

SAMPLE FORMS - CONTRACTS  
California Producer Operational Balancing Agreement  
Form No. 6452

(See Attached Form)

(TO BE INSERTED BY UTILITY)

ADVICE LETTER NO. 5179  
DECISION NO.

107

ISSUED BY

**Dan Skopec**  
Vice President  
Regulatory Affairs

(TO BE INSERTED BY CAL. PUC)

DATE FILED Aug 28, 2017  
EFFECTIVE Oct 1, 2017  
RESOLUTION NO. \_\_\_\_\_

CALIFORNIA PRODUCER OPERATIONAL BALANCING AGREEMENT  
between

\_\_\_\_\_ and  
SOUTHERN CALIFORNIA GAS COMPANY

THIS CALIFORNIA PRODUCER OPERATIONAL BALANCING AGREEMENT (“Agreement”) is made and entered into by and between \_\_\_\_\_, a \_\_\_\_\_, hereinafter referred to as “Interconnector,” and SOUTHERN CALIFORNIA GAS COMPANY, a California corporation, hereinafter referred to as “SoCalGas,” this \_\_\_ day of \_\_\_ 20\_\_\_. Interconnector and SoCalGas shall also be hereinafter referred to individually as “Party” and jointly as the “Parties.”

**RECITALS**

WHEREAS, SoCalGas is a “gas utility” as defined in the Public Utilities Code of the State of California and is subject to the jurisdiction of the California Public Utilities Commission (“CPUC”), is a “Hinshaw” pipeline exempt from the jurisdiction of the Federal Energy Regulatory Commission (“FERC”) under section 1 (c) of the Natural Gas Act and is a “local distribution company” served by interstate pipelines within the meaning of Sections 2(17) and 311 of the Natural Gas Policy Act of 1978 and the Regulations of the FERC thereunder; and

WHEREAS, Interconnector owns and controls natural gas which is capable of being physically delivered into SoCalGas’ pipeline system within the State of California; and

WHEREAS, the Parties desire to provide for the delivery to, and receipt of, natural gas by the SoCalGas system as set forth in this Agreement and the California Producer Interconnection Agreement; and

WHEREAS, Interconnector and/or SoCalGas have entered, or may enter, into one or more agreements with third party Service Requesters (hereinafter referred to as “Service Requester(s)”) for the transportation of Gas to the delivery point Interconnection Point(s) or from the receipt point Interconnection Point(s) on their respective systems as shown in Exhibit 1 (said agreements hereinafter referred to as “Service Requester Agreements”); and

WHEREAS, from time to time, the quantities of Gas confirmed and scheduled by the Parties to be delivered to, or received at, the Interconnection Point (said quantities hereinafter referred to as the “Scheduled Quantities”) may be greater or less than the quantities of Gas which are actually delivered at the Interconnection Point, resulting in over- or under-deliveries relative to Scheduled Quantities; and

WHEREAS, the Parties desire to implement this Agreement in order to facilitate more efficient operations, accounting, and systems management at the Interconnection Point and on

the SoCalGas system, and to provide for certain terms and conditions under which Gas will be delivered by Interconnector and accepted by SoCalGas, for the account of Service Requester(s) and/or their designees at the Interconnection Point.

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, the Parties agree as follows:

## **SECTION I** **SCOPE OF AGREEMENT**

1.1 Scope – This Agreement sets forth the terms and conditions governing the treatment of Operational Imbalances at the Interconnection Point between the pipeline facilities that have been constructed or will be constructed at such Interconnection Point by SoCalGas and Interconnector for all Gas delivered by Interconnector to SoCalGas for the account of itself or its affiliates or third parties at the Interconnection Point as set forth below and incorporating herein the provisions of the Recitals above. The Parties have or will have executed the California Producer Interconnection Agreement, and its execution and performance is a condition precedent to the obligations herein. No action or inaction of SoCalGas will or shall relieve Interconnector of this obligation.

1.2 Term and Termination – This Agreement, unless terminated earlier as provided in this Agreement and/or in the California Producer Interconnection Agreement, is effective as of the date first written above and shall remain in effect for a primary term of fifteen (15) years from the date Gas first flows through the Interconnection Point (the “Commencement Date”), and year to year thereafter.

1.2.1 Interconnector may terminate this Agreement for any reason upon sixty (60) calendar days prior written notice to SoCalGas, provided that Interconnector has met all financial obligations to SoCalGas under this Agreement.

1.2.2 SoCalGas may terminate this Agreement at the end of the primary term of this Agreement or thereafter by providing sixty (60) calendar days prior written notice to Interconnector, or in the event of a material default by Interconnector, upon sixty (60) calendar days following Interconnector’s receipt of a written detailed notice from SoCalGas of such default that has not been cured. If Interconnector requires installing new equipment and/or modifying existing equipment (other than that for meeting Gas quality) in order to cure the default, then SoCalGas, at its sole discretion, will grant Interconnector an additional period of opportunity to cure such default.

1.2.3 In the event the California Producer Interconnection Agreement has not been fully executed by \_\_\_\_\_, or any pipeline system construction that is necessary to begin Gas deliveries or receipts at the Interconnection Point is not completed on or before \_\_\_\_\_, or Gas flows substantially equal to the design volumes have not commenced within \_\_\_\_ days of completion of the interconnection, either Party may terminate this Agreement with sixty (60) calendar days prior written notice.

1.3 Definitions - For purposes of this Agreement the following words when used herein shall have the meaning set forth below:

1.3.1 “Interconnector’s Facilities” shall mean those Gas pipeline facilities as defined in the California Producer Interconnection Agreement.

1.3.2 “California Producer Interconnection Agreement” shall mean an agreement executed between the Parties that provides the terms and conditions governing the operations at the Interconnection Point between Interconnector’s Facilities and SoCalGas’ Facilities.

1.3.3 “Gas” shall mean any mixture of hydrocarbons or of hydrocarbons and non-combustible gases, in a gaseous state, consisting essentially of methane, that is of general merchantable quality and meeting the quality specifications of SoCalGas’ tariffs, rules and other applicable regulations.

1.3.4 “Interconnect Capacity” shall be as defined in the California Producer Interconnection Agreement.

1.3.5 “Interconnection Point” shall mean that point where SoCalGas' Facilities and Interconnector’s Facilities physically interconnect for delivery of Gas by Interconnector to, and receipt thereof by, SoCalGas as described in the California Producer Interconnection Agreement. The location of the Interconnection Point is described in Exhibit 3.

1.3.6 “SoCalGas’ Facilities” shall mean the Gas pipelines, appurtenant facilities, meters, regulators, quality measurement, other equipment and related system upgrades at and from the Interconnection Point as defined in the California Producer Interconnection Agreement, for receipt into SoCalGas’ system in the State of California pursuant to this Agreement. SoCalGas’ Facilities shall be owned and operated by SoCalGas and are generally set forth in Exhibit 2.

- 1.3.7 “Operational Imbalance” shall mean actual physical deliveries of Gas less Gas quantities that are scheduled to be delivered. Therefore, Operational Imbalance shall be positive for over-deliveries, i.e., deliveries greater than scheduled deliveries. Operational Imbalance shall be negative for under-deliveries, i.e., deliveries less than Scheduled Quantities.
- 1.3.8 “OFO Day” shall mean any Gas flow day for which SoCalGas calls an OFO as described in Rule 30.
- 1.3.9 “Split Meter” shall mean a single meter through which Gas produced by two or more California Producers flows into the SoCalGas system under separate California Producer Interconnection Agreements and separate California Producer Operational Balancing Agreements or another agreement governing access to SoCalGas' system.

1.4 Regulatory Jurisdiction

- 1.4.1 Hinshaw Exemption - SoCalGas is exempt from jurisdiction of the FERC under the Hinshaw Exemption. SoCalGas shall not be required to take any action hereunder, including without limitation to enter into any contracts with third parties transporting Gas on Interconnector's Facilities to the Interconnection Point, which for any reason jeopardizes or in SoCalGas' sole opinion could reasonably raise a question regarding SoCalGas' retention of its Hinshaw Exemption under the Natural Gas Act (15 U.S.C. §717(c)). While SoCalGas has the right and obligation to take action to protect its Hinshaw Exemption status, SoCalGas shall notify the Interconnector as soon as SoCalGas becomes aware that any action under the Agreement jeopardizes its Hinshaw Exemption. SoCalGas shall make a good faith effort to allow the Interconnector an opportunity to take such actions as necessary to assist SoCalGas in eliminating the concern.
- 1.4.2 FERC Jurisdiction - This Agreement is entered into by the Parties with the understanding that the balancing activities provided for hereunder will not subject any non-jurisdictional entity to regulation by the FERC as a “natural gas company” under the provisions of the Natural Gas Act. If, at any time, it is determined by FERC that such balancing activities do result in such regulation, then either Party may immediately terminate this Agreement by providing written notice to the other Party, except that it shall survive in those particulars required to resolve any remaining Operational Imbalance which shall be resolved by the

Parties within thirty (30) calendar days after termination of this Agreement, pursuant to this Agreement.

- 1.4.3 CPUC Jurisdiction – If the CPUC or any other regulatory body, at any time, shall assert that Interconnector as a result of delivery of Gas hereunder, is a public utility or subject to regulation as such or that such regulatory body may prevent SoCalGas from complying with this Agreement in any respect, then within thirty (30) calendar days of such assertion either Party may, upon written notice to the other Party, terminate this Agreement effective thirty (30) calendar days after such written notice, except that it shall survive in those particulars required to resolve any remaining Operational Imbalance which shall be resolved by the Parties within thirty (30) calendar days after termination of this Agreement, pursuant to this Agreement.

## **SECTION II** **SCHEDULING**

2.1 Nominations, Confirmations and Scheduling - Prior to the date and time of flow at the Interconnection Point, the Parties shall nominate, confirm and schedule volumes of Gas which will be delivered or received at the Interconnection Point. Such nominations and confirmations between the Parties shall be made electronically or in writing, unless otherwise mutually agreed to by the Parties. Such nominations, confirmations and scheduling by the Interconnector will be in compliance with the North American Energy Standards Board (“NAESB”) standards and SoCalGas protocols. If Interconnectors’ Gas is delivered through a Split Meter, then one of the California Producers delivering Gas through that Split Meter shall be designated as the Interconnection Point operator who shall provide SoCalGas, in writing, with the Split-Meter allocation for that particular Split Meter within seven (7) calendar days after each non-OFO Day and within one (1) business day after each OFO Day. If the Split-Meter allocation is not provided by the Interconnection Point operator by the close of business (5:00 P.M. Pacific Clock Time) on the applicable day, then the last Split-Meter allocation provided by the Interconnection Point operator shall be used.

2.2 Operational Imbalance and Cash-Out – Interconnector shall to the extent feasible make deliveries of Gas at the Interconnection Point at substantially uniform rates of flow during a particular flow day. Any Operational Imbalance outside of the Tolerance Band (as defined in Subsection 2.2.1) created will be the responsibility of the Interconnector to eliminate pursuant to this Agreement. For Gas accounting purposes, all daily Scheduled Quantities as scheduled for flow day shall be deemed to be delivered regardless of the actual volume of Gas delivered. Any Operational Imbalance outside of the Tolerance Band shall be eliminated as soon as practicable, using the same Interconnection Point, by mutually agreeable arrangements between Interconnector and SoCalGas.

2.2.1 Non-OFO Days - If, at any Interconnection Point, the cumulative Operational Imbalance is outside the tolerance band of plus or minus ten percent ( $\pm 10\%$ ) of seven (7) days of Interconnect Capacity expressed in decatherms (\_\_\_\_\_ Dth) (“Tolerance Band”), the following flow day shall begin an Operational Imbalance payback period (hereinafter “Payback Period”) not to exceed fourteen (14) calendar days. The 14-day Payback Period for an Operational Imbalance resulting from a Split Meter shall begin on the flow day after the date the Operational Imbalance allocation is finalized by SoCalGas. An Operational Imbalance shall be deemed to be finalized when the Operational Imbalance is posted by SoCalGas on its Electronic Bulletin Board (“EBB”) and designated as such. The Payback Period will be used to bring the cumulative Operational Imbalance that occurred before and during the Payback Period within the Tolerance Band. During the 14-day Payback Period, the Interconnector may also trade any Operational Imbalances, accruing to or caused by Interconnector, with other Interconnector(s) with an effective California Producer Operational Balancing Agreement (“Trading Partner”). A trade will not be confirmed by SoCalGas if the trade would cause the Trading Partner’s Operational Imbalance to go outside its Tolerance Band. The Interconnector may trade Operational Imbalance quantities up to a maximum of its cumulative Operational Imbalance including quantities outside of its own Tolerance Band and those quantities within its own Tolerance Band. SoCalGas will verify each such trade on the next business day and make appropriate quantity adjustments to the associated accounts on that day. When the cumulative Operational Imbalance is no longer outside the Tolerance Band, the Payback Period will cease. If at the end of the Payback Period any positive Operational Imbalance (over-deliveries) outside of the Tolerance Band still remains, then it will be subject to a cash-out paid by SoCalGas to Interconnector at the rate set forth in Schedule No. G-CPS. If at the end of the Payback Period any negative Operational Imbalance (under-deliveries) outside of the Tolerance Band still remains, then it will be subject to a cash-out paid by Interconnector to SoCalGas at the rate set forth in Schedule No. G-CPS. The Parties may mutually agree to waive the balancing provisions of this Agreement and to permit an Operational Imbalance to arise, in which case such imbalance shall be reduced to, or below, a specified Dth level as soon as practicable according to a mutually agreed upon schedule.

2.2.2 Split Metering – Financial responsibilities for any resulting imbalance cash-out payments, including any cash-out payments for imbalances on OFO Days, and credit requirements shall belong

individually to each California Producer (as described in its own California Producer Operational Balancing Agreement or another agreement governing access to SoCalGas' system) using the Split Metering arrangement.

- 2.2.3 OFO Days – During OFO Days, the Interconnector shall be required to balance in accordance with SoCalGas' Rule 30 and be subject to the charges specified therein. The requirement to balance on the OFO Day shall be applied at all times, including any defined Payback Period. Operational Imbalance quantities during an OFO Day that are outside the appropriate OFO Day tolerance level will be considered in the calculation of the cumulative Operational Imbalance for non-OFO Days. Operational Imbalances cashed out pursuant to Rule 30 will be removed from the Interconnector's Operational Imbalance and the information will be promptly communicated to the Interconnector. For Split Meters, the allocation of Gas deliveries on OFO Days shall be in accordance with Section 2.1. The financial responsibility for any Split Meter cash-outs for OFO Days shall be in accordance with Section 2.2.2.

2.3 Measurement Correction - Operational Imbalances that may arise from time to time as the result of a measurement correction for a prior period shall be resolved as follows: (i) by adding or subtracting the measurement correction to the Interconnector's then existing cumulative Operational Imbalance, or (ii) on a "cash-out" basis, or (iii) by some other mutually agreed to method. In the event the Parties cannot agree within thirty (30) calendar days after the occurrence of such Operational Imbalance as to the method to be used for the resolution of the Operational Imbalance, the "cash-out" basis shall be utilized. The cash-out rate will be equal to the average of the Average California/Arizona border price index for delivery into SoCalGas ("Daily Index – SoCal Border Average") as reported by Natural Gas Intelligence ("NGI") (or its legal successor) for each day of that particular prior period. For a positive Operational Imbalance, the cash-out will be paid by SoCalGas to Interconnector. For a negative Operational Imbalance, the cash-out will be paid by Interconnector to SoCalGas. If, for any reason, NGI (or its legal successor) ceases to be available for a particular imbalance period, the cash-out rate will be based on another generally accepted available publication mutually agreed to in writing by the Parties.

#### 2.4. Balancing

- 2.4.1 Estimated operating quantities flowing at the Interconnection Point shall be used during any current period to determine the estimated Operational Imbalance at such Interconnection Point, with physical flow and/or scheduling adjustments to be made during that current period to keep the Operational Imbalance within the Tolerance Band. Interconnector and SoCalGas shall cooperate in order to minimize the daily over- and under-deliveries. In this regard,



Interconnector's and SoCalGas' Gas control and/or scheduling personnel shall be in contact, to the extent necessary, each day in order to balance daily delivered quantities of Gas with Scheduled Quantities of Gas. For the purpose of this Agreement, delivery or receipt of any Gas to resolve an Operational Imbalance is not subject to transportation charges by either Party.

2.4.2 The actual measured quantity of Gas at the Interconnection Point each day shall be determined and communicated by SoCalGas on its EBB. The actual measured quantity shall be determined pursuant to the applicable provisions of SoCalGas' measurement procedures and standard methodologies consistent with standard industry practices. To the extent that the actual measured quantity of Gas differs from the estimated operating quantity of Gas at the Interconnection Point, at the beginning of each month SoCalGas will calculate the difference (actual minus estimated) between the two quantities for the previous month ("True-up"). SoCalGas will add the True-up to the cumulative Operational Imbalance up to the Tolerance Band. Any True-up quantities falling outside the Tolerance Band will be subject to the cash-out rate set forth in Schedule No. G-CPS. For a positive Operational Imbalance, the cash-out will be paid by SoCalGas to Interconnector. For a negative Operational Imbalance, the cash-out will be paid by Interconnector to SoCalGas.

2.4.3 On, or about, the 9<sup>th</sup> business day of each calendar month, information showing the quantity of Gas scheduled and delivered at the Interconnection Point during the previous month, including any quantity of Gas traded pursuant to Section 2.2.1, shall be available in SoCalGas' EBB. The information on the ending cumulative imbalance quantity shall also be provided. The Operational Imbalances shall be deemed to be agreed to unless either Party notifies the other Party within seven (7) calendar days that it believes there is an error. At a later date during the month an invoice shall be rendered showing any cash-out charges or other charges and credits, along with supporting price and volume data and detailed cash-out price calculations to enable Interconnector or third-party verification. Billing and payment shall be consistent with SoCalGas' Tariff Rule 12.

2.4.4 All imbalances shall be recorded on a Decatherm basis for accounting purposes.

2.4.5 If over a period of any consecutive twelve (12) months it is found that the Interconnector is deviating by more than 10% from uniform daily deliveries more often than it is complying with that

requirement, then SoCalGas reserves the right to suspend service until such time appropriate actions have been taken to ensure compliance with this provision.

2.5 Disputed Calculations - All reasonable efforts shall be made by the Parties to resolve any disputed computations. Either Party may pursue resolution of a dispute as to computations or imbalances owed hereunder in accordance with the provisions of this Agreement; however, unless the Parties mutually agree otherwise, delivery of the entire imbalance due, including any disputed imbalance, shall be made to the respective Party notwithstanding such dispute resolution. Delivery of the disputed imbalance(s) shall not be deemed a waiver of any rights to recoup any imbalance amount in dispute.

### **SECTION III** **DEFAULT**

3.1 Waiver - A waiver by either Party of any one or more defaults by the other Party hereunder shall not operate as a waiver of any future default or defaults, whether of like or different character. Furthermore, no consent or waiver, expressed or implied, by any Party of any breach or default by the other Party in the performance of its obligations hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance of any other obligation of the other Party. Failure on the part of any Party to complain of any act or failure to act by the other Party or to declare the other Party in default, regardless of how long such failure continues, shall not constitute a waiver by such Party of any of its rights hereunder.

3.2 Regulatory Impairment – This Agreement shall at all times be subject to such changes or modifications by the CPUC as said Commission may from time to time direct in the exercise of its jurisdiction. Notwithstanding the other provisions of this Agreement, if at any time during the term hereof, any governmental authority having jurisdiction: (a) requires changes or modifications to the terms of this Agreement that are unacceptable to either Party; or (b) takes any action whereby either Party’s delivery, receipt, and/or use of Gas hereunder shall be proscribed or subjected to terms, conditions, regulations, restraints, or limits that in the reasonable judgment of a Party prevents that Party from acting in a commercially reasonable manner to fulfill the terms of this Agreement, then such Party shall have the unilateral right to terminate this Agreement at any time upon thirty (30) calendar days written notice to the other Party, without further performance due or liability hereunder, except as to redelivery of any outstanding Gas imbalances. Nothing herein shall prevent the Parties through mutual agreement from modifying this Agreement in lieu of termination.

3.3 Sole Remedy - Each Party agrees that its sole remedy for nonperformance by the other Party or other default by the other Party in the performance of its obligations under this Agreement shall be as specified in this Agreement. Both Parties agree to use commercially reasonable efforts and actions to correct nonperformance on their respective systems in a timely manner.

3.4 Reconciliation - Upon the termination of this Agreement, the Parties agree to reconcile and eliminate any remaining Operational Imbalance pursuant to the terms and conditions of this Agreement within thirty (30) calendar days of termination. If the negative imbalance (i.e., under-deliveries) is not resolved within such thirty (30) calendar days, any remaining imbalance shall be reduced to zero (0) by cashing out at the highest High Daily Index – SoCal Border Average as reported by NGI (or its legal successor) during this 30-day Operational Imbalance Payback Period. If the positive imbalance (i.e., over-deliveries) is not resolved within such thirty (30) calendar days, any remaining imbalance shall be reduced to zero (0) by cashing out at the lowest Low Daily Index – SoCal Border Average as reported by NGI (or its legal successor) during this 30-day Operational Imbalance Payback Period. For a negative Operational Imbalance, the cash-out will be paid by Interconnector to SoCalGas. For a positive Operational Imbalance, the cash-out will be paid by SoCalGas to Interconnector. If, for any reason, NGI (or its legal successor) ceases to be available for this particular Payback Period, the cash-out rate will be based on another generally accepted available publication mutually agreed in writing by the Parties.

