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# APPENDIX 1

**PUBLIC VERSION**

EXECUTION VERSION

**SETTLEMENT AGREEMENT**

This Settlement Agreement (the “Settlement Agreement”), dated as of April 8, 2011 (the “Execution Date”), is made and entered into by and among the Division of Ratepayer Advocates (“DRA”), NaturEner Rim Rock Wind Energy, LLC (“Rim Rock”), San Diego Gas & Electric Company (“SDG&E”) and The Utility Reform Network (“TURN”). Each of DRA, Rim Rock, SDG&E and TURN is individually referred to herein as a Party, and collectively as the Parties.

**Recitals**

A. SDG&E filed Advice Letter 2088-E on May 29, 2009 requesting approval by the California Public Utilities Commission (“Commission”) of a renewable energy power purchase agreement (“Original PPA”) executed with Rim Rock for generation from a new 309 MW wind generation facility to be located near Kevin, Montana (“Project”). On November 20, 2009, the Commission approved the Original PPA in Resolution E-4277 in its entirety and without any modifications.

B. On July 12, 2010, SDG&E and Rim Rock’s affiliate, NaturEner USA, LLC (“NaturEner”), executed the Participation Agreement (“Participation Agreement”) which contemplates amendment of the Original PPA and a potential tax equity investment by SDG&E in the Project. Attached as exhibits to the Participation Agreement are forms of additional agreements which would be executed by SDG&E and Rim Rock (or its affiliates) upon the satisfaction of certain conditions precedent. The attached exhibits include: the form of an Equity Capital Contribution Agreement (“ECCA”) (Exhibit A to the Participation Agreement), which governs the terms upon which SDG&E would make a tax equity investment in the Project; the form of a Limited Liability Company Agreement (“LLC Agreement”) (Exhibit A to the ECCA), which governs the relationship between SDG&E as a tax equity investor in the Project and Rim Rock (or its affiliate) as the equity investor in the Project; and the form of an SDG&E Closing/Stand Alone PPA (Exhibit C to the Participation Agreement), which upon execution would effectuate amendments to the Original PPA through either the Closing PPA (in the event

that SDG&E is the tax equity investor in the Project) or the Stand Alone PPA (in the event that SDG&E is not the tax equity investor in the Project) (the Participation Agreement and the agreed-upon form of the additional agreements are referenced collectively as the “Transaction Agreements”). The Participation Agreement sets forth the conditions precedent to SDG&E and Rim Rock’s (or its affiliate’s) execution of the Transaction Agreements, including, among other matters, the requirement for a final and non-appealable order from the California Public Utilities Commission (“Commission”) approving the Transaction Agreements.

C. The agreed-upon form of SDG&E Closing/Stand Alone PPA would upon its execution, among other matters: (a) change the term of the Original PPA from 15 years to 20 years; (b) adjust the green attributes pricing structure from a fixed price to a cost-based price subject to a cap on the green attributes price (“GA Price Cap”); (c) add flexibility regarding Project phasing; (d) adjust the commercial operations date of the Project; and (e) fix the total quantity (in MW) purchased from the Project. The Participation Agreement provides that the final green attributes price will be established by the re-run of the base case model (“Base Case Model”) immediately prior to the anticipated construction financing of the Project, updating various inputs in the Base Case Model. The Participation Agreement also sets forth in detail the protocols and constraints that govern the running of the Base Case Model at that time.

Capitalized terms not defined in this Settlement Agreement shall have the meaning give in the Participation Agreement.

D. On July 15, 2010, SDG&E filed an application with the Commission (A.10-07-017) (the “Pending Application”) requesting approval for, among other matters: (a) SDG&E to make a tax equity investment in the Rim Rock Wind project holding company for up to the lesser of \$600 million or 79.99% of the Project Costs and to enter into the Transaction Agreements and perform its obligations thereunder in accordance with the Transaction Agreements; (b) SDG&E to enter into either the Closing PPA, or in the alternative, the Stand Alone PPA; (c) SDG&E’s proposed ratemaking and cost recovery proposals to place the tax

equity investment in SDG&E's rate base and earn a fixed return of 8.4%<sup>1</sup> throughout the 20 year term of the Closing PPA; (d) SDG&E's request to modify its current long-term procurement plan to allow it to enter into hedging arrangements for a period of up to ten years; (e) SDG&E's request to provide credit support as necessary to the project company pursuant to P.U. Code Section 701.5(c); (f) SDG&E's request for Commission approval, as may be necessary, of any limited waivers of the Commission's Affiliate Transaction Rules to effect the transactions described herein and to preserve the confidentiality of certain NaturEner cost data and sensitive SDG&E renewable procurement information; and (g) approval of any other relief as necessary and proper, including, without limitation, the relief identified in Section 2 of this Settlement Agreement.

E. SDG&E also requested in the Pending Application that the Commission make specific findings that:

(a) the Closing PPA, or in the alternative, the Stand Alone PPA, is consistent with SDG&E's Commission-approved Renewable Portfolio Standard ("RPS") plan and procurement from the Closing PPA, or in the alternative, the Stand Alone PPA, will contribute towards SDG&E's RPS procurement obligation;

(b) the terms and conditions of the Closing PPA, or in the alternative, the Stand Alone PPA, are reasonable and the Closing PPA, or in the alternative, the Stand Alone PPA, should be approved in its entirety. All costs of the purchase associated with the Closing PPA, or in the alternative, the Stand Alone PPA, including for energy, green attributes, resource adequacy, and load uplift are fully recoverable in rates over its term, subject to Commission review of SDG&E's administration of the contract; and

(c) generation that SDG&E procures pursuant to the Closing PPA, or in the alternative, the Stand Alone PPA constitutes generation from an eligible renewable energy resource for purposes of determining SDG&E's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California RPS program (Public

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<sup>1</sup> 8.4% is the fixed pre-tax return that is applied to the rate-based investment in the revenue requirement model. 7.36% is the fixed after-tax return that is applied to the ratepayer investment in the Base Case Model. These returns are documented at page AM-26 of the Prepared Direct Testimony of Amir Moftakhar (Ex. 3).

