

Attachments

Excerpt of Bona Fide Offer Terms from PG&E and MID Settlement
(June 18, 2009, Settlement Approved in D.09-06-025 in Case 07-08-027)

PG&E Motion to Dismiss Modesto Irrigation District's Complaint
(Filed October 4, 2007 in Case 07-08-027)

Joint Motion for Approval of Settlement Agreement
(Filed March 19, 2009 in Case 07-08-027)

Excerpt of Bona Fide Offer Terms from PG&E-MID Settlement
(June 18, 2009, Settlement Approved in D.09-06-025, in Case 07-08-027)

Section 2.3 **PG&E 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 . . . 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”).

Section 2.4 **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 . . . 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”).

Section 2.5 **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 . . . 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”).

(D.09-06-025, attachment A, pp. 3-5.)

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA**

Modesto Irrigation District,)
)
 Complainant,)
)
 v.)
)
 Pacific Gas & Electric Company,)
)
 Defendant (U39E))
)

Case No. C.07-08-027

**PACIFIC GAS AND ELECTRIC COMPANY'S
MOTION TO DISMISS
MODESTO IRRIGATION DISTRICT'S COMPLAINT**

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October 4, 2007

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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Modesto Irrigation District,)	
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Complainant,)	
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v.)	Case No. C.07-08-027
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Pacific Gas & Electric Company,)	
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Defendant (U39E))	
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**PACIFIC GAS AND ELECTRIC COMPANY’S
MOTION TO DISMISS
MODESTO IRRIGATION DISTRICT’S COMPLAINT**

Pursuant to Rules 11.1 and 11.2 of the California Public Utilities Commission’s (“CPUC” or “Commission”) Rules of Practice and Procedure, Pacific Gas and Electric Company (“PG&E”) hereby moves to dismiss Modesto Irrigation District’s (“MID”) Complaint. PG&E respectfully requests that the Commission dismiss MID’s Complaint with prejudice.

I.

INTRODUCTION

MID’s allegations are not only unfounded, but based upon misrepresentation of PG&E’s prior testimony and on misstatements of law. MID’s inappropriate conduct provides a more than adequate basis for the Commission to dismiss the present Complaint. Moreover, the relief that MID requests is inappropriate in an adjudicatory proceeding, and provides further grounds for dismissing MID’s Complaint and each of its requests therein.

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- ***MID’s Unfounded Definition of “Bona Fide Offer”***

MID’s primary allegation – that PG&E offered Schedule E-31¹ service to prospective customers before MID extended “bona fide offers” to them – is based on an unsupportable definition of “bona fide offer.” As discussed in Section III(A), *infra*, there is no precedent for MID’s proposed definition, and, in fact, MID’s definition contradicts well-established California contract law. Why then has MID proposed such a definition? To limit PG&E’s ability to use E-31. More specifically, MID’s service rules and regulations (“Rules”) do not require MID to prepare a document called “Bona Fide Offer,” and MID can enter into contracts based on its published Rules, i.e., without preparing what it subjectively defines (and would have the Commission define) as a “bona fide offer.” MID’s argument is in effect a legal shell game: by asking the Commission to require PG&E to demonstrate that MID has re-written the terms of its Rules on a separate document that MID need not prepare, MID seeks to undermine PG&E’s ability to pursue E-31 contracts – and itself sign those customers to contracts.

- ***MID’s Inappropriate Effort to Build the Current Case During A.06-07-027***

MID’s accusations derive from PG&E’s customized line extension (“CLE”) proceeding, A.06-07-027. There, MID pointedly searched for means to challenge PG&E’s E-31 practices, see Ex. B (seeking detailed information concerning PG&E’s E-31 accounts), and accused PG&E of violating E-31 without proffering any evidence thereof. See Ex. C. PG&E denied MID’s

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¹ The accompanying Declaration of Clifford Gleicher contains true and correct copies of the documents referenced in this Motion to Dismiss and PG&E’s Answer. All references to exhibits are to the Gleicher Declaration. A true and correct copy of Commission-approved Schedule E-31 is attached thereto as Exhibit A.

