

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

Through this Settlement Agreement (“Agreement”), Modesto Irrigation District (“MID”) and Pacific Gas and Electric Company (“PG&E”) (sometimes individually referred to herein as “Party” or collectively as “Parties”) hereby agree to fully and finally resolve the currently-pending dispute set forth below on the terms and conditions identified below.

RECITALS

- A. WHEREAS, on or about September 30, 2000, the California Legislature enacted Public Utilities Code Section 454.1, through which it authorized electrical corporations, including PG&E, to offer discounted electric rates under specified circumstances.
- B. WHEREAS, on or about August 21, 2003, the California Public Utilities Commission (“CPUC” or “Commission”) issued Resolution E-3801, “in accordance with Public Utilities Code Section 454.1,” to “allow[] PG&E to offer, under certain conditions, discounts to retain or attract customers within [its] service territory when an irrigation district provides, or is seeking to provide, similar service at lower rates.”
- C. WHEREAS, on or about September 2, 2003, PG&E’s Schedule E-31 (entitled “Schedule E-31 – Distribution Bypass Deferral Rate”) and form E-31 contract (entitled “Agreement for Customers Taking Service on Schedule E-31, Form No. 79-995”) went into effect.
- D. WHEREAS, from 2004 through 2007, PG&E entered into contracts with various customers pursuant to Schedule E-31, which customers are located in the geographic area described in Public Utilities Code Section 9610(b)(1), which is territory in which both PG&E and MID provide electric-distribution service (“the Mutual Service Area”).
- E. WHEREAS, on or about August 28, 2007, MID filed a Complaint against PG&E at the CPUC, in which it alleged that PG&E had violated Schedule E-31 when it entered into contracts pursuant to Schedule E-31 with certain PG&E customers located in the Mutual Service Area. MID’s Complaint is styled *Modesto Irrigation District v. Pacific Gas and Electric Company (U39E)*, C.07-08-027 (the “Action”), and presently is pending at the Commission before Assigned Commissioner Dian M. Grueneich and Administrative Law Judge Jeffrey P. O’Donnell.
- F. WHEREAS, on or about October 4, 2007, PG&E answered and moved to dismiss the Complaint.
- G. WHEREAS, the Parties subsequently stipulated to postpone litigating the Action to provide adequate time both to discuss their respective positions and explore negotiating a resolution of the Action, and then between October 2007 and December 2008 negotiated a detailed resolution of the Action.
- H. WHEREAS, through these negotiations, the Parties discovered that they had significantly-different interpretations of how Schedule E-31 should be implemented; and over the ensuing months reviewed and addressed these interpretations to establish mutually-agreeable rules within the parameters of existing law.

NOW, WHEREFORE, the Parties have achieved a mutually-satisfactory resolution of the Action, including means of addressing their differing interpretations of Schedule E-31. Accordingly, and in order to minimize the costs and risks to the Parties, including that of future disputes, and to eliminate the cost to the CPUC of adjudicating this Action and potentially others, PG&E and MID hereby agree to compromise the Action as set forth herein.

ARTICLE I. EFFECTIVENESS

1.1 **Purpose.** The Parties' proposed settlement sets forth a mutually-agreeable framework with respect to Schedule E-31 and potential E-31 customers, and the Parties agree to operate prospectively in accord with this framework, which is fully consistent with Public Utilities Code Section 454.1, Resolution E-3801, and Schedule E-31. The Parties do not by this Agreement intend to alter Public Utilities Code Section 454.1, Resolution E-3801, or Schedule E-31, and nothing herein shall be construed as modifying or altering the requirements of any of these legal authorities.

1.2 **Joint Motion.** The Parties shall cooperate fully in the timely preparation and filing of a joint motion for approval of the settlement of the Complaint, for the approval of the terms and conditions of this Agreement, and for the dismissal of the Complaint with prejudice upon approval of the terms and conditions of this Agreement.

1.3 **Commission Approval.** The effectiveness of this Agreement is expressly subject to a condition precedent of an order by the CPUC no longer subject to appeal approving this Agreement and dismissing the Complaint with prejudice, with no required modifications or conditions to the Agreement. The date on which such condition precedent is satisfied shall be referred to as the "Effective Date." Should the CPUC approve a settlement subject to modifications or conditions, the Parties agree to meet and confer in good faith (a) concerning whether such modifications or conditions are acceptable and, if necessary, (b) to modify their agreement to address the CPUC's modifications and/or conditions.

ARTICLE II. APPLICATION BY CUSTOMER-CATEGORY

2.1 **Customer Categories.** The Parties agree that, pursuant to Public Utilities Code Section 454.1, Resolution E-3801, Schedule E-31, and this Agreement, particularly as set forth in greater detail in Paragraphs 2.3., 2.4, and 2.5 below, PG&E may offer electric service ("E-31 Service") to customers in the Mutual Service Area that (1) already receive electric-distribution service from PG&E ("Existing PG&E Customers"), (2) already receive electric-distribution service from MID ("Existing MID Customers"), and/or (3) do not receive electric-distribution service either from PG&E or MID ("New Construction Customers").

2.2 **"Delivery" and "Date of Delivery".** This Article details the process by which the Parties shall "deliver" certain items, including the Parties' respective bona fide offer letters as defined infra, to customers and prospective customers. For such purposes, the Parties agree to the following definitions of "Deliver" and "Date of Delivery."

(a) For purposes of this Agreement, to "Deliver" an item to an offeree means to cause any of the following to occur: to hand that item to the offeree, send that item to the offeree via

electronic transmission (including but not limited to electronic mail and/or facsimile transmission), send that item to an offeree by depositing the item with an overnight delivery service or courier service, and/or by depositing the item into the United States Mail with the correct address set forth on the envelope and proper postage appended thereto.

(b) For purposes of this Agreement, the Date of Delivery is the date upon which any of the following is caused to occur: an item is handed to the offeree, or sent to the offeree via electronic transmission (including but not limited to electronic mail and/or facsimile transmission). If the delivery is accomplished by overnight mail or courier service, then one calendar day shall be added to the 7-day hold period. If the delivery is accomplished by United States Mail, then two calendar days shall be added to the 7-day hold period.

2.3 **PG&E's Existing Customers.** From and after the Effective Date of this Agreement, PG&E and MID agree to follow the following procedures with respect to the implementation of Public Utilities Code section 454.1, Resolution E-3801, and Schedule E-31, as applied to PG&E's Existing Customers:

(a) **Bona Fide Offer.** MID shall Deliver a "bona fide offer" to any PG&E Existing Customer before it may agree to provide (regardless of the form of the agreement, including oral contract, written contract, or schedule) or in fact provide that customer with electric-distribution service. MID's bona fide offer shall be in writing and shall be substantially in the form of the letter attached hereto as Exhibit A (the "MID Offer Letter").

(b) **7-Day "Hold" Period.** MID shall not enter into a contract with such customer and/or physically connect such customer to MID's electric-distribution service for a period of 7 days from the Date of Delivery of the MID Offer Letter.

(c) **E-31 Offer.** PG&E may not extend an offer of E-31 Service to a PG&E Existing Customer unless MID has Delivered the MID Offer Letter to the customer. While PG&E may discuss E-31 as an option with any PG&E Existing Customer before MID extends the MID Offer Letter, it cannot actually extend an offer or enter into a contract for E-31 Service to a PG&E Existing Customer until MID has provided the customer with the MID Offer Letter.

(d) **Date of Commencement.** PG&E may not provide E-31 Service prior to the anticipated date of commencement of service set forth in the MID Offer Letter, which the Parties agree is the "Commencement Date" as that term is defined in Schedule E-31.

(e) **Bona Fide Offer Shelf-Life.** The MID Offer Letter may state that MID's bona fide offer will expire 30 days after the Date of Delivery. Notwithstanding such expiration date, PG&E shall have the right to extend an offer of E-31 Service to the customer for a period of (97) days from the Date of Delivery. Any such PG&E offer of E-31 Service shall expire at the later of (i) the end of the 97-day period or (ii) if stated in the MID Offer Letter, the date on which the MID Offer Letter expires by its own terms.

2.4 **MID's Existing Customers.** From and after the Effective Date of this Agreement, PG&E and MID agree to follow the following procedures with respect to the implementation of Public Utilities Code section 454.1, Resolution E-3801, and Schedule E-31, as applied to MID's Existing Customers:

(a) **Bona Fide Offer.** PG&E shall Deliver a “bona fide offer” to any MID Existing Customer before it may agree to provide (regardless of the form of the agreement, including oral contract, written contract, or schedule) or in fact provide that customer with electric-distribution service. PG&E’s bona fide offer shall be in writing and shall be substantially in the form of the letter attached hereto as Exhibit B (the “PG&E Offer Letter”).

(b) **7-Day “Hold” Period.** PG&E shall not enter into a contract with such customer and/or physically connect such customer to PG&E’s electric-distribution service for a period of 7 days from the Date of Delivery of the PG&E Offer Letter.

(c) **E-31 Offer.** PG&E may discuss E-31 as an option with any MID Existing Customer, but it cannot actually extend an offer or enter into a contract for E-31 Service to an MID Existing Customer unless:

(i) With respect to MID Existing Customers receiving electric-distribution service at a rate set pursuant to a written contract, PG&E may extend an E-31 offer to the customer within ninety days of the expiration of the contract. After the expiration of the contract, PG&E may only extend an E-31 offer to the customer pursuant to subsection 2.4(c)(ii), below.

(ii) With respect to MID Existing Customers receiving electric-distribution service at a rate set forth in an MID rate schedule, PG&E may extend an E-31 offer to the customer only as follows:

(A) once per calendar year, including any offer made pursuant to subsection 2.4(c)(i), above; and, in addition

(B) once within 60 days of any “Material Change” in the MID rate schedule applicable to such customer.

(C) For purposes of this subsection, “Material Change” means a change in the price per unit of energy, a change in the applicability of the schedule (i.e., whether the rate now applies to customers that it previously did not or no longer applies to customers to which it had applied), the customer’s change from an MID-schedule to a term agreement, and/or a change to impose any new charge or surcharge on such customer.

(D) For purposes of this subsection, if PG&E delivers an E-31 offer to an MID Existing Customers receiving electric-distribution service at a rate set forth in an MID rate schedule during the time period of January 1, 2009, through the date on which the Commission approves this Agreement, inclusive, then any such offer shall be counted toward the “once per calendar year” limit set forth in subsection 2.4(c)(ii)(A), above.

