# ATTACHMENT A

Amendment No. 1 to the
Confirmation Letter and Cover Sheet of the Master Power
Purchase and Sale Agreement Between
San Diego Gas & Electric Company and
San Diego County Water Authority
Regarding the Olivenhain-Hodges
Pumped Storage Facility

# Amendment No. 1 to the Confirmation Letter and Cover Sheet of the Master Power Purchase and Sale Agreement Between San Diego Gas & Electric Company and San Diego County Water Authority Regarding the Olivenhain-Hodges Pumped Storage Facility

1. PARTIES: This Amendment No. 1 ("Amendment") to the above-referenced Confirmation Letter ("Confirm") and Cover Sheet to the Master Power Purchase and Sale Agreement ("Master Agreement") dated January 29, 2004 is entered into between San Diego Gas & Electric Company ("Buyer") and the San Diego County Water Authority ("Seller") effective as of DECEMBER 19, 2008 ("Effective Date") (Buyer and Seller are collectively referred to herein as the "Parties" and individually as a "Party)." All capitalized terms not otherwise defined herein shall have the meanings attributed to them in the Confirm or Master Agreement.

2. RECITALS:

   WHEREAS: Due to construction delays, Seller's Facility did not start Commercial Operations on January 1, 2008; and

   WHEREAS: Buyer agrees to extend the time Seller must commence Commercial Operation in exchange for Seller providing non-spin ancillary services, paying a one time lump sum delay damage amount, and the other considerations described herein.

   NOW, THEREFORE, the Parties agree as follows:

3. CONDITION PRECEDENT: CPUC Approval. The obligations of Parties of this Amendment are expressly conditioned upon CPUC Amendment Approval. The Parties agree to cooperate and use all commercially reasonable efforts to obtain the CPUC Amendment Approval as soon as is practicable. Should the CPUC issue an order approving this Amendment with conditions or modifications that materially alter the commercial aspects of this Amendment, the Parties shall have ten (10) Business Days from the mailing date of such order to provide the other Party written notice of the issuing Party's acceptance or rejection of the CPUC order as issued; provided, however, if a Party fails to provide written notification of its acceptance or rejection to the other Party within such ten (10) day period, that Party's silence shall be deemed to constitute acceptance of the CPUC order as issued and agreement by such Party that this condition has been satisfied, upon the CPUC Amendment Approval Date. If a notice of rejection is sent, the parties agree to use good faith efforts to renegotiate this Amendment. If, within sixty (60) days, no agreement is reached, either party may terminate this Amendment upon delivery of notice to the other party. "CPUC Amendment Approval" means the CPUC approval of the terms and conditions of this Amendment without material alteration of the terms described herein and full rate recovery of the costs associated under this Amendment and a finding by the CPUC that the payments

under this Amendment are just and reasonable. "CPUC Amendment Approval Date" means the first Business Day after the date on which the CPUC order approving this Amendment becomes final and no longer subject to any appeal.

4. DELAY PAYMENT. Within thirty (30) days of the Effective Date, Seller shall pay to Buyer a delay damage payment of $700,000 for its failure to achieve Commercial Operation in 2008.

5. AGREEMENT: As of the Effective Date, the Parties agree to the following:

   A. Amend "**Part 1. General Terms and Conditions**" of the Cover Sheet to the Master Agreement by modifying the **Definitions** with the following:

   "(18) Section 1.68 is added as follows:

   "Ancillary Service" or "AS" is the service defined by the CAISO FERC Electric Tariff [1] for Non-Spinning Reserve, as may be amended from time to time."

   (19) Section 1.69 is added as follows:

   "Capacity Attributes" means any currently defined characteristic, and any future characteristic that does not require Seller to incur unreasonable added costs, certificate, tag, credit, whether general in nature or specific as to the location or any other attribute of the Facility, intended to value any aspect of the capacity of the Facility to produce energy , including but not limited to any accounting construct so that the full Dependable Capacity of the Facility, as set forth in Article 7 of the Confirmation Letter, may be counted toward a Resource Adequacy Requirement or any other measure by the CPUC, the CAISO, the FERC, or any other entity invested with authority under federal or state law, to require Buyer to procure, or to procure at Buyer's expense, Resource Adequacy or other such products."

   (20) Section 1.70 is added as follows:

   "Resource Adequacy" means the procurement obligation of load serving entities, including Buyer, as such obligations are described in CPUC D.04-10-035, D.05-10-042, D.06-06-064 and subsequent CPUC decisions addressing Resource Adequacy issues, as those obligations may be altered from time to time in the CPUC Resource Adequacy Rulemaking (R.)04-04-003 and (R.)05-12-013 or by any successor proceeding, and all other Resource Adequacy obligations, including those relating to scheduling coordination, established by any other entity, including the CAISO, provided that such obligations do not require Seller to incur unreasonable added costs."

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[1] **ISO TARIFF APPENDIX A Master Definitions Supplement** CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION FERC ELECTRIC TARIFF AMENDED AND RESTATED SECOND REPLACEMENT VOLUME NO. I Original Sheet No. 525. **CAISO TARIFF APPENDIX A Master Definitions Supplement**

B. Amend the "**Confirm**" by adding or modifying the following sections:

(i) Modify Section 2.0 Product to read: "Capacity, Energy, Ancillary Services, and Resource Adequacy."

(ii) Modify Section 5.0 Facility by replacing the first sentence with the following:

"The Product subject to the Agreement (defined below) will be supplied from the following generation asset (collectively, the "Facility" or the "Project"):

(iii) Modify Section 7.1 Capacity Payments by replacing the reference to "May 1, 2009 and on May 1 of each Contract Year" with "the first anniversary of the Commercial Operation Date and each anniversary date thereafter."

In the definition of "Dispatch Order," after the words "Capacity and Energy," add the phrase "and Ancillary Services."

(iv) Modify Section 7.2 Variable O&M Charge by replacing the reference to "May 1, 2009 and on May 1 of each Contract Year" with "the first anniversary of the Commercial Operation Date and each anniversary date thereafter."

(v) Add Section 7.7 AS Charges.

"Buyer and Seller shall share any energy revenues resulting from a CAISO dispatch for Ancillary Services, any capacity revenues paid by the CAISO for Ancillary Services and any Rescission of Payment(s) When Dispatch Instruction is Not Followed, on a 50%-50% basis during the Delivery Period. The Parties shall cooperate and use reasonable efforts to maximize amounts paid by the CAISO and to minimize Rescission of Payment(s) When Dispatch Instruction is Not Followed. "Rescission of Payment(s) When Dispatch Instruction is Not Followed" is the return of any credits related to Ancillary Services as defined in the CAISO Tariff, or any successor payment, which shall not be considered a penalty hereunder and shall not include any penalties developed in the future by the CAISO. Seller shall not be responsible for paying any penalties resulting from equipment failure, communication or other operational issues, including water quality issues, unless any penalties result from Seller's willful misconduct."

(vi) Add Section 7.8 Ancillary Services.

"Participating Load. So long as all associated costs are reasonable, Seller shall apply for, schedule testing for, and use best efforts to obtain certification from the CAISO for Ancillary Services as a participating load for the Dependable Capacity, within ninety (90) days from the Commercial Operation Date and maintain the certification during the Delivery Period. The costs associated with certifying and maintaining the Facility for Ancillary Services with the CAISO shall be paid by the Seller. After certification, Buyer

shall be entitled to curtail the participating load during the Delivery Period in a Dispatch Order.

Participating Generator. So long as all associated costs are reasonable, Seller shall apply for, schedule testing for, and use all commercially reasonable efforts to obtain certification from the CAISO for Ancillary Services as a participating generator for the Dependable Capacity no later than twelve (12) months after the Commercial Operation Date and maintain the certification during the Delivery Period. The costs associated with certifying and maintaining the Facility for Ancillary Services with the CAISO shall be paid by the Seller. Upon notice from Seller, which shall be no later than twelve (12) months after certification, Buyer shall be entitled to issue a Dispatch Order."

