# **Import Resource Adequacy Capacity Product**

**Confirmation Agreement Between**

**[\_\_\_\_\_\_\_\_] and**

**San Diego Gas & Electric Company**

**Resource Contract Capacity Number: [\_\_\_\_\_\_\_\_\_\_\_\_]**

This confirmation agreement (Confirmation Agreement) dated [\_\_\_\_\_\_\_] is the transaction (the Transaction) between [\_\_\_\_\_\_\_\_\_] (Seller) and San Diego Gas & Electric Company (Buyer), together the “Parties”, in which Seller agrees to provide to Buyer the right to Import Resource Adequacy (RA) Capacity Product as specified herein. This Transaction is governed by the WSPP Master Purchase & Sale Agreement, effective April 11, 2015 (WSPP Agreement). The definitions and provisions contained in the WSPP Agreement, in the RA Rules, and in the tariffs, business practices manuals, and/or protocols of the California Independent System Operator (CAISO) as amended from time to time (the Tariff), shall apply to this Confirmation Agreement and are incorporated by reference; provided that, to the extent that this Confirmation Agreement is inconsistent with any provision of the WSPP Agreement, this Confirmation Agreement shall govern the rights and obligations of the Parties hereunder.

1. **Definitions:**
	1. “Capacity Replacement Price” means (a) the price paid for any replacement capacity purchased by Buyer, plus costs reasonably incurred by Buyer in purchasing such replacement capacity, or (b) absent a purchase of any replacement capacity, the market price for such Import RA Capacity not provided at the RA Capacity Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner. For purposes of Section 4 of the Master Agreement, “Capacity Replacement Price” shall be deemed to be the “Replacement Price.”
	2. “Contract Quantity” means the amount of Import RA Capacity stated in megawatts (MW), made available twenty-four hours per day, seven days per week, to the RA Capacity Delivery Point consistent with the requirements described in the CAISO Tariff. If the CAISO instructs Seller to deliver energy from the Import RA Capacity as provided by the CAISO Tariff, Seller will cause such energy to be delivered through transmission service that is consistent with CAISO Tariff requirements to the RA Capacity Delivery Point, and cause such energy to be backed by operating reserves in the originating Balancing Authority Area.
	3. “Import Resource Adequacy (RA) Capacity Product”, or “Import RA Capacity” means the qualified and deliverable capacity from a System Resource that can be counted toward Buyer’s System Resource Adequacy Requirements (RAR) as described in the RA Rules and all other resource adequacy requirements established by any other regional entity responsible for RAR. Import RA Capacity does not confer to Buyer any right to the Contract Quantity of Seller’s System Resource other than the right to count such Contract Quantity toward Buyer’s RAR during the Delivery Period. Specifically, no energy associated with Seller’s System Resource is required to be made available to Buyer as part of this RA Capacity obligation, and Buyer shall in no way be responsible to compensate Seller for any commitments to CAISO as set forth in this Transaction.
	4. “Intertie Resource ID” means the name to be used on the RAR Showings as listed in Section 3
	5. “RA Capacity” means the qualifying and deliverable capacity for RAR purposes for the Delivery Period, as determined by the CAISO, or other governmental body authorized to make such determination under Applicable Laws.
	6. “RA Capacity Delivery Point” means the CAISO Scheduling Point at [\_\_\_\_\_\_\_] which maps to the CAISO Branch Group [\_\_\_\_\_\_\_\_\_\_\_].
	7. “RAR" means the resource adequacy requirements established for Buyer by the California Public Utilities Commission (CPUC) pursuant to the RA Rules, or by other governmental body having jurisdiction.
	8. “RAR Showings" means the RAR compliance showings (or similar or successor showings) Buyer is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the RA Rules, or to other governmental body having jurisdiction.
	9. “RA Rules” means orders of the CPUC as contained in D.04-01-050, D.04-10-035, D.05-10-042, D.06-04-40, D.06-06-031, D.06-06-064, D.06-07-031, D.07-06-029, D.08-06-031, D.09-06-028, D.09-12-053, D.10-06-036, D.10-12-038, D.11-06-022, D.11-10-003, D.12-06-025, D.13-02-006, D.13-04-013, D.13-06-024, D.14-03-026, D.14-06-050, D.14-12-024, D.15-02-007, and D.15-06-063 and any other existing, subsequent, or modifying decisions, resolutions, orders or rulings issued by the CPUC from time to time in the Resource Adequacy phases of Rulemaking R.04-04-003, R.05-12-013, R.08-01-025, R.09-10-032, R.11-10-023, and R.14-10-010 or by any successor proceeding.
	10. “Resource ID” means the name to be used on the RAR Showings as listed in Section 3.
	11. “System Resource” means a group of resources located outside of the CAISO Control Area capable of providing Energy and/or Ancillary Services to the RA Capacity Delivery Point.