(d) **Date of Commencement.** PG&E may not commence E-31 Service to an MID Existing Customer until the expiration of the customer’s existing contract with MID, if any.

(e) **Bona Fide Offer Shelf-Life.** The PG&E Offer Letter may state that it will expire in 30 days from the Date of Delivery.

2.5 **New Construction Customers.** From and after the Effective Date of this Agreement, PG&E and MID agree to follow the following procedures with respect to the implementation of Public Utilities Code section 454.1, Resolution E-3801, and Schedule E-31, as applied to New Construction Customers:

(a) **Bona Fide Offer.** MID shall Deliver a “bona fide offer” to any New Construction Customer before it may agree to provide (regardless of the form of the agreement, including oral contract, written contract, or schedule) or in fact provide that customer with electric-distribution service. MID’s bona fide offer shall be in writing and shall be substantially in the form of the letter attached hereto as Exhibit A (the “MID Offer Letter”).

(b) **28-Day “Hold” Period.** MID shall not enter into a contract with such customer and/or physically connect such customer to MID’s electric-distribution service for a period of 28 days from the Date of Delivery of the MID Offer Letter. Provided, however:

(i) If a New Construction Customer has a material business justification either for (A) entering into a contract with MID for electric-distribution service, or (b) receiving MID electric-distribution service, sooner than the expiration of the 28th day after the Date of Delivery, then the customer may do so provided that it shall articulate its material business justification under oath through a signed and notarized affidavit in the form of Exhibit C to this Agreement.

(ii) MID may take steps that it deems warranted in preparation for its commencement of service to a New Construction Customer, provided that it shall do so at its own risk and cost if the New Construction Customer ultimately chooses not to receive electric-distribution service from MID.

(c) **E-31 Offer.** PG&E may not extend an offer of E-31 Service to a New Construction Customer unless MID has sent the MID Offer Letter to the customer. While PG&E may discuss E-31 as an option with any New Construction Customer before MID extends the MID Offer Letter, it cannot actually extend an offer or enter into a contract for E-31 Service to a New Construction Customer until MID has provided the customer with the MID Offer Letter.

(d) **Date of Commencement.** PG&E may not provide E-31 Service prior to the anticipated date of commencement of service set forth in the MID Offer Letter, which the Parties agree is the “Commencement Date” as that term is defined in Schedule E-31.

(e) **Bona Fide Offer Shelf-Life.** The MID Offer Letter may state that MID’s bona fide offer will expire 30 days after the Date of Delivery. Notwithstanding such expiration date, PG&E shall have the right to extend an offer of E-31 Service to the customer for a period of (97) days from the Date of Delivery. Any such PG&E offer of E-31 Service shall expire at the later of (i) the end of the 97-day period or (ii) if stated in the MID Offer Letter, the date on which the MID Offer Letter expires by its own terms.

ARTICLE III: ADDITIONAL CONSIDERATION AND STIPULATIONS

3.1 **No Conditions on Offers of Service.** The Parties agree that neither may condition its offer of service to an offeree on that offeree’s (a) not contacting the other Party, or (b) not discussing or sharing the first Party’s offer letter, the terms of that offer, or any other information that comprises the offer with the second Party.

3.2 **Treatment of E-31 Customers At End of E-31 Agreement Term.** The Parties agree that a customer receiving E-31 Service is not automatically entitled to renew its E-31 contract when its

existing E-31 contract expires. Rather, the requirements of section 2.3 of this Agreement apply as they would if the customer never before had received E-31 Service.

3.3 Customer Agreement Exhibit A. PG&E's form E-31 contract (entitled "Agreement for Customers Taking Service on Schedule E-31, Form No. 79-995") contains a Commission-approved worksheet (entitled "Discount Amount Worksheet"), which is "Exhibit A" thereto. The function of this worksheet is to identify the amount of the discount that PG&E may provide to the customer under Schedule E-31. The Parties have clarified this worksheet to more transparently demonstrate the underlying calculation, and attach a copy of this revised Discount Amount Worksheet as Exhibit D to this Agreement. The Parties hereby agree that the revised Discount Amount Worksheet should replace the existing Discount Amount Worksheet for all E-31 agreements into which PG&E enters after the Effective Date. PG&E shall not be obligated to amend its existing E-31 agreements to include revised Exhibit A.

3.4 Settlement Funds. Within 10 calendar days of the Effective Date, PG&E shall pay to MID the sum of \$925,000.00 ("Payment"). PG&E shall convey the Payment to MID by wire transfer as follows:

Wells Fargo Bank
ABA #121000248
For Further Credit to Modesto Irrigation District
Account 4159349588

3.5 Exchange of Information.

(a) For purposes of compromise and this Agreement only, and with the express understanding that this provision shall not waive any rights of either Party nor set any precedent that either Party may use or attempt to use in any future disagreement concerning the CPRA, the Parties agree that: (1) pursuant to the California Public Records Act, Cal. Gov. Code Section 6253, et seq. ("CPRA"), PG&E has the right to obtain from MID any MID Offer Letters that are no longer pending; and (2) pursuant to Government Code Section 6255, PG&E shall not have the right to obtain from MID any still-pending MID Offer Letters.

(b) PG&E Offer Letters and MID Offer Letters are no longer pending at the expiration of 97 days from the Date of Delivery.

(c) MID shall have the right to obtain from PG&E, upon written request and within 30 days of such request, copies of any PG&E Offer Letters that are no longer pending. MID may exercise its rights under this provision of the Agreement no more than 6 times per calendar year.

(d) In addition, MID shall have the right to obtain the following documentation from PG&E, upon written request and within 30 days of such request, once per calendar year:

(i) a list of customers within the Mutual Service Area that at the time of the request in fact receive E-31 Service;

(ii) a list of customers within the Mutual Service Area to which PG&E offered E-31 Electric Service during the previous calendar year;

(iii) a list of customers within the Mutual Service Area that stopped receiving electric distribution service from PG&E pursuant to Schedule E-31 during the previous calendar year;

(iv) copies of executed agreements into which PG&E entered pursuant to Schedule E-31, including customer affidavits thereto.

ARTICLE IV: REASONABLENESS REVIEW

4.1. **Annual Review.** The Parties agree that the Commission should review the reasonableness of PG&E's E-31 contracts on an annual basis, and propose that the Energy Division review and confirm both (a) the accuracy of PG&E's calculations and the attendant E-31 rates on which its E-31 contracts are based, including, without limitation, compliance with the marginal cost floor price as required by sections 7 and 8 of the Agreement for Customers Taking Service on Schedule E-31, Form No. 79-995 ("Rate Review"), and (b) PG&E's compliance with the procedures set forth in Public Utilities Code Section 454.1, Resolution E-3801, Schedule E-31, the Agreement for Customers Taking Service on Schedule E-31, Form No. 79-995, and this Agreement ("Procedural Review"). Accordingly, PG&E shall submit an advice letter to the Commission each year, requesting the full Commission's approval by resolution.

4.2. **First Reasonableness Review.** The Parties agree that PG&E shall submit its first such advice letter to the Commission within 90 days of the Effective Date. Through such advice letter, PG&E shall submit for the Commission's review all of the E-31 contracts into which PG&E entered prior to January 1, 2009, i.e., from the inception of Schedule E-31 through the end of calendar year 2008. With respect to each such contract, the Commission shall perform a Rate Review, but not a Procedural Review, as the Parties have agreed to settle any disputes with respect to Procedural Review issues as part of this Agreement.

4.3. **Subsequent Reasonableness Reviews.** In all subsequent years following the initial Reasonableness Review, the Commission shall perform both a Procedural Review and a Rate Review with respect to any new E-31 contract(s) into which PG&E has entered since the last review; and it shall perform a Rate Review on any E-31 contract in existence during any portion of the time period since the last review.

4.4. **PG&E's Provision of Information to the Commission for Review.** In connection with the Reasonableness Reviews described in the preceding paragraphs, PG&E shall provide to the Commission all of the following documents and/or information for the time period at issue:

(a) A list of all customers who currently receive PG&E electric-distribution service pursuant to Schedule E-31. This list shall be served on MID at the time it is filed with the Commission.

(b) A complete set of the documents required by this Agreement regarding the provision of E-31 service for each customer including, without limitation, bona fide offer letters, customer affidavits, and E-31 Agreements. The documentation must be sufficient to allow a full review of PG&E's compliance with the Settlement Agreement, Schedule E-31, and Public Utilities Code Section 454.1. These documents shall be served on MID at the time they are filed with the Commission.

(c) A list of all customers whose E-31 contracts expired during the time period at issue. This list shall be served on MID at the time it is filed with the Commission.

(d) All records, information, and data that the Commission requires to conduct the Rate Review, including as necessary to review and analyze whether the rates that PG&E charged pursuant to Schedule E-31 complied with the terms of this Agreement, Schedule E-31, the Agreement for Customers Taking Service on Schedule E-31, Form No. 79-995 (including all records, information, and data necessary to determine whether PG&E has complied with Sections 7 and 8, therein), and Section 454.1. PG&E shall file this information under seal and it shall not be served on MID.

(e) To the extent that PG&E contends that documents or information necessary to the Review are confidential or proprietary, PG&E shall file such information under seal with the Commission. MID shall not be entitled to review such documents and/or information.

ARTICLE V: DISPUTE RESOLUTION

5.1 In the event of a dispute between the Parties arising out of Public Utilities Code Section 454.1, Resolution E-3801, Schedule E-31, and/or this Agreement (“Dispute”), then:

(a) The Party alleging a Dispute (“Alleging Party”) shall provide written notice to the other Party (“Responding Party”) in which it sets forth the facts giving rise to the Dispute (“Notice”). Within 15 days of receipt of such notice, the Responding Party shall respond in writing to the allegations set forth in the Alleging Party’s notice (“Response”). The Notice and Response shall be made in any manner authorized by section 6.7, below.

(b) If the Parties have not resolved the Dispute within 15 days of the Response, then PG&E and MID business-persons with sufficient settlement authority to resolve the Dispute shall meet and confer in person (the “Business-Person Meet and Confer”) to discuss and in good faith attempt to resolve the Dispute. Either Party, or both, may choose to have counsel attend the Business-Person Meet and Confer, but attendance of counsel shall not be mandatory.

(c) If the Parties do not resolve the Dispute during the Business-Person Meet and Confer, or within 10 days thereafter, PG&E and MID shall in good faith discuss whether to retain a mediator to help the Parties attempt to resolve the Dispute; however, neither Party shall be obligated to enter into mediation. In the event that the Parties do in fact choose to mediate the Dispute, they shall bear equally the costs of such mediation.

(d) If the Parties have not resolved the Dispute within 30 days of the Business-Person Meet and Confer or the conclusion of mediation, whichever is later, the Alleging Party shall initiate an arbitration at JAMS, with the Parties bearing equally the costs of such arbitration, as follows:

(i) There shall be a single arbitrator.

(ii) The arbitration shall be governed by the JAMS Comprehensive Rules in effect at the time of the commencement of the arbitration.

(iii) PG&E and MID agree that such arbitration shall address liability only, not damages.

(iv) The arbitrator shall prepare in writing and provide to the Parties a Statement of Decision that includes the factual findings and legal reasons on which the Arbitrator based the Statement of Decision, and such Statement of Decision shall be final and binding unless appealed.

(v) The arbitrator's Statement of Decision shall be subject to judicial review consistent with California law. Accordingly, the Parties expressly agree that the arbitrator shall not have the power to commit errors of law or legal reasoning, any such legal errors constituting an excess of arbitral authority that is reviewable by the courts. The arbitrator's Statement of Decision may be vacated or corrected on appeal to a court of competent jurisdiction for any such legal error.

(e) If the Parties have not resolved the Dispute within 30 days of a final, non-appealable ruling on liability, PG&E's and MID's business-persons jointly shall meet and confer in person (the "Joint Meet and Confer") to attempt in good faith to finally resolve the Dispute. Either Party, or both, may choose to have counsel attend the Joint Meet and Confer, but attendance of counsel shall not be mandatory.

(f) If the Parties have not resolved the Dispute within thirty days of the Joint Meet and Confer, the Alleging Party shall initiate an arbitration on damages at JAMS, with the Parties bearing equally the costs of such arbitration, as follows:

(i) There shall be a single arbitrator.

(ii) The arbitrator for the damages arbitration shall be the same individual as the arbitrator who presided over the liability arbitration. If, however, the liability arbitration award is reversed on appeal, either Party may strike the arbitrator from presiding over the damages arbitration, in which case a new arbitrator shall be selected pursuant to JAMS Comprehensive Rules.

(iii) The arbitration shall be governed by the JAMS Comprehensive Rules in effect at the time of the commencement of the arbitration.

(iv) The arbitrator shall prepare in writing and provide to the Parties a Statement of Decision that includes the factual findings and legal reasons on which the Arbitrator based the Statement of Decision, and such Statement of Decision shall be final and binding unless appealed.

(v) The Parties agree that the Arbitrator shall calculate damages based on the difference between the Alleging Party's lost revenues and applicable marginal costs. Lost revenues shall be calculated as the product of (i) the actual load of the customer at issue, multiplied by (ii) the otherwise applicable rate of the Alleging Party, multiplied by (iii) the length of time the customer received service from the Responding Party. With respect to marginal costs, both PG&E and MID hereby reserve all rights and arguments with respect to the highly-proprietary and confidential nature of their respective marginal costs. Despite agreeing to measure damages in this way, neither Party agrees that its marginal cost information is relevant and/or subject to discovery.

(g) The arbitrator's Statement of Decision shall be subject to judicial review consistent with California law. Accordingly, the Parties expressly agree that the arbitrator shall not have the power to commit errors of law or legal reasoning, any such legal errors constituting an excess of arbitral authority that is reviewable by the courts. The arbitrator's Statement of Decision may be vacated or corrected on appeal to a court of competent jurisdiction for any such legal error.

ARTICLE VI: MISCELLANEOUS PROVISIONS

6.1 **Limited Publicity.** The Parties acknowledge that this Agreement and the terms thereof are, once executed, a public record. The Parties agree that they shall not voluntarily publicize this Agreement or the terms thereof. The Parties further agree that to the extent they are asked to comment on the Agreement or its terms by any media outlet (whether print, television, radio, or Internet-based source), they will state in substance only that the matter was resolved to the satisfaction of both Parties.

6.2 **Termination.**

(a) This Agreement shall terminate upon 30 day's written notice after any of the following. To the extent the Parties dispute the termination, they shall initiate the dispute resolution process set forth in this Agreement.

(i) The repeal or amendment of Section 454.1; or

(ii) The repeal or amendment of Public Utilities Code Section 9610 (to the extent such repeal or amendment of Section 9610 affects the applicability of section 454.1 to the Parties); or

(iii) The enactment of any statute modifying the law as set forth in either Section 454.1 or Section 9610 (but only to the extent such modification of Section 9610 affects the applicability of section 454.1 to the Parties); or

(iv) The issuance of a decision of any tribunal with jurisdiction over Section 454.1 and/or Section 9610, modifying the law as set forth in Sections 454.1 or 9610 (but only to the extent such decision affects the applicability of section 454.1 to the Parties); or

(b) This Agreement shall terminate upon any of the following, without notice:

(i) On December 31, 2017, unless the parties agree in writing to extend the Agreement for another 8-year term; or

(ii) December 31, 2025.