Utilities Code §§ 399.11, et seq. and/or other applicable law) and relevant Commission decisions.

F. On August 18, 2010, Western Power Trading Forum, TURN and DRA protested the Pending Application, and the Independent Energy Producers Association filed a response. On August 30, 2010, SDG&E filed a reply to the protests and response. The Commission held a Prehearing Conference on September 15, 2010. On November 9, 2010, Rim Rock, TURN and DRA served Opening Testimony, and SDG&E and Rim Rock served Rebuttal Testimony on November 30, 2010. Evidentiary hearings were held from December 13, 2010 to December 17, 2010. DRA, TURN, SDG&E, and Rim Rock began settlement negotiations soon afterwards.

G. As the result of settlement negotiations, the Parties have agreed that in consideration for certain modifications to the terms and conditions of the Transaction Agreements as set forth in Confidential Exhibit A (collectively the “Amended Transaction Agreements”)<sup>2</sup>, and the establishment of procedural and other protections for ratepayers, set forth more particularly herein, the Commission should authorize SDG&E to execute and perform the Amended Transaction Agreements and grant the other requests made by SDG&E in the Pending Application.

H. Pursuant to Rule 12.1 of the Commission Rules of Practice and Procedure, on March 24, 2011, a settlement conference was convened for the purpose of discussing the settlement of all issues raised by and among SDG&E, Rim Rock, TURN and DRA in the Pending Application proceeding.

In consideration of the respective covenants and agreements contained in this Settlement Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

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<sup>2</sup> The Amended Transaction Agreements included in Confidential Exhibit A to this Settlement Agreement are as follows: (1) a First Amendment to Participation Agreement, which includes, among other things, an Amended Pricing Addendum and an amended Table of Base Case Model Inputs, and (2) an Amended form of LLC Agreement. The original Transaction Agreements included in SDG&E’s Pending Application can be found in Exhibit 8-CRR (the McClenahan/Burkhart direct testimony, Confidential Exhibit A).

## **AGREEMENT**

1. **Compromise and Support.** This Settlement Agreement is a negotiated compromise of issues and is fully supported by the Parties. Nothing contained in this Settlement Agreement or the Amended Transaction Agreements shall be deemed to constitute an admission or an acceptance by any Party of any fact, principle, or position contained herein. Notwithstanding the foregoing, the Parties, by signing this Settlement Agreement and by joining the motion to approve the settlement in the Pending Application proceeding, acknowledge that they pledge support for Commission approval and subsequent implementation of these provisions.

2. **Commission Approvals.** The Parties hereby agree that the Commission shall approve this Settlement Agreement and authorize SDG&E to execute and perform its obligations under the Amended Transaction Agreements, which have been revised to incorporate the terms and conditions of this Settlement Agreement as set forth more particularly in Confidential Exhibit A and below, and shall grant the additional authority as set forth below:

(a) Order SDG&E to amend the Transaction Agreements as needed to reduce the total quantity purchased from the Project from 309 MW to no more than 189 MW, and approve the Closing PPA or in the alternative, the Stand Alone PPA, which reflect the amendments described in Section C of the recitals and a total quantity purchased of no more than 189 MW, and make the findings described in Section E of the recitals in relation to the Closing PPA and Stand Alone PPA;

(b) Approve SDG&E's request to modify its current long-term procurement plan to allow it to enter into hedging arrangements for a period of up to ten years in order to ensure price stability for the null power sales associated with the transaction as set forth in the Pending Application and SDG&E's testimony;

(c) Approve SDG&E's request to provide credit support as necessary to the project company pursuant to P.U. Code Section 701.5(c) and for approval of any associated costs as set forth in the Pending Application and SDG&E's testimony;

(d) Approve, as necessary, any limited waivers of the Commission's Affiliate Transaction Rules to effect the transactions described herein and to preserve the confidentiality of certain NaturEner cost data and sensitive SDG&E renewable procurement information as set forth in the Pending Application and SDG&E's testimony;

(e) Approve SDG&E's ratemaking, cost recovery, and tax equity investment proposals as set forth in the Pending Application and SDG&E's testimony, subject to the express modifications required by this Settlement Agreement, including but not limited to the modifications to the proposals in the following sections 2(f) to 2(i) Ordered by the Commission;

(f) Order SDG&E to make the following modifications to its ratemaking and cost recovery proposals for the tax equity investment in the Project:

(i) out of the total tax equity investment to be made by SDG&E, the maximum amount allocated to SDG&E's ratepayers shall be reduced from SDG&E's originally requested amount of the lesser of \$600 million or 79.99% of Project Costs to the lesser of \$250 million or 64.99% of the Project Costs;

(ii) the amount of SDG&E's total tax equity investment allocated to SDG&E's ratepayers be placed in SDG&E's rate base and earn a fixed return of 8.4% throughout the 20-year term of the Closing PPA;

(iii) out of the total tax equity investment to be made by SDG&E, the amount allocated to SDG&E's shareholders shall be at least 10% of the Project Costs (except to the extent of cost overruns during construction that are allocated to Rim Rock in accordance with the terms of the Participation Agreement) and SDG&E shall have the option to make this tax equity investment according to SDG&E's authorized capital structure and under SDG&E's existing financing authority (at the target returns set forth in sections 2(g)(ii) and 2(g)(iii)), provided that SDG&E shareholders in their sole discretion shall have the right to increase the amount of their total tax equity investment;

(iv) Rim Rock's (or its affiliate's) equity contribution shall be in an amount of no less than 25% of the Project Costs; and

(v) the remaining capital contributions above the amounts specified in Sections 2(f)(i), (iii) and (iv) that are needed to equal 100% of the Project Costs shall be provided by SDG&E shareholders and Rim Rock, as agreed between them;

(g) Order that SDG&E's tax equity investment in the Project shall be made consistent with each of the following conditions:

(i) from the total return earned by SDG&E on its tax equity investment, the portion of SDG&E's tax equity investment that is allocated to SDG&E's ratepayers shall earn a targeted rate of return of 7.36% (after tax) on a date targeted in the Base Case Model to occur ten (10) years or less from the Contribution Closing Date (the "Ratepayer Flip Date"<sup>3</sup>),

(ii) from the total return earned by SDG&E on its tax equity investment, unless a higher rate of return is approved by all Parties to the Settlement Agreement prior to the Construction Financial Closing Date, the portion of SDG&E's tax equity investment that is allocated to SDG&E's shareholders shall earn a targeted rate of return that does not exceed [REDACTED] after tax, targeted in the Base Case Model to occur no less than twelve (12) months and no more than eighteen (18) months after the Ratepayer Flip Date (the "Shareholder Flip Date"<sup>4</sup>), with the exact target Shareholder Flip Date to be determined in accordance with Section 3(c)(ii) below,

(iii) from the total return earned by SDG&E on its tax equity investment, the portion of SDG&E's tax equity investment that is allocated to SDG&E's shareholders shall earn no more than a targeted rate of return of [REDACTED] after tax, as of the end of the twentieth (20<sup>th</sup>) year after the Contribution Closing Date ("SDG&E Investment Period"<sup>3</sup>), unless a higher rate of return is approved by all Parties to the Settlement Agreement prior to the Construction Financial Closing Date,

(iv) prior to the Cash Flip Date, subject to meeting the constraints in the Base Case Model set forth in this Settlement Agreement and the Amended Pricing

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<sup>3</sup> In the Amended Transaction Agreements, the Ratepayer Flip Date is referred to as the Tranche 1 Flip Date.

<sup>4</sup> In the Amended Transaction Agreements, the Shareholder Flip Date is referred to as the Tranche 2 Flip Date.

Addendum, Rim Rock shall retain the highest possible allocation of Distributable Cash from the Project,

(v) for the period prior to the Ratepayer Flip Date, the portion of SDG&E's tax equity investment that is allocated to SDG&E's ratepayers shall (1) receive a higher than pro-rata allocation of the total benefits from the Project relative to their investment, and (2) SDG&E's shareholders cannot be targeted to achieve a return equal to or higher than the SDG&E's ratepayers' return at the Ratepayer Flip Date, unless otherwise approved by all Parties to the Settlement Agreement as determined by the selection of a Base Case Model in accordance with Section 3(f)(iv),

(vi) in the Base Case Model, following the Shareholder Flip Date, SDG&E shall earn not less than the percentage interest in partnership income and gain for the taxable year as is required by applicable tax safe harbor rules. The exact portion of such percentage interest in the partnership income and gain to be allocated to SDG&E's ratepayers in the Base Case Model for the period after the Shareholder Flip Date shall be determined by the selection of a Base Case Model in accordance with Section 3(f)(iv), and

(vii) if additional generating facilities are placed into commercial operation at or near the Project that uses any of the facilities or contractual rights of the Project (including, without limitation, a portion of the transmission rights held by the Project), such new project shall pay a prorata share of initial capital costs and operating costs of any jointly used facilities or contractual rights to the Project, pursuant to the terms of a Shared Assets Agreement that shall be subject to approval by SDG&E;

(h) Order that SDG&E shall make periodic reports to the Commission regarding Ratepayer Neutrality (as defined below) as follows:

(i) "Ratepayer Neutrality" means that, at the end of the SDG&E Investment Period, the costs to SDG&E ratepayers of the rate-based investment over the SDG&E Investment Period less the stream of actual and expected remaining Project benefits received by SDG&E ratepayers during the SDG&E Investment Period,

discounted in the revenue requirement model in effect as of the Construction Financial Closing Date at 8.4% to the Contribution Closing Date, shall have no greater than a zero net present value. Though the actual achievement of Ratepayer Neutrality cannot be known until the end of SDG&E's 20-year Investment Period (and any adjustments to the annual revenue requirements to achieve and maintain Ratepayer Neutrality under Sections 2(h)(iv) and 2(h)(v) below are required only on or after the Ratepayer Flip Date as defined in the Base Case Model), the achievement and maintenance of Ratepayer Neutrality shall be estimated pursuant to the following paragraphs.

(ii) Materials sufficient to demonstrate to the Commission that the investment has achieved or is expected to achieve and maintain Ratepayer Neutrality include, at a minimum, outputs from SDG&E's revenue requirements model reflecting the costs or projected costs of the rate-based investment and the Project benefits received or projected to be received by SDG&E in accordance with the Base Case Model and the LLC Agreement.

(iii) SDG&E shall file a Tier 1 advice letter annually with the Commission (until such time as the Tier 2 Advice Letter described in Section 2(l) (iv) below is filed) in which SDG&E shall provide an update of (1) the historic revenue requirement based on actual Project performance and the remaining forecasted annual revenue requirement and Project benefits for the SDG&E Investment Period, (2) the expected date of the Ratepayer Flip Date, (3) if the Ratepayer Flip Date is expected to occur within SDG&E's Investment Period, materials sufficient to demonstrate that the rate-based investment is expected to achieve and maintain Ratepayer Neutrality, and (4) if the Ratepayer Flip Date is not expected to occur within SDG&E's Investment Period, an explanation of why the Project benefits will fail to achieve a Ratepayer Flip Date and the actual or projected net loss to ratepayers from the rate based tax equity investment.

(iv) On or about the time of the Ratepayer Flip Date, as determined in the Base Case Model, SDG&E shall file a Tier 2 advice letter ("Tier 2 Advice Letter") notifying the Commission that the Ratepayer Flip Date has occurred or will occur in the near future. The Tier 2 Advice Letter should also include (1) an update of the historic

revenue requirement based on actual Project performance and remaining forecasted annual revenue requirements and expected Project benefits for the remainder of the SDG&E Investment Period, (2) materials sufficient to demonstrate that the rate-based investment is expected to achieve and maintain Ratepayer Neutrality, and (3) if necessary to achieve and maintain Ratepayer Neutrality, SDG&E shall verify that it has adjusted the remaining annual revenue requirements to achieve and maintain Ratepayer Neutrality. An adjustment to the annual revenue requirements, if necessary, would only occur upon the achievement of the Ratepayer Flip Date, as determined in the Base Case Model, and would not involve any adjustment whatsoever to the Base Case Model or to the allocations or distributions required to be made pursuant to the LLC Agreement.

(v) Within one (1) year after filing the Tier 2 Advice Letter, and annually thereafter, SDG&E shall file a Tier 1 advice letter that provides (1) an update of the historic revenue requirement based on actual Project performance and the remaining forecasted annual revenue requirements and Project benefits, (2) materials sufficient to demonstrate that the rate-based investment has achieved and will maintain Ratepayer Neutrality, and (3) if necessary to maintain Ratepayer Neutrality, SDG&E shall verify that it has adjusted the remaining annual revenue requirements to achieve and maintain Ratepayer Neutrality, provided that any adjustment to the annual revenue requirements, if necessary, would only occur upon the achievement of the Ratepayer Flip date, as determined in the Base Case Model, and would not involve any adjustment whatsoever to the Base Case Model or to the allocations or distributions required to be made pursuant to the LLC Agreement.

(i) Order that SDG&E and Rim Rock shall make amendments to the Transaction Agreements and the Base Case Model consistent with the foregoing, including changes in thresholds, production levels, and other matters in proportion to the reduction in the Project size from 309 MWs to 189 MWs, as may be applicable in the Transaction Agreements;

(j) Order that the Green Attributes Price Cap shall remain unchanged from the price specified in the Participation Agreement and the Green Attributes Price shall be optimized to be as low as is possible while satisfying all caps, targets and constraints set forth in

this Settlement Agreement or the Amended Transaction Agreements (including, without limitation, the target for full-term return for Rim Rock (or its affiliates), SDG&E shareholders and SDG&E ratepayers unless a Party in its sole discretion agrees to reduce its return); and

- (k) Approve any other relief as is necessary and proper.

**3. Agreements Relating to Due Diligence, Updating Inputs to the Base Case Model, and the Running of the Base Case Model at Construction Financial Closing.**

(a) Concurrent with the execution of this Settlement Agreement, SDG&E and Rim Rock have provided TURN and DRA a disk containing the current version of the Base Case Model that reflects the revised transaction structure described in Section 2 above, which TURN and DRA have reviewed and accepted.<sup>5</sup> To the extent SDG&E and Rim Rock make any material changes in the Base Case Model after execution of the Settlement Agreement, they shall advise TURN and DRA of any such material changes and provide TURN and DRA an opportunity to review and advise SDG&E regarding the proposed changes.

(b) SDG&E and Rim Rock shall provide TURN, DRA, and the Director of the Energy Division with the results of certain due diligence and certain updated Base Case Model inputs for the Project together with the following reports (collectively the “Project Diligence”) as such reports are completed and shall use reasonable commercial efforts to have such Project reports completed no later than sixty (60) days prior to the expected Construction Financing Closing Date for the Project:

- (i) a wind assessment report from an independent wind engineer chosen by SDG&E;
- (ii) a study of the suitability of the turbines purchased for the Project at the Project Site;

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<sup>5</sup> The disk referenced above is provided as an attachment to the Amended Pricing Addendum and is referred to in the Amended Transaction Agreements as the Amended Base Case Model. Inputs to the Amended Base Case Model will be updated as set forth in more detail in the sections of the Settlement Agreement below, including but not limited to Sections 3(c) and 3(f).

(iii) one or more independent engineering reports from independent engineering firm(s) chosen by SDG&E which assess the Project;

(iv) any study prepared by the Alberta Independent System Operator (“AESO”) related to the interconnection of the MATL transmission line to the AESO system that addresses potential curtailment risk;

(v) any reports prepared pursuant to the Transaction Agreements with respect to the environmental condition of the Project Site; and

(vi) the most recent Price Forecast (as defined below in Section 3(d)) that is available as of sixty (60) days prior to the expected Construction Financial Closing Date.

