



SAN DIEGO GAS & ELECTRIC COMPANY
FUEL CELL GENERATING FACILITY NET ENERGY METERING
AND INTERCONNECTION AGREEMENT

This Fuel Cell Generating Facility Net Energy Metering and Interconnection Agreement ("Agreement") is entered into by and between _____ a _____ ("Producer"), and San Diego Gas & Electric Company ("SDG&E"), a California corporation. Producer and SDG&E are sometimes also referred to in this Agreement jointly as "Parties" or individually as "Party." In consideration of the mutual promises and obligations stated in this Agreement and its attachments, the Parties agree as follows:

1. SCOPE AND PURPOSE

This Agreement provides for Producer to interconnect and operate an Eligible Fuel Cell Electrical Generating Facility, as defined section 2827.10 of the California Public Utilities Code ("Generating Facility"), in parallel with SDG&E's Distribution System to serve the electrical loads at the location identified in Section 2.2, below.

2. SUMMARY AND DESCRIPTION OF PRODUCER'S GENERATING FACILITY

2.1 A description of the Generating Facility, including a summary of its significant components and a single-line diagram showing the general arrangement of how Producer's Generating Facility and loads are interconnected with SDG&E's Distribution System are attached as Appendix A and made a part of this Agreement.

2.2 Name and address used by SDG&E to locate the Electric Service Account(s) used to interconnect the Generating Facility with SDG&E's Distribution System:

Name: _____

Address: _____

City / Zip: _____

2.3 Generating Facility identification number: _____ (Assigned by SDG&E)

2.4 Producer's electric service account number: _____ (Assigned by SDG&E)

2.5 The Gross Nameplate Rating of the Generating Facility is _____ kW.

2.6 The Net Nameplate Rating of the Generating Facility is _____ kW.

2.7 The annual energy production of the Generating Facility is expected to be _____ kWh.

2.8 The annual amount of surplus energy to be delivered to SDG&E's Distribution System is expected to be _____ kWh.

2.9 The maximum (instantaneous) level of power that may be delivered to SDG&E's Distribution System is _____ kW.

2.10 The Generating Facility's expected date of Initial Operation is _____. The expected date of Initial Operation shall be within two years of the date of this Agreement.

2.11 Producer hereby declares that the Generating Facility meets the requirements for an "Eligible Fuel Cell Electrical Generating Facility", as defined in Section 2827.10 of the California Public Utilities Code.

3. METERING AND BILLING:

Metering requirements and billing procedures shall be set forth in the rate schedule(s) applicable to the electric service account assigned to the location where the Generating Facility is connected.

4. DISCONNECTION, INTERRUPTION OR REDUCTION OF DELIVERIES:

- 4.1 SDG&E may require Producer to interrupt or reduce the output of its Generating Facility under the following circumstances:
- (a) Whenever SDG&E deems it necessary in its sole judgment, to construct, install, maintain, repair, replace, remove, investigate, or inspect any of its equipment or any part of its electric system; or
 - (b) Whenever SDG&E determines in its sole judgment, that curtailment, interruption, or reduction of Producer's electrical generation is otherwise necessary due to emergencies, forced outages, force majeure, or compliance with prudent electrical practices.
- 4.2 Notwithstanding any other provision of this Agreement, upon termination of this Agreement or at any time SDG&E determines the continued parallel operation of the Generating Facility may endanger the public or SDG&E personnel, or affect the integrity of SDG&E's electric system or the quality of electric service provided to other customers, SDG&E shall have the right to require the Generating Facility to be immediately disconnected from SDG&E's electric system. The Generating Facility shall remain disconnected until such time as SDG&E is satisfied, in its sole judgment, that the condition(s) causing such disconnection have ended or have been corrected.
- 4.3 Whenever feasible, SDG&E shall give Producer reasonable notice of the possibility that interruption or reduction of deliveries may be required.
- 4.4 Electrical energy and capacity provided to Producer during periods of curtailment or interruption of the output of the Generating Facility shall be provided pursuant to the terms of the rate schedule(s) applicable to the electric service account to which the Generating Facility is connected.

