CONFIRMATION LETTER  
BETWEEN  
[COUNTERPARTY]   
AND  
SaN DIEGO GAS & ELECTRIC COMPANY

Resource Capacity Contract Number: [TBD]

This confirmation letter ("Confirmation") confirms the Transaction between [Counterparty]  (“Seller”) and San Diego Gas & Electric Company (“Buyer”), each individually a “Party” and together the “Parties”, dated as of [Date] (the "Confirmation Effective Date") in which Seller agrees to provide to Buyer the right to the resource adequacy capacity product described herein (the "Product"). This Transaction is governed by the Western Systems Power Pool Agreement (Effective Version: October 1, 2010) to which both Seller and Buyer are members along with any amendments and annexes thereto (the "Master Agreement"). Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement and the Tariff.  ***[NOTE TO BIDDERS: SDG&E shall convert this to an EEI form instead of a WSPP form if collateral is required.]***

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DEFINITIONS

"Applicable Laws" means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.

"Buyer" has the meaning specified in the introductory paragraph hereof.

"CAISO" means the California Independent System Operator, or its successor.

"CAISO Control Area" has the meaning specified in the Tariff.

"CAISO Controlled Grid" has the meaning specified in the Tariff.

"Capacity Replacement Price" means (a) the price paid for any Replacement Capacity purchased by Buyer pursuant to Section 5.3 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Designated RA Capacity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner. For purposes of Section 4 of the Master Agreement, “Capacity Replacement Price” shall be deemed to be the “Replacement Price.”

"Confirmation" has the meaning specified in the introductory paragraph hereof.

"Contingent Firm RA Product" has the meaning specified in Section 3.3 hereof.

"Contract Price" means, for any Monthly Delivery Period, the product of the RA Capacity Flat Price and the Price Shape Factor for such period.

"Contract Quantity" means the total Unit Contract Quantity for all Units.

"CPUC" means the California Public Utilities Commission or any successor thereto.

"CPUC Decisions" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, D.07-06-029 and subsequent decisions related to resource adequacy, as may be amended from time to time by the CPUC.

"Delivery Point" has the meaning specified in Section 4.2 hereof.

"Designated RA Capacity" means, for each Unit, the amount of RA Capacity that Seller provides to Buyer pursuant to this Confirmation that is certified for inclusion in RAR Showings and if applicable LAR Showings, in each case as determined pursuant to Section 3.1 hereof. Designated RA Capacity shall include those attributes associated with the capacity identified in Article 2 and Article 3 hereof.

"Confirmation Effective Date" has the meaning specified in the introductory paragraph hereof.

"Firm RA Product" has the meaning specified in the Section 3.2 hereof.

* 1. “Forced Outage” means an outage that is designated “forced” according to CAISO’s outage coordination rules and procedures.

"Governmental Body" means any federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal.

"LAR” means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSE’s by the CPUC pursuant to the CPUC Decisions, or by another LRA having jurisdiction over the LSE. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.

"LAR Attributes" means, with respect to a Unit, any and all resource adequacy attributes (or other locational attributes related to system reliability), as may be identified from time to time by the CPUC, CAISO, LRA, or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward LAR, but exclusive of any RAR Attributes which are not associated with where in the CAISO Control Area the Unit is physically located or electrically interconnected. For clarity, it should be understood that the LAR Attributes associated with a Unit by virtue of its location or point of electrical interconnection may change as the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas and such change will not result in a change in payments made pursuant to this transaction.

"LAR Showings" means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA having jurisdiction over the LSE.

"LRA" means a Local Regulatory Authority, as defined in the Tariff.

“LSE” means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).

* 1. "Maintenance Outage" has the meaning specified in the NERC/GADS Protocols.

"Master Agreement" has the meaning specified in the introductory paragraph hereof.

"Monthly Delivery Period" means each calendar month during the Period of Delivery.

"Monthly RA Capacity Payment" has the meaning specified in Section 4.4 hereof.

"NERC/GADS Protocols" means the North American Electric Reliability Council (NERC) Generating Availability Data System (GADS) protocols, as may be updated from time to time.

"Non-Excusable Event" means an event which prevents Buyer’s ability to use Designated RA Capacity for its RAR Showing or LAR Showing as a result of Seller's (a) negligence, (b) failure to perform its obligations under this Confirmation, including, without limitation, the failure to cause the owner, operator or SC of a Unit to comply with the operations and maintenance standards specified in Section 8.2(f), or (c) failure to comply, or cause the owner, operator or SC of the Units to comply, with the Tariff with respect to the Units providing RAR Attributes and LAR Attributes, as applicable.

“Period of Delivery” has the meaning specified in Section 4.1 hereof.

* 1. "Planned/Scheduled Outage" means any outage, including Maintenance Outages, that are designated “Approved Planned” in the SLIC System.

"Price Shape Factor" means the Price Shape Factor specified in the Monthly Payment Price Shape Table in Section 4.4 hereof.

"Product" has the meaning specified in the introductory paragraph hereof.

"Prorated Percentage of Unit Factor" means the percentage of RA Capacity, as specified in Article 2 hereof, from the Unit that is dedicated to Buyer pursuant to this Confirmation.

"RA Availability" means, for each Unit, expressed as a decimal value rounded to the nearest hundredth, (a) the Unit's RA Capacity, divided by (b) the Unit’s CAISO Net Qualifying Capacity shown in Article 2, provided that a Unit's RA Availability shall not exceed 1.00.

"RA Capacity" means the qualifying and deliverable capacity of the Unit for RAR and LAR purposes for the Period of Delivery, as determined by the CAISO, or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses both the RAR Attributes and LAR Attributes of the capacity provided by a Unit.

"RA Capacity Flat Price" means the price specified in the RA Capacity Flat Price Table in Section 4.4 hereof.

"RAR" means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by an LRA or other Governmental Body having jurisdiction.

"RAR Attributes" means, with respect to a Unit, any and all resource adequacy attributes, as may be identified from time to time by the CPUC, LRA, or Governmental Body having jurisdiction, that can be counted toward RAR, exclusive of any LAR Attributes.

"RAR Showings" means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to an LRA having jurisdiction.

"Replacement Capacity" has the meaning specified in Section 5.3 hereof.

* 1. “Resource Capacity Contract Number” is the number appearing on page 1 of this Confirmation and shall be listed on the LSE’s CPUC Compliance filing as well as the Scheduling Coordinator’s Supply Plan.

"Replacement Unit" means a generating unit meeting the requirements specified in Section 5.2 hereof.

"Resource Top Down Category" means the resource classification as described in CPUC Decision 05-10-042, and as may be amended from time to time by the CPUC.

"RMR Agreement" has the meaning specified in Section 8.2(b) hereof.

"Scheduling Coordinator" or "SC" has the meaning defined in the Tariff.

"Seller" has the meaning specified in the introductory paragraph hereof.

“SLIC System” means the scheduling and logging system for the CAISO, which is a web-enabled interface for transmission and generation owners and operators to communicate outage information to the CAISO.

"Supply Plan" means the supply plans, or similar or successor filings, that each Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other Governmental Body, pursuant to Applicable Laws, in order for that RA Capacity to count for its RAR Attributes or LAR Attributes, if applicable.

"Tariff" means the tariff and protocol provisions of the CAISO, as amended or supplemented from time to time.

"Transaction" has the meaning specified in the introductory paragraph hereof.

"Unit" or "Units" shall mean the generation assets described in Article 2 hereof (including any Replacement Units), from which RA Capacity is provided by Seller to Buyer.

"Unit Contract Quantity" means the quantity of RA Capacity for a Unit as of the Confirmation Effective Date, as specified in Section 4.3 hereof.

UNIT INFORMATION[[1]](#footnote-1)1

Seller shall provide the Unit Contract Quantity and associated applicable Local RA Capacity, RA Attributes, and LAR Attributes from the following Unit

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Resource Name** | **CAISO**  **Resource ID** | **Local RA**  **Area** | **North/South Path-26** | **Unit SCID** | **Resource**  **Category** | **NQC Rating**  **(MW)** | |
|  |  |  |  |  |  |  |

RESOURCE ADEQUACY CAPACITY PRODUCT

During the Period of Delivery, Seller shall provide the Product to Buyer pursuant to the terms of this Confirmation. The Product shall (a) include RAR Attributes only, and (b) be either a Firm RA Product or a Contingent Firm RA Product, as selected below. The Product does not confer to Buyer any right to the electrical output from the Units, other than the right to include the Designated RA Capacity associated with the Contract Quantity in RAR Showings, LAR Showings if applicable, and any other capacity or resource adequacy markets or proceedings as specified in this Confirmation. Specifically, no energy or ancillary services associated with any Unit is required to be made available to Buyer as part of this Transaction and Buyer shall not be responsible for compensating Seller for Seller's commitments to the CAISO required by this Confirmation. Seller retains the right to sell any RA Capacity from a Unit in excess of that Unit’s Contract Quantity, and any RAR Attributes or LAR Attributes not otherwise sold under this Confirmation. For the avoidance of doubt, the Parties acknowledge and agree that any LAR Attributes of the Units are expressly excluded from the Transaction under this Confirmation and Seller shall have the right to commit any such LAR Attributes to third parties during the Delivery Period.

## RAR and LAR Attributes

Seller shall provide Buyer with the Designated RA Capacity and the RAR Attributes from each Unit associated with such Designated RA Capacity, as expressed in MWs. For each Monthly Delivery Period, a Unit's Designated RA Capacity shall be equal to the product of (x) the Unit's RA Capacity, and (y) the Unit's Prorated Percentage of Unit Factor, subject to adjustments for Planned/Scheduled Outages at the time of the RAR Showings and, if applicable, LAR Showings, if any, as determined pursuant to Article 7 below; provided that the total amount of Designated RA Capacity from all Units shall not exceed the Contract Quantity.

## [\_\_] Firm RA Product

Seller shall provide Buyer with Designated RA Capacity from the Units in the amount of the Contract Quantity. If, for any Monthly Delivery Period, the Designated RA Capacity is insufficient to provide the full amount of the Contract Quantity for such period solely as a result of Planned/Scheduled Outages resulting in adjustments to RA Capacity of a Unit at the time of the RAR Showings and, if applicable, LAR Showings pursuant to Article 7 below, Seller shall provide Buyer with Designated RA Capacity from one or more Replacement Units pursuant to Section 5.2 hereof. If Seller fails to provide Buyer with replacement Designated RA Capacity from Replacement Units pursuant to Section 5.2, as Buyer’s sole and exclusive remedy for such failure, (a) Seller shall be liable for damages pursuant to Section 5.4 hereof, or (b) Seller shall indemnify Buyer for penalties or fines pursuant to Section 5.5 hereof if Seller is not able to replace the Designated RA Capacity. For clarity, if, for any Monthly Delivery Period, the Designated RA Capacity is insufficient to provide the full amount of the Contract Quantity for such period as a result of a Forced Outage or a Force Majeure, Seller shall have no obligation to provide Buyer with replacement Designated RA Capacity from Replacement Units pursuant to Section 5.2 with respect thereto, or to pay Buyer any damages pursuant to Section 5.4 or indemnify Buyer for any penalties pursuant to Section 5.5 in connection therewith.

## [\_\_ ] Contingent Firm RA Product

Seller shall provide Buyer with Designated RA Capacity from the Units in the amount of the Contract Quantity. If, for any Monthly Delivery Period, the Designated RA Capacity is insufficient to provide the full amount of the Contract Quantity because of a Non-Excusable Event, Seller shall provide Buyer with Designated RA Capacity from one or more Replacement Units pursuant to Section 5.2 hereof. In such case, if Seller fails to provide Buyer with replacement Designated RA Capacity from Replacement Units pursuant to Section 5.2, as Buyer’s sole and exclusive remedy for such failure, (a) Seller shall be liable for damages pursuant to Section 5.4 hereof, or (b) Seller shall indemnify Buyer for penalties or fines pursuant to Section 5.5 hereof. For clarity, if the Units provide less than the full amount of the Contract Quantity for any reason other than a Non-Excusable Event, Seller is not obligated to provide Buyer with replacement Designated RA Capacity or to indemnify Buyer for penalties or fines pursuant to Section 5.5 hereof.

DELIVERY AND PAYMENT

## Period of Delivery

The Period of Delivery shall be: \_\_\_\_\_\_\_\_\_\_\_\_ through\_\_\_\_\_\_\_\_\_\_\_\_ , inclusive.

## Delivery Point

The Delivery Point for each Unit shall be the CAISO Control Area and, if applicable, the LAR region in which the Unit is electrically interconnected.

## Unit Contract Quantity**[[2]](#footnote-2)2**

The Contract Quantity of each Unit for each Monthly Delivery Period shall be:

Unit Contract Quantity (MWs)

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## If any portion of the Unit Contract Quantity of any Unit providing a Contingent Firm RA Product is not countable in Buyer’s RAR Showings or, if applicable, LAR Showings after the Confirmation Effective Date for reasons other than a Non-Excusable Event, the Unit Contract Quantity shall be adjusted to the product of the Unit's (a) RA Capacity following adjustment, and (b) Prorated Percentage of Unit Factor, provided that the resulting Unit Contract Quantity shall not exceed the original Unit Contract Quantity on the Confirmation Effective Date.

## Monthly RA Capacity Payment

In accordance with the terms of Section Nine of the Master Agreement, Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit, in arrears, following each Monthly Delivery Period. Each Unit's Monthly RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for that Monthly Delivery Period, (b) the Designated RA Capacity for the Monthly Delivery Period, and (c) 1,000. The final product of this Monthly RA Capacity Payment calculation shall be rounded to the nearest penny (i.e., two decimal places). Each Monthly RA Capacity Payment may be subject to reduction in accordance with Section 4.5 hereof.

RA CAPACITY FLAT PRICE TABLE



## Reduction of Monthly RA Capacity Payment (Contingent Firm RA Product only)

For any Contingent Firm RA Product, the Monthly RA Capacity Payment for each Unit shall be reduced by its RA Availability Adjustment, which is calculated as follows:

|  |  |
| --- | --- |
| Time Period | Adjustment to the Unit’s Designated RA Capacity at the Time of Showing |
| Summer  May  through September | Any month where days of Planned/Scheduled Outages exceed 25% of days in the month, the Unit’s Designated RA Capacity will be equal to zero (0) for the month. If Planned/Scheduled Outages are less than or equal to 25%, the Unit’s Designated RA Capacity will be deemed to equal the Contract Quantity. |
| Non- Summer Months  October through April | (i) For Planned/Scheduled Outages less than 1 week, the Unit’s Designated RA Capacity will be deemed to equal the Contract Quantity (ii) For Planned/Scheduled Outages 1 to 2 weeks, inclusive, the Unit’s Designated RA Capacity will be calculated using the following formula:  [1 – (days of Planned/Scheduled Outage/days in month) – 0.25] \* Unit’s Designated RA Capacity  (iii) For Planned/Scheduled Outages over 2 weeks, the Designated RA Capacity will be deemed to equal zero for that month. |

The final product of this RA Availability Adjustment calculation shall be rounded to the nearest penny (i.e., two decimal places). The RA Availability Adjustment for each Unit shall be subtracted from the Monthly RA Capacity Payment determined in Section 4.4 to determine the amount due to the Seller for Designated RA Capacity provided hereunder from each Unit. In no case shall a Unit's Monthly RA Capacity Payment be less than zero.