accusations and properly issued discovery demanding facts to support MID's claims,² but MID refused to respond substantively. See Ex D. Indeed, Administrative Law Judge ("ALJ") O'Donnell granted PG&E's motion to strike MID's testimony concerning E-31 on the basis that MID had refused to respond to PG&E's discovery. See Ex. E. MID's misuse of the CLE proceeding and rehashing of its unfounded allegations here constitutes an abuse of process. MID should not be permitted to continue to waste this Commission's and PG&E's customers' resources on these unfounded charges.

- ***MID's Misrepresentation of PG&E's Testimony in A.06-07-027***

Making matters worse, MID has based its case on the untrue allegation that PG&E-witness David Rubin "admitted and confirmed" MID's unfounded definition of what constitutes a "bona fide offer." See Complaint ¶4. While MID's counsel did *ask* Mr. Rubin several times whether "bona fide offers" are the same in the CLE and E-31 contexts, Mr. Rubin three times advised MID's attorney that he could not answer the question without spending proper time examining the details of Schedule E-31 and comparing them to PG&E's proposed CLE tariff (in effect, that Schedule E-31 and the proposed CLE tariff are different and that the definition of

² PG&E propounded the following data request to MID, a copy of which is found at Exhibit D:

Q 18: Beginning at page 13, line 23, Mr. Kimball addresses PG&E's Schedule E-31 and accuses PG&E of violating that tariff. Specifically, he testifies that "it appears to us that PG&E has provided the special rate under Schedule E-31 to customers who are not eligible for that rate." This is a very serious accusation, as to which Mr. Kimball has not provided very much information, and which PG&E vehemently denies. Accordingly, please answer the following questions in detail:

(a) With respect to Mr. Kimball's accusation, please state all facts on which you claim that this so "appears."

(b) With respect to Mr. Kimball's accusation, please identify to whom MID is referring as "us." Similarly, at page 14, line 3, where Mr. Kimball states that "[w]e believe . . .," please identify to whom MID is referring as "we."

(c) Mr. Kimball asserts at page 14, line 3 that PG&E has provided E-31 rates "to customers to whom MID never made any offer of service, including any 'bona fide' offer as required." With respect to such accusation, please identify all such customers; please identify all facts on which MID bases this accusation; please define what MID contends constitutes a "bona fide" offer.

“bona fide offer” would not necessarily be the same in the two contexts). MID’s attorney acknowledged this testimony and changed his question:

Okay. And I’m backing away from that at this point. *I want to know in this proceeding how would you define the term bona fide offer.*

See Ex. E at 121:28 – 123:1 (emphasis added). Notwithstanding this express concession by MID’s counsel during the CLE hearing, MID nevertheless has made this purported admission a central allegation in its case. MID’s assertion is patently false; and its allegations should be dismissed.

- ***MID’s Requests for Relief Are Inappropriate in a Complaint Case***

Even if there were any basis for MID’s claims, they are inappropriate in an adjudicatory proceeding such as this. From proposing a new definition of “bona fide offer” (see Complaint ¶4), to conceding it lacks sufficient evidence to review PG&E’s E-31 “floor prices,” (see Complaint ¶7, 18), to requesting a new annual proceeding (the so-called Special Exceptions and Rates Review proceeding) at which the Commission would review all of PG&E’s “special rates and contracts” (see Complaint ¶45), MID’s true intent seems to be to modify the existing rules concerning Schedule E-31 to limit PG&E’s use of this tariff. None of this is proper in a complaint case, and MID’s allegations should be dismissed with prejudice. To the extent that MID seeks such review, revision, and/or clarification of the existing E-31 rules (beyond what would occur in the Commission’s reasonableness review of PG&E’s E-31 contracts, which PG&E anticipates will occur in 2008), it should so petition the Commission for such review, revision, and/or clