SDG&E desires to continue to use to provide utility service, provided that SDG&E shall pay to KUMEYAAY a facility termination charge reflecting the greater of the salvage value of such facilities or an amount for such facilities based on KUMEYAAY's cost for such facilities less depreciation. If SDG&E does not exercise the option contemplated in this subsection 6.2(i) then SDG&E shall remove at KUMEYAAY's sole cost any Interconnection Facilities paid for by KUMEYAAY wherever located.

(ii) In the event of a termination of this IA, SDG&E shall identify any purchase order or subcontracts of SDG&E for which KUMEYAAY has paid under this IA but for which delivery of the related materials or services has not been completed. As directed by KUMEYAAY, SDG&E shall either cancel any such purchase order or subcontract, in which case the amount of any refund due under such purchase order or subcontract shall be included in the calculation of any final or adjusted bill pursuant to Section 15.5 or paid to KUMEYAAY if the amount of refund exceeds the amount of such final bill, or allow performance under the purchase order or subcontract to be completed, in which case the provisions of Section 6.2(i) above shall apply.

## **7. SDG&E'S RIGHTS AND OBLIGATIONS**

**SDG&E shall own, operate and maintain, and as necessary, repair the Interconnection Facilities and perform its rights and obligations under this IA in accordance with ISO's operational and maintenance directives and SDG&E's Standard Operating Procedures, established maintenance practices and Good Utility Practice.**

### **7.1 Limited Responsibility to Accept Energy and Ancillary Services Into and to Deliver Station Requirements from the SDG&E Electric System**

#### **7.1.1 Sole Purpose to Provide Interconnection Services**

**The sole intent and purpose of this IA is to provide for the electric interconnection and parallel operation of the Generating Facility with the SDG&E Electric System, including the establishment of the Interconnection Capacity at the Point of Interconnection and rules governing the interconnected operations to promote and maintain SDG&E System Integrity.**

#### **7.1.2 Obligation to Accept Energy and Ancillary Services**

**Subject to the ISO Tariff and the TCA, SDG&E shall provide Interconnection Services pursuant to this IA up to the Interconnection Capacity specified in Exhibit 5. Provided, however, KUMEYAAY shall make previous arrangements, either directly for its own account or indirectly through a Third-Party purchaser of its energy and ancillary services, for the transmission service, and any necessary permits, needed to transfer power from and, as necessary, station service requirements to, the Point of Interconnection. Provided, further, that the Parties recognize that KUMEYAAY may purchase station service from any service provider. In the event of an increase in the output of the Generating Facility or other material change or modification to the configuration and operation of the Generation Facility, the Parties shall negotiate appropriate revisions to this IA, including as necessary the specifications or requirements set forth in Exhibit 5 as necessary to permit SDG&E to provide revised Interconnection Service in a fashion consistent with this IA. Facilities that are required to accommodate such revised Interconnection Service shall provide the ISO with acceptable operating flexibility and meet all applicable requirements for reliable integration within the ISO Controlled Grid.**

#### **7.1.3 No Obligation to Provide Transmission or Distribution Service or to Reimburse KUMEYAAY for Costs Arising from Congestion Management**

**Nothing in this IA shall be deemed either expressly or implicitly to obligate SDG&E to provide any electric transmission or distribution service for the transport of electric energy from the Generating Facility beyond the Point of Interconnection. Further, without limiting SDG&E's obligations in Section 7.4, KUMEYAAY acknowledges and agrees that SDG&E shall under no circumstances be obligated to pay or reimburse KUMEYAAY pursuant to this IA for costs associated with KUMEYAAY's ability to transmit or deliver electric energy beyond the Point of Interconnection, that may arise from congestion management or congestion mitigation resulting from the addition of other generator interconnections.**

#### **7.1.4 New or Revised Interconnection Services Subject to FERC and ISO**

**Approval**

KUMEYAAY understands that SDG&E is subject to FERC's jurisdiction, the ISO Tariff and to the TCA and, as a result, SDG&E cannot commit to provide any new or revised Interconnection Service to KUMEYAAY except on a basis consistent with FERC's transmission and interconnection policies and regulations, the ISO Tariff and the TCA

#### 7.1.5 Long Term shutdown

In the event that the Generating Facility is shut down, or partially but materially shutdown, for a period of 6 months or more for any reason, the Parties, at either Party's request, shall meet to determine the date ("Restoration Date") the Generating Facility may reasonably be expected to resume full power production capability if KUMEYAAY uses, or causes to be used, due diligence in curing whatever problem exists.

### 7.2 Right to Disconnect the Generating Facility During the Term

#### 7.2.1 KUMEYAAY's Failure to Meet Standards

Subject to Section 16.9.1, Standard Operating Procedures and Good Utility Practice, SDG&E may disconnect the Generating Facility from the SDG&E Electric System if, and during the period which, the Generating Facility materially fails to meet the requirements set forth in this IA. Except as described in Subsection 7.2.2, prior to such disconnection SDG&E shall promptly provide written notice to KUMEYAAY detailing the failure to adhere to such requirements and provide KUMEYAAY 30 calendar days to correct such failure. Except as otherwise provided in Subsection 7.2.2, SDG&E shall not disconnect the Generation Facility if KUMEYAAY corrects the failure described in the written notice within 30 calendar days or if KUMEYAAY is working, or is causing others to work diligently, to achieve a cure that reasonably takes additional time. SDG&E shall reconnect the Generating Facility as soon as reasonably possible following the correction of a failure leading to disconnection hereunder.

#### 7.2.2 Immediate Disconnection

If SDG&E reasonably determines that a hazardous condition exists and immediate action is necessary to protect Persons, Interconnection Facilities, or the SDG&E Electric System, other customers' facilities, or other interconnected utility systems from material damage or interference caused by the Generating Facility, then SDG&E may immediately disconnect the Generating Facility from the SDG&E Electric System. Immediately following such events, the Designated SDG&E Switching Center will provide the Generating Facility with a clear explanation of the cause(s) for the action taken and the remedies required to return to normal operation. Within 24 hours SDG&E will also provide a written report to KUMEYAAY explaining any such event.

#### 7.2.3 Right to Inspect KUMEYAAY's Operations Logs, Maintenance Records, and Facilities

Upon reasonable advance notice to KUMEYAAY, SDG&E shall have the right to enter KUMEYAAY's premises at any reasonable times for inspection of KUMEYAAY's (i) operations logs and maintenance records relating to activities which can reasonably be expected to affect operation of the Interconnection Facilities and the SDG&E Electric System as a result of providing Interconnection Services and (ii) control, protective and safety devices. While on KUMEYAAY's premises, SDG&E shall comply with KUMEYAAY's written safety, security and operating conventions, protocols and practices; provided, that KUMEYAAY has



provided SDG&E with such written safety, security and operating conventions, protocols and practices, which are consistent with Good Utility Practice. Such inspection shall be at SDG&E's sole cost and expense.

### **7.3 Right to Interrupt Interconnection Service**

In taking any action pursuant to this Section 7.3, SDG&E shall not unduly discriminate between the treatment of the Generating Facility and the treatment accorded other generating facilities interconnected to the SDG&E Electric System, including generating facilities owned, operated or controlled by SDG&E.

#### **7.3.1 Unscheduled Interruptions**

Upon reasonable advance notice to KUMEYAAY, SDG&E may temporarily interrupt or reduce Interconnection Service to the Generating Facility, or temporarily separate the SDG&E Electric System, or the Interconnection Facilities, from the Generating Facility, if SDG&E reasonably determines at any time that: (i) an Emergency condition exists and the action is necessary or desirable to protect or maintain SDG&E System Integrity; (ii) the operation of the Interconnection Facilities, or SDG&E Electric System is suspended, interrupted or interfered with as a result of Uncontrollable Force; or (iii) it has been so instructed by the ISO, in accordance with the TCA, or by any duly authorized regulatory or governmental agency. In the event of such interruption or reduction in Interconnection Service, SDG&E shall restore full Interconnection Service on a basis comparable to the restoration of other public service and safety facilities, and, in any event, as directed by the authorized emergency response officials. Should SDG&E determine that such interruption or reduction in service will be of a prolonged nature, SDG&E and KUMEYAAY shall confer and attempt to agree on the earliest reasonable time by which full service can be restored.

#### **7.3.2 Interruption by Protective Devices**

SDG&E utilizes automatic protective devices in order to assist in maintaining SDG&E System Integrity. SDG&E shall maintain these devices in reasonable working order in accordance with Good Utility Practices and Standard Operating Procedures. In the event of any interruption resulting from the operation of protective devices, Interconnection Service will be restored consistent with Good Utility Practice and Standard Operating Procedures.

#### **7.3.3 Maintenance Interruptions**

**7.3.3.1** SDG&E may interrupt or reduce Interconnection Service to the Generating Facility to perform necessary maintenance on the Interconnection Facilities or the SDG&E Electric System ("Scheduled Interruption"); provided, that such interruptions or reductions are consistent with Standard Operating Procedures and Good Utility Practice. SDG&E shall reasonably attempt to coordinate such maintenance interruptions or reductions with KUMEYAAY and shall provide KUMEYAAY with as much advance notice as possible but in no event shall the notice be less than 3 Business Days except where SDG&E determines an Emergency exists or may exist which requires quicker action to correct, in which case SDG&E shall provide as much advance notice to KUMEYAAY of the interruption or reduction as is reasonably possible. If SDG&E determines that it is necessary to interrupt or reduce Interconnection Service to the Generating Facility to perform any maintenance on the Interconnection Facilities, SDG&E shall use commercially reasonable efforts, consistent with Good Utility Practice and Standard Operating Procedures, to schedule and perform required

maintenance to coincide with the scheduled outages of the Generating Facility and, if not possible, during periods of low demand.

7.3.3.2 SDG&E normally conducts maintenance interruptions during normal business hours on a Business Day, between 6:30 AM and 4:00 PM. In the event that KUMEYAAY desires the proposed maintenance interruption to occur during non-business hours, SDG&E will make reasonable efforts to accommodate KUMEYAAY, but in all events reserves the right to charge KUMEYAAY the additional cost for work performed. SDG&E will provide KUMEYAAY with an estimate of the additional cost and if KUMEYAAY still desires the work to be performed during non-normal business hours and SDG&E does perform the work, SDG&E shall charge KUMEYAAY the actual additional reasonable costs of the work, the amount of which shall not exceed the cost estimate.

7.3.3.3 KUMEYAAY understands that generation from the Generating Facility may be subject to curtailment during a Scheduled Interruption. Furthermore, during such Scheduled Interruption, KUMEYAAY agrees not to seek (and to cause any Third-Party purchaser of energy or ancillary services from the Generating Facility not to seek) compensation with respect to the Generating Facility: from SDG&E for any necessary Scheduled Interruption.

#### 7.3.4 Communication Devices

Telecommunication equipment to interface with the local telecommunication carrier is provided for ISO and SDG&E use only, not for non-utility operation. SDG&E shall maintain these devices in reasonable working order in accordance with Good Utility Practices and Standard Operating Procedures. In the event of any interruption resulting from the operation of telecommunication equipment protective devices or telecommunication equipment failure, Interconnection Service will be restored consistent with Standard Operating Procedures and Good Utility Practice.

### 7.4 Right to Install Facilities

#### 7.4.1 Installation of Facilities

In the event SDG&E determines that it is necessary, consistent with Standard Operating Procedures and Good Utility Practice, to install new or modify existing SDG&E-owned facilities, including, but not limited to, such facilities located at the Crestwood Substation and implement operating procedures (collectively, the facilities and procedures shall be referred to hereinafter as the "Facilities") that may reasonably be expected to affect Interconnection Service or the Generating Facility, SDG&E shall promptly notify KUMEYAAY. The Parties shall work together, in good faith, to agree to develop a plan of service that minimizes the impact upon the Interconnection Service and the Generating Facility. SDG&E shall take all reasonably available means to minimize the time and amount of disruption on Interconnection Services and the Generation Facility. The Parties agree that SDG&E and not KUMEYAAY shall be solely responsible for all costs associated with any such plan of service determined to be required, to permit the installation of Facilities.

