

Application No: A.10-07-  
Exhibit No.: \_\_\_\_\_  
Witness: Mike McClenahan

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Application of San Diego Gas & Electric Company )  
(U 902 E) to Amend Renewable Energy Power ) Application 10-07-\_\_\_\_\_  
Purchase Agreement with NaturEner Rim Rock Wind ) (Filed July 15, 2010)  
Energy, LLC and for Authority to Make a Tax Equity )  
Investment in the Project. )  
\_\_\_\_\_)

**CHAPTER 2**

**PREPARED DIRECT TESTIMONY OF**

**MIKE MCCLENAHAN**

**ON BEHALF OF**

**SAN DIEGO GAS & ELECTRIC COMPANY**

**\*\*PUBLIC VERSION\*\***

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

**July 15, 2010**

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1 **II. TRANSACTION**

2 **A. Introduction**

3 The 2010 deadline for compliance with the State of California’s Renewables Portfolio  
4 Standard (“RPS”) is rapidly approaching. The Commission has charged all regulated investor  
5 owned utilities (“IOUs”) to “undertake all reasonable actions to comply with RPS targets,  
6 including UOG [Utility Owned Generation] when necessary and appropriate.” (Decision 09-06-  
7 018, Conclusion of Law 24.) In response to this direction, and in furtherance of the important  
8 and ambitious renewable policy goals of this State, SDG&E proposes to assist in increasing the  
9 prospects of success in its largest Commission-approved RPS transaction (Rim Rock).

10 This assistance comes in the form of a novel, if not unique, investment structure proposed  
11 by SDG&E. SDG&E’s proposed new role as a tax equity investor in an RPS project fills a  
12 troublesome gap in the market. Specifically, due to the financial crisis of recent years, the pool  
13 of potential investors in tax equity has decreased – at the same time that the pipeline of  
14 renewables projects seeking tax equity has expanded dramatically. The utility is one of the few  
15 entities situated to lend the strength of its balance sheet (on a limited basis) to accomplish an  
16 important set of goals:

- 17 • Improve ratepayer economics of the Green Attributes purchased under a proposed  
18 amendment to the existing PPA, while mitigating the risk profile of ratepayers versus  
19 investment in a typical UOG project;
- 20 • Facilitate the placement of a construction loan by demonstrating a Commission-  
21 approved investment by SDG&E that would repay that lender,
- 22 • Allow for monetization of the significant tax benefits of the project in a market where  
23 typical tax investors have retreated or are charging higher rates for the same  
24 investment that was made at lower rates in better economic times,

- 1 • Promote a novel ownership structure that facilitates the goals of both Independent  
2 Power Producers (“IPPs”) and UOG in California’s hybrid market structure by  
3 allowing both the utility and a merchant power plant developer to have an ownership-  
4 like interest during the operating lifetime of the power plant, and
- 5 • Increase project viability of the largest RPS resource currently in SDG&E’s portfolio  
6 by assuring financing for the project in an environment of tight capital markets.

7 If approved by the Commission, this Application will likely not be the last tax equity  
8 investment by the Company. SDG&E has been approached by a number of counterparties and is  
9 currently evaluating other RPS projects to see where a utility role in providing tax equity may be  
10 beneficial. Each of these additional projects would be located in the State of California.

11 Unfortunately, transmission delays have moved those projects further into the future. Rim Rock  
12 is the project that is ripe for development at this time and will add to SDG&E’s RPS portfolio the  
13 soonest. SDG&E has thoroughly demonstrated its commitment to the development of California  
14 renewables by pledging to maintain a certain quantity of renewable power flow across the  
15 Sunrise Power Link. In pursuit of this goal, it showed a preference in its 2009 RPS RFO for  
16 local, Sunrise-region projects and proposes to do so again in its 2010 RPS Procurement Plan,  
17 thereby providing additional benefit to ratepayers. Approval of the proposed investment in Rim  
18 Rock will create a template that will allow for quicker and easier transacting of these in-state  
19 investments in the future.

20 With regard to any tax equity investments, those investments would be evaluated based  
21 upon the strategic importance of the project to SDG&E and its ratepayers, the strength and  
22 maturity of the development, an assessment of a project’s many and varied risks, including

1 technology risk and availability of capital. With these criteria in mind, SDG&E thinks that the  
2 Rim Rock project is a very good opportunity for ratepayer investment because:

- 3 1. The developer has a strong track record. NaturEner USA, LLC (“NaturEner”) is  
4 the developer, owner and manager of the Glacier Wind Energy 1 and Glacier  
5 Wind Energy 2 projects, also in Montana. Glacier 1 and Glacier 2 signed  
6 contracts with SDG&E for power deliveries beginning in 2008 and 2009 that were  
7 approved by the Commission in Resolution E-4192. Glacier 1 achieved its  
8 Commercial Operations Date (“COD”) in December of 2008, and Glacier 2  
9 achieved COD in December of 2009;
- 10 2. The Rim Rock project is approaching the point where financing, taking into  
11 account required Commission approval, has become the critical path item and  
12 there appears to be few, if any, alternatives to an SDG&E investment;
- 13 3. The project is highly viable. Site control is established, all major permits are in-  
14 hand and the majority of equipment deliveries are secured;
- 15 4. The technology is mature - the turbines are field-tested units and the wind data  
16 collected thus far is favorable and the project is expected to enjoy a high capacity  
17 factor;
- 18 5. The COD allows for significant quantities of near term (2012) renewable power  
19 deliveries that would be difficult to replace if this project were delayed;
- 20 6. Federal Production Tax Credits (“PTCs”) are available to ratepayers to reduce the  
21 project’s overall revenue requirement as long as the project is placed in service  
22 prior to January 1, 2013.

1 SDG&E undertakes this investment as a means of furthering the State’s RPS and  
2 Greenhouse Gas (“GHG”) reduction goals and to enhance the viability of the project, thus  
3 increasing the likelihood of meeting the State’s ambitious 33% RPS goal. This is not a  
4 speculative investment – but for the nexus between the investment and these important  
5 objectives and obligations, SDG&E would not have considered making this investment. This  
6 investment furthers the development of SDG&E’s portfolio of resources, with a projected COD  
7 in late 2012, and is thus critical to the achievement of the RPS and GHG goals of the Company,  
8 its ratepayers and the State. SDG&E has stepped forward at this time to propose its investment  
9 so that the Commission has sufficient time to evaluate its Application and approve an investment  
10 in time to meet a late 2012 COD.

11 Finally, the proposed investment is consistent with SDG&E’s RPS Procurement Plan as  
12 filed with the Commission in December of 2009.

13 SDG&E is currently in discussion with two entities concerning possible tax equity  
14 investment. Early indications are that with SDG&E’s involvement as a tax equity  
15 investor, one or both of these opportunities could move forward with an increased  
16 probability of success, versus otherwise being stalled due to financing difficulties.  
17 SDG&E will continue to evaluate these and other projects for tax equity investment  
18 opportunities and will keep the Commission apprised of these ongoing discussions.  
19 SDG&E will submit any proposals to the Commission for approval at the appropriate  
20 time.<sup>1</sup>

21  
22 **B. Overview and Description**

23 NaturEner is a wind energy development company headquartered in San Francisco,  
24 California, employing approximately 25 renewable energy professionals. NaturEner is a wholly  
25 owned subsidiary of Grupo NaturEner S.A., a renewable energy company based in Madrid,  
26 Spain. NaturEner entered the U.S. market in 2006 and has successfully completed both the  
27 106.5 MW wind project known as Glacier Wind Energy 1 in Montana, which commenced

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<sup>1</sup> SDG&E’s 2010 RPS Plan, as filed with the Commission on 12/18/2009, Attachment A; Section II.3.; Pages 19-20.

1 commercial operations in December of 2008, and the 103.5 MW Glacier Wind Energy 2 project,  
2 which began commercial operations in December of 2009. In addition, NaturEner has  
3 approximately 800 MW of other wind energy projects in development or construction in the  
4 United States and Canada.

5 To SDG&E's knowledge, the Rim Rock transaction represents the first instance of a  
6 proposed tax equity investment in an independently-developed renewable energy facility by a  
7 regulated IOU. SDG&E believes that Commission approval of this innovative financing  
8 structure could unlock desperately needed utility capital to assist in renewable development at a  
9 time when capital markets are far less available than in prior years. If approved by the  
10 Commission, SDG&E's tax equity investment will benefit SDG&E's ratepayers by reducing the  
11 financing costs of the project, thus helping to lower pricing under the revised PPA between  
12 SDG&E and the project. In addition, SDG&E's investment will ensure the viability of the  
13 project, which is expected to provide a significant quantity of renewable energy to SDG&E's  
14 power supply portfolio. A more detailed description of the investment mechanics and its  
15 financial implications is provided in the testimony of Mr. Moftakhar.

16 As illustrated in the following project transaction schematic diagram, there are many  
17 pieces to the proposed commercial transaction:

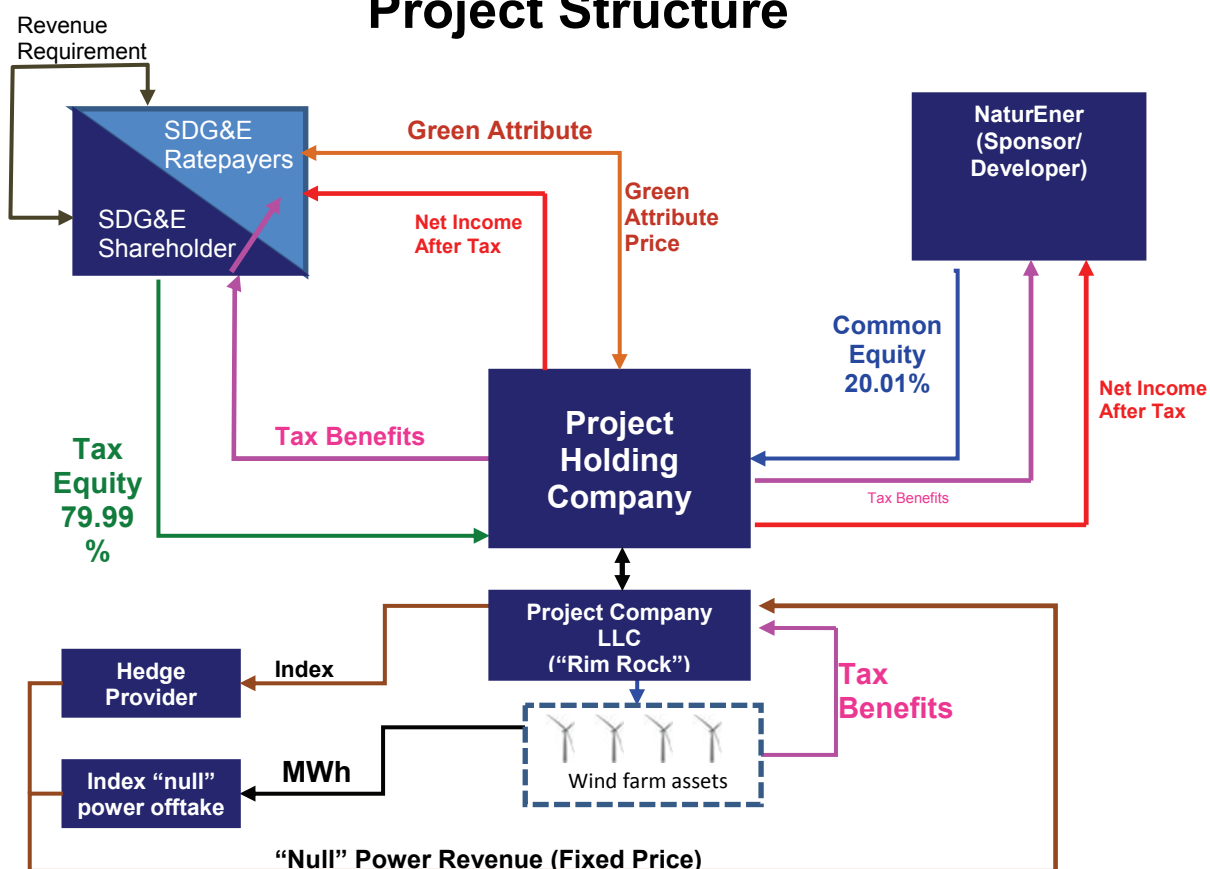
- 18 • **Project Investment:** (1) an investment of up to \$600 million (or up to 79.99% of  
19 total equity) in the Rim Rock wind generation project by SDG&E and (2) an  
20 investment by NaturEner of the remaining capital required to finance the project;
- 21 • **Ratepayer Repayment:** (1) the creation of a ratebase-like revenue requirement to  
22 recover this investment by SDG&E shareholders (see testimony of Mr. Deremer for  
23 more detail) and (2) ratepayers, as an owner of up to 79.99% of the project company,



1 will receive most of the tax benefits (see testimony of Mr. Reeves for more detail)  
2 and cash flows from the project. Project revenues include the proceeds of the sale of  
3 the “null” power and the revenue generated by the sale of Green Attributes to  
4 SDG&E ratepayers through the Commission-approved PPA. The remaining portion  
5 of the tax benefits and cash flows will go to the other equity investor (NaturEner).  
6 The tax benefits and cash flows received by ratepayers over the life of their  
7 investment is forecast to be sufficient to fully repay their investment, making this a  
8 “rate neutral” investment;

9 • **Project Sales:** (1) the Green Attributes from the project will be sold to SDG&E for a  
10 term of 20 years and delivered to California and (2) the sale of the “null power” from  
11 the project will not be finalized until Construction Financial Close. However, it is  
12 likely to be either (a) a sale of the power at a fixed price at the project busbar or (b) a  
13 sale of index power at the busbar with a financial swap put in place to create certainty  
14 of these revenues. This fixed-price arrangement will likely need to be collateralized.  
15 This will also likely not occur until Construction Financial Closing; SDG&E is still  
16 investigating a variety of transaction structures to facilitate this collateral, (3) some  
17 unhedged power sales into the spot market.

# Project Structure



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The structure of this transaction, as graphically illustrated above, is common for renewable generation projects in contrast with conventional (non-renewable) generation. The key difference that allows for this sharing of the project ownership between the IPP and the utility is the role of tax equity – tax equity is fundamental to an RPS project. As described in the testimony of Mr. Moftakhar, the financing of renewables is generally 100% equity financing, whereas financing of conventional generation is more typically a combination of debt and equity. The debt in a renewables project is replaced by funds from a tax equity investor who will monetize the PTCs and depreciation in the project as part of the return on and of their investment. The use of equity in lieu of debt is governed by IRS safe harbor rules surrounding the use of PTCs. In the case of the Rim Rock project, SDG&E is simply a tax equity investor,

1 taking on the role typically played by a financial institution. The project remains an IPP project,  
2 and the developer's stake and interest in the project are unchanged.

3 During the operating life of the project, when it is online and producing energy, SDG&E  
4 ratepayers will pay for the power produced by the project under the PPA arrangements, resell the  
5 null power back to the project company and retain the Green Attributes, which will be delivered  
6 to California pursuant to CEC RPS deliverability guidelines. The project company will then  
7 resell the null power into the energy markets in Alberta, Canada. This basic transaction structure  
8 remains unchanged from the currently-approved PPA.

9 In this Application, SDG&E is seeking approval to potentially provide some form of  
10 credit support associated with the hedge of the null power sale by the project company. This  
11 credit support would benefit ratepayers by facilitating the sale of null power by the project  
12 company to a third party under, for example, a fixed price contract or under a contract indexed to  
13 a market rate. SDG&E may provide credit support in the form of an offsetting position with  
14 either the third party purchasing the null power under a fixed priced contract or the third party  
15 providing the fixed-for-floating swap for a portion of the null power (depending on how the  
16 project company sells its null power). These potential offsetting hedges would be consistent  
17 with the terms of SDG&E's currently-approved long-term procurement plan ("LTTP") with the  
18 exception of term. SDG&E seeks through this Application to amend its current long-term  
19 procurement plan to allow this potential hedge to be up to ten years in length (our current  
20 authority extends for only five years).

21 At the same time, the project will be generating PTCs for a period of ten years from the  
22 online date. As the tax equity investor, SDG&E will be able to monetize the value of the PTCs  
23 by reducing its federal income tax obligations, which savings will be passed on to ratepayers. In

1 addition, the project's capital costs will be eligible for accelerated depreciation as authorized by  
2 the Tax Reform Act of 1986, Pub. L. No. 99-514. This depreciation benefit will also pass  
3 through to ratepayers as part of the repayment of their investment, as discussed in the ratemaking  
4 testimony of Mr. Deremer. At the end of ten years, ratepayers are forecast to have been fully  
5 repaid their total investment as explained in the testimony of Mr. Moftakhar.

6 During an initial period of [REDACTED], the cash flows to the LLC from the sale of  
7 Green Attributes to SDG&E and the resale of null power will be allocated [REDACTED] to  
8 NaturEner until NaturEner has recovered an agreed portion of its project investment, while [REDACTED]  
9 [REDACTED] PTCs and tax benefits will be passed to SDG&E ratepayers during this period. Once the  
10 agreed portion of NaturEner's project investment has been recovered, the cash flows will be  
11 reallocated, with approximately [REDACTED] going to SDG&E and approximately [REDACTED] to NaturEner until  
12 SDG&E has recovered its targeted return on its capital investment, which is designed to occur at  
13 the end of the ten-year period of PTC eligibility. The cash flows allocated to SDG&E from the  
14 project will be returned to ratepayers in the form of a credit against the revenue requirement for  
15 the rate-based intangible capital asset (the Class B shares in the project company). The deferred  
16 income taxes and depreciation, as discussed in the testimony of Mr. Reeves and Mr. Deremer,  
17 will be credited against the ratebased revenue requirement.

18 At the end of the initial ten years, the cash flows will again "flip" so that NaturEner USA  
19 is allocated not greater than approximately [REDACTED] and SDG&E not less than approximately [REDACTED] for  
20 the remaining life of the project.<sup>2</sup> For a defined period after the end of year ten<sup>3</sup>, NaturEner will  
21 have the right to purchase SDG&E's membership interest in the project holding company for fair

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<sup>2</sup> The exact timing of the final flip is dependent upon SDG&E fully recovering its authorized rate of return on the project. Project cash flows will not flip until SDG&E has fully recovered its return, that is, until ratepayers have been repaid in full.

<sup>3</sup> The exact timing of the final flip option is based on the date when any deficit in SDG&E's capital account returns to zero.

1 market value. If NaturEner decides to exercise this option, the parties will work together to  
2 determine the fair market value of SDG&E's interest and to obtain any required approvals. By  
3 the end of the 20-year period, SDG&E and NaturEner will have each recovered their investment  
4 and earned their respective returns, and the project will be fully depreciated for tax purposes.  
5 Ratepayers will have received the full benefit of the RPS energy along with full repayment of the  
6 tax equity investment through their allocation of project cash flows, the accelerated depreciation  
7 and PTCs.

8 SDG&E already has a Commission-approved PPA in place with the Rim Rock project,  
9 which SDG&E proposes to modify as a part of the transactions involved in becoming the tax  
10 equity investor. SDG&E's participation as an investor will allow the developer to complete and  
11 operate the project via a NaturEner/SDG&E partnership, increasing the viability of the project  
12 and giving the Commission enhanced transparency into the economics of the project. A detailed  
13 discussion of tax equity investment and the financial benefits that this particular investment will  
14 bring to ratepayers is found in the testimony of Mr. Reeves and Mr. Moftakhar. SDG&E is  
15 taking this step with respect to the Rim Rock project in order to avail itself of a transaction  
16 structure that benefits ratepayers, advances the State's RPS goals and represents a major effort  
17 by SDG&E to make "all reasonable actions" at meeting those RPS goals (D.09-06-018,  
18 Conclusion of Law 24).

19 In brief, SDG&E is requesting authority to make an equity investment in the project  
20 equal to the lesser of \$600 million or up to 79.99% of the total capital costs to be invested.  
21 SDG&E's tax equity investment will be placed into SDG&E's ratebase and earn a return at  
22 SDG&E's Commission-authorized rate of return, currently set at 7.36% (after tax). In exchange  
23 for its investment, SDG&E will become a passive owner/partner, along with NaturEner, in a

1 limited liability company (“LLC”) (the project holding company) that will own all of the  
2 membership interests in another LLC (the project company), which in turn will own the wind  
3 project. SDG&E’s ownership interest will be a membership interest in the project holding  
4 company, and not direct ownership of the underlying generation facilities, a fact that further  
5 distinguishes this transaction from utility-owned generation.

### 6 **C. Tax Equity Participation Compared to UOG**

7 The tax equity investment is not strictly an arrangement for direct ownership of project  
8 assets. That is, SDG&E owns shares in the project holding company, rather than the actual  
9 assets. After the projected “flip date” when SDG&E ratepayers will have fully recovered from  
10 the project its investment plus SDG&E’s authorized rate of return (forecasted to occur at year  
11 10), the developer has the option to purchase 100% of the tax equity investor’s interest in the  
12 project. This joint ownership structure, which provides a continuing equity stake in the project  
13 for the merchant developer (NaturEner), offers several advantages to ratepayers that lower  
14 ratepayer risk versus a traditional UOG investment:

- 15 • **Reduction of Construction Risk:** The investment by the ratepayer is made only  
16 upon successful completion of the project. Therefore, ratepayers are shielded from  
17 the majority of construction risk. In a UOG investment, ratepayers bear the risk of  
18 project construction difficulties.
- 19 • **Preferred return:** In a typical UOG investment, ratepayers own the physical assets –  
20 and derive the benefits of their investment – over the entire useful life of the asset.

21 As more fully described in the testimony of Mr. Mofitakhar, the ratepayer investment  
22 has a significant similarity to debt in that ratepayers are repaid in full prior to the  
23 developer earning back the bulk of its investment of and on capital. This fact means

1 that (a) ratepayers are repaid primarily through a reduction in SDG&E's tax payments  
2 and through cash distributions after three years of operations during the early years of  
3 the project, which reduces their exposure to operational risk in the later life of the  
4 project, (b) the "first-in-line" repayment of ratepayers through receipt of tax benefits  
5 gives them a lower risk profile compared to the developer and (c) this ratepayer  
6 repayment, to the extent attributable to federal tax benefits, is less risky than  
7 depending entirely upon power purchase agreement or merchant revenues. The  
8 developer's return is much more heavily dependent upon null power revenues in the  
9 years after the ratepayers have received their preferred return. The higher quality of  
10 ratepayer benefits also creates a lower risk profile compared to the developer.

### 11 **III. RIM ROCK TRANSACTION AGREEMENTS**

12 The Rim Rock tax equity investment described in this Application consists of four  
13 principal agreements: (1) the Participation Agreement, including the project Base Case Model,  
14 which controls the conditions precedent to SDG&E's obligation to enter into a binding  
15 agreement to invest, including Commission approval of this Application, (2) the Equity Capital  
16 Contribution Agreement ("ECCA"), which governs the timing and amount of SDG&E's total  
17 investment, (3) the Limited Liability Company Agreement ("LLC Agreement"), which governs  
18 the relationship between the partners and the distribution of income, expenses, cash flows, PTCs  
19 and depreciation, and (4) the amended and restated Rim Rock PPA (the "Amended PPA"). The  
20 basic outline and function of each document is described below. The principal agreements each  
21 apply for a discrete period of time and in a set sequence. At the time of the filing of this  
22 Application, the Participation Agreement will have been executed and be in effect. The other  
23 agreements will be provided to the Commission in their current, substantially final but  
24 unexecuted form, as attachments to the Participation Agreement.

1           Upon satisfaction of the conditions precedent in the Participation Agreement for each of  
2 one or two project phases (which will be concurrent with Construction Financial Closing for  
3 such project phase), the parties will execute (1) an ECCA for such project phase, which will  
4 supersede the Participation Agreement for such project phase and will obligate SDG&E to make  
5 its equity contribution for such project phase upon satisfaction of the conditions therein, chiefly,  
6 the achievement of COD for that project phase, and (2) an Amended PPA for that project phase.  
7 Upon COD, the parties will execute an LLC Agreement for that project phase, which (along with  
8 the Amended PPA for that project phase) will govern their relationship from that point forward.  
9 If the project is constructed in two phases, this sequence will apply to the second project phase  
10 also.

11           Two other key documents that are part of the principal agreements are the project Base  
12 Case Model and the Pricing Addendum. The project Base Case Model is the project's financial  
13 model and an integral part of the Participation Agreement, ECCA and LLC Agreement and is  
14 further used to set the Green Attributes price in the Amended PPA. This Base Case Model is a  
15 detailed exposition of all financial elements of the project, including costs, revenues and tax  
16 benefits, and is included as an attachment to the Participation Agreement, the ECCA and LLC  
17 Agreement. The Base Case Model memorializes and incorporates into the project, among other  
18 things, the forecast pricing of the hedge positions for the null power and foreign currency, as  
19 well as the required developer and investor returns. The Base Case Model is described more  
20 fully in the testimony of Mr. Moftakhar, as it is used in setting the price of the Green Attributes.  
21 The Base Case Model provides a transparent method for calculating the market price for the  
22 Green Attributes; this price sets that difference between pricing of the energy and Green  
23 Attributes acquired by SDG&E and the price for the null power sold back to the project. While



1 some project revenues are set (null power prices are set by the forward curve, tax benefits by the  
2 tax code), the Green Attributes price is variable until the close of construction financing to  
3 ensure that the total project revenues cover costs.

4 Another key document related to the Base Case Model is the Pricing Addendum, which  
5 is an attachment to the Participation Agreement and the ECCA. The Pricing Addendum controls  
6 the timing and process for updating the costs and assumptions in the Base Case Model and  
7 describes how the Base Case Model is run to determine the Green Attributes price and the timing  
8 of the cash flips. The estimated project costs as of the Construction Financial Closing will  
9 determine the pricing of the Green Attributes in the Amended PPA (up to its price cap). The  
10 final project costs as of COD of a particular project phase will determine the amount of  
11 SDG&E's equity contribution (up to the investment cap). A more detailed discussion of the  
12 Pricing Addendum is contained in the discussion of the ECCA, below.

13 As illustrated by the chart, below, the project timeline calls for SDG&E to execute the  
14 Participation Agreement and file its applications with the Commission and the FERC in 2010  
15 and to commence additional due diligence. Assuming Commission approval in the first quarter  
16 of 2011 and satisfaction of due diligence, SDG&E and NaturEner would execute the ECCA,  
17 place the hedges for the null power, execute the Amended PPA, and run the Base Case Model to  
18 set the Green Attributes price. At the same time, NaturEner would close on its construction  
19 financing (made possible by the commitment of SDG&E to repay the construction lender at the  
20 time of commercial operations), and the project would be ready to begin construction. Assuming  
21 achievement of COD and satisfaction of SDG&E's other conditions precedent to funding in late  
22 2012, the Base Case Model would be run one last time to update the costs (with the Green  
23 Attributes price unchanged from the prior run), SDG&E would make its equity contribution, the



1 SDG&E's obligation to enter into the ECCA at the Construction Financial Closing of the project,  
2 under which SDG&E will be obligated to invest in the project upon completion, subject to  
3 satisfaction of conditions set forth in the ECCA.

4 Unless and until the conditions precedent in the Participation Agreement to entering into  
5 the binding ECCA are met, SDG&E has no obligation to make its commitment by execution of  
6 the ECCA, and hence, to make a tax equity investment in the project. Among the key conditions  
7 in the Participation Agreement are: (1) obtaining all required approvals (including the  
8 Commission's approval of this Application), (2) the execution of material contracts for the  
9 project and demonstrated ability of the counterparties under those material contracts to perform  
10 their obligations, (3) assurance that the schedule for completion of the plant will allow SDG&E  
11 to be eligible to claim the PTCs once the project is in service, (4) determining that no proceeding  
12 or action pending against the project, the NaturEner parties or any counterparty to a material  
13 contract threatens the viability of the project, (5) completion and placement in service of the  
14 Montana-Alberta Tie Line ("MATL"), (6) acceptable arrangements for the sale and hedging of  
15 the null power are in place, and (7) SDG&E satisfaction in all respects with the results of its due  
16 diligence review of the project, NaturEner and counterparties to material contracts. In order to  
17 protect ratepayers, the Participation Agreement gives SDG&E broad discretion to walk away  
18 from the investment if, during the course of due diligence, it discovers anything that poses an  
19 undue risk to SDG&E and/or its ratepayers.

20 The typical tax equity agreement by a bank investor in such a project would come much  
21 later in the project development cycle - typically near the close of construction financing. Due to  
22 the need to allow time for Commission consideration and approval of this investment, SDG&E  
23 and NaturEner are entering into the Participation Agreement at an earlier stage of the project,

1 where there are more uncertainties. However, with a broad ability to exit the transaction based  
2 upon its due diligence, risk to the utility and its ratepayers is mitigated. SDG&E will use the  
3 term of the Participation Agreement (approximately one year) to perform extensive due diligence  
4 on the project; while the early signing of the Participation Agreement leaves time for  
5 Commission deliberation, the Commission's approval is a critical path activity for the project.  
6 Therefore SDG&E is requesting approval no later than the last Commission meeting of March,  
7 2011.

8 **B. Equity Capital Contribution Agreement**

9 The form Equity Capital Contribution Agreement ("ECCA"), a complete copy of which  
10 is included in the Participation Agreement (Confidential Exhibit A to this testimony), sets forth  
11 the timing and terms of SDG&E's agreement to invest tax equity in the project, or if done in  
12 phases, each project phase.

13 **Cap on and Schedule for Investment(s).** Included in the Participation Agreement is a  
14 discussion of the schedule for making contributions to the project. The Rim Rock project may  
15 be completed in a single phase or multiple phases. In the event of multiple phases, there will be  
16 a separate ECCA for each phase with a separate investment date occurring on the COD for each  
17 phase. However, the sum of all investments will not exceed the ECCA's capital contribution cap  
18 of \$600 million, the maximum for which SDG&E will be authorized upon approval of this  
19 Application except in the case of the deficit restoration obligation described in the testimony of  
20 Mr. Moftakhar and Mr. Deremer.

21 **Conditions Precedent.** The ECCA contains a number of conditions precedent that must  
22 be met prior to SDG&E's capital contributions being due. These include: (1) the contribution  
23 by NaturEner of its required capital contribution amount, (2) achievement of CODs, (3) no  
24 material change in any governmental approvals, environmental approvals or permits that have

1 | been obtained, (4) no unpermitted liens against the project and (5) the financial model shall have  
2 | been updated, establishing that (a) the price for the Green Attributes price in the Amended PPA  
3 | does not exceed the cap, (b) the Investor Capital Contributions do not exceed the cap, and (c) the  
4 | required Investor return will be achieved. In addition to the conditions precedent found in the  
5 | ECCA currently, it is possible that additional conditions may be added as SDG&E completes its  
6 | due diligence.

7 |         **Pricing Addendum.** The Pricing Addendum is a guidebook describing the agreed  
8 | process for running the Base Case Model. It dictates the timing and process for updating the  
9 | Base Case Model in order to derive final project costs, the actual Green Attributes price to be  
10 | included in the final Amended PPA(s), the total investment amounts and the projected flip dates.  
11 | Initially, the Base Case Model was developed by inputting the *estimated* capital costs of the  
12 | project, projected operating and capital expenses, the projected revenues from the sale of null  
13 | power over the term of the Amended PPA and the required returns. Upon Construction Financial  
14 | Closing (for each project phase, if there is more than one phase), the Base Case Model will be  
15 | updated to include the then-estimated project costs, any known *actual* project costs, the financial  
16 | impacts caused by any changes to tariffs or permits that may affect project revenues or  
17 | operations, and any updated wind forecasts and forward price curves that could impact the  
18 | assumptions in, or outputs of, the Base Case Model.

19 |         At the point of this update at Construction Financial Closing, the resulting Green  
20 | Attributes price for the Amended PPA will be set by the Base Case Model, subject to the Green  
21 | Attributes price cap. Once determined at Construction Financial Closing, the Green Attributes  
22 | price will no longer be subject to modification. The amount of SDG&E's equity investment will  
23 | be preliminarily determined at Construction Financial Closing, and the amount of SDG&E's

1 initial equity investment will be finally determined at Capital Contribution Closing, but still  
2 subject to the \$600 million cap. If the *actual* project costs turn out to be less than the estimates  
3 provided at Construction Financial Closing, then SDG&E's investment amount will decrease; [REDACTED]  
4 [REDACTED], then SDG&E's investment will account  
5 for up to 79.99% of those increased costs, subject to the cap. If project costs have increased [REDACTED]  
6 [REDACTED], NaturEner's equity contribution will be increased to cover  
7 those costs, and SDG&E's contribution will not increase.

8 By SDG&E calculating and making the final investment only upon achievement of the  
9 COD, and by including a cap on total investment, ratepayers are well insulated from the majority  
10 of all construction risk. [REDACTED]

11 [REDACTED]  
12 [REDACTED]

13 **Offtake Agreements and Hedge Transaction.** Another important element in assuring  
14 the project financial viability and protecting ratepayer repayment is the price of null power sold  
15 by the project company. Because ratepayers are repaid from a variety of revenue sources (see  
16 the testimony of Mr. Moftakhar), including revenue from null power sales, it is important that the  
17 price on those sales be as stable as possible during the 10-year ratepayer repayment period. The  
18 project company will fix a large percentage of the first ten years of power sales through either  
19 indexed physical power sales combined with a financial hedge, or a fixed price power sale  
20 arrangement. It is too early in the project development cycle for these large financial  
21 commitments to be put in place.

22 When the financial hedge (or fixed price "null" power sale) is put in place to provide  
23 assurance of revenues to repay ratepayers, that fixed price arrangement is likely to require some

1 provision of collateral. The project company may seek a variety of different hedges or sale  
2 arrangements and the required form and amount of collateral to support these arrangements is  
3 unknown at this time. The project company may provide some collateral in the form of a Letter  
4 of Credit or some other provisions. In addition, it is possible that SDG&E could use an  
5 offsetting transaction in a netting arrangement that would reduce or eliminate the collateral  
6 required in the project company's sales arrangements and/or hedges. The contemplated  
7 transaction, to be used in this netting arrangement, could be an offsetting fixed price financial or  
8 physical power swap placed by SDG&E on behalf of its ratepayers with the null power purchaser  
9 or the hedge provider. These backstop hedges are consistent with SDG&E's existing risk  
10 management strategy contained in its Commission-approved LTPP except that it is for a longer  
11 term than current approvals allow. Therefore, SDG&E asks that the Commission approve in this  
12 Application a change to its LTPP to allow SDG&E to enter into such a transaction (one that both  
13 serves the purposes in SDG&E Commission-approved LTPP risk strategy and also is effective in  
14 reducing or eliminating collateral requirements of the project company) for a ten-year term rather  
15 than the five-year limit in the current LTPP. If the final hedging structure is put in place prior to  
16 a Commission decision, SDG&E will update the Commission on the arrangements prior to  
17 approval.

### 18 **C. Limited Liability Company Agreement**

19 The form LLC Agreement, a complete copy of which is included in the Participation  
20 Agreement (Confidential Exhibit A to this testimony), is a contract between NaturEner and  
21 SDG&E governing the ownership and management of the various project companies that will  
22 own and operate the project assets (or if done in phases, the assets of the particular project  
23 phase). The contract outlines the ownership and governance, capital contributions to be made by  
24 each party and the allocation of project benefits amongst the owners, the manner in which the

1 project holding company and the project company will be managed and the rights and  
2 obligations of NaturEner and SDG&E, respectively.

3 **Ownership and Governance.** The project holding company is owned through 2,000  
4 membership interests, divided into 1,000 Class A interests and 1,000 Class B interests.  
5 NaturEner will own 100% of the Class A membership interests. In return for the tax equity  
6 investment made by SDG&E, SDG&E will own 100% of the Class B membership interests. For  
7 governance purposes, each Class A membership interest will be entitled to three votes, and each  
8 Class B membership interest will have one vote. Matters voted on by the members are required  
9 to pass with a 50% vote, except for matters identified as Major Decisions, which require an  
10 eighty percent (80%) supermajority of votes. In this way, NaturEner, the managing member,  
11 will make decisions on the day-to-day business while any Major Decisions will require  
12 SDG&E's consent and approval.

13 The LLC Agreement outlines procedures and bounds surrounding dissolution and transfer  
14 of membership interests. Also included is a right for NaturEner to purchase SDG&E's  
15 membership interest after the projected "flip date" around year 10 (when the PTCs and  
16 accelerated depreciation have been fully monetized) at a fair market value. If NaturEner decides  
17 to pursue that option, the parties will work together to determine a fair market value and to  
18 obtain any required approvals, including approval of the Commission under Section 851 of the  
19 Public Utilities Code.

20 **Capital Contributions and Allocations.** The LLC Agreement describes the investments  
21 to be made by each member along with the ongoing maintenance of the capital accounts. It is  
22 anticipated that the majority of the SDG&E investment will be placed into its capital account at  
23 COD of the first project phase sometime in late 2012. Pursuant to a second LLC Agreement for



1 a second project phase, if any, an additional capital contribution by SDG&E may be made at  
2 COD of such second project phase up to an amount that will not exceed its cap on capital  
3 contributions. In exchange for this capital contribution, SDG&E will own 100% of the Class B  
4 membership interests. The SDG&E investment, combined with NaturEner's equity contribution  
5 to the project, will be used to repay the project construction loan and transaction expenses paid  
6 by the NaturEner parties to the project during development and construction, and pay a  
7 development fee to NaturEner for its services in connection with development of the project.

8 The LLC Agreement also outlines the allocation between the partners of the LLC's  
9 income, losses, gains, deductions and credits for each tax year. This allocation is a fundamental  
10 element of the tax flip structure described by Mr. Mofakhar and illustrated in the project Base  
11 Case Model (included in Confidential Exhibit A).

12 **Rights and Obligations.** The LLC Agreement contemplates that NaturEner will be the  
13 managing partner in the project. The project contemplates entering into a Management Services  
14 Agreement with Naturener as the manager with broad oversight over the day-to-day operations,  
15 bookkeeping and other management of the facility and of the partnership. However, SDG&E  
16 maintains approval rights over Major Decisions affecting the project, which are defined in the  
17 LLC Agreement. NaturEner is also obligated to provide prompt notice to SDG&E in the event  
18 of certain material events, such as the initiation of enforcement or other regulatory actions or  
19 litigation, or a known material release of hazardous substances. SDG&E also has the right to  
20 step in and take certain actions to protect its investment in the event that NaturEner fails to act  
21 under certain circumstances. If NaturEner becomes bankrupt or insolvent, that would not in and  
22 of itself dissolve the company, so that SDG&E's rights to PTCs, depreciation and partnership  
23 distributions would be preserved. Other rights and obligations of the members provided for in

1 the LLC Agreement include rules regarding partnership meetings, withdrawal rights, transfers of  
2 membership interests, liability of members, limited circumstances for withdrawal of capital and  
3 member representations, warranties and covenants.

#### 4 **D. Amended PPA**

5 This Application for approval for SDG&E's ratepayers to invest in tax equity financing  
6 for Rim Rock incorporates an amendment to the Commission-approved PPA for energy and  
7 Green Attributes from the project that was approved in Resolution E-4277. A complete copy of  
8 the proposed Amended PPA is included in the Participation Agreement (Confidential Exhibit A  
9 to this testimony). The original PPA was negotiated and executed without regard to any  
10 potential tax investment by SDG&E. In fact, that agreement binds SDG&E and NaturEner Rim  
11 Rock Wind Energy, LLC to transact for the power and Green Attributes of the project regardless  
12 of the Commission's decision on this Application, thus demonstrating the importance of this  
13 PPA as a stand-alone, arms-length transaction.

14 Nevertheless, as part of this Application, SDG&E requests five modifications to the  
15 original PPA, each of which is described below. They are: (1) changing the term of the PPA  
16 from 15 years to 20 years, (2) an adjustment to the Green Attributes pricing structure from fixed  
17 price to cost based, (3) flexibility regarding the project phasing, (4) changes to the COD and  
18 project development milestones and (5) changing the name of the counterparty of the Amended  
19 PPA to each of the Project Companies for each phase of the project.

#### 20 **1. Extension of the PPA Term**

21 SDG&E and NaturEner have agreed (subject to the Commission's approval) to amend the  
22 original PPA term of 15 years to a term of 20 years. This extension is beneficial in that it allows  
23 the project to contribute significantly more RPS-eligible energy to SDG&E. Also, under the 20-  
24 year project Base Case Model and flip structure that is integral to the LLC Agreement, the term

1 extension better reflects the assumptions made when this transaction was negotiated. NaturEner  
2 will recoup a portion of its investment in years one to three, but will not have the opportunity to  
3 earn the bulk of its return until the after the ten-year period in which ratepayer and SDG&E  
4 returns are first in line. Continuing the Amended PPA for a term that is equal to the term of the  
5 economic assumptions allows for the developer to have a fair chance of achieving its portion of  
6 the economic bargain negotiated between the parties in this transaction.

## 7 **2. Adjustment to Green Attributes pricing**

8 SDG&E's role as an investor gives it – and thus the Commission – complete transparency  
9 into the financial details of the Rim Rock transaction. This transparency represents unparalleled  
10 access to the actual costs behind a PPA. The Commission in E-4150 (April 10, 2008) provided  
11 guidance regarding the standards by which it will evaluate proposed pricing amendments of  
12 already-approved PPAs. That guidance states that:

13 A project requesting a price amendment will only be considered if  
14 it is compared with bids in the recent RPS solicitation, and the  
15 request is filed with extensive documentation in the forms of  
16 balance of plan [sic], cash flow and shadow models, and detailed  
17 documentation (from manufacturer and/or developer) clearly  
18 showing the reasoning for the increase.  
19

20 This requirement is satisfied here because SDG&E has provided the required analysis comparing  
21 the Amended PPA to offers received in its 2009 RPS solicitation (and recent bilaterally  
22 negotiated contracts) and also provided the Base Case Model and the Pricing Addendum, which  
23 together provide a complete picture of the balance of plant, cash flow and other financial  
24 information for the project.

25 **Comparison with most recent RPS solicitation.** SDG&E's tax equity investment will  
26 modify the calculation of the price of Green Attributes in the Amended PPA. Currently, these  
27 Green Attributes are at a fixed price; that is, under the current PPA, the cost of both the bundled

1 power that SDG&E purchases and the power it sells back to the project is fixed, and thus the cost  
2 of Green Attributes are fixed as the difference in price between the purchase and sale price for  
3 power.

4 The proposed amendment would change the pricing structure from its current fixed price  
5 to a price based upon actual costs and forecast forward prices at the time of construction  
6 financing plus a return, but subject to an absolute cap. This structure is consistent with the  
7 Commission's guidance on contract re-pricings. SDG&E has previously employed this type of  
8 pricing submitted to the Commission for approval. [REDACTED]

9 [REDACTED] The final Green Attributes price in the  
10 Amended PPA, when determined by the Base Case Model at Construction Financial Closing,  
11 could be either higher or lower than the current PPA price, but will in no instance exceed the cap.  
12 See the "Pricing Addendum" section above for a detailed description of this process.

13 As shown in Confidential Exhibit B, SDG&E has analyzed the Amended PPA according  
14 to the Least Cost Best Fit ("LCBF") principles using two different analytical methodologies to  
15 compare the Amended PPA price cap to the prices of the projects that were shortlisted in  
16 SDG&E's most recent RPS solicitation and recent bilateral transactions. Because the final Green  
17 Attributes price will float until Construction Financial Closing, SDG&E has conducted each  
18 analysis assuming a Green Attributes price set both at the current projected Green Attributes  
19 pricing and also at the cap, so that the comparisons reflect the expected and the highest-priced  
20 scenario.

21 Under the first methodology, SDG&E has constructed a "synthetic" bundled price for the  
22 Rim Rock power based on the Green Attributes price with an added cost for resource adequacy

1 and variable costs based on the projected costs for the El Dorado generating plant, the probable  
2 source for the energy used to firm and shape deliveries for the Rim Rock Green Attributes.

3 Under the second methodology, SDG&E started with a bundled price for renewable  
4 power and subtracted various contract attributes such as capacity and energy values and was left  
5 with an implied value of the Green Attributes embedded in the bundled contract prices.

6 As shown in Confidential Exhibit B, under each methodology, the proposed cap price on  
7 Green Attributes resulting from the Base Case Model, its currently forecasted costs, is  
8 competitive with the LCBF ranking prices of the shortlisted bids and recent SDG&E bilateral  
9 transactions, meaning that the project would have been shortlisted if it had been offered into the  
10 most recent solicitation at the proposed cap price. This is true even at the maximum price (the  
11 cap), so the Commission can have assurance that any Green Attributes price up to the cap is  
12 reasonable in comparison with SDG&E's most recent offers. Accordingly, the Commission  
13 should find that use of the Base Case Model and Pricing Addendum to determine the Green  
14 Attributes price is reasonable so long as the price does not exceed the cap. The cap allows the  
15 Commission to approve the Amended PPA even at this early point in the project development.

16 Commission approval of this cap prior to final costs being known is important because  
17 Commission approval must come early in the project development cycle when not all costs are  
18 known. For instance, it is not possible to obtain construction financing prior to Commission  
19 approval. However, the cost of the financing in that loan cannot be so high as to exceed the  
20 Commission-approved price cap. The actual cost of that financing (and all other floating price  
21 variables) will be what is incorporated into the Green Attributes price to be used during the term  
22 of the PPA.

1            **Documentation of the Reasoning for the Price Increase.** The other requirement for the  
2 Commission’s approval is to provide detailed documentation clearly showing the reason why the  
3 price has increased. That information is contained in the Base Case Model and in Confidential  
4 Exhibit B.

5            **Green Attributes Price Established at Construction Financial Close.** As was recently  
6 recognized in the pricing amendment for the NaturEner Glacier 2 PPA, there are elements of  
7 project cost which cannot be fixed until greater certainty of the project moving forward is  
8 achieved, most likely at construction financial close. In the case of the Rim Rock project, some  
9 project costs are largely known, since the turbine price, the major cost element, is subject to  
10 pricing which can be forecast from terms contained in the negotiated turbine supply agreement.  
11 The remaining plant costs are not yet fixed, but are not seen as particularly volatile.

12            SDG&E is entering this deal earlier than is typical for an investor in order to give the  
13 Commission time to review and approve the arrangement. At this stage, it is not possible to  
14 establish a final price because all project items have not been finalized. One of the largest items  
15 that remains unknown is [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED] The

22 final price for the Green Attributes in the Base Case Model cannot be calculated until these items  
23 are known.

1           When the project closes on its construction loan, approximately one year after this filing  
2 is made, the parties will know much more about what actual project costs will be. At that point,  
3 the parties will update the Base Case Model and the Green Attributes Price will be set by  
4 following the procedure in the Pricing Addendum. After final pricing has been determined by  
5 the Base Case Model, SDG&E commits that it will file a compliance Advice Letter (Tier 1)  
6 advising the Commission of the final Green Attributes price. If at any point in time prior to or at  
7 the final price setting at the time of construction financing the Base Case Model determines that  
8 the price for the Green Attributes will exceed the cap, NaturEner [REDACTED]  
9 [REDACTED]  
10 [REDACTED] SDG&E will not agree to a price that exceeds the cap.

11           The setting of the Green Attributes price by use of the Base Case Model allows SDG&E,  
12 with Commission approval, to enter into this potential investment at a relatively early stage of  
13 the project's development, allowing development to move forward while protecting ratepayers  
14 from unbounded risk through the use of a cap on the Green Attribute costs. It is expected that  
15 within approximately three months of the Commission's approval of this Application, the project  
16 will have finalized engineering, procurement and construction ("EPC") costs [REDACTED]

17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED] SDG&E supports this cost-plus return approach to pricing  
20 both qualitatively and quantitatively, and has used this approach in other PPAs submitted to the  
21 Commission for approval.

22           Qualitatively, SDG&E believes that the cost-plus fixed-return formula that guides cost  
23 setting in this Amended PPA should increase the Commission's confidence in the reasonableness

1 of the pricing by providing complete transparency into the costs behind the Amended PPA. The  
2 Commission will have full view into the project economics with the ability to see the Base Case  
3 Model and related supporting documentation.

4 SDG&E therefore requests that the Commission find that it has met its burden to justify  
5 the change from fixed-pricing to cost-plus return pricing for the Amended PPA, and approve  
6 both the Amended PPA and the use of the Pricing Addendum and Base Case Model for  
7 determining the final Green Attributes price. Approval of this process based on the timing of  
8 SDG&E's submission of this Application in relation to project development, the timing of  
9 SDG&E's tax equity investment, and the need to preserve the ratepayer protections (eligibility  
10 for PTCs and accelerated depreciation, project cash flows used to offset revenue requirement,  
11 addition of the project to SDG&E's RPS portfolio) is justified by the documentation provided  
12 and the Commission's ability to maintain full visibility into the project costs behind the pricing  
13 in the Amended PPA.

14 SDG&E's request for approval of the Amended PPA also is supported by the  
15 Independent Evaluator's report, attached to this testimony as Exhibit C.

### 16 **3. Flexibility Regarding Project Phasing**

17 An important condition precedent to the project moving forward is the placement in  
18 service of the Montana-Alberta Transmission Line ("MATL") and the amount of transfer  
19 capability that will be available. Another important consideration is the timing of the required  
20 approvals (including the Commission's consideration of this Application) and the expiration of  
21 the availability of PTCs. To deal with these unknowns, SDG&E and NaturEner have  
22 contemplated that the project may be built in phases subject to certain limits, so that the full  
23 output can be delivered and so that the PTCs can be monetized. Without this flexibility, the  
24 economics of the project are more uncertain and ratepayer benefits could be lessened.



1 As structured, the Participation Agreement (and all other project documents, including  
2 the Amended PPA) allow for phasing by updating the Base Case Model in accordance with the  
3 Pricing Addendum for each phase of the project on a stand-alone basis, but subject to the overall  
4 cap on total investment and with the Green Attributes price cap applying to each phase. So, at  
5 Construction Financial Closing of the first phase, the Base Case Model will be updated and the  
6 Green Attributes price for that phase of the project will be set based on the costs for that phase.  
7 When Construction Financial Closing of the next phase occurs, the Base Case Model will be  
8 updated with the costs for that phase, the Green Attributes price for the PPA applicable to that  
9 phase will be calculated, and SDG&E's total contribution, subject to the cap, will also be  
10 calculated.

11 In no case will SDG&E's initial aggregate investment in all phases exceed \$600 million  
12 (except in the possible case of SDG&E's deficit restoration obligation as described by Mr.  
13 Moftakhar and Mr. Deremer), and in no case will the Green Attributes price for any project  
14 phase exceed the Green Attributes price cap. Accordingly, SDG&E requests that the  
15 Commission approve the PPA changes that affect project size and phasing.

#### 16 **4. Adjustments to Commercial Operations Date**

17 The fourth major amendment to the PPA that is required by this Application is  
18 adjustment of the project development milestones and the COD. The currently-approved PPA  
19 has a guaranteed COD of December 31, 2010, [REDACTED]

20 [REDACTED]  
21 The updated COD is designed to take into account the passage of time since the original  
22 approval, the time required for Commission approval of this Application, the current in-service  
23 deadline for projects requesting PTCs and the seasonal construction window available in  
24 Montana.

1           The critical date for achieving a COD in 2012 is the date upon which a NTP is issued to  
2 the EPC contractor. The project NTP must be issued by July 1, 2011 to allow completion in time  
3 for 2012 deliveries. In order to issue the NTP, the following must have occurred: (1)  
4 Commission approval of this Application; (2) financial close of construction financing; and (3)  
5 issuance of a NTP for the MATL on a schedule that allows the line to be in service at the time  
6 that Rim Rock is commissioning turbines. The existing Rim Rock PPA was approved on  
7 November 20, 2009. Approval of this Application by the end of March, 2011 will allow for the  
8 Construction Financial Closing to occur shortly thereafter. The timing of the NTP for the MATL  
9 project is outside of the control of this Commission, SDG&E and/or NaturEner. However, the  
10 current outlook is positive. MATL has secured construction funding through federal stimulus  
11 dollars administered by the Western Area Power Administration, and all legal appeals to project  
12 permits have been exhausted. That leaves Commission approval of this application as the critical  
13 path approval.

14           To make a 2012 COD a possibility, the Commission must issue a final decision on this  
15 Application at its last meeting in March, 2011 so that the decision is non-appealable by May 1,  
16 2011. If that approval is not achieved, then the project may not be able to construct some or all  
17 of its turbines by the end of 2012, which is the date required for PTC eligibility. The COD of all  
18 project phases will be prior to the expiration of PTCs at the end of 2012.

19           **Development Milestone Changes.** In recognition of the new COD, this Application  
20 seeks to modify the PPA milestones as outlined in the PPA.

#### 21           **5.       Different Counterparties to the Amended PPA**

22           The fifth major amendment to the current PPA that is required by this Application is the  
23 change in counterparties to the Amended PPA. The original counterparty to the current PPA is  
24 Naturener Rim Rock Wind Energy, LLC. Because the project will most likely be developed in

1 phases, there will be different project companies as counterparties to each Amended PPA. Even  
2 if the project is developed in one project phase, a new project company will be formed to hold  
3 the project assets and to contract with SDG&E under the Amended PPA.

#### 4 **IV. APPROVAL OF STAND-ALONE PPA**

5 While SDG&E considers this tax equity investment to be in the best interest of  
6 ratepayers, should the Commission decide against such an investment, SDG&E requests that the  
7 Amended PPA(s) be approved on its own; that is, without an SDG&E tax equity investment.

8 Although it is unlikely, based upon conditions in today's financing market, that the cost-based  
9 pricing will produce a viable PPA price - one that is less than the specified Green Attributes  
10 price cap - if a non-utility investor is involved, it is important to the RPS goals of the State that  
11 the project be allowed to try to find alternate financing.

12 SDG&E believes that the financial information and documentation provided in support of  
13 this Application satisfies the Commission's requirements for a re-pricing of the PPA on a stand-  
14 alone basis at or below the level of the cap. Therefore, SDG&E requests that, if the Commission  
15 determines not to approve SDG&E's proposal to make the tax equity investment, it nevertheless  
16 approve the Amended PPA at the pricing set forth in Confidential Exhibit A. Importantly,  
17 approving the Amended PPA(s) regardless of whether the tax equity investment is approved: (1)  
18 demonstrates that the Amended PPA is an arms-length transaction by SDG&E since it proposes  
19 to go forward even if it is not an investor and (2) shows the importance of the Rim Rock project  
20 in meeting SDG&E's RPS goals, and (3) means that ratepayers will benefit from a PPA that is  
21 subject to a reasonable price cap. The Amended PPA price, which is forecast in today's  
22 financing environment to be higher absent SDG&E's tax equity investment, will still be in the  
23 public interest.

1           The Amended PPA(s) would continue to be priced based upon the Base Case Model and  
2 Pricing Addendum, but would now contain a financing input that is likely to be at a higher cost  
3 than the 7.36% after-tax return that would be earned by SDG&E. If the resulting Green  
4 Attributes price remains within the cap, although it is higher than the Green Attributes price with  
5 SDG&E as the tax equity investor, the Amended PPA(s) would go forward. Approval of either  
6 the tax equity investment or of the stand-alone Amended PPA(s) will allow the project to go  
7 forward and supply much needed renewable energy for SDG&E ratepayers.

#### 8 **V. DUE DILIGENCE**

9           Due to the need to allow sufficient time for Commission approval of this Application,  
10 SDG&E is entering into these agreements earlier in the project development cycle than a typical  
11 bank investor would. As a result, SDG&E's due diligence with respect to NaturEner and the  
12 project are ongoing. During the pendency of this Application, SDG&E will continue to exercise  
13 due diligence with respect to the representations of the NaturEner parties and the potential  
14 liabilities associated with environmental issues, financial status and reporting, construction,  
15 financing, EPC and O&M contracts, the status of permitting for the project, and all other matters  
16 for which due diligence is required. Per the Participation Agreement, satisfactory completion of  
17 due diligence is a necessary condition precedent to the consummation of the deal. Even if the  
18 necessary regulatory approvals are obtained, SDG&E will not move forward if due diligence is  
19 not satisfied. This requirement provides strong protection for ratepayers by preventing the  
20 consummation of a deal that is not in their interest.

#### 21 **VI. AFFILIATE ISSUES**

22           The parties anticipate that if SDG&E ultimately makes its proposed tax equity investment  
23 in the project (after CPUC approval of this application and after all of the conditions precedent  
24 have been met, including commercial operation of the project), the Rim Rock project companies

1 likely would be considered affiliates of SDG&E, within the Commission’s affiliate transaction  
2 rules. In light of this, SDG&E and NaturEner have conducted their negotiations for this  
3 proposed transaction at arms length and SDG&E retained an Independent Evaluator to monitor  
4 the negotiations between SDG&E and NaturEner when investment discussions began in earnest.  
5 The Independent Evaluator’s Report (both public and confidential versions) is included as  
6 Confidential Exhibit C to this testimony.

7           When the project goes into commercial operations, SDG&E will have no role in the  
8 project’s day-to-day operations. SDG&E will have the right, however, to participate in Major  
9 Decisions impacting the project. These Major Decisions are identified in the LLC Agreement  
10 between SDG&E and the project. When participating in discussions with the project company  
11 regarding Major Decisions, SDG&E will convey no non-public utility information to the project  
12 company (any information flows will be the other way – from the project company to SDG&E).  
13 Moreover, preserving SDG&E’s right to participate in these Major Decisions will benefit  
14 ratepayers by providing SDG&E with an opportunity to further protect its interests in the project.

15           The following sections further describe how the project company, NaturEner and  
16 SDG&E may be impacted by the affiliate relationship.

17           **A.     SDG&E’s Financial Investment**

18           Public Utilities Code Section 701.5 prohibits a regulated utility such as SDG&E from,  
19 among other things, issuing any debt instruments or pledging its credit on behalf of an affiliate,  
20 subject to certain exceptions. Among those exceptions is subdivision (c), which allows for such  
21 activity:

22                     For or on behalf of a subsidiary or affiliate if it engages in  
23 activities which support the electric, gas, or telephone corporation  
24 in its operations or service, these activities are, or will be,  
25 regulated either by the commission or a comparable federal  
26 agency, and the issuance of the bond, note, lien, guarantee, or

1                   indebtedness is specifically approved in advance by the  
2                   commission.  
3

4   As discussed elsewhere in my testimony, it is possible that SDG&E may be called upon to  
5   provide credit support to hedge the price of null power. If that were to be the case, subdivision  
6   (c) ought to apply because (1) the project company is engaged in selling RPS-eligible energy to  
7   SDG&E, which supports SDG&E's operations and service by helping SDG&E fulfill its RPS  
8   obligations at a reasonable cost, (2) Rim Rock's wholesale power sales at market-based rates are  
9   subject to regulation by the FERC, a comparable federal agency and (3) SDG&E is requesting  
10   this Commission's advance approval for the transaction. Accordingly, the Commission should  
11   find that the requirements of Section 701.5 are satisfied and allow SDG&E to participate in the  
12   Rim Rock project.

13               In order to approve the investment, the Commission also must find that "the proposed  
14   financing will benefit the interests of the utility and its ratepayers." That test also is clearly met  
15   here because ratepayers will benefit from lower pricing for the RPS-eligible energy because of  
16   SDG&E's lower financing costs (see analysis in Confidential Exhibit B) and the reductions to  
17   the rate-based revenue requirement from the PTCs, accelerated depreciation and partnership  
18   income. SDG&E will benefit from the lower priced RPS-eligible energy and the enhanced  
19   viability of the project, as well as from the opportunity to earn a return on the ratebase  
20   investment. While there may be an arguable risk to both SDG&E and its ratepayers related to  
21   operational difficulties, that risk is mitigated by the transaction structure (as described in this  
22   testimony and the testimony of Mr. Mofakhar) and limited to the value of SDG&E's \$600  
23   million investment (plus the possible deficit restoration obligation described by Mr. Mofakhar).  
24   In addition, SDG&E's obligation to invest is conditioned upon the project achieving COD, thus  
25   SDG&E and its ratepayers bear very limited construction risk.

1           **B.     CPUC Affiliate Transaction Rules**

2           As described above, SDG&E and the Rim Rock project companies likely will be  
3 considered affiliates after SDG&E makes its proposed tax equity investment. As such, the  
4 relationship would be governed by the Commission’s Affiliate Transaction Rules. SDG&E  
5 commits to compliance with the rules and acknowledges the Commission’s oversight role in  
6 monitoring that compliance.

7           **C.     FERC Affiliate Rules**

8           SDG&E and NaturEner are committed to obtaining all FERC approvals as necessary and  
9 complying with all applicable affiliate compliance rules.

10       **VII.   CONFIDENTIALITY**

11           In its decisions adopted in docket R.05-06-040, the Commission has set forth a  
12 comprehensive system of protection for categories of information that are deemed to be  
13 confidential, proprietary, or otherwise deserving of protection from disclosure. Accordingly,  
14 SDG&E requests that the Commission grant confidential treatment to certain information in this  
15 Application in accordance with the attached Declaration of Ms. Uyen Nguyen (Exhibit D to this  
16 testimony). To be clear, SDG&E does not object to the disclosure of the capacity, energy, timing  
17 and pricing contained in the Amended PPA as contemplated in the Matrix. However, the  
18 underlying project costs (Base Case Model information) - including the major capital items such  
19 as wind turbines, land costs, hedged prices for null power, and forward pricing curves for null  
20 power - are all commercially sensitive, highly confidential proprietary information (with some  
21 subject to non-disclosure agreements) that should not be disclosed other than on a protected basis  
22 to non-market participants.

1 Any confidential information not protected by the Matrix should be protected under  
2 Public Utilities Code Section 583, General Order 66-C, and other provisions of California law  
3 that protect such information.

4 This issue extends beyond the instant Application. As stated above, SDG&E may  
5 consider future such investments and the Commission's actions in this proceeding regarding such  
6 confidential information are required to ensure that ratepayers are not harmed (1) in those future  
7 negotiations through release of the confidential terms to future counterparties (other developers),  
8 (2) by the chilling effect that disclosure of the counterparties' (other developers') proprietary  
9 information would have on those parties willingness to enter into such arrangement.

10 Finally, to the extent that the tax equity investment subsequently causes SDG&E and the  
11 Rim Rock companies to become affiliates, SDG&E requests that certain cost information remain  
12 confidential as described in the declarations attached to my testimony and the testimony of other  
13 SDG&E witnesses.

### 14 **III. SCHEDULE FOR COMMISSION APPROVAL**

15 SDG&E respectfully requests that the Commission approve its Application expeditiously  
16 due to the time sensitive nature of this project.

17 First, in order to be eligible for PTCs, the project currently must achieve COD no later  
18 than December 31, 2012. In order to achieve that COD, the project must have its Construction  
19 Financial Closing by June 1, 2011. In order to close by that date, the Commission would need to  
20 issue a decision approving the Application no later than the last business meeting of March,  
21 2011. During the period between the filing of this Application and the requested decision,  
22 SDG&E will continue to engage in due diligence, so that the ECCA can be executed upon  
23 approval and NaturEner can arrange for construction financing. The availability of PTCs is a



1 critical part of the economics of the project, and the loss of them would be a severe financial  
2 setback.

3 Secondly, certain supply agreements contain better pricing if arrangements are firmly in  
4 place in the early part of 2011. While not included in SDG&E's base case presented for price  
5 benchmarking, this potential reduction in the cost of equipment would reduce the forecast costs  
6 that are presented and is only available if the Commission grants a decision in a timeframe  
7 consistent with SDG&E's request. A delayed Commission approval would eliminate this price  
8 discount.

9 Accordingly, SDG&E requests approval of the Application in its entirety no later than the  
10 last Commission meeting in March, 2011.

## 11 **IX. EXHIBITS**

12 The following Exhibits are provided with this Application in support of my direct  
13 testimony.

14 Exhibit A - CONFIDENTIAL Participation Agreement (including the Pricing  
15 Addendum, the Base Case Model, the form Equity Capital Contribution  
16 Agreement, the form Limited Liability Company Agreement, the form  
17 Company Management Services Agreement and the proposed Amended  
18 Rim Rock PPA)

19 Exhibit B - CONFIDENTIAL Comparison of the Amended PPA to Shortlisted  
20 Projects in SDG&E's Most Recent Solicitation

21 Exhibit C - CONFIDENTIAL Report of the Independent Evaluator

22 Exhibit D – Declaration of Uyen Nguyen Regarding Confidentiality of Certain Data

23 This concludes my prepared direct testimony.

1 **X. STATEMENT OF QUALIFICATIONS**

2 My name is Mike McClenahan. My business address is 8306 Century Park Court, San  
3 Diego, California, 92123-1593. I am employed by SDG&E as Director, Procurement and  
4 Portfolio Design. My responsibilities include long-term procurement, incorporating regulatory  
5 and policy issues into commercial transactions, and portfolio planning. I joined the Electric and  
6 Fuel Procurement group in September 2002.

7 I received my Bachelor's Degree in Industrial Technology from the California Maritime  
8 Academy. My career in electricity has spanned a broad range of functional areas – generation  
9 operations, power system control and transmission operations, system resource planning (real-  
10 time to two year time horizon), commercial operation (trading and risk management), market  
11 analysis, business development and market design/regulatory efforts in all major U.S. markets  
12 and several Asian markets. I have worked in both regulated (SDG&E and PG&E) and  
13 unregulated (Mirant) energy companies as well as for a market service provider (Automated  
14 Power Exchange).

# Exhibit A

[The entire Exhibit A is not included in the Public Version]

# Exhibit B

**CONFIDENTIAL EXHIBIT OF APPLICATION**

**PROTECTED INFORMATION WITHIN EXHIBIT TO THE APPLICATION IS IDENTIFIED WITH COLOR FONTS AND CATEGORIZED IN ACCORDANCE WITH THE CONFIDENTIALITY CODE SHOWN BELOW:**

**CONFIDENTIALITY KEY**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

## **CONFIDENTIAL EXHIBIT B**

### **CONSISTENCY WITH COMMISSION DECISIONS AND RULES AND PROJECT DEVELOPMENT STATUS**

This Confidential Exhibit

1. Provides, where appropriate, confidential information necessary to fully answer any items in the public section of the Application.
2. Provide answers to the additional items included in this Exhibit. To the extent such information is not confidential, it is included in the public version of the Application.

## CONSISTENCY WITH COMMISSION DECISIONS AND RULES

### A. RPS PROCUREMENT PLAN

The Proposed Amendment to the existing Power Purchase Agreement (PPA) conforms to SDG&E's most recent Commission-approved RPS procurement plan by delivering Green Attributes that fill a portion of SDG&E's RPS net short position. The project complies with RPS program requirements, meets the portfolio needs outlined by the 2009 RPS Plan and, as demonstrated below, is competitive when compared to the most recent RFO offers.

This proposed Amended and Restated PPA is a product of bilateral negotiations between NaturEner and SDG&E. Rim Rock represents SDG&E's largest renewable resource and provides an opportunity for near-term RPS compliance beginning as early as late 2012. [REDACTED]

[REDACTED]

[REDACTED]

### B. BILATERALS

Competitive RFOs are not the only means of procurement. SDG&E's ability to consider bilateral offers widens the scope of resources available to SDG&E. The WECC has a well-established, liquid bilateral market and SDG&E, for the benefit of its ratepayers, can make full use of this valuable source of renewable supply. Not only is the bilateral market an important tool for procurement, it is available year-round. RPS RFOs, by contrast, are an annual "batch-processing" approach to commercial arrangements. The Commission approved SDG&E's 2009 RPS Plan, which included provisions for bilateral renewable contracting.

In D.06-10-019, the Commission concluded that bilateral contracts used for RPS compliance must be submitted for approval and, while not subject to the MPR, must contain pricing that is "reasonable."<sup>1</sup> On June 19, 2009, the Commission issued D.09-06-050 establishing price benchmarks and contract review processes for very short term (less than four years), moderately short term (at least 4 years, but less than 10 years) and bilateral RPS contracts. Below, SDG&E reviews the Least Cost Best Fit evaluation used in the 2009 RPS RFO. The same analysis was performed on this Proposed Amendment, which was negotiated bilaterally,

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<sup>1</sup> D.06-10-019, mimeo, p. 31

and the results were compared to the shortlist developed in that RFO as well as other recent bilateral opportunities agreements by SDG&E.

Impetus for the renegotiation stemmed from the parties understanding that obtaining the required project financing under NaturEner Rim Rock's existing tax equity structure would be extremely difficult, given the collapse of the tax equity market and the collapse of the forward curve for conventional power in the Pacific Northwest which is driving the need for a higher price for Green Attributes. SDG&E and NaturEner have discussed and negotiated methods of employing SDG&E as a tax equity investor in the Rim Rock project, to provide financing where the utility's cost of capital would help offset the required increase in Green Attribute pricing. The increase in Green Attributes pricing is tied in large part to the decrease in the market price available to the project for the sale of "null" power (see chart "Green Attributes Price Change Breakdown" below). Also adding to SDG&E's desire to see the project succeed is the fact that it is an existing contract with high viability (the developer has completed two other wind farms which are under long-term contract to SDG&E) and which represents a significant portion of SDG&E's RPS procurement plan. The Proposed Amendment was negotiated bilaterally due to its complexity and unique structure. These factors provided a compelling case for SDG&E to enter into the Proposed Amendment outside of a solicitation.