2. **Representations and Warranties:**

2.1 Seller and Buyer represent and warrant that throughout the Delivery Period they shall take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer’s right to the use of the Contract Quantity for the sole benefit of Buyer's RAR consistent with the Tariff and RA Rules. Such commercially reasonable actions may include but are not limited to the following:

1. Meeting requirements established by the Tariff and CPUC in its RA counting protocols, including demonstration of the ability to deliver the Contract Quantity over all hours of the Delivery Period required for full RAR eligibility, and demonstrating that the Contract Quantity can be delivered to the CAISO Controlled Grid, pursuant to “deliverability” standards established by the CPUC or other regional entity or entities responsible for RA administration, and provision of a Supply Plan to the CAISO by Seller’s Scheduling Coordinator and sufficient information to allow for the submission of a complete Resource Plan by Buyer’s Scheduling Coordinator; and
2. Negotiating in good faith to make necessary amendments, if any, to this Transaction to conform this Transaction to subsequent clarifications, revisions or decisions rendered by the CPUC or regional entity or entities responsible for RA administration, so as to maintain the benefits of the bargain struck by the Parties; and
3. At all times using “Good Utility Practice”as defined in the Tariff.

2.2 Seller represents and warrants that throughout the Delivery Period:

1. Buyer has the exclusive right to count the Contract Quantity of Import RA Capacity from Seller’s System Resource toward Buyer’s RAR;
2. No portion of the Contract Quantity of Import RA Capacity has been committed by Seller to any third party in order to satisfy RAR or analogous capacity obligations in other markets; and
3. Seller shall abide by all applicable CAISO Tariff provisions and procedures approved by the Federal Energy Regulatory Commission (FERC), and RA Rules approved by the CPUC as they apply to the Import RA Capacity.
4. The Seller shall maintain its CPUC certification or other CPUC approval as a “Women-Owned Business” or a “Minority-Owned Business” or a “Disabled Veteran Business Enterprise” as defined in Section 1.3 of the CPUC General Order 156, as each may be amended from time to time or further defined, supplemented, or superseded by applicable law or replaced with similar designations or certifications. Seller shall take all actions and execute any and all documents or instruments reasonably necessary and deliver all documents and information to Buyer, the CPUC, or other governmental body reasonably necessary to enable Seller to be certified or otherwise approved by the CPUC or other governmental body as, and to enable the transactions under this Confirmation Agreement to qualify as procurement by Buyer from, a “Women-Owned Business” or a “Minority-Owned Business” or a “Disabled Veteran Business Enterprise,” as each may be amended from time to time or further defined, supplemented, or superseded by applicable law.
5. **Contract Quantity** **and Delivery Period** are as follows:

*(remove this note and brackets and headers when finished entering data)*

Delivery Period(s):

[ Date 1 ], 2016 🡺 [ DATE 2 ], 2016

Contract Quantity:

[ Month ]: [ ### ] MW

Intertie Resource ID:

[ Insert Resource ID ]

1. **Contract Price applied to the Contract Quantity:**

*(remove this note and brackets and headers when finished entering data)*

Contract Price:

[ Pricing Period ], 2016: $ [ $$$ ] /kW-month

5. **Payments.** Buyer shall make a payment with respect to each month during the Delivery Period (an “RA Capacity Payment”) equal to the product of (a) the applicable Contract Price for that month, (b) the Contract Quantity of Import RA Capacity for such month, and (c) 1,000. Each RA Capacity Payment calculation shall be rounded to the nearest penny (i.e., two decimal places).

1. **CAISO**. Seller shall retain any and all revenues received from the CAISO in relation to this Transaction. The Parties agree that any Availability Incentive Payments are for the benefit of the Seller and for Seller’s account and that any Non-Availability Charges are the responsibility of the Seller and for Seller’s account as such terms are defined in the CAISO Tariff.
2. **Filing**. Seller shall, on a timely basis, submit, or cause its Scheduling Coordinator to submit, Supply Plans to identify and confirm the Import RA Capacity sold to Buyer. Seller shall cause the Scheduling Coordinator to certify to Buyer fifteen (15) Business Days before the relevant deadline for any applicable RAR Showing, that Buyer will be credited with the Import RA Capacity for the Delivery Period in the Supply Plan.
3. **Firm Product.** Seller shall provide Buyer with Import RA Capacity in the amount of the Contract Quantity in accordance with the terms of this Confirmation. If the Import RA Capacity provided to Buyer is insufficient to provide the full amount of the Contract Quantity for any reason, Seller shall provide Buyer with replacement RA Capacity pursuant to Section 9 hereof. If Seller fails to provide Buyer with replacement RA Capacity, Seller shall indemnify Buyer for penalties or fines pursuant to Section 11 hereof plus any amounts due under Section 10.
4. **Replacement**. Seller may, at no cost to Buyer and at Seller’s election, provide Buyer with replacement Import RA Capacity from one or more replacement RA Capacity Delivery Point if the Import RA Capacity is insufficient for any reason, such that the total amount of Import RA Capacity provided to Buyer equals the Contract Quantity. The designation of any replacement RA Capacity Delivery Point by Seller shall be subject to Buyer’s prior written approval, which shall not be unreasonably withheld. For purposes of this Confirmation, Seller shall be deemed to have failed to provide Buyer with Import RA Capacity in the full amount of the Contact Quantity if the original and replacement RA Capacity Delivery Points providing such Import RA Capacity do not in the aggregate provide to Buyer the resource attributes contracted for in the Contract Quantity pursuant to this Confirmation Agreement. Notwithstanding the foregoing, Seller shall have the right, subject to Buyer’s approval in its sole discretion pursuant to the foregoing, to designate as replacement RA Capacity, RA Capacity from resources located within the CAISO balancing authority area that are otherwise eligible to provide RA Capacity sufficient for purposes of RAR. To the extent that any replacement RA Capacity is provided by resources located within the CAISO balancing authority area, such RA Capacity shall be deemed to be Import RA Capacity delivered at the RA Capacity Delivery Point for purposes of this Transaction.
5. **Damages for Failure to Deliver**. If Seller fails to provide Import RA Capacity, including from one or more replacement RA Capacity Delivery Points pursuant to Section 9, then, for purposes of determining the damages due to Buyer under Section 21 of the Master Agreement, Seller shall pay to Buyer an amount equal to the positive difference, if any, between (a) the sum of (i) the Capacity Replacement Price for each replacement capacity transaction entered into by Buyer times the applicable RA Capacity quantity associated with such transaction, plus (ii) with respect to RA Capacity not replaced, the applicable Capacity Replacement Price times the Import RA Capacity not provided by Seller (adjusted for any quantity purchased by Buyer in (i) above), and (b) the Import RA Capacity not provided for multiplied by the Contract Price. If Seller fails to pay those damages, then Buyer may offset those damages owed it against any amounts it may owe to Seller under this Confirmation.

## Indemnities for Failure to Deliver Import RA Capacity. In addition to the damages described under Section 10, Seller agrees to indemnify Buyer for any monetary penalties or fines assessed against Buyer by the CPUC or the CAISO resulting from: (a) Seller’s failure to provide Buyer with any portion of the Import RA Capacity pursuant to (including, without limitation, meeting the Buyer’s reasonable time requirements for designating any replacement RA Capacity Delivery Point ); (b) Seller’s failure to provide notice of the non-availability of any portion of the Import RA Capacity; or (c) any other failure by Seller to perform its obligations under this Confirmation. With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties and fines, provided that in no event shall Buyer be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. If Seller fails to pay any of the penalties or fines, or fails to reimburse Buyer for the penalties and fines, then Buyer may offset the cost of those penalties and fines against any amounts it may owe to Seller under this Confirmation Agreement.

**ACKNOWLEDGED AND AGREED TO:**

[Insert Seller’s name] San Diego Gas & Electric Company

By: By:

Name: Name:

Title: Title:

Date: Date:

 APPROVED as to legal form \_\_\_\_\_