

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



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Application of San Diego Gas & Electric Company
(U 902 E) for Authority to Enter into Purchase Power
Tolling Agreements with Escondido Energy Center, Pio
Pico Energy Center and Quail Brush Power.

Application 11-05-023

MOTION TO SUPPLEMENT EVIDENTIARY RECORD

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Attorney for
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Dated: July 9, 2012

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Pursuant to Rule 11.1 of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), San Diego Gas & Electric Company (“SDG&E”) respectfully moves to supplement the record of the above-captioned, pending proceeding to:

(1) update estimated Network Upgrade Costs (“NUCs”) presented in an exhibit that was entered on the record during the recently concluded evidentiary hearings; and (2) to enter into the record further, recently executed amendments to the Purchase Power Tolling Agreements (PPTAs) for the Pio Pico Energy Center (“Pio Pico”) and Quail Brush Energy Project (“Quail Brush”) that should be included as part of the contracts that are pending the Commission’s review and approval in this proceeding. Each of these matters is discussed below.

Regarding the first, SDG&E is submitting evidence that the estimated NUCs associated with interconnecting the Quail Brush project to the grid are expected to change and exceed the estimated costs that were reflected in a document that has been previously entered into evidence in this proceeding as Exhibit 35-C (the “C” designation refers to the fact that the cost data in the exhibit are confidential).¹ A key reason why Exhibit 35-C is captioned as “estimated” data is

¹ The Commission, the Division of Ratepayer Advocates, and the California Environmental Justice Alliance, which signed a nondisclosure agreement with SDG&E, obtained a non-redacted version of Exhibit 35-C.

because interconnection costs are generally subject to change until an interconnecting generator comes online. At this time, SDG&E has no better estimate of the NUCs; however, these costs are not expected to reach the “not to exceed amount,” a condition precedent in the PPTA that would allow SDG&E to terminate its relationship with the project sponsor.

With respect to the Pio Pico project, SDG&E is aware that there appears to be a very minor change to the project’s estimated NUCs reflected in Exhibit 35-C. As with the Quail Brush PPTA, the estimated, changed NUCs for Pio Pico would appear at this time to have no effect on the conditional precedent amount stated in the Pio Pico PPTA.

In assessing the cost-effectiveness issues for either contract, SDG&E notes that with respect to the NUCs, the “not to exceed” condition precedent amounts, which have not been exceeded, are the relevant criterion in assessing such costs. To the extent the actual NUCs are lower than those specified in the contracts, they afford additional benefits to ratepayers.

Regarding the second development, the uncertainties associated with the projects’ NUCs have caused SDG&E to execute further contract amendments to the respective Quail Brush and Pio Pico PPTAs. These amendments are very similar to amendments previously submitted by SDG&E in this proceeding and discussed in the April 27, 2012 written testimony of witness Juancho Eekhout.² Each amendment postpones the dates by which the NUCs need to be refined before SDG&E relinquishes its right to terminate the contracts due to the NUCs. A copy of each amended contract is attached to this Motion.³

² Exhibit 13, page 5.

³ The Pio Pico amendment is not confidential and is attached in full. The Quail Brush amendment does contain confidential information, and therefore a redacted copy of the amendment accompanies this Motion. The confidential information that is contained in the non-redacted version of the Quail Brush amendment is identical in all respects to the confidential information noted in the Declaration of Brad Mantz that was submitted in SDG&E’s original May 19, 2011 Application at pages 74-75, indicating that the information is covered by Matrix Category VII.B. Accordingly, SDG&E does not find it necessary to submit a further motion for confidential treatment covering this same material. A non-redacted version of the Quail Brush amendment will be provided by email to

In sum, SDG&E moves to supplement the record to: (1) reflect that the estimated NUCs reflected on Exhibit 35-C have changed and remain uncertain at this time but are expected to be below the “not to exceed” condition precedent amount for NUCs; and (2) enter into evidence the two PPTA amendments that extend the period of time for resolution of uncertainties regarding the NUCs. SDG&E notes, in further support of this Motion, that the question about the amount of NUCs did not occupy any hearing time at the evidentiary hearings, and SDG&E does not expect that admitting into evidence the above-described information and associated contract amendments would prejudice any party or cause any disruption to this proceeding or its schedule.⁴ SDG&E’s sole objective in filing this Motion is to ensure that the estimated NUCs reflected in Exhibit 35-C are updated on the record and to admit the necessary contractual amendments that preserve SDG&E’s and ratepayers’ benefits. For these reasons, SDG&E respectfully submits there is good cause to supplement the record of A.11-05-023 as discussed here.

Respectfully submitted,

/s/ Paul A. Szymanski

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ALJ Yacknin and counsel for DRA and CEJA. SDG&E requests that it be notified if a separate motion is necessary in these circumstances.

⁴ SDG&E has called counsel for DRA and CEJA prior to filing this Motion to alert them to the issues and SDG&E’s request, as discussed herein.

Pio Pico Amendment #3

**THIRD AMENDMENT
TO THE
POWER PURCHASE TOLLING AGREEMENT**

This THIRD AMENDMENT TO THE POWER PURCHASE TOLLING AGREEMENT ("Third Amendment") is entered into effective as of May 30, 2012 ("Third Amendment Effective Date") by and among San Diego Gas & Electric Company ("SDG&E" or "Buyer") and Pio Pico Energy Center, LLC ("Seller"). SDG&E and Seller are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

WHEREAS, Buyer and Seller entered into a Power Purchase Tolling Agreement dated February 2, 2011, amended on March 20, 2012 and April 0, 2012 (the "Agreement").

WHEREAS, Buyer and Seller now desire to amend further the Agreement, under the terms and conditions set forth in this Third Amendment.

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

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

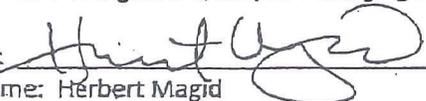
1.0 Conditions Precedent. Section 2.4.2(a) of the Agreement, as amended, shall be modified by replacing the date "June 1, 2012" with "August 1, 2012".

2.0 No Other Modification. Except as modified and amended herein, all other terms and conditions of the Agreement shall remain unchanged and in full force and effect.

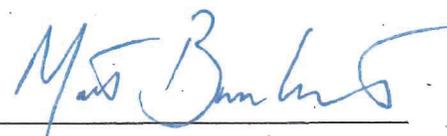
3.0 Agreement. This Third Amendment shall be subject to all of the terms and conditions of the Agreement, as amended, as if it were a part thereof, including, without limitation, any provision with respect to choice of law, venue, and/or jurisdiction.

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

Seller: **Pio Pico Energy Center, LLC**
By: EIF Pio Pico, LLC, its sole member
By: United States Power Fund III, LP., its member
By: EIF US Power III, LLC, its general partner
By: EIF Management, LLC, its managing member

By: 
Name: Herbert Magid
Its: Managing Partner

Buyer: **SAN DIEGO GAS & ELECTRIC COMPANY**

By: 
Name: Matt Burkhardt
Its: Vice President
Approved as to legal form: A.S.

Quail Brush Amendment #2 (Redacted)

AMENDMENT NO. 2 TO
POWER PURCHASE TOLLING AGREEMENT

THIS AMENDMENT NO. 2 (this "Amendment No. 2"), is entered into effective as of July 5, 2012, to that certain Power Purchase Tolling Agreement, dated as of April 29, 2011, as amended by Amendment No. 1, dated as of April 24, 2012 (as amended, the "Agreement"), by and between San Diego Gas & Electric Company, a California corporation ("Buyer") and Quail Brush Genco, LLC, a Delaware limited liability company ("Seller").

WITNESSETH

WHEREAS, the Parties are willing to amend the terms of the Agreement as set forth herein.

NOW, THEREFORE, the Parties hereto hereby agree as follows:

1. Defined Terms. Capitalized terms used herein without definition shall have the meanings ascribed to them in the Agreement.

2. Amendment. Effective as of the date hereof, the Parties hereby agree to amend the Agreement as follows:

a. Section 1.2.1 of the Agreement is hereby amended by replacing the words "230,000 Volts" with "138,000 Volts".

b. Section 2.4.2 of the Agreement is hereby amended by adding the following new subsection 2.4.2(c) as follows:

"(c) No later than September 30, 2012, Seller, CAISO and the Participating Transmission Owner shall have executed and delivered an amendment to that certain Large Generator Interconnection Agreement, dated as of May 25, 2012, or an unexecuted version of such an amendment has been filed with FERC, such that as amended such Large Generator Interconnection Agreement provides for:

(i) as contemplated in Section 2.4.2(a)(i), a refundable cost for Network Upgrades that Seller would be obligated to pay and would be entitled to reimbursement from the Participating Transmission Owner as provided thereunder not exceeding [REDACTED]

(ii) as contemplated in Section 2.4.2(a)(ii), other costs that Seller would be obligated to pay thereunder not exceeding [REDACTED] (or such greater amount as Seller may approve, in its sole discretion); and

(iii) as contemplated in Section 2.4.2(b), interconnection of the Project under Full Capacity Deliverability Status (as defined in the Tariff) and

otherwise sufficient to deliver all Product required to be delivered by Seller hereunder in accordance with the terms hereof, with an in-service interconnection date for the Electrical Interconnection Upgrades necessary to allow backfeed of Station Power to the Project from the transmission grid no later than six months prior to the Guaranteed Initial Delivery Date and an in-service interconnection date for all other Electrical Interconnection Upgrades no later than three months prior to the Guaranteed Initial Delivery Date, provided that Seller provides the Participating Transmission Owner with the appropriate security and written authorization to proceed thereunder at least 10 days after full execution of such amendment to the Large Generator Interconnection Agreement or the filing at FERC of such amendment to the Large Generator Interconnection Agreement unexecuted.”

c. Section 2.5.1(a) of the Agreement is hereby amended by adding the phrase “and 2.4.2(c)(i)” after the phrase “Both of the Parties are the beneficiaries of the Conditions Precedent set forth in Sections 2.4.1 and 2.4.2(a)(i).”

d. Section 2.5.1(b) of the Agreement is hereby amended by adding the phrase “2.4.2(c)(ii), 2.4.2(c)(iii),” after the phrase “Seller shall be the sole beneficiary of the Conditions Precedents set forth in Sections 2.4.2(a)(ii), 2.4.2(b).”

e. Section 2.5.2(b) of the Agreement is hereby amended by restating such Section in its entirety as follows:

“(b) Upon a termination of this Agreement (i) by Seller, for an Event of Default of Buyer prior to the CP Satisfaction Date, or (ii) by either Party as a result of the failure of (A) any of the Conditions Precedent set forth in Sections 2.4.1 or 2.4.2(a)(i) or 2.4.2(c)(i) to be satisfied (or waived by both Seller and Buyer), or (B) any of the Conditions Precedent set forth in Sections 2.4.2(a)(ii), 2.4.2(b) (subject to the final sentence of this Section 2.5.2(b)), 2.4.2(c)(ii), 2.4.2(c)(iii) (subject to the final sentence of this Section 2.5.2(b)), or 2.4.4 to be satisfied (or waived by Seller), Buyer shall return to Seller the full amount of the Pre-Construction Security, together with any interest accrued thereon. If the condition precedent set forth in Section 2.4.2(b) or Section 2.4.2(c)(iii) was not satisfied despite Seller having being offered, at least sixty days prior to the deadline to achieve the Condition Precedent set forth in Section 2.4.2(b) or Section 2.4.2(c)(iii), as applicable, a Large Generator Interconnection Agreement or an amendment thereto, as applicable, on commercially reasonable terms, providing for interconnection of the Project under Full Capacity Deliverability Status (as defined in the Tariff), with an in-service interconnection date for the Electrical Interconnection Upgrades necessary to allow backfeed of Station Power to the Project from the transmission grid no later than six months prior to the Guaranteed Initial Delivery Date and an in-service interconnection date for all other Electrical Interconnection Upgrades no later than three months prior to the Guaranteed Initial Delivery Date, assuming that Seller provides the Participating Transmission Owner with the appropriate security and written authorization to proceed thereunder at least 30 days after the deadline to achieve the Condition