## Allocation of Other Payments and Costs

Seller may retain any revenues it may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down and minimum load costs, (b) capacity revenue for ancillary services, (c) energy sales, and (d) any revenues for black start or reactive power services. However, Buyer shall be entitled to receive and retain all revenues associated with and arising from the Designated RA Capacity of any Unit during the Period of Delivery (including any capacity or availability revenues from RMR Agreements for any Unit, and Reliability Capacity Services Tariff capacity payments, but excluding payments described in clauses (a) and (b) above). In accordance with Section 4.4 of this Confirmation and Section Nine of the Master Agreement, all such revenues received by Seller, a Unit’s SC, owner, or operator shall be remitted to Buyer, and Seller shall indemnify Buyer for any such revenues that Buyer does not receive, and Seller shall pay such revenues to Buyer if the Unit’s SC, owner, or operator fails to remit those revenues to Buyer. If Seller fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for these revenues against any future amounts it may owe to Seller under this Confirmation. If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid or otherwise submit Designated RA Capacity provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive any and all related revenues.

Seller agrees that the Unit is subject to the terms of the Availability Standards under Standard Capacity Product. Furthermore, the Parties agree that any Availability Incentive Payments are for the benefit of the Seller and for Seller’s account and that any Non-Availability Charges are the responsibility of the Seller and for Seller’s account.

SELLER'S FAILURE TO DELIVER CONTRACT QUANTITY

## Notices and Filings

If the Units will not be available to provide Designated RA Capacity in the full amount of the Contract Quantity for any RAR and/or LAR Showings, if applicable, for the Period of Delivery, Seller shall, no later than the earlier of (a) twenty (20) Business Days after the loss of any Designated RA Capacity, or (b) fifteen (15) Business Days before the relevant deadline for such RAR or LAR Showing, notify Buyer of the Designated RA Capacity of each Unit which can be included in such Showings. Seller shall, on a timely basis, submit, or cause each Unit's Scheduling Coordinator to submit, Supply Plans to identify and confirm the Designated RA Capacity of each Unit sold to Buyer. Seller shall cause the Unit’s Scheduling Coordinator to certify to Buyer, no later than the earlier of (a) twenty (20) Business Days after the Confirmation Effective Date, or (b) fifteen (15) Business Days before the relevant deadline for any applicable RAR or LAR Showing, that Buyer will be credited with the Designated RA Capacity for the Period of Delivery in the Unit’s Scheduling Coordinator’s Supply Plan. Seller shall indemnify and hold harmless Buyer from any costs, monetary penalties or fines Buyer may incur in the event any Unit’s Scheduling Coordinator fails to timely submit Supply Plans that identify Buyer’s right to the Designated RA Capacity purchased hereunder. If Seller fails to pay those costs, monetary penalties or fines, or fails to reimburse Buyer for those, monetary penalties or fines, then Buyer may offset any amounts owing to it under this Section 5.1 against any future amounts it may owe to Seller under this Confirmation.

## RA Capacity from Replacement Units

If Seller is required to provide Designated RA Capacity from one or more Replacement Units pursuant to Sections 3.2 or 3.3, Seller shall, at no cost to Buyer, provide Buyer with replacement RA Capacity from one or more Replacement Units, such that the total amount of Designated RA Capacity provided to Buyer from all Units and Replacement Units equals the Contract Quantity. The designation of any Replacement Unit by Seller shall be subject to Buyer’s prior written approval, which shall not be unreasonably withheld. For clarity, in the aggregate all Units and Replacement Units must provide to Buyer RAR Attributes equivalent to those that were provided by the original Units and that were sold under this Confirmation. Seller shall identify Replacement Units meeting the above requirements no later than the earlier of twenty (20) Business Days after the loss of any Designated RA Capacity, or fifteen (15) Business Days before the relevant deadline for Buyer's RAR Showing and/or LAR Showing, if applicable. Once Seller has identified in writing any Replacement Units that meet the requirements of this Section 5.2, any such Replacement Unit shall be automatically deemed to be a Unit for purposes of this Confirmation until Seller notifies Buyer, in writing, of the availability of the original Units.

For purposes of this Confirmation, Seller shall be deemed to have failed to provide Buyer with Designated RA Capacity in the full amount of the Contact Quantity if the Units and Replacement Units providing such Designated RA Capacity do not in the aggregate provide to Buyer the RAR Attributes contracted for pursuant to this Confirmation.