(vii) Add Section 7.9 Resource Adequacy and Capacity Attributes.

"During the Delivery Period, Seller grants, pledges, assigns and otherwise commits to Buyer, at no additional cost, all Resource Adequacy benefits the Facility is capable of producing. Seller and Buyer agree that throughout the Delivery Term the Parties shall take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to enable Buyer to use the Resource Adequacy benefits to satisfy Buyer's Resource Adequacy requirements.

Seller shall provide to Buyer exclusively during the Delivery Period at no additional cost, all Capacity Attributes of the Facility."

(viii) Replace the third sentence of the second paragraph in Section 8.2 Availability Notices and Scheduling of Energy with the following:

"Buyer shall have the right, but not the obligation, to issue two (2) Dispatch Orders pursuant to Section 8.1 and 8 .3 to Seller at least one (1) hour in advance of each dispatch. Notwithstanding the foregoing, a dispatch pursuant to an Ancillary Service schedule alone, whether issued by the CAISO or Buyer, shall not count as a Dispatch Order."

(ix) Modify Section 10.2 Facility Schedule by replacing the "January 1, 2008" with "July 31, 2010."

(x) Modify Section 10.6 Milestone Completion Notice to add the following sentence:

"Seller shall provide Buyer an updated milestone schedule on January 1, 2009 and updated schedules thereafter on a quarterly basis until the Commercial Operation Date."

(xi) Section 10.7c Further Missed Commercial Operation shall be replaced in its entirety with the following:

"If Commercial Operation is not achieved by December 31, 2008, Seller shall owe to Buyer delay damages for each month or portion of each month that the Commercial Operation occurs after December 31, 2008, which shall not be excused for any reason, including under Section 1.23 of Cover Sheet. Buyer shall recover such delay damages by withholding the Capacity Payment, under this Agreement until all delay damages have been recouped. If and when, after using reasonable efforts, Seller obtains damages from its contractors for any delay in achieving Commercial Operation by December 31, 2008, such damages shall be applied toward the delay damages due Buyer hereunder. The delay damages shall be equal to following amounts, to be compounded monthly at an interest rate of 0.117%/month starting January 1, 2009 and ending on the date of Commercial Operation:

| Month/Yr | Payment |
|---|---|
| Jan 09 | $168,667 |
| Feb 09 | $66,667 |
| Mar 09 | $66,667 |
| Apr 09 | $114,667 |
| May 09 | $144,667 |
| Jun 09 | $264,667 |
| Jul 09 | $714,667 |
| Aug 09 | $816,667 |
| Sep 09 | $468,667 |
| Oct 09 | $114,667 |
| Nov 09 | $114,667 |
| Dec 09 | $144,667 |
| Jan 10 | $172,040 |
| Feb 10 | $68,000 |
| Mar 10 | $68,000 |
| Apr 10 | $116,960 |
| May 10 | $147,560 |
| Jun 10 | $269,960 |
| Jul 10 | $728,960 |
| Aug 10 | $833,000 |
| Sep 10 | $478,040 |
| Oct 10 | $116,960 |
| Nov 10 | $116,960 |
| Dec 10 | $147,560 |

Each Party agrees and acknowledges that (a) the actual damages that Buyer would incur due to delay in achieving Commercial Operation on or before December 31, 2008 would be difficult or impossible to predict with certainty, (b) the monthly delay damages set forth in this section are a reasonable and appropriate approximation of such damages for replacement capacity, and (c) the monthly delay damages set forth in this section are the exclusive remedy for

Seller's delay in achieving Commercial Operation by December 31, 2008 but shall not otherwise act to limit any of Buyer's rights or remedies arising from any Event of Default by Seller, including, without limitation, the failure by Seller to achieve Commercial Operation by December 31, 2010.