### C. LEAST-COST BEST-FIT – IF APPLICABLE

As with many recent contract repricings negotiated by SDG&E, this proposed amendment has a cost-based price that is based upon a project proforma model that tallies all of the project costs. The model inputs will float until they are more certain as the project develops and costs are fixed. Major inputs are turbine costs, EPC costs, capital costs and conventional power sales. At the time of commencement of construction, all costs will be known or more accurately estimated (future sales prices will be based upon market forecasts), the model will be rerun and a Green Attribute price calculated to exactly match the required revenue requirement of the project given all of its cost inputs (please refer to the "Pricing Addendum" for a more complete description of the price setting process). [REDACTED]

[REDACTED]

[REDACTED] The actual price may be lower – but will not be higher – than the cap price. The



difference between the “net Green Attributes Cost” and the forecast contract Green Attributes Cost is due to tax equity structure that is being used. As explained elsewhere in this testimony, the entire \$600 million Rim Rock Investment is fully repaid in 10 years. The contract Green Attributes price is set based upon the economics at the year 10 “flip date”. In this structure, a small portion of benefits continue to flow to ratepayers post-flip and represent a direct financial benefit. [REDACTED]

As in other RPS Advice Letters where contract prices are benchmarked, FF&U is not included in these Green Attributes prices.

While SDG&E purchases a bundled product from Rim Rock (energy and green attributes together) it sells the “null power” back to Rim Rock at the project busbar and delivers the green attributes to California using CEC authorized delivery mechanisms. The difference between the bundled purchase and “null power” sale is the value of the Green Attributes. SDG&E proposes two different analyses to evaluate the cost of the transaction as compared with traditional long-term bundled power purchases within SDG&E’s portfolio.

1) “Synthetic Bundled Transaction”. The first method takes this Green Attributes cost and creates an all-in bundled cost equivalent for the Rim Rock transaction by adding the cost of the Green Attribute to other components of a bundled RPS transaction such as the underlying cost of imported energy and capacity to which the Green Attributes are attached.

2) “Implied Green Attributes” Cost. This analysis is the bookend of that just described. That is, in this analysis, SDG&E calculates the implied value of the Green Attributes embedded in its bundled RPS transactions in order to compare all of its transactions on a Green Attributes only basis.

### **Analytical Method #1: Synthetic Bundled Transaction Analysis**

[REDACTED]

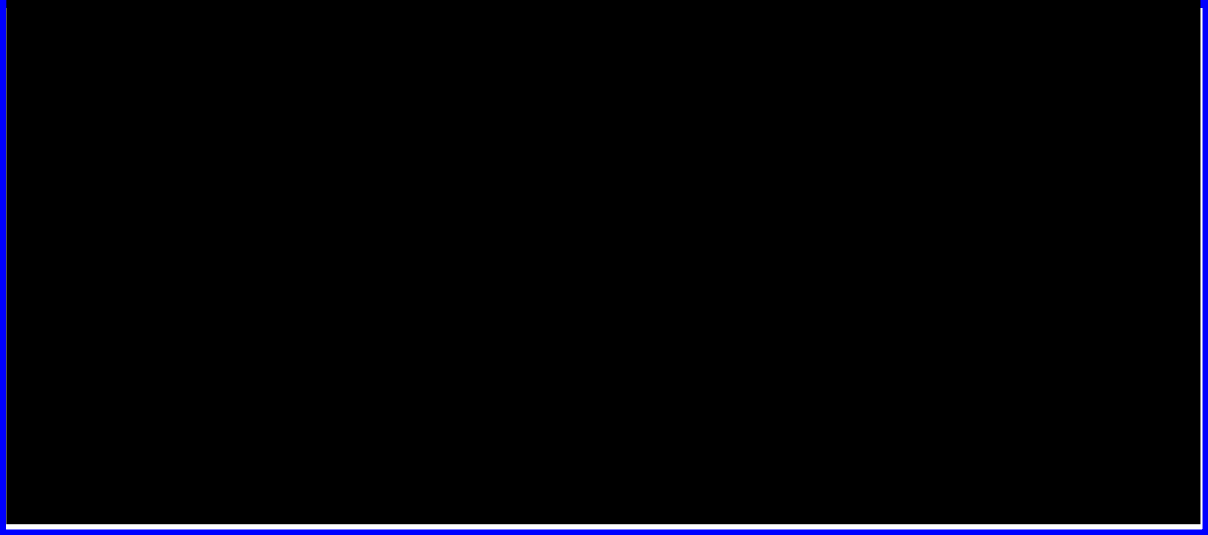
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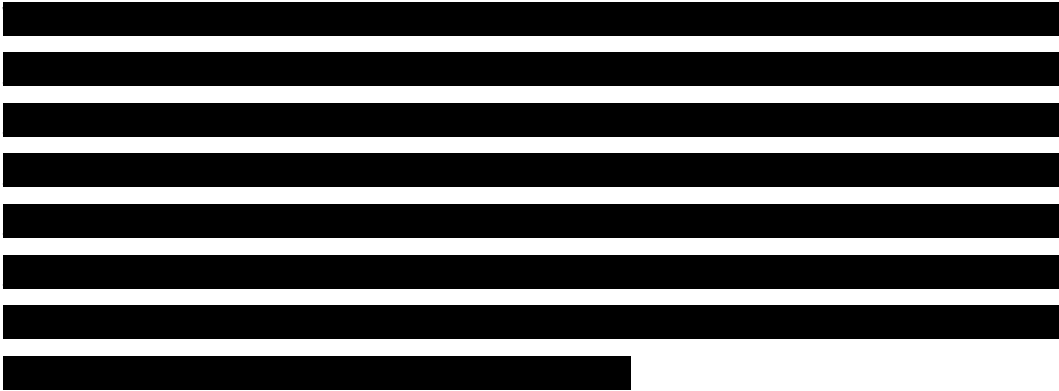
[REDACTED]

[REDACTED]

1. THE PROJECT'S BID SCORES UNDER SDG&E'S APPROVED LCBF EVALUATION CRITERIA.



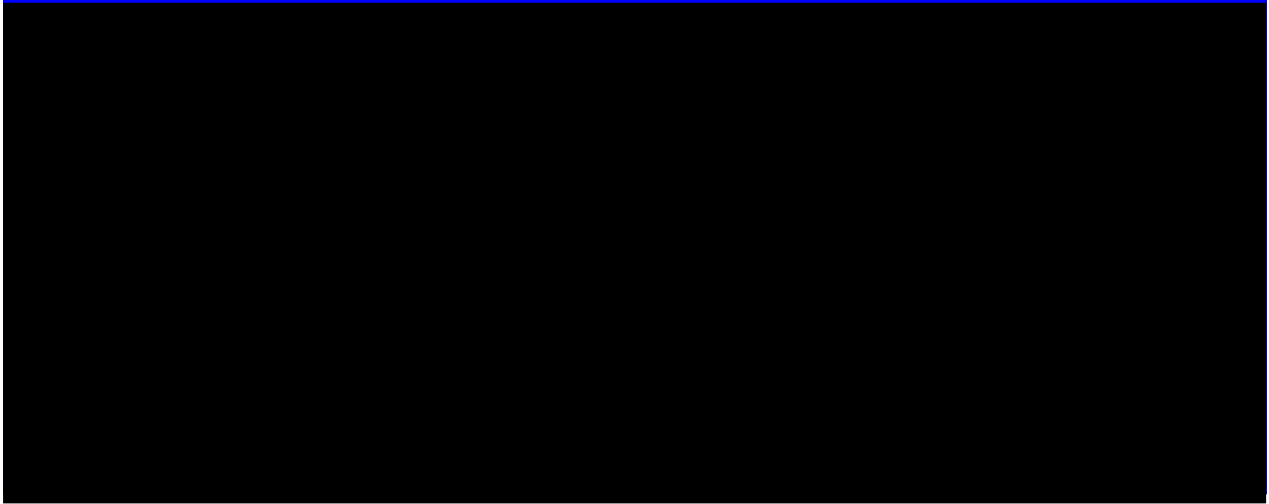
2. HOW THE PROJECT COMPARES WITH OTHER BIDS RECEIVED IN THE SOLICITATION WITH REGARD TO EACH LCBF FACTOR AND WHY THE SUBMITTED CONTRACT RANKED HIGHER (QUANTITATIVELY AND/OR QUALITATIVELY) THAN THE OTHER BIDS USING THE LCBF CRITERIA.



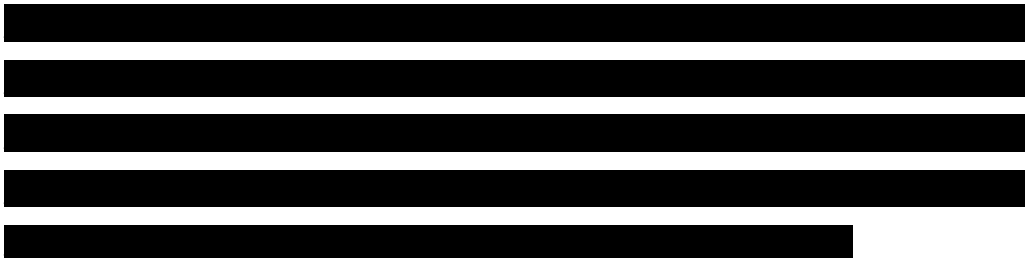
- Portfolio Fit

As discussed below, various factors which describe “portfolio fit” have been quantitatively and qualitatively evaluated. Each is presented in this section.

Attached below is SDG&E's LCBF Ranking for the 2009 RPS RFO, together with bilateral contracts recently approved or submitted for approval.



- Transmission Adder



- Application of TODs



[REDACTED]

- Qualitative Factors

[REDACTED]

[REDACTED] SDG&E has worked with NaturEner extensively over the last year to monitor project costs and structure, and due to SDG&E's participation, the Rim Rock project is much more transparent than other projects currently under consideration. This transparency has given SDG&E a high degree of certainty over the project costs and revenue requirements. In contrast, many of the project viability scores to which Rim Rock is compared here are self-scored by the developer bidding the project into SDG&E's RFO.

Participation in the project as a tax equity investor provides SDG&E and the Commission the opportunity to monitor project development at a greater level of detail than would be possible with other PPA counterparties.

The use of utility financing will benefit the project by ensuring financing in a very uncertain tax equity market and will also benefit ratepayers through the reduced cost they will pay as a result of the lower financing costs due to the utility's authorized return as opposed to market rates for tax equity.

3. THE ADDERS APPLIED IN THE LCBF ANALYTICAL PROCESS AND THE IMPACT OF THOSE ADDERS ON THE PROJECT'S RANKING.

- Levelized Bid Price

[Redacted text block]

- Begin/End Effects adder

[Redacted text block]

[Redacted text block]

[Redacted text block]

- TOD Adjustment Adder

[Redacted text block]

- TRCR Adder

[Redacted text block]

- RA Capacity Credit



[Redacted text block]

[Redacted text block]

- Congestion Adder

[Redacted text block]

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<sup>2</sup> [Redacted footnote text]

[Redacted text block]

[Redacted text block]

- Firming and Shaping Costs

[Redacted text block]

- Hedging/Collateral provisions

[Redacted text block]

[REDACTED]

[REDACTED]

**ANALYTICAL METHOD #2 : “IMPLIED GREEN ATTRIBUTES” COST.**

[REDACTED]

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[REDACTED]

[Redacted text block]



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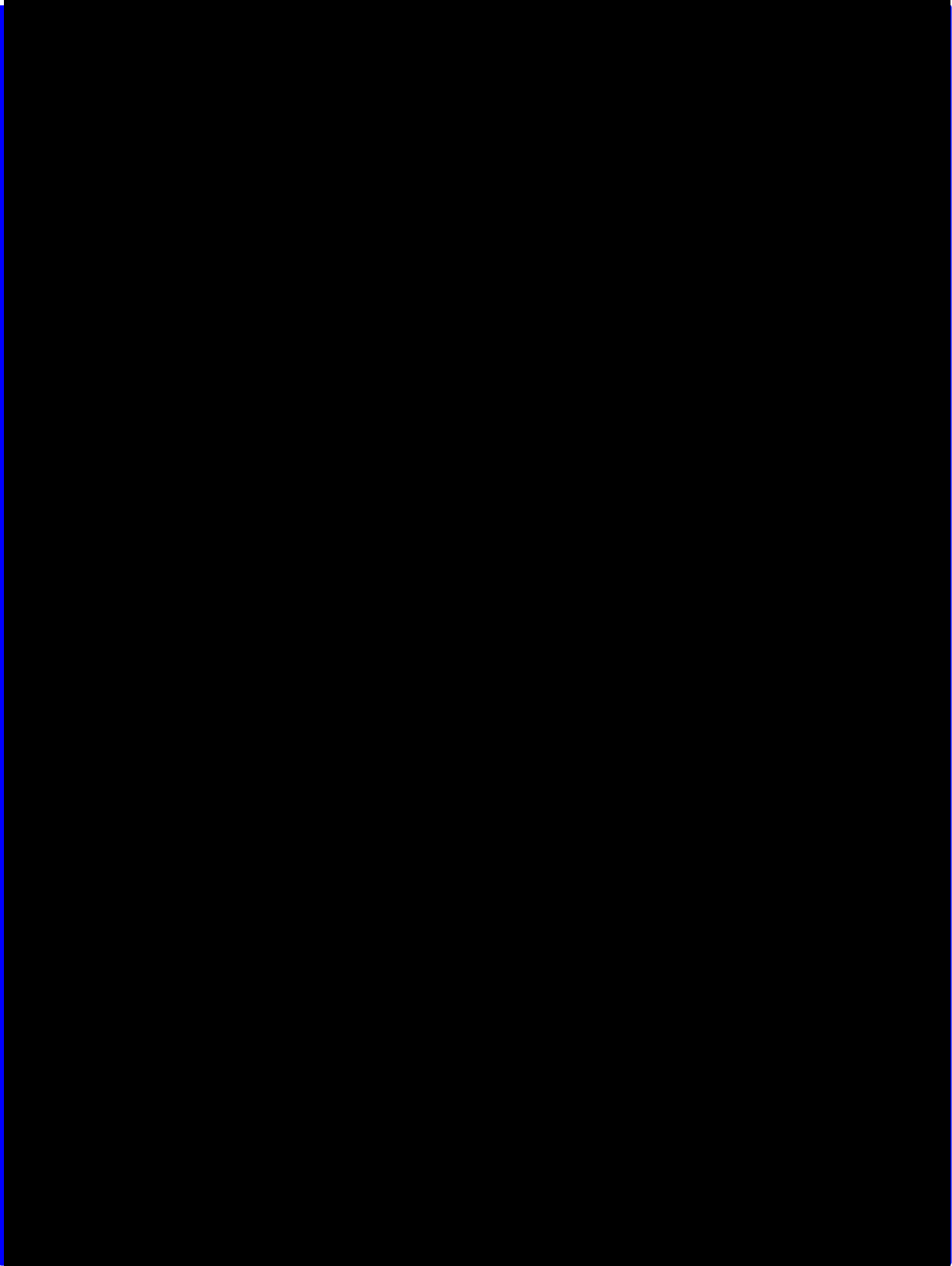
4. HOW AND WHY THE PROJECT'S BID RANKING CHANGED AFTER NEGOTIATIONS.

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[Green Attribute Price Change Breakdown](#)

5. USING LCBF CRITERIA AND OTHER RELEVANT CRITERIA, EXPLAIN WHY THE SUBMITTED CONTRACT WAS PREFERRED RELATIVE TO OTHER SHORTLISTED BIDS OR OTHER PROCUREMENT OPTIONS.

The Proposed Amendment is competitive with SDG&E's 2009 RPS shortlist on an LCBF ranking price basis as discussed above. Also, the due diligence / open book process thus far has given SDG&E ample reason to continue to pursue this existing, highly viable contract.

This project is not being pursued in lieu of other options. Rather, SDG&E is investigating all possible means of achieving the State's ambitious RPS and GHG goals. Other procurement options, which are equally advanced, viable and with 2012 delivery are limited. SDG&E continues to pursue diverse RPS projects throughout the western US and more recently focused within San Diego County, and over the Sunrise Powerlink to Imperial County, in order to meet its' RPS needs. However, due to lengthy and complex permitting processes and continuous opposition to any kind of generation or transmission project development from intervenors, the ability of SDG&E to meet the requirements of the RPS program by 2013 could be placed at risk. The NaturEner Rim Rock project can be developed with a sufficient degree of certainty to reliably provide RPS credits to SDG&E beginning in 2012 to meet the RPS goals.

Approval of the Proposed Amendment helps to further the important and aggressive RPS goals set by the Commission.

D. STANDARD TERMS AND CONDITIONS

<b>Modifiable? (Yes/No)</b>	<b>STC No.</b>	<b>STANDARD TERM AND CONDITION</b>	<b>Modified? (Yes/No)</b>	<b>Description of Change and Rationale</b>
<b>No</b>	1	CPUC Approval	No	n/a
	2	RECs and Green Attributes	No	n/a
	6	Eligibility	No	n/a
	17	Applicable Law	No	n/a
<b>Yes</b>	4	Confidentiality		
	5	Contract Term		
	7	Performance Standards/Requirements		
	8	Product Definitions		
	9	Non-Performance or Termination Penalties and Default Provisions		
	12	Credit Terms		
	15	Contract Modifications		
	16	Assignment		
	18	Application of Prevailing		

		Wages		
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Note: Decision D.08-04-009 removed STC 3, stating:  
 “Given implementation of SB 1036, STC 3 has no continuing relevance and should be deleted from the current 14 STCs”

**Modifiable Term Red-line Table**

(Red-line is actual contract language relative to the standard modifiable term language)

<p>STC 1: CPUC Approval (Non-Modifiable)</p> <p>“CPUC Approval” means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which contains the following terms:</p> <p>(a) approves this Agreement in its entirety, including payments to be made by the Buyer, subject to CPUC review of the Buyer’s administration of the Agreement; and</p> <p>(b) finds that any procurement pursuant to this Agreement is procurement from an eligible renewable energy resource for purposes of determining Buyer’s compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), Decision 03-06-071, or other applicable law.</p> <p>CPUC Approval will be deemed to have occurred on the date that a CPUC decision containing such findings becomes final and non-appealable.</p>	
<p>STC 2: RECs and Green Attributes (Non-Modifiable)</p> <p>“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and</p>	

allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser's discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Project, (ii) production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the project that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits. If the Project is a biomass or biogas facility and Seller receives any

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

3.2. Green Attributes. Seller hereby provides and conveys all Green Attributes associated with all electricity generation from the Project to Buyer as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Project, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Project.

STC 6: Eligibility (Non-Modifiable)

Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project's output delivered to

Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

STC 17: Applicable Law (Non-Modifiable)

Governing Law.

This agreement and the rights and duties of the parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. To the extent enforceable at such time, each party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this agreement.



STC 4: Confidentiality (Modifiable)

“Confidentiality: Neither Party shall disclose the non-public terms or conditions of this Agreement or any Transaction hereunder to a third party, other than (i) the Party’s employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential, (ii) for disclosure to the Buyer’s Procurement Review Group, as defined in CPUC Decision (D.) 02-08-071, subject to a confidentiality agreement, (iii) to the CPUC under seal for purposes of review, (iv) disclosure of terms specified in and pursuant to Section 10.12 of this Agreement; (v) in order to comply with any applicable law, regulation, or any exchange, control area or ISO rule, or order issued by a court or entity with competent jurisdiction over the disclosing Party (‘Disclosing Party’), other than to those entities set forth in subsection (vi); or (vi) in order to comply with any applicable regulation, rule, or order of the CPUC, CEC, or the Federal Energy Regulatory Commission. In connection with requests made pursuant to clause (v) of this Section 10.11 (‘Disclosure Order’) each Party shall, to the extent practicable, use reasonable efforts: (i) to notify the other Party prior to disclosing the confidential information and (ii) prevent or limit such disclosure. After using such reasonable efforts, the

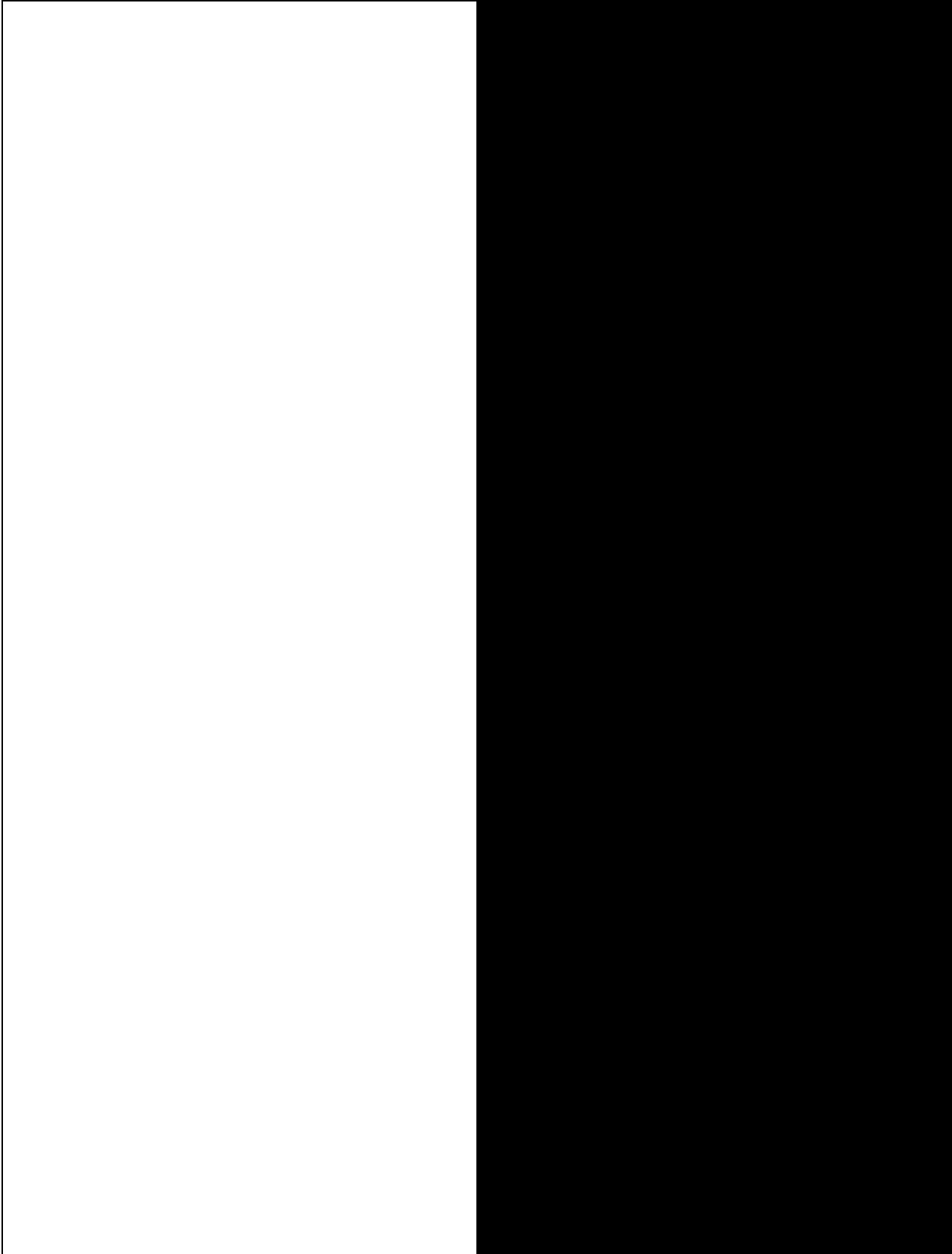
Disclosing Party shall not be: (i) prohibited from complying with a Disclosure Order or (ii) liable to the other Party for monetary or other damages incurred in connection with the disclosure of the confidential information. Except as provided in the preceding sentence, the Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.”

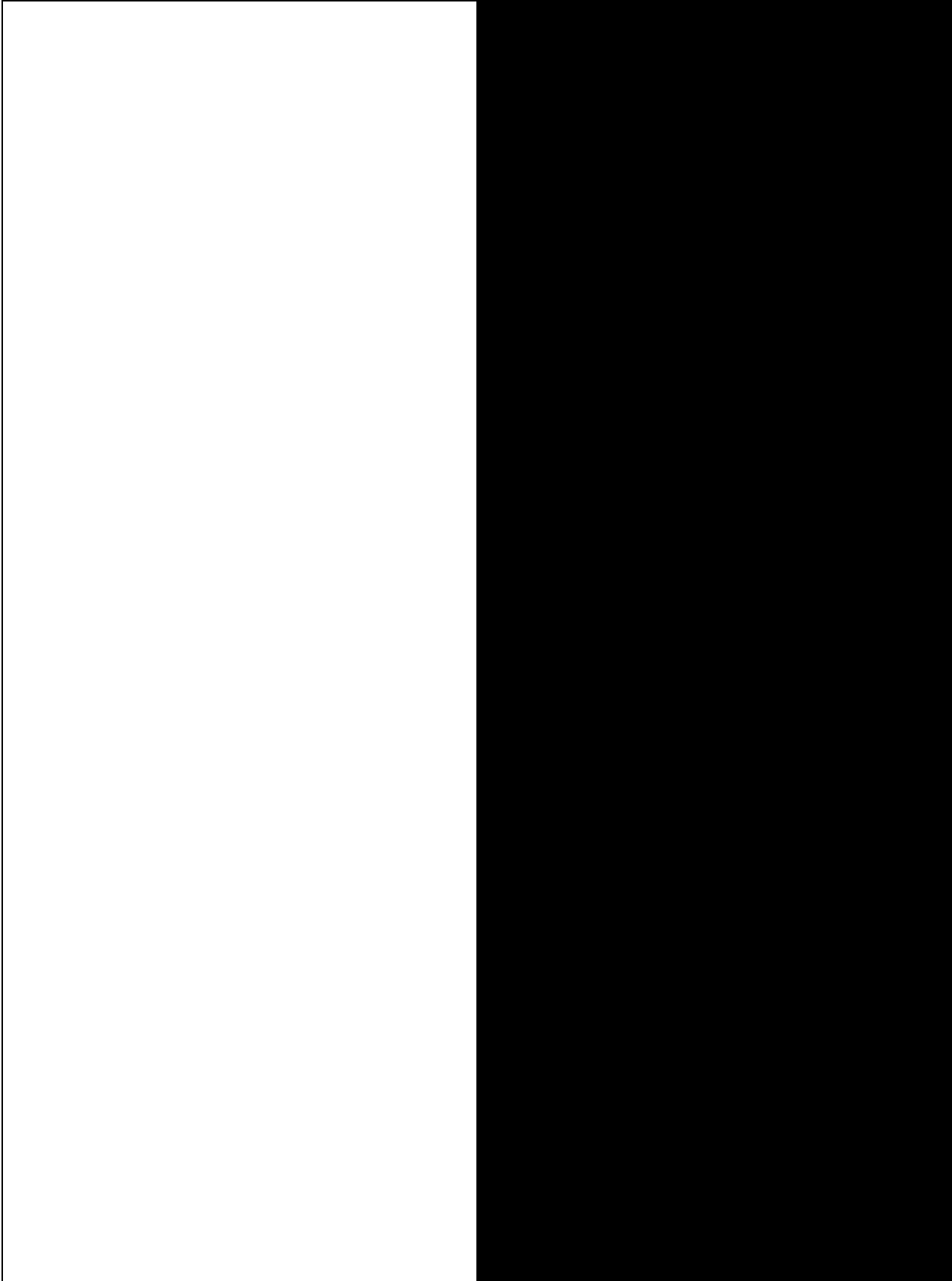
“10.12 RPS Confidentiality. Notwithstanding Section 10.11 of this Agreement at any time on or after the date on which the Buyer makes its advice filing letter seeking CPUC Approval of the Agreement either Party shall be permitted to disclose the following terms with respect to such Transaction: Party names, resource type, delivery term, project location, and project capacity. If Option B is checked on the Cover Sheet, neither Party shall disclose party name or project location, pursuant to this Section 10.12, until six months after such CPUC Approval.”

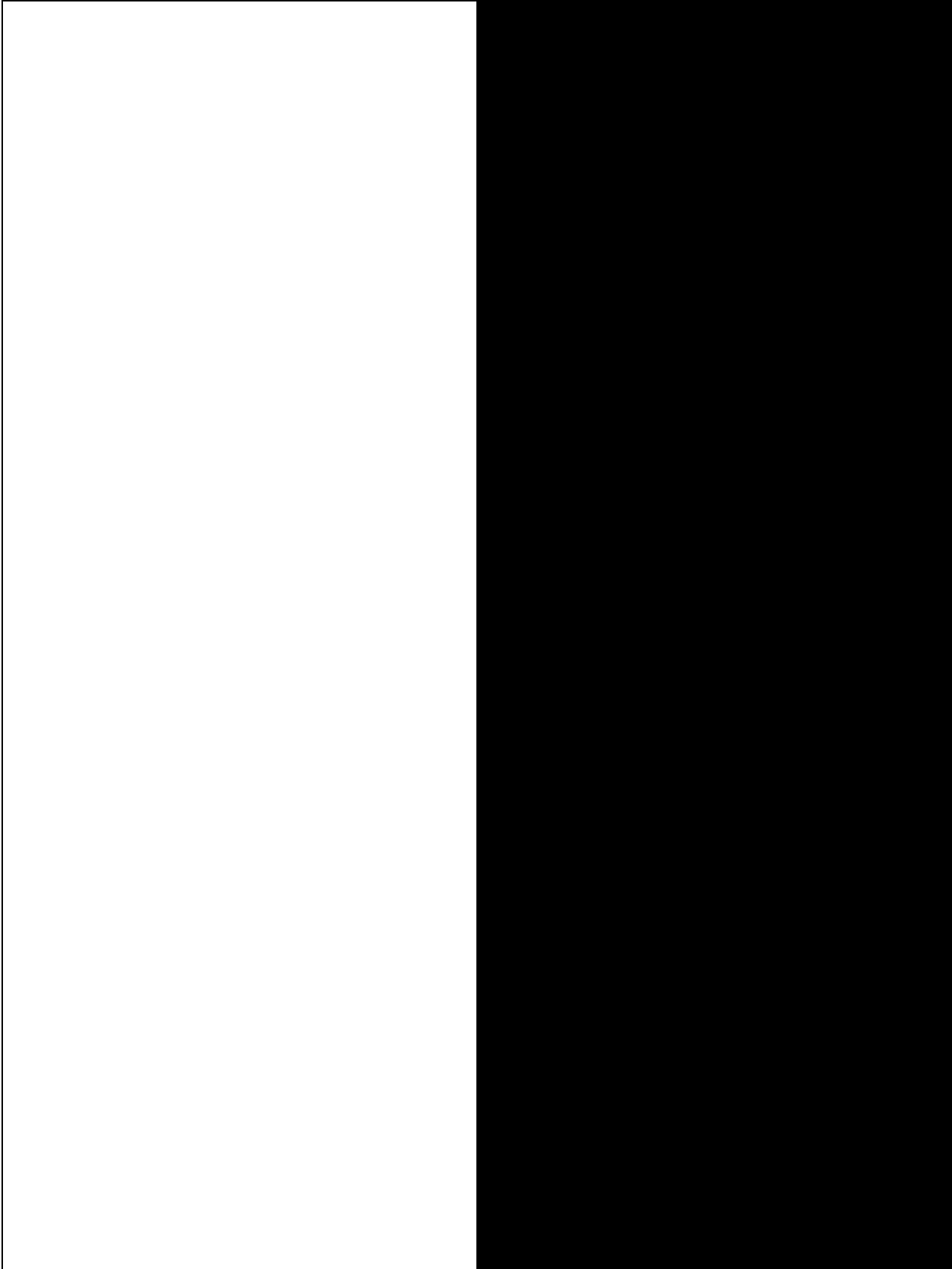
The Cover Sheet of the Agreement shall be amended by adding to Article 10, Confidentiality, a new “Option B,” as follows:

Option B RPS Confidentiality  
Applicable. If not checked, inapplicable”

Option C Confidentiality Notification:  
If Option C is checked on the Cover Sheet, Seller has waived its right to notification in accordance with Section 10.11 (v).”







STC 5: Contract Term (Modifiable)

The following provision shall be included as a standard term in the Confirmation(s) for the Transaction(s) entered into under the Agreement:

“Delivery Term: The Parties shall specify the period of Product delivery for the ‘Delivery Term,’ as defined herein, by checking one of the following boxes:

Delivery shall be for a period of ten (10) years.

Delivery shall be for a period of fifteen (15) years.

Delivery shall be for a period of twenty (20) years.

Non-standard Delivery shall be for a period of \_\_\_ years.”

If the “Non-standard Delivery” contract term is selected, Parties need to apply to the CPUC justifying the need for non-standard delivery.

STC 7: Performance Standards/Requirements  
(Modifiable)

A. The following shall be included in the applicable post Commercial Operation Date performance standards/requirement provisions of the Agreement or Confirmation for “As Available” projects:

“Energy Production Guarantees

The Buyer shall in its sole discretion have the right to declare an Event of Default if Seller fails to achieve the Guaranteed Energy Production in any [12 month period] [or] [24 month period] and such failure is not excused by the reasons set forth in subsections (ii), (iii), or (v) of Section \_\_\_ of this Agreement, “Excuses for Failure to Perform.”

Guaranteed Energy Production =  
\_\_\_\_\_ MWh.”

B. The following shall be included in the applicable performance standards/requirement provisions, as “Excuses for Failure to Perform” in the Agreement or Confirmation for “As Available” projects:

“Seller shall not be liable to Buyer for any damages determined pursuant to Article Four of the Agreement in the event that Seller fails to deliver the Product to Buyer for any of the following reasons:

i. if the specified generation asset(s) are unavailable as a result of a Forced Outage (as defined in the NERC Generating Unit Availability Data System (GADS) Forced Outage reporting

guidelines) and such Forced Outage is not the result of Seller's negligence or willful misconduct;

ii. Force Majeure;

iii. by the Buyer's failure to perform;

iv. by scheduled maintenance outages of the specified units;

v. a reduction in Output as ordered under terms of the dispatch down and Curtailment provisions (including CAISO or Buyer's system emergencies); or

vi. [the unavailability of landfill gas which was not anticipated as of the date this [Confirmation] was agreed to, which is not within the reasonable control of, or the result of negligence of, Seller or the party supplying such landfill gas to the Project, and which by the exercise of reasonable due diligence, Seller is unable to overcome or avoid or causes to be avoided; OR insufficient wind power for the specified units to generate energy as determined by the best wind speed and direction standards utilized by other wind producers or purchasers in the vicinity of the Project or if wind speeds exceed the specified units' technical specifications; OR the unavailability of water or the unavailability of sufficient pressure required for operation of the hydroelectric turbine-generator as reasonably determined by Seller within its operating procedures, neither of which was anticipated as of the date this [Confirmation] was agreed to, which is not within the reasonable control of, or the result of negligence of, Seller or the party supplying such water to the Project, and which by the exercise of due diligence, such Seller or the party supplying the water is unable to overcome or avoid or causes to be avoided.]

The performance of the Buyer to receive the Product may be excused only (i) during periods of Force Majeure, (ii) by the Seller's failure to perform or (iii) during dispatch down periods."

