

## MUTUAL NONDISCLOSURE AGREEMENT

In connection with discussions between **San Diego Gas & Electric Company** (“SDG&E”) and [\_\_\_\_\_] (“NAME”) relating to the possible working relationship between the parties, involving the sale of assets related to the Manzanita Wind Project (the “Transaction”), each party anticipates disclosing certain Confidential Information (as defined below). As a condition to such disclosure by each party to the other and its current and future direct and indirect parent companies and its and their respective directors, officers, employees, agents and advisors, and with respect to SDG&E, its “Independent Evaluator” as defined in California Public Utilities Commission (“CPUC”) Decision 04-12-048 (collectively, “Representatives”), the parties hereby agree as follows:

### **1. DEFINITION**

“Confidential Information” shall mean information concerning the business, operations, and assets of the disclosing party, including, without limitation, all information related to the Manzanita Wind Project to the CAISO grid, all business plans documentation, source code, object code, diagrams, flow charts, research, development, processes, marketing techniques and materials, development or marketing timetables, strategies, development plans, customer, supplier or employee names, pricing policies and financial and valuation information, and other information of a similar nature. Information satisfying the foregoing requirements shall be Confidential Information whether or not prepared in connection with the Transaction and whether or not reduced to writing or other tangible form so long as the disclosing party identifies the information as “confidential” at the time of its disclosure. Confidential Information of each party shall also include any information defined as “trade secrets” of such party under the Uniform Trade Secrets Act of California. Confidential Information shall not include information (1) known to the party to whom information is disclosed or its Representative prior to obtaining same from the disclosing party; (2) in the public domain at the time of disclosure by the disclosing party; (3) obtained by the receiving party or its Representative from a third party who did not receive same, directly or indirectly, from the disclosing party; (4) that is independently developed by persons who had no access to the Confidential Information; or (5) approved for release by written authorization of an authorized officer of the disclosing party. Any party claiming that any of the foregoing five exceptions apply shall have the burden of proof to establish such applicability.

### **2. LIMITED USE; NONDISCLOSURE**

Each party hereby agrees that it shall use the Confidential Information solely for the purpose of evaluating and consummating the Transaction. Neither party nor its Representatives shall use the Confidential Information of the other party for its own benefit other than for the limited purposes set forth herein. Each party agrees to use the higher of the same degree of care it uses with respect to its own proprietary or confidential information or a reasonable standard of care to prevent unauthorized use or disclosure of the Confidential Information. Without limiting the generality of the foregoing, neither party shall disclose the Confidential Information of the other party to any individual other than a Representative. Except as otherwise provided herein, each party and its Representatives will keep confidential and not disclose the Confidential Information. Each party shall cause each of its Representatives to become familiar with, and abide by, the terms of this Agreement.

### **3. COURT OR ADMINISTRATIVE ORDER**

Notwithstanding the provisions of Article 2 above, each party and its Representatives may disclose any of the Confidential Information in the event, but only to the extent, that, based upon reasonable advice of counsel, it is required to do so by the disclosure requirements of any law, rule, or regulation or any order, decree, subpoena or ruling or other similar process of any court, securities exchange, governmental agency or governmental or regulatory authority. Prior to making or permitting any of its Representatives to make such disclosure, each party shall provide the other party with prompt written notice of any such requirement so that the party seeking to prevent disclosure (with the other party's assistance, at the expense of the party seeking to prevent disclosure) may seek a protective order or other appropriate remedy. Provided further that notwithstanding the foregoing and the provisions of Article 2 above, SDG&E and its Representatives may without providing notice thereof to [NAME] disclose Confidential Information to regulatory agencies with jurisdiction over SDG&E and their staffs, including, but not limited to, the CPUC, the Federal Energy Regulatory Commission, and participants of SDG&E's Procurement Review Group ("PRG"), a group of non-market participants including members of the CPUC, other governmental agencies and consumer groups established by the CPUC in D.02-08-071, provided such PRG participants have executed confidentiality agreements.

### **4. PUBLICITY**

Neither party shall, without the prior written consent of the other party, disclose to any person (a) the fact that the parties have exchanged Confidential Information or (b) any information regarding the ongoing business relationship between the parties, including the fact that such relationship exists; provided, however, that a party may disclose the information specified in (a) and (b) above if such disclosure is required in Section 3 above, in which case the procedures specified therein with respect to such disclosure shall apply.

### **5. DOCUMENT RETENTION**

At any time upon the request of the disclosing party, the other party shall promptly deliver to the disclosing party or destroy (with such destruction to be certified to the disclosing party) all portions of documents (and all copies thereof, however stored) furnished to or prepared by the other party and its Representatives that contain Confidential Information and all other portions of documents in such other party's possession that contain or that are based on or derived from Confidential Information (to the extent so derived). Non-destruction of (1) electronic copies of materials or summaries containing or reflecting Confidential Information that are automatically generated through data backup and/or archiving systems and which are not readily accessible by a party's business personnel, and (2) summary information regarding a Transaction that has been presented to a party's control groups, including without limitation the boards of directors whose review was deemed necessary for approval of the Transaction, which summary information cannot be removed from the corporate records, shall not be deemed to violate this Agreement, so long as the Confidential Information contained therein is not disclosed or used in violation of the other terms of this Agreement.

