Confirmation Letter for Bilateral import capability transfer

BETWEEN

SAN DIEGO GAS & ELECTRIC (“Party A”)

AND

[PARTY B NAME] (“PARTY B”)

This confirmation letter (“Confirmation”) confirms the Transaction between Party A (“Buyer/Seller”) and Party B (“Buyer/Seller”), which becomes effective on the date fully executed by both Parties (the “Confirmation Effective Date”), in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Section 3 of this Confirmation. This Transaction is governed by the Master Power Purchase and Sale Agreement between the Parties, effective as of [Date of EEI Master between Parties], together with the Cover Sheet, [the Collateral Annex and Paragraph 10 to the Collateral Annex,] and any other annexes thereto (collectively, as amended, restated, supplemented, or otherwise modified from time to time, the “Master Agreement”). The Master Agreement and this Confirmation are collectively referred to herein as the “Agreement”. Capitalized terms used but not otherwise defined in this Confirmation have the meanings specified for such terms in the Master Agreement or the Tariff (defined below), as applicable. Section references herein are to this Confirmation unless otherwise noted.

1. **Definitions**
   1. “Bilateral Import Capability Transfer” is the transfer of Remaining Import Capability from one Market Participant to another, as defined and described in the Tariff.
   2. “Buyer” has the meaning specified in the introductory paragraph.
   3. “CAISO” means the California Independent System Operator Corporation, or any successor entity performing substantially the same functions.
   4. “CIRA” means the CAISO Customer Interface for Resource Adequacy.
   5. “CIRA System Failure” means a disruption in transfer of Product caused solely by the CIRA System that is not within the control of, or the result of the negligence of, either Party and which could not have been avoided by the exercise of due diligence.
   6. “Confirmation” has the meaning specified in the introductory paragraph.
   7. “Confirmation Effective Date” has the meaning specified in the introductory paragraph of this Confirmation.
   8. “Contract Month” has the meaning set forth in Section 3.3 of this Confirmation.
   9. “Contract Price” means the price, expressed in dollars per kW-month, specified for each Contract Month as set forth in the Contract Price Table in Section 4.1.
   10. “Contract Quantity” means, with respect to the Contract Month, the amount of Product, expressed in MW set forth in the Contract Quantity Table in Section 3.3.
   11. “Contract Term” has the meaning set forth in Section 2.1.
   12. “CPUC” means the California Public Utilities Commission.
   13. “Governmental Body” means any federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal. This definition does not include “market participant” as defined in the CAISO’s Business Practice Manual for Definitions and Acronyms as published on the CAISO website.
   14. “Master Agreement” has the meaning specified in the introductory paragraph of this Confirmation.
   15. “One-Time Payment” has the meaning specified in Section 4.1 of this Confirmation.
   16. “Procurement Review Group” has the meaning set forth in CPUC Decision D. 02-08-071.
   17. “Product” has the meaning specified in Section 3.1 of this Confirmation.
   18. “Remaining Import Capability” means the quantity in MW of Total Import Capability assigned to a Load Serving Entity up to its Load Share Quantity after the assignment of Existing Contract Import Capability and Pre-RA Import Commitment Capability.
   19. “Scheduling Coordinator” has the meaning set forth in the Tariff.
   20. “Seller” has the meaning specified in the introductory paragraph of this Confirmation.
   21. “Tariff” means the Fifth Replacement FERC Electric Tariff and the associated CAISO protocol provisions, including any current CAISO-published “Operating Procedures” and “Business Practice Manuals,” in each case as amended or supplemented from time to time.
2. **Term**
   1. Contract Term

The “Contract Term” shall mean the period of time commencing upon the Confirmation Effective Date and continuing until the later of (a) the expiration of the last Contract Month or (b) the date the Parties’ obligations under the Agreement have been fulfilled.

* 1. Binding Nature

This Agreement shall be effective and binding as of the Confirmation Effective Date.

1. **Transaction**
   1. Product

Seller shall transfer to Buyer, in the manner set forth in Section 3.3, the Remaining Import Capability (the “Product”) corresponding to the Contract Quantity, for each day in each Contract Month, and at the applicable Contract Price.

* 1. Delivery Point

|  |  |
| --- | --- |
| **Branch Group** | **Bilateral Import Capability Transfer** |
| CAISO BG/MSL Name | (e.g., MALIN500) |

* 1. Delivery of Product

Seller shall transfer to Buyer, within five (5) Business Days following receipt of the One Time Payment, the Product in the amount of the Contract Quantity for the Contract Month(s) by registering the transfer with the CAISO as a Bilateral Import Capability Transfer, and completing any other action or documentation required by the CAISO to effect such transfer.