5. TERM AND TERMINATION

- 5.1 This Agreement shall become effective as of the last date entered in Section 17 of this Agreement. The Agreement shall continue in full force and effect until the earliest date that one of the following events occurs:
- (a) The Parties agree in writing to terminate the Agreement, or
 - (b) Unless otherwise agreed in writing by the Parties, at 12:01 A.M. on the day following the date the electric service account through which Producer's Generating Facility is Interconnected to SDG&E's Distribution System is closed or terminated, or
 - (c) At 12:01 A.M. on the 61st day after Producer or SDG&E provides written Notice pursuant to Section 10 of this Agreement to the other Party of Producer's or SDG&E's intent to terminate this Agreement.
 - (d) At 12:01 A.M. on January 1, 2006, unless the eligibility provisions for an Eligible Fuel Cell Electrical Generating Facility, as defined in Section 2827.10 of the California Public Utilities Code have been extended by legislation.
- 5.2 Producer may elect to terminate this Agreement pursuant to the terms of Section 5.1(c) for any reason. SDG&E may elect to terminate this Agreement pursuant to the terms of Section 5.1(c) for one or more of the following reasons:
- (a) A change in applicable tariffs as approved or directed by the California Public Utilities Commission (CPUC) or a change in any local, state or federal law, statute or regulation, either of which materially alters or otherwise affects SDG&E's ability or obligation to perform SDG&E's duties under this Agreement; or,
 - (b) Unless otherwise agreed in writing by the Parties, Producer fails to take all corrective actions specified in SDG&E's Notice that Producer's Generating Facility is out of compliance with the terms of this Agreement within the time frame set forth in such Notice; or,

- (c) Producer fails to interconnect and operate the Generating Facility per the terms of this Agreement prior to 120 days after the date set forth in Section 2.10 of this Agreement as the Generating Facility's expected date of Initial Operation; or,
 - (d) Producer abandons the Generating Facility. SDG&E shall deem the Generating Facility to be abandoned if SDG&E determines, in its sole opinion, the Generating Facility is non-operational and Producer does not provide a substantive response to SDG&E's notice of its intent to terminate this Agreement as a result of Producer's apparent abandonment of the Generating Facility affirming Producer's intent and ability to continue to operate the Generating Facility.
- 5.3 Notwithstanding any other provisions of this Agreement, SDG&E shall have the right to unilaterally file with the CPUC, pursuant to the CPUC's rules and regulations, an application to terminate this Agreement.
- 5.4 Any agreements attached to and incorporated into this Agreement shall terminate concurrently with this Agreement unless the Parties have agreed otherwise in writing.

6. GENERATING FACILITY OPERATION

Producer will operate the Generating Facility consistent with the requirements as specified in Rule 21 or Schedule NEM-FC, or such superseding applicable tariffs as the CPUC may from time to time order.

7. INTERCONNECTION FACILITIES

- 7.1 Producer and/or SDG&E, as appropriate, shall provide Interconnection Facilities that adequately protect SDG&E's Distribution System, personnel, and other persons from damage or injury which may be caused by the operation of Producer's Generating Facility.
- 7.2 Producer shall be solely responsible for the costs, design, purchase, construction, operation, and maintenance of the Interconnection Facilities that Producer owns.
- 7.3 If the provisions of SDG&E's Rule 21, or any other tariff approved by the CPUC, requires SDG&E to own and operate a portion of the Interconnection Facilities, Producer and SDG&E shall promptly execute an agreement that establishes and allocates responsibility for the design, installation, operation, maintenance, and ownership of the Interconnection Facilities. This agreement shall be attached to and made a part of this Agreement as Appendix B.

8. INDEMNITY AND LIABILITY:

- 8.1 Each Party as indemnitor shall defend, hold harmless, and indemnify the other Party and the directors, officers, employees, and agents of the other Party against and from any and all loss, liability, damage, claim, cost, charge, demand, or expense (including any direct, indirect or consequential loss, liability, damage, claim, cost, charge, demand, or expense, including retained or in-house attorneys' fees) for injury or death to persons, including employees of either Party, and damage to property, including property of either Party, arising out of or in connection with (a) the engineering, design, construction, maintenance, repair, operation, supervision, inspection, testing, protection or ownership of the indemnitor's facilities, or (b) the making of replacements, additions, betterments to, or reconstruction of the indemnitor's facilities. This indemnity shall apply notwithstanding the active or passive negligence of the indemnitee. However, neither Party shall be indemnified hereunder for its loss, liability, damage, claim, cost, charge, demand, or expense resulting from its sole negligence or willful misconduct.
- 8.2 The indemnitor shall, on the other Party's request, defend any suit asserting a claim covered by this indemnity and shall pay for all costs, including reasonable attorney fees, which may be incurred by the other Party in enforcing this indemnity.
- 8.3 The provisions of this Section shall not be construed to relieve any insurer of its obligations to pay any insurance claims in accordance with the provisions of any valid insurance policy.
- 8.4 Except as otherwise provided in Section 8.1 neither Party shall be liable to the other Party for consequential damages incurred by that Party.
- 8.5 Nothing in this Agreement shall create any duty, any standard of care with reference to, or any liability to any person who is not a party to it.

8.6 Notwithstanding the provisions of Section 7.1, Customer shall be responsible for protecting its Generating Facility from damage by reason of the electrical disturbances of faults caused by the operation, faulty operation, or non-operation of SDG&E's facilities, and SDG&E shall not be liable for any such damage so caused.

9. INSURANCE

9.1 In connection with Producer's performance of its duties and obligations under this Agreement, Producer shall maintain, during the term of this Agreement, general liability insurance with a combined single limit of not less than:

- (a) Two million dollars (\$2,000,000) for each occurrence if the Gross Nameplate Rating of Producer's Generating Facility is greater than one hundred (100) kW;
- (b) One million dollars (\$1,000,000) for each occurrence if the Gross Nameplate Rating of Producer's Generating Facility is greater than twenty (20) kW and less than or equal to one hundred (100) kW; and
- (c) Five hundred thousand dollars (\$500,000) for each occurrence if the Gross Nameplate Rating of Producer's Generating Facility is twenty (20) kW or less.
- (d) Two hundred thousand dollars (\$200,000) for each occurrence if the Gross Nameplate Rating of Producer's Generating Facility is ten (10) kW or less and Producer's Generating Facility is connected to an account receiving residential service from SDG&E.

Such general liability insurance shall include coverage for "Premises-Operations, Owners and Contractors Protective, Products/Completed Operations Hazard, Explosion, Collapse, Underground, Contractual Liability, and Broad Form Property Damage including Completed Operations."

9.2 The general liability insurance required in Section 9.1 shall, by endorsement to the policy or policies, (a) include SDG&E as an additional insured; (b) contain a severability of interest clause or cross-liability clause; (c) provide that SDG&E shall not by reason of its inclusion as an additional insured incur liability to the insurance carrier for payment of premium for such insurance; and (d) provide for thirty (30) calendar days' written notice to SDG&E prior to cancellation, termination, alteration, or material change of such insurance.

9.3 If Producer's Generating Facility is connected to an account receiving residential service from SDG&E and the requirement of Section 9.2(a) prevents Producer from obtaining the insurance required in Section 9.1, then upon Producer's written Notice to SDG&E in accordance with Section 10.1, the requirements of Section 9.2(a) shall be waived.

9.4 Evidence of the insurance required in Section 9.2 shall state that coverage provided is primary and is not in excess to or contributing with any insurance or self-insurance maintained by SDG&E.

9.5 Producer agrees to furnish the required certificates and endorsements to SDG&E prior to Initial Operation. SDG&E shall have the right to inspect or obtain a copy of the original policy or policies of insurance.

9.6 If Producer is self-insured with an established record of self-insurance, Producer may comply with the following in lieu of Sections 9.1 through 9.4:

- (a) Producer shall provide to SDG&E, at least thirty (30) calendar days prior to the date of Initial Operation, evidence of an acceptable plan to self-insure to a level of coverage equivalent to that required under Section 9.1.
- (b) If Producer ceases to self-insure to the level required hereunder, or if Producer is unable to provide continuing evidence of Producer's ability to self-insure, Producer agrees to immediately obtain the coverage required under Section 9.1.

9.7 All insurance certificates, statements of self insurance, endorsements, cancellations, terminations, alterations, and material changes of such insurance shall be issued and submitted to the following:

San Diego Gas & Electric Company
Attention: _____
Address: _____
City/Zip: _____

10. NOTICES

10.1 Any written notice, demand, or request required or authorized in connection with this Agreement ("Notice") shall be deemed properly given if delivered in person or sent by first class mail, postage prepaid, to the person specified below:

If to SDG&E: San Diego Gas & Electric Company
Attention: _____
Address: _____
City/Zip: _____
Phone: _____
FAX: _____

If to Producer: Producer Name: _____
Address: _____
City/Zip: _____
Phone: _____
FAX: _____

10.2 A Party may change its address for Notices at any time by providing the other Party Notice of the change in accordance with Section 10.1.

10.3 The Parties may also designate operating representatives to conduct the daily communications, which may be necessary or convenient for the administration of this Agreement. Such designations, including names, addresses, and phone numbers may be communicated or revised by one Party's Notice to the other.

11. REVIEW OF RECORDS AND DATA

11.1 SDG&E shall have the right to review and obtain copies of Producer's operations and maintenance records, logs, or other information such as, unit availability, maintenance outages, circuit breaker operation requiring manual reset, relay targets and unusual events pertaining to Producer's Generating Facility or its Interconnection with SDG&E's Distribution System.

11.2 Producer authorizes SDG&E to release to the California Energy Commission (CEC) and/or the CPUC information regarding the Generating Facility, including the Producer's name and location, and the size, location and operational characteristics of the generating facility, as requested from time to time pursuant to the CEC's or CPUC's rules and regulations.

12. AMENDMENT, MODIFICATIONS, WAIVER OR ASSIGNMENT:

12.1 This Agreement may not be altered or modified by either of the Parties, except by an instrument in writing executed by each of them.

12.2 None of the provisions of this Agreement shall be considered waived by a Party unless such waiver is given in writing. The failure of a Party to insist in any one or more instances upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or the relinquishment of any such rights for the future, but the same shall continue and remain in full force and effect.

12.3 This Agreement shall supersede any existing agreement under which Producer is currently operating the Generating Facility identified in Section 2.2, herein, and any such agreement shall be deemed terminated as of the date this Agreement becomes effective.

- 12.4 This Agreement contains the entire agreement and understanding between the Parties, their agents, and employees as to the subject matter of this Agreement. Each Party also represents that in entering into this Agreement, it has not relied on any promise, inducement, representation, warranty, agreement or other statement not set forth in this Agreement.
- 12.5 Neither Party shall voluntarily assign this Agreement or any of its rights or duties hereunder without the written consent of the other Party, which consent shall not be unreasonably withheld. Any such assignment or delegation made without such written consent shall be null and void.
13. GOVERNING LAW, JURISDICTION OF COMMISSION, INCLUSION OF SDG&E TARIFF SCHEDULES, DEFINED TERMS
- 13.1 This Agreement shall be interpreted, governed, and construed under the laws of the State of California as if executed and to be performed wholly within the State of California without giving effect to choice of law provisions that might apply to the law of a different jurisdiction.
- 13.2 This Agreement shall, at all times, be subject to such changes or modifications by the CPUC as it may from time to time direct in the exercise of its jurisdiction.
- 13.3 The interconnection and services provided under this Agreement shall at all times be subject to the terms and conditions set forth in the tariffs applicable to the electric service provided by SDG&E. Copies of such tariffs are available at SDG&E's Internet site: www.sdge.com/regulatory or by request to SDG&E and are incorporated into this Agreement by this reference.
- 13.4 Notwithstanding any other provisions of this Agreement, SDG&E shall have the right to unilaterally file with the CPUC, pursuant to the CPUC's rules and regulations, an application for change in tariffs, rates, charges, classification, service, or any agreement relating thereto.
14. DOCUMENTS INCLUDED
- This Agreement includes the following exhibits, which are specifically incorporated herein and made a part of this Agreement.
- Appendix A - Description of Generating Facility and Single-Line Diagram
- Appendix B - Interconnection Facility Financing and Ownership Agreement
- Appendix C - Schedule NEM-FC, Net Energy Metering for Fuel Cell Customer-Generators
- Appendix D - Producer's warranty that the Generating Facility meets the requirements for an "Eligible Fuel Cell Electrical Generating Facility" as defined in Section 2827.10 of the California Public Utilities Code.
15. AMENDMENTS AND MODIFICATION
- This Agreement can only be amended or modified by a written agreement signed by both Parties. SDG&E shall determine in its sole discretion whether prior CPUC approval is required for such amendments or modifications.
16. ENTIRE AGREEMENT
- This Agreement, including any incorporated rate schedules and rules, contains the entire agreement and understanding between the Parties, their agents, and employees as to the subject matter of this Agreement. Each Party also represents that in entering into this Agreement; it has not relied on any promise, inducement, representation, warranty, agreement or other statement not set forth in this Agreement, or in the incorporated tariffs and rules.