#### 7.4.2 Costs Incurred by KUMEYAAY as a Result of the Installation and Operation of Facilities

To the extent modifications to the Generating Facility are reasonably required as a result of Facilities to be installed by SDG&E, SDG&E shall be solely responsible for all costs

reasonably incurred by KUMEYAAY as a result of the installation of such Facilities. The Parties shall work together, in good faith, to agree upon the extent of and costs to KUMEYAAY to accommodate the installation of the Facilities. If the Parties cannot agree on such costs to KUMEYAAY, then the dispute shall be resolved through procedures set forth in Section 16.10; *provided, however*, SDG&E may install and implement such Facilities prior to the resolution of such dispute.

#### **7.4.3 SDG&E's Right to Install Protective Devices on KUMEYAAY-Owned Facilities**

SDG&E may install, or request KUMEYAAY to install, at SDG&E's cost automatic protective devices on the Generating Facility that SDG&E determines in its reasonable judgment are required to assist in maintaining SDG&E System Integrity; provided that such protective devices do not damage, or impair the operation of the Generating Facility.

#### **7.4.4 SDG&E's Obligation to Engineer, Construct and Install Replacement of or Additions to Interconnection Facilities**

After the Interconnection Facilities are placed In-Service and only if the Parties mutually agree that replacements of or additions to the Interconnection Facilities are required, then the Parties shall meet and confer in good faith regarding whether to address KUMEYAAY's request or need for replacements or additional Interconnection Service by amending this IA or execute an interconnection facilities agreement that establishes the terms and conditions pursuant to which SDG&E designs, engineers, constructs, installs and operates such facilities and otherwise permitting SDG&E to recover the costs of such facilities from KUMEYAAY. Unless reasonably necessary to install such replacements or additions, nothing in this IA shall be construed to require SDG&E to acquire land rights, either through condemnation or any other means, unless SDG&E shall freely elect to do so.

### **8. KUMEYAAY 'S RIGHTS AND OBLIGATIONS**

#### **8.1 KUMEYAAY 's Right to Deliver Energy and Ancillary Services to the SDG&E Electric System.**

KUMEYAAY shall have the sole and exclusive right to deliver energy and ancillary services from the Generating Facility into the SDG&E Electric System through the Interconnection Facilities; provided, at no time shall KUMEYAAY deliver energy and ancillary services at a rate that exceeds the Interconnection Capacity specified in Exhibit 5; nor shall KUMEYAAY deliver energy and ancillary services into the SDG&E Electric System unless it has arranged for transmission service pursuant to Section 7.1.2.

##### **8.1.1 Consequences of Exceeding Interconnection Capacity**

It is the intent of the Parties that the Interconnection Services shall not exceed the Interconnection Capacity specified in Exhibit 5 at any time. In the event that energy and ancillary service deliveries exceed the Interconnection Capacity, the Parties, at either Party's request, shall meet to determine the reason that the Interconnection Capacity was exceeded. If the Parties determine that such an event was not due to Uncontrollable Force or an Emergency and is reasonably likely to occur again in the future, then a new higher Interconnection Capacity shall be established. SDG&E shall have the right to require that a study be conducted pursuant

to the ISO Tariff and SDG&E's Transmission Owner Tariff, at KUMEYAAY's expense, to determine if additional facilities, including upgrades to the SDG&E transmission and distribution systems, are required to accommodate the increased Interconnection Capacity. If the Parties fail to agree within 30 calendar days after the initial meeting, that the Interconnection Capacity must be increased, the matter, at either Party's request, shall be resolved through the dispute resolution procedures set forth in Section 16.10. If either Party determines that additional facilities are required, then the Parties shall negotiate in good faith and execute an interconnection facilities agreement establishing the terms and conditions pursuant to which SDG&E may recover the costs of any such additional facilities. During any period SDG&E and KUMEYAAY have not reached an agreement as to whether the event of deliveries in excess of the Interconnection Capacity occurred and is likely to occur again in the future, KUMEYAAY agrees, in the event of material adverse effects resulting there from, that the Generating Facility shall be operated in a manner that is consistent with Good Utility Practice and is likely to ensure that energy and ancillary services are not delivered at any time into SDG&E's Electric System in excess of the Interconnection Capacity specified in Exhibit 5.

8.1.2 KUMEYAAY may, consistent with Good Utility Practice, Standard Operating Practices, and, if reasonably possible after consultation with the Designated SDG&E Switching Center, (a) shut down the Generating Facility during an Emergency without prior notification to SDG&E if KUMEYAAY reasonably believes that continued parallel operations is creating or contributing to the Emergency or (b) isolate or disconnect the Generating Facility from the SDG&E Electric System if KUMEYAAY reasonably believes an Emergency or abnormal condition may cause damage to the Generating Facility. KUMEYAAY will provide SDG&E's Switching Center with prompt oral notification or such other notice as is reasonable under the circumstances.

## 8.2 Obligation to Make Payments

### 8.2.1 Operation and Maintenance Charge.

Commencing with the In-Service Date, SDG&E shall bill annually, and KUMEYAAY shall pay over the term of this IA, a separate operation and maintenance charge to compensate SDG&E for the operation, maintenance, and applicable taxes associated with the Interconnection Facilities that are direct assignment facilities as described in Exhibit 5 and not related to network upgrades in an amount equal to the currently effective Generation Interconnection O&M Fixed Charge Rate set forth in Appendix XI of SDG&E's Transmission Owner Tariff (as such rate may be modified from time to time) monthly rate times the following amount: The installed Cost of the direct assignment Interconnection Facilities. An example calculation of the formula is attached as Exhibit 7.

### 8.2.2 Other Charges

In accordance with the billing and payment procedures in Section 15, SDG&E shall issue to KUMEYAAY and KUMEYAAY shall pay a monthly bill for any reasonable costs that are incurred by SDG&E as set forth in Sections 6.2(ii) and 7.3.3.2 hereof.

## 8.3 Generating Facility Must Meet Standards

### 8.3.1 Generating Facility to Meet Applicable Laws and Good Utility Practice

KUMEYAAY shall be fully responsible for designing new generation facilities or additions to the existing Generating Facility in accordance with Good Utility Practice. KUMEYAAY shall be fully responsible for ensuring that the installation, ownership, operation and maintenance of the Generating Facility or any new generating facility

or additions is in accordance with all applicable laws, rules and regulations of governmental agencies having jurisdiction and in accordance with Good Utility Practice.

### **8.3.2 Generating Facility to Comply with SDG&E Interconnection Handbook; Maintenance by KUMEYAAY of Facilities**

New generating facilities or additions to the existing Generating Facility shall be designed and constructed in accordance with the SDG&E Interconnection Handbook, and KUMEYAAY shall have obtained the necessary approvals from each Governmental Authority and the ISO, as applicable. Such facilities shall be designed and constructed in accordance with the SDG&E Interconnection Handbook, except as provided in Exhibit 6. Concurrent with the execution of this IA, SDG&E shall provide KUMEYAAY with the latest version of the SDG&E Interconnection Handbook. SDG&E may make revisions to the SDG&E Interconnection Handbook from time to time and shall make such revisions available to KUMEYAAY in a prompt and timely manner. KUMEYAAY shall be responsible for assuring that the operating personnel of the Generating Facility at all times have the latest versions of the SDG&E Interconnection Handbook. KUMEYAAY shall maintain the Generating Facility or shall cause the Generating Facility to be maintained in accordance with Good Utility Practice.

### **8.3.3 KUMEYAAY Shall Provide Transmission Planning Data**

KUMEYAAY is obligated to provide SDG&E with steady state and dynamic data for the Generating Facility as required by the SDG&E Interconnection Handbook and the WECC.

### **8.3.4 KUMEYAAY Shall Own, Operate, and Maintain Protective Devices**

KUMEYAAY shall own, operate and maintain at its cost protective and safety devices as required by the SDG&E Interconnection Handbook for safe parallel operation of the Generating Facility with the SDG&E Electric System.

### **8.3.5 Duty to Minimize Disturbances**

KUMEYAAY agrees that it shall cause the Generating Facility related apparatus to be operated and planned in a manner that reasonably minimizes electrical disturbances on the interconnection facilities and the SDG&E Electric System caused by the operation of KUMEYAAY's Generating Facility.

### **8.3.6 Power Delivery Standard**

Power delivered to the interconnection facilities from the Generating Facility shall be at what is commonly designated as three-phase alternating current, at 60 Hertz, and at the normal voltage specified in Exhibit 5. Normal variations in voltage and frequency shall be permitted pursuant to Standard Operating Procedures and Good Utility Practice.

## **8.4 No Parallel Operation Without Approval**

After the initial commercial operation of the Generating Facility, if KUMEYAAY's Generating Facility has not been operated for one year or more, KUMEYAAY shall not operate its Generating Facility in parallel with the SDG&E Electric System until the Generating Facility has been inspected by an authorized SDG&E representative and final written approval has been

received from SDG&E, which approval shall not be unreasonably withheld, conditioned, or delayed. *Provided, however,* SDG&E will not inspect the Generating Facility after initial commercial operation for a period of one year and the inspection obligation set forth in the immediately preceding sentence shall apply based on the one year period commencing from the date the Generating Facility first stopped operations. Any such inspection and approval shall not be deemed or construed as any representation, assurance, guarantee or warranty by SDG&E of the safety, durability, reliability, or compliance as required in Section 8.3, of the Generating Facility and its control, protective and safety devices or the quality of power produced by the Generating Facility.

#### **8.5 KUMEYAAY Must Implement Operating Guidelines**

KUMEYAAY shall implement the Standard Operating Procedures, including applicable guidelines included in the SDG&E Interconnection Handbook, provided that such SDG&E Interconnection Handbook is maintained by SDG&E in accordance with applicable requirements of each Governmental Authority and the ISO, as applicable. KUMEYAAY shall ensure that its operating personnel are familiar with the procedures and guidelines in this IA.

#### **8.6 Obligation to Install, Own, Operate, and Maintain Power Factor, Voltage and Power Delivery**

KUMEYAAY understands that the voltage of SDG&E's Electric System is not automatically regulated and may vary widely. The voltage levels will fluctuate depending on plant operation and SDG&E Electric System conditions. In accordance with the SDG&E Interconnection Handbook, KUMEYAAY shall install, own, operate, and maintain the necessary equipment to maintain proper power factor and voltage at the Point of Interconnection. KUMEYAAY shall specify the power factor range of operation at the generator terminals to meet or exceed a minimum bandwidth from 0.98 lag (producing reactive power) to 0.98 lead (absorbing reactive power) at rated power output utilizing fast acting dynamic reactive power support, subject to demonstration of acceptable performance over the power factor range pursuant to the amended Facilities Study and the ISO's written concurrence. Unless otherwise instructed by the ISO or SDG&E and subject to Section 10.2 hereof, the Generating Facility must be operated in an automatic voltage regulating mode being promptly responsive to changes in transmission voltage and shall follow the voltage set point provided by the Designated SDG&E Switching Center. KUMEYAAY shall install, own, operate, and maintain the necessary equipment (e.g., "Voltage Ride Through" package) for uninterrupted power delivery based upon SDG&E specifications, as may be modified from time to time consistent with Good Utility Practice, to limit tripping of the Generating Facilities for temporary low voltage conditions caused by remote faults.

