

SAMPLE FORMS - CONTRACT
Exhibit D - Interconnect
Collectible System Upgrade Agreement (Form 6430, 11/2006)

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(TO BE INSERTED BY UTILITY)

ADVICE LETTER NO. 3675
DECISION NO. 06-09-039

108

ISSUED BY

Lee Schavrien
Vice President
Regulatory Affairs

(TO BE INSERTED BY CAL. PUC)

DATE FILED Nov 1, 2006
EFFECTIVE Jun 7, 2007
RESOLUTION NO. _____

EXHIBIT D

INTERCONNECT
COLLECTIBLE SYSTEM UPGRADE AGREEMENT

This Agreement (“Agreement”) is entered into as of _____[date] by and between Southern California Gas Company (“SoCalGas”) and _____[company name], a _____[type] company (“Interconnector”). SoCalGas and Interconnector may be referred to herein severally as a “Party,” or jointly as “Parties.”

WHEREAS, SoCalGas is a public utility regulated by the California Public Utilities Commission and is involved in the receipt and redelivery of natural gas to its customers; and

WHEREAS, Interconnector is a _____[company type] and would benefit from SoCalGas being capable of receiving Gas at the Interconnection Point for redelivery to customers; and

NOW THEREFORE, in consideration of the promises and mutual undertakings set forth below, SoCalGas and Interconnector agree as follows:

SECTION 1

SCOPE OF AGREEMENT

(a) Scope - This Agreement sets forth the terms and conditions under which SoCalGas agrees to design, engineer and construct Gas facilities including pipelines, meters, regulators and appurtenant facilities and related system upgrades in order to provide the Interconnect Capacity from Interconnector’s pipeline facilities near _____ in _____, California to SoCalGas’ existing utility system. Such facilities, which include all facilities and equipment necessary for receipt of Interconnector’s Gas, shall permit Gas to be delivered by Interconnector to SoCalGas pursuant to the Interconnection Agreement (“IA”) and Operational Balancing Agreement (“OBA”) between the Parties dated _____[date], for the account of itself or third party shippers for transport on SoCalGas’ pipeline system in California. Interconnector agrees to pay the actual costs for SoCalGas’ Facilities constructed by SoCalGas hereunder. Payment by Interconnector does not imply that Interconnector is entitled to receive firm access rights at the Interconnection Point under this Agreement. Attached hereto as Exhibit A and incorporated by reference herein is a map on which the Interconnector’s Facilities are indicated generally. The Interconnection Point and SoCalGas’ Facilities (see definition for each below) are indicated generally on the map attached hereto as Exhibit B, and incorporated by reference herein.

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

(i) “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, for receipt into SoCalGas’ system in the state of California pursuant to this Agreement. SoCalGas’ Facilities shall be owned and operated by SoCalGas.

(ii) “CPUC” shall mean the Public Utilities Commission of the State of California.

(iii) “Gas” or “natural gas” for purposes of this Agreement 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.

(iv) “In-Service Date” is that date when SoCalGas’ Facilities from the Interconnection Point are operationally capable of utilizing the Interconnect Capacity on a continuous basis for Gas deliveries from Interconnector, and receipt thereof by SoCalGas at the Interconnection Point. This does not address whether the Interconnector has established the physical capability for the Interconnection Capacity at the Interconnection Point nor does it address whether SoCalGas has established the physical takeaway capability for the Interconnection Capacity downstream of the outlet of SoCalGas’ Facilities at the Interconnection Point.

(v) “Interconnect Capacity” shall be as defined in the IA. _____ Interconnect Capacity does not reflect SoCalGas’ ability to provide takeaway capacity from the outlet of SoCalGas’ Facilities at the Interconnection Point.

(vi) “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 set forth on Exhibit B.

(vii) “Interconnector’s Facilities” shall mean those Gas pipeline facilities, as shown generally on Exhibit A, to be constructed and operated by Interconnector up to the Interconnection Point.

(c) Hinshaw Exemption - SoCalGas is exempt from jurisdiction of the Federal Energy Regulatory Commission (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)).

SECTION 2

CONDITIONS PRECEDENT

(a) Intent - This Agreement establishes the intent of the Parties that they shall attempt diligently, and cooperate with each other in good faith, to discharge promptly all conditions set forth in Subsection 2(b) prior to the dates specified below. In the event such conditions are not satisfied or waived by the date applicable thereto, this Agreement may be terminated as specified in Subsection 2(d).