Precedent set forth in Section 2.4.2(b) or Section 2.4.2(c)(iii), as applicable, then Seller shall owe Buyer liquidated damages in an amount equal to the Pre-Construction Security and the provisions of Section 2.5.2(a) shall apply.”

f. Section 5.1(c) of the Agreement is hereby amended by adding the following sentence at the end of such Section 5.1(c): “Following satisfaction or waiver of the Condition Precedents set forth in Section 2.4.2(c), Seller shall not request from the CAISO or the Participating Transmission Owner any changes to its plan of interconnection that are inconsistent with the plan of interconnection that was agreed upon in the amendment to the Large Generator Interconnection Agreement that satisfied the Conditions Precedent in Section 2.4.2(c) without Buyer’s prior written consent, not to be unreasonably withheld, which consent shall specifically refer to this Section 5.1(c).”

3. Acknowledgement. Each of Seller and Buyer agrees that to the extent the Conditions Precedent set forth in Sections 2.4.2(a) and (b) have not yet been achieved, they are hereby waived by the beneficiary Parties thereto.

4. Miscellaneous.

a. Amended Agreement. Any reference to the Agreement therein shall mean a reference to the Agreement as amended by this Amendment No. 2. For the avoidance of doubt, CPUC Approval (as defined in the Agreement) shall include approval by the CPUC of the Agreement, as amended by this Amendment No.2.

b. Continuing Effect; No Other Amendments. Except as expressly amended hereby, all of the terms and provisions of the Agreement are and shall remain in full force and effect. The amendments contained herein shall not constitute an amendment or waiver of any other provision of the Agreement except as expressly set forth herein.

c. Counterparts. This Amendment No. 2 may be executed in any number of counterparts by the Parties hereto, each of which counterparts when so executed shall be an original, but all the counterparts shall together constitute one and the same instrument. Delivery of an executed signature page of this Amendment No. 2 (which may be by electronic facsimile transmission) shall be effective as delivery of a manually executed counterpart hereof.

d. Severability. Any provision of this Amendment No. 2 that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate nor render unenforceable such provision in any other jurisdiction.

e. Governing Law. This Amendment No. 2 shall be construed under the laws of the State of California without giving effect to choice of law provisions that might apply the laws of a different jurisdiction. THE PARTIES WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY LITIGATION ARISING UNDER THIS AMENDMENT NO. 2 TO THE EXTENT SUCH WAIVER IS CONSISTENT WITH APPLICABLE LAW.

f. Headings. The headings of this Amendment No. 2 are for purposes of reference only and shall not limit or otherwise affect the meaning hereof.

g. Assignment. The terms and provisions hereof shall be binding on, inure to the benefit of, and be enforceable by, the successors and assigns of the Parties. Notwithstanding the foregoing, neither Party shall assign any rights or delegate any duties under the Agreement, as modified by this Amendment No. 2, except in connection with an assignment of the Agreement as permitted thereunder.

h. Authority. Each Party represents and warrants that the execution, delivery and performance of this Amendment No. 2 are within its powers, have been duly authorized by all necessary action, and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party, or any law, rule, regulation, order or the like applicable to it, and that the person who signs below on behalf of that Party has authority to execute this Amendment No. 2 on behalf of such Party and to bind such Party to this Amendment No. 2.

i. Entire Agreement. This Amendment No. 2 sets forth the entire agreement of the Parties with respect to the subject matter herein, and supersedes all previous understandings, written or oral, with respect thereto.

j. Amendments. This Amendment No. 2 may not be amended, modified, abrogated or superseded by a subsequent agreement unless such subsequent agreement is in the form of a written instrument executed by each Party.

k. Rules of Construction. This Amendment No. 2 is the result of negotiation and each Party has participated in its preparation and negotiation. Accordingly, any rules of construction that direct an ambiguity to be resolved against the drafting Party shall not be employed in the interpretation of this Amendment No. 2.

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IN WITNESS WHEREOF, the Parties have executed this Amendment No. 2 as of the date first written above.

QUAIL BRUSH GENCO, LLC,
a Delaware limited liability company

SAN DIEGO GAS & ELECTRIC COMPANY,
a California corporation

By: _____
Name:
Title

By: 
Name:
Title

Approved as to Legal Form ATC