#### **8.7 Emergency Disconnection and Interruption Protective Devices**

In an Emergency, KUMEYAAY agrees to expeditiously open the Disconnect Device upon notification from the Designated SDG&E Switching Center that such action is needed, pursuant to Standard Operating Procedures and Good Utility Practice, to preserve reliability or prevent unsafe conditions. KUMEYAAY shall utilize protective devices in order to protect its Generating Facility. These devices will be maintained in reasonable working order. In the event of interruption, the Generating Facility will be restarted consistent with Good Utility Practice.

## **8.8 Clearance Point Request**

Consistent with the requirements for responding to an Emergency or undertaking work, as provided in Sections 7.2.2, 7.3.1, 7.3.3, 8.2 and 8.7, KUMEYAAY must open its Disconnect Device if SDG&E reasonably requests a Clearance Point. A qualified KUMEYAAY employee will cause the Disconnect Device to be opened, lock it with a KUMEYAAY lock, and attach a filled-out "Hold-Out" tag to indicate it is a Clearance Point. KUMEYAAY shall promptly thereafter inform SDG&E's designated switching center that it has caused its Disconnect Device to be opened and locked. SDG&E shall thereafter inform KUMEYAAY's designated representative that the lock may be removed based upon the cessation of the need for opening the Disconnect Device.

## **8.9 Routine Tests and OK-On-Or-Near Authorizations**

When conducting a routine test or an OK-On-Or-Near Authorization, KUMEYAAY agrees to follow the procedures set forth in Exhibit 2.

## **8.10 Obligation to Maintain Insurance**

The obligations of the Parties to maintain insurance are set out in Exhibit 1.

## **8.11 Obligation to Provide Access Rights**

### **8.11.1 SDG&E Access Rights**

KUMEYAAY agrees to grant SDG&E all reasonably necessary easements and rights-of-way, including adequate and continuing access rights, on property of KUMEYAAY to transport, install, operate, maintain, replace, and remove Interconnection Facilities and any equipment that may be provided, owned, operated and maintained by SDG&E on the property of KUMEYAAY in connection therewith. KUMEYAAY agrees to grant, or cause to be granted, such easements and rights-of-way to SDG&E at no cost and in a form satisfactory to SDG&E (utilizing reasonable commercial principals) and capable of being recorded in the office of the County Recorder.

## **8.12 [RESERVED]**

## **8.13 Review and Disclaimer**

Review, if any, by SDG&E of the design, construction, operation, or maintenance of the Generating Facility, including modifications thereto, shall not constitute any representation as to the economic or technical feasibility, operational capability, or reliability of such facilities. KUMEYAAY shall in no way represent to any third party that any such review by SDG&E of such facilities, including but not limited to any review of the design, construction, operation, or maintenance of such facilities by SDG&E, is a representation by SDG&E as to the economic or technical feasibility, operational capability, or reliability of such facilities. As between the Parties, KUMEYAAY is solely responsible for economic and technical feasibility, operational capability, and reliability of KUMEYAAY's Generating Facility.

- (b) Any Emergency situation or any request that SDG&E de-energize a portion of the SDG&E Electric System or the Interconnection Facilities under its control;
- (c) Any changes in the mechanical or electric condition of the Generating Facility or Generator Step-up Facility that may materially affect the reliability of either the Generating Facility or SDG&E System Integrity;
- (d) Discovery of any misoperation or inoperable condition of a SDG&E-required interconnection relay or circuit breaker;
- (e) Discovery of any circuit breaker that was operated by a SDG&E-required interconnection relay, along with the relay targets that caused the circuit breaker to operate; and
- (f) Plans to manually separate from the SDG&E Electric System or the Interconnection Facilities and the times of actual manual parallels and separations. Emergency separations shall be reported as soon as conditions permit.

### 9.3 Oral Communications

All oral operating communications shall be conducted through the Designated SDG&E Switching Center. KUMEYAAY agrees to maintain 24-hour direct phone service so that SDG&E can give instructions to KUMEYAAY or its designated operator.

### 9.4 Telemetry Requirements

KUMEYAAY shall telemeter real-time information, including Megawatts and Megavars for each line interconnecting to the Crestwood Substation attributable to the interconnection of the Generating Facility, pursuant to the requirements of the SDG&E Interconnection Handbook; provided that, if such telemetered information is available in reasonably suitable form to SDG&E from the ISO, KUMEYAAY shall be relieved of its obligation to provide telemetered information directly to SDG&E. When telemetered real-time information is required for SDG&E to bill KUMEYAAY for service taken under separate SDG&E tariffs, upon SDG&E's request, KUMEYAAY shall request the ISO to provide SDG&E with read-only passwords and other information necessary for SDG&E to access KUMEYAAY's meters.

### 9.5 [RESERVED]

## 10. OPERATION AND MAINTENANCE OF GENERATING FACILITY AND GENERATOR STEPUP FACILITIES

### 10.1 Daily Operating Log

To the extent required by Standard Operating Procedures and Good Utility Practice, KUMEYAAY shall maintain, or cause to be maintained, operating and maintenance records for the radial transmission tie-line interconnecting the Generating Facility to SDG&E's Crestwood Substation, including the operation and maintenance of related protective devices.



## **10.2 Power Factor and Voltage Instructions**

SDG&E's voltage schedules and power factor schedules shall treat all sources of reactive power in the Control Area in an equitable and not unduly discriminatory manner. The Designated SDG&E Switching Center shall exercise commercially reasonable efforts to provide KUMEYAAY with voltage schedules and power factor (reactive power) schedules, if reasonably possible, at least 1 day in advance, and may make changes to such schedules as necessary to maintain the reliability of the SDG&E Electric System. KUMEYAAY shall operate the Generating Facility to maintain the specified voltage set-point (or plant power factor). If KUMEYAAY is unable to maintain the specified voltage set-point (or plant power factor), it shall promptly notify the Designated SDG&E Switching Center. If the Generating Facility's 69kV voltage or power factor are outside of the specified values, SDG&E shall have the right to order a reduction in output or to disconnect the Generating Facility if the plant's operation is adversely affecting the SDG&E Electric System.

## **10.3 Harmonic Distortion and Flicker**

KUMEYAAY shall operate the Generating Facility to comply with the Institute of Electrical and Electronics Engineers (IEEE) standards, or its successor, for harmonic control in electrical power systems (standard 519) and light flicker (standard 1453).

## **10.4 Maintenance Notice**

KUMEYAAY shall provide no later than **October 1** of each year its projected annual outage schedules, including outages for the Generation Facility and the pumping mode of operation. Such outage schedule shall be updated quarterly. Notwithstanding the annual outage schedule, but subject to **Sections 7.3.3 and 10.6** hereof, KUMEYAAY shall give or shall cause to be given as much reasonable advance notice as reasonably possible (a minimum of 5 Business Days) to the Designated SDG&E Switching Center when work is being planned that may result in any curtailment or outage of the Generating Facility. KUMEYAAY shall update its planned maintenance schedules as necessary. Such information shall include the same information provided to the ISO regarding actual scheduling of outages of the Generating Facility. At a minimum, the notice shall include:

- (a) Nature of the work to be performed;
- (b) Date and time the work will begin;
- (c) Estimated date and time the work will be completed;
- (d) Apparatus to be cleared and the Clearance Points required;
- (e) Name and telephone number of the person in charge of the work; and
- (f) Whether or not protective grounds will be installed.

## **10.5 Maintenance on Facilities Energized by SDG&E**

### **10.5.1 KUMEYAAY May Perform Certain Work**

If KUMEYAAY wishes to perform work on its own facilities which would normally be energized by SDG&E-controlled voltage source(s), SDG&E must open its associated disconnect device(s) at SDG&E's voltage source(s) upon receiving KUMEYAAY's reasonable request that SDG&E open, lock out and tag such associated disconnect device(s) to isolate SDG&E's voltage source(s) from KUMEYAAY's facilities, within the period requested by KUMEYAAY but in no event less than 4 hours from KUMEYAAY's reasonable request and in close coordination with KUMEYAAY to ensure that KUMEYAAY can accomplish their outage work schedules. SDG&E shall remove any applicable tags and locks promptly upon cessation of the need for opening the associated disconnect device(s) and in close coordination with KUMEYAAY following established energization procedures agreed upon between SDG&E and KUMEYAAY. SDG&E will also establish the disconnect device(s) as an open Clearance Point(s) and install a "Hold-Out" tag as presently set forth in Section 13.1 of SDG&E Standard Operating Procedures.

### **10.5.2 KUMEYAAY Responsible for its Equipment and Work**

SDG&E is not responsible for KUMEYAAY's equipment energized by the Generator Step-up Facilities or by any other means. KUMEYAAY agrees that any work it performs is at its own risk. KUMEYAAY shall take all necessary steps to ensure that work is conducted consistent with Good Utility Practice.

## **10.6 Coordinated Maintenance Planning**

To the extent reasonably possible and subject to Section 7.3.3 hereof, the Parties will cooperate and coordinate on planning of scheduled outages for the Generating Facility and the Interconnection Facilities in accordance with ISO Operating Procedure T-113 (Scheduled and Forced Outages), or its successor, Standard Operating Procedures and Good Utility Practice. ISO may request Generator to reschedule its maintenance as necessary to maintain SDG&E System Integrity; provided, however, adequacy of generation supply shall not be a criterion in determining Transmission System reliability.

## **10.7 Special Protective System**

For certain contingency situations on the SDG&E Electric System, the generation output from the Generating Facility could result in an overload condition, a voltage violation, or instability on the electric facilities in the area. To remedy such a contingency condition and maintain system reliability KUMEYAAY consents or shall cause consent to be given to SDG&E to initiate a Special Protective System ("SPS") as set forth in Exhibit 5 hereof. Depending upon the contingency that occurs, the SPS may cause the tripping or run back of one or more of the units designated as the Generating Facility. The SPS will remain in effect for the minimum time deemed necessary by the ISO working in conjunction with SDG&E to remedy such a contingency and restore system reliability. SDG&E may install, or request KUMEYAAY to install at SDG&E's sole expense, automatic devices on the Generating Facility that SDG&E determines are required to initiate and maintain a SPS.

The Designated SDG&E Switching Center shall notify KUMEYAAY's Designated Representative whenever a related SPS scheme is armed or disarmed, or provide KUMEYAAY

with a planned schedule for such arming and disarming in a format that is suitable to the Parties.

A table of remedial actions that result from the application of the SPS is set forth in Section 5.2.3 of Exhibit 5. Exhibit 5 may be modified from time to time upon the mutual agreement of both Parties after consultation with the ISO; *provided, however*, Exhibit 5 shall be amended based on the final Detailed Facilities Study that is being revised to include without limitation the SPS, subject to the ISO's review and acceptance of such Detailed Facilities Study.

## 11. METERING

### 11.1 Delivery Meters

All real and reactive power deliveries to the SDG&E Electric System from the Generating Facility shall be metered at Crestwood Substation, unless otherwise agreed, compensated for actual line losses to the 69 kV bus as needed with meters meeting all of the requirements of the ISO Tariff. In addition, meters and metering equipment shall meet the requirements of the SDG&E Interconnection Handbook. Any conflicts with regard to metering standards that may arise between this IA, the SDG&E Interconnection Handbook and the ISO Tariff shall be resolved consistent with the ISO Tariff. Power deliveries shall be metered at the voltage specified for the Point(s) of Interconnection in Section 5.2.1 of Exhibit 5.

### 11.2 Requirements for Meters and Meter Maintenance

The Responsible Meter Party's metering equipment shall measure and record real and reactive power flows and shall be capable of recording flows in both directions. Such "in" and "out" bi-directional meters shall be designed to prevent reverse registration and shall measure and continuously record such deliveries. Meters, metering transformers and devices shall be maintained and tested annually by the Responsible Meter Party in accordance with applicable metering maintenance and testing standards and guidelines.