#### **SECTION IV** **NOTICES**

Any notice, request, or statement provided pursuant to this Agreement shall be in writing and shall be considered as having been given, if delivered personally, when delivered, or, if either electronically communicated, mailed, sent by express mail, or overnight delivery, or if telecopied to the other Party, then, when received, at the following:

#### **AGREEMENT NOTICES AND OTHER CORRESPONDENCE**

|                |                                    |
|----------------|------------------------------------|
| Interconnector | Southern California Gas Company    |
|                | 555 W. Fifth Street                |
|                | Los Angeles, California 90013-1011 |
| Telephone:     | Telephone: (213) 244-              |
| Telefax:       | Telefax: (213) 244-                |
| Attn:          | Attn:                              |
|                | M.L.                               |
| E-mail:        | E-mail:                            |

## DISPATCHING AND NOMINATIONS

|                     |                                                                                              |
|---------------------|----------------------------------------------------------------------------------------------|
| Interconnector      | Southern California Gas Company<br>555 W. Fifth Street<br>Los Angeles, California 90013-1011 |
| Dispatch Telephone: | Gas Control: (323) 266-5888                                                                  |
| Telefax:            | Scheduling Fax: (213) 244-8281                                                               |
| Nominations:        | Nominations: (213) 244-3900                                                                  |
| Attn:               | Attn: Gas Scheduling<br>M.L. 20B5                                                            |
| E-mail:             | Gasscheduling@semprautilities.com                                                            |

## ALLOCATION STATEMENTS

|                |                                                                                              |
|----------------|----------------------------------------------------------------------------------------------|
| Interconnector | Southern California Gas Company<br>555 W. Fifth Street<br>Los Angeles, California 90013-1011 |
| Telephone:     | Telephone: (213) 244-3812                                                                    |
| Telefax:       | Telefax: (213) 244-8281                                                                      |
| Attn:          | Attn: Scheduling Manager,<br>M.L. GT20B5                                                     |
| E-mail:        | Gasscheduling@semprautilities.com                                                            |

Changes to the designated contacts, addresses and telefax and telephone numbers specified herein may be changed from time to time by the Party affected after two (2) calendar days written notice.

## **SECTION V** **INDEMNITY**

5.1 Indemnity - Each Party shall be solely responsible for and shall indemnify, defend and hold harmless the other Party, its parent and affiliates including its officers, Board of Directors, agents, contractors, and employees thereof against losses, costs and expenses (including in-house and outside attorneys' fees), claims, enforcement actions, judgments or other obligations or liabilities, resulting from physical injury to property or person, or a violation of a local, state or federal common law; statute or representation, arising from the indemnifying Party's performance or nonperformance of its obligations under this Agreement; provided, however, that neither Party shall be obligated to indemnify the other Party against any losses, however caused, which arise in whole or in part from the sole negligence, or willful or criminal misconduct of that Party.

5.2 Risk of Loss - Risk of loss of all Gas shall pass at the Interconnection Point. SoCalGas shall not be responsible to Interconnector or Interconnector's Service Requester(s) for any Gas losses or delays (due to operating conditions or constraints, force

majeure or otherwise) or damages or injuries occurring on Interconnector's side of the Interconnection Point and Interconnector shall not be responsible to SoCalGas or SoCalGas' Service Requester(s) for Gas losses or delays (due to operating conditions or constraints, force majeure or otherwise) or damages or injuries occurring on SoCalGas' side of the Interconnection Point; provided that if the damages or injuries are caused by or attributable to excessive pressure or the quality of Gas that Interconnector or Interconnector's Service Requester(s) delivers at the Interconnection Point, then Interconnector or Interconnector's Service Requester(s) agrees to be responsible and shall be responsible for all such damages or injuries.

5.3 Limitation of Liability - Notwithstanding any other provision hereof, neither Party shall be liable to the other Party for or assessed pursuant to Section VI or otherwise any special, punitive, consequential, incidental, or indirect damages or for lost business or lost profits, whether under tort, breach of contract, strict liability or any other theory, even if the Party has been advised of the possibility of such damages. SoCalGas is not committing to provide any capacity on its system or access rights to its system to Interconnector as a result or benefit of this Agreement.

## **SECTION VI DISPUTE RESOLUTION**

6.1 Disputes - The Parties shall use their best efforts to resolve any disputes arising out of or pertaining to the provisions of this Agreement informally by good faith negotiations. Any such dispute that cannot be resolved shall be submitted to the CPUC for resolution under whatever process is then currently available.

## **SECTION VII ASSIGNMENT**

7.1 Assignment - Assignment or transfer of the entire rights and obligations of either Party hereunder shall only be permitted under one of the following circumstances:

- 7.1.1 When the assignment is to a successor, representative or assignee which shall succeed by purchase, merger, corporate reorganization/restructuring or consolidation to all or substantially all of the assets of Interconnector or SoCalGas, as the case may be and when the assignment is to a parent, affiliate or subsidiary of a Party hereto; or
- 7.1.2 When either Party assigns or pledges this Agreement under the provisions of any mortgage, deed of trust, indenture or similar instrument which it has executed or may execute hereafter;

however, in such event the other Party shall be provided prior written notice thereof; or

- 7.1.3 When the Party assigning shall have first obtained the consent in writing of the other Party hereto, such consent shall not be unreasonably withheld.

## **SECTION VIII MISCELLANEOUS**

8.1 No Dedication - Nothing herein shall be construed as a dedication by any Party of its respective facilities to the other Party or to or for the benefit of any third party. Both Parties may each construct such facilities on their respective systems, as they may deem necessary or appropriate in their sole discretion. Nothing herein obligates either Party to construct any additional facilities (including measuring facilities) over and above those included within the California Producer Interconnection Agreement or to modify any future facilities not described herein or existing facilities to provide for the receipt or delivery of Gas contemplated hereunder.

8.2 Information - Each Party shall have the right to request, and upon such request, the other Party shall provide, information that is sufficient to meet its obligations and to enforce its rights under this Agreement including the verification of the accuracy of any computation contemplated under this Agreement. If the information is considered confidential, then the disclosing Party shall identify it as such and the receiving Party shall treat it as such. Notwithstanding the above, no Party shall be required to provide the other Party with information that is confidential, proprietary, or in violation of the rules and regulations of either the FERC or CPUC.

8.3 Force Majeure - In the event a Party is rendered unable, wholly or in part, by an event of force majeure (as defined in SoCalGas' tariff) to carry out its respective obligations under this Agreement, it is agreed that upon such Party giving notice and reasonably full particulars of such event of force majeure in writing, electronic mail or by telecopy or by telephone (and confirmed in writing within seventy-two (72) hours thereafter), to the other Party within a reasonable time after the occurrence of the cause relied on, then the obligations of the Party giving such notice, so far as they are affected by such event of force majeure, shall be suspended during the continuance of the effects of the cause, but for no longer and the Party subject to such cause shall remedy it so far as possible with all reasonable dispatch. No event of force majeure shall affect any Party's ability to suspend performance as set forth in Section 4(i) of the California Producer Interconnection Agreement.

8.4 Choice of Law - As to all matters of construction and interpretation, this Agreement shall be interpreted in accordance with the laws of California, excluding any choice of law or rules, which direct the application of laws of another jurisdiction.

8.5 Entire Agreement - This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof, supersedes all prior discussions, agreements and understandings, whether oral or written, which the Parties may have in connection herewith (specifically excepting the California Producer Interconnection Agreement, which is not affected by this Agreement) and may not be amended or modified except by written agreement of the Parties, and shall not be modified by course of performance, course of conduct or usage of trade.

8.6 Context - Whenever the context may require, the singular form of nouns, pronouns and verbs shall include the plural and vice versa. Unless otherwise stated, a reference to a paragraph shall include all sub-paragraphs, e.g., a reference to section 2 shall, unless otherwise indicated, include paragraph 2.1, 2.2, 2.3, and so on.

8.7 Survivability - Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of that prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of that provision in any other jurisdiction. Notwithstanding any termination of this Agreement for any reason, Sections 3, 5 and 8 shall survive.

#### 8.8 Credit

8.8.1 Any Interconnector which is delivering Gas into the SoCalGas system under an existing access agreement, as of August 23, 2007 -the effective date of D.07-08-029, shall be deemed creditworthy unless the Interconnector shows a pattern of material past due payments or the Interconnector's financial condition has materially degraded.

8.8.2 SoCalGas shall have the right, but not the obligation, to reevaluate the creditworthiness of any Interconnector whenever such Interconnector fails to fulfill its financial obligations under this Agreement or whenever the financial condition of the Interconnector has materially changed, including but not limited to a change or transition in ownership, a request for a substantial increase in the amount of Gas to be delivered to SoCalGas has been made, or significant under-deliveries have occurred.

8.8.3 In the event a reevaluation of credit of an existing Interconnector is deemed necessary by SoCalGas, or if Interconnector is a new Interconnector, such Interconnector shall provide SoCalGas with such Interconnector's most recent annual report and the Interconnector's most recent SEC Form 10-K or a copy of the Interconnector's audited financial statement.

8.8.4 The creditworthiness evaluation may be performed by an outside credit analysis agency selected by SoCalGas, with final credit

approval granted by SoCalGas. The creditworthiness evaluation shall consider the credit facilities that are already in place between SoCalGas and the Interconnector and the Interconnector's affiliate(s) so that the credit coverage is not duplicative. Also, a third party (the "Guarantor") shall be allowed to assume creditworthiness on behalf of the Interconnector in accordance with the following provisions:

SoCalGas may accept a guaranty in an amount, from an issuer, and in a form acceptable to SoCalGas in its sole discretion (the "Guaranty") from the Guarantor.

The Guarantor shall deliver and maintain the Guaranty until such time when the Interconnector is able to demonstrate the Interconnector's creditworthiness to SoCalGas, as determined by SoCalGas in its sole discretion. The Interconnector shall be in default of this Agreement if a replacement guaranty (in a form, from an issuer and in an amount acceptable to SoCalGas in its sole discretion) or a cash deposit or letter of credit in an amount determined by SoCalGas in accordance with Section 8.8.5 is not received within fifteen (15) calendar days of SoCalGas' notice to the Interconnector of a determination that the Guarantor is no longer creditworthy (or SoCalGas is unable to determine the creditworthiness of the Guarantor), as determined by SoCalGas in its sole discretion.

- 8.8.5 In the event SoCalGas denies the Interconnector or its Guarantor an unsecured line of credit, SoCalGas shall provide the Interconnector, within seven (7) calendar days of the denial of credit, with an explanation as to why the Interconnector or its Guarantor was denied credit. If the Interconnector or its Guarantor is denied an unsecured line of credit, SoCalGas shall accept as a security deposit, for a secured line of credit, a cash deposit, or letter of credit or other instrument acceptable to SoCalGas that meets the following criteria: the Interconnector's Interconnect Capacity multiplied by 40 days, and then multiplied by the average of the Average Daily Index – SoCal Border Average as reported by NGI (or its legal successor) for each day of the immediately preceding calendar month. If, for any reason, NGI (or its legal successor) ceases to be available, the price index will be based on another generally accepted available publication selected by SoCalGas in its sole discretion.



8.9 Publicity - Any public statements, publicity or press releases concerning this Agreement and the transactions contemplated by this Agreement shall be jointly planned and coordinated by and between the Parties. No Party shall act unilaterally regarding such publicity or press releases without the prior written approval of the other Party, which approval shall not be unreasonably withheld.

8.10 Attorneys' Fees - Should any dispute arise regarding any term or provision of this Agreement or enforcement of any rights hereunder, or to collect any portion of the amount payable under this Agreement, then all litigation and collection expenses, witness fees, court costs and attorney's fees shall be paid to the prevailing Party.

8.11 Compliance with Law - This Agreement and the terms and conditions herein are subject to all present and future valid laws, orders, rules, and regulations of duly constituted authorities having jurisdiction. SoCalGas shall provide notice to the Interconnector prior to filing any request for a change to its tariffs that would affect this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed duplicate originals of this Agreement on the date set forth hereinabove.

INTERCONNECTOR

SOUTHERN CALIFORNIA GAS  
COMPANY

\_\_\_\_\_

\_\_\_\_\_

By:

By:

\_\_\_\_\_

\_\_\_\_\_

Printed Name:

Printed Name:

\_\_\_\_\_

\_\_\_\_\_

Title:

Title:

\_\_\_\_\_

\_\_\_\_\_

Date:

Date:

\_\_\_\_\_

\_\_\_\_\_

**EXHIBIT 1: SYSTEM MAP**

**TO THE CALIFORNIA PRODUCER OPERATIONAL BALANCING AGREEMENT**  
between

\_\_\_\_\_ and  
Southern California Gas Company  
Dated: \_\_\_\_\_, 20\_\_

**EXHIBIT 2: SOCALGAS' FACILITIES**

**TO THE CALIFORNIA PRODUCER OPERATIONAL BALANCING AGREEMENT**

between

\_\_\_\_\_ and  
Southern California Gas Company  
Dated: \_\_\_\_\_, 20\_\_

**EXHIBIT 3: LOCATION**

**TO THE CALIFORNIA PRODUCER OPERATIONAL BALANCING AGREEMENT**  
between

\_\_\_\_\_ and  
Southern California Gas Company  
Dated: \_\_\_\_\_, 20\_\_

| <u>D-U-N-S®</u><br><u>NUMBER</u> | <u>RECEIPT/DELIVERY</u><br><u>DESIGNATION</u> | <u>PROPRIETARY GAS</u><br><u>TRANSACTION</u><br><u>POINT CODE</u> | <u>DRN NO.</u> | <u>DESCRIPTION</u>                                                                                                                                                             |
|----------------------------------|-----------------------------------------------|-------------------------------------------------------------------|----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                  |                                               |                                                                   |                | Interconnection<br>between the facilities<br>of _____ and<br>Southern California<br>Gas Company located<br>at County: _____<br>Section _____<br>Township: ____;<br>Range ____. |