Quarterly Progress Reports required under the Participation Agreement shall be provided to TURN and DRA when provided to SDG&E.

(c) Sixty (60) days prior to the expected Construction Financial Close Date, SDG&E and Rim Rock shall also provide TURN, DRA, and the Energy Division with an update to the Base Case Model that incorporates the results of the Project Diligence and reflects the most recent projections of Project Costs and Operating Expense (as these terms are defined in the Amended Pricing Addendum to the Participation Agreement). Further:

(i) SDG&E may provide the Parties with Base Case Models that meet all of the caps, targets and constraints set forth in this Settlement Agreement and the Amended Pricing Addendum, with the constraint for the Shareholder Flip Date being relaxed to allow it to occur less than twelve (12) months or more than eighteen (18) months after the Ratepayer Flip Date.

(ii) A Shareholder Flip Date that occurs anytime between twelve (12) months and eighteen (18) months after the Ratepayer Flip Date (“Shareholder Subordination Period”) shall be deemed acceptable for use in the Base Case Model selected in accordance with Section 3(f)(iv), unless within ten (10) Business Days after receipt of the Base Case Models provided by SDG&E in accordance with Section

3(c)(i), TURN and DRA approve a shorter Shareholder Subordination Period, which they may do in their sole discretion. A Shareholder Subordination Period in excess of eighteen (18) months shall only be permitted if approved by all Parties to the Settlement Agreement prior to the issuance by SDG&E of the Base Case Models provided in accordance with Section 3(f)(i). For the avoidance of doubt, if TURN and DRA have not approved a shorter Shareholder Subordination Period or all the Parties to the Settlement Agreement have not approved a longer Shareholder Subordination Period, the Base Case Models provided in accordance with Section 3(f)(i) shall be in compliance with this Settlement Agreement as long as the Shareholder Flip Date occurs between twelve (12) and eighteen (18) months after the Ratepayer Flip Date.

(d) As soon as reasonably available after providing the Project Diligence, but in any event approximately thirty (30) days prior to the expected Construction Financing Closing Date for the Project, consistent with the other scheduling requirements for the Project, SDG&E and Rim Rock shall provide TURN, DRA and the Director of the Energy Division with the results of the following due diligence and updated Base Case Model inputs for the Project:

(i) the identity of the “short list” of prospective counter-parties to the hedge or fixed price contract for the sale of null power from the Project, the overall status of negotiations of the hedge or fixed price contract, including the anticipated price ranges, the quantity of energy subject to the hedge or fixed price contract, other terms that may affect the results of the Base Case Model, and the status of any credit support and firming and shaping arrangements. The counter-party to the hedge or fixed price contract shall be investment-grade, as defined by Standard & Poors or if no rating is assigned to such entity’s unsecured, senior long-term debt by Standard & Poors, then the general corporate credit rating or long-term issuer rating assigned by Standard & Poors, as the case may be;

(ii) the most recent Price Forecast that is available;

(iii) the report of the Insurance Consultant and the Appraiser; and

(iv) the form of the opinion letter to be delivered at the Construction Financial Closing (1) from counsel for Rim Rock, as approved by SDG&E, and (2) from counsel to SDG&E with respect to tax matters.

(e) Notwithstanding any provision of the Amended Pricing Addendum, the definition of Price Forecast, the Base Case Model input for merchant energy revenues, shall be defined in the Transaction Agreements to be either the EDC Index or the Blended Index, as selected by TURN and DRA in conjunction with the selection of a Base Case Model, in accordance with Section 3(f)(iv) below. The “EDC Index” shall be defined as the most recent Quarterly Report of On and Off Peak AESO Pool Price Forecast, published by EDC Associated Ltd., as of the date the adjustment is made, as applicable to wind production forecasts for On and Off Peak, respectively, as shaped to reflect the anticipated on peak and off peak output of the Project, based on wind studies of the Project. The “Blended Index” shall mean the EDC Index, modified for years 2013 through 2017 by averaging the pricing in the EDC Index with prices from the Intercontinental Exchange (“ICE”) for the AESO market for such years weighted as follows:

2012	65% Exchange and 35% EDC Index
2013	55% Exchange and 45% EDC Index
2014	45% Exchange and 55% EDC Index
2015	35% Exchange and 65% EDC Index
2016	25% Exchange and 75% EDC Index
2017	15% Exchange and 85% EDC Index

(f) As soon as reasonably available, but in any event at least thirty (30) days prior to the expected Construction Financing Closing Date for the Project, except to the extent expressly modified by this Settlement Agreement, SDG&E and Rim Rock shall update the BCM (“Updated BCM”) in accordance with the updating methodology set forth in Annex II, Amended Pricing Addendum to the Participation Agreement as modified by this Settlement Agreement (“Updating Methodology”), and deliver the Updated BCM to TURN and DRA. The Updated BCM will include a computation of a Green Attribute Price and allocations of future Project benefits consistent with the Updating Methodology. For the avoidance of doubt, if the definitions and parameters in the Amended Pricing Addendum conflict with the terms of this

Settlement Agreement, the terms of this Settlement Agreement shall control. SDG&E and Rim Rock shall respond promptly to TURN and DRA if they have questions regarding the Updated BCM. The Parties acknowledge that a final hedge price for null power may not be available in this time frame.

(i) In addition to providing the Updated BCM, at least thirty (30) days prior to the expected Construction Financial Closing Date for the Project, SDG&E will provide the results of two (2) sets of three (3) distinct Base Case Models, based on the Updated BCM, with the input for the post-Shareholder Flip Date allocations and distributions to SDG&E's ratepayers adjusted to be 1%, 2.5% and 4%, respectively, in the three (3) Base Case Models. One set of the three (3) Base Case Models so provided shall have the EDC Index as an input for the Price Forecast, and the other set shall have the Blended Index as an input for the Price Forecast. All of the Base Case Models provided in accordance with this sub-section will include a computation of a Green Attribute Price and allocations of future Project benefits consistent with the Updating Methodology. SDG&E shall simultaneously provide materials sufficient to demonstrate whether each of the Base Case Models provided pursuant to this sub-section is predicted to achieve Ratepayer Neutrality or better for ratepayers. Subject to meeting the Base Case Model constraints set forth in this Settlement Agreement and the Amended Pricing Addendum, SDG&E will develop each of the distinct Base Case Models to be provided pursuant to this sub-section in a manner that minimizes the potential for a positive net present value ("NPV") to occur during sensitivity analysis under commercially reasonable values, or combinations of commercially reasonable values, of the four assumptions listed in sub-section (ii) immediately below.

(ii) For each of the Base Case Models provided in accordance with sub-section 3(f)(i), SDG&E will prepare up to nine (9) sensitivity cases with alternate assumptions, with such alternate assumptions specified by TURN and DRA within three (3) Business Days after receipt of the Base Case Models provided pursuant to sub-section 3(f)(i). Alternate assumptions for purposes of sensitivity analysis can include changing one or more of the following variables: capacity factor, "null" power prices, the hedge or offtake price and the US/CAD exchange rate. SDG&E will

provide results from these scenario cases to the Parties to the Settlement Agreement within seven (7) Business Days after TURN and DRA have notified SDG&E of their selected alternate assumptions. The results of the sensitivity cases shall demonstrate the expected annual and net ratepayer impact to ratepayers of the ratepayer investment. Results shall be provided in electronic Excel-compatible format and include at least the “Partner # Monthly IRR” tabs of the Base Case Model, outputs from SDG&E’s revenue requirements model, and any related Excel files required to process these models’ results to determine ratepayer costs and Ratepayer Neutrality. The sensitivity cases are to be provided by SDG&E for informational purposes to assist TURN and DRA in selecting one (1) final Base Case Model pursuant to section 3(f)(iii).

(iii) Subject to the following conditions, SDG&E and Rim Rock will accept the preference of TURN and DRA in selecting a final Base Case Model from one of the Base Case Models provided in accordance with sub-section 3(f)(i) in order to determine the Green Attributes Price and allocations of Project benefits. The Base Case Models provided shall be consistent with the Updated BCM and shall satisfy all caps, targets and constraints set forth in this Settlement Agreement or the Amended Transaction Agreements, including, without limitation, each Party’s target or full-term return (unless a Party in its sole discretion agrees to reduce its return). To the extent that any of the Base Case Models to be provided pursuant to sub-section 3(f)(i) does not meet the foregoing criteria, it shall be eliminated from consideration. In addition, Base Case Models that produce positive NPVs under commercially reasonable scenarios in the revenue requirement model during sensitivity analysis may also be eliminated by SDG&E.

(iv) Within seven (7) Business Days after receipt of the sensitivity cases provided pursuant to sub-section 3(f)(ii), TURN and DRA shall advise SDG&E and Rim Rock of their selection of a final Base Case Model to use for the calculation of the Green Attributes Price, from the set of Base Case Models provided pursuant to sub-section 3(f)(i), including specifying whether the final Base Case Model shall use the EDC Index or the Blended Index as the input for the Price Forecast. If TURN and

DRA fail to notify SDG&E of their choice within such seven (7) Business Day period, SDG&E and Rim Rock shall make this selection.

(g) If TURN and DRA object to the use of any of the updated material inputs used in the Updated BCM, they shall notify SDG&E and Rim Rock in writing within five (5) Business Days after receipt of the Updated BCM of their objections (“Objection to Updated BCM Inputs”). Such Objection to Updated BCM Inputs shall specify precisely the grounds on which TURN and DRA object to the Updated BCM Input.

(h) In the event that no timely Objection to Updated BCM Inputs is asserted, the Parties agree that within two (2) Business Days after the later of (a) the five (5) Business Day period for objections has expired, or (b) the date by which one of the Base Case Models is selected in accordance with Section 3(f)(iv), the Director of the Energy Division shall issue a letter (“Energy Division Authorizing Letter”) providing SDG&E authority to:

(i) proceed with the Updated BCM, adjusted consistent with the Base Case Model selected in accordance with Section 3(f)(iv), as it may be further updated by the actual executed hedge price or fixed price contract, and

(ii) execute the Amended Transaction Agreements and perform its obligations thereunder.

The Parties agree that the purpose of the Energy Division Authorizing Letter is to confirm that SDG&E and Rim Rock are proceeding to implement the Amended Transaction Agreements and run the Base Case Model in a manner consistent with the Commission’s approval of this Settlement Agreement, and that, accordingly, the issuance of the Energy Division Authorizing Letter is not subject to an appeal to or request for rehearing with the full Commission.

(i) If an Objection to Updated BCM Inputs is timely submitted to SDG&E and Rim Rock, the Parties shall meet within five (5) Business Days and seek to clarify and resolve any issue raised by the Objection to Updated BCM Inputs (“Informal Resolution of BCM Inputs”). If the Parties are able to resolve the issues raised in the Objection to Updated BCM Inputs within such five (5) Business Day period, the Objection to Updated BCM Inputs shall be

deemed withdrawn and the Energy Division shall issue the Energy Division Authorizing Letter within two (2) Business Days after the later of (a) the Informal Resolution of BCM Inputs, or (b) the date by which a final Base Case Model is selected in accordance with Section 3(f)(iv).

(j) If the Informal Resolution of Updated BCM Inputs process does not resolve the issues raised in the Objection to Updated BCM Inputs within five (5) Business Days after the submission of the Objection to Updated BCM Inputs, the Parties shall within two (2) Business Days (unless extended by the mutual agreement of all Parties) present any remaining issue to the Director of the Energy Division to assist in resolving the dispute and, if necessary, to decide any unresolved dispute. In the event that the Parties require the Director of the Energy Division to decide any unresolved issue relating to the Updated BCM, they shall present all oral and written material in support of their position to the Director of the Energy Division within such two (2) Business Day period (unless extended by the mutual agreement of all Parties). Within five (5) Business Days thereafter, the Director of the Energy Division shall determine the outcome of the dispute. The Director of the Energy Division shall make a determination in favor of SDG&E if the Director determines that the Updated BCM Input in dispute is in compliance with the requirements of the Updating Methodology; in any event, the Energy Division shall accept the values and methodologies for calculating such inputs set forth in the amended Table of Base Case Model Inputs. The Energy Division shall issue the Energy Division Authorizing Letter within two (2) Business Days after the later of (a) the date the Parties resolve the dispute with the assistance of the Director of the Energy Division; or (b) the date the Director of the Energy Division determines the outcome of the dispute or (c) the date by which a final Base Case Model is selected in accordance with Section 3(f)(iv), but in any event, no later than seven (7) Business Days after expiration of the five (5) Business Day Informal Resolution period.

**4. SDG&E Commitment Regarding Satisfaction of RPS Requirements with Tradable Renewable Energy Credits (“TRECs”).**

(a) SDG&E commits to refrain from procuring any incremental Tradable Renewable Energy Credits (TRECs) from projects that are neither directly connected nor dynamically scheduled to a California-based Balancing Area Authority if such purchase would

cause SDG&E to meet more than 25% of its Renewable Energy Requirements with such TRECs through December 31, 2017.

(b) Notwithstanding paragraph (a), SDG&E may procure additional TRECs from projects that are neither directly connected nor dynamically scheduled to a California-based Balancing Area Authority if both of the following conditions are met:

(i) The TRECs are necessary to achieve compliance with a Renewable Energy Requirement prior to January 1, 2018; and

(ii) The compliance deficit is due to the failure of an operating renewable generator selling power to SDG&E under a Commission-approved power purchase agreement to satisfy minimum production requirements due to either a force majeure event or default. In order for this condition to be satisfied, SDG&E must have been receiving electricity from this facility prior to the default or force majeure event. In the event that this condition is satisfied, SDG&E may procure additional TRECs equal to the deficit associated with the force majeure event or default.

(c) For purposes of this agreement, “Tradable Renewable Energy Credits” have the same meaning as the term used in Commission Decisions 10-03-021 and 11-01-025.

(d) For purposes of this Settlement Agreement, “a California-based Balancing Area Authority” includes the Balancing Areas operated by the California Independent System Operator, the Imperial Irrigation District, the Los Angeles Department of Water and Power, and the Sacramento Municipal Utility District.

(e) For purposes of this Settlement Agreement, “directly connected” refers to the first point of interconnection by the generator to the transmission network.

(f) For purposes of this Settlement Agreement, the term “Renewable Energy Requirements” includes the California Renewable Portfolio Standard administered by the Commission and the Renewable Electricity Standard under development at the Air Resources

Board. The commitment identified in this section is binding regardless of any future administrative or legislative changes made to these programs.

(g) This commitment is not binding if the Project fails to achieve commercial operation for any reason.

**5. Complete Package.** The Settlement is to be treated as a complete package not as a collection of separate agreements on discrete issues or proceedings. To accommodate the interests of different Parties on diverse issues, the Parties acknowledge that changes, concessions, or compromises by a Party or Parties with respect to one part of the settlement necessitated changes, concessions, or compromises by other Parties in other parts.

**6. Modifications by Commission.** In the event the Commission rejects or modifies this Settlement Agreement, the Parties reserve their respective rights under Rule 12.4 of the Commission's Rules of Practice and Procedure. In addition, SDG&E and Rim Rock reserve their respective rights under the provisions of the Transaction Agreements as originally submitted to the Commission for approval.

**7. Cooperation.** The Parties agree not to contest the validity and enforceability of this Settlement Agreement, the Amended Transaction Agreements, the Energy Division Authorizing Letter or any Commission decision contemplated by or required to implement this Settlement Agreement and the Parties will cooperate fully and in good faith to obtain timely Commission approval of the matters set forth in Section 2 above, and to effectuate the transactions contemplated by this Settlement Agreement. The Parties shall actively support Commission approval of the matters described in Section 2 above in all public, judicial, administrative and legislative forums.

**8. Commission Approval.** "Commission Approval" means a final and non-appealable order of the Commission, without conditions or modifications unacceptable to the Parties, or any of them, which authorizes and approves each of the SDG&E's requests, as described in Section 2, above in its entirety. Commission Approval will be deemed to have occurred on the date that a Commission decision containing such findings becomes final and

non-appealable. As used in this definition, non-appealable means that all periods for filing an application for rehearing with the Commission and for filing a petition for judicial review have passed, or if such an application or petition has been filed, has been resolved in favor of the validity of the order.