### 11.3 Meter Access

#### 11.3.1 Access to Meter-Related Facilities

The Party that owns meter-related facilities, such as metering transformers and devices, shall grant reasonable access to allow the other Party to use such meter-related facilities in lieu of the other Party's own meters; provided that the other Party shall compensate the owning Party for actual costs incurred related to such access.

#### 11.3.2 Reading and Maintaining Meters

If required, the other Party shall grant the Responsible Meter Party such reasonable access to the other Party's facilities as may be required for meter reading and/or the proper operation and maintenance of all revenue metering facilities.

### 11.4 Auxiliary Metering

KUMEYAAY will install, at its own expense, auxiliary metering to accurately measure auxiliary energy usage supplied to the Generating Facility through KUMEYAAY's tie line. The

auxiliary metering shall meet the ISO's metering specifications and be installed at a location accessible by the ISO and SDG&E

11.5 [Reserved]

12. MAINTENANCE OF INTERCONNECTION EQUIPMENT OWNED BY KUMEYAAY

12.1 Modifications to the Interconnection or Protection Devices

KUMEYAAY agrees to obtain SDG&E's prior written approval before materially modifying its existing interconnection or protection devices that have previously been approved by SDG&E; provided, SDG&E's approval shall not be unreasonably withheld, conditioned, or delayed. Modifications include, but are not limited to, the application of new or revised settings. KUMEYAAY shall notify SDG&E in writing, at least 60 calendar days prior to such modification, unless lesser time is necessitated under the circumstances in conformance with Good Utility Practice. SDG&E shall respond to such notice within 30 calendar days.

12.2 [Reserved]

12.3 Relay Requirements

12.3.1 Relays

Before the Generating Facility operates in parallel with SDG&E, KUMEYAAY shall cause all SDG&E-required interconnection relays to be verified and made available for review by SDG&E. If a relay is removed for maintenance or repair, the designated SDG&E switching center shall be notified pursuant to Section 9.1 hereof. If the relays are removed for any reason, SDG&E reserves the right to inspect the Generating Facility before parallel operation may resume.

12.3.2 Nameplates

Lamicaid or equivalent forms of nameplates or labels shall be installed by KUMEYAAY adjacent to all SDG&E-required interconnection relays. Each relay nameplate shall include the device number and the relay's function.

13. REFERENCES

The following reference materials, all of which are subject to revision or being superseded from time to time in SDG&E's sole discretion, are available for use by KUMEYAAY and its operating personnel. SDG&E shall notify and promptly shall provide KUMEYAAY any revisions or updates to the following reference materials. Additional copies may be requested from the Designated SDG&E Switching Center:

13.1 SDG&E Standard Operating Procedures: ATP7005 is a document describing approved SDG&E clearance procedures and OCP7505 is a document describing instructions for obtaining clearances.

13.2 SDG&E Interconnection Handbook: A handbook, developed by SDG&E pursuant to TCA Section 10.3.1 that is entitled "Technical Standards For Load And Non-SDG&E Owned Generator Interconnections", describing technical requirements for wholesale

generators and loads connected to the SDG&E Electric System. SDG&E's standards contained in the handbook are, and shall be maintained, consistent with Good Utility Practice and Applicable Reliability Criteria. Where there is conflict or inconsistency between the terms and conditions of this IA and the SDG&E Interconnection Handbook, the terms and conditions of this IA shall apply.

#### **14. SIGNIFICANT REGULATORY CHANGE\***

##### **14.1 Notification**

If, at any time during the term of this IA, either Party becomes aware of a Significant Regulatory Change (whether actual or proposed), and if such change may reasonably be expected to materially affect either Party's or both Parties' obligations or operations under this IA, such Party shall provide written notice to the other Party promptly, but no later than 30 calendar days after becoming aware of such Significant Regulatory Change. The notice shall contain a description of the Significant Regulatory Change and its impact on this IA, including expected time schedules. If either Party believes that it will be necessary to amend this IA to address the anticipated change, then the Parties shall proceed timely to meet and confer in accordance with Section 14.2 hereof and shall use reasonable efforts to timely negotiate in good faith an appropriate amendment to this IA.

##### **14.2 Amendment of Agreement**

###### **14.2.1 Meet to Discuss Need for Amendment**

Following notification under Section 14.1, the Parties shall meet to discuss whether an amendment to this IA is necessary to address the Significant Regulatory Change. Such amendment, if any, shall be limited in scope to what is necessary to allow this IA to accommodate the Significant Regulatory Change identified in the notice issued pursuant to Section 14.1.

###### **14.2.2 Process to Amend Agreement**

If the Parties agree that such an amendment to this IA is necessary, the Parties will proceed to negotiate in good faith such amendment. If the Parties have not reached agreement within 60 calendar days of the date of the first meeting, any unresolved issues shall be resolved through dispute resolution procedures set forth in Section 16.10. Notwithstanding the above, if any issues remain unresolved as of 90 calendar days before the Significant Regulatory Change is scheduled to take place or if the Significant Regulatory Change is anticipated to take place at an earlier date, then with respect to the unresolved issues, (i) SDG&E may, but is not required to, unilaterally file an amendment to this IA with FERC pursuant to Section 205 of the FPA, provided that KUMEYAAY shall retain and may exercise its rights under the FPA to protest or oppose such filing, and (ii) KUMEYAAY may, but is not required to, unilaterally file a complaint under Section 206 of the FPA asking FERC to amend this IA, and SDG&E may exercise its right to protest or oppose such filing.

###### **14.2.3 Inability to Agree That Amendment Is Necessary**

If within 30 calendar days of the date on which notice was provided in accordance with Section 14.1 hereof, the Parties cannot agree that an amendment to this IA is

necessary to allow this IA to accommodate the Significant Regulatory Change, they shall submit such dispute to resolution proceedings pursuant to Section 16.10 (Dispute Resolution); provided, however, that if such dispute is not resolved as of 90 calendar days before the Significant Regulatory Change is scheduled to take place or a Party reasonably believes that the Significant Regulatory Change is anticipated to take place at an earlier date, then (i) SDG&E may, but is not required to, unilaterally file an amendment to this IA with FERC, provided that KUMEYAAY shall retain and may exercise its rights under the FPA to protest or oppose such filing, and (ii) KUMEYAAY may, but is not required to, unilaterally file a complaint under Section 206 of the FPA asking FERC to amend this IA, and SDG&E may exercise its right to protest or oppose such filing.

## **15. BILLING AND PAYMENT**

### **15.1 Billing**

SDG&E shall bill KUMEYAAY, and KUMEYAAY shall bill SDG&E, for any costs contemplated pursuant to the IA. KUMEYAAY shall pay SDG&E for such costs at:

San Diego Gas & Electric  
P.O. Box 25110  
Santa Ana, California 92799-5110

SDG&E shall pay KUMEYAAY for such costs at:

KUMEYAAY Wind, LLC  
1600 Smith Street, Suite 4240  
Houston, Texas 77002  
Attn: Mr. Jeff Ferguson

A party may change the place where payment is made by giving the other party 30 calendar days advance notice thereof as provided in Section 16.21.

### **15.2 Payment Due Date**

The payment of any bill shall be due absent a good faith dispute as to sums due and must be received by the billing party not later than the 30th calendar day following the day on which the billed party receives the bill or, if that 30th day is a Saturday, Sunday or legal holiday, the next Business Day. Such date shall be referred to as the "Payment Due Date". A bill shall be deemed delivered on the third Business Day after the postmarked date unless a copy of the bill is delivered by electronic facsimile, in which case it shall be deemed delivered on the same day. If a party has a question concerning a bill, it may immediately review the back-up data used in preparation of the bill, which both parties shall retain for 3 years from the last day of each calendar year and following final payment under this IA.

### **15.3 Estimated Bills**

If charges under this IA cannot be determined accurately for preparing a bill, a Party shall use its best estimates in preparing the bill, and such estimated bill shall be paid by the other Party. Any estimated charges shall be labeled as such and the billing Party shall, upon request, document the basis for the estimate used. Estimated bills shall be prepared and paid

in the same manner as other bills under this IA. The billing Party shall prepare an adjusted bill pursuant to Section 15.5 when final and complete billing information becomes available.

#### **15.4 Disputed Bills**

*If a Party disputes all or any portion of a bill, the billed party shall pay the undisputed amount on or before the Payment Due Date. The billed Party shall, on or before the Payment Due Date, notify the billing Party, in writing, of the amount in dispute and the specific basis for the dispute. The Parties shall endeavor to resolve any billing dispute within 30 calendar days of the billing party's receipt of the billed Party's notice of a dispute (or such extended period as the Parties may establish). If the Parties cannot agree, either Party may initiate dispute resolution pursuant to Section 16.10 (Dispute Resolution). A dispute between either Party and any third party shall not be a proper basis for withholding payment. Payments to the billing Party of the billed Party's obligations arising under this IA are not subject to any reduction, whether by offset, payments into escrow, or otherwise, except for routine adjustments or corrections as may be agreed to by the Parties or as expressly provided in this IA.*

#### **15.5 Adjusted Bills**

*When final and complete billing information becomes available and a charge is determined accurately or billing errors are identified and corrected, the billing Party shall promptly prepare and submit an adjusted bill to the billed Party, and any additional payments by the billed Party shall be made in accordance with the provisions of this Section 15.5. Refunds by the billing Party shall be paid to the billed party not later than 30 calendar days after the date of the adjusted bill.*

### **16. GENERAL PROVISIONS**

#### **16.1 Appendices Included**

The following Appendices to this IA, as they may be revised from time to time by written agreement of the Parties or by order of FERC related to this IA, are attached hereto and are incorporated by reference as if fully set forth herein:

**Exhibit 1 - Insurance**

**Exhibit 2 - Routine Test Guidelines and OK-On-Or-Near Authorization Procedures**

**Exhibit 3 - Dispute Resolution and Arbitration**

**Exhibit 4 - Elections Made By KUMEYAAY**

**Exhibit 5 - Generating Facility Information and Interconnection Capacity**

**Exhibit 6 - SDG&E Interconnection Handbook Waivers**

**Exhibit 7- Sample Operation and Maintenance Charge Calculation**

## 16.2 Auditing

Upon reasonable advance written notice each Party shall have the right to audit, at its own expense and during normal business hours, the relevant records of the other Party (including the relevant records of KUMEYAAY's meters) for the limited purpose of determining whether the other Party is meeting its obligations under this IA and enforcing its obligations. Such audits shall be limited to only those records reasonably required to determine compliance with this IA, and each Party agrees to disclose the information obtained in such audit only to those persons, whether employed by such Party or otherwise, that are directly involved in the administration of this IA. Each Party agrees that under no circumstances will it use any information obtained in such an audit for any purposes other than the determination of SDG&E's compliance with the terms of this IA, verification of the propriety of any charges assessed to KUMEYAAY, and enforcement of obligations hereunder. Each Party's right to audit shall extend for a period of 3 years from the last day of each calendar year. Records and related back-up data shall be maintained for a period of 3 years from the last day of each calendar year to facilitate such audits.

## 16.3 Adverse Determination or Expansion of Obligations

### 16.3.1 Adverse Determination

If, after the effective date of this IA, FERC or any other regulatory body, agency or court of competent jurisdiction determines that all or any part of this IA, its operation or effect is unjust, unreasonable, unlawful, imprudent or otherwise not in the public interest, each Party shall treat this event as a Significant Regulatory Change and proceed in accordance with Sections 14.1, 14.2.1, and 16.3.