C. The following shall be included in the applicable performance standards/requirement



provisions as “Excuses for Failure to Perform” in the Agreement or Confirmation for “Unit Firm” projects:

“Net Rated Output Capacity. If the Net Rated Output Capacity at the Commercial Operation Date or at the end of the first twelve (12) consecutive months after the Commercial Operation Date [and every twelve (12) consecutive months thereafter] is less than \_\_\_ MW, Buyer shall have the right to declare an Event of Default. For subsequent contract years, Buyer shall trigger an Annual Capacity Test to determine each year’s Net Rated Output Capacity by scheduling Deliveries from the facility for two consecutive weeks. Buyer shall provide Seller two (2) weeks notice of the Annual Capacity Test. For the second year and thereafter the Net Rated Output Capacity shall be the ratio of the sum of average hourly Energy Delivered for two (2) weeks divided by 336 hours (24 hours x 14 days). Energy Delivered shall exclude any energy greater than \_\_\_ MW average in each hour. The resulting Net Rated Output Capacity shall remain in effect until the next Annual Capacity Test. The Net Rated Output Capacity shall not exceed the Contract Capacity of \_\_\_ MW.

Additional Event of Default. It shall be an additional Event of Default if (i) the Availability Adjustment Factor is less than \_\_\_% for \_\_\_ consecutive months, or (ii) Net Rated Output Capacity falls below \_\_\_ MW. In no event shall the Seller have the right to procure Energy from sources other than the Facility for sale and delivery pursuant to this Agreement.”

D. The following shall be included in the applicable performance standards/requirement provisions of the Agreement or Confirmation for “Unit Firm” projects:

“Seller shall be excused from achieving the Availability Adjustment Factor for the applicable time period, in the event that Seller fails to deliver the Product to Buyer for any of the following reason:

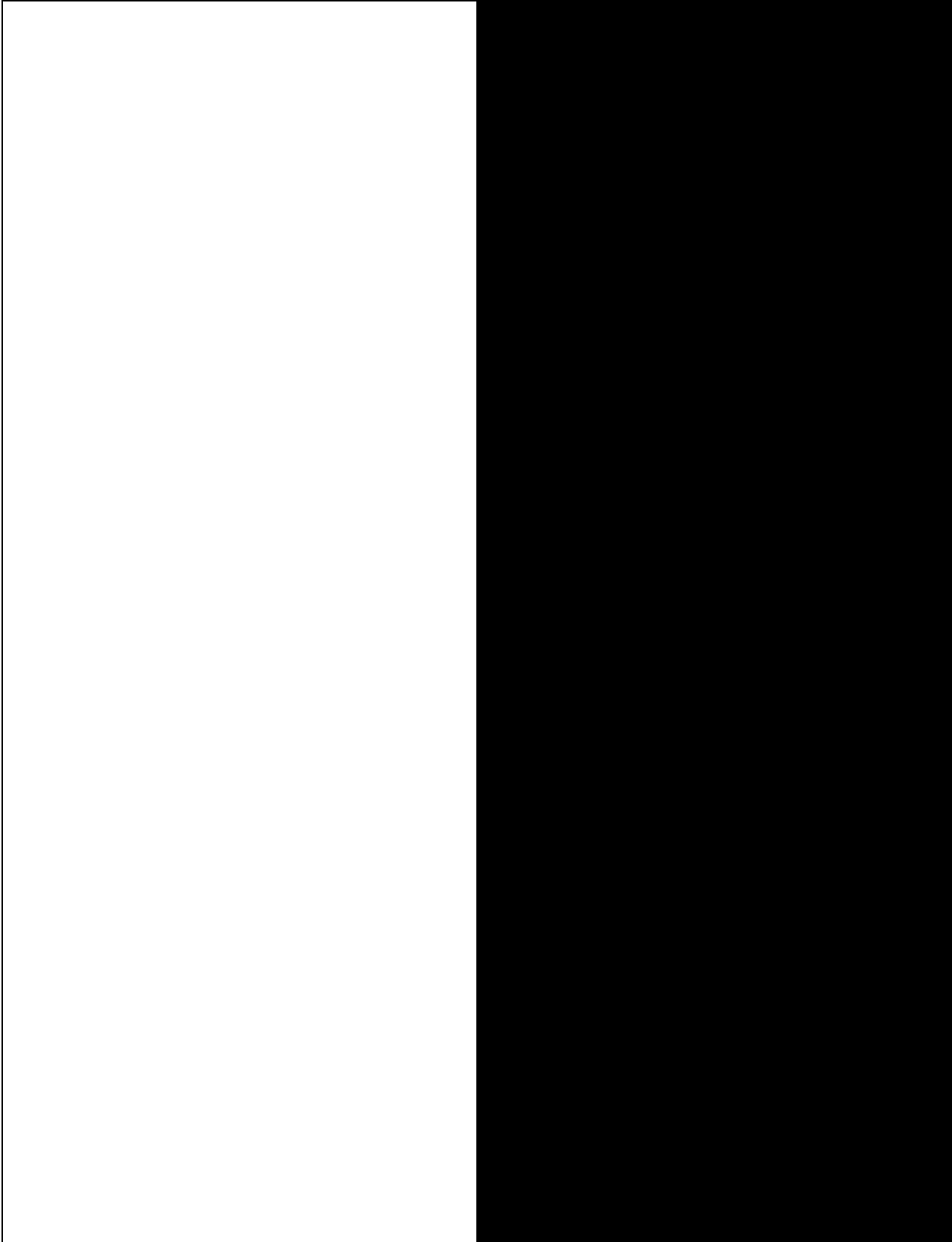
- i. during Force Majeure;
- ii. by Buyer's failure to perform; or,
- iii. a reduction in Output as ordered under terms of the dispatch-down and Curtailment provisions (including CAISO or Buyer's system emergencies.)"

E. The following shall be included in the applicable performance standards/requirement provisions as "Excuses for Failure to Perform" in the Agreement or Confirmation for "Unit Firm," "Baseload," "Peaking," and "Dispatchable" Products:

"Seller shall not be liable to Buyer for any damages determined pursuant to Article Four of the Agreement, in the event that Seller fails to deliver the Product to Buyer for any of the following reason:

- i. if the specified generation asset(s) are unavailable as a result of a Forced Outage (as defined in the NERC Generating Unit Availability Data System (GADS) Forced Outage reporting guidelines) and such Forced Outage is not the result of Seller's negligence or willful misconduct;
- ii. Force Majeure;
- iii. by the Buyer's failure to perform;
- iv. by scheduled maintenance outages of the specified units; or, a reduction in Output as ordered under terms of the dispatch down and Curtailment provisions (including CAISO or Buyer's system emergencies).

The performance of the Buyer to receive the product may be excused only (i) during periods of Force Majeure, (ii) during periods of dispatch-down, or (iii) by the Seller's failure to perform."



STC 8: Product Definitions (Modifiable)

“ ‘As Available’ means, with respect to a Transaction, that Seller shall deliver to Buyer and Buyer shall purchase at the Delivery Point the Product from the Units, in accordance with the terms of this Agreement and subject to the excuses for performance specified in this Agreement.”

The “Unit Firm” Product Definition in Schedule P of the EEI Agreement shall be deleted in its entirety and replaced with the following:

“ ‘Unit Firm’ means, with respect to a Transaction, that the Product subject to the Transaction is intended to be supplied from a specified generation asset or assets specified in the Transaction. The following Products shall be considered “Unit Firm” products:

‘Peaking’ means with respect to a Transaction, a Product for which Delivery Periods coincide with Peak Periods, as defined by Buyer.

‘Baseload’ means with respect to a Transaction, a Product for which Delivery levels are uniform for all Delivery Periods.

‘Dispatchable’ means with respect to a Transaction, a Product for which Seller makes available unit-contingent capacity for a Buyer to schedule and

dispatch up or down at Buyer's option.”

STC 9: Non-Performance or Termination Penalties and Default Provisions (Modifiable)

“5.1 Events of Default. An ‘Event of Default’ shall mean, with respect to a Party (a ‘Defaulting Party’), the occurrence of any of the following:

- (a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice;
- (b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated;
- (c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party's obligations to deliver or receive the Product, the exclusive remedy for which is provided in Article Four) if such failure is not remedied within three (3) Business Days after written notice;
- (d) such Party becomes Bankrupt;
- (e) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Article Eight hereof;
- (f) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation,

merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;

(g) if the applicable cross default section in the Cover Sheet is indicated for such Party, the occurrence and continuation of (i) a default, event of default or other similar condition or event in respect of such Party or any other party specified in the Cover Sheet for such Party under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet), which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable or (ii) a default by such Party or any other party specified in the Cover Sheet for such Party in making on the due date therefore one or more payments, individually or collectively, in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet);

(h) with respect to such Party's Guarantor, if any:

(i) if any representation or warranty made by a Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated;

(ii) the failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any guaranty made in connection with this Agreement and such failure shall not be remedied within three (3) Business Days after written notice;

(iii) a Guarantor becomes Bankrupt; the failure of a Guarantor's guaranty to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of such Party under each Transaction to which such guaranty shall relate

without the written consent of the other Party; or

(v) a Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any guaranty.”

Section 5.1 of the Agreement, as provided above, shall be modified as follows:

Section 5.1(c) is amended by deleting the reference to “three (3) Business Days” and replacing it with “thirty (30) days;” and

Sections 5.1(b) and 5.1(h)(i) are amended by adding the following at the end thereof: “or with respect to the representations and warranties made pursuant to Section 10.2 of this Agreement or any additional representations and warranties agreed upon by the parties, any such representation and warranty becomes false or misleading in any material respect during the term of this Agreement or any Transaction entered into hereunder.”

The following new “Events of Default” shall be included in Section 5.1 of the Agreement, as amended:

Section 5.1 (i) is added as follows: “if at any time during the Term of Agreement, Seller delivers or attempts to deliver to the Delivery Point for sale under this Agreement electrical power that was not generated by the Unit(s)”; and

Section 5.1(j) is added as follows: “failure to meet the performance requirements agreed to pursuant to Section \_\_ hereof.”

#### NON- PERFORMANCE/TERMINATION PENALITIES:

The following modifications to Article One of the EEI Agreement are offered as “Non-Performance/Termination Penalties” for the Agreement:

The definition of “Gains” shall be deleted in its entirety and replaced with the following:

“ ‘Gains’ means with respect to any Party, an

amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of a Terminated Transaction for the remaining term of such Transaction, determined in a commercially reasonable manner. Factors used in determining economic benefit may include, without limitation, reference to information either available to it internally or supplied by one or more third parties, including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets market referent prices for renewable power set by the CPUC, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remaining term of the applicable Transaction and include the value of Environmental Attributes.”

The definition of “Losses” shall be deleted in its entirety and replaced with the following:

“ ‘Losses’ means with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from the termination of a Terminated Transaction for the remaining term of such Transaction, determined in a commercially reasonable manner. Factors used in determining the loss of economic benefit may include, without limitation, reference to information either available to it internally or supplied by one or more third parties including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market referent prices for renewable power set by the CPUC, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g. NYMEX), all of which should be calculated for the remaining term of the applicable Transaction and include value of Environmental Attributes.”

The definition of “Costs” shall be deleted in its



entirety and replaced with the following:

“ ‘Costs’ means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace a Terminated Transaction; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with the termination of a Transaction.”

The definition of “Settlement Amount” shall be adopted in its entirety as follows:

“1.56 ‘Settlement Amount’ means, with respect to a Transaction and the Non Defaulting Party, the Losses or Gains, and Costs, expressed in U.S. Dollars, which such party incurs as a result of the liquidation of a Terminated Transaction pursuant to Section 5.2.”

Section 5.2 of the Agreement shall be deleted in its entirety and replaced with the following:

“5.2 Declaration of Early Termination Date and Calculation of Settlement Amounts:

If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (‘Non-Defaulting Party’) shall have the right to (i) designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date (‘Early Termination Date’) to accelerate all amounts owing between the Parties and to liquidate and terminate all, but not less than all, Transactions (each referred to as a ‘Terminated Transaction’) between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance. The Non-defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for each such Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without

limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. The Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount.”

Section 5.3 through 5.5 of the Agreement shall be adopted in their entirety. For reference Section 5.3 – 5.5 are as follows:

“5.3 Net Out of Settlement Amounts. The Non-Defaulting Party shall aggregate all Settlement Amounts into a single amount by: netting out (a) all Settlement Amounts that are due to the Defaulting Party, plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party pursuant to Article Eight, plus any or all other amounts due to the Defaulting Party under this Agreement against (b) all Settlement Amounts that are due to the Non Defaulting Party, plus any or all other amounts due to the Non Defaulting Party under this Agreement, so that all such amounts shall be netted out to a single liquidated amount (the ‘Termination Payment’). If the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the Termination Payment shall be zero.

5.4 Notice of Payment of Termination Payment. As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to the Non Defaulting Party, as applicable, within two (2) Business Days after such notice is effective.

5.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer Performance Assurance to the Non defaulting Party in an amount equal to the Termination Payment."

STC 12: Credit Terms (Modifiable)

Sections 8.1 through 8.3 of the EEI Agreement shall be adopted in their entirety for inclusion in the Agreement as follows:

“8.1 Party A Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet and shall only apply if marked as “Applicable” on the Cover Sheet.

(a) Financial Information. Option A: If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party B’s annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Party B’s quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as Party B diligently pursues the preparation, certification and delivery of the statements.

Option B: If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for the party(s) specified on the Cover Sheet and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal

quarter for the party(s) specified on the Cover Sheet. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

Option C: Party A may request from Party B the information specified in the Cover Sheet.

(b) Credit Assurances. If Party A has reasonable grounds to believe that Party B's creditworthiness or performance under this Agreement has become unsatisfactory, Party A will provide Party B with written notice requesting Performance Assurance in an amount determined by Party A in a commercially reasonable manner. Upon receipt of such notice Party B shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party A. In the event that Party B fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default under Article Five will be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

(c) Collateral Threshold. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to Party A plus Party B's Independent Amount, if any, exceeds the Party B Collateral Threshold, then Party A, on any Business Day, may request that Party B provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party B's Independent Amount, if any, exceeds the Party B Collateral Threshold (rounding upwards for any fractional amount to the next Party B Rounding Amount) ("Party B Performance Assurance"), less any Party B Performance Assurance already

posted with Party A. Such Party B Performance Assurance shall be delivered to Party A within three (3) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Party B, at its sole cost, may request that such Party B Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment plus Party B's Independent Amount, if any, (rounding upwards for any fractional amount to the next Party B Rounding Amount). In the event that Party B fails to provide Party B Performance Assurance pursuant to the terms of this Article Eight within three (3) Business Days, then an Event of Default under Article Five shall be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

For purposes of this Section 8.1(c), the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by Party A as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party B to Party A, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions.

(d) Downgrade Event. If at any time there shall occur a Downgrade Event in respect of Party B, then Party A may require Party B to provide Performance Assurance in an amount determined by Party A in a commercially reasonable manner. In the event Party B shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default shall be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

(e) If specified on the Cover Sheet, Party B shall deliver to Party A, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party A.

8.2 Party B Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet and shall only apply if marked as "Applicable" on the Cover Sheet.

(a) Financial Information. Option A: If requested by Party B, Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party A's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Party's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as such Party diligently pursues the preparation, certification and delivery of the statements.

Option B: If requested by Party B, Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for the party(s) specified on the Cover Sheet and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the party(s) specified on the Cover Sheet. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

Option C: Party B may request from Party A the information specified in the Cover Sheet.

(b) Credit Assurances. If Party B has reasonable grounds to believe that Party A's creditworthiness or performance under this Agreement has become unsatisfactory, Party B will provide Party A with written notice requesting Performance Assurance in an amount determined by Party B in a commercially reasonable manner. Upon receipt of such notice Party A shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party B. In the event that Party A fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, then an Event of Default under Article Five will be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

(c) Collateral Threshold. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to Party B plus Party A's Independent Amount, if any, exceeds the Party A Collateral Threshold, then Party B, on any Business Day, may request that Party A provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party A's Independent Amount, if any, exceeds the Party A Collateral Threshold (rounding upwards for any fractional amount to the next Party A Rounding Amount) ("Party A Performance Assurance"), less any Party A Performance Assurance already posted with Party B. Such Party A Performance Assurance shall be delivered to Party B within three (3) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Party A, at its sole cost, may request that such Party A Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment plus Party A's Independent Amount, if any, (rounding upwards for any fractional amount to the next Party A Rounding Amount). In the event that Party A fails to provide Party A Performance Assurance pursuant to the terms of this Article Eight within three (3) Business Days, then an Event of Default under Article Five



shall be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

For purposes of this Section 8.2(c), the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by Party B as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party A to Party B, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions.

(d) Downgrade Event. If at any time there shall occur a Downgrade Event in respect of Party A, then Party B may require Party A to provide Performance Assurance in an amount determined by Party B in a commercially reasonable manner. In the event Party A shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, then an Event of Default shall be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

(e) If specified on the Cover Sheet, Party A shall deliver to Party B, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party B.

8.3 Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent either or both Parties deliver Performance Assurance hereunder, each Party (a "Pledgor") hereby grants to the other Party (the "Secured Party") a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, such Secured Party, and each Party agrees to take such action as the other Party reasonably requires in order to perfect the Secured Party's first-priority security interest in, and lien on

(and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, the Non Defaulting Party may do any one or more of the following: (i) exercise any of the rights and remedies of a Secured Party with respect to all Performance Assurance, including any such rights and remedies under law then in effect; (ii) exercise its rights of setoff against any and all property of the Defaulting Party in the possession of the Non-Defaulting Party or its agent; (iii) draw on any outstanding Letter of Credit issued for its benefit; and (iv) liquidate all Performance Assurance then held by or for the benefit of the Secured Party free from any claim or right of any nature whatsoever of the Defaulting Party, including any equity or right of purchase or redemption by the Defaulting Party. The Secured Party shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Pledgor's obligations under the Agreement (the Pledgor remaining liable for any amounts owing to the Secured Party after such application), subject to the Secured Party's obligation to return any surplus proceeds remaining after such obligations are satisfied in full."

If the parties elect as being applicable on the Cover Sheet, the following new Section 8.4 shall be added to Article Eight of the EEI Master Agreement:

To secure its obligations under this Agreement, in addition to satisfying any credit terms pursuant to the terms of Section [8.1 or 8.2] to the extent marked applicable, Seller agrees to deliver to Buyer (the "Secured Party") within thirty (30) days of the date on which all of the conditions precedent set forth in Section \_\_ are either satisfied or waived, and Seller shall maintain in full force and effect a) until the Commercial Operation Date a [INSERT TYPE OF COLLATERAL] in the amount of \$[\_\_\_\_], the form of which shall be determined in [the sole discretion of] [or] [by] Buyer and (b) from the Commercial Operation Date until the end of the Term [INSERT TYPE OF COLLATERAL]in the amount of \$[\_\_\_\_], the form of which shall be

determined [in the sole discretion of] [or][by] the Buyer. Any such security shall not be deemed a limitation of damages.”

STC 15: Contract Modifications (Modifiable)

“Except to the extent herein provided for, no amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both parties.”

STC 16: Assignment (Modifiable)

“Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, however, either Party may, without the consent of the other Party (and without relieving itself from

liability hereunder), transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof to its financing providers and the financing provider(s) shall assume the payment and performance obligations provided under this Agreement with respect to the transferring Party provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.”

STC 18: Application of Prevailing Wage (Modifiable)

To the extent applicable, Seller shall comply with the prevailing wage requirements of Public Utilities Code section 399.14, subdivision (h).

E. UNBUNDLED RENEWABLE ENERGY CREDIT TRANSACTIONS

This Proposed Amendment to the existing Rim Rock Agreement is not an unbundled Renewable Energy Credit transaction and conforms with the CEC Eligibility Guidebook definition of delivered energy. On August 26, 2009, the CEC provided the Commission with a letter declaring that the proposed Rim Rock delivery structure satisfies the RPS delivery requirements; this was accepted by the CPUC in Resolution E-4277<sup>4</sup>.

F. MINIMUM QUANTITY (IF APPLICABLE)

The Proposed Amendment is 20 years in length and thus does not trigger the minimum quantity requirements set forth in D.07-05-028.

G. SHORT-TERM CONTRACT (IF APPLICABLE)

The Proposed Amendment to the Agreement is 20 years in length and thus not a short term contract.

H. MPR

[REDACTED]

This project specific MPR is derived from the baseload 2009 MPR from resolution E-4298 (\$105.07 for a project starting in 2012 with a 20 year term), which is then adjusted by the AMF Calculator based on the contract's production profile.

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<sup>4</sup> CPUC Resolution E-4177, dated November 20, 2009, p. 14.

I. AMFs

As a bilateral contract, this Project is not eligible to receive Above MPR Funds. SB 1036 establishes five explicit criteria for the award of AMFs and states that once AMFs reach a cap that is equal to the maximum Supplemental Energy Payments ("SEPs") (aka AMF's) that would have been allotted to SDG&E, SDG&E is no longer required to procure renewable energy at above MPR prices. SDG&E's Commission-approved contracts have exhausted SDG&E's AMFs and, therefore, SDG&E is no longer required to procure renewable energy at above MPR. SDG&E has voluntarily procured contracts at costs that are above MPR only after full recovery of all such costs through rates is approved by the Commission.

[REDACTED]



J. EMISSIONS PERFORMANCE STANDARD

The Rim Rock wind facility itself is non-emitting and is therefore in compliance with the Emissions Performance Standard (EPS). By generating approximately 1,054 GWh annually, the wind farm will power approximately 165,000 homes per year and reduce the production of 433,678 metric tons<sup>5</sup> of CO<sub>2</sub>e. Consistent with CEC guidelines regarding

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<sup>5</sup> Based upon Rim Rock annual output and carbon dioxide, methane and nitrous oxide emissions rates from EPA's eGrid2007 database version 1.1 for the Northwest WECC subregion.

RPS eligibility and in exactly the same manner as the Glacier 1 and Glacier 2 contracts already approved by the Commission in Res. E-4192, SDG&E may match the Green Attributes with unspecified power or with generation from pre-existing long term contract (i.e. executed prior to adoption of D.07-01-039). All Green Attributes purchased under this PPA will be matched or rebundled with equal volumes of imported conventional energy and will be delivered as an RPS-eligible bundled product delivered into California.

SDG&E intends to source the firm imported power for rebundling the Green Attributes into California from the El Dorado gas-fired combined cycle generating facility located in Nevada. The CPUC has approved SDG&E's request to exercise an option to purchase the El Dorado facility beginning in October 2011. The El Dorado facility was found in D.07-11-046 (approval decision) to meet the current GHG performance standards and its ownership of El Dorado by SDG&E will continue past the term of the Rim Rock PPA. The energy generated by El Dorado will be "matched" with the Green Attributes generated by Rim Rock using the NERC E-tags to import the energy into California. There will be more than sufficient generation from El Dorado to match the generation from Rim Rock. SDG&E may procure system energy from the market or use existing contracts to re-bundle the Green Attributes from time to time, if the El Dorado facility cannot be used for such purposes. These purchases will be for less than one year period of time and is thus compliant with the EPS standards.

#### **K. PRG PARTICIPATION AND FEEDBACK.**

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

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

f. California Utility Workers' Union

On May 21, 2009, the PRG was provided with a potential rate impact estimate of the Rim Rock transaction together with other selected RPS projects under development at that time. On August 20, 2009, the PRG was provided a slide as part of a presentation that presented Rim Rock's projected contribution to SDG&E's overall RPS portfolio.

On January 15, 2010, and March 19, 2010, Rim Rock was discussed with the PRG in the context of CPUC decisions regarding tradable RECs. On October 23, 2009 and May 21, 2010, presentations on the Rim Rock tax equity structure and SDG&E's potential participation as a tax equity investor were presented to the PRG along with an analysis of the repriced Rim Rock PPA agreement.

SDG&E does not keep transcripts of PRG meetings; discussions can include exploration of positions that may or may not reflect parties' positions. One member of the PRG expressed a general objection to the contract which seemed to be based on the out-of-state nature of the transaction. Any objections to transactions presented to the PRG are ultimately made public through interventions in SDG&E's filings for contract approval. At the time of this filing, all parties will be allowed to comment.

L. INDEPENDENT EVALUATOR.

Refer to Confidential Exhibit C for the report of the Independent Evaluator.



## PROJECT DEVELOPMENT STATUS

### A. COMPANY/DEVELOPMENT TEAM

NaturEner USA, LLC is managing the Glacier 1 wind farm located near Cut Bank, Montana which has been generating power since October, 2008. NaturEner's Glacier 2 wind farm (located adjacent to Glacier 1) has been generating power since December 2009. Grupo NaturEner has also development experience with 14 wind farms, and operates 55 MW of hydroelectric and 30 MW of solar PV, which it developed, financed, and built, in Spain.

### B. TECHNOLOGY

#### 1. TYPE AND LEVEL OF TECHNOLOGY MATURITY.

Wind technology has an extensive history of use in commercial power applications, and has been in use on the utility. Furthermore, the developer has already developed and completed the Glacier 1 and 2 wind farms in Montana, which are of a similar size and technology.

#### 2. RESOURCE AND/OR AVAILABILITY OF FUEL

The Rim Rock wind resource was measured using nearly two years of on-site meteorological tower data in addition to long-term off-site correlating data. The estimated annual net capacity factor of the wind farm combined with the contract price of this Proposed Amendment to the Agreement results in viable project economics.

Acciona 1.5 MW wind turbines have been selected for this particular site, the same turbines in operation at NaturEner's Glacier wind farm in Montana. Acciona has confirmed the suitability of the turbines for the site.

C. DEVELOPMENT MILESTONES

1. SITE CONTROL

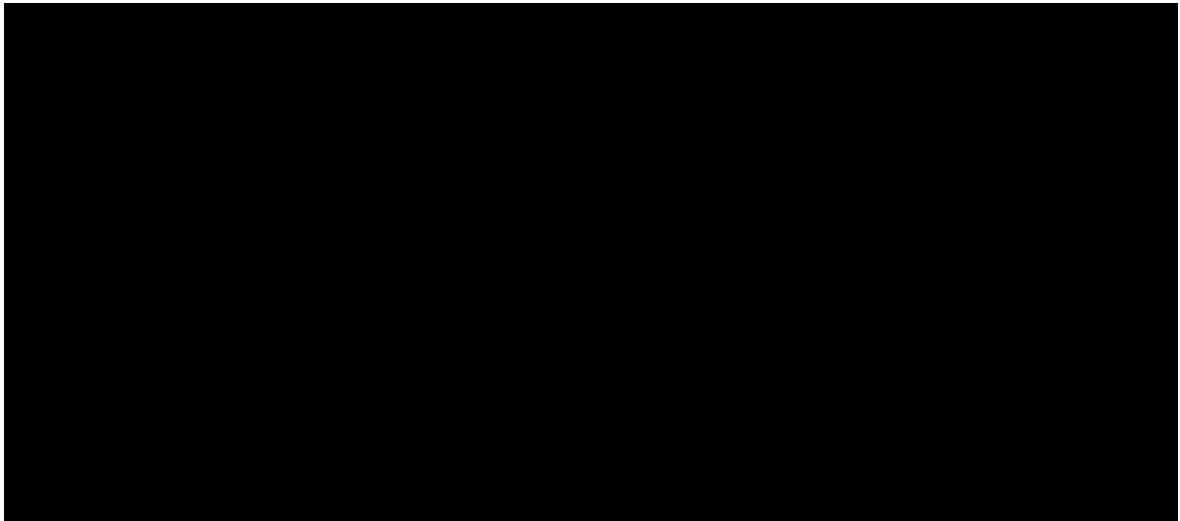
NaturEner has leased the land from private owners and claims to have 100% control of the land. There are no state or federal lands involved.

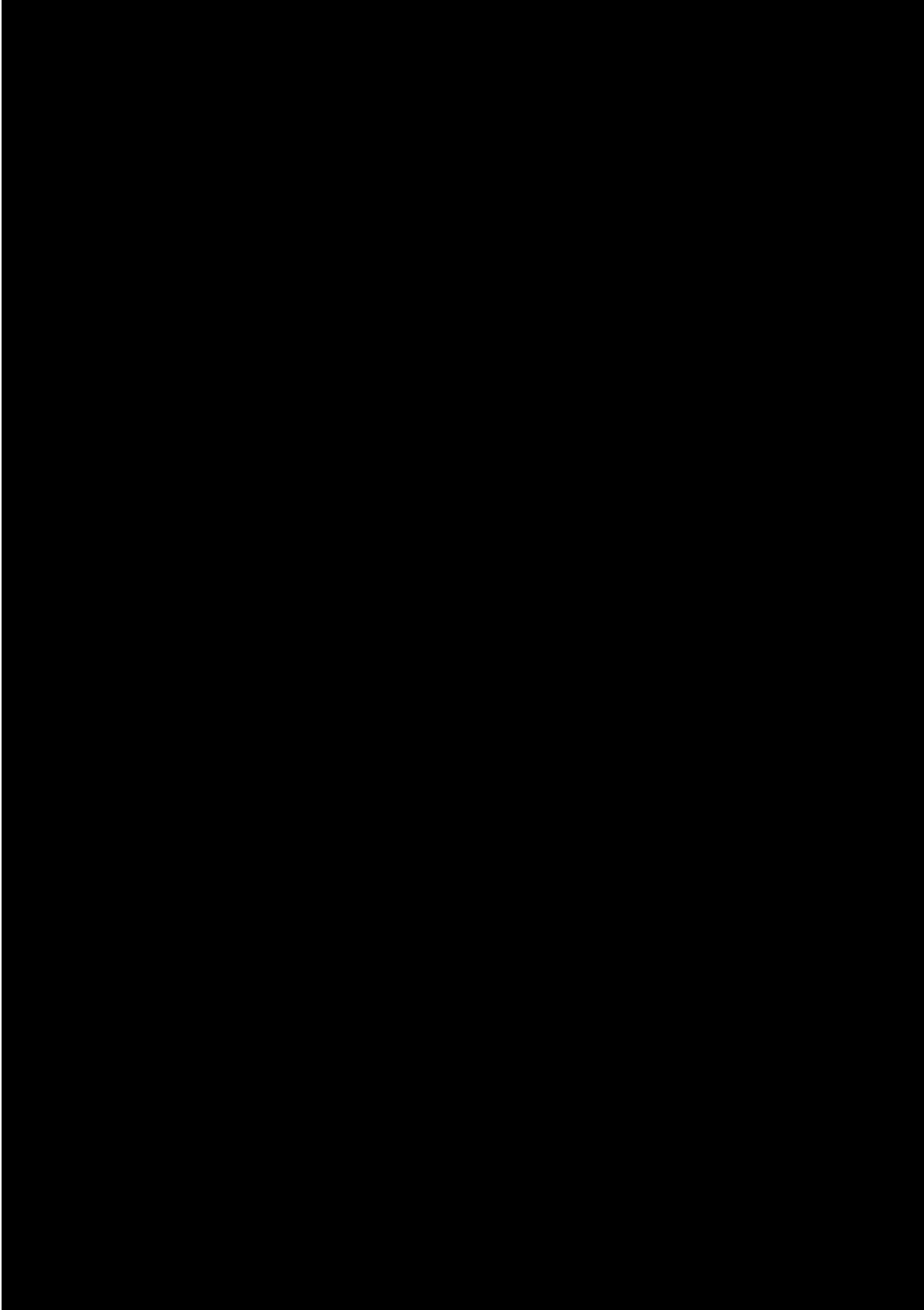
2. EQUIPMENT PROCUREMENT

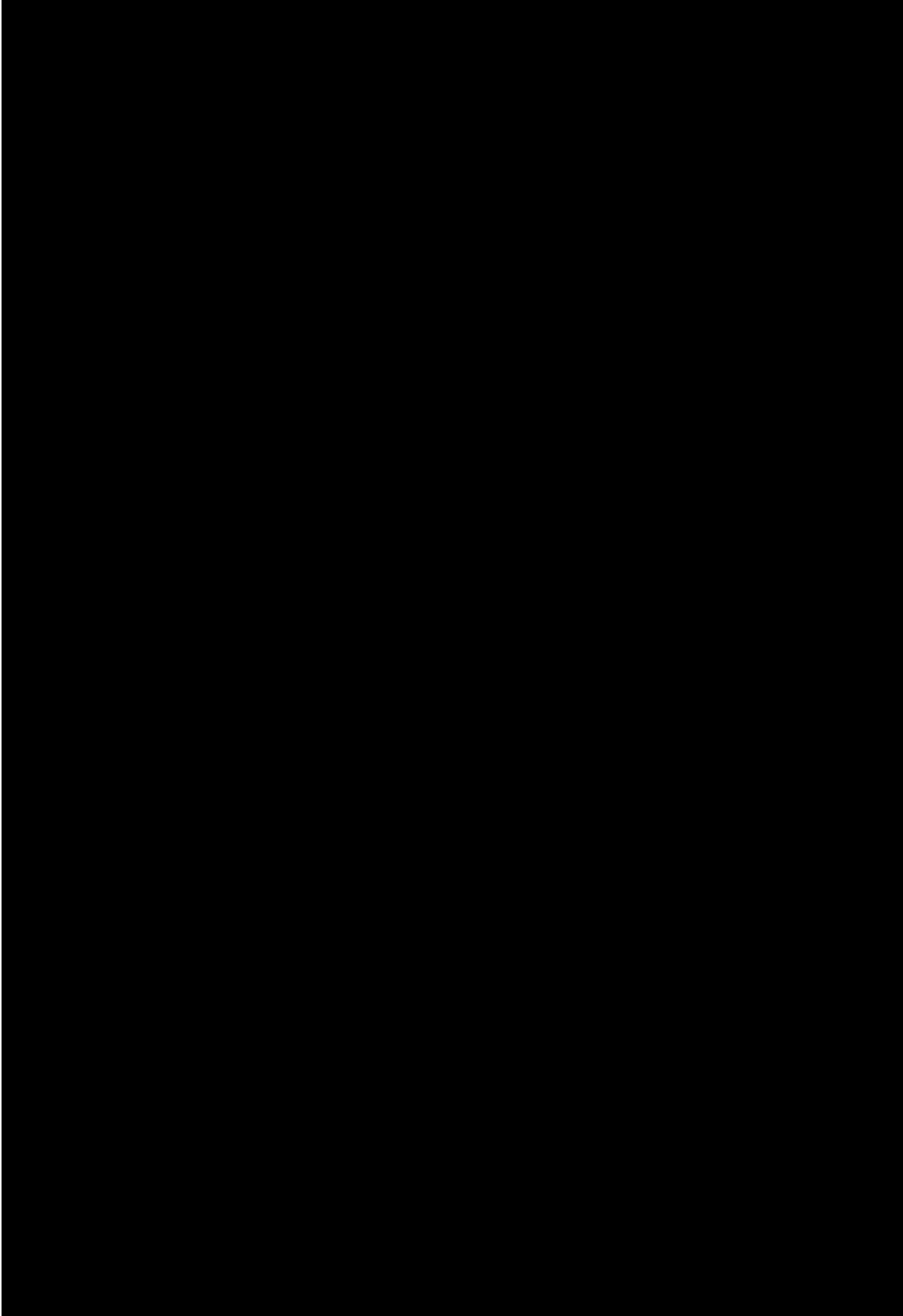
NaturEner has already signed agreements committing to the procurement of the Acciona 1.5 MW turbines, turbine assemblies, and collection systems for the project