**9. Joint Motion for Approval.** Within five days from the Execution Date, the Parties shall file a joint motion for approval of settlement with the Commission (“Joint Motion”). The Joint Motion will request Commission Approval as described in Section 8 above.

**10. Not Precedential.** As provided by Rule 12.5 of the Commission’s Rules of Practice and Procedure, the Parties agree that Commission approval of the Joint Motion will not constitute precedent regarding any principle or issue in this proceeding or in any future proceeding unless the Commission expressly provides otherwise.

**11. Confidentiality of Certain Aspects of Settlement Agreement and Amended Transaction Agreements.** The Parties shall not publicly disclose the terms or conditions contained in the redacted portions of this Settlement Agreement and the Amended Transaction Agreements except as expressly required by the respective non-disclosure agreements entered into by and among the Parties, and in conformance with P.U. Code Section 454.5(g) and S.B. 1488, the decisions arising out of R.05-06-040 (including D.06-06-066 and D.08-04-023), P.U. Code Section 583 and General Order 66-C. In the Joint Motion or a concurrently filed pleading, SDG&E and Rim Rock will request that the redacted portions of this Settlement Agreement and the Amended Transaction Agreements be protected from disclosure to the public. The respective obligations of the Parties to maintain the confidentiality of the Amended Transaction Agreements shall continue irrespective of whether the Commission approves, rejects or modifies the Amended Transaction Agreements.

**12. Protests Rendered Moot.** TURN and DRA agree, and the Joint Motion shall state, that their respective protests of the Pending Application are rendered moot by the filing of the Joint Motion, and that TURN and DRA each fully supports Commission Approval, as described in Section 8 above.

13. **No Modification; Entire Agreement.** This Settlement Agreement contains the entire understanding of the Parties concerning the subject matter of the settlement and, except as expressly provided for herein, supersedes all prior understandings and agreements, whether oral or written, among them with respect to the subject matter hereof and thereof. There are no representations, warranties, agreements, arrangements or understandings, oral or written, among the Parties hereto relating to the subject matter of the settlement and such other documents and instruments which are not fully expressed herein or therein. This Settlement Agreement may be amended or modified only by an agreement in writing signed by each of the Parties hereto.

14. **Confidentiality of Settlement Discussions.** The Parties hereby acknowledge and agree that the settlement discussions, including the information exchanged in connection therewith that was identified as confidential and subject to the settlement privilege, shall continue to be subject to both Commission Rule 12.6 and California Evidence Code Section 1152. The respective obligations of the Parties to maintain the confidentiality of the settlement discussions shall continue irrespective of whether the Commission approves, rejects or modifies this Settlement Agreement or the Amended Transaction Agreements.

15. **Counterparts.** This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

16. **Captions and Section Headings.** Captions and section headings used herein are for convenience only and are not a part of this Settlement Agreement and shall not be used in construing it.

17. **Time of Essence.** Time is hereby expressly made of the essence with respect to each and every term and provision of this Settlement Agreement upon its effectiveness. The Parties acknowledge that each will be relying upon the timely performance by the others of their obligations hereunder as a material inducement to each Party's execution and approval of this Settlement Agreement.

18. **No Third Party Beneficiaries.** Except as may be specifically set forth in this Settlement Agreement, nothing in this Settlement Agreement, whether express or implied, is

intended to confer any rights or remedies under or by reason of this Settlement Agreement on any persons other than the Parties and their respective permitted successors and assigns, nor is anything in this Settlement Agreement intended to relieve or discharge the obligation or liability of any third persons to any Party, nor give any third persons any right of subrogation or action against any Party. This Settlement Agreement does not confer any rights or remedies on TURN and/or DRA with respect to the Transaction Agreements or the Amended Transaction Agreements.

**19. Authority; Enforceability.** Each Party represents and warrants to the others that this Settlement Agreement has been duly authorized by all action required of such Party to be bound thereby, and that this Settlement Agreement, when effective, constitutes the valid, binding and enforceable obligations of such Party.

**20. Waiver of Compliance.** To the extent permitted by applicable law, any failure of any of the Parties to comply with any obligation, covenant, agreement or condition set forth herein may be waived by the Party entitled to the benefit thereof only by a written instrument signed by such Party, but any such waiver shall not operate as a waiver of, or estoppel with respect to, any prior or subsequent failure to comply therewith. The failure of a Party to this Settlement Agreement to assert any of its rights under this Settlement Agreement or otherwise shall not constitute a waiver of such rights.

**21. California Law.** This Settlement Agreement shall be governed by, and shall be construed and enforced in accordance with, the laws of the State of California, without giving effect to the conflict of law principles thereof.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement as of the Execution Date.

April 8, 2011

NATURENER RIM ROCK WIND ENERGY, LLC

By: \_\_\_\_\_

Its: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

April 8, 2011

THE UTILITY REFORM NETWORK

By: \_\_\_\_\_

Its: \_\_\_\_\_

April 8, 2011

SAN DIEGO GAS & ELECTRIC COMPANY

By: \_\_\_\_\_

Its: \_\_\_\_\_

April 8, 2011

DIVISION OF RATEPAYER ADVOCATES

By: \_\_\_\_\_

Its: \_\_\_\_\_

**CONFIDENTIAL EXHIBIT A**  
**(FILED UNDER SEAL)**

AMENDED TRANSACTION AGREEMENTS

(END OF APPENDIX 1)