**6. SURVIVAL**

Notwithstanding the return or destruction of all or any part of the Confidential Information, the terms of this Agreement shall nevertheless remain in full force and effect with respect to specific Confidential Information until the date that is two years after the date of disclosure of such Confidential Information.

**7. ASSIGNMENT**

Neither party may assign (by operation of law or otherwise) any of its rights or obligations hereunder without the prior written consent of the other party.

**8. REMEDIES**

The parties acknowledge that the Confidential Information is valuable and unique and that damages would be an inadequate remedy for breach of this Agreement, and the obligations of each party and its Representatives are specifically enforceable. Accordingly, the parties agree that in the event of a breach or threatened breach of this Agreement by either party, the disclosing party shall be entitled to seek an injunction preventing such breach, without the necessity of proving damages or posting any bond. Any such relief shall be in addition to, and not in lieu of, money damages or any other available legal or equitable remedy. Neither party nor any of its Representatives shall have any liability to any other party or its Representatives for any special, indirect, incidental or consequential loss or damage whatsoever, including, without limitation, lost profits or lost investment opportunity, even if such party has been advised in advance that such damages could occur.

**9. OTHER BUSINESS OPPORTUNITIES**

Neither the holding of discussions between SDG&E and [NAME] nor the disclosure of Confidential Information will be construed as an obligation on the part of either party to refrain from engaging at any time in the same business or any business similar or dissimilar to the business in which the other is now engaged. Further, except as otherwise agreed in writing, Confidential Information received concerning the other party's future plans is tentative and does not represent firm decisions or commitments by either party. Either party may meet with third persons and may receive information similar to the Confidential Information which the party received under this Agreement.

**10. NO IMPLIED LICENSES**

Nothing in this Agreement will be construed as granting any rights to the receiving party, by license or otherwise, to any of the disclosing party's Confidential Information, except as specifically stated in this Agreement.

**11. NO WAIVER**

It is understood and agreed that no failure or delay by either party in exercising any right, power or privilege available hereunder or under applicable law shall operate as a waiver thereof,

nor shall any single or partial exercise thereof preclude any other or further exercise thereof the exercise of any other such right, power or privilege.

**12. ENTIRE AGREEMENT; AMENDMENT**

This Agreement contains the entire agreement between the parties with respect to the subject matter hereof, and may be amended only in writing signed by both parties. This Agreement supersedes any previous confidentiality or nondisclosure agreement or contractual provisions between the parties to the extent they relate to the subject matter hereof.

**13. GOVERNING LAW**

The formation, interpretation and performance of this Agreement shall be governed by the internal laws of the State of California.

**14. ATTORNEYS' FEES**

If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to recover from the unsuccessful party all costs, expenses (including expert testimony) and reasonable attorneys' fees, including allocated costs and fees of in-house counsel, incurred therein by the prevailing party.

**15. VENUE AND JURISDICTION**

In the event of any litigation to enforce or interpret any terms of this Agreement, the parties agree that such action will be brought in the Superior Court of the County of San Diego, California (or, if the federal courts have exclusive jurisdiction over the subject matter of the dispute, in the U.S. District Court for the Southern District of California), and the parties hereby submit to the exclusive jurisdiction of such courts.

**16. NOTICE**

All notices to be given under this Agreement shall be in writing and either sent by a nationally recognized overnight courier service, in which case notice shall be deemed delivered as of the date shown on the courier's delivery receipt; or sent by telecopy during business hours of the recipient, with a copy of the notice also deposited in the United States mail (postage prepaid) the same business day, in which case notice shall be deemed delivered on transmittal by telecopier provided that a transmission report is generated reflecting the accurate transmission of the notices, or sent by United States mail, postage prepaid, in which case notice shall be deemed delivered as of two business days after deposit in the mail, addressed as follows:

SDG&E:  
San Diego Gas & Electric Company  
8315 Century Park Court  
San Diego, California 92123

[NAME]: [INSERT NAME]  
[INSERT ADDRESS]

These addresses may be changed by written notice to the other party provided that no notice of a change of address shall be effective until actual receipt of the notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice.

**17. SAVINGS CLAUSE; EFFECT OF UNIFORM TRADE SECRETS ACT**

If any provision of this Agreement or the application thereof to any person, place, or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable, or void, the remainder of the Agreement and such provisions as applied to other persons, places, and circumstances shall remain in full force and effect. In the event of any conflict between any provision hereof and any provision of the Uniform Trade Secrets Act of California, the provision affording the greater degree of protection to the disclosing party shall control.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date last written below.

[FULL NAME]

SAN DIEGO GAS & ELECTRIC COMPANY,  
a California corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Approved as to legal form: \_\_\_\_\_