(b) Conditions:

(i) Governmental Authorizations:

1. Interconnector: On or before _____[date], Interconnector shall have received and accepted from any and all applicable governmental entities all material authorizations necessary for the construction and operation of Interconnector's Facilities.

2. SoCalGas: On or before commencement of construction, SoCalGas shall have received and accepted: (1) from the CPUC, if necessary, authorizations approving this Agreement, and provided that such authorizations are, in the sole discretion of SoCalGas, acceptable to SoCalGas; and (2) from any other governmental or local agency, if necessary in SoCalGas' sole judgment, the proper approvals required for SoCalGas to dispense its duties under this agreement.

(ii) Interconnector Commitments: On or before commencement of construction, Interconnector shall have paid SoCalGas for SoCalGas' total estimated expenditures/investments related to the interconnection of Interconnector's Facilities to SoCalGas' Facilities as set forth in Section 3 (c) herein.

(iii) SoCalGas Commitments: On or before commencement of construction, SoCalGas shall have accepted payment by Interconnector of the total estimated expenditures/investments related to the interconnection of Interconnector's Facilities to SoCalGas' Facilities as set forth in Section 3 (c) herein

(c) Notification - Each Party shall notify the others in writing whenever in its sole opinion any of the foregoing conditions in Subsection 2(b) have been satisfied. Interconnector shall retain the right to waive conditions (b)(i)(2) and SoCalGas shall retain the right to waive conditions (b)(i)(1) and (b)(ii) (but no such condition may be waived except in writing).

(d) Termination Conditions - In the event that any of the conditions in subsection 2(b) have not been satisfied or waived by all Parties by the date specified therein, the Parties shall meet within fifteen (15) days following such date to discuss in good faith whether or not this Agreement can be restructured on a mutually satisfactory basis under the circumstances. In the event the Parties are unable to agree on such a

restructuring within forty-five (45) days after the first meeting on such matter, this Agreement may either (i) be extended up to an additional ninety (90) days thereafter by mutual consent obtained on or before such 45th day, or (ii) be terminated if any Party, within fifteen (15) days thereafter, gives ten (10) days prior written notice; provided, however, such termination shall not become effective if such condition under Subsection 2(b) has been satisfied or waived prior to the effective date of such termination.

(e) Cooperation - Each Party shall cooperate with the other Parties as is reasonable under the circumstances, and keep the other Parties advised of all significant developments in connection with applying for or obtaining satisfaction of the conditions specified in Subsection 2(b).

(f) Termination Charges - In the event that this Agreement is terminated under Subsection 2(d), Interconnector shall pay SoCalGas the actual costs of that portion of SoCalGas' Facilities constructed to date plus any other costs already incurred and other unavoidable costs incurred or to be incurred by SoCalGas arising out of SoCalGas' performance pursuant to this Agreement.

SECTION 3

CONSTRUCTION, PAYMENT, AND OPERATIONS

(a) Description of Interconnection Facilities - Interconnector's Facilities shall interconnect with the SoCalGas' Facilities at the Interconnection Point. All deliveries of Gas by Interconnector to SoCalGas for transport shall occur at the Interconnection Point.

(b) Installation of Facilities - At the Interconnection Point, Interconnector shall install such piping, regulators, valves, meters, separators, quality measurement, odorant or other equipment as the Parties mutually agree are necessary to measure, regulate and deliver gas at the Interconnection Point, Gas volumes in an amount up to the Interconnect Capacity (or such other volume as mutually agreed) at a delivery pressure sufficient to enter the SoCalGas system but not to exceed the MAOP of the SoCalGas transmission system at the Interconnection Point. SoCalGas shall design, engineer, acquire permits and rights-of-way, and, if necessary, construct, and install such piping, regulators, valves, meters, separators, quality measurement, odorant or other equipment, as it deems necessary to have the capability to measure, regulate, receive from the Interconnection Point Gas volumes in an amount up to the Interconnect Capacity (or such other volume as mutually agreed). All Interconnector's and SoCalGas' equipment shall meet SoCalGas' minimum specifications for materials, installation, testing and acceptance.

(i) No SoCalGas Facilities which are to be paid for by Interconnector shall be designed, engineered or constructed by SoCalGas without Interconnector's prior written approval of the total estimated cost, as set forth in Exhibit C. Interconnector acknowledges that the total estimated cost is an estimate only and that

Interconnector will be responsible for SoCalGas' actual costs including, but not limited to, its labor, procurement, permits and associated fees, indirect costs and internal overheads, of designing, engineering, installing and constructing any facilities described in Exhibit C, including any related income tax liability thereon, whether or not such costs are above or below advance payments made or detailed cost estimates provided to Interconnector by SoCalGas.

(ii) SoCalGas shall submit to Interconnector, as available from time to time, any proposal regarding the scope of services to be performed, and schedules for construction (including ordering materials) and estimated costs related to implementing such Interconnection Capacity as defined in Exhibit C, based on the mutually agreed date projected as the In-Service Date (as determined in good faith from time to time);

(iii) Interconnector shall, within a reasonable period of time given the nature of any such proposal, accept or reject any such proposal in writing;

(iv) Interconnector shall be solely responsible hereunder for any failure by SoCalGas to timely complete SoCalGas' Facilities at the Interconnection Point delaying the In-Service Date including all costs resulting therefrom, which failure is solely attributable to Interconnector's delay or refusal in approving any reasonable proposal by SoCalGas; and

(v) Prior to SoCalGas making any financial commitment hereunder, SoCalGas, in its sole discretion, shall be satisfied that Interconnector has the financial capability of performing fully any payment obligations to SoCalGas that may arise in connection therewith.

(c) Payment by Interconnector - Interconnector shall advance SoCalGas' total estimated costs set forth within the scope of an approved Exhibit C. After a final accounting has been made by SoCalGas but in no event later than _____[date], Interconnector shall reimburse SoCalGas for its actual costs above the prepaid estimated costs, including indirect costs and overheads, carrying costs, designing, engineering, installing, permitting and constructing SoCalGas' Facilities set forth in an approved Exhibit C, and including any related income, CIAC, or other tax liability thereon, even if such costs are above cost estimates provided to Interconnector by SoCalGas within thirty (30) days of invoice from SoCalGas. After a final accounting has been made by SoCalGas but in no event later than _____[date], any advances paid, which are in excess of SoCalGas' actual costs, shall be returned to Interconnector.

1. Interconnector may request and SoCalGas shall agree to Interconnector's audit by a certified public accountant of the accounting records applicable to the construction of SoCalGas' Facilities installed and owned by SoCalGas hereunder at Interconnector's expense. Such audit may be conducted during the term hereof or for a period of up to one year after termination.

(d) Interconnector Guaranty - In the event that on or before, _____, the In-Service Date has not occurred, SoCalGas shall invoice Interconnector and Interconnector shall within ninety (90) days following receipt of the invoice, reimburse SoCalGas for the actual costs unpaid to date (including indirects, overheads, and carrying costs if applicable) of all SoCalGas' Facilities constructed and services provided pursuant to this Agreement.

(e) Coordination - The Parties shall cooperate together and establish such procedures as may be deemed appropriate by the Parties to coordinate the design, planning, construction and completion by the In-Service Date of Interconnector's and SoCalGas' Facilities at the Interconnection Point.

(f) General Indemnity - As between SoCalGas on the one hand, and Interconnector on the other hand, each Party shall be solely responsible for, and shall indemnify, defend and hold the other Party and its officers, shareholders, employees, agents, representatives, successors and assigns harmless from and against any and all claims, actions, suits, proceedings, losses, liabilities, penalties, fines, damages, costs or expenses including without limitation, reasonable attorneys fees (including fees and disbursements of in-house and outside counsel) of any kind whatsoever to the extent resulting from the indemnifying Party's negligent performance of its obligations pursuant to this Agreement.

(g) Specific Indemnity - As to the actual "tying-in" of the respective facilities constructed by the Parties under this agreement, SoCalGas shall be solely responsible for performing the "tie-in".

SECTION 4

ASSIGNMENT

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

(a) When the assignment is to a successor, representative or assignee which shall succeed by purchase, merger, corporate reorganization/restructuring or consolidation to the respective interconnection facilities of Interconnector or SoCalGas, as the case may be, including without limitation an assignment to a parent, affiliate or subsidiary of a Party hereto; or

(b) When any 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 Parties shall be provided prior written notice thereof; or

(c) When the Party assigning shall have first obtained the consent in writing of the other Party hereto, which consent shall not be unreasonably withheld.

(d) Notwithstanding the above, no assignment or other transfer of utility property subject to California Public Utilities Code §851 will occur without having secured prior CPUC authorization.

SECTION 5

NOTICES

(a) Form of Notice - All notices including invoices provided for herein shall be given in writing, and either hand delivered, or sent by prepaid priority courier, or sent by telephone facsimile (“telefax”) with original to follow by regular mail. In the case of courier delivery, delivery shall be deemed to occur three (3) business days after delivery to the courier by the sending Party and in the case of telefax the following business day after telephonic confirmation that the message was sent and received. Unless changed as set forth below, the addresses and telefax number of the Parties for purposes of this Section 5 are as follows:

Interconnector:

Mailing Address:
Telefax Number:

SoCalGas:

Mailing Address: Southern California Gas Company
Box 3249 ML 22E1
Los Angeles, California 90051-1249

Telefax Number: (213) 244-

(b) Telephone Contacts - At any time a telephone call is required to confirm the sending and receipt of any telefax notices, the following telephone numbers shall be utilized:

Interconnector:

Confirmation Telephone:

Contact:

SoCalGas:

Confirmation Telephone: (213) 244-

Contact:

(c) Changes - The designated contact, address and telefax and telephone numbers specified herein may be changed from time to time by the Party affected after two (2) days written notice.

SECTION 6

LIMITED WARRANTY

A. Services - SoCalGas warrants to Interconnector that the work performed by SoCalGas will meet or exceed all generally accepted industry standards for this type of work. SoCalGas disclaims any other warranty, express or implied, and disclaims all implied warranties of fitness for intended purpose.

B. Limitation of Liability - The warranties expressly provided for above are in lieu of all other express or implied warranties. 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. SoCalGas shall not be liable in contract, in tort (including active and passive negligence) or otherwise for damage or loss of the Interconnector as a result of this Agreement. In no event shall SoCalGas be liable for punitive, consequential, indirect, incidental, or special damages or for lost business or lost profits, whether under tort, breach of contract, strict liability, or any other theory, even if SoCalGas has been advised of the possibility of such damages.

SECTION 7

MISCELLANEOUS

(a) Laws - The formation, interpretation and performance of this Agreement shall be governed by the internal laws of the State of California, without reference to principles of conflicts of laws.

b) Force Majeure - In no event shall SoCalGas be liable for breach of this Agreement if it cannot perform its obligations under this Agreement because of forces not under its control including, but not limited to, acts of God, labor disputes or strikes (whether involving SoCalGas' or its subcontractor's workforce), shortages of parts or materials, civil unrest, war, inability to obtain governmental approvals or permits, or government orders. In the event of such delay, the time for completion shall be extended by a period of time reasonably necessary to overcome the effect of such delay.

(c) 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 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.

(d) Execution of Documents - Each Party shall do all necessary acts and make, execute, and deliver such written instruments as shall from time to time be reasonably necessary to carry out the terms of this Agreement.

(e) 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 Parties, which approval shall not be unreasonably withheld.

(f) Disputes - Any dispute or need for interpretation arising out of this Agreement, which cannot be resolved after a reasonable period of time of good faith negotiation, will be submitted to the CPUC for resolution.

(g) Term - This Agreement shall become effective on the date provided at the beginning of this Agreement and, unless terminated earlier, continue until the "In Service Date" for Interconnector's Facilities.

(h) Credit - SoCalGas reserves the right to require the Interconnector from time to time to demonstrate creditworthiness. Creditworthiness may be demonstrated by providing audited financial statements of recent date and, if necessary, other adequate assurances of performance as requested by SoCalGas.

(i) Attorney's 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.

(j) Regulation - This contract shall at all times be subject to such changes or modifications by the Public Utilities Commission of the State of California as said Commission may from time to time direct in the exercise of its jurisdiction.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed in two (2) copies by their authorized representatives as of the day and year first written above.

[Company Name]

By: _____

Title: _____

SOUTHERN CALIFORNIA GAS COMPANY

By: _____

Title: _____

EXHIBIT A

To the Interconnect Collectible System Upgrade Agreement
between

and
Southern California Gas Company
Dated: _____, 200_

INTERCONNECTOR'S FACILITIES

EXHIBIT B

To the Interconnect Collectible System Upgrade Agreement
between

_____ and
Southern California Gas Company
Dated: _____, 200_

INTERCONNECTION POINT AND SOCALGAS' FACILITIES

EXHIBIT C

To the Interconnect Collectible System Upgrade Agreement
between

_____ and
Southern California Gas Company
Dated: _____, 200_

SCOPE OF SERVICES