



San Diego Gas & Electric Company  
San Diego, California

Original Cal. P.U.C. Sheet No. 19199-E

Canceling \_\_\_\_\_ Cal. P.U.C. Sheet No. \_\_\_\_\_

**SAMPLE FORMS**

Sheet 1

Form 142-05215

THIRD-PARTY MARKETER AGREEMENT  
FOR BASE INTERRUPTIBLE PROGRAM

(04/06)

(See Attached Form)

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Advice Ltr. No. 1783-E-A

Decision No. D.06-03-024

Issued by  
**Lee Schavrien**  
Vice President  
Regulatory Affairs

Date Filed Apr 10, 2006

Effective Apr 30, 2006

Resolution No. \_\_\_\_\_

**THIRD-PARTY MARKETER AGREEMENT**  
**FOR BASE INTERRUPTIBLE PROGRAM**

This Third-Party Marketer for Base Interruptible Program Agreement (“Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_ (the “Effective Date”), by and between San Diego Gas & Electric Company (“Utility”), a corporation organized and existing under the laws of the State of California, and \_\_\_\_\_ (“Marketer”), a \_\_\_\_\_ organized and existing under the laws of the State of \_\_\_\_\_. Utility and Marketer may sometimes be referred to herein as a “Party” and collectively as the “Parties”.

WHEREAS, the California Public Utilities Commission (“CPUC”) has authorized the Base Interruptible Program (“BIP”) as set forth in Schedule BIP, Base Interruptible Program (“Schedule BIP”), which is attached hereto as Attachment A and incorporated herein by this reference, whereby Utility pays participating Utility customers a monthly incentive payment in return for pre-determined load reduction; and

WHEREAS, the CPUC has authorized the participation of third-party marketers in BIP to act as representatives for participating Utility customers, and Marketer desires to participate in BIP subject to the applicable Utility tariff rules and rate schedules.

NOW, THEREFORE, in consideration of the mutual undertakings set forth below, the Parties agree as follows:

**I. MARKETER STATUS**

1.1 Status. Marketer’s status under this Agreement shall be as a “Marketer” under Electric Rule No. 29, “Third-Party Marketers for Base Interruptible Program” (“Electric Rule No. 29”), which is attached hereto as Attachment B and incorporated herein by this reference. Marketer shall be subject to all applicable tariff rules and regulations (which rules and regulations are hereby incorporated herein as an integral part of this Agreement), including, but not limited to, the rates, terms and conditions set forth in Electric Rule No. 29 and Schedule BIP, as such rules and regulations may be amended from time to time.

1.2 Representation of Utility Customers. Marketer shall represent those Utility customers eligible to participate in BIP and who have elected to participate in BIP through Marketer with respect to such customer’s service account by entering into and maintaining signed contracts with each such eligible customer whereby such customer authorizes Marketer, as its representative, to receive incentive payments and to pay penalty charges on behalf of such customer in connection with such customer’s participation in BIP (“Customer Contract”). The Utility shall not be responsible for monitoring, auditing, reviewing or enforcing such Customer Contracts between the Marketer and such customers. Once Marketer has entered into a Customer Contract with an eligible customer, Marketer shall deliver a “Notice by Third-Party Marketer to Add or Delete Customers,” in the form attached hereto as Attachment C and incorporated herein by this reference, adding such customer. Marketer may also drop customers from its representation by delivering to Utility the same “Notice by Third-Party Marketer to Add or Delete Customers” dropping such customer. Marketer’s delivery of such “Notice by Third-Party Marketer to Add or Delete Customers” shall be a condition precedent to both Marketer’s representation of an eligible customer and Marketer’s termination of its representation of a customer, as the case may be. Marketer acknowledges that each customer it represents is subject to the terms and conditions of Schedule BIP.

1.3 Eligibility. The customers represented by Marketer in BIP pursuant to a Customer Contract shall have committed, in the aggregate, to provide Utility with the Minimum Load Reduction (as defined in Electric Rule No. 29). If Marketer is unable to achieve or otherwise maintain the Minimum Load Reduction at any time, Marketer shall have fourteen (14) calendar days from the date of such inability to make up the committed load capacity in order to achieve the Minimum Load Reduction. If Marketer fails to achieve the Minimum Load Reduction within such fourteen (14) day period, this Agreement may be terminated, at Utility's sole discretion, and the terms and provisions for such termination as set forth in Electric Rule No. 29 shall apply.

1.4 Definitions. Except where explicitly defined herein, the capitalized terms used in this Agreement shall have the meanings set forth in Electric Rule No. 29 or Schedule BIP.

## **II. REPRESENTATIONS**

2.1 Representations and Warranties. Each Party represents and warrants, individually for itself, as follows:

2.1.1 Such Party is and shall remain in compliance with all applicable laws and tariffs, including applicable CPUC requirements.

2.1.2 Each person executing this Agreement for such Party has the full power and authority to execute and deliver this Agreement and bind the entity on whose behalf this Agreement is executed.

2.1.3 The execution, delivery and performance of this Agreement have been duly authorized by all necessary action by such Party, and this Agreement constitutes such Party's valid and binding obligation, enforceable against such Party in accordance with its terms.

2.1.4 All duties under this Agreement shall be performed by such Party in accordance with applicable recognized professional standards.

2.2 Additional Representations of Marketer.

2.2.1 With each submission of a "Notice by Third-Party Marketer to Add or Delete Customers" adding a customer with respect to a service account, Marketer represents and warrants, at the time of submission thereof and from time to time until Marketer submits such notice for the removal of such customer from its representation, that:

(a) Such customer is eligible to participate in BIP and has elected to participate in BIP through Marketer;

(b) Such customer has (i) entered into a Base Interruptible Program Contract (Form No. 142-05207) with Utility, (ii) completed a "Notice to Add, Change or Terminate a Third-Party Marketer for Base Interruptible Program" (Form No. 142-05216) and delivered such notice to Utility, and (iii) completed, executed and delivered to Utility all such other documents, instruments, consents and agreements as any be required for such participation in BIP and designation of such Marketer (including, without limitation, an "Authorization To: Receive Customer Information or Act on a Customer's Behalf"); and

(c) Marketer has entered into a Customer Contract with such customer whereby such customer has authorized Marketer to receive incentive payments from and to pay

penalty charges to Utility on behalf of such customer in connection with such customer's participation in BIP.

2.2.2 With each submission of a "Notice by Third-Party Marketer to Add or Delete Customers" dropping a customer with respect to a service account, Marketer represents and warrants that:

(a) Such customer has elected, or has been deemed to have elected, to terminate its participation in BIP through Marketer with respect to such service account; and

(b) Such customer has (i) completed a "Notice to Add, Change or Terminate a Third-Party Marketer for Base Interruptible Program" (Form No. 142-05216) and delivered such notice to Utility, and (ii) delivered all such other documents, instruments, consents and agreements as any be required for terminating Marketer's representation of such customer in BIP with respect to such service account.

### **III. SECURITY**

Marketer acknowledges that it has provided, prior to the execution of this Agreement, any and all financial information of Marketer required by Utility. Marketer acknowledges that Marketer shall have a continuing obligation to provide such additional financial information to Utility upon the Utility's written request. Concurrently with the execution of this Agreement, and from time to time thereafter, Marketer shall deliver any security required by Utility pursuant to Electric Rule No. 29. Additionally, Marketer represents and warrants that there has been no materially adverse change in its financial position from the date of the latest available and provided financial statements to the date hereof. In the event that (a) Utility determines that a material financial change in Marketer has adversely affected Marketer's creditworthiness subsequent to the execution of this Agreement, or (b) Marketer does not provide the financial information or security requested by Utility, Utility may terminate this Agreement as of the day written notice is given or require Marketer to provide additional security as provided in Electric Rule No. 29.

### **IV. BILLING AND PAYMENT**

4.1 **Billing and Payment Terms.** During the term of this Agreement, each Party shall make the payments or credits to the other Party as provided in Electric Rule No. 29.

4.2 **Billing Address.** Statements, invoices and billings shall be by first class U.S. mail to the following addresses:

If to Marketer:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to Utility:

San Diego Gas & Electric Company  
Billing Collections Manager

\_\_\_\_\_  
\_\_\_\_\_

4.3 Payment Address. Payments shall be submitted electronically or by wire transfer to the following accounts:

If to Marketer:

\_\_\_\_\_  
\_\_\_\_\_

If to Utility:

\_\_\_\_\_  
\_\_\_\_\_

4.4 Disputed Bills or Charges. Marketer agrees to resolve any disputed bills and/or charges in accordance with Electric Rule No. 29.

#### **V. TERM**

The term of this Agreement shall commence on the Effective Date and shall terminate three (3) years from the Effective Date, unless terminated earlier pursuant to Section 6 below.

#### **VI. TERMINATION**

6.1 Termination by Utility. If payment is not received within seven (7) days of the issuance of a past due notice, or upon any other breach of this Agreement by Marketer, Marketer's participation in BIP pursuant to this Agreement will be subject to termination by Utility as set forth in Electric Rule No. 29. In addition, if Utility receives any notification that Marketer has filed or will be filing any type of bankruptcy, or is closing its business, Marketer's participation in BIP pursuant to this Agreement shall be terminated immediately, subject, however, to any bankruptcy laws that take precedence of the rules set forth in Electric Rule No. 29 in respect of such bankruptcy. Utility's termination rights set forth in this Section 6.1 shall be in addition to any rights and remedies as may be provided by law or in equity as a result of Marketer's failure to pay, breach, bankruptcy or other actions or omissions.