Contract Quantity: Seller shall transfer the Contract Quantity for each of the following months (each a “Contract Month”):

**Contract Quantity Table**

| **Contract Month Reference** | **Contract Month and Year** | **Contract Quantity (MW)** | **SCID of Benefitting LSE (Buyer to fill out)** |
| --- | --- | --- | --- |
| (e.g. 4) | (e.g. April – YYYY) | XX |  |

* 1. Buyer’s Re-Sale of Product

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

1. **Payment**
   1. One-Time Payment

Buyer shall make a One-Time Payment for the Product. The One-Time Payment is to be received by Seller within five (5) Business Days following the Confirmation Effective Date. The Parties understand and agree that the One-Time Payment shall be paid by Buyer in advance of the applicable Contract Month(s) and that the payment of such One-Time Payment when due and payable hereunder shall be a condition to Seller’s obligation to deliver Product in respect of such Contract Month(s). This “One Time Payment” is defined and calculated as follows:

One-Time Payment =

where: *Ai* = Contract Price *i* (in $/kW-month) for Contract Month *i*

*Bi* = Contract Quantity *i* (in MW) transferred by Seller for Contract Month *i*

*k = Count of Contract Months*

The One-Time Payment shall be rounded to two decimal places.

CONTRACT PRICE TABLE

|  |  |  |
| --- | --- | --- |
| **Contract Month Reference** | **Contract Month and Year** | **Contract Price ($/kW-month)** |
| (e.g. 4) | (e.g. April – YYYY) | $X.XX |

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1. **CIRA System Failure** 
   1. If a Party is unable to transfer or receive Product due to a CIRA System Failure, the affected Party shall, within two (2) Business Days from its discovery of the CIRA System Failure, provide the other Party with Notice and full details identifying the cause of the CIRA System Failure. Each Party shall use reasonable efforts to cause transfer or receipt of the Product.
   2. Neither Party’s failure to transfer or receive Product due solely to a CIRA System Failure constitutes an Event of Default or failure to deliver Product. In no event shall Buyer be obligated to pay for Product that it does not receive, nor shall Seller be required to pay damages to Buyer pursuant to Section 6.1, due solely to a CIRA System Failure.
2. **Damages for Failure to Deliver Product**

If Seller fails to transfer to Buyer the Contract Quantity for any Contract Month in accordance with Section 3.3, then with respect to such Contract Month, Seller shall pay to Buyer damages in the amount of set forth in this Article Six as follows in lieu of damages specified in Section 4.1 of the Master Agreement:

For each Contract Month for which the Buyer has made a payment to Seller in accordance with Section 4.1 of this Confirmation, Seller shall pay to Buyer damages in the amount equal to (x) the applicable Contract Price multiplied by (y) the amount of Contract Quantity not delivered by Seller for that Contract Month, multiplied by (z) 1,000 kw/MW, for each Contract Month that Product was not transferred.

1. **Confidentiality**

Notwithstanding Section 10.11 of the Master Agreement, the Parties may disclose all terms and conditions of this Transaction to any Governmental Body, the CPUC, CAISO, and the Procurement Review Group; provided, that each disclosing Party shall use reasonable efforts to limit, to the extent possible, the ability of any such applicable Governmental Body, CAISO, or Scheduling Coordinator to further disclose such information. Notwithstanding the foregoing, the Parties may disclose the terms of this Confirmation to the CAISO to effectuate Seller’s delivery of product and the transfer of the Product and the CAISO may publicly disclose the transfer of the Product from Seller to Buyer as indicated in the Tariff promptly following Seller’s delivery of Product. In addition, if Buyer resells all or any portion of the Product, Buyer shall be permitted to disclose to the other party to such resale transaction all such information necessary to effect such resale transaction, other than the Contract Price.

1. **Party B Collateral Requirements**

TBD

1. **Counterparts**

This Confirmation may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered by electronic mail (including pdf or any electronic signature complying with the federal ESIGN Act of 2000, California’s Uniform Electronic Transactions Act (Cal. Civ. Code Section 1633.1, et seq.) or other applicable law) or other transmission method and any counterpart so delivered shall have the same legal effect as an original.

[*Signature page follows*]

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE.

|  |  |  |  |
| --- | --- | --- | --- |
| **SAN DIEGO GAS & ELECTRIC COMPANY** | | **[INSERT LEGAL NAME OF PARTY B]** | |
| By: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | By: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  |  |  |  |
| Name: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Name: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
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| Title: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Title: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
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| Date: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Date: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |