



San Diego Gas & Electric Company
San Diego, California

Original Cal. P.U.C. Sheet No. 19665-E

Canceling _____ Cal. P.U.C. Sheet No. _____

SAMPLE FORMS

Sheet 1

Form 142-05301

AGGREGATOR AGREEMENT FOR CAPACITY BIDDING PROGRAM (CBP)

(10/06)

(See Attachment)

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(Continued)

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Advice Ltr. No. 1799-E-A

Decision No. _____

Issued by
Lee Schavrien
Vice President
Regulatory Affairs

Date Filed Oct 30, 2006

Effective Oct 30, 2006

Resolution No. _____

AGGREGATOR AGREEMENT
FOR CAPACITY BIDDING PROGRAM (CBP)

This Aggregator Agreement for Capacity Bidding Program (“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 _____ (“Aggregator”), a _____ organized and existing under the laws of the State of _____. Utility and Aggregator may sometimes be referred to herein as a “Party” and collectively as the “Parties”.

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

WHEREAS, the CPUC has authorized the participation of third-party aggregators to aggregate the load reductions of one or more participating Utility customers, and Aggregator desires to participate in the Program as such a third-party aggregator, 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. AGGREGATOR STATUS

1.1 Status. Aggregator’s status under this Agreement shall be as an “Aggregator” under Schedule CBP and Electric Rule 30, which is attached hereto as Attachment B and incorporated herein by this reference. Aggregator shall be subject to, and shall comply with, 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 Rule 30 and Schedule CBP, as such rules and regulations may be amended from time to time.

1.2 Eligibility. As a condition to participating in the Program as an “Aggregator,” Aggregator shall meet the eligibility and qualification requirements set forth in Rule 30.

1.3 Definitions. Except where explicitly defined herein, the capitalized terms used in this Agreement shall have the meanings set forth in Rule 30 or Schedule CBP.

II. REPRESENTATIONS

2.1 Representations and Warranties. Each Party represents, warrants and covenants, 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 Aggregator.

2.2.1 With each submission of a "Notice by Aggregator to Add or Delete Customers" (Form 142-05303), which is attached hereto as Attachment C and incorporated herein by reference, adding a customer with respect to a service account to its representation, Aggregator represents and warrants, at the time of submission thereof and from time to time until Aggregator submits such notice for the removal of such customer from its representation, that:

(a) Such customer is otherwise eligible to participate in the Program and has elected to participate in the Program through Aggregator;

(b) Such customer has (i) entered into a Customer Contract (Form 142-05300) with Utility, (ii) completed a "Notice to Add, Change or Terminate a Third-Party Aggregator for Capacity Bidding Program" (Form 142-05302) 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 the Program and for the designation of such Aggregator (including, without limitation, an "Authorization To: Receive Customer Information or Act on a Customer's Behalf"; and

(c) Aggregator has entered into an Aggregator/Customer Contract with such customer consistent with the requirements of this Agreement.

2.2.2 With each submission of a "Notice by Aggregator to Add or Delete Customers" (Form 142-05303) dropping a customer with respect to a service account from its representation, Aggregator represents and warrants that:

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

(b) Such customer has (i) completed a "Notice to Add, Change or Terminate an Aggregator for Capacity Bidding Program" (Form 142-05302) and delivered such notice to Utility, and (ii) delivered all such other documents, instruments, consents and agreements as any be required for terminating Aggregator's representation of such customer in the Program with respect to such service account.

III. SECURITY

Aggregator acknowledges that it has provided, prior to the execution of this Agreement, any and all financial information of Aggregator required by Utility. Aggregator acknowledges that Aggregator 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, Aggregator shall deliver any security required by Utility pursuant to Rule 30. Additionally, Aggregator 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 Aggregator has adversely affected Aggregator's creditworthiness subsequent to the execution of this Agreement, or (b) Aggregator 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 Aggregator to provide additional security as provided in Rule 30.

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, and in such amounts, as provided in Schedule CBP.

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

If to Aggregator:

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 Aggregator:

If to Utility:

4.4 Disputed Bills or Charges. Aggregator agrees to resolve any disputed bills and/or charges in accordance with Rule 30.

V. TERM

This Agreement shall become effective on the date that this Agreement is signed by both Parties ("Effective Date"), and remains effective unless terminated sooner by the terms herein. The term of this Agreement shall continue for at least twelve (12) calendar months after the Effective Date ("Minimum Term"), unless (a) the Program expires earlier (which is expected to occur on December 31, 2008 unless the Program is extended by the CPUC), or (b) this Agreement terminates earlier as set forth in this

Agreement. After the expiration of the Minimum Term, either Party may terminate this Agreement by written notification to the other Party of such termination, which termination shall be effective on the date that is the later of (i) the beginning of the calendar month that is immediately after the expiration of the Minimum Term, and (ii) the beginning of the calendar month that is closest to but at least thirty (30) calendar days after the non-terminating Party receives such notification.