6.2 Rights and Responsibilities. The Parties' rights and responsibilities following termination of this Agreement are set forth in Electric Rule No. 29.

#### **VII. LIMITATION OF LIABILITY**

Utility's liability to Marketer for any loss, cost, claim, injury, liability or expense, including reasonable attorneys' fees, relating to or arising from any act or omission in Utility's performance of this Agreement shall be limited to the amount of direct damage actually incurred. In no event shall Utility be liable to Marketer for any indirect, special, consequential or punitive damages of any kind whatsoever, whether in contract, tort or strict liability.

#### **VIII. INDEMNIFICATION**

8.1 Indemnification of Utility. To the fullest extent permitted by law, Marketer shall indemnify, defend and hold harmless Utility, and its current and future parent company, subsidiaries, affiliates and their respective shareholders, officers, directors, employees, agents, representatives, successors and assigns (collectively, the "Indemnified Parties"), from and against any and all claims, actions, suits, proceedings, losses, liabilities, penalties, fines, damages, costs or expenses, including

without limitation reasonable attorneys' fees (a "Claim"), resulting from (a) any breach of the representations, warranties, covenants and obligations of Marketer under this Agreement, (b) any act or omission of Marketer, whether based upon Marketer's negligence, strict liability or otherwise, in connection with the performance of this Agreement, or (c) any third party claims of any kind, whether based upon negligence, strict liability or otherwise, arising out of or connected in any way to Marketer's performance or nonperformance under this Agreement. This indemnification obligation shall not apply to the extent that such injury, loss or damage is caused by the willful misconduct of Utility or Utility's sole negligence.

8.2 Defense of Claim. If any Claim is brought against the Indemnified Parties, Marketer shall assume the defense of such Claim, with counsel reasonably acceptable to the Indemnified Parties, unless in the opinion of counsel for the Indemnified Parties a conflict of interest between the Indemnified Parties and Marketer may exist with respect to such Claim. If a conflict precludes Marketer from assuming the defense, then Marketer shall reimburse the Indemnified Parties on a monthly basis for the Indemnified Parties' defense costs through separate counsel of the Indemnified Parties' choice. If Marketer assumes the defense of the Indemnified Parties with acceptable counsel, the Indemnified Parties, at their sole option and expense, may participate in the defense with counsel of their own choice without relieving Marketer of any of its obligations hereunder.

8.3 Survival. Marketer's obligation to indemnify Utility under this Section 8 shall survive the termination of this Agreement.

**IX. NOTICES**

9.1 Mailing Address. Except for statements, invoices and bills, which shall be submitted pursuant to Section 4 above, any formal notice, request, or demand concerning this Agreement shall be given in writing by Utility or Marketer, and shall be (a) mailed by first-class mail, (b) mailed by registered, certified or other overnight mail, (c) delivered in hand, or (d) faxed with confirmation as set forth below, to the other party as indicated below, or to such other address as the parties may designate by written notice.

If to Marketer:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Fax : \_\_\_\_\_

If to Utility:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Fax : \_\_\_\_\_

9.2 Notices. Notices delivered by hand shall be deemed received when delivered. Notices sent by facsimile shall be deemed received upon receipt but must be confirmed by mail within seventy-two (72) hours. Notices delivered by first class mail shall be deemed received forty-eight (48) hours (not including weekends and holidays) after deposit, postage prepaid, in the U.S. mail, or if certified, registered or overnight mailing is used, as acknowledged by the signed receipt of mailing.

## **X. CONFIDENTIALITY**

10.1 **Confidentiality.** Marketer shall not disclose any Confidential Information obtained pursuant to this Agreement to any third party, including any affiliates of Marketer, without the express prior written consent of Utility. As used herein, the term “Confidential Information” means proprietary business, financial and commercial information pertaining to Utility, customer names and other information related to customers, including energy usage data (“Customer Information”), any trade secrets and any other information of a similar nature, whether or not reduced to writing or other tangible form. Confidential Information shall not include: (a) information known to Marketer prior to obtaining the same from Utility; (b) information in the public domain at the time of disclosure by Marketer; (c) information obtained by Marketer from a third party who did not receive the same, directly or indirectly, from Utility; or (d) information approved for release by express prior written consent of an authorized representative of Utility.