6.3 **Confidentiality.** The Parties hereby acknowledge and agree that the information and documents that the Parties and/or their representatives have exchanged in the course of negotiating, drafting, and/or executing this Agreement are subject to the PG&E-MID "Attorneys' Eyes Only" Confidentiality Agreement ("Confidentiality Agreement") dated April 24, 2008. The Parties agree to abide by the Confidentiality Agreement, which this Agreement does not modify or amend, and which Confidentiality Agreement is and shall remain in full force and effect according to its terms.

6.4. Mutual Releases; Scope of Releases.

(a) With the execution of this Agreement, MID does for itself, its officers, directors, agents, employees, attorneys, consultants, representatives, affiliates, predecessors, successors and assigns hereby release and forever discharge PG&E and its shareholders, officers, directors, agents, employees, attorneys, consultants, representatives, parent corporation, subsidiaries, affiliates, predecessors, successors and assigns from any and all claims, demands, causes of action, obligations or liabilities of any nature whatsoever (including attorneys' fees and costs of suit), whether known or unknown, which, as of the date of this Agreement, it ever had or now has against PG&E relating to the Action, including, without limiting the generality of the foregoing, all such claims, demands, causes of action, obligations or liabilities which in any way relate to or arise out of any action, omission, representation, or proceeding with respect to the matters which were raised or which could have been raised in the Action.

(b) With the execution of this Agreement, PG&E does for itself, its shareholders, officers, directors, agents, employees, attorneys, consultants, representatives, parent corporation, subsidiaries, affiliates, predecessors, successors and assigns hereby release and forever discharge MID and its officers, directors, agents, employees, attorneys, consultants, representatives, affiliates, predecessors, successors and assigns from any and all claims, demands, causes of action, obligations or liabilities of any nature whatsoever (including attorneys' fees and costs of suit), whether known or unknown, which, as of the date of this Agreement, it ever had or now has against MID relating to the Action, including, without limiting the generality of the foregoing, all such claims, demands, causes of action, obligations or liabilities which in any way relate to or arise out of any action, omission, representation, or proceeding with respect to the matters which were raised or which could have been raised in the Action.

(c) MID and PG&E each expressly acknowledge it may have claims against the other, of which claim(s) it is currently unaware, and nevertheless agrees this Agreement is intended to and does extend to any and all claims it may have against the other, whether known or unknown, that arise from the Action, and the matters alleged therein. As a further inducement and consideration, and subject to the foregoing exception, MID and PG&E expressly and specifically waive any rights or benefits available to them under California Civil Code section 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

(d) Each Party represents and warrants that it has given any and all notices, and obtained any and all consents, powers and authorities, necessary to permit it and the persons executing this Agreement for it, to enter into this Agreement, settle, compromise, and release the claims settled, compromised, and released herein, to do, undertake, or forebear from any act called for herein, and to make this Agreement, and all the provisions hereof, fully binding on and enforceable against that Party, including, without limitation thereto, any necessary notice to or consent or approval from its

shareholders, creditors, Board of Directors, partners, members, managers, officers, or any similar person, entity, group or body, except that the Parties expressly acknowledge that approval of this Agreement must be obtained from the Commission as set forth in greater detail above.

(e) None of the releases contained in this Agreement is intended to release any Party from any obligation or undertaking called for or to be performed pursuant to this Agreement, all of which obligations and undertakings shall survive the execution and delivery hereof.

(f) MID and PG&E acknowledge that the valuable consideration that each is exchanging through the settlement of the Action and by way of this Agreement is solely for the purpose of purchasing peace and preventing further involvement in protracted litigation between them. Based on this mutual understanding, the Parties agree as follows:

(i) Neither the payment of money nor the provision of any other consideration is or shall be construed to be an admission that any of the claims compromised or released by this Agreement is valid;

(ii) Neither the existence of this Agreement, nor any element hereof, including but not limited to the component duties, obligations, actions, settlements, and agreements provided for in the Agreement, shall constitute or be deemed to constitute a precedent or have any precedential effect in any contested matter and/or proceeding, including but not limited to judicial, regulatory, administrative, quasi-judicial and/or quasi-legislative proceedings, regardless of whether such proceeding is of federal, state, or local jurisdiction.

(iii) The Parties agree that neither shall use this Agreement nor any element hereof, including but not limited to the component duties, obligations, actions, settlements, and agreements provided for in the Agreement, as evidence respecting any fact, right, obligation, or alleged liability of either Party or the customers of either Party, except as may be required in an action to enforce the terms of this Agreement.

6.5 **Waiver.** A waiver of any provision of this Agreement shall not be effective unless such a waiver is made expressly in writing. An express waiver of any one breach shall not be deemed a waiver of any other breach of the same or any other provision of this Agreement.

6.6 **Representation by Counsel.** MID and PG&E represent they have been represented by counsel of their own choosing regarding the preparation and negotiation of this Agreement and all the matters and claims set forth herein, and that each of them has read this Agreement and is fully aware of its contents and its legal effect.