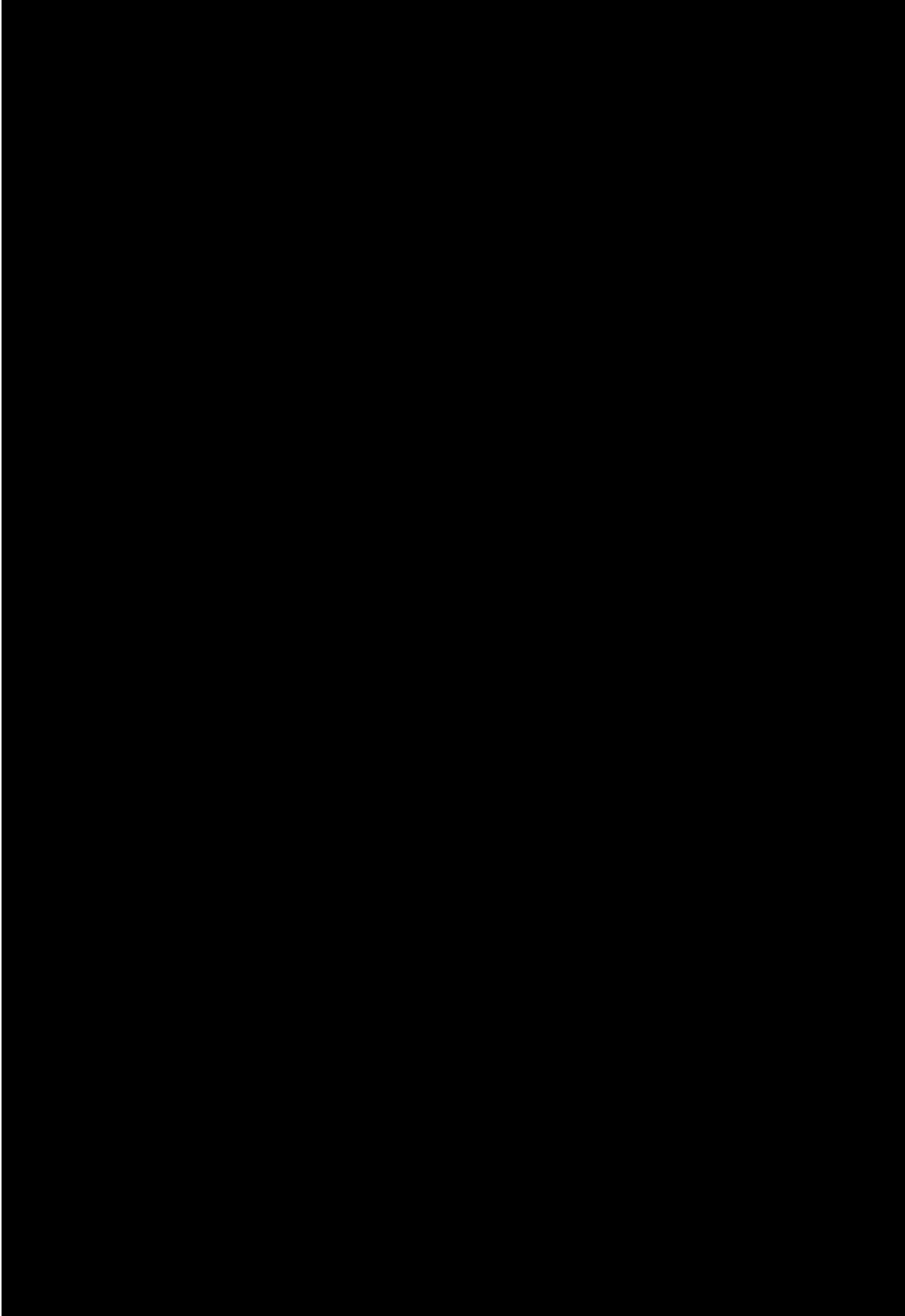
3. PERMITTING STATUS

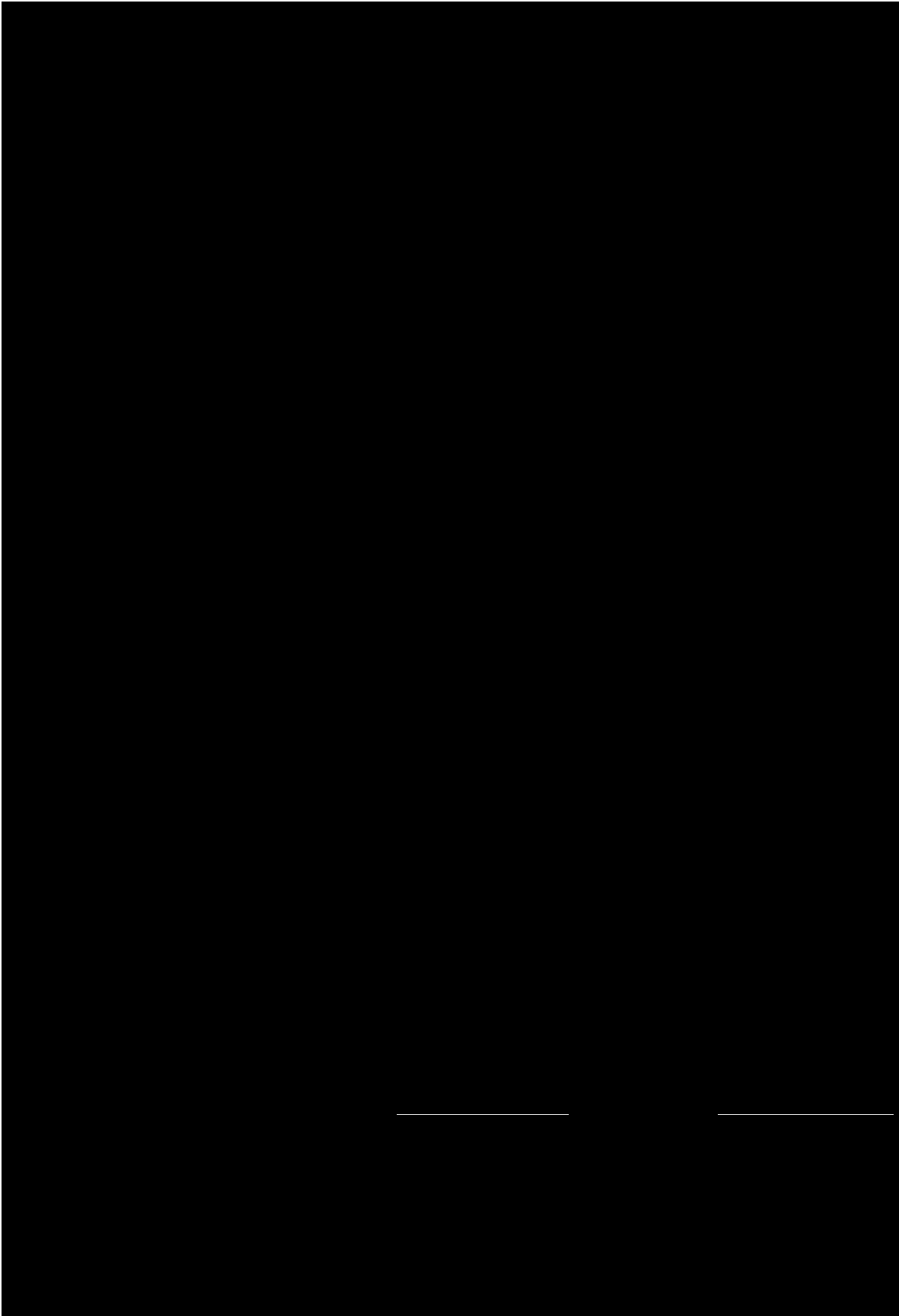
Below is a table showing status of permits for the Rim Rock facility as of the most recent updated provided by NaturEner on October 28, 2009.

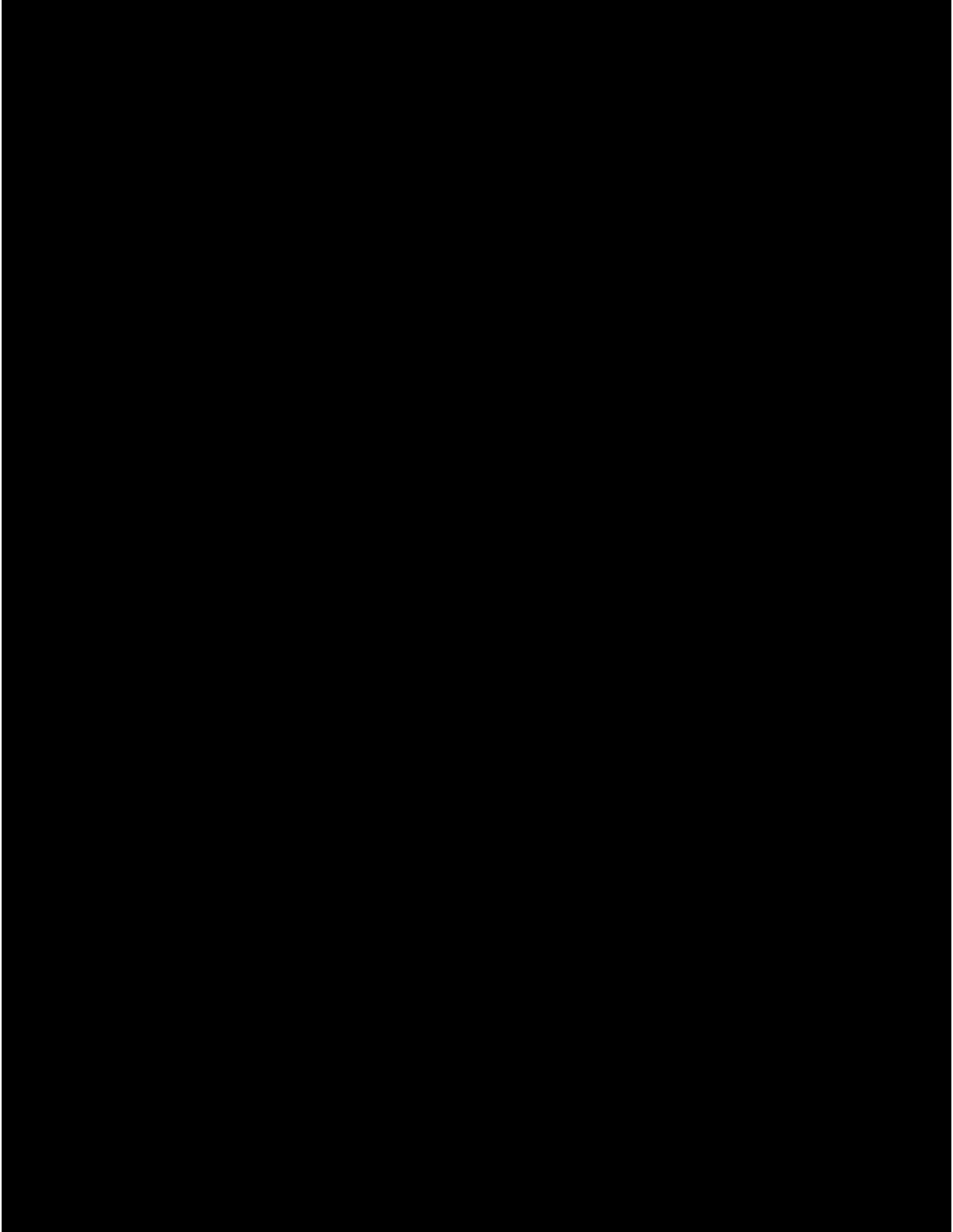












D. PTC/ITC.

The Rim Rock wind farm is located in Montana and is eligible for federal Production Tax Credit or Investment Tax Credits.

The project will elect to receive PTCs. Given the high capacity factor of the wind at the project site, PTCs provide more economic benefit than ITCs. The project is forecast to be online prior to the expiration of PTCs at the end of 2012. The PTCs are needed as part of a tax equity financing structure, as they are passed to the tax equity investor as a form of return on their tax equity investment. Without PTCs, there would not be sufficient tax benefits available to justify a tax equity investment; this would make the Project much less attractive to financiers and make project financing more difficult, possibly resulting in the loss of the Project.

Closing on financing for Rim Rock would be impaired if Production Tax Credits were not available at the time of closing. Failure to secure project financing triggers a termination right under the Rim Rock contract. Under the Federal Stimulus bills, these tax credits have been extended through year 2012. Therefore the availability of tax credits is highly likely and the risk of failure due to lack of tax credits is low if CPUC approval of SDG&E's financing is approved at the last CPUC meeting in March, 2011.

E. TRANSMISSION.

1. HOW ELECTRICITY WILL BE DELIVERED UNDER THE CONTRACT IN TERMS OF COST, TIMING, AND LOCATION. ANY IMPROVEMENTS, TRANSACTIONS, AND OTHER CONTINGENCIES THAT MUST BE MET, TO ENABLE DELIVERY AS PLANNED

Electricity will be delivered from the project site to the Hay Lake Substation on the Montana-Alberta Transmission Link via a ~7.2 mile generation tie line, and from there transmitted to the Alberta Electric System Operator ("AESO"). To deliver power to Alberta and to sell it as a firm power transaction,



NaturEner has had to procure regulating reserves from other utilities as well as a dynamic transfer arrangement to ensure deliveries of the regulating reserves into the NaturEner Rim Rock balancing authority.

2. LOCATIONAL ATTRIBUTES OF THE CONTRACT SUCH AS, CONGESTION RISK, IMPACT ON THE STATUS OF RUN MUST RUN (RMR) GENERATORS, AND RESOURCE ADEQUACY REQUIREMENTS.

[REDACTED]

Impact on RMR Generators: There is no known impact of the Proposed Amendment to the Agreement on RMR generators; however RMR decisions are the jurisdiction of the CAISO, not SDG&E.

[REDACTED]

3. TRANSMISSION DETAILS:

<b>TRANSMISSION DETAILS</b>	
QUEUE NUMBER (SPECIFY CONTROL AREA : CAISO, IID, ETC) AND RELATIVE POSITION	Queue positions #1 and 2 on Montana Alberta Tie Ltd's interconnection queue
IF IN CAISO SERIAL GROUP, STATUS OF:	
FEASIBILITY STUDY	Not in CAISO Serial Group
SYSTEM IMPACT STUDY	Not in CAISO Serial Group
FACILITIES STUDY	Not in CAISO Serial Group
IF IN CAISO CLUSTER:	
NAME OF CLUSTER	Not in CAISO Cluster
STATUS OF PHASE I AND II STUDIES	Not in CAISO Cluster
INTERCONNECTION AGREEMENT – DATE SIGNED OR ANTICIPATED	Currently in negotiation
PREFERRED POINT OF INTERCONNECTION (LINE, SUBSTATION, ETC.)	MATL's 230 kV transmission line at Hay Lake Substation between Great Falls, Montana, USA and Lethbridge, Alberta, Canada
EARLY INTERCONNECTION DETAILS, IF APPLICABLE	None
GEN-TIE TYPE (NEW LINE, RECONDUCTOR, INCREASED TRANSFORMER BANK CAPACITY, INCREASED BUS CAPACITY, INCREASED SUB AREA)	New Line
GEN-TIE LENGTH	~7.2 miles
GEN-TIE VOLTAGE	230 kV

DEPENDENT NETWORK UPGRADE(S)	
EXPECTED NETWORK UPGRADE COMPLETION DATE	

**F. FINANCING PLAN.**

NaturEner plans to obtain construction financing from lenders. Take-out, long-term financing will be provided using a combination of its own equity, and tax equity investments made by SDG&E. It is anticipated that the total amount of tax equity contributed by SDG&E will be up to the lower of 79.99% of total Project cost, depending on the final Project costs or \$600 million. SDG&E is submitting its tax equity financing proposal for approval by the CPUC together with this request for modification of the Rim Rock contract.

**G. PROJECT VIABILITY CALCULATOR (PVC) – NOT APPLICABLE IF PROJECT IS COMMERCIALY OPERATIONAL.**

**1. MODIFICATIONS THAT WERE MADE TO THE PVC**

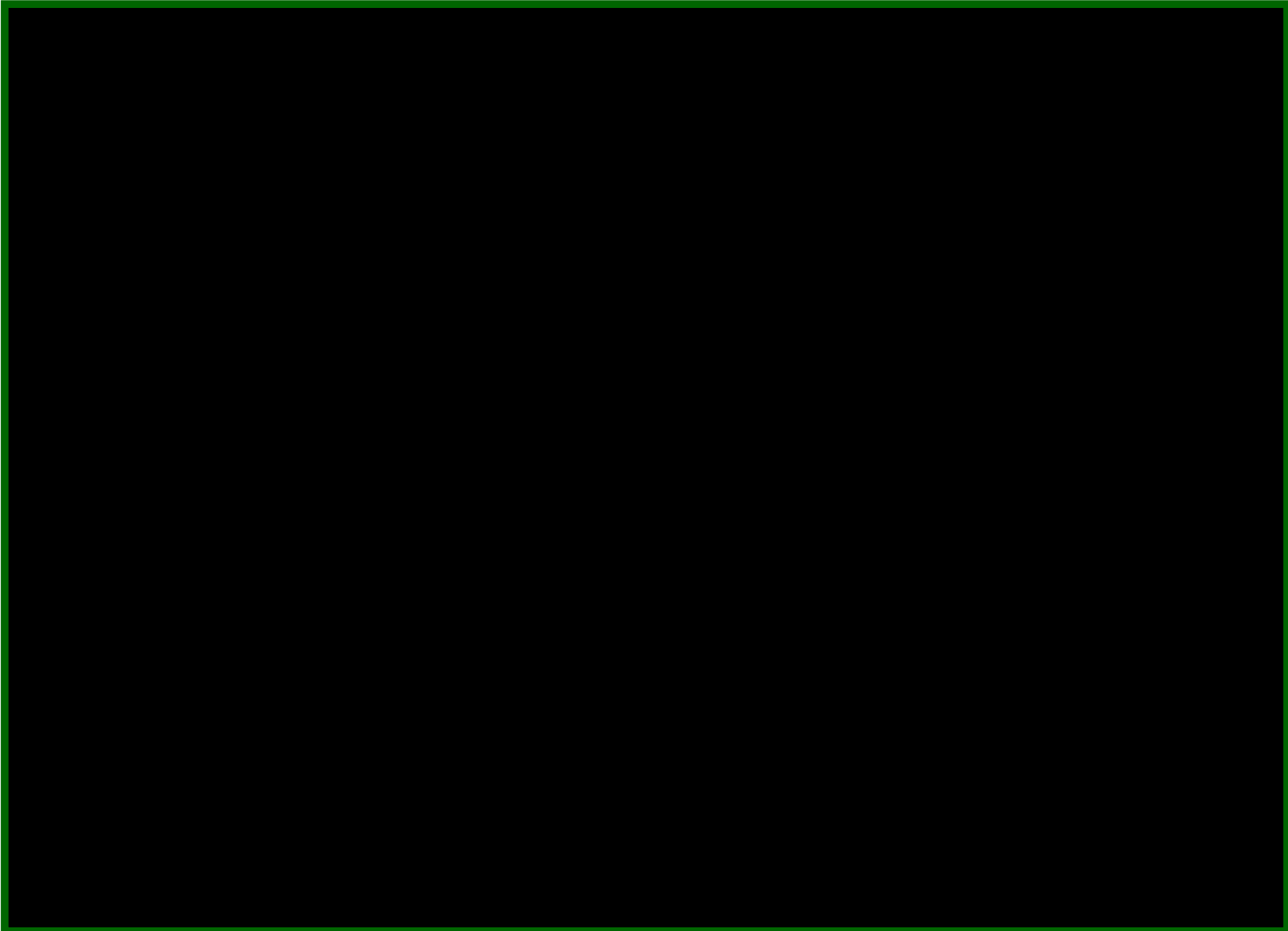
SDG&E did not make any modifications to the Energy Division issued PVC.

2. THE PROJECT'S PVC SCORE RELATIVE TO OTHER PROJECTS ON THE SHORTLIST AND IN THE SOLICITATION (E.G. RELATION TO MEAN AND MEDIAN, ANY PROJECTS NOT SHORTLISTED WITH HIGHER PVC SCORES, ETC.). USE FIGURES FROM BID WORKPAPERS, AS APPROPRIATE.

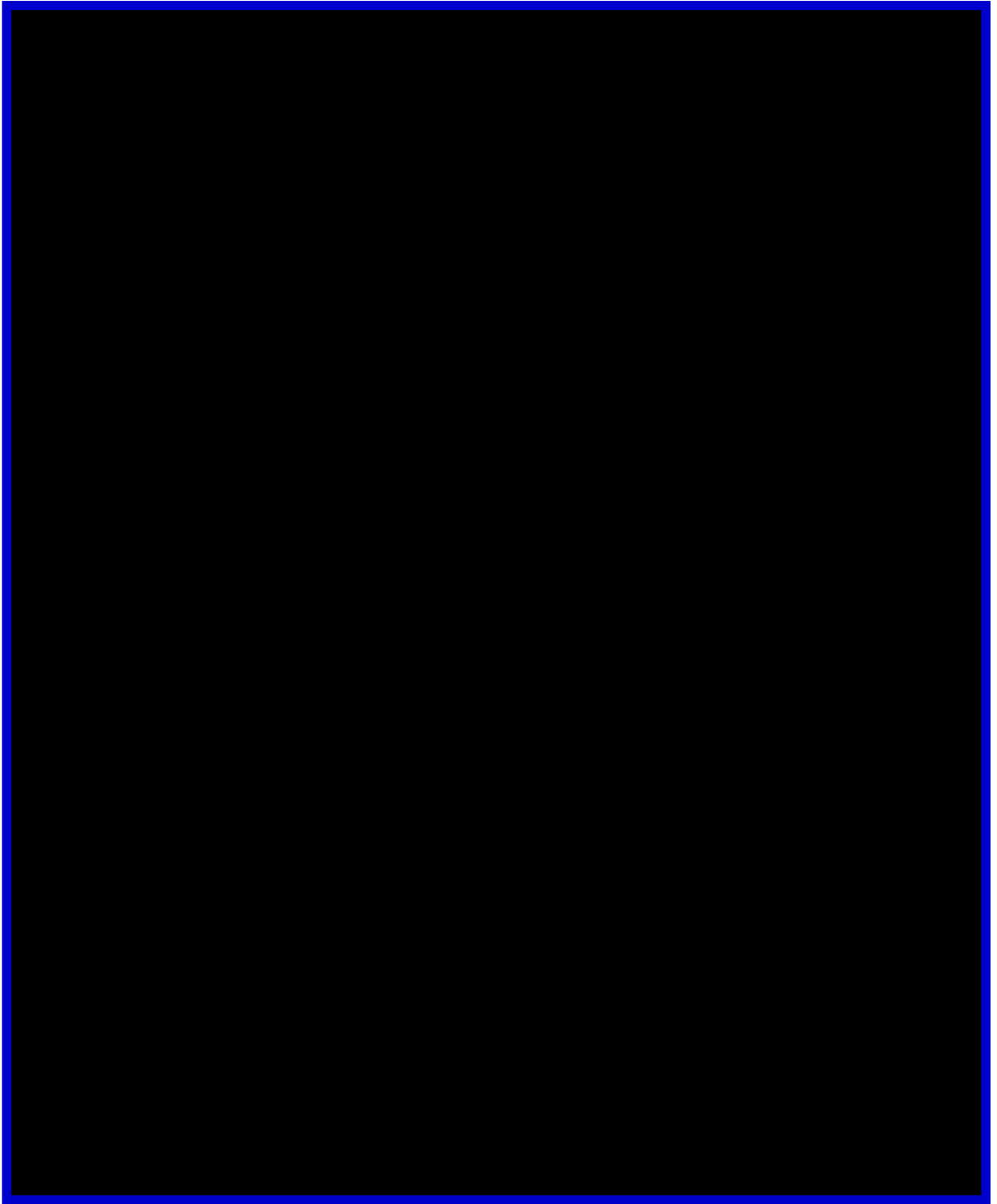
[REDACTED]

3. GENERATED GRAPHS FROM THE RPS WORKPAPERS.





4. THE PROJECT'S PVC RESULTS



## CONTRACT SUMMARY

### A. SITE

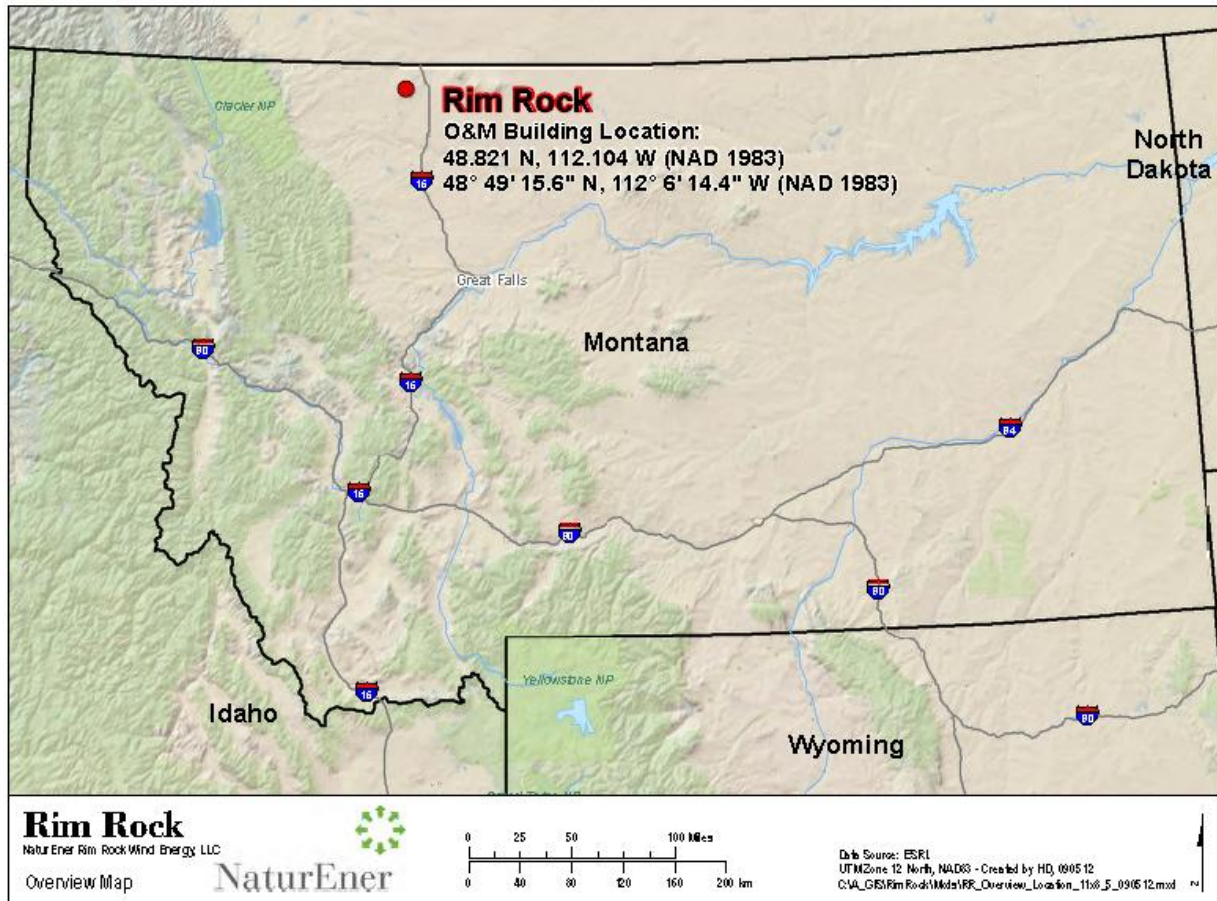
#### 1. ADDRESS, LATITUDE AND LONGITUDE OF PROJECT SITE (IN DECIMAL DEGREE AND DEGREES: MINUTES: SECONDS FORM)

The project is located in north central Montana, near Kevin. The project's geographical coordinates are listed on the map below.

Latitude: 48.821 N or 48° 49' 15.6" N

Longitude: 112.104 W (NAD 1983) or 112° 6' 14.4" W (NAD 1983)

#### 2. PROVIDE A GENERAL MAP OF PROJECT LOCATION.





**B. CONTRIBUTION TO IOU'S RPS PROCUREMENT TARGETS:**

Rim Rock is scheduled to be built during 2012 and expected to provide its' first full year deliveries starting in 2013. [REDACTED]

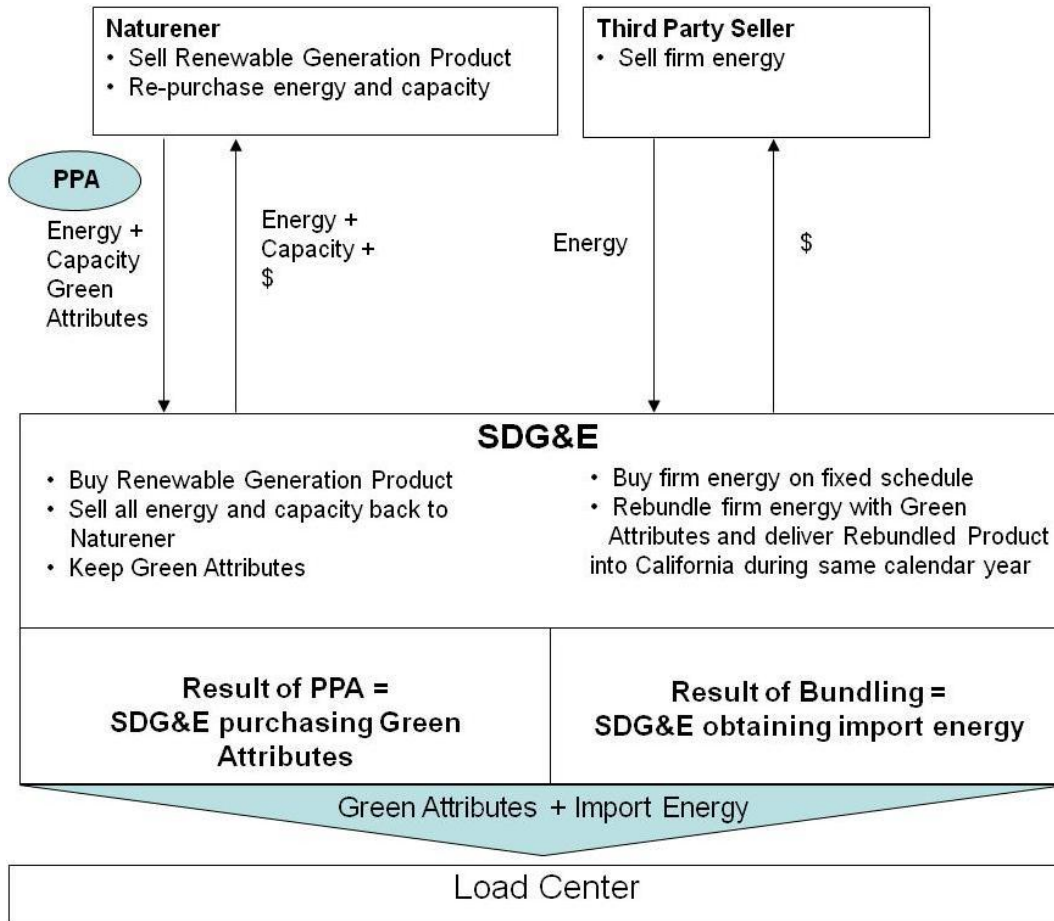


**C. TERMS AND CONDITIONS OF DELIVERY**

**1. THE POINT OF DELIVERY FOR THE PROJECT'S ENERGY AND THE SCHEDULING COORDINATOR.**

SDG&E is responsible for rebundling the green attributes to conventional power and scheduling that power into California as part of the delivery requirement. SDG&E has no responsibility to schedule power from the Rim Rock facility , the project company (Seller) has the responsibility for scheduling "null" power flows from the project. SDG&E intends to attach Rim Rock's Green Attributes to imports from an existing power plant, El Dorado CCGT (located in southern Nevada), to be purchased by SDG&E in October, 2011. SDG&E reserves the right to use spot purchases if needed for importing power in any year where existing imports are insufficient.

2. INFORMATION REGARDING FIRING AND SHAPING ARRANGEMENTS, OR OTHER PLANS TO MANAGE DELIVERY OF THE ENERGY THAT IS NOT INCLUDED IN THE PUBLIC SECTION OF THE ADVICE LETTER.



SDG&E will purchase a bundled renewable power product from Rim Rock. SDG&E will make a simultaneous sale back to Rim Rock, at the project’s busbar, of conventional power. This CEC eligible firming-and-shaping method leaves SDG&E with the green attributes associated with the project. SDG&E will rebundle or match these green attributes to the energy generated by the El Dorado generating facility in Nevada and delivered to the CAISO using a firm transmission agreement. During a potential CAISO emergency or Force Majeure with El Dorado generation or transmission, SDG&E has a number of existing long term power imports that it may use for this purpose on an interim basis, or it may use spot power imports. A true-up of the Project’s net metered

generation and the rebundled imported energy will be accomplished annually. Deliveries of import energy will be documented with a North American Electric Reliability Corporation (“NERC”) E-tag that relates such deliveries to the energy generated from the project through a note in the miscellaneous field. The green attributes will be tracked via the project’s net metered generation that will be reported to and tracked by the Western Renewable Energy Generation Information System (“WREGIS”).