10.2 **Use of Confidential Information.** Marketer hereby agrees that it shall use the Confidential Information solely for the purpose of performing under this Agreement. Marketer agrees to use at least the same degree of care Marketer uses with respect to its own proprietary or confidential information, which in any event shall result in a reasonable standard of care to prevent unauthorized use or disclosure of the Confidential Information.

10.3 **Authorized Disclosure.** Notwithstanding any other provisions of this Section 10, Marketer may disclose any of the Confidential Information in the event, but only to the extent, that, based upon advice of counsel, Marketer is required to do so by the disclosure requirements of any law, rule, regulation or any order, decree, subpoena or ruling or other similar process of any court, governmental agency or regulatory authority. Prior to making or permitting any such disclosure, Marketer shall provide Utility with prompt written notice of any such requirement so that Utility (with Marketer’s assistance if requested by Utility) may seek a protective order or other appropriate remedy.

10.4 **Term.** The confidentiality provisions set forth in this Section 10 shall remain in full force and effect with respect to any Confidential Information until the date that is five (5) years after the date of disclosure of such Confidential Information; provided, further, that such confidentiality provisions shall remain in full force and effect with respect to any Customer Information in perpetuity.

10.5 **Remedies.** The Parties acknowledge that the Confidential Information is valuable and unique, and that damages would be an inadequate remedy for breach of this Section 10 and the obligations of Marketer are specifically enforceable. Accordingly, the Parties agree that in the event of a breach or threatened breach of this Section 10 by Marketer, Utility, its parent company(ies), subsidiaries and/or affiliates, who shall be third party beneficiaries of this Agreement, 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, monetary damages or any other legal or equitable remedy available to Utility, its direct and indirect parent company(ies), subsidiaries or affiliates.

## **XI. MISCELLANEOUS**

11.1 **Assignment.** This Agreement, and the rights and obligations granted and/or obtained by Marketer hereunder, shall not be further transferred or assigned by Marketer without the prior written consent of Utility. Any assignment in violation of this Section 11.1 shall be void.

11.2 **Independent Contractor.** Marketer shall perform its obligations under this Agreement as an independent contractor, and no principal-agent or employer-employee relationship or joint venture or partnership shall be created with Utility.

11.3 Choice of Law. This Agreement shall be carried out and interpreted under the laws of the State of California, without regard to any conflict of law principles thereof. Except for matters and disputes with respect to which the CPUC is the proper venue for dispute resolution pursuant to applicable law or this Agreement, the federal and state courts located in San Diego County, California shall constitute the sole proper venue for resolution of any matter or dispute hereunder. The Parties submit to the exclusive jurisdiction of such courts with respect to such matters and disputes.

11.4 Resolution of Disputes. Any dispute arising between the Parties relating to the interpretation of this Agreement or to the performance of a Party's obligations hereunder shall be reduced to writing and referred to the Parties' designated representative for resolution. The Parties shall be required to meet and confer in an effort to resolve any such dispute. Any dispute or need for interpretation arising out of this Agreement which cannot be resolved after discussion between the Parties shall be submitted to the CPUC for resolution. If Marketer disputes a Utility bill, the resolution of such dispute shall be as set forth in Electric Rule No. 29.

11.5 Waiver. Any failure or delay by either party to exercise any right, in whole or part, hereunder shall not be construed as a waiver of the right to exercise the same, or any other right, at any time thereafter.

11.6 Governmental Actions. This Agreement shall be subject to the continuing jurisdiction of the CPUC and all orders, rules, regulations, decision or actions of any governmental entity (including a court) having jurisdiction over Utility or this Agreement. The Agreement is subject to such changes or modifications by the CPUC as it may direct from time to time in the exercise of its jurisdiction.

11.7 Entire Agreement. This Agreement, including the Attachments listed below, sets forth the entire understanding of the Parties as to the subject matter hereof, and supersedes any prior discussions, offerings, representations or understanding (whether written or oral), and shall only be superseded by an instrument in writing executed by both Parties. This Agreement shall not be modified by course of performance, course of conduct or usage of trade.

*Attachment A: Schedule BIP*

*Attachment B: Electric Rule No. 29 – Third-Party Marketers for Base Interruptible Program*

*Attachment C: Notice by Third-Party Marketer to Add or Delete Customers*

11.8 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

11.9 Headings. The headings contained in this Agreement are solely for the convenience of the Parties and shall not be used or relied upon in any manner in the construction or interpretation of this Agreement.

IN WITNESS WHEREOF, the authorized representatives of Utility and Marketer have executed this Agreement as of the Effective Date.

UTILITY:  
SAN DIEGO GAS & ELECTRIC COMPANY

MARKETER:  
\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_