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6.7 **Notice.** Consistent with Section 2.2, Delivery of formal notices may be accomplished by hand, via electronic transmission (including but not limited to electronic mail and/or facsimile transmission), by overnight delivery service or courier service, and/or by depositing the item into the United States Mail with the correct address set forth on the envelope and proper postage appended thereto, as follows:

(a) To Modesto Irrigation District:

MODESTO IRRIGATION DISTRICT
Office of the General Manager
1231 11th Street
Modesto, CA 95354
Email: allens@mid.org

(b) To Pacific Gas and Electric Company

PACIFIC GAS AND ELECTRIC COMPANY
Attn: David Rubin
77 Beale Street, B8L - 891
P.O. Box 7442
San Francisco, CA 94120
Email: DER1@pge.com

and

PACIFIC GAS AND ELECTRIC COMPANY
Attn: Cliff Gleicher
77 Beale Street, B30A - 3013
P.O. Box 7442
San Francisco, CA 94120
Email: CJGf@pge.com

6.8 **Interpretation of Agreement.** The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any Party. No presumptions or rules of interpretation based upon the identity of the Party preparing or drafting the Agreement, or any part thereof, shall be applicable or invoked. In addition, each provision of this Agreement shall be interpreted in such a manner as to be valid and enforceable under applicable law, but if any provision hereof shall be or become prohibited or invalid under any applicable law, that provision shall be ineffective only to the extent of such prohibition or invalidity, without thereby invalidating the remainder of that provision or of any other provision hereof.

6.9 **Choice of Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California.

6.10 **Integrated Agreement.** This Agreement constitutes the entire agreement among the Parties and that except for the Confidentiality Agreement (which remains in full force and effect), the Agreement supersedes all prior understandings or agreements with respect to its subject matter.

6.11 **Amendment.** This Agreement may not be altered, amended, modified or otherwise changed, except in writing duly executed by authorized representatives of each of the Parties.

6.12 **Execution By Counterparts.** This Agreement may be executed in counterparts, which taken together, shall constitute an original. Facsimiles of original pages shall be binding on the Parties to the Agreement. The Parties shall exchange original signed counterparts as soon as possible.

6.13 **Benefit of Agreement.** This Agreement is made solely for the benefit of the Parties and it is not made for the benefit of any person, firm, association, corporation, or public entity that is not a Party hereto; and no person, firm, association, corporation or public entity other than the Parties shall have any right to enforce this Agreement.

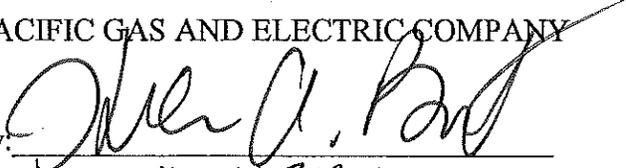
6.14 **Authority to Sign and Implement Settlement.** Each Party represents and warrants that it has the necessary Board, corporate, and/or legal authority to enter into this Agreement and to perform each and every duty and obligation provided for herein, and that this Agreement, when executed by the duly authorized representatives of each Party, represents a valid, binding, and enforceable legal obligation on each Party. Each individual affixing a signature to this Agreement represents and warrants that he or she is duly authorized to execute this Agreement on behalf of the Party represented, and that by signing this Agreement, a valid, binding and enforceable legal obligation of said Party has been created.

IN WITNESS WHEREOF this Agreement is executed and agreed to by the following, as of the last date set forth below.

*** SIGNATURE PAGE FOLLOWS ***

PACIFIC GAS AND ELECTRIC COMPANY

2/20, 2009

By: 
Name: HELEN BURT
Title: SVP, CHIEF CUSTOMER OFFICER

MODESTO IRRIGATION DISTRICT

2/27, 2009

By: 
Name: ALLEN SHORT
Title: GM

Approved as to form.

2/20, 2009

By: 
Name: CLIFF GUETCHER
Attorneys for Pacific Gas and Electric Company

Approved as to form.

FEBRUARY 25, 2009

DAY CARTER & MURPHY LLP

By: 
Ralph R. Nevis
Attorneys for Modesto Irrigation District

November __, 2007

[Customer]

[Address]

Re: MID Offer of Service

Dear _____:

The Modesto Irrigation District is pleased to provide you with the following estimate for the provision of electrical service to your location at _____, California. The terms and conditions set forth herein represent the District's bona fide estimate of the terms and conditions of the District's proposed service to you. They are estimates based on the information available to the District as of the date of this letter. The actual terms and conditions are subject to change as circumstances warrant. The terms and conditions set forth herein shall expire 30 days from the date of this letter.

1. Rate.

The District has determined that you are qualified for rates based on District tariff _____. We have attached the current rate schedule for your reference. The District's rates are subject to annual review and adjustment by the District's Board of Directors.

2. Line Extension and Facilities.

The District will supply and install a line extension and electrical facilities in accordance with its service rules and commercial guide, which are available by visiting www.mid.org. You, as the customer, also have specific obligations and responsibilities under the service rules and commercial guide. The District will provide detailed terms with respect to the parties' obligations and responsibilities in a separate writing at a later date.

You must also deposit with the District a one-time, non-refundable amount of \$*** prior to the release of the work order. This amount is the total of the line extension charges for the line installation beyond the free allowances provided by the District.

You must also sign a "Service Agreement" with the District prior to commencing electrical service from the District.

3. Construction Schedule.

The District will issue the work order and commence construction of the line extension and facilities within *** days of your acceptance of and compliance with the terms set forth herein. The District estimates construction to be complete on _____, 2008.