## Purchase of Replacement Capacity

If Seller fails to provide any portion of Designated RA Capacity from Replacement Units as required by Section 5.2 hereof, Buyer may, but shall not be required to, replace any Designated RA Capacity not provided by Seller with capacity (such replacement capacity being referred to as "Replacement Capacity") having equivalent RAR compared to the Designated RA Capacity not provided by Seller. Buyer may enter into purchase transactions with one or more other parties to replace Designated RA Capacity not provided by Seller. Additionally, Buyer may enter into one or more arrangements to repurchase its obligation to sell and deliver the Product to another party, and such arrangements shall be considered to be the procurement of Replacement Capacity. Buyer shall act in a commercially reasonable manner in purchasing any Replacement Capacity.

## Damages for Failure to Deliver

If Seller is required to provide Designated RA Capacity from one or more Replacement Units pursuant to Sections 3.2 or 3.3, and fails to do so pursuant to Section 5.2 hereof, then, for purposes of determining the damages due to Buyer under Section 21 of the Master Agreement, Seller shall pay to Buyer an amount equal to the positive difference, if any, between (a) the sum of (i) the Capacity Replacement Price for each Replacement Capacity transaction entered into by Buyer times its applicable RA Capacity quantity, plus (ii) absent a purchase of Replacement Capacity, each Capacity Replacement Price times the Designated RA Capacity not provided by Seller (adjusted for any quantity purchased by Buyer in (i) above), and (b) the Designated RA Capacity not provided for each Monthly Delivery Period multiplied by the Contract Price for that month. If Seller fails to pay those damages, then Buyer may offset those damages owed it against any future amounts it may owe to Seller under this Confirmation.

## Indemnities for Failure to Deliver Designated RA Capacity

Seller agrees to indemnify Buyer for any monetary penalties or fines assessed against Buyer by the CPUC or the CAISO, or an LRA having jurisdiction, resulting from: (a)  Seller’s failure to provide Buyer with any portion of the Designated RA Capacity pursuant to Sections 3.2, 3.3, and 5.2 (including, without limitation, meeting the time requirements for designating any Replacement Units); (b) Seller’s failure to provide notice of the non-availability of any portion of the Designated RA Capacity as required under Section 5.1 hereof; or (c) any other failure by Seller to perform its obligations under this Confirmation. With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties and fines, provided that in no event shall Buyer be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. Seller will have no obligation to Buyer under this Section 5.5 in respect of the portion of Contract Quantity for which Seller has paid damages pursuant to Section 5.4 hereof. If Seller fails to pay those penalties or fines, or fails to reimburse Buyer for those penalties and fines, then Buyer may offset the cost of those penalties and fines against any future amounts it may owe to Seller under this Confirmation.

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CAISO OFFER REQUIREMENTS

During the Period of Delivery, Seller shall either schedule or cause the Unit’s Scheduling Coordinator to schedule with, or make available to, the CAISO each Unit’s Designated RA Capacity in compliance with the Tariff, and shall perform all, or cause the Unit’s Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Designated RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit’s Scheduling Coordinator, owner or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit’s Scheduling Coordinator, owner, or operator for such noncompliance.

PLANNED/Scheduled OUTAGES

Upon Confirmation Effective Date and no later than January 1, April 1, July 1 and October 1 of each calendar year until the end of the Delivery Period, Seller shall submit, or cause the Unit's Scheduling Coordinator to submit to Buyer the portion of each Unit's schedule of proposed Planned Outages ("Outage Schedule") for the following twenty-four (24) month period that overlaps the Delivery Period. Within twenty (20) Business Days after its receipt of an Outage Schedule, Buyer shall notify Seller in writing of any reasonable request for changes to the Outage Schedule, and Seller shall, consistent with Good Utility Practices, accommodate Buyer's requests regarding the timing of any Planned Outage. Seller or the Unit's Scheduling Coordinator shall notify Buyer within five (5) Business Days of any change to the Outage Schedule.

Planned Outages cannot aggregate more than 168 hours in any calendar month (unless the Parties, prior to the first day of the Planned Outage, agree otherwise in writing), and shall not be scheduled from each May 1 through September 30 during the Delivery Period. In the event that Seller has a previously Planned Outage that becomes coincident with a CAISO-declared system emergency, Seller shall make all reasonable efforts to reschedule such Planned Outage.

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OTHER BUYER AND SELLER COVENANTS

Buyer and Seller shall, throughout the Period of Delivery, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer's RAR and LAR if applicable. Such commercially reasonable actions shall include, without limitation:

### Cooperating with and providing, and in the case of Seller causing each Unit’s Scheduling Coordinator, owner or operator to cooperate with and provide, requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering RAR and/or LAR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CPUC, or by an LRA having jurisdiction, to demonstrate for each month of the Period of Delivery the ability to deliver the Contract Quantity from each Unit to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, and providing information requested by the CPUC, CAISO or other Governmental Body having jurisdiction to administer RAR or LAR to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid, pursuant to "deliverability" standards established by the CAISO, or other Governmental Body having jurisdiction to administer RAR and/or LAR; and

### Negotiating in good faith to make necessary amendments, if any, to this Confirmation to conform this Transaction to subsequent clarifications, revisions or decisions rendered by the CPUC, FERC, or other Governmental Body having jurisdiction to administer RAR or LAR, so as to maintain the benefits of the bargain struck by the Parties.

Seller represents, warrants and covenants to Buyer that, throughout the Period of Delivery:

### Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, CAISO, CPUC or other jurisdictional LRA, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;

### No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy RAR analogous obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit’s owner or operator;

### No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR or analogous obligations in any non-CAISO market;

### Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, and is under the control of CAISO;

### In the event Seller has rights to the energy output of any Unit, and Seller or the Unit’s Scheduling Coordinator schedules energy from the Unit for export from the CAISO Control Area, or commits energy to another entity in a manner that could result in scheduling energy from the Unit for export from the CAISO Control Area, it shall do so only as allowed by, and in accordance with, Applicable Laws and such exports may, if allowed by the Tariff, be curtailed by the CAISO;

### The owner or operator of each Unit is obligated to maintain and operate each Unit using "Good Utility Practice," as defined in the Tariff, and, if applicable, General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit, provided that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities;

### The owner or operator of each Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity and RAR;

### If Seller is the owner of any Unit, the aggregation of all amounts of RAR Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit’s RA Capacity;

### With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit’s SC is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity and RAR;

### Seller has notified the SC of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the SC is obligated to deliver the Supply Plans in accordance with the Tariff; and

### Seller has notified each Unit’s SC that Buyer is entitled to the revenues set forth in Section 4.6 of this Confirmation, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

CONFIDENTIALITY

Notwithstanding Section 30.1 of the Master Agreement, the Parties agree that either Party may disclose the sale of the Designated RA Capacity under this Confirmation to any Governmental Body, the CPUC, the CAISO or any LRA having jurisdiction in order to support its LAR or RAR Showings, if applicable, and Seller may disclose the transfer of the Designated RA Capacity under this Transaction to the SC of each Unit in order for such SC to timely submit accurate Supply Plans; provided, that each disclosing Party shall, to the extent reasonable, use reasonable efforts to limit the ability of any such applicable Governmental Body, CAISO, LRA or SC to further disclose such information.

BUYER’S RE-SALE OF PRODUCT

Buyer may re-sell all or a portion of the Product delivered to Buyer hereunder.

CALIFORNIA CLIMATE ACTION REGISTRY

In accordance with CPUC Rulemaking 06-04-009, upon modification of the protocols of the California Climate Action Registry to allow generation facility-specific registration, Seller shall promptly (i) register with the California Climate Action Registry and (ii) send Buyer notice of such registration.

COLLATERAL REQUIREMENTS

***[NOTE TO BIDDERS: To be determined.]***

**Article 13**

**WSPP Agreement Amendments**

**13. WSPP Agreement Amendments:** For purposes of this Transaction only, the Master Agreement shall be amended as follows:

(a) Sections 22.1(d) and 27 of the Master Agreement shall not apply to either Party with respect to this Transaction.

(b) The following phrase is inserted at the beginning of Section 37: “On the date of entering into this Confirmation,”.

(c) Section 24 of the Master Agreement is deleted and replaced with the following:

“This Master Agreement and any Confirmation shall be governed by and construed, enforced and performed in accordance with the laws of the State of California, without regard to principles of conflicts of law or contrary provisions of the Master Agreement, if any.

(d) Subsections 34.1 and 34.2 of the Master Agreement are hereby deleted and replaced with the following:

34.1 Waiver of Jury Trial. EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION, CLAIM OR PROCEEDING RELATING TO THIS AGREEMENT, PROVIDED, HOWEVER, THE PARTIES DO NOT WAIVE JURY TRIAL IF ANY PROCEEDING RELATED TO THIS AGREEMENT IS BROUGHT IN THE STATE OF TEXAS.”

The rest of Section 34 of the Master Agreement shall be re-numbered accordingly.

(e) LIMITATION OF DAMAGES. FOR BREACH OF ANY PROVISION OF THIS CONFIRMATION AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, THE EXPRESS REMEDY OR MEASURE OF DAMAGES PROVIDED IS THE SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT AND THE AGREEMENT FOR THE BREACH, LIABILITY FOR THE BREACH IS LIMITED AS SET FORTH IN THE PROVISION AND ALL OTHER REMEDIES FOR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT FOR A PARTICULAR BREACH, LIABILITY FOR THE BREACH IS LIMITED TO DIRECT DAMAGES ONLY, THE DIRECT DAMAGES ARE THE SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT FOR THE BREACH, AND ALL OTHER REMEDIES FOR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. NEITHER PARTY IS LIABLE FOR ANY OTHER TYPE OF DAMAGE, INCLUDING INCIDENTAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES OF ANY NATURE (INCLUDING DAMAGES ASSOCIATED WITH LOST PROFITS, BUSINESS INTERRUPTION AND LOSS OF GOODWILL) ARISING AT ANY TIME, WHETHER IN TORT (INCLUDING THE SOLE OR CONTRIBUTORY NEGLIGENCE OF EITHER PARTY OR ANY RELATED PERSON), WARRANTY, STRICT LIABILITY, CONTRACT OR STATUTE, UNDER ANY INDEMNITY PROVISION, OR OTHERWISE.

(f) Section 41 “Witness” of the Master Agreement shall become Section 42 and the following “Standard of Review” Section substituted in its place:

“The Parties agree as follows:

From the date of entering into a Transaction under this Master Agreement and throughout the term of such Transaction, the Parties each warrant and covenant as follows:

(i) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any section of this Master Agreement (including all Transactions and/or Confirmations) specifying the rate(s) or other material economic terms and conditions agreed to by the Parties herein, whether proposed by a Party, a non-party or FERC acting sua sponte, shall be the "public interest" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956)( the "Mobile-Sierra" doctrine).

(ii) The Parties, for themselves and their successors and assigns, (i) agree that this "public interest" standard shall apply to any proposed changes in any other documents, instruments or other agreements executed or entered into by the Parties in connection with this Master Agreement and (ii) hereby expressly and irrevocably waive any rights they can or may have to the application of any other standard of review, including the "just and reasonable" standard.”

ACKNOWLEDGED AND AGREED TO AS OF \_\_\_\_\_\_\_\_\_\_\_\_\_:  
  
  
COUNTERPARTY  SAN DIEGO GAS & ELECTRIC COMPANY

By: By:   
  
Name: Name:   
  
Title: Title:   
  
Date: Date:

1. 1 To be repeated for each Unit if more than one. [↑](#footnote-ref-1)
2. 2 To be repeated for each Unit if more than one. [↑](#footnote-ref-2)