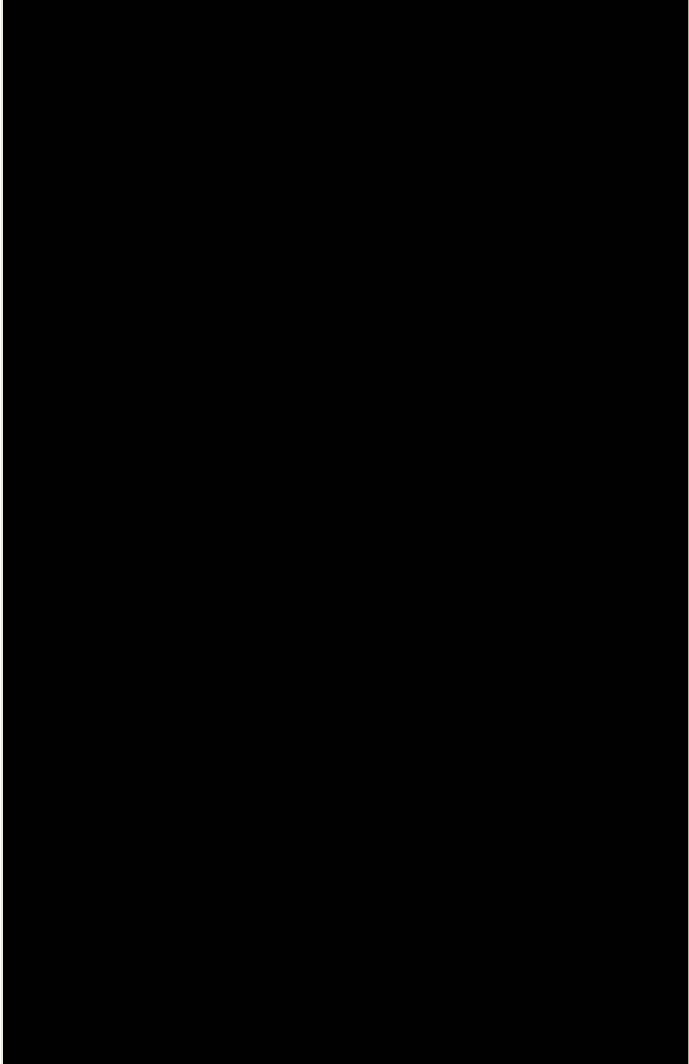
**D. MAJOR CONTRACT PROVISIONS**

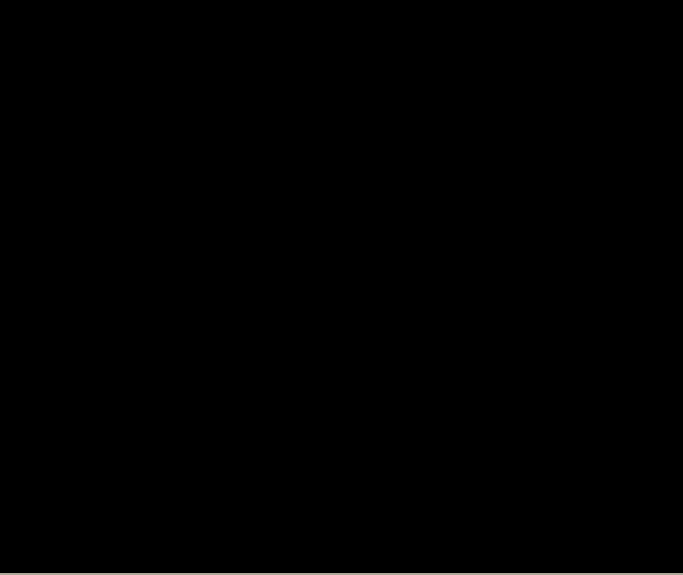


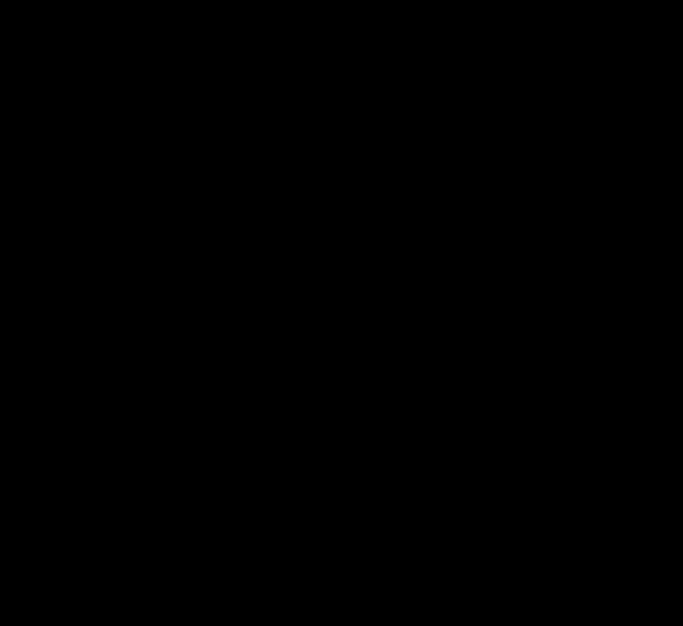
1. MAJOR CONTRACT PROVISIONS ARE SUMMARIZED IN THE MATRIX BELOW.
  
2. CONTROVERSIAL AND/OR MAJOR PROVISIONS NOT EXPRESSLY IDENTIFIED IN THE MATRIX BELOW.

TERM/CONDITION	RPS CONTRACT
<b>TYPE OF PURCHASE</b> (RENEWABLE, RENEWABLE/CONVENTIONAL HYBRID, ETC.)	
<b>UTILITY OWNERSHIP OPTION</b>	
<b>CONDITIONS PRECEDENT AND DATE TRIGGERS</b>	

TERM/CONDITION	RPS CONTRACT
AVERAGE ACTUAL PRICE (\$/MWh)	[REDACTED]
PRODUCT TYPE	[REDACTED]
<p>KEY CONTRACT DATES</p> <p>(INITIAL STARTUP DEADLINE, COMMERCIAL OPERATION DEADLINE, PTC DEADLINES, ETC.)</p>	[REDACTED]
FIRMING/SHAPING REQUIREMENTS	[REDACTED]
EXPECTED PAYMENTS	[REDACTED]
SCHEDULING COORDINATOR	[REDACTED]
<p>ALLOCATION OF CAISO</p> <p>(OR OTHER CONTROL AREA) CHARGES</p>	[REDACTED]
ALLOCATION OF CONGESTION RISK	[REDACTED]
PROJECT DEVELOPMENT SECURITY	[REDACTED]

TERM/CONDITION	RPS CONTRACT
<b>DAILY DELAY DAMAGES</b>	[REDACTED]
<b>SELLER-REQUIRED PERFORMANCE</b>	[REDACTED]
<b>SELLER PERFORMANCE ASSURANCES</b> (CALCULATION METHODOLOGY, FORM OF PERFORMANCE ASSURANCE AND AMOUNT)	[REDACTED]
<b>AVAILABILITY GUARANTEES</b>	[REDACTED]
<b>ENERGY DELIVERY REQUIREMENTS</b>	[REDACTED]
<b>LIQUIDATED DAMAGES</b> <b>/PENALTIES FOR FAILURE TO PERFORM</b>	[REDACTED]

TERM/CONDITION	RPS CONTRACT
<p data-bbox="164 772 545 806"><b>FORCE MAJEURE PROVISIONS</b></p>	 The right-hand column of the table is completely redacted with a solid black fill, obscuring any text or data that might have been present.

TERM/CONDITION	RPS CONTRACT
<p><b>NO FAULT TERMINATION</b></p>	
<p><b>SELLER'S TERMINATION RIGHTS</b></p>	
<p><b>UTILITY'S TERMINATION RIGHTS</b></p>	
<p><b>RIGHT OF FIRST REFUSAL OR RIGHTS OF FIRST OFFER</b></p>	

**3. OTHER CONTRACT PROVISIONS**

- a. ANY OTHER SIGNIFICANT OR UNIQUE CONTRACT PROVISIONS TOO DETAILED AND/OR COMPLICATED TO INCLUDE IN THE MATRIX ABOVE.

SDG&E is applying in this application to be a tax equity investor in the project, making it both the offtaker of power and green attributes and a partial owner of the holding company that owns the project company. See other portions of this application for details on the tax equity investment.

- b. WHETHER THE DEVELOPER IS TAKING ON THE FULL RISK UNDER CURRENT CONTRACT TERMS AND PRICE (FOR BIOMASS CONTRACTS ONLY).

The project does not depend on biomass fuel.

**E. CONTRACT PRICE**

1. THE LEVELIZED CONTRACT PRICE USING SDG&E'S BEFORE TAX WEIGHTED AVERAGE COST OF CAPITAL DISCOUNT RATE IS INDICATED BELOW.

	PRICE	NOTES
LEVELIZED BID PRICE - INITIAL (\$/MWh)		Current price under CPUC-approved contract
LEVELIZED CONTRACT PRICE - FINAL (\$/MWh)		Amended cost-based repricing; final contract price to be set at the time of construction financing
TOTAL SUM OF CONTRACT PAYMENTS		Cost of Green Attributes over 20 yrs

2. THE INDIVIDUAL COMPONENTS OF THE CONTRACT PRICING STRUCTURE ARE AS FOLLOWS:



- **FLAT PRICING:** Price of Green Attributes will be flat and fixed upon close of project construction financing.
- **INDEXED PRICING:** None.
- **ESCALATION FACTORS:** None.
- **NON-AMFs SUBSIDIES:** Federal production tax credits are used.

3. CONTRACT TERMS THAT PERMIT MODIFICATIONS TO THE CONTRACT PRICE.

As discussed above, this proposed contract amendment will be based upon costs (actual and forecast) at the time of construction financing. The Agreement does not include terms that would permit modification to the contract price once the project reaches construction financial close.

4. PRICE ADJUSTMENTS/MODIFICATIONS REQUESTED OF THE DEVELOPER DURING THE NEGOTIATION PERIOD. PRICE ADJUSTMENTS/MODIFICATIONS REQUESTED OF THE UTILITY DURING THE NEGOTIATION PERIOD. REASON(S) FOR THE PRICE ADJUSTMENT(S). HOW THE INITIAL BID PRICE COMPARES TO THE FINAL CONTRACT PRICE.

Details of price adjustments and modifications are provided in "Consistency with Commission Decisions and Rules", section C.4, "How and Why the Project's Bid Ranking Changed After Negotiations" above.

5. PROJECT CHARACTERISTICS (E.G. NETWORK UPGRADE COSTS, EQUIPMENT COSTS, CHANGES IN CAPACITY FACTOR, ETC.) THAT COULD CHANGE THE CONTRACT PRICE AND THEIR EFFECT ON THE LEVELIZED CONTRACT PRICE.

As discussed above, this proposed contract amendment will be based upon costs (actual and forecast) at the time of construction financing.

6. FOR BIOMASS PROJECTS:

- a. WHAT LENGTH FUEL CONTRACT(S) HAS BEEN SIGNED, AND FOR HOW MANY YEARS OF THE PPA HAVE FUEL CONTRACT(S) BEEN SECURED?

The project will not depend on biomass fuel.

**b. DESCRIBE THE DEVELOPER'S FORECASTED PRICE FOR FUEL SUPPLIES.**

The project will not depend on biomass fuel.

**c. EXPLAIN HOW THE CONTRACT PRICE TAKES FUEL PRICE VOLATILITY INTO ACCOUNT.**

The project will not depend on biomass fuel.

**d. EXPLAIN WHAT THE DEVELOPER PLANS TO DO IF FUEL SOURCE DISAPPEARS OR BECOMES MORE EXPENSIVE.**

The project will not depend on biomass fuel.

**7. THE FOLLOWING TABLE ESTIMATES/PROVIDES ALL APPLICABLE ASSUMPTIONS REGARDING DIRECT OR INDIRECT CONTRACT COSTS THAT ARE PART OF THE CONTRACT, BUT NOT INCLUDED IN THE CONTRACT'S \$/MWh PRICE.**

Costs	Direct or Indirect?	Description	\$/Year	\$/MWh*
There are no direct or indirect costs that are not included in the contract's price of Green Attributes. As discussed in the main body of this testimony, SDG&E may enter into hedging arrangements to backstop the sale of null power from the project company to third parties.				

**8. INDIRECT EXPENSES ARE BUILT INTO THE CONTRACT PRICE, PROVIDE:**

**a. A CALCULATION THAT SUBTRACTS THE INDIRECT EXPENSES FROM THE CONTRACT'S TOTAL ABOVE-MARKET COSTS, AND**

[REDACTED]

**b. A DESCRIPTION OF THE METHODOLOGY USED FOR THE CALCULATION.**

[REDACTED]

[REDACTED] The NPV of Above MPR Costs is calculated by the AMF Calculator on the "AMFs CALCULATION" worksheet, cell G40. [REDACTED]

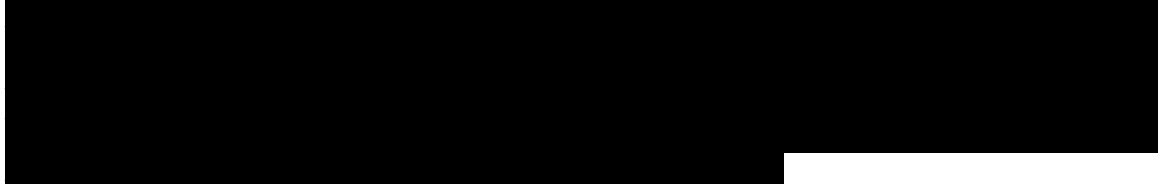
[REDACTED]

9. FOR AN OUT-OF-STATE CONTRACT IN WHICH THE ENERGY WILL BE FIRMED AND SHAPED, THE TABLE BELOW IDENTIFIES ALL FIRING AND SHAPING COSTS ASSOCIATED WITH THE PROJECT AND WHETHER THEY ARE INCLUDED IN THE CONTRACT PRICE. (IF THERE ARE MULTIPLE POTENTIAL DELIVERY OPTIONS, THE TABLE IDENTIFIES THE FIRING AND SHAPING COSTS ASSOCIATED WITH EACH OPTION, AND A NARRATIVE BELOW EXPLAINS WHICH OPTION SDG&E EXPECTS IS THE MOST AND LEAST LIKELY.)

(\$/MWH)	EXPECTED CASE	BEST CASE	CAP CASE	IMPORTING INTO CALIFORNIA
<b>PPA PRICE (GREEN ATTRIBUTES)</b>				
<b>MAXIMUM PRICE</b>				
<b>FIRMING/SHAPING (FOR DELIVERIES OF GREEN ATTRIBUTES TO CALIFORNIA)</b>				
<b>TRANSMISSION LOSSES:</b>				
<b>TRANSMISSION SERVICE (WHEELING):</b>				
<b>IMBALANCE ENERGY CHARGES:</b>				
<b>ANCILLARY SERVICE CHARGES:</b>				
<b>COST OF IMPORTED ENERGY FOR FIRMING/SHAPING:</b>				
<b>ESTIMATED CONGESTION COST:</b>				
<b>TOTAL FIRMING/SHAPING:</b>				
<b>ALL-IN TOTAL</b>				
<b>RELEVANT MPR</b>				

<b>MAXIMUM PRICE + TOTAL FIRMING/SHAPING:</b>				
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\* Refer to table in "Consistency with Commission Decisions and Rules", section C.1, "Project's bid scores under SDG&E's approved LCBF evaluation criteria" above for price details



**10. RESULTS FROM THE ENERGY DIVISION'S AMFs CALCULATOR**

	(\$/MWH)	NOTES
LEVELIZED TOD-ADJUSTED CONTRACT PRICE		Maximum Green Attribute Case
LEVELIZED TOD-ADJUSTED TOTAL CONTRACT COST (CONTRACT PRICE + FIRMING AND SHAPING)		Maximum Green Attribute + El Dorado Cost of Energy with RA
LEVELIZED MPR		
LEVELIZED TOD-ADJUSTED MPR		
ABOVE-MPR COST (\$/MWH)		
TOTAL SUM OF ABOVE-MPR PAYMENTS (\$)		

AMF Calculator spreadsheet is attached in "Consistency with Commission Decisions and Rules", section I, "AMFs" above.

**11. EXPLAINING WHICH MPR WAS USED FOR THE AMFs / COST CONTAINMENT CALCULATION (ONLY IF THE CONTRACT IS ELIGIBLE FOR AMFs).**

As a bilateral transaction, this project is ineligible for AMFs.

**12. GRAPHS FROM THE RPS WORKPAPERS:**

**RPS SOLICITATION BID SUPPLY CURVE: 2009 ALL BIDS VS. CURRENT SHORT LIST**









[REDACTED]

**b. OTHER BIDS IN THE RELEVANT SOLICITATION USING THE SAME TECHNOLOGY,**

[REDACTED]

**c. RECENTLY EXECUTED CONTRACTS**

[REDACTED]

**d. OTHER PROCUREMENT OPTIONS (E.G. BILATERALS, UTILITY-SPECIFIC PROGRAMS, ETC.)**

See discussion under "Consistency with Commission Decisions and Rules", section C.5, "Using LCBF criteria and other relevant criteria, explain why the submitted contract was preferred relative to other shortlisted bids or other procurement options" above.

**14. THE RATE IMPACT OF THE PROPOSED CONTRACT (CENTS PER KILOWATT-HOUR) BASED ON THE RETAIL SALES FOR THE YEAR WHICH THE PROJECT IS EXPECTED TO COME ONLINE.**

[REDACTED]

[REDACTED]

[REDACTED]

# Exhibit C

# San Diego Gas & Electric Co.

Report of the Independent Evaluator on the  
amended NaturEner Rim Rock contract  
relative to the results of the 2009 Request  
for Offers from Eligible Renewable  
Resources (2009 Renewable RFO)

July 14, 2010

# San Diego Gas & Electric Co.

Report of the Independent Evaluator on the  
amended NaturEner Rim Rock contract  
relative to the results of the 2009 Request  
for Offers from Eligible Renewable  
Resources (2009 Renewable RFO)

July 14, 2010

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Version: 1.0

***FOREWORD***

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This is PA Consulting Group's Independent Evaluator (IE) Report analyzing, in the context of the results of San Diego Gas & Electric Company's 2009 Renewables RFO, the amended contract with the NaturEner Rim Rock project for wind power. It is not, strictly speaking, a report of results from that RFO or describing any contract coming out of the RFO. The contract at issue is bilateral, as NaturEner did not bid any resources into the RFO. The contract at issue was initially submitted to the CPUC for approval in May 2009 (SDG&E Advice Letter 2088-E) and approved by the CPUC in Resolution E-4277 dated Nov. 20, 2009.

This report is based on PA Consulting Group's Preliminary Report on the 2009 RFO. The Preliminary Report addressed the conduct and evaluation of San Diego Gas & Electric Company's 2009 Renewables RFO through the selection of its preliminary short list. This report contains all the text of the Preliminary Report (placeholder text in chapters 6 and 7 is replaced by new text). In the body of the report (that is, except for this Foreword), text from the Preliminary Report is in gray while new text is presented in black. This should help the reader identify the new text.

We anticipate that this Report will be filed with the CPUC in fulfillment of that Commission's requirement that an IE Report accompany contracts submitted for approval. SDG&E may also make a tax equity investment in the Rim Rock project, which could create an affiliate relationship. A contract with an affiliate would require a FERC Section 205 filing and evidence that there was no affiliate abuse. SDG&E has indicated that they would want to use this IE report to demonstrate a lack of affiliate abuse, and have therefore included language specifically directed to the FERC requirement, based on the analysis performed to meet California's requirement.

This report contains confidential and/or privileged materials. Review and access are restricted subject to PUC Sections 454.5(g), 583, D.06-06-066, GO 66-C and the Confidentiality Agreement with the CPUC.

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## **1. INTRODUCTION**

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PA Consulting Group, Inc. (PA) has served as the Independent Evaluator (IE) of San Diego Gas & Electric Co.'s (SDG&E's) 2009 Request for Offers from Eligible Renewable Resources (2009 Renewable RFO). This Report provides PA's evaluation of the fairness of the solicitation, up to and including the identification of a "short list" of bidders with whom SDG&E may pursue contract negotiations. This document has been formatted in accord with a template provided by Cheryl Lee of the CPUC Energy Division in an email dated Oct. 27, 2009.

The CPUC template has been augmented by the additional of a final chapter directed at a potential FERC Section 205 filing. FERC applies what is known as the *Edgar* standard to determine whether there was any abuse of the affiliate relationship or unfair dealing. Chapter 8 connects the analysis performed in the earlier sections of the report to the *Edgar* standard.

## **2. ROLE OF THE INDEPENDENT EVALUATOR (IE)**

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*Template language: “Describe the IE’s role.”*

This chapter describes the history of the requirements for Independent Evaluators at the Federal level and in California. It includes a list of the roles of the IE as well as a summary of PA’s activities in fulfilling those roles.

### **2.1 THE IE REQUIREMENT**

*Template language: “Cite CPUC decisions requiring IE participation in RPS solicitations: D.04-12-048 (Findings of Fact 94-95, Ordering Paragraph 28) and D.06-05-039 (Finding of Fact 20, Conclusion of Law 3, Ordering Paragraph 8).”*

Regulatory requirements for an IE of resource procurement can be traced to the Federal Energy Regulatory Commission’s (FERC’s) “Opinion and Order ... Announcing New Guidelines for Evaluating Section 203 Affiliate Transactions” (108 FERC ¶ 61,081 (2004)). That decision addressed ways to demonstrate that a utility’s procurement of power from an affiliate was not abusive or unfair, under the standards of the *Edgar* decision (55 FERC ¶ 61,382 (1991)). FERC provided a set of guidelines, which presumably would be sufficient to demonstrate that the utility had not unfairly favored its affiliate. One of those guidelines was that “an independent third party should design the solicitation, administer bidding, and evaluate bids prior to the company’s selection.” FERC proposed not just independent evaluation but independent conduct of all aspects of the solicitation (except, presumably, the need determination).

The California Public Utilities Commission (CPUC) referenced those guidelines in its December 2004 decision on long-term resource procurement.<sup>1</sup> The CPUC stated that although it had not previously required the use of an IE for resource procurement, it would “require the use of an IE in resource solicitations where there are affiliates, IOU-built, or IOU-turnkey bidders” from that point forward.<sup>2</sup> The CPUC’s intention was clearly that the IE should ensure that the utility did not favor itself, its affiliates or its shareholders (shareholders would earn a return on “ownership projects” – IOU-built or turnkey – but not on independent PPAs). The CPUC stated explicitly that it would not require the IE to conduct or administer the solicitation, nor would it “allow the IEs to make binding decisions on behalf of the utilities.” Under this decision the role of the IE is to provide advice to the utility in “the design, administration, and evaluation aspects of the RFO” and to observe the utility’s procurement and evaluation process in order to provide a fairness opinion.

D. 04-12-048 did not require IEs for procurements in which there were no affiliate or ownership bids. But in its decision approving the utilities’ plans for 2006 Renewable Portfolio Standard (RPS) solicitations, the CPUC determined that Independent Evaluators would be required for these and “all future solicitations” (it is unclear whether this means only all future

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<sup>1</sup> California Public Utilities Commission, Decision (D.) 04-12-048, May 26, 2006, p. 135f and Findings of Fact 94-95 on pp. 219-220.

<sup>2</sup> D. 04-12-084, p. 135f and Ordering Paragraphs 26i and 28 on p. 245.

## 2. Role of the Independent Evaluator (IE)

RPS solicitations).<sup>3</sup> The role of the IE is still not to conduct or administer the solicitation but to “separately evaluate and report on the IOU’s entire solicitation, evaluation and selection process”.<sup>4</sup> The Decisions that approved the utility RPS solicitation plans for 2007 and 2008<sup>5</sup> did not further elaborate on the IE role but took the participation of an IE as a given.

D. 09-06-018, which approved the utility RPS solicitation plans for 2009, contained additional requirements related to the use of Project Viability Calculators and directed “that project-specific project viability information should be included in the confidential appendices to advice letters and validated by the IE in the confidential versions of IE reports.”<sup>6</sup> The reference to the Project Viability Calculator has been incorporated by Energy Division in its template language for Section 7, which is only completed in the final IE report submitted with each contract Advice Letter.

CPUC Resolution E-4199<sup>6A</sup> clarifies the treatment of contract amendments that affect pricing. Proposed repricings should always be compared to the most recent MPR. The Commission is also expressly concerned that price amendments should only respond to changes in the developer’s costs, and not provide extra profits, and therefore the Commission requires the developer to provide cash flow models for the original contract and the repricing in order to allow Energy Division and the IE to identify any changes to model assumptions and to verify that they have not unfairly impacted the ratepayers. In all other cases the IE is only supposed to opine upon the relationship of the contract to the market.<sup>6B</sup>

D. 09-06-050, which was primarily concerned with the definition of a “fast-track” procedure for selecting and approving short-term renewable contracts, also clarified the procedure for approving bilateral contracts. It specifies that “long-term bilateral contracts should be reviewed according to the same processes and standards as contracts that come through a solicitation. This includes review by the utility’s Procurement Review Group and its Independent Evaluator.”<sup>6C</sup> The Decision further orders “the Director of Energy Division [to use] the market price referent calculated for the same solicitation year in which the contract is signed as a price reasonableness benchmark.”<sup>6D</sup> That would imply the reasonableness of contract should be judged against the contemporary market price referent (MPR), and

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<sup>3</sup> California Public Utilities Commission, Decision (D.) 06-05-039, May 26, 2006, p. 46, Finding of Fact 20b on p. 78, Conclusion of Law 3e(2) on p. 82 and Ordering Paragraph 8 on p. 88.

<sup>4</sup> D. 06-05-039, p. 46.

<sup>5</sup> California Public Utilities Commission, Decision (D.) 07-02-011, Feb. 15, 2007 and Decision (D.) 08-02-008, Feb. 15, 2008. The decisions actually only conditionally approved the plans but the conditions were not connected with the use of IEs.

<sup>6</sup> California Public Utilities Commission, Decision (D.) 09-06-018, June 8, 2009, p. 24.

<sup>6A</sup> California Public Utilities Commission, Resolution E-4199, March 12, 2009.

<sup>6B</sup> CPUC Resolution E-4199 op. cit., p. 26.

<sup>6C</sup> California Public Utilities Commission, Decision (D.) 09-06-050, June 19, 2009, p. 28f.

<sup>6D</sup> D. 09-06-050, Ordering Paragraph 7, p. 42.

## 2. Role of the Independent Evaluator (IE)

similarly against the shortlist of the contemporary RFO. In this specific case PA has used the results of the 2009 RFO.

### 2.2 PA'S ROLE AS INDEPENDENT EVALUATOR

*Template language: "Description of key IE roles: IEs provide an independent evaluation of the IOU's RPS bid evaluation and selection process:*

- "1. Did the IOU do adequate outreach to potential bidders and was the solicitation robust?*
- "2. Was the IOU's LCBF methodology designed such that all bids were fairly evaluated?*
- "3. Was the IOU's LCBF bid evaluation and selection process fairly administered?*
- "4. Did the IOU make reasonable and consistent choices regarding which bids were brought to CPUC for approval?"*

In April 2006, SDG&E retained PA to be the Independent Evaluator for an All-Source Request for Offers (All-Source RFO). SDG&E anticipated that there might be affiliate bids in that RFO, as in fact there were. The CPUC Energy Division, as well as the rest of SDG&E's Procurement Review Group (PRG), participated in the decision to select PA. PA's contract was subsequently amended to include the independent evaluation of additional SDG&E procurement activities.

When PA was contracted as IE for the All-Source RFO, PA and SDG&E agreed on an interpretation of the IE role that would not include a complete LCBF evaluation or full replication of the utility's computations, although PA would spot-check them. PA's role would be that of an observer and an adviser as needed. PA subsequently served as Independent Evaluator for SDG&E's 2006 Renewable RFO and the Local Peaker RFO (conducted in 2006-7). In each case, PA and SDG&E used the above interpretation of the IE role, and it was adopted for the 2009 Renewables RFO.

PA's emphasis has been on issues of fairness and equity. PA reviews the reasonableness of SDG&E's evaluation criteria and algorithms and spot-checks the calculations but does not enforce a single standard of evaluation. While PA may have an opinion about the "best" way to value certain attributes or even to conduct a multi-attribute evaluation, its role as IE has not been to judge SDG&E's evaluation against a standard, but rather to determine that SDG&E's evaluation has not unfairly favored affiliates or ownership bids, or favored SDG&E and its shareholders in any other way<sup>7</sup>.

For the 2009 RFO, SDG&E also asked PA to conduct the quantitative LCBF evaluation of bids, except for the congestion adder computation. This was a direct response to experience of past RFOs, and the efforts that SDG&E had to make to avoid any appearance of conflict in its evaluation of affiliate bids. PA also determined the **Transmission Ranking Cost Report (TRCR)** clusters, and hence TRCR costs, in cases where the bidder had not specified them.

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<sup>7</sup> E.g., it would have been unfair for SDG&E to design an evaluation method that favored a category of bidders on whose behalf SDG&E would have to make extensive rate-based transmission or distribution investments.

## 2. Role of the Independent Evaluator (IE)

PA's approach to conducting this evaluation was consistent with its approach to reviewing SDG&E's evaluation: the criteria to be applied were SDG&E's, not PA's, the spreadsheet model used to apply those criteria had been developed by SDG&E, and PA ensured that the criteria and model were reasonable and then applied them. PA did not itself determine the evaluation standards but PA did advise SDG&E on the definition and refinement of the evaluation criteria.

### 2.3 PA'S ACTIVITIES

*Template language: "Description of activities undertaken by the IE to fulfill the IE's role (i.e. attended negotiation meetings, reviewed Request for Proposals materials, attended pre-bid conference, evaluated proposals and/or reviewed evaluation process and results, etc.) and reporting/consultation with CPUC, PRG and others."*

PA and SDG&E began to discuss plans for the 2009 RFO during and after the 2008 RPS RFO evaluation, including the possibility of PA conducting the LCBF evaluation. SDG&E provided PA the draft RPS plan for review prior to its filing, and PA responded with a number of specific comments based on past experience. SDG&E and PA discussed several of these areas at length, most notably the treatments of duration equivalence and resource adequacy. SDG&E adopted several of PA's suggestions and declined to adopt others. In all these cases SDG&E's decisions were reasonable (even if they were to disagree with PA).

PA was provided access to all the SDG&E staff involved in the evaluation of the Renewables RFO. In general, the bid evaluation criteria were similar to those that had been used in past RFOs. PA met with SDG&E to review the evaluation criteria and reviewed the LCBF model constructed by SDG&E.

PA was present at both bidder conferences: in San Diego on August 5 and in El Centro on August 12. PA was provided all questions submitted by bidders either at the bidder conference or later in writing, as well as SDG&E's answers. PA received the electronic bids from SDG&E in San Diego on both days bids were due.

PA was in regular contact with the SDG&E evaluation team. PA was provided all the data in the evaluation process. PA was responsible for interpreting all bids in order to conduct the LCBF evaluation. PA identified missing or incomplete information, including viability scorecards, and requested additional data from bidders. PA also reviewed questions put by SDG&E to bidders, and bidders' answers. PA advised SDG&E on judgments that certain bids did not conform to RFO requirements. PA participated in Procurement Review Group (PRG) meetings during the evaluation period. SDG&E discussed the short list with PA as well as with the PRG.

SDG&E in no way prevented PA from observing its process and analyzing its methods, and did not interfere with PA's conduct of the LCBF evaluation.

### 2.4 CONFIDENTIALITY AND ADDITIONAL COMMENTS

*Template language: "Any other relevant information or observations."*

## *2. Role of the Independent Evaluator (IE)*

It is PA's understanding that confidential treatment of the information in an IE report is obtained through procedures defined in CPUC Rulemaking (R.) 05-06-040.<sup>8</sup> Under that Ruling a person or party that serves testimony, supplies data or files an advice letter requests confidential treatment of some data within that submittal and must accompany the data by a declaration under penalty of perjury that justifies the claim of confidentiality.

PA delivers its IE report to SDG&E and SDG&E in turn submits it to the CPUC. It is PA's understanding that each utility separately submits its IE's report and requests confidential treatment for parts of that report. Because it is the utility that identifies confidential data and provides the associated declaration, PA believes that it is the utility's right to determine which data in the report is confidential and the utility's responsibility to defend that determination. SDG&E's view of confidentiality may be more or less expansive than PA's. While PA has in the past provided recommendations to SDG&E about which parts of its IE reports should be held confidential, in general PA takes a "minimal redaction" (redaction only of information about identifiable bids) view. SDG&E always makes the ultimate determination of data to redact.

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<sup>8</sup> "Administrative Law Judge's Ruling Clarifying Interim Procedures for Complying with Decision 06-06-066", August 22, 2006.

### 3. Adequacy of outreach and robustness of the solicitation

#### **3. ADEQUACY OF OUTREACH AND ROBUSTNESS OF THE SOLICITATION**

---

*Template language: “Did the IOU do adequate outreach to bidders and was the solicitation robust?”*

This chapter describes the information provided by the utility to potential bidders, and the utility’s efforts to stimulate a wide and robust response to the RFO.

##### **3.1 SOLICITATION MATERIALS**

*Template language: “Were the solicitation materials clear and concise to ensure that the information required by the utility to conduct [sic] its evaluation was provided by the bidders?”*

PA reviewed SDG&E’s RFO and supporting forms. PA’s opinion was that the RFO was clear and supporting forms were generally well-designed and would elicit appropriate information except as noted in the next paragraph. Even so, not all bidders entered data correctly and completely, but PA does not believe this was the fault of the forms.

SDG&E held two pre-bid conferences, in San Diego and El Centro, and also posted on its website answers to questions submitted by bidders. Even so, the solicitation forms and posted responses did not always elicit the type of information required by the Project Viability Calculator. In particular, the **Project Viability Calculator (PVC)** scoring criteria are based on specific information – e.g., identification of projects to support assertion of project development experience, or an explanation of why a particular interconnection milestone with IID is or is not equivalent to a CAISO milestone.

##### **3.2 ADEQUACY OF OUTREACH**

*Template language: “Identify guidelines used to determine whether IOU did adequate outreach (e.g., sufficient publicity, emails to expected interested firms). Did IOU do adequate outreach? If not, explain how it was deficient.”*

California’s Renewable Procurement Standard and its utilities’ attempts to meet that standard have been widely publicized. The investor-owned utilities have conducted annual RFOs for renewable resources for several years. Because of the publicity, it should not have been necessary for SDG&E to take on the responsibility of informing bidders that California has a renewables program or that utilities would be contracting with renewable suppliers. Furthermore, it was well-known in the California energy industry that at the time of the adoption of the RPS, SDG&E was the furthest of the three utilities from satisfying the RPS (least renewable energy relative to retail sales). It would have been adequate for SDG&E to advertise the RPS solicitation on its website and to a sizable email list.

In PA’s opinion, SDG&E did adequate outreach. SDG&E provided PA with a list of 686 email addresses, associated with 545 separate organizations, to which it sent the RFO. Some of those addresses are consultants probably not working with any particular bidder. In addition, SDG&E publicized the RFO with a press release, and notices appeared in Platt’s *MW Daily* and *California Energy Markets*.

### 3. Adequacy of outreach and robustness of the solicitation

#### **3.3 SOLICITATION ROBUSTNESS**

*Template language: "Identify guidelines used to determine adequate robustness of solicitation (e.g., number of proposals submitted, number of MWhs associated with submitted proposals). Was solicitation adequately robust?"*

PA judges the robustness of the solicitation by the number of bids received. In PA's opinion, the solicitation engendered a robust response. ■ separate organizations responded to the solicitation with a total of ■ project proposals with ■ pricing options. The CPUC had encouraged SDG&E to do specific outreach to the Imperial Valley and, more generally, the SPL area. ■ project proposals were submitted from the SPL area, with ■ pricing options, from a total of ■ separate bidders.

#### **3.4 FEEDBACK**

*Template language: "Did the IOUs seek adequate feedback about the bidding/bid evaluation process from all bidders after the solicitation was complete?"*

SDG&E did not formally seek bidder feedback.

#### **3.5 ADDITIONAL ISSUES**

*Template language: "Any other relevant information or observations"*

PA has nothing else to add to this chapter.



#### **4. FAIRNESS OF THE DESIGN OF SDG&E'S METHODOLOGY FOR BID EVALUATION AND SELECTION**

---

*Template language: "Was the IOU's LCBF methodology designed such that bids were fairly evaluated?"*

This chapter describes SDG&E's quantitative evaluation methodology and PA's opinion of its application.