If these conditions are acceptable to you, please sign and date this letter below and return it to ***. If you have any question, please contact ***.

[Signature Block]

[Customer Acceptance Block]

_____, 2008

[Customer]

[Address]

Re: Offer of Service

Dear _____:

PG&E is pleased to provide you with the following estimate for the provision of electrical service to your location at _____, California. The terms and conditions set forth herein represent PG&E's bona fide estimate of the terms and conditions of its proposed service to you. They are estimates based on the information available to PG&E as of the date of this letter. The actual terms and conditions are subject to change as circumstances warrant. The terms and conditions set forth herein shall expire 30 days from the date of this letter.

1. Rate.

PG&E has determined that you are qualified for rates based on its Schedule E-31, a CPUC-approved tariff. We have attached a rate analysis for your reference.

2. Line Extension and Facilities.

PG&E will supply and install a line extension and electrical facilities in accordance with its tariffs, which are available by visiting www.pge.com. You, as the customer, also have specific obligations and responsibilities under these rules. PG&E will provide detailed terms with respect to the parties' obligations and responsibilities in a separate writing at a later date.

Under PG&E's line extension tariffs you have the option of designing your line extension and having it installed by your own contractor. PG&E will provide you with an estimate for PG&E to perform the design work and for PG&E to install the facilities, but you have the option of choosing your own designer or installer. PG&E anticipates that, should you choose PG&E to perform this work, we would be able to complete the design and installation by _____ 2008. If you choose your own designer or installer, the completion might be sooner or later, depending of course on your contractor.

If these conditions are acceptable, please sign and date this letter below and return it to _____ . If you have any question, please contact _____ at _____ .

[Signature Block]

[Customer Acceptance Block]

**AFFIDAVIT OF MATERIAL BUSINESS JUSTIFICATION FOR
IMMEDIATE MODESTO IRRIGATION DISTRICT
CONTRACT AND/OR CONNECTION**

I, _____ [NAME] _____, hereby declare all of the following under penalty of perjury under the laws of the State of California:

1. I am the _____ [TITLE] _____ of _____ [COMPANY
NAME] _____ ("Company"), and I am authorized to make this affidavit on Company's behalf.

2. Company is a new construction electric-customer within the territory that Modesto Irrigation District ("MID") may serve and has at least 20 kW peak demand at its premises.

3. MID has informed me and I am aware that California law, as set forth by the California Public Utilities Commission ("Commission"), requires MID to wait 28 days ("the Hold Period") before connecting or entering into a contract with a new construction customer that has at least 20 kW peak demand at its premises and is located within the territory that MID may serve.

4. I also am aware that there is a very limited exception to the Hold Period that allows MID to enter into a contract for MID service and/or allow MID to connect that customer before the end of the 28-day Hold Period. MID may do so when the Customer submits an affidavit describing the material business justification for doing so.

5. On behalf of Company, I hereby represent that Customer's business interests are material so as to justify MID and Company entering into the subject electric contract and/or for MID to connect with Company because _____

I hereby declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed at _____ [CITY] _____, California this _____ day if _____, 20____.

[SIGNATURE]

[PRINTED NAME]

Notarized by:

EXHIBIT D

- Distribution:
- Applicant (Original)
 - Account Services (Original)
 - Tariffs and Compliance (Original)
 - Customer Billing

Reference:
Service Agreement ID _____

EXHIBIT A:

DISCOUNT AMOUNT WORKSHEET

A. Comparison of Average Total Rates

- 1. **PG&E's Average Total Rate (\$/kWh)**
(Under otherwise-applicable rate schedule; attach calculation) _____
- 2. **Competitor's Average Total Rate (\$/kWh)**
(Under otherwise-applicable rate schedule, plus applicable NBCs paid by customer; attach calculation) _____
- 3. **Difference (\$/kWh)**
(Item 1 minus Item 2) _____

B. Comparison of Average Non-Commodity Rates

- 4. **PG&E's Average Non-Commodity Rate (\$/kWh)**
(Under otherwise-applicable rate schedule; including NBCs; attach calculation) _____
- 5. **Irrigation District's Average Non-Commodity Rate (\$/kWh)**
(Reference Competitor's tariff or other written offer, including out-of-pocket non-bypassable charges that customer would pay; attach calculation) _____
- 6. **Difference (\$/kWh)**
(Item 4 minus Item 5) _____

C. Discount

- 7. **Competitive Discount (\$/kWh)**
(Item 6) _____
- 8. **Additional Discount**
(Amount of additional discount, if any, which in PG&E's reasonable business judgment is necessary to retain or attract the customer) _____
- 9. **Constraints On Discount**
(A reduction in the sum of the discounts in Items 7 and 8 to account for constraints on discounting, expressed as a negative number; attach calculation) (_____)
- 10. **Total Allowable Discount (\$/kWh)**
(Sum of items 7 through 9) _____

D. Application to Customer's E-31 Rate

11. PG&E's Average Non-Commodity Rate (Net of Nonbypassable Charges) (\$/kWh)

(Under otherwise-applicable rate schedule; net of NBCs; attach calculation)

12. Rate Discount Percentage (%)

(Item 10 expressed as a percentage of item 11)