17. SIGNATURES

IN WITNESS WHEREOF, the Parties hereto have caused two originals of this Agreement to be executed by their duly authorized representatives. This Agreement is effective as of the last date set forth below.

PRODUCER'S NAME

SAN DIEGO GAS & ELECTRIC COMPANY

By: _____

By: _____

Name: _____

Name: Leslie Sabin-Mercado

Title: _____

Title: Mgr, Service Stds. & Customer Gen.

Date: _____

Date: _____

APPENDIX A

DESCRIPTION OF GENERATING FACILITY
AND SINGLE-LINE DIAGRAM

(Provided by Producer)

APPENDIX B
(If Applicable)

INTERCONNECTION FACILITIES
FINANCING AND OWNERSHIP AGREEMENT

This Agreement is not applicable

APPENDIX C

SCHEDULE NEM-FC
NET ENERGY METERING FOR FUEL CELL CUSTOMER-GENERATORS

(Provided by SDG&E)

(Note: SDG&E's tariffs are included for reference only and shall at all times be subject to such changes or modifications by the Commission as the Commission may, from time to time, direct in the exercise of its jurisdiction. A copy of Schedule NEM-FC has not been provided. A copy may be obtained from SDG&E's website: www.sdge.com)

APPENDIX D

PRODUCER'S WARRANTY THAT THE GENERATING FACILITY IS AN ELIGIBLE FUEL CELL ELECTRICAL GENERATING FACILITY PURSUANT TO SECTION 2827.10 OF THE CALIFORNIA PUBLIC UTILITIES CODE

Producer has declared that the Generating Facility meets the requirements for an "Eligible Fuel Cell Electrical Generating Facility", as defined in Section 2827.10 of the California Public Utilities Code. ("Eligibility Requirements")

Producer warrants that, beginning on the date of Initial Operation and continuing throughout the term of this Agreement, its Generating Facility shall continue to meet the Eligibility Requirements. If Producer becomes aware that the Generating Facility has ceased to meet the Eligibility Requirements, Producer shall promptly provide SDG&E with Notice of such change pursuant to Section 10.1 of the Agreement. If at any time during the term of this Agreement SDG&E determines in its sole discretion that Producer's Generating Facility may no longer meet the Eligibility Requirements, SDG&E may require Producer to provide evidence that the Generating Facility continues to meet the Eligibility Requirements within 15 business days of SDG&E's request for such evidence. Additionally, SDG&E may periodically (typically, once per year) inspect Producer's Generating Facility and/or require documentation from Producer to monitor the Generating Facility's compliance with the Eligibility Requirements. If SDG&E determines in its sole judgment that Producer either failed to provide evidence in a timely manner or that it provided insufficient evidence that its Generating Facility continues to meet the Eligibility Requirements, then the Distributed Energy Resources Generation status of the Generating Facility shall be deemed ineffective until such time as Producer again demonstrates to SDG&E's reasonable satisfaction that the Generating Facility meets the requirements for a Distributed Energy Resources Generation facility (the "Eligibility Status Change").

SDG&E shall revise its records and the administration of this Agreement to reflect the Eligibility Status Change and provide Notice to Producer of the Eligibility Status Change pursuant to Section 10.1 of this Agreement. Such Notice shall specify the effective date of the Eligibility Status Change. This date shall be the first day of the calendar year for which SDG&E determines in its sole discretion that the Generating Facility first ceased to meet the Eligibility Requirements. SDG&E shall invoice the Producer for any tariff charges that were not previously billed during the period between the effective date of the Eligibility Status Change and the date of the Notice in reliance upon Producer's representations that the Generating Facility complied with the Eligibility Requirements and therefore was eligible for the rate treatment available under the Net Energy Metering provisions of SDG&E's Schedule NEM-FC, Net Energy Metering for Fuel Cell Customer-Generators.

Any amounts to be paid or refunded by Producer, as may be invoiced by SDG&E pursuant to the terms of this warranty, shall be paid to SDG&E within 30 days of Producer's receipt of such invoice.