##### **4.1 PRINCIPLES USED TO EVALUATE METHODOLOGY**

*Template language: "Identify the principles the IE used to evaluate the IOU's bid evaluation methodology. Example principles (each IE should include the specific principles he/she used in his/her evaluation):*

- "1. The IOU bid evaluation should be based only on information submitted in bid proposal documents.*
- "2. There should be no consideration of any information that might indicate whether the bidder is an affiliate.*
- "3. Procurement targets and objectives were clearly defined in IOU's solicitation materials.*
- "4. The IOU's methodology should identify quantitative and qualitative criteria and describe how they will be used to rank bids. These criteria should be applied consistently to all bids.*
- "5. The LCBF methodology should evaluate bids in a technology-neutral manner.*
- "6. The LCBF methodology should allow for consistent evaluation and comparison of bids of different sizes, in-service dates, and contract length."*

PA has used the following principles to guide its evaluation. These principles were originally codified by PA in its report on SDG&E's 2006 RPS RFO:<sup>9</sup>

- The evaluation should only be based on those criteria requested in the response form. There should be no consideration of any information that might indicate whether the bidder is an affiliate.
- The methodology should identify how quantitative measures will be considered and be consistent with an overall metric.
- The approach should not be biased for or against specific technologies, solely based on the choice of technology (as opposed to, e.g., quantifiable differences between the value of peaking and baseload technologies).

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<sup>9</sup> Jacobs, Jonathan M., *Preliminary Report of the Independent Evaluator on the 2006 Request for Offers from Eligible Renewable Resources (Renewable RFO)*, PA Consulting Group, Los Angeles CA, January 16, 2007, p. 2-1.

#### 4. Fairness of the design of SDG&E's methodology for bid evaluation and selection

- The methodology does not have to be the one that the IE would independently have selected but it needs to be “reasonable”.

These principles do not require the upfront identification of procurement targets, as those may depend on committed contract quantities and commitments may be made between release of the RFO and selection of the shortlist. They do not also specifically address “consistent” evaluation of bids of different sizes and timing because PA considers the fairness of such analysis to fall within the area of reasonableness; and it is conceivable that a consistent evaluation may not be the most reasonable.

#### 4.2 SDG&E'S LCBF METHODOLOGY

*Template language: “Describe IOU LCBF methodology.”*

SDG&E ranked bids using a spreadsheet. The following quantitative values went into the ranking:

- Adjusted, levelized offer price
- Estimated costs of transmission network upgrades or additions
- Estimated congestion costs
- Estimated RA credit

Debt equivalence was not considered, per CPUC D. 07-12-052. The next four subsections describe the four bullet items above. The fifth subsection addresses a specific change to one of the details of the LCBF calculation relative to previous renewable RFOs. PA's opinion of the use of LCBF methodology is included in section 5.8.

##### 4.2.1 Adjusted, levelized offer price

SDG&E's bid evaluation method does not directly compare costs and benefits of individual contracts; rather it creates an “adjusted price” metric for each contract, and compares contracts based on that metric rather than on a measure of net benefits or net costs. This means that SDG&E does not compute an “avoided cost” or “market price” by hour or subperiod to be compared with contract costs. Such a computation would be appropriate if the source of contract value was energy value (avoided energy purchases). But RPS-qualified energy is not interchangeable or fungible with spot energy, because spot energy is not guaranteed to be RPS-qualified.

The benefit or value of RPS-qualified energy is in its renewability. In that sense every MWh from a renewable resource has equal benefit regardless of the contract or the time of delivery. But SDG&E also recognized that RPS-qualified energy has both “renewability value” and “energy value”, and that the energy value depends on time of delivery (TOD). To recognize this, SDG&E uses as its measure of contract cost the average of the projected contract payments in different TOD periods weighted by the product of volume and a TOD weighting factor. The weighting factors have been approved by the CPUC and PA did not investigate their source.

For each year, the adjusted or “benefit-weighted” price is the average payment, divided by a MWh-weighted average TOD factor. For contracts with TOD pricing (where in each period

#### 4. Fairness of the design of SDG&E's methodology for bid evaluation and selection

the payment per MWh equals the contract price times the TOD factor) it is the same as the contract price. The **adjusted, levelized** offer price is the levelization of the adjusted price: for each year, the adjusted price in \$/MWh is multiplied by projected deliveries in MWh to get a stream of revenues, and the **adjusted, levelized** offer price is the constant price in \$/MWh that would yield a stream of energy revenues having the same net present value.

##### 4.2.2 Estimated costs of transmission network upgrades or additions

For offers for new projects or projects proposing to increase the size of existing facilities, SDG&E's model calculated costs for transmission network upgrades or additions, using the information provided through the TRCRs. (Two projects had CAISO-approved, completed System Impact Studies that could have been used but since they were ranked below the shortlist cutoff before adding any transmission costs, this specialized effort was not undertaken.) If a bidder identified the cluster to which a project belonged, the transmission cost corresponded to the cost of the first plant in that cluster according to the utility's TRCR. If the bidder had not identified the cluster, PA applied its own judgment to determine the cluster based on the project location and interconnection information. Projects outside of the California ISO were expected to have internalized the cost of transmission to the ISO, as well as the cost of required transmission upgrades outside the ISO, into their bid price; they could still be assigned additional upgrade costs within California based on the TRCRs.

##### 4.2.3 Estimated congestion costs

Congestion impacts from the proposed point of delivery to SDG&E's load aggregation point were determined after LCBF rankings had been computed without congestion information. In this way SDG&E was able to reduce the number of projects for which congestion impacts were computed. In past RFOs the congestion study had been conducted by ABB Inc. ABB was unable to do so for the 2009 study. PA agreed that it was reasonable for SDG&E's transmission planning group to conduct the study given the separation from the procurement group provided for under the FERC Code of Conduct. As for the 2008 RFO, there was no pre-Sunrise case. Congestion adders for the projects that ranked highest based on the other LCBF components were all small and therefore congestion costs did not affect the composition of the short list.

##### 4.2.4 RA credit

Renewable projects under contract to SDG&E would provide varying amounts of resource adequacy (RA) credit. In the 2008 RPS RFO for which PA served as IE, SDG&E had represented RA as a cost rather than a credit, based on the cost SDG&E would incur for additional RA credits equal to the difference between a bid's capacity and its own RA credit. PA argued that this approach unduly relied on a bid's "nameplate" capacity, which had no real relation to any commodity the bid provided to SDG&E and which could in some cases be an artificial value. SDG&E accepted PA's argument for the 2009 RFO and assigned each bid a cost credit equal to the value of the RA credit the bid would be expected to receive based on technology and the RA capacity credits that have been assigned by CAISO to projects of similar technology (normalized by capacity). The result is an annual RA credit in \$/year (a unit cost in \$/kW-yr multiplied by capacity in kW). The credit is converted to levelized \$/MWh, similar to the levelization of the offer price term.

#### 4. Fairness of the design of SDG&E's methodology for bid evaluation and selection

##### 4.2.5 Duration equalization

In past Renewables RFOs, SDG&E used a "duration equalization" approach to handle start and end effects. This has addressed principle 6 from the Template (section 4.1). All contracts were put on an equal term basis by using an early start date (in principle, the earliest start date over all bids) and a late end date (in principle, the latest end date over all bids). The pricing for each contract prior to its start date and after its end date was based on an MPR proxy, that is, a value computed using the CPUC's MPR methodology applied to contemporary cost assumptions. For the 2009 RFO, SDG&E's evaluation model was constructed to use the average bid price of bids shortlisted in 2008 as a proxy instead of the MPR; all other aspects of the design were the same as before.

##### 4.3 EVALUATION OF THE STRENGTHS AND WEAKNESSES OF SDG&E'S LCBF METHODOLOGY IN THIS SOLICITATION

*Template language: "Using the principles indentified in section III.A, evaluate the strengths and weaknesses of IOU's methodology in this solicitation:*

- "1. Market valuation*
- "2. Evaluation of various technologies and products*
- "3. Evaluation of portfolio fit*
- "4. Evaluation of bids with varying sizes, in-service dates, and contract length*
- "5. Evaluation of bids' transmission costs*
- "6. Evaluation of bids' project viability*
- "7. Other."*

Overall, PA believes that the SDG&E methodology is reasonable. This judgment is within the context of the principles set forth in 4.1, especially the last: "The methodology does not have to be the one that the IE would independently have selected but it needs to be 'reasonable'." PA has detailed comments on a limited number of the points above.

##### 4.3.1 Evaluation of various technologies and products

PA did not detect any technology bias in the methodology; [REDACTED]

[REDACTED]



#### 4.3.2 Evaluation of portfolio fit

The Renewable Portfolio Standard is based on raw renewable MWh, with no time differentiation. Furthermore, the quantitative LCBF analysis is but part of a process that includes consideration of bidders' track records and viability and extensive negotiation – another IE has characterized the process as more like a “competitive negotiation” rather than a sealed-bid auction.<sup>10</sup> SDG&E's LCBF computation bears a similar relation to a more complex time-differentiated analysis as a “screening curve” analysis does to an optimal capacity expansion model; yet as a part of a larger process the screening curve analysis is often quite adequate.

#### 4.3.3 Evaluation of bids' transmission costs

PA assigned TRCR clusters to those projects that did not provide such information. PA did not consider SCE's TRCR to contain a sufficient definition of its clusters, and requested additional information, which was received from an SCE attorney. In mid-August, PA was informed that SDG&E's procurement group was considering requesting from its transmission planning group a special TRCR-like upgrade analysis for Imperial Valley resources, but if such a study was conducted its results were not used in the LCBF evaluation. SDG&E's Evaluation Team requested a congestion analysis from SDG&E's Transmission function; PA reviewed the information provided by the Evaluation Team and ensured that no data was transmitted that could identify bidders.

#### 4.3.4 Evaluation of bids' project viability

SDG&E eliminated certain bids due to low viability. These judgments did not always accord with bidders' Project Viability Calculators, which had been self-scored. It was necessary to rescore all high-ranking bids.

### 4.4 FUTURE IMPROVEMENTS

*Template language: “What future LCBF improvements would you recommend?”*

PA has no improvements to recommend at this time.

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<sup>10</sup> Private conversation.

4. Fairness of the design of SDG&E's methodology for bid evaluation and selection

**4.5 ADDITIONAL COMMENT ON THE METHODOLOGY**

*Template language: "Any additional information or observations regarding the IOU's evaluation methodology."*

PA has nothing else to add to this chapter.

## **5. PROCEDURAL FAIRNESS OF THE BID EVALUATION**

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*Template language: "Was the LCBF bid evaluation process fairly administered?"*

This chapter addresses the application or administration of the methodology described in chapter 4

### **5.1 PRINCIPLES USED TO DETERMINE FAIRNESS OF PROCESS**

*Template language: "A. Identify guidelines used to determine fairness of evaluation process. Example guidelines (each IE should identify the specific guidelines he/she used in his/her evaluation)*

1. *Were all bids treated the same regardless of the identity of the bidder?*
2. *Were bidder questions answered fairly and consistently and the answers made available to all bidders?*
3. *Did the utility ask for "clarifications" that provided one bidder an advantage over others?*
4. *Was the economic evaluation of the bids fair and consistent?*
5. *Was there a reasonable justification for any fixed parameters that were a part of the IOU's LCBF methodology (e.g., RMR values; debt equivalence parameters)?*
6. *What qualitative and quantitative factors were used to evaluate bids?"*

As in the previous section, PA used principles originally codified by PA in its report on SDG&E's 2006 RPS RFO:<sup>11</sup>

- Were affiliate bids treated the same as non-affiliate?
- Were bidder questions answered fairly and consistently and the answers made available to all?
- Did the utility ask for "clarifications" that provided the bidder an advantage over others?
- Were bids given equal credibility in the economic evaluation?
- Was the procurement target chosen so that SDG&E would have a reasonable chance of meeting its 20% target (taking into account contract failures)?
- Was there a reasonable justification for any fixed parameters that enter into the methodology (e.g., RMR values; debt equivalence parameters)?
- Were qualitative factors used only to distinguish among substantially equal bids?

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<sup>11</sup> Jacobs, op. cit., p. 3-1.

## 5.2 ADMINISTRATION AND BID PROCESSING

*Template language: "Utilizing the guidelines in Section IV.A, describe the IE methodology used to evaluate administration of the IOU LCBF process."*

A complete description of PA's activities is in section 2.3. Most of the guidelines above are addressed in detail in subsequent sections of this chapter, but three of them, which are not addressed below, can be answered here succinctly:

- Bidder questions were answered fairly and consistently.
- SDG&E did not ask for clarifications in such a way as to advantage any bidder.
- All bids were given equal credibility in the quantitative (LCBF) evaluation.

## 5.3 CONFORMANCE CHECK

*Template language: "Did the utility identify, for each bid, the terms that deviate from the utility RFO? Did the IOU identify nonconforming bids fairly – fair both to the nonconforming bidders and to conforming bidders?"*

PA verified that each offer received conformed with the requirements of the RFO. Nonconforming bids were identified as such but not immediately discarded. As in previous renewables solicitation, the RFO stated that non-conformance "may disqualify [a] proposal from further consideration". SDG&E and PA interpreted this somewhat broadly and attempted to evaluate the nonconforming bids if possible. Extensive efforts were made to contact bidders and give them opportunities to provide additional information that would bring their bids into conformance. PA recommended that SDG&E eliminate a small number of offers as non-conforming:

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

[REDACTED]



PA believes that SDG&E's treatment of non-conforming bids was fair and reasonable.

#### **5.4 PARAMETERS AND INPUTS FOR SDG&E'S ANALYSIS**

*Template language: "If the IOU conducted any part of the bid evaluation, were the parameters and inputs determined reasonably and fairly? What controls were in place to ensure that the parameters and inputs were reasonable and fair?"*

The quantitative bid analysis was conducted by PA. Certain key parameters were supplied by SDG&E independent of any bids, including the RA price estimate, RA cost factors, the proxy price for duration equalization, TOU pricing factors, and financial parameters of the revenue requirements model for Alternative III bids. Parameters and inputs for the congestion analysis were determined by SDG&E's transmission function independent of the procurement group.

#### **5.5 PARAMETERS AND INPUTS FOR OUTSOURCED ANALYSIS**

*Template language: "If the IE or a third party conducted any part of the bid evaluation, what information/data did the utility communicate to that party and what controls did the utility exercise over the quality or specifics of the out-sourced analysis?"*

PA conducted the quantitative LCBF analyzing using a spreadsheet model and parameters supplied by SDG&E. SDG&E and PA were in communication throughout the analysis, generally about modifications to the model that became necessary in the course of the analysis and about missing data. SDG&E did not exercise control over the quality or specifics of the analysis. SDG&E and PA did work together to identify and solicit missing information from bidders.

Congestion impacts from the proposed point of delivery to SDG&E's load aggregation point were determined by a study conducted by SDG&E's transmission function. SDG&E's procurement group communicated to the transmission function the locations and general characteristics of a set of high-ranking bids for this analysis. PA reviewed that communication to ensure it included no identifying information.

#### **5.6 TRANSMISSION ANALYSIS**

*Template language: "Were transmission cost adders and integration costs properly assessed and applied to bids?"*

For offers for new projects or projects proposing to increase the size of existing facilities, SDG&E's model calculated costs for transmission network upgrades or additions, using the information provided through the TRCRs or a CAISO-approved, completed System Impact Study. PA identified clusters for projects whose bids did not contain that information. Projects outside of the California ISO were expected to have internalized the cost of transmission to the ISO, as well as the cost of required transmission upgrades outside the ISO, into their bid price; they could still be assigned additional upgrade costs within California based on the TRCRs.

## 5. Procedural fairness of the bid evaluation

### 5.7 ADDITIONAL ISSUES

*Template language: “Describe any additional criteria or analysis used in creating its short list (e.g. seller concentration). Were the additional criteria included in the solicitation materials?”*

#### 5.7.1 Affiliate bids and UOG ownership proposals

The treatment of affiliate bids has been a focus of PA throughout its tenure as Independent Evaluator for SDG&E. Although the Energy Division’s template does not specifically call for discussion of the handling of affiliate bids and **Utility-Owned Generation (UOG)** ownership proposals, the CPUC and FERC have both expressed concern about the fair treatment of non-affiliate bids. They required particular attention in past RFOs because SDG&E was conducting the evaluation itself, rather than having the IE do so. In this case, since PA conducted the evaluation, no special “masking” was required as in past RFOs.

SDG&E provided three alternative forms for bids: PPA, PPA with buyout option, and turnkey. The latter two are utility ownership forms. Several bidders submitted Alternative II (PPA with buyout) bids. In all cases these were additional options to Alternative I bids but the buyouts did not provide identifiable value. Several bidders submitted Alternative III (turnkey) bids, which were evaluated using a variant of a “revenue requirements” model and treating the revenue requirement to finance the purchase similarly to an annual PPA payment.

#### 5.7.2 Viability

Developer and project viability have become a key concern in the Renewable RFO, because of the delays and contract failures that have affected several projects. The CPUC devoted special attention to viability in 2009, requiring “that each IOU include a project viability methodology and calculator in its amended 2009 Procurement Plan and solicitation package.”<sup>12</sup>

SDG&E requested bidders to complete a Project Viability Calculator (PVC) for each bid, rather than fill out the PVC for each bid. The PVC form was based on the format developed by the Energy Division. This was in order to avoid having the utility or IE create a PVC for every bid, since SDG&E did not know in advance how many bids would be received. In the event, 158 separate project proposals were received

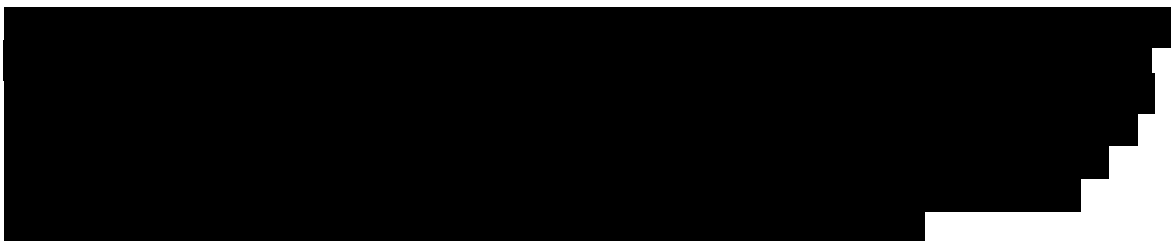
SDG&E’s intent was that after the quantitative evaluation it would eliminate bids that, while scoring high, did not appear viable. One basis for doing so could have been the bidder-supplied PVCs; however, SDG&E and PA both expected bidders to take an optimistic view of viability and had therefore decided to rescore the PVCs from those bidders who scored highest in the LCBF ranking, beginning from the bidders’ own scoring. SDG&E and PA separately rescored sets of high-ranking bids.

The original and revised scores are shown in Figure 1 in section 5.8.

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<sup>12</sup> D. 09-06-018, p. 21.

### 5.7.3 Concentration risk



## 5.8 RESULTS ANALYSIS

*Template language:* 1. Please identify instances where the IE and the IOU disagreed in the LCBF evaluation process.

- a. Discuss any problems and solutions
  - b. Identify specific bids if appropriate
  - c. Does the IE agree that the IOU made reasonable and justifiable decisions to exclude, shortlist and or/ execute contracts with projects? If the IE did its own separate bid ranking and selection process and it differed from the IOU's results, then identify and describe differences.
  - d. What actions were taken by the IOU to rectify any deficiencies associated with rejected bids?
  - e. Other
2. Overall, was the overall bid evaluation fairly administered?"

One of the most important aspects of the Renewables RFO is the need determination. Under the Renewable Portfolio Standard, utilities seek to obtain at least 20% of their 2010 retail deliveries from renewable sources. SDG&E has further committed to obtain 33% of its 2020 retail deliveries from renewable sources. The primary goal of RPS procurement is total renewable volume. For an individual Renewable RFO, this translates to a "need" target.

In the past, SDG&E has determined its renewable need based on a target of 24-26% of its 2010 deliveries "to provide a margin of safety in the event contracted resources do not achieve commercial operation by 2010."<sup>13</sup> In 2009, SDG&E set a target at that fraction (24-26%) in "2011-2013" since the 2009 RFO could not yield capacity in 2010. SDG&E computed the energy expected to be produced in 2012 by all contracts already signed, plus the "discounted" energy from contracts currently in negotiation, to be in excess of 26% of load. Therefore SDG&E reasoned it had no need except if it had underestimated contract failure probabilities.

SDG&E took a "largest hazard" approach, and analyzed the largest hazard in two ways: (a) the largest individual expected delivery volume; (b) the total expected delivery from contracts

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<sup>13</sup> Ibid., p. 11.

5. Procedural fairness of the bid evaluation

with viability scores below [REDACTED]  
[REDACTED]  
[REDACTED] since SDG&E has committed to replace SPL-region contracts with other SPL-region contracts, SDG&E said it would shortlist bids in the SPL region. PA concurs that all these decisions are reasonable.

[REDACTED]

SDG&E generally shortlisted bids in order of LCBF ranking, but in two cases chose not to shortlist bids due to low viability. The viability scores are illustrated in Figure 1. The two rejected bids are indicated by red X's.

[REDACTED]



Figure 1 - Project Viability Scores

5. Procedural fairness of the bid evaluation

The shortlist contains one existing wind project (27 GWh), three projects in the SPL area (about 1500 GWh), and the Borrego Springs project (45 GWh). SDG&E has not achieved its 1600 GWh of “need” in the SPL area, basically by having shortlisted the wind repowering, but has shortlisted a reasonable project portfolio. This is in contrast to the 2008 RFO, where SDG&E shortlisted three times its identified need but wound up terminating negotiations with many counterparties. PA believes that a smaller shortlist (3 projects) will be easier for SDG&E to manage.

In PA’s opinion, SDG&E conducted the RFO in a fair and equitable manner. There were areas in which PA and SDG&E disagreed, as has been noted, but in each case PA believes that these were issues on which reasonable parties could disagree and that SDG&E, as the party at risk to meet its RPS objective, should have the prerogative to make those decisions.

[REDACTED]

[REDACTED]

**5.9 ADDITIONAL ISSUES**

*Template language: “Any other relevant information or observations.”*

PA has nothing else to add to this chapter.

## **6. FAIRNESS OF PROJECT-SPECIFIC NEGOTIATIONS**

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The Rim Rock contract was initially submitted to the CPUC for approval in May 2009 (SDG&E Advice Letter 2088-E) and approved by the CPUC in Resolution E-4277 dated November 20, 2009. SDG&E had begun thinking about tax equity investments several months prior to submitting the contract, and discussed the possibility at length with its PRG in January 2009. PA has considered whether SDG&E chose Rim Rock over other potential renewable resources because of the possible tax equity investment. After monitoring all negotiations and reviewing project-related pro formas and contracts, PA does not believe the potential tax equity investment was the reason SDG&E chose to negotiate a contract with Rim Rock.

### **6.1 PRINCIPLES OF EVALUATION**

*Template language: "A. Identify principles used to evaluate the fairness of the negotiations."*

The key questions are whether SDG&E showed favoritism to this or any other bidder, and whether SDG&E negotiated harder or less hard with them than with any other bidder. Note that in the context of negotiations, favoritism toward a bidder is not the same as favoritism toward a technology.

### **6.2 PROJECT-SPECIFIC NEGOTIATIONS**

*Template language: "Using the above principles (section V.A), please evaluate fairness of project-specific negotiations."*

Given the unique nature of this deal, the principal question of fairness relates primarily to SDG&E's commitment to ensuring that the PPA has not in any way been predicated on -- nor its terms compromised by -- the utility's interest in serving as the project's tax equity provider. Specifically, PA has focused on SDG&E's commitment to a) evaluating the PPA on its own merits and, b) not pursuing contractual arrangements that serve as a detriment to its ratepayers.

It is conceivable that SDG&E pursued the Rim Rock contract in preference to other offers because of the opportunity for a tax equity investment. We do not believe that to be the case. During 2008, SDG&E reported to its PRG on several negotiations with NaturEner and the first mention of Rim Rock of which we have record was in November, 2008. SDG&E repeatedly stated that they found NaturEner to be both a successful developer and a counterparty with whom they could easily negotiate. We believe these are the reasons that SDG&E chose to pursue the Rim Rock opportunity. They may also be the reasons SDG&E chose also to negotiate a tax equity investment in the Rim Rock project. According to a negotiation log provided to PA, the initial tax equity discussion with Rim Rock was in March 2009, a day after a separate PPA negotiation session. However, for a period of several months in the summer of 2009, tax equity negotiations stopped while NaturEner attempted to find other investors.

The PPA and tax equity investment discussions cannot realistically be considered and negotiated in complete isolation from one another, given the effect of the prospect of low-cost utility financing on project cost and viability. Phone calls and meetings have routinely discussed topics that relate to both elements. However, no source of overlap between the

## 6. Fairness of project-specific negotiations

two deals has been seen to unduly influence the ongoing negotiations. The PPA, as currently structured, indicates interest from both parties in consummating an offtake agreement with or without the investment. Whether or not SDG&E invests in the project, the Green Attributes price will be subject to the same limit. Both sides have acknowledged that the PPA would probably be lower in price with SDG&E financing – the stand alone price will be generated based on market interest rates – but neither side has indicated any reluctance to pursue the stand alone PPA should the tax equity provision be prohibited.

In addition, SDG&E has negotiated hard throughout, consistently seeking to minimize Green Attributes prices and indicating no willingness to capitulate on price or risk-related concerns in order to increase the likelihood of consummating a tax equity deal. At the same time, SDG&E has maintained the necessity of obtaining CPUC approval for certain major decisions which – to the extent that requirement hinders the smooth operation of the partnership to be formed to own and operate the plant – does impact the viability of the project.

Finally, the interests of ratepayers and shareholders were rarely discussed separately. One can argue whether the benefits of the deal are allocated between ratepayers and shareholders in proportion to the risk assumed by each, but discussions did not reveal any tendency towards misaligned interests. There was very little discussion during negotiations of ratepayers' interests as distinct from shareholders', as negotiations centered on SDG&E's interest versus NaturEner's.

PA monitored the calls and meetings between SDG&E, NaturEner, and their respective legal counsels. PA participated in every formal call or meeting except one of the last (with which there was an unavoidable scheduling conflict, and by which point we thoroughly understood the issues and parties' positions); the negotiation had been well balanced up to that point and we felt that the resolution of final contract issues would not unbalance it. We further reviewed the final documents to verify that the basic bargain had not changed to the potential affiliate's benefit.

We have been given no reason to believe that SDG&E would not pursue the Rim Rock PPA without the tax equity deal. One could argue whether ratepayers earn a return – in the form of Green Attributes price savings and post-Flip date cash returns – consistent with their level of risk, but PA did not interpret any particular element of the tax equity deal to be particularly unusual or unfair to the ratepayer, nor do there appear to be explicit incentive misalignments associated with the tax equity investment. The provision of tax equity solutions, just like self-build solutions, will involve risk, and the extent to which that risk is borne by the ratepayer will depend on the level of recovery approved.

### 6.3 TERMS AND CONDITIONS

*Template language: "Identify the terms and conditions that underwent significant changes during the course of negotiations."*

There have been few changes to the PPA itself since the initial contract was negotiated. The key changes are:

- Article 1 (Effectiveness of the Confirmation Letter) has been deleted; all conditions precedent now appear in the Participation Agreement
- The specific price has been removed and now references a Green Attributes price to be determined according to the Participation Agreement

6. Fairness of project-specific negotiations

- Contract capacity is now to be specified later (as-built; see Section 7.1)
- The detailed milestone schedule has been removed from the PPA.



Over the course of these negotiations, the parties have also negotiated terms related to both the PPA and the tax equity investment, and have at times discussed the impact of the latter on the terms of the former. The tax equity investment has entailed the creation of additional agreements, most significantly an Equity Capital Contribution Agreement under which SDG&E would invest, and a Participation Agreement governing the overall relationship between SDG&E and NaturEner. Representations, warranties and conditions precedent now appear in the Participation Agreement but PA does not believe that the balance of the bargain between SDG&E and NaturEner has significantly changed. The Participation Agreement has been significantly modified to allow for the possibility that the CPUC will not permit SDG&E to invest tax equity or that SDG&E would be forced to make a broad disclosure of NaturEner’s confidential information, in which case NaturEner must seek another investor while retaining the PPA with SDG&E (conditions precedent to that “Stand-Alone PPA” are also in the Participation Agreement).

**6.4 RELATION TO OTHER NEGOTIATIONS**

*Template language: “Was similar information/options made available to other bidders, e.g. if a bidder was told to reduce its price down to \$X, was the same information made available to others?”*

PA does not believe this question to be relevant here.

**6.5 ADDITIONAL ISSUES**

*Template language: “Any other relevant information or observations.”*

PA has nothing else to add to this chapter.



**7. PROJECT-SPECIFIC RECOMMENDATION**

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PA believes that the Rim Rock contract is at the expensive end of the shortlisted bids in the 2009 RFO, and is subject to some price risk. Specifically, the contract price is based on a formula that under current assumptions would be superior to at least one bid in the 2009 RFO, but under worst case conditions could be more expensive. Despite these cost concerns PA agrees with SDG&E that the Rim Rock contract amendment merits approval. There are two reasons for this:

1. The contract is a “bird in the hand” and many of the details that often make contract prices greater than RFO bids have already been addressed.
2. It is not clearly a bad or overly expensive deal (overall we consider it neutral) and does not appear to be the result of unfair self-dealing.

**7.1 EVALUATION**

*Template language: “A. Provide narrative for each category and describe the project’s ranking relative to: 1) other bids from the solicitation and 2) from an overall market perspective:*

1. *Contract Price, including transmission cost adders*
2. *Portfolio Fit*
3. *Project Viability*
  - a. *Project Viability Calculator score*
  - b. *IOU-specific project viability measures*
  - c. *Other (credit and collateral, developer’s project development portfolio, other site-related matters, etc.)*
4. *Any other relevant factors.”*

At the time of this writing, the latest draft of the Rim Rock Power Purchase Agreement available for PA to review is dated June 19 but was actually current as of July 6. We do not expect there to have been significant changes between that draft and the version SDG&E is submitting to the CPUC. Certain items are left unspecified in the PPA, but the methods by which they will be determined are defined:



- The “Green Attributes price” has not been specified but will be determined based upon a method detailed in a separate Participation Agreement between SDG&E and NaturEner .

## 7. Project-specific recommendation

The NaturEner contract is structured as a “firming and shaping” contract consistent with the description of such contracts in section II.D of the California Energy Commission’s Renewables Portfolio Standard Eligibility Guidebook.<sup>14</sup> In the original Rim Rock contract, SDG&E was to buy the output from the plant at the busbar for [REDACTED], resell the energy back to the plant at the busbar for [REDACTED], and “match” the Green Attributes to other energy being imported to or produced in California (if SDG&E buys the power in California it avoids wheeling and import costs). Previous SDG&E analyses have indicated it intends to match the Green attributes to round-the-clock baseload power. The residual price of [REDACTED] is what SDG&E would pay for Green Attributes. In the current contract, there is a blank for “Green Attributes price”; SDG&E buys the power from Rim Rock for [REDACTED] plus the Green Attributes price, and resells the null power for [REDACTED]. Under the currently-stayed T-REC decision this would have been considered a “Tradable REC” contract.<sup>15</sup>

Since the original PPA was negotiated, SDG&E and NaturEner have been negotiating a potential tax equity investment in the project by SDG&E. According to one of NaturEner’s attorneys, if SDG&E makes a tax equity investment in Rim Rock, the plant will become a related party to the offtaker (SDG&E). In order to preserve the favorable tax treatment associated with a partnership flip structure, the price must be set at arm’s length or with reference to costs. The Green Attributes price in the contract is blank and the Participation Agreement specifies the computation of the Green Attributes price based on a cost estimate as of the point at which SDG&E makes its tax equity investment (at which point an Independent Engineer will have certified that the plant is Substantially Complete). The Participation Agreement would also limit the Green Attributes price to [REDACTED].

SDG&E staff have characterized the cost-based formula pricing as similar to a number of other repricings that they have done. In the most recent case with which PA is familiar (Imperial Valley Solar) the PPA price is capped but not fixed. A formula is used to reduce (but not increase) the PPA price to share construction cost savings (but not overruns).

If SDG&E does not make the tax equity investment, the Participation Agreement mandates a similar formula for the Green Attributes price but based on the rate of return of a non-affiliated tax equity provider rather than SDG&E. The Participation Agreement assures that the Green Attributes price (currently unspecified) will not exceed [REDACTED].

### 7.1.1 Evaluation of Contract Pricing and Risks

PA reviewed the amended Rim Rock contract using the same evaluation model that had been used for the 2009 Renewables RFO. The model was not built for evaluating fixed-price purchases of Green Attributes, only PPAs, either fixed-price or with pricing that varied by TOD period according to SDG&E’s TOD multipliers. In order to compare the pricing of the NaturEner Rim Rock contract with the RFO bids PA had to estimate how much it would actually cost SDG&E for renewable energy that SDG&E could deliver to load, as well as other attributes. The total energy cost is referred to as a “bundled cost.”

<sup>14</sup> The specific contract structure is described in item 3 of footnote 21 on page 24 of that Guidebook. The Guidebook is report CEC-300-2007-006-ED3-CMF, dated January 2008.

<sup>15</sup> California Public Utilities Commission, Decision (D.) 10-03-021, March 16, 2010

## 7. Project-specific recommendation

As noted in Section 4.2, SDG&E's quantitative LCBF methodology ranks bids according to the sum of four cost components:

- Adjusted, levelized offer price
- Estimated costs of transmission network upgrades or additions
- Estimated congestion costs
- Estimated RA credit.

PA assumed, consistent with SDG&E's analysis, that the project will begin deliveries on November 1, 2012. The date cannot be determined from the PPA because SDG&E intends to file it unexecuted. Section 2.1 of the amended PPA provided to PA states, "Commercial Operation Deadline' with respect to the Facility shall be no later than [On the execution date insert 18 months after the date this Confirmation is executed for if the Facility Total Nameplate Capacity is 100 MWs or less, and insert 24 months if the Facility Total Nameplate Capacity is for any greater number of MWs], as extended on a day for day basis by reason of Force Majeure." If the PPA were filed in early July, 2010, and if it were executed before filing, the contractual Commercial Operation Deadline would be around July 1, 2012

The offer price used by the model should represent a price for energy, as for all the other offers, not just the Green Attributes price. PA had to estimate the cost of the energy to which SDG&E would match the Green Attributes. SDG&E's analysis is based on [REDACTED]

In addition to the offer price transmission cost, congestion cost and RA credit, the analysis of the Rim Rock contract *if* SDG&E makes a tax equity investment should also include the value of the cash distributions SDG&E receives after the Flip Date. The Flip Date is the point when the tax investment has yielded an internal rate of return of [REDACTED], which is the after-tax rate of return needed to repay investors. Subsequent cash flows should go exclusively to ratepayers.