VI. EVENTS OF DEFAULT

- 6.1 Events of Default. An “Event of Default” shall mean:
- (a) if Aggregator defaults on the due and timely payment of monies when the same shall become due and payable, and such default shall continue for a period of seven (7) days after written notice thereof by Utility to Aggregator; or
 - (b) if Aggregator defaults in the performance or observance on its part of any other covenant, obligation or agreement contained in this Agreement to be performed by Aggregator (other than the payment of monies, which is governed by clause (a) above), and such default shall continue for a period of sixty (60) days after written notice thereof to Aggregator by Utility; provided, however, that if such default shall be such that it cannot be remedied by Aggregator within such sixty (60) day period, it shall not constitute an Event of Default if corrective action to cure such default is commenced by Aggregator within such sixty (60) day period and Aggregator diligently pursues the cure of such default until the default is remedied; or
 - (c) if Aggregator (i) makes an assignment or any general arrangement for the benefit of creditors, or (ii) files a petition or otherwise commence, authorize, or acquiesce in the commencement of a proceeding or case under any bankruptcy or similar law for the protection of creditors or have such petition filed or proceeding commenced against it which is not dismissed within thirty (30) days of such filing.
- 6.2 Remedies. If an Event of Default occurs and is continuing, Utility may terminate this Agreement and exercise any other remedies available to it at law, in equity, by statute or otherwise, subject, however, to the dispute resolution procedures set forth in Section 11.4 below. In addition, if an Event of Default for the payment of monies occurs and is continuing where Aggregator is the Defaulting Party, then the Utility may make a draw under any security provided by Aggregator for any such outstanding amounts due and payable from Aggregator.
- 6.3 Remedies Not Exclusive. No remedy by the terms of this Agreement conferred upon or reserved to Utility is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or existing at law or in equity or by statute.
- 6.4 Rights and Responsibilities Following Termination. The Parties’ rights and responsibilities following termination of this Agreement are set forth in Rule 30.

VII. LIMITATION OF LIABILITY

Utility's liability to Aggregator 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 Aggregator for any indirect, special, consequential or punitive damages of any kind whatsoever, whether in contract, tort or strict liability. In addition, in no event shall Utility, its shareholders, directors, employees, agents or subcontractors (including, without limitation, suppliers of the Utility System) (collectively "Utility Parties") be liable to Aggregator for any claims, losses, liabilities or damage (whether direct, indirect, consequential, special, incidental, or punitive damages under any other theories including, but not limited to, tort, contract, breach of warranty or strict liability) for (i) the design, manufacture, installation, operation, maintenance, performance or demonstration of the Utility System, or (ii) the acts or omissions of, or the performance or non-performance of, Aggregator or any customer under any Aggregator/Customer Contract to which such customer is party. The "Utility System" includes any metering, meter communication equipment, Internet communication software, energy demand management software and related goods and services. Utility shall not be responsible for any business loss, actual or implied, as a result of the partial or complete failure of the Utility System to operate.

VIII. INDEMNIFICATION

8.1 **Indemnification of Utility.** To the fullest extent permitted by law, Aggregator 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 Aggregator under this Agreement, (b) any act or omission of Aggregator, whether based upon Aggregator'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 Aggregator'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, Aggregator 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 Aggregator may exist with respect to such Claim. If a conflict precludes Aggregator from assuming the defense, then Aggregator shall reimburse the Indemnified Parties on a monthly basis for the Indemnified Parties' defense costs through separate counsel of the Indemnified Parties' choice. If Aggregator 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 Aggregator of any of its obligations hereunder.

8.3 **Survival.** Aggregator'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 Aggregator, 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 Aggregator:

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. Aggregator shall not disclose any Confidential Information obtained pursuant to this Agreement to any third party, including any affiliates of Aggregator, 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 Aggregator prior to obtaining the same from Utility; (b) information in the public domain at the time of disclosure by Aggregator; (c) information obtained by Aggregator 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. Aggregator hereby agrees that it shall use the Confidential Information solely for the purpose of performing under this Agreement. Aggregator agrees to use at least the same degree of care Aggregator 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, Aggregator may disclose any of the Confidential Information in the event, but only to the extent, that, based upon advice of counsel, Aggregator 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, Aggregator shall provide Utility with prompt written notice of any such requirement so that Utility (with

Aggregator'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 ten (10) 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 Aggregator are specifically enforceable. Accordingly, the Parties agree that in the event of a breach or threatened breach of this Section 10 by Aggregator, 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 Aggregator hereunder, shall not be further transferred or assigned by Aggregator without the prior written consent of Utility. Any assignment in violation of this Section 11.1 shall be void.

11.2 Independent Contractor. Aggregator 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 Aggregator disputes a Utility bill, the resolution of such dispute shall be as set forth in Rule 30.

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 Capacity Bidding Program (CBP)

Attachment B: Rule 30 – Aggregators for Capacity Bidding Program (CBP)

Attachment C: Notice by Aggregator 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 Aggregator have executed this Agreement as of the Effective Date.

UTILITY:

SAN DIEGO GAS & ELECTRIC COMPANY

By: _____

Signature: _____

Name: _____

Title: _____

AGGREGATOR:

By: _____

Signature: _____

Name: _____

Title: _____

ATTACHMENT A

Schedule Capacity Bidding Program (CBP)

ATTACHMENT B

Rule 30 – Aggregators for Capacity Bidding Program (CBP)

ATTACHMENT C

Notice by Aggregator to Add or Delete Customers