If the Seller has not achieved Commercial Operation by December 31, 2010, for any reason, Buyer shall have the right, at its sole discretion, to declare an Event of Default."

(xii) Delete the language in Section 12.0 entitled Operating Procedures and replace with:

"Within 180 days of approval of the Amendment by the CPUC, Buyer and Seller will meet to develop the Operating Procedures, provided however that the Operating Procedures shall be finalized no later than 90 days prior to the start of Commercial Operation. The Parties shall thereafter meet from time to time, as reasonably determined to be necessary, to amend the Operating Procedures. The Operating Procedures shall include but not be limited to: (1) the method of day-to-day communications; (2) key personnel lists for each Party; (3) procedures for Forced Outage and Scheduled Maintenance Outage reporting; (4) procedures for delivery forecasting, including using SCADA; (5) procedures for record keeping; (6) scheduling procedures if applicable and (7) invoicing and payment procedures; provided that the failure to agree on Operating Procedures will not relieve the Parties of their respective obligations under this Transaction."

(xiii) **Schedule 2 Energy Banking**. The last sentence on page 18 of the Confirm shall be replaced with the following:

"Hourly Energy Prices shall be defined as the hourly clearing price at Seller's PNode (or its successor) established in the CAISO's Day-Ahead Market. In the event such price is not available, Parties agree to use a successor index as mutually agreed to by the Parties."

(xiv) **Schedule 2 Energy Banking.** Replace the phrase "(defined as the CAISO ex post price for each hour, or its successor index or as mutually agree to by the Parties times the applicable quantity)" on the top of page 19 of the Confirm with the following:

"(defined as the CAISO Day Ahead Market energy price, or its successor, times the applicable quantity)."

(xv) Schedule 3 entitled **Contract Operating Limits of the Facility** shall be modified by adding the following to section (C) General:

"(viii) Manual Limits. So long as they are not in conflict with any Contracted Operating Limits contained in the Agreement, including but not limited to the water levels described in Schedule 3, Contracted Operating Limits shall also include any new restrictions based on water quality issues contained in the Lake Hodges Projects Reservoir Regulation Manual dated April of 2008 and subsequent

versions, provided however that should subsequent versions contain provisions that would cause additional material adverse impact(s) on Buyer's ability to dispatch the Facility, Buyer and Seller shall timely enter into good faith negotiations to attempt to modify the Agreement to resolve such impact(s). If such negotiations have not led to agreement between Buyer and Seller after sixty (60) days from the date such negotiation was commenced, Buyer shall have the right to provide written notice to Seller that such negotiations are terminated and, Buyer has the right to terminate this Agreement by sending Seller sixty (60) days written notice, such sixty (60) days to begin running no earlier than the delivery of the written notice of termination of negotiations to Seller. Such termination shall not be deemed a declaration of an Event of Default, though any amounts already accrued shall still be due and owing between the Parties."

C. Multiple Originals. This Amendment may be executed in multiple counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute a single document.

D. Signature Clause. The Parties' signatories represent that they have been duly authorized to enter into this Amendment of behalf of the Party for whom they sign.

E. Full Force and Effect. Except as amended herein, all terms, covenants and conditions contained in the Confirm and Master Agreement shall remain in full force and effect, and apply to this Amendment No. 1 as though incorporated herein.

| **San Diego County Water Authority** | **San Diego Gas & Electric Company** |
|---|---|
| Signature: | Signature: |
| By: Maureen A. Stapleton | By: Matt Burkhart |
| Title: General Manager | Title: Vice President, Electric & Gas Procurement |
| Date: 12-19-08 | Date: 12/19/08 |

**APPROVED AS TO FORM**

Daniel S. Hentschke
General Counsel

**APPROVED AS TO FORM**

Abby Snyder
Attorney

(END OF ATTACHMENT A)