According to the Participation Agreement the Green Attributes price is to be determined using a "Base Case Model" populated with contemporary estimates of project costs and market power prices. SDG&E provided PA with an estimate of the Green Attributes price based on the Base Case Model and project costs estimated as of July 6; that estimate was [REDACTED]. Using that Green Attributes price, plus PA's forecast for the cost of energy in [REDACTED], the 2009 RFO model returns a "ranking price" of [REDACTED] for the amended Rim Rock contract. [REDACTED]

On the other hand, if SDG&E makes a tax equity investment in the project, and in return ratepayers receive a share of cash distributions after the flip date, that revenue reduces the "ranking price" to [REDACTED]

[REDACTED]

At the currently estimated Green Attributes price, Rim Rock is close to competitive with the 2009 shortlist and, if SDG&E ratepayers receive post-Flip cash flows from a tax equity investment, superior to one bid from the shortlist. SDG&E estimated the resource need for the 2009 RFO assuming that Rim Rock was already in its contract portfolio. If Rim Rock were not already in the portfolio, the need would have been that much greater and it is quite possible that Rim Rock would have been shortlisted even without the post-Flip cash flows.

The only reason to doubt that Rim Rock would have been shortlisted is that SDG&E explicitly eliminated all out-of-state wind projects. One reason for the exclusion was the uncertainty or ill definition of the firming and shaping arrangements, not an issue in this case because the firming and shaping plan is understood (and clearly the responsibility of SDG&E). A second reason was the complexity of the deals; while this deal is complex it has also been better defined through the negotiation of the original contract (and this amendment). At the time the shortlist was chosen there was also uncertainty about restrictions that might be placed on new out-of-state contracts by the Tradable REC decision, but this contract should be grandfathered. Therefore PA concludes that the revised pricing for the Rim Rock contract is within the market as described by the results of the 2009 RFO, although possibly at the higher end of the market.

A pessimistic analysis, using the maximum [REDACTED] Green Attributes price, plus PA's forecast for the cost of energy in [REDACTED], and assuming no post-Flip cash flows, returns a "ranking price" of [REDACTED] for the amended Rim Rock contract. This is inferior to all the bids shortlisted in 2009 as well as several solar photovoltaic bids, a solar thermal bid, and two out-of-state wind bids.

Using the 2008 RFO model, which we used in reporting on the original Rim Rock contract but which had a slightly different evaluation method, we obtain a ranking price of [REDACTED] for the currently estimated Green Attributes price but assuming no tax equity investment (no post-Flip cash flows) (Because of differences in the evaluation models, 2008 and 2009 ranking prices are not directly comparable.) While this is somewhat higher than the ranking prices we obtained for the original contract, its position relative to the shortlist is the same: superior to every resource bid into the 2008 RFO except [REDACTED] and an additional set of bids from a bidder that SDG&E had not considered credible and had not short-listed. In other words, under the current estimate of the revised pricing formula, the Rim Rock project (with post-Flip cash flows) is still at market relative to the 2008 RPS RFO.

There is still some uncertainty associated with this valuation. First, the current Green Attributes price is based on a conservative (low) quote for a hedge on the value of the brown energy resold by SDG&E to the plant. It is quite likely that even at current power pricing the hedge price, when executed, will be higher. This would reduce the Green Attributes price. (It is also possible that merchant power prices, used to value the unhedged part of the brown power, will rise by the time the Green Attributes price is set, but that is more of a speculative price view that should not be taken into account in evaluating the contract.)

On the other hand, to the extent that SDG&E does not fully hedge its purchase of power to which the Green Attributes will be matched (it is probably not cost-effective to hedge 20 years of power purchases), it will be exposed to price risk. Even if the price of power goes up

## 7. Project-specific recommendation

comparably in California and in Alberta (where the brown power from Rim Rock is sold) SDG&E will be exposed to price risk. As a tax equity investor its upside is limited and it benefits only slightly from increases in the Alberta power price after the Green Attributes price is set. Specifically, an increase to the Alberta price will increase the plant's revenue from reselling the brown power, and its distributable cash. During the pre-Flip period when SDG&E receives the bulk of the plant's cash, the benefit of higher prices on non-hedged power sales will flow to SDG&E but will concomitantly shorten that period (move the Flip Date forward). Once SDG&E gets back its investment plus a defined annual return, the allocations of cash, taxable income, PTCs, and depreciation will "flip". Following the Flip Date SDG&E receives less than █████ of distributable cash, and thus less than █████ of the benefits of any increase in the brown power resale price.

If SDG&E makes a tax equity investment in Rim Rock, the risk to ratepayers may increase. This would be the case if SDG&E made the investment out of ratebase – the plan they have outlined to PA and to the Procurement Review Group – rather than from shareholder funds. A ratebased investment would probably be at a lower rate of return than a non-ratebased investment, and would thus reduce ratepayers' PPA payments, but presumably the regulatory treatment would in turn provide some risk reduction to investors. There should be no construction risk, since the tax equity investment takes place at the point when the facility comes online. The production risk associated with low wind years or otherwise lower-than-expected generation should also be limited, because the deal structure allows the flip date to move out until SDG&E recovers its investment. So the principal risk borne by SDG&E ratepayers is that of equipment failure. If the failure is great enough, the CPUC could potentially remove the tax equity investment from ratebase (in other words, shareholders may still bear some of that risk).

In the next section we present an analysis of the project cash flow model, as compared with a model of the original contract. That analysis reveals one way to reduce the Green Attributes price, by reducing the tenor of the 10-year hedge on brown power sales in Alberta. This could be accomplished without a change to any contracts, by SDG&E waiving its condition precedent to the Participation Agreement. It must be borne in mind, though, that this hedge serves to reduce the risk to ratepayers by increasing the likelihood that SDG&E's investment on their behalf will be recouped in ten years. In other words, we noted above that investor risk in this deal is reduced by regulatory treatment. Some of that added risk is transformed into a cost through the hedge, rather than being transferred to ratepayers. The Green Attributes price could be reduced, but by increasing the risk to ratepayers.

The extent to which risk is transferred from investors to ratepayers will depend on the regulatory treatment of the investment, which is beyond the scope of this report. PA has no reason to believe that the additional ratepayer risk is not commensurate with PPA price savings due to the reduced financing cost and post-Flip cash returns.

### 7.1.2 Cash flow model

In December 2009 the CPUC adopted MPR values associated with the 2009 RFO.<sup>16</sup> They represent a significant reduction below the MPR values that had been adopted the previous year. For contracts coming online in 2012, the baseload MPR value is \$105.07/MWh, and this is also the TOD-weighted MPR of deliveries associated with NaturEner Rim Rock if its

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<sup>16</sup> CPUC Resolution E-4298, Dec. 17, 2009.

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Green Attributes are matched to baseload power. [REDACTED]

Resolution E-4199 states that “the developer must provide the Commission and the IE with cash flow models, both the original reflecting the price in the original contract and the latest version, for projects that are re-filed with the Commission for approval of a price amendment if the new contract price is above the MPR and the contract is eligible for AMFs.... An IE’s conclusions must not be based on whether the developer’s rate of return is reasonable, but rather whether the change in model inputs are reasonable and justify the price change.”<sup>17</sup> SDG&E provided PA with a pro forma financial model for the full 309 MW project, yielding a Green Attributes price of [REDACTED].<sup>18</sup> NaturEner has provided a cash flow model which yields the [REDACTED] Green Attributes price in the original contract and which may be the model that NaturEner used to price the original contract – the individual who did the analysis has left that company.

There is actually little difference between the all-in project revenues -- reviewed here as an appropriate proxy for all-in costs plus return -- between the two cash-flow models.<sup>19</sup> Levelizing the revenues associated with hedged energy sales, merchant energy sales, and Green Attribute sales reveals levelized prices of [REDACTED] for the 2009 model and [REDACTED] for the 2010 model.<sup>20</sup>

Close review of the all-in costs associated with the two models suggests that the expected Green Attributes price increase is largely the result not of increased all-in costs, but of decreases in the energy component of all-in revenues (thus exerting upward pressure on the Green Attributes price). PA reviewed with SDG&E a comparison of capital cost models, which supports the conclusion that underlying cost assumptions have not changed significantly. The difference in Green Attributes prices can be largely explained by new energy production and price projections, as well as extensions to the tenor of assumed hedges.

To gain comfort with the fact that the major sources of Green Attributes price difference had been identified, PA reviewed the two pro forma models side-by-side and isolated the individual impact of major assumptions changes. As expected, the [REDACTED] difference between the “old” and “new” Green Attributes prices of [REDACTED] and [REDACTED] per MWh, respectively, can be attributed primarily to the following differences in assumptions:

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<sup>17</sup> CPUC Resolution E-4199 op. cit., p. 28.

<sup>18</sup> This should be the same version of the Base Case Model that is attached to the Participation Agreement.

<sup>19</sup> Models as of May 1, 2009 (file received from NaturEner on June 16, 2010, named “090501c Rim Rock Pro Forma sent to SDGE.xlsx”) and July 13, 2010 (named “EconExpert-Wind 7056 3 ob RIMROCK 23 VALUES ONLY.xlsx”) represent the original and re-priced contracts, respectively.

<sup>20</sup> In both cases, annual revenues and energy generation have been discounted at a rate of [REDACTED]. Generation values are taken at the busbar, which translates to the Green Attributes generated but does not account for any transmission losses.

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- Lower energy and Green Attribute production (when viewed in isolation, leads to an approximate Green Attributes price increase of [REDACTED] in the new model)
- Lower energy prices, particularly in the case of hedge prices, which dropped by more than [REDACTED] in the 2010 model (approximate increase of [REDACTED])
- Longer hedge tenor, which increased from 7 years to 10 years (approximate increase of [REDACTED])

The following sections expand on the reasoning behind the new assumptions, explain their individual Green Attributes price impacts, and speak to their approximate cumulative impact. PA believes that reduced forecast of energy and Green Attribute production is an improvement over the previous forecast; that the lower energy price reflects the market; and that while the price associated with the longer hedge tenor seems low relative to the market price curve it has been represented to us as having been given by a hedge provider in which case we assume it accurately captures the premium that would be demanded for a hedge of that length.

a. LOWER ENERGY AND GREEN ATTRIBUTE PRODUCTION

The assumptions embedded in the 2010 model are such that annual energy generation and Green Attribute production are both assumed to be lower than the levels projected as part of the 2009 Rim Rock analysis. Each of these outputs act to put upward pressure on Green Attributes prices.

In spite of a slight [REDACTED] in plant net capacity factor from [REDACTED] energy production at the busbar in the 2010 model is [REDACTED] GWh annually, approximately [REDACTED] than the [REDACTED] projection from the 2009 model. The primary reason for this [REDACTED] is the assumption of [REDACTED], which was apparently incorporated into the model based on early Glacier 1 & 2 experience. After accounting for this [REDACTED] the effective net capacity factor in the model is essentially [REDACTED]

Assumed transmission losses are assumed to be [REDACTED] in the 2010 model ([REDACTED]) than that assumed in 2009, but even with these losses the delivered power at AESO is still [REDACTED] in the 2010 model. This margin is amplified by the lower prices discussed below. And with lower energy revenues, the required return from the renewable attribute market increases.

To isolate the cumulative impact of these two changes on the Green Attributes price, PA has replaced the energy values (both at the busbar and as delivered to AESO) for all full years in the 2010 model with the values from the full years in the 2009 model. The projected internal rate of return (IRR) of the project, as identified in the 2010 model, is [REDACTED]. Once the energy and Green Attribute production are [REDACTED] to the levels projected in the 2009 model, the IRR [REDACTED] to [REDACTED]. To [REDACTED] the IRR to the same [REDACTED], one must [REDACTED] the Green Attributes price in the 2010 model to approximately [REDACTED]

One can conclude that the cumulative impact of the [REDACTED] energy and Green Attribute production on the Green Attributes price, all else being equal, is equal to the difference

## 7. Project-specific recommendation

between the current price of [REDACTED] and the updated price of [REDACTED]. In other words, the [REDACTED] annual energy and Green Attribute production in the 2010 model, viewed in isolation, has forced the Green Attributes price [REDACTED] by [REDACTED]. With [REDACTED] energy revenues and [REDACTED] Green Attribute volumes, a [REDACTED] Green Attributes price is needed to compensate.

### b. LOWER ENERGY PRICES

Lower power prices in 2010 relative to 2009 mean lower energy revenues in the 2010 model, and thus also act to put upward pressure on Green Attributes prices. This power price impact is particularly large in the case of the hedge prices. The 2009 model assumes that 75% of generation is hedged over a 7-year period at a price of [REDACTED], which is [REDACTED] market prices over the term of the hedge. [REDACTED] hedge price assumed in the 2010 model. [REDACTED]

By changing the hedge price to be [REDACTED] below the 7-year average market price and updating the 2010 model according to the same methodology followed in the preceding subsection, one can determine that the Green Attributes price impact of the [REDACTED] hedge price alone is approximately [REDACTED]. This does not consider the impact of lower power prices on merchant revenues.

### c. HEDGE TENOR INCREASED FROM 7 YEARS TO 10 YEARS

The final material difference between the 2009 and 2010 pricing stems from the tenor of the hedge employed. The 2010 model does not assume that the percentage of generation hedged increases – it is still 75% -- but does assume that the tenor of the hedge increases to 10 years. This is now a condition precedent in the Participation Agreement (Section 2.4(y)), apparently added by SDGE in order to eliminate as much merchant risk as possible during the initial 10 years when ratepayers are scheduled to recoup their investment.

There is of course a cost associated with this risk mitigation. By delaying the transition from hedging to fully merchant by 3 years, the project thus forgoes the higher projected merchant prices for 75% of its power in those years. The assumed hedge price is also low compared with the ten-year levelized power price forecast.

The isolated impact of moving from 7 years to 10 years, all else being equal, is [REDACTED]

### d. CUMULATIVE IMPACT AND REASONABLENESS OF INCREASES

The individual impacts noted above sum to more than [REDACTED] difference between the 2009 Green Attributes price of [REDACTED] and the 2010 Green Attributes price of [REDACTED]. Of course, one cannot simply sum the isolated impact of such changes without double counting in places, and there are other less material differences between the models, such as interest rate assumptions and expense projections, that have not been accounted for here, some of which would affect the Green Attributes price. However, this analysis does give a good representative look at the detrimental impact that curtailment, changing price curves, and added price security have on other drivers of project revenue, thus explaining the project's increased reliance on Green Attribute revenues.



7. Project-specific recommendation

The changes in the assumptions are reasonable. The actual changes in project cost assumption are along the lines one would expect as the costs are refined and contracts renegotiated – some equipment costs have gone down, other costs have risen. Of the three key factors examined here, one (reduced energy production) reflects improved and more conservative modeling, another represents market movement (hedge price) and the third is a contract term requested by SDG&E (hedge tenor).

7.1.3 Project Viability Calculator

PA scored the NaturEner Rim Rock project using the CPUC Project Viability Calculator and obtained a score of [REDACTED]. SDG&E shared with PA its scoring of the project, which produced a score of [REDACTED]. SDG&E scored the project [REDACTED] for [REDACTED] status but PA scored it [REDACTED] because the SDG&E tax equity investment has not been finalized and in fact SDG&E is allowing for the possibility that it will not conclude that investment.

Project Scoring		range 0 - 10	Utility	IE
<b>weight</b>				
25%	<b>Company / Development Team</b>			
4	Project Development Experience			
1	Ownership / O&M Experience			
	<i>Total Category</i>			
	<i>Weighted Criteria</i>			
	<i>Normalized Category</i>			
	<i>Weighted Category</i>			
35%	<b>Technology</b>			
4	Technical Feasibility			
2	Resource Quality			
3	Manufacturing Supply Chain			
	<i>Total Category</i>			
	<i>Weighted Criteria</i>			
	<i>Normalized Category</i>			
	<i>Weighted Category</i>			
40%	<b>Development Milestones</b>			
4	Site Control			
4	Permitting Status			
4	Project Financing Status			
4	Interconnection Progress			
3	Transmission Requirements			
3	Reasonableness of COD			
	<i>Total Category</i>			
	<i>Weighted Criteria</i>			
	<i>Normalized Category</i>			
	<i>Weighted Category</i>			
<b>Total Weighted Score</b>				

## 7. Project-specific recommendation

### 7.2 RECOMMENDATION

*Template language: “Do you agree with the IOU that the contract merits CPUC approval? Explain the merits of the contract based on bid evaluation, contract negotiations, final price, and viability.”*

At a maximal [REDACTED] Green Attributes price, the NaturEner Rim Rock contract is at the high end of the market described by the shortlisted bids from the 2009 RPS RFO, but in line with other projects on the 2008 shortlist. PA believes that it is more likely than not that the Green Attributes price will turn out to be less than the contractual [REDACTED] cap, if SDG&E makes a tax equity investment; at this time it is not possible to assume a price below [REDACTED] if SDG&E does not make a tax equity investment.

There is risk associated with SDG&E’s exposure to power market prices in purchasing the energy to which the Green Attributes will be matched, to the extent these purchases are not fully hedged. In the past, SDG&E has argued to its PRG that it is experienced at managing power price risks and would be able to manage them in cases like this. It must be borne in mind that the price risk is *relative*. In the absence of the Rim Rock contract or a replacement renewable contract, SDG&E would be buying power from the market (or generating power at an opportunity cost represented by market prices) and would be exposed to power price risk. On the other hand, if instead of contracting with Rim Rock SDG&E contracted for fixed price renewable power – even if it were from out of state and firmed and shaped by a third party – it would not be exposed to that price risk.

Despite these concerns PA agrees with SDG&E that the Rim Rock contract amendment merits approval. There are two reasons for this:

1. SDG&E has been working with NaturEner on this contract, and on other contracts, for several years. The contract is a “bird in the hand” and many of the details that often make contract prices greater than RFO bids have already been addressed, as opposed to other bids that were not shortlisted.
2. The economics of the NaturEner contract, relative to RFO shortlists, are borderline. It is not clearly a bad or overly expensive deal; it is neutral. In that case, PA would tend to defer to the utility’s judgment, given that in the long run it is the utility that is at risk for cost recovery even after a contract is approved (in this case, for example, for the way it operates – firms and shapes – the contract).

### 7.3 ADDITIONAL ISSUES

*Template language: “Any other relevant information or observations.”*

PA has nothing else to add to this chapter.

## 8. ANALYSIS RELATIVE TO THE EDGAR STANDARD

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If SDG&E makes a tax equity investment in the Rim Rock project, an affiliate relationship could be created. If an affiliate relationship is created, then under Section 205 of the Federal Power Act, SDG&E will have to file the contract with the Federal Energy Regulatory Commission (FERC) and the FERC will determine whether it is “just and reasonable”.<sup>21</sup> As noted in the *Edgar* decision, there must be a “clear showing of lack of potential affiliate abuse”.<sup>22</sup> The *Edgar* decision goes on to list the types of proof that can be brought forth.

The *Edgar* decision laid out three ways to show lack of potential affiliate abuse, which are more succinctly stated in a later decision:

We note that there are three ways to demonstrate lack of affiliate abuse under the Edgar standard: (1) evidence of direct head-to-head competition between the affiliate and competing unaffiliated suppliers in a formal solicitation or informal negotiation process; (2) evidence of the prices which non-affiliated buyers were willing to pay for similar services from the affiliate; and (3) and benchmark evidence that shows the prices, terms and conditions of sales made by non-affiliated sellers.<sup>23</sup>

In this case there are two areas in which lack of affiliate abuse must be addressed, namely the choice of Rim Rock as a negotiating partner and the pricing. As PA stated above in section 6.2, we believe that the one free choice made by SDG&E was its choice of the developer NaturEner as a negotiating partner, not the specific Rim Rock project. This choice was made prior to the discussion of any tax equity investment, and SDG&E stated several times to the Procurement Review Group its comfort with NaturEner and that it was discussing with NaturEner several PPAs.

Over the last several years SDG&E has attempted to negotiate PPAs with several different counterparties. There have been other counterparties with which SDG&E had tried to negotiate multiple PPAs and it is true that we have observed greater success with NaturEner than with most others. PA believes that the decision to negotiate with NaturEner and with Rim Rock came from “direct head-to-head competition between the affiliate and competing unaffiliated suppliers in a[n] ... informal negotiation process.”

At the same time, SDG&E has conducted formal solicitations for renewable resources, under the guidance of the California Public Utilities Commission. The Rim Rock deal did not compete in any of those solicitations; however, PA believes that its most recent RFO solicitation is the best view of the market for renewable power that a California utility can have. Therefore the pricing of bids into the most recent RPS RFO provides “benchmark evidence that shows the prices, terms and conditions of sales made by non-affiliated sellers” in the language of item (3) above. Under that test, the question of affiliate abuse should be

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<sup>21</sup> 16 USC § 824d (c) and (a).

<sup>22</sup> 55 FERC ¶ 61,382 (1991), p. 13.

<sup>23</sup> 108 FERC ¶ 61,081 (2004) at 67.

## 8. Analysis relative to the Edgar standard

resolved if one determines that the contract would have been shortlisted in the most recent RPS RFO.

SDG&E originally contracted with Rim Rock in 2009 independent of discussions of a tax equity investment. At the time PA opined that the pricing of the Rim Rock deal was competitive with the pricing of offers selected (shortlisted) in what was at the time the most recent RFO.<sup>24</sup> In section 7.1.1 of this report, we have analyzed the revised pricing in this amended PPA and have concluded that it remains competitive with the shortlist from the 2008 RFO, and would probably have been selected in the 2009 RFO had it not already been in SDG&E's portfolio of signed contracts.

An interesting point about the pricing in the Rim Rock contract is that it is cost-based, subject to a cap. The cost-based pricing has been explained as being mandated by an IRS "arms-length" standard which is in its way similar to an assurance of lack of affiliate abuse. It has been portrayed as a necessity of the tax equity investment. The pricing formula is used to ensure the tax treatment of SDG&E's benefits from the deal, not to favor the affiliate.

PA's conclusion is that the amended Rim Rock Power Purchase Agreement has not involved affiliate abuse. The pricing of the contract is based on a formula that will, we believe, yield results that are comparable with the market for renewable power contracts as revealed in SDG&E's RPS RFOs.

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<sup>24</sup> PA Consulting Group, *Report of the Independent Evaluator on the Naturener Rim Rock contract relative to the results of the 2008 Request for Offers from Eligible Renewable Resources (2008 Renewable RFO)*, May 27, 2009.

# Exhibit D

**BEFORE THE PUBLIC UTILITIES  
COMMISSION OF THE STATE OF CALIFORNIA**

**DECLARATION OF UYEN NGUYEN  
REGARDING CONFIDENTIALITY OF CERTAIN DATA**

I, Uyen Nguyen, do declare as follows:

1. I am an Energy Contracts Originator in the Electric & Fuel Procurement Department for San Diego Gas & Electric Company (“SDG&E”). I have reviewed the Prepared Direct Testimony of Mike McClenahan, submitted concurrently herewith (the “Testimony”). In addition, I am personally familiar with the facts and representations in this Declaration and, if called upon to testify, I could and would testify to the following based upon my personal knowledge and/or belief.

2. I hereby provide this Declaration in accordance with D.06-06-066<sup>1/</sup> and D.08-04-023 to demonstrate that the confidential information (“Protected Information”) provided in the Report submitted concurrently herewith (described below) falls within the scope of data protected as confidential pursuant to the IOU Matrix attached to the Commission’s confidentiality decision, D.06-06-066 (the “IOU Matrix”) and/or under relevant statutory provisions.<sup>2/</sup>

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<sup>1/</sup> As amended by D.07-05-032.

<sup>2/</sup> The Matrix is derived from the statutory protections extended to non-public market sensitive and trade secret information. (See D.06-06-066, *mimeo*, note 1, Ordering Paragraph 1). The Commission is obligated to act in a manner consistent with applicable law. The analysis of protection afforded under the Matrix must always produce a result that is consistent with the relevant underlying statutes; if information is eligible for statutory protection, it must be protected under the Matrix. (See *Southern California Edison Co. v. Public Utilities Comm.* 2000 Cal. App. LEXIS 995, \*38-39) Thus, by claiming applicability of the Matrix, SDG&E relies upon and simultaneously claims the protection of applicable statutory provisions including, but not limited to, Public Utilities Code §§ 454.5(g) and 583, Govt. Code § 6254(k) and General Order 66-C.

3. In D.06-06-066, the Commission adopted rules governing confidentiality of certain categories of electric procurement data submitted to the Commission by investor owned utilities (“IOUs”) and energy service providers (“ESPs”). The Commission established two matrices – one applicable to IOUs, the other to ESPs – setting forth categories and sub-categories of data and providing a confidentiality designation for each.<sup>3/</sup>

4. To the extent information matches a Matrix category, it is entitled to the protection the Matrix provides for that category of information. In addition, the Commission has made clear that information must be protected where “it matches a Matrix category exactly . . . or consists of information from which that information may be easily derived.”<sup>4/</sup> In order to claim the protection afforded by the relevant Matrix, the party seeking confidential treatment must establish:

- 1) That the material it is submitting constitutes a particular type of data listed in the Matrix,
- 2) Which category or categories in the Matrix the data correspond to,
- 3) That it is complying with the limitations on confidentiality specified in the Matrix for that type of data,
- 4) That the information is not already public, and
- 5) That the data cannot be aggregated, redacted, summarized, masked or otherwise protected in a way that allows partial disclosure.<sup>5/</sup>

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<sup>3/</sup> See, D.06-06-066, as amended by D.07-05-032, *mimeo*, Appendices 1 and 2.

<sup>4/</sup> See, *Administrative Law Judge’s Ruling on San Diego Gas & Electric Company’s April 3, 2007 Motion to File Data Under Seal*, issued May 4, 2007 in R.06-05-027, p. 2 (emphasis added).

<sup>5/</sup> D.06-06-066, as amended by D.07-05-032, *mimeo*, p. 81, Ordering Paragraph 2.

5. SDG&E's Protected Information: The Protected Information, consisting of the information described below, is protected pursuant to the following Matrix categories:

**Chapter 2: Prepared Direct Testimony of Mike McClenahan**

Description of Data	Matrix Category	Period of Confidentiality
Section II.B. ▪ Page MM-10, Lines 6-11, 19  Section III.B. ▪ Page MM-20, Lines 3-6, 10-12  Section III.D. ▪ Page MM-29, Lines 8-10, 16-19 ▪ Page MM-31, Lines 19-20	VII.G.	Contract Terms and Conditions  Confidential for three years following delivery starts or until one year following expiration, whichever comes first.
Section III.D. ▪ Page MM-28, Lines 15-21	VIII.A	Raw Bid Data -Always confidential.  Summaries of bids (total MW, MWH, technology types, etc) are confidential until final contracts are submitted to CPUC for approval.
Section III.D. ▪ Page MM-26, Lines 8-9	VIII.B	Quantitative Analysis in Scoring and Evaluation of Bids  Confidential for three years after winning bidders selected.



**Exhibit B: Comparison of the Amended PPA to Shortlisted Projects  
in SDG&E's Most Recent Solicitation**

Description of Data	Matrix Category	Period of Confidentiality
<p>Section Entitled: Consistency with Commission Decision and Rules</p> <ul style="list-style-type: none"> <li>▪ Part A</li> </ul> <p>Section Entitled: Contract Summary</p> <ul style="list-style-type: none"> <li>▪ Part B</li> </ul>	<p>V.C.</p>	<p>Net Short Position</p> <p>Front three years confidential.</p>
<p>Section Entitled: Consistency with Commission Decision and Rules</p> <ul style="list-style-type: none"> <li>▪ Part D</li> </ul> <p>Section Entitled: Contract Summary</p> <ul style="list-style-type: none"> <li>▪ Part D.2</li> <li>▪ Part E.1</li> <li>▪ Part E.9</li> <li>▪ Part E.10</li> </ul>	<p>VII.G.</p>	<p>Contract Terms and Conditions</p> <p>Confidential for three years following delivery starts or until one year following expiration, whichever comes first.</p>
<p>Section Entitled: Consistency with Commission Decision and Rules</p> <ul style="list-style-type: none"> <li>▪ Part C</li> </ul> <p>Section Entitled: Project Development Status</p> <ul style="list-style-type: none"> <li>▪ Part C.3</li> <li>▪ Part E.3</li> <li>▪ Part G.3</li> <li>▪ Part G.4</li> </ul> <p>Section Entitled: Contract Summary</p> <ul style="list-style-type: none"> <li>▪ Part E.12</li> </ul>	<p>VIII.A</p>	<p>Raw Bid Data -Always confidential.</p> <p>Summaries of bids (total MW, MWH, technology types, etc) are confidential until final contracts are submitted to CPUC for approval.</p>

**Exhibit B: Comparison of the Amended PPA to Shortlisted Projects  
in SDG&E's Most Recent Solicitation**

Description of Data	Matrix Category	Period of Confidentiality
<p>Section Entitled: Consistency with Commission Decision and Rules</p> <ul style="list-style-type: none"> <li>▪ Part C</li> <li>▪ Part H</li> <li>▪ Part I</li> </ul> <p>Section Entitled: Project Development Status</p> <ul style="list-style-type: none"> <li>▪ Part E.2</li> <li>▪ Part G.2</li> <li>▪ Part G.3</li> <li>▪ Part G.4</li> </ul> <p>Section Entitled: Contract Summary</p> <ul style="list-style-type: none"> <li>▪ Part E.8</li> <li>▪ Part E.9</li> <li>▪ Part E.12</li> <li>▪ Part E.13</li> <li>▪ Part E.14</li> </ul>	<p>VIII.B</p>	<p>Quantitative Analysis in Scoring and Evaluation of Bids</p> <p>Confidential for three years after winning bidders selected.</p>

**Exhibit C: Report of the Independent Evaluator**

Description of Data	Matrix Category	Period of Confidentiality
<p>Section 6</p> <ul style="list-style-type: none"> <li>▪ Paragraph 6.3</li> </ul> <p>Section 7</p> <ul style="list-style-type: none"> <li>▪ Paragraph 7.1.2</li> </ul>	<p>VII.G.</p>	<p>Contract Terms and Conditions</p> <p>Confidential for three years following delivery starts or until one year following expiration, whichever comes first.</p>
<p>Section 3</p> <ul style="list-style-type: none"> <li>▪ Paragraph 3.3</li> </ul> <p>Section 5</p> <ul style="list-style-type: none"> <li>▪ Paragraph 5.7.2</li> </ul> <p>Section 7</p> <ul style="list-style-type: none"> <li>▪ Paragraph 7.1</li> <li>▪ Paragraph 7.1.2a.</li> </ul>	<p>VIII.A</p>	<p>Raw Bid Data -Always confidential.</p> <p>Summaries of bids (total MW, MWH, technology types, etc) are confidential until final contracts are submitted to CPUC for approval.</p>
<p>Section 4</p> <ul style="list-style-type: none"> <li>▪ Paragraph 4.3.1</li> <li>▪ Paragraph 4.3.4</li> </ul> <p>Section 5</p> <ul style="list-style-type: none"> <li>▪ Paragraph 5.3</li> <li>▪ Paragraph 5.7.2</li> <li>▪ Paragraph 5.7.3</li> <li>▪ Paragraph 5.8</li> <li>▪ Figure 1</li> </ul> <p>Section 7</p> <ul style="list-style-type: none"> <li>▪ Paragraph 7.1</li> <li>▪ Paragraph 7.1.1</li> <li>▪ Paragraph 7.1.2</li> <li>▪ Paragraph 7.1.2a.</li> <li>▪ Paragraph 7.1.2b.</li> <li>▪ Paragraph 7.1.2c.</li> <li>▪ Paragraph 7.1.2d.</li> <li>▪ Paragraph 7.1.3</li> <li>▪ Paragraph 7.2</li> </ul> <p>Footnote 20</p>	<p>VIII.B</p>	<p>Quantitative Analysis in Scoring and Evaluation of Bids</p> <p>Confidential for three years after winning bidders selected.</p>

6. The Commission previously considered and approved application of IOU Matrix confidentiality protection to project development status data in its *Administrative Law Judge's Ruling Granting San Diego Gas & Electric Company's May 21, 2007 Amendment to April 3, 2007 Motion and May 22, 2007 Amendment to August 1, 2006 Motion*, issued June 28, 2007 in R.06-05-027.

7. SDG&E intends to comply with the limitations on confidentiality specified in the Matrix for the type of data that is provided herewith.

8. I am not aware of any instance of public disclosure of the Protected Information.

9. The Protected Information cannot be provided in a form that is further aggregated, redacted, or summarized and still provide the level of detail requested and expected by the Energy Division.

10. As an alternative basis for requesting confidential treatment, SDG&E submits that the project status information provided in the Testimony is material, market sensitive, electric procurement-related information protected under §§ 454.5(g) and 583, as well as trade secret information protected under Govt. Code § 6254(k), and that the disclosure of this information would place SDG&E at an unfair business disadvantage, thus triggering the protection of G.O. 66-C.<sup>6/</sup>

11. Public Utilities Code § 454.5(g) provides:

The commission shall adopt appropriate procedures to ensure the confidentiality of any market sensitive information submitted in an

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<sup>6/</sup> This argument is offered in the alternative, not as a supplement to the claim that the data is protected under the IOU Matrix. California law supports the offering of arguments in the alternative. *See, Brandolino v. Lindsay*, 269 Cal. App. 2d 319, 324 (1969) (concluding that a plaintiff may plead inconsistent, mutually exclusive remedies, such as breach of contract and specific performance, in the same complaint); *Tanforan v. Tanforan*, 173 Cal. 270, 274 (1916) ("Since . . . inconsistent causes of action may be pleaded, it is not proper for the judge to force upon the plaintiff an election between those causes which he has a right to plead.")

electrical corporation's proposed procurement plan or resulting from or related to its approved procurement plan, including, but not limited to, proposed or executed power purchase agreements, data request responses, or consultant reports, or any combination, provided that the Office of Ratepayer Advocates and other consumer groups that are nonmarket participants shall be provided access to this information under confidentiality procedures authorized by the commission.

12. General Order 66-C protects “[r]eports, records and information requested or required by the Commission which, if revealed, would place the regulated company at an unfair business disadvantage.”

13. Under the Public Records Act, Govt. Code § 6254(k), records subject to the privileges established in the Evidence Code are not required to be disclosed.<sup>7/</sup> Evidence Code § 1060 provides a privilege for trade secrets, which Civil Code § 3426.1 defines, in pertinent part, as information that derives independent economic value from not being generally known to the public or to other persons who could obtain value from its disclosure.

14. Public Utilities Code § 583 establishes a right to confidential treatment of information otherwise protected by law.<sup>8/</sup>

15. If disclosed, the Protected Information could provide parties with whom SDG&E is currently negotiating insight into SDG&E’s procurement options, which would unfairly undermine SDG&E’s negotiation position and could ultimately result in increased cost to ratepayers. In addition, if developers mistakenly perceive that SDG&E is not committed to assisting their projects, disclosure of the Protected Information could act as a disincentive to developers. Accordingly, pursuant to P.U. Code § 583, SDG&E

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<sup>7/</sup> See also Govt. Code § 6254.7(d).

<sup>8/</sup> See, D.06-06-066, *mimeo*, pp. 26-28.

seeks confidential treatment of this data, which falls within the scope of P.U. Code § 454.5(g), Evidence Code § 1060 and General Order 66-C.

16. In accordance with the statutory provisions described herein, SDG&E hereby requests that the information set forth in the Testimony be protected from public disclosure.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Executed this 15th day of July, 2010, at San Diego, California.



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Uyen Nguyen  
Energy Contracts Originator