### 16.3.2 Expansion of Obligations

If, after the effective date of this IA, FERC or court of competent jurisdiction orders or determines that this IA should be interpreted, modified, or significantly extended in such a manner that SDG&E or KUMEYAAY may be required to incur significant new or different obligations to the other Party not contemplated by this IA, then the Parties shall be relieved of their obligations to the extent lawful and necessary to eliminate the effect of that order or determination, and the Parties shall attempt to renegotiate in good faith the terms and conditions of the IA to restore the original balance of benefits and burdens contemplated by the Parties at the time this IA was made.

### 16.3.3 Renegotiation

If, within 3 months after an order or decision as described in Sections 16.3.1 and 16.3.2, the Parties either: (i) do not agree that a renegotiation is feasible or necessary; or (ii) the Parties cannot agree to amend or supersede this IA, then: (a) either Party may submit the dispute for resolution in accordance with procedures set forth in Section 16.10; (b) if such matter is not submitted for resolution under subsection (a) above within 10 days of the completion of the referenced 90 day period, SDG&E may unilaterally file a replacement interconnection agreement with FERC pursuant to Section 205 of the FPA, with the non-filing Party reserving the right to protest such replacement interconnection agreement; or (c) KUMEYAAY may unilaterally file a complaint under Section 206 of the FPA asking for a replacement IA, with SDG&E reserving the right to protest such filing. The effect of termination, and the rights of the Parties there under, shall be as provided in Section 6.2 of this IA.



## **16.4 Transfers and Assignments**

### **16.4.1 Consent Required**

Except with the prior written consent of each other Party, which consent shall not be unreasonably withheld, conditioned or delayed, no Party may sell, assign or otherwise transfer, voluntarily or by operation of law, all or any part of its rights and obligations under this IA, except (a) a transfer or assignment of all such rights and obligations to lenders financing the Generating Facility to which this IA is applicable, or (b) an assignment by SDG&E to an affiliate that is technically and financially capable of performing SDG&E's obligations hereunder. Any attempted or purported transfer made other than in accordance with this Section 16.4.1, either voluntarily or by operation of law, shall be void and of no effect.

### **16.4.2 Assignee's Continuing Obligation**

Any successor to or transferee or assignee of the rights or obligations of a Party, whether by voluntary transfer, judicial sale, foreclosure sale or otherwise, shall be subject to all terms and conditions of this IA to the same extent as though such successor, transferee, or assignee were an original Party.

## **16.5 Captions**

All indices, titles, subject headings, section titles and similar items are provided for the purpose of reference and convenience and are not intended to affect the meaning of the contents or scope of the IA. All references in this IA to sections are sections of this IA, unless otherwise indicated.

## **16.6 Construction of the Agreement**

Each Party and their respective counsel have contributed to the preparation of this IA. Accordingly, no provision of this IA shall be construed against any Party because that Party or its counsel drafted the provision.

## **16.7 Control and Ownership of Facilities**

The SDG&E Electric System shall at all times be and remain in the exclusive ownership, possession and control of SDG&E, and nothing in the IA shall be construed to give KUMEYAAY any right of ownership, possession or control of all or any portion of the SDG&E Electric System. All facilities installed hereunder, including but not limited to Facilities as defined in Section 7.4.1 hereof, shall, unless otherwise agreed by the Parties, at all times be and remain the property of SDG&E, notwithstanding that they may be affixed to premises owned or leased by or under an easement or license to KUMEYAAY.

## **16.8 Cooperation and Right of Access and Inspection**

Each Party shall give to the other all reasonably necessary permission to enable it to perform its obligations under the IA. Each Party shall give the other Party the right to have its contractors, employees and/or representatives, when accompanied by the contractors, employees and/or representatives of the other Party, enter its premises at reasonable times and in accordance with reasonable rules and regulations for the purpose of inspecting the property

and equipment of the Party in a manner which is reasonable for assuring the performance of the Parties' obligations under the IA.

## **16.9 Default**

**16.9.1 A Party will be in default under the IA if, at any time:**

(A) the Party fails to make any payment due the other Party in accordance with this IA and does not make such payment to the other Party within 30 calendar days after receiving written notice from the other Party of such failure; or

(B) (1)(a) the Party fails in any material respect to comply with, observe or perform any term or condition of this IA; (b) any representation or warranty made herein by the Party fails to be true and correct in all material respects; or (c) the Party fails to provide to the other Party reasonable written assurance of its ability to perform fully and completely any of its material duties and responsibilities under this IA within 30 calendar days after receiving any reasonable request for such assurances from the other Party; and

(2)(a) the Party fails to correct or cure the situation within 30 calendar days after receiving written notice from the other Party, or (b) if the situation cannot be completely corrected or cured within such thirty-day period, the Party fails to either (i) commence diligent efforts to correct or cure the situation within such thirty-day period or (ii) diligently pursue such action as is reasonably necessary to completely correct or cure the situation within 90 calendar days after receiving written notice from the other Party; *provided, however, if the situation is one that cannot be corrected or cured within 90 days, the Parties shall meet and confer to determine a reasonable time-frame within which the situation can be corrected or cured without harming either Party or others interconnecting with SDG&E. If the situation is not corrected or cured within such mutually agreed time frame, the non-performing Party shall be in default.*

## **16.9.2 Remedies Upon Default.**

If a Party defaults under this IA in accordance with this Section 16.9, the other Party may (A) act to terminate this IA by providing written notice of termination to the defaulting Party, and/or (B) take whatever action at law or in equity as may appear necessary or desirable to enforce the performance or observance of any rights, remedies, obligations, agreements, or covenants under this IA. Any termination sought under this Section 16.9.2 shall not take effect until FERC either authorizes any request by either Party seeking termination of this IA or accepts any written notice of termination. The rate of interest ("Rate of Interest") on any amount in default shall be the rate per annum calculated in accordance with 18 C.F.R. § 35.19a of the

**FERC's Regulations.** The Interest Rate shall not exceed the maximum interest rate permitted under California law. Interest shall be calculated for the period during which the payment is overdue or the period during which the refund is accruing interest.

#### **16.9.3 Performance of Other Party's Obligations.**

If either Party (the "Defaulting Party") fails to carry out its obligations under this IA and such failure could reasonably be expected to have a material adverse impact on the SDG&E Electric System, the Interconnection Facilities, the Generating Facility, or the regional network, the other Party, following 10 calendar days prior written notice (except in cases of an Emergency, in which case only such notice as is reasonably practicable in the circumstances is required), may, but will not be obligated to, perform the obligations of the Defaulting Party (including, without limitation, maintenance obligations), in which case the Defaulting Party will, upon presentation of an invoice there for, reimburse the other Party for all actual and reasonable costs and expenses incurred by it in performing said obligations of the Defaulting Party (including, without limitation, costs associated with its employees and the costs of appraisers, engineers, environmental consultants and other experts retained by said Party in connection with performance of the Defaulting Party's obligations), together with interest calculated in accordance with Section 16.9.2.

#### **16.9.4 Remedies Cumulative.**

No remedy conferred by any of the provisions of this IA is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies.

#### **16.9.5 No Further Obligations**

In the event a Party not in Default terminates this IA on account of an Event of Default relating to the other Party, the non-defaulting Party shall have no further obligations hereunder other than obligations (a) to make payments for amounts that come due prior to termination, and (b) for claims that arose prior to termination.

#### **16.10 Dispute Resolution**

The Parties shall make reasonable efforts to resolve all disputes arising under this IA expeditiously and by good faith negotiation. Where this IA specifically calls for resolution of disputes pursuant to this Section 16.10, the Parties shall pursue dispute resolution according to the procedures set forth in Exhibit 3. In all other circumstances the procedures in Exhibit 3 may optionally be used to resolve disputes upon agreement by both Parties. In the event that a matter is submitted to arbitration under Exhibit 3, the Parties shall be bound by the determination of the arbitrator(s). In the event the Parties are unable to resolve the dispute by application of the procedures in Exhibit 3, a Party may pursue its claim, if any, in any other appropriate forum.

#### **16.11 Governing Law**

This IA shall be interpreted, governed by and construed under the laws of the State of California, as if executed and to be performed wholly within the State of California.

## 16.12 Indemnity

### 16.12.1 Definitions

As used in this Section 16.12, with initial letters capitalized, whether in the singular or the plural, the following terms shall have the following meanings:

- loss which:
- (i) **Accident** - Personal injury, death, property damage, or economic
    - (a) is sustained by a Third Party ("Claimant");
    - (b) arises out of delivery of, or curtailment of, or interruption to electric service, including but not limited to abnormalities in frequency or voltage; and
    - (c) results from either or both of the following:
      - (I) engineering, design, construction, repair, supervision, inspection, testing, protection, operation, maintenance, replacement, reconstruction, use, or ownership of either the SDG&E Electric System, the Interconnection Facilities, or KUMEYAA's Generating Facility; or
      - (II) the performance or non-performance of either Party's obligations under the IA.
  - (ii) **Indemnitee** — A Party defined in Section 16.12.2(ii).
  - (iii) **Indemnitor** — A Party defined in Section 16.12.2(ii).

### 16.12.2 Indemnity Duty

If a Claimant makes a claim or brings an action against a Party seeking recovery for loss, damage, costs or expenses resulting from or arising out of an Accident, the following shall apply:

- (i) That Party shall defend any such claim or action brought against it, except as otherwise provided in this Section 16.12.2.
- (ii) A Party ("Indemnitor") shall hold harmless, defend and indemnify, to the fullest extent permitted by law, the other Party, its directors or members of its governing board, officers and employees (collectively "Indemnitees"), upon request by the Indemnitee, for claims or actions brought against the Indemnitee allegedly resulting from Accidents caused by acts or omissions of the Indemnitor. In so doing, the Indemnitor shall not settle or consent to the entry of judgment in an action without the consent of the

Indemnitee, which consent shall not be unreasonably withheld.

- (iii) No Party shall be obligated to defend, hold harmless or indemnify the other Party, its directors or members of its governing board, officers and employees for Accidents resulting from the latter's negligence or willful misconduct.
- (iv) If a Party successfully enforces this indemnity, the Party against which enforcement is required shall pay all costs, including reasonable attorneys' fees and other reasonable litigation expenses, incurred in such enforcement.

#### **16.13 Interpretation**

This IA is not intended to modify any SDG&E tariff or rule filed with the FERC. In case of conflict between this IA and any SDG&E or ISO Tariff, the ISO Tariff shall govern. This IA represents the entire understanding between the Parties hereto relating to the parallel operation of the Generating Facility with the SDG&E Electric System, and supersedes any and all prior proposals or agreements, whether written or oral, that may exist between the Parties, provided that the IFA governs with respect to the initial installation and construction of those facilities defined as "Interconnection Facilities" in the IFA. Where there is conflict or inconsistency with the express terms in this IA and any documents referenced by this IA excluding the above referenced SDG&E and ISO Tariffs, the terms of this IA shall supersede such conflicting terms. If there is a conflict between the express terms in this IA and the IFA, the terms of this IA shall supersede such conflicting terms as to matters related to the operation and maintenance of the Interconnection Facilities and the Generating Facility and the right of SDG&E to install additional facilities.

#### **16.14 Judgments and Determinations**

When the terms of this IA provide that an action may or must be taken, or that the existence of a condition may be established based on a judgment or determination of a Party, such judgment shall be exercised or such determination shall be made reasonably and in good faith, and where applicable in accordance with Standard Operating Procedures or Good Utility Practice, and shall not be arbitrary or capricious.

#### **16.15 Liability**

##### **16.15.1 To Third Parties**

Nothing in this IA shall be construed to create any duty to, any standard of care with reference to, or any liability to, any Third Party.

##### **16.15.2 Between the Parties**

Except for its willful misconduct or negligence, or with respect to breach of this IA, or with respect to the indemnity duty under Section 16.12, no Party, nor its directors or members of its governing board, officers, employees or agents shall be liable to the other Party for any claim of such other Party for loss, damage, cost, charge, or expense arising from or related to this IA. Notwithstanding the foregoing, neither Party, nor its directors or members of

its governing board, officers, employees or agents shall be liable to the other Party for any consequential, special or indirect damages.

#### **16.15.3 Protection of a Party's Own Facilities**

Each Party shall be responsible for protecting its facilities from possible damage by reason of electrical disturbances or faults caused by the operation, faulty operation, or non-operation of another Party's facilities, and such other Party shall not be liable for any such damage so caused.

#### **16.15.4 Liability for Interruptions**

Neither Party shall be liable to the other, and each Party hereby releases the other and its directors, officers, employees and agents from and indemnifies them, to the fullest extent permitted by law, for any claim, demand, liability, loss or damage, whether direct, indirect or consequential, incurred by either Party, which results from the interruption or curtailment of Interconnection Services undertaken pursuant to (i) this IA, (ii) Standard Operating Procedures and Good Utility Practice, or (iii) ISO directives.

#### **16.16 Modification**

This IA may be amended or modified only by a written instrument signed by the authorized representatives of both Parties, except as may otherwise herein be expressly provided.

#### **16.17 No Dedication of Facilities**

Any undertaking by either Party under any provision of this IA is rendered strictly as an accommodation and shall not constitute the dedication by KUMEYAAY of any part or all of the Generating Facility or by SDG&E of any part or all of the SDG&E Electric System to the other, the public, or any Third Party. Any such undertaking by any Party under a provision of, or resulting from, this IA shall cease upon the termination of that Party's obligations under this IA.

#### **16.18 No Obligation to Offer Same Service To Others**

By entering into this IA to interconnect with KUMEYAAY and filing it with FERC, SDG&E does not commit itself to furnish any like or similar undertaking to any other Person.

#### **16.19 No Precedent**

This IA establishes no precedent with regard to any other entity or IA. Nothing contained in this IA shall establish any rights to or precedent for other arrangements as may exist, now or in future, between SDG&E and KUMEYAAY for the provision of any interconnection arrangements or any form of electric service.

#### **16.20 No Transmission, Distribution or Ancillary Services Provided**

Under this IA, SDG&E does not undertake to provide any transmission service, distribution service, or ancillary services using any part of the SDG&E Electric System for KUMEYAAY or any Third Party, or to act as a Scheduling Coordinator (as that term is defined in the ISO Tariff or a successor tariff) or in any other capacity as an Intermediary for KUMEYAAY

with others. Nothing in this IA shall be construed to preclude KUMEYAAY from seeking transmission, distribution, or other services from SDG&E or providing services to SDG&E under a separate arrangement with SDG&E, or pursuant to any tariff for such service which SDG&E may have on file with FERC or CPUC, or on the basis of other rights that may exist in law or regulation.

#### 16.21 Notices and Other Communications

(a) Except as provided in Sections 9 and 10 above and in Exhibit 3, all notices or other communications herein provided to be given or which may be given by either Party to the other shall be deemed to have been duly given if delivered by electronic facsimile transmission with confirmed receipt, or when made in writing and delivered in person or deposited in the United States mail, postage prepaid, certified mail, return receipt requested and addressed as follows:

**To SDG&E:**

Manager, Transmission Planning  
San Diego Gas & Electric Company  
8316 Century Park Court, CP52A  
San Diego, CA 92123-1582

**To KUMEYAAY:**

Mr. Jeff Ferguson  
KUMEYAAY Wind, LLC  
1600 Smith Street, Suite 4240  
Houston, TX 77002

Either Party may change any address or location for notices and other communications by giving notice to the other Party as provided in this Section 16.21.

(b) KUMEYAAY and SDG&E agree that all notices and communications provided herein and any procedures developed shall be in the English language

#### 16.22 Non-waiver

Failure by either Party to enforce any right or obligation with respect to any matter arising in connection with this IA shall not constitute a waiver as to that matter or any other matter. No waiver shall be effective unless in writing and signed by the waiving Party. Without limiting the foregoing, payment or delay in exercising any right or remedy shall not constitute a waiver of any kind.

#### 16.23 Reservation of Rights

##### 16.23.1 Rate Changes

Nothing contained herein shall be construed as affecting in any way the right of SDG&E to unilaterally make application to the FERC for a change in rates under Section 205 of the FPA and pursuant to the FERC's Rules and Regulations promulgated there under. KUMEYAAY shall have the right to protest and object to such change in rates and otherwise to exercise any and all rights it may have with respect thereto, including its rights under Section 206 of the FPA. Nothing contained herein shall be construed as affecting in any way the right of KUMEYAAY to unilaterally make application to the FERC for a change in rates under Section 206 of the FPA. The term "rates" as used herein shall mean all rates, terms and conditions contained in this IA. A change in rates may include, but not be limited to, not only changes in

rates and charges but also in the underlying methodology by which such rates and charges are developed.

#### **16.23.2 FPA Disputes**

The Parties agree that each Party expressly reserves all of its rights under the FPA, including the right to seek resolution by FERC of disputes arising under Sections 202(b) and/or 210 of the FPA; provided, however, that the Parties may mutually agree to resolve such dispute through procedures set forth in Section 16.10.

#### **16.24 Rules and Regulations**

SDG&E and KUMEYAAY may each establish and, from time to time, change such reasonable procedures, rules, or regulations as they shall determine are necessary in order to establish the methods of operation to be followed in the performance of this IA; provided that any such procedure, rule, or regulation shall not be inconsistent with the provisions of this IA. If a Party objects to a procedure, rule, or regulation established by the other Party, it will notify the other Party and the Parties will endeavor to modify the procedure, rule, or regulation in order to resolve the objection. If the Parties cannot reach agreement, either Party may seek to resolve such dispute through procedures set forth in Section 16.10.

#### **16.25 Severability**

If any term, covenant or condition of this IA or its application is held to be invalid as to any Person, entity or circumstance, by FERC or any other regulatory body, or agency or court of competent jurisdiction, then such term, covenant or condition shall cease to have force and effect to the extent of that holding. In that event, however, all other terms, covenants and conditions of this IA and their application shall not be affected thereby, but shall remain in full force and effect unless and to the extent that a regulatory agency or court of competent jurisdiction finds that a provision is not separable from the invalid provision(s) of this IA.

#### **16.26 Uncontrollable Force**

In the event of the occurrence of an Uncontrollable Force which prevents a Party from performing any of its obligations under this IA such Party shall (i) immediately notify the other Party in writing of such Uncontrollable Force and an estimate of the date on which the Party claiming the existence of an Uncontrollable Force believes the Uncontrollable Force will cease, (ii) not be entitled to suspend performance of any greater scope or longer duration than is required by the Uncontrollable Force, (iii) use commercially reasonable efforts to overcome the effects of such Uncontrollable Force, remedy its inability to perform, and resume full performance hereunder, (iv) keep the other Party apprised of such efforts on a continual basis, and (v) provide written notice of the resumption of performance hereunder. No Party will be considered in default as to any obligation under this IA if prevented from fulfilling the obligation due to the occurrence of an Uncontrollable Force.

#### **16.27. Confidentiality**

##### **16.27.1 Confidential Information**

- (a) "Confidential Information" shall mean any confidential, proprietary or trade secret information of a plan,



specification, pattern, procedure, design, device, list concept, policy or compilation relating to the present or planned business of a Party, which is designated in good faith as Confidential by the Party supplying the information, whether conveyed orally, electronically, in writing, through inspection or otherwise, except that the real-time in-plant data, shall be considered Confidential Information without the need for designation. Confidential Information shall include, without limitation, all information relating to a Party's technology, research and development, business affairs, and pricing, and any information supplied by either of the Parties to the other prior to the execution of the IA.

- (b) Each Party will hold in confidence any and all Confidential Information unless (1) compelled to disclose such information by judicial or administrative process or other provisions of law or as otherwise provided for in this IA, or (2) to meet obligations imposed by FERC or by a state or other federal entity or by membership in NERC, the California ISO or a regional transmission organization. Information required to be disclosed under (b)(1) or (b)(2) above, does not, by itself, cause any Information provided by one Party to the other Party to lose its confidentiality. To the extent it is necessary for either Party to release or disclose such information to a third party in order to perform that Party's obligations herein, such Party shall advise said third party of the confidentiality provisions of the IA and use all reasonable efforts to require said third party to agree in writing to comply with such provisions.
- (c) During the term of the IA, and for a period of 2 years after disclosure hereunder, except as otherwise provided in this Section 16.27, each Party shall hold in confidence and shall not disclose to any person Confidential Information.
- (d) Each Party shall use at least the same standard of care to protect Confidential Information it receives as it uses to protect its own Confidential Information from an unauthorized disclosure, publication or dissemination.
- (e) Nothing in this Section 16.27 shall limit any other confidentiality agreement between the Parties.

#### **16.27.2 Scope**

Confidential Information shall not include information that the receiving Party can demonstrate: (1) is generally available to the public other than as a result of disclosure by the receiving Party; (2) was in the lawful possession of the receiving Party on a non-confidential basis prior to receiving it from the disclosing Party; (3) was supplied to the receiving Party without restriction by a third party, who, to the knowledge of the receiving party, after due inquiry

was under no obligation to the disclosing party to keep such information confidential; (4) was independently developed by the receiving party without reference to Confidential Information of the Disclosing Party; (5) is, or becomes, publicly known, through no wrongful act or omission of the receiving Party or breach of this Agreement; or (6) is required, in accordance with Section 16.27.1 of this IA, to be disclosed by any federal or state government or agency or is otherwise required to be disclosed by law or subpoena, or is necessary in any legal proceeding establishing rights and obligations under this IA. Information designated as Confidential Information will no longer be deemed confidential if the Party that designated the information as confidential notifies the other Party that it no longer is confidential.

#### **16.27.3 Order of Disclosure**

If a court or a government agency or entity with the right power, and apparent authority to do so requests or requires either Party, by subpoena, oral deposition, interrogatories, requests for production of documents, administrative order, or otherwise, to disclose Confidential Information, that Party shall provide the other Party with prompt notice of such request(s) or requirement(s) so that the other Party may seek an appropriate protective order or waive compliance with the terms of this IA. The notifying Party shall have no obligation to oppose or object to any attempt to obtain such production except to the extent requested to do so by the disclosing Party and at the disclosing Party's expense. If either Party desires to object or oppose such production, it must do so at its own expense. The disclosing Party may request a protective order to prevent any confidential information from being made public. Notwithstanding the absence of a protective order or waiver, the Party may disclose such Confidential Information which, in the opinion of its counsel, the Party is legally compelled to disclose. Each Party will use reasonable effort to obtain reliable assurance that confidential treatment will be accorded any Confidential Information so furnished.

#### **16.27.4 Use of Information or Documentation**

Each Party may utilize information or documentation furnished by the disclosing Party and subject to Section 16.27 in any proceeding in an administrative agency or court of competent jurisdiction addressing any dispute arising under this IA, subject to a confidentiality agreement with all participants (including, if applicable, any arbitrator) or a protective order.

#### **16.27.5 Remedies Regarding Confidentiality**

The Parties agree that monetary damages by themselves will be inadequate to compensate a Party for the other Party's breach of its obligations under Section 16.27. Each party accordingly agrees that the other Party is entitled to equitable relief, by way of injunction or otherwise without the necessity of proving damages or posting a bond, if it breaches or threatens to breach its obligations under Section 16.27. Any such relief shall be in addition and not in lieu of money damages or any other available legal or equitable remedy.

#### **16.27.6 Document Retention**

At any time upon the request of the disclosing Party, the other Party shall promptly deliver to the disclosing Party or destroy (with such destruction to be certified to the disclosing Party) all portions of documents (and all copies thereof, however stored) furnished to or prepared by the other Party and its representatives that contain Confidential Information and all other portions of documents in such other Party's possession that contain or that are based on or derived from Confidential Information (to the extent so derived).

**16.28 Insurance**

Both Parties shall obtain insurance in conformance with the requirements set forth in Exhibit 1.

**16.29 [Reserved]**

**16.30 Flow Down Clauses**

Each Party hereby confirms that it complies with federal requirements to the extent applicable, to the transactions contemplated by this IA including but not limited to the following: 48 C.F.R. Section 52 et seq.; Affirmative Action for Workers with Disabilities; Affirmative Action Compliance; Equal Opportunity; Prohibition of Segregated Facilities; Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era; Utilization of Small Business Concerns; Affirmative Action Programs; Small Disadvantaged and Women-Owned Small Business Subcontracting Plan and any applicable sections contained in 41 C.F.R. Chapter 60.

**16.31 Business Practices Policy; Compliance with Laws.**

Each of the Parties shall comply with all laws, rules and regulations applicable to the performance of its obligations hereunder, including, but not limited to, the provisions of the Foreign Corrupt Practices Act of 1977 of the United States of America and, in that connection shall not undertake nor cause to be undertaken any activity which is illegal under the laws of the United States of America, or any other country in which work under this Agreement is being conducted, or any political subdivision of any of the foregoing. Notwithstanding any other provision of this IA, each Party shall indemnify, defend and hold harmless each other Party and their respective officers, directors, employees and representatives to the extent permitted by law from and against any claim, loss, damages, liability, expense or cost of whatever nature, including reasonable attorneys' fees and costs, arising out of or related to any failure by such Party (including its affiliates, directors, agents, employees and officers) to comply with the provisions set forth in this Section 16.31. The obligation of each Party under this Section 16.31 shall survive the termination or expiration of this IA.

**16.32 Survival**

Any provision(s) of this IA that expressly or by implication comes into or remains in force following the termination or expiration of this IA shall survive the termination or expiration of this IA.

**16.33 Further Assurances**

The Parties shall execute such additional documents including, without limitation, a consent to assignment or similar documents, and shall cause such additional action to be taken as may be required or, in the judgment of any Party, may be reasonably necessary or desirable, to effect or evidence the provisions of this IA and the transactions contemplated hereby.


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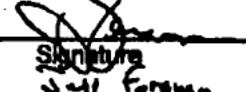
17. EXECUTION

The signatories hereto warrant and represent that they have been appropriately authorized to enter into this IA on behalf of the Party for whom they sign. This IA may be executed in one or more counterparts at different times, each of which shall be regarded as an original and all of which, taken together, shall constitute one and the same IA.

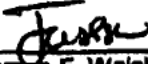
**SAN DIEGO GAS & ELECTRIC COMPANY**

**KUMEYAAY WIND LLC**

By:   
Signature  
James Avery  
Name  
Senior Vice President  
Title  
2-14-05  
Date

By:   
Signature  
Scott Ferguson  
Name  
CEO  
Title  
2/14/05  
Date

APPROVED AS TO LEGAL FORM:

  
James F. Walsh

## **EXHIBIT 1**

### ***Insurance Requirements***

**1.1 Each Party shall maintain during the performance hereof:**

**1.1.1 Commercial General Liability Insurance for bodily injury, personal injury, and property damage in limits, of combined single limit or equivalent for the results of any one (1) occurrence, of not less than \$1,000,000. Such insurance shall provide coverage on a mutually acceptable Commercial General Liability Coverage "occurrence" form, with no coverage deletions.**

**1.1.2 Workers' Compensation insurance for statutory benefits limits of the applicable Labor Code(s) and Workers' Compensation law(s) and Coverage B - Employer's Liability with limits of \$1,000,000 each accident for Bodily Injury by accident, \$1,000,000 each employee for Bodily Injury by disease, and \$1,000,000 policy limit for Bodily Injury by disease.**

**1.1.3 Commercial or Business Automobile Liability insurance, covering use of all owned, leased, non-owned or hired automobiles with a combined single limit of not less than One Million Dollars (\$1,000,000) each accident.**

**1.1.4 Umbrella Liability Insurance in excess of coverages as required in 1.1.1, 1.1.2 (Employer's Liability Section, (B) only), and 1.1.3 such that the combined limit of the primary and umbrella coverage is \$10,000,000 per occurrence or accident.**

**1.1.5 Such insurance described in Sections 1.1.1, 1.1.2 (Employers Liability only), 1.1.3, and 1.1.4 above, by endorsement to the policy(ies), shall include each Party as an additional insured, shall contain a severability of interest or cross-liability clause and shall provide that each Party shall not by reason of its inclusion as an additional insured incur liability to the insurance carrier for payment of premium for such insurance.**

**1.2 Additional Insurance Provisions**

**1.2.1 Evidence of coverage described above in Section 1 shall state that coverage provided is primary in respect of operations carried out pursuant to this IFA and is not excess to or contributing with any insurance or self-insurance maintained by the other Party for events arising out of the performance or non-performance of the insured Party's obligations under this Agreement.**

**1.2.2 Each Party shall furnish the required certificates and endorsements to the other prior to commencing operation.**

**1.2.3 Each Party waives its rights of recovery against the other for any loss or damage covered by such policy(ies) to the extent that such loss or damage is reimbursed under such policy(ies). Such insurance shall be endorsed to include a Waiver of Subrogation in favor of the other party and evidence of such Waiver of Subrogation shall be noted on the certificates of insurance.**

**1.2.4 Such insurance shall provide for 30-calendar days written notice to each Party prior to cancellation, termination, alteration or material change of such insurance; provided,**

however, 10 calendar days prior written notice shall be provided to each party prior to cancellation or termination for non-payment of premiums.

1.2.5 Failure of either Party to comply with the above insurance terms and conditions, or the complete or partial failure of an insurance carrier to fully protect and indemnify the other Party or its affiliates, or the inadequacy of the insurance shall not in any way lessen or affect the obligation or liabilities of each Party to the other.

1.2.6 All insurance certificates, endorsements, cancellations, terminations, alterations, and material changes of such insurance shall be issued and submitted to the following:

For San Diego Gas & Electric Company:

Manager, Grid Asset Management  
San Diego Gas & Electric Company  
8316 Century Park Court, CP52A  
San Diego, CA 92123-1593

For KUMEYAAY: Director of Plant Operations

1600 Smith Street, Suite 4240  
Houston, TX 77002  
Phone: 713-571-8900  
Fax: 713-571-8004

## EXHIBIT 2

### Routine Test Guidelines and OK-On-Or-Near Authorization Procedures

#### 2.1 Routine Test Guidelines

The following routine test guidelines apply to the Generating Facility.

2.1.1 KUMEYAAY shall secondary bench test individual relays by applying the appropriate currents, voltages or frequencies. The relays must be tested at their specified settings to verify the following:

2.1.1.1 Operating point at which relay will actuate.

2.1.1.2 Time delay for at least three (3) separate operating points, if applicable.

2.1.1.3 Phase angle characteristic of directional impedance relays.

2.1.1.4 All relays must meet the following tolerances as applicable under test conditions:

| <u>Item</u> | <u>Range</u> |
|-------------|--------------|
| Current     | ± 5%         |
| Voltage     | ± 5%         |
| Time        | ± 5%         |
| Frequency   | ± 0.3 Hz     |
| Phase Angle | ± 5 Degrees  |

2.1.2 KUMEYAAY shall check each protective relay to confirm that the appropriate breaker and/or main breaker is tripped by the relay contact.

2.1.3 KUMEYAAY shall check all current voltage and frequency relays when energized to confirm that the proper secondary quantities are applied.

#### 2.2 OK-On-Or-Near Authorization Procedures

2.2.1 KUMEYAAY agrees to the following conditions regarding an OK-On-Or-Near Authorization requested by SDG&E.

**2.2.1.1 KUMEYAAY shall not re-energize the affected circuits, whether manually or automatically, without first receiving the approval of the Designated SDG&E Switching Center.**

**2.2.1.2 KUMEYAAY agrees to install and maintain permanent warning signs on the Generating Facility' main control panel and at each remote operating location where KUMEYAAY has remote closing capability. The warning signs shall instruct personnel to contact SDG&E before re-closing the circuit.**



## **EXHIBIT 3**

### **Dispute Resolution and Arbitration**

#### **3.1 Negotiation and Mediation**

As provided in Section 16.10, the Parties agree to seek settlement of all disputes arising under this IA by good faith negotiation before resorting to other methods of dispute resolution. In the event that negotiations have failed, but before initiating arbitration proceedings under this Exhibit 3, the Parties may by mutual assent decide to seek resolution of a dispute through mediation. If this occurs, the Parties shall meet and confer to establish an appropriate timetable for mediation, to pick a mediator, and to decide on any other terms and conditions that will govern the mediation.

#### **3.2 Technical Arbitration**

3.2.1 The Parties agree that it is in the best interest of both Parties to seek expedited resolution of arbitrable disputes that are technical in nature. Technical disputes may include, without limitation, disputes centered on engineering issues involving technical studies, the need for and associated costs of any work or facilities contemplated by this IA, the Interconnection Capacity, and the need for Facilities as that term is defined in Section 7.4.1. Such technical issues may be resolved through expert application of established technical knowledge and by reference to Good Utility Practice and industry standards.

3.2.2 The Party initiating arbitration pursuant to Section 3.3 below shall indicate in its notice to the other Party whether it regards the dispute to be technical in nature. If both Parties agree that a dispute is technical in nature, then the Parties shall meet and confer to develop an appropriate timetable and process for expedited resolution of the dispute by a neutral expert, or "technical arbitrator". If the Parties cannot agree that a dispute is technical in nature, or if they cannot agree on a neutral arbitrator, then the Parties shall submit the dispute to arbitration under the procedures set forth in Section 3.3 below.

#### **3.3 Arbitration**

##### **3.3.1 Notices And Selection Of Arbitrators**

In the event that a dispute is subject to arbitration under Section 16.10, the aggrieved Party shall initiate arbitration by sending written notice to the other Party. Such notice shall identify the name and address of an impartial person to act as an arbitrator. Within 10 Business Days after receipt of such notice, the other Party shall give a similar written notice stating the name and address of the second impartial person to act as an arbitrator. Each Party shall then submit to the two named arbitrators a list of the names and addresses of at least three persons for use by the two named arbitrators in the selection of the third arbitrator. If the same name or names appear on both lists, the two named arbitrators shall appoint one of the persons named on both lists as the third arbitrator. If no name appears on both lists, the two named arbitrators shall select a third arbitrator from either list or independently of either list. If the two named arbitrators cannot agree on the selection of the third arbitrator, the third arbitrator shall be appointed by the Chief Judge of the United States District Court for the Southern District of California upon the joint request of the two named arbitrators. Each arbitrator selected under

these procedures shall be a person experienced in the construction, design, operation or regulation of electric power transmission facilities, as applicable to the issue(s) in dispute.

### **3.3.2 Procedures**

Within 15 Business Days after the appointment of the third arbitrator, or on such other date to which the parties may agree, the arbitrators shall meet to determine the procedures that are to be followed in conducting the arbitration, including, without limitation, such procedures as may be necessary for the taking of discovery pursuant to Sections 2016-2036 of the California Code of Civil Procedure, giving testimony and submission of written arguments and briefs to the arbitrators. Unless otherwise mutually agreed by the parties, the arbitrators shall determine such procedures based upon the purpose of the Parties in conducting an arbitration under Section 16.10 of the IA, specifically, the purpose of utilizing the least burdensome, least expensive and most expeditious dispute resolution procedures consistent with providing each Party with a fair and reasonable opportunity to be heard. If the arbitrators are unable unanimously to agree to the procedures to be used in the arbitration, the arbitration shall be governed by the Commercial Arbitration Rules of the American Arbitration Association.

### **3.3.3 Hearing and Decision**

After giving the Parties due notice of hearing and a reasonable opportunity to be heard, the arbitrators shall hear the dispute(s) submitted for arbitration and shall render their decision within 90 calendar days after appointment of the third arbitrator or such other date selected upon the mutual agreement of the Parties. The arbitrators' decision shall be made in writing and signed by any 2 of the 3 arbitrators. The decision shall be final and binding upon the parties; provided, however, under no circumstances are the arbitrators authorized to award any money damages in favor of either Party in rendering a decision and award. Judgment may be entered on the decision in any court of competent jurisdiction upon the application of either Party.

### **3.3.4 Expenses**

Each Party shall bear its own costs and the costs and expenses of the arbitrators shall be borne equally by the parties.

## EXHIBIT 4

### Elections Made By KUMEYAAY

#### 4.1 Standby Generator

In the interest of safety, KUMEYAAY must promptly notify SDG&E before operating or allowing any Third Party to operate any generation sources capable of parallel operation with the SDG&E Electric System that are interconnected to the Interconnection Facilities. KUMEYAAY shall comply with the requirements identified in the SDG&E Interconnection Handbook, as it may be revised or superseded from time to time, for all such generation sources capable of parallel operation with the SDG&E Electric System. For SDG&E's information and by way of initial compliance with this Section, KUMEYAAY represents to SDG&E that the following is correct:

4.1.1  KUMEYAAY has installed a standby generator.

4.1.2  KUMEYAAY does not have and does not plan to install a standby generator.

4.1.3  While KUMEYAAY does not currently have a standby generator installed, if it plans to install a standby generator in the future, KUMEYAAY will notify the Designated SDG&E Switching Center before operating this generator in parallel with the SDG&E Electric System.

KUMEYAAY shall promptly notify SDG&E if the conditions or circumstances indicated above change.

## EXHIBIT 5

### GENERATING FACILITY INFORMATION AND INTERCONNECTION CAPACITY

#### 5.1 Generating facility Information

5.1.1 Location of Generating Facility: A remote location in eastern San Diego County. The Project site is located north of Interstate 8 and is approximately 8 miles northeast of Campo, CA

#### 5.1.2 Description of Generating Facility:

|         |                                  |   |
|---------|----------------------------------|---|
| 5.1.2.1 | Number of Units:                 | 25  |
| 5.1.2.2 | Frequency:                       | 60 HZ                                       |
| 5.1.2.3 | Auxiliary Power Supply Location: | N/A   |
| 5.1.2.4 | Manufacturer:                    | Gamesa                                      |
| 5.1.2.5 | Model:                           | G 87  |
| 5.1.2.6 | Type:                            | Doubly fed induction wind turbine generator |
| 5.1.2.7 | Serial No.:                      | To be determined                            |
| 5.1.2.8 | Nameplate Output Rating:         | 2 MW each                                   |
|         |                                  |   |

#### 5.2 Interconnection with SDG&E Electric System

5.2.1 Voltage of the Interconnection Transmission Lines: 69 kV.

5.2.2 Interconnection Capacity: 50 MW

5.2.3 Special Protective System Requirements: next page

### GENERATION SPS REQUIREMENTS<sup>1</sup>

| RESULTING PROBLEMS  | CONTINGENCY  | GENERATION SUBJECT TO AUTOMATIC TRIPPING     |
|---|--|--|
| Risk of overloads on:<br><br>Boulevard Tap – Glenciff Tap – Descanso 69 kV Line<br><br>Boulder Creek Tap – Descanso - Santa Ysabel 69 kV Line | Loveland – Barrett Tap – Descanso - Barrett 69 kV Line   | Trip Superior's Campo wind farm <sup>2</sup> |
| Risk of overloads on:<br><br>Boulevard Tap – Glenciff Tap – Descanso 69 kV Line   | Barrett – Cameron 69 kV Line   | Trip Superior's Campo wind farm <sup>1</sup> |
| Risk of overloads on:<br><br>Boulevard Tap – Cameron 69 kV Line   | Boulevard Tap – Glenciff Tap – Descanso – Cameron 69 kV Line   | Trip Superior's Campo wind farm <sup>1</sup> |
| Crestwood Substation and Boulevard will be islanded   | Glenciff Tap - Boulevard Tap – Crestwood 69 kV Line  | Trip Superior's entire Campo wind farm       |
| Risk of damage to SDG&E and Customer Facilities   | Kumeyaay operating outside .98 lead/lag power factor or outside SDG&E 69 kV system voltage standards | Trip Superior's entire Campo wind farm       |

<sup>1</sup> Actual SPS functionality is subject to modification from time to time by mutual agreement of the Parties after consultation with the ISO. ISO will direct when respective schemes must be armed or disarmed.

<sup>2</sup> The amount of wind generation to be tripped will be determined by the final Detailed Facilities Study to be completed by SDG&E pursuant to the Facility Study Agreement, as amended to include without limitation the SPS. The final Detailed Facilities Study, including the SPS, must be approved by the ISO.

### **5.3 Interconnection Facilities**

As shown in Section 5.6

#### **Direct Assignment Facilities:**

1. Generator tie line switches
2. Jumpers to Tie line terminators
3. Jumpers from the line disconnect to the tie line breaker, the tie line breaker and jumpers to the bus disconnect.
4. The bus disconnect, the spare emergency connection disconnect and the bus extension.
5. The tie line relaying

#### **Network Assignment Facilities:**

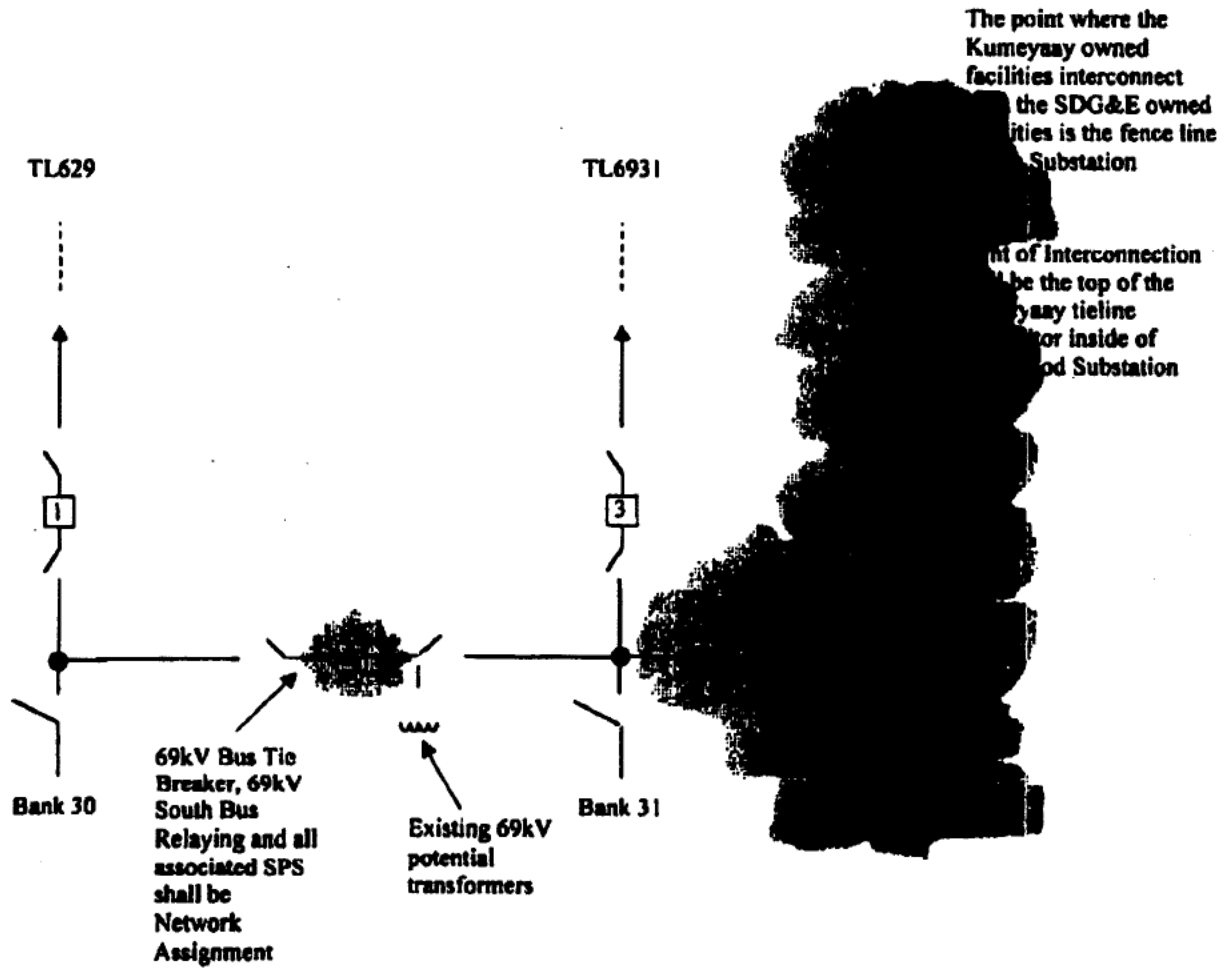
1. 69kV bus tie breaker,
2. 69kV bus relaying
3. SPS at various substations
4. Re-conductor 6.65 miles of 1/0 ACSR/AW radial 69kV transmission line to Junco 266.8 kcmil ACSS/AW between Boulevard Tap and Crestwood Substation (TL629E).

### **5.4 Points of Interconnection**

The 'points of interconnection' are the points where the KUMEYAAY owned facilities connect with the SDG&E owned and ISO Controlled Grid as shown in Section 5.6.

### **5.5 Reserved**

**5.6: One-line Diagram and Auxiliary Load Metering Diagram of Interconnection Facilities Showing SDG&E-Owned Facilities and KUMEYAAY-Owned Facilities**



## **EXHIBIT 6**

### **SDG&E Interconnection Handbook Waivers**

**KUMEYAAY shall submit requests for waivers from the SDG&E Interconnection Handbook in writing within 1 year of the date of execution of this Agreement. The written request shall provide an explanation of the basis for the requested waiver including a description of the alternative proposed by KUMEYAAY. SDG&E shall perform a timely review of such waiver requests and inform KUMEYAAY in writing of SDG&E's decision. KUMEYAAY may refer any refusal of SDG&E to grant a waiver request to Dispute Resolution pursuant to Section 16.10 of the Agreement**



## **EXHIBIT 7**

### **SAMPLE OPERATION AND MAINTENANCE CHARGE CALCULATION**

When the Interconnection Facilities are placed In-Service, Section 8.2.1 of the IA provides for an annual O&M charge equal to the currently effective Generation Interconnection O&M Fixed Charge Rate set forth in Appendix XI of SDG&E's Transmission Owner Tariff (as such rate may be modified from time to time) monthly rate times the following amount: the installed Cost of the Interconnection Facilities that are identified as Direct Assignment Facilities.

The following example using hypothetical costs illustrates how the formula would work. Assume the following:

|  |            |
|--|------------|
| Cost of the Direct Assignment Interconnection Facilities | \$ 550,000 |
|--|------------|

The resulting annual O&M charge would be calculated as follows:

the currently effective Generation Interconnection O&M Fixed Charge Rate set forth in Appendix XI of SDG&E's Transmission Owner Tariff (as such rate may be modified from time to time) x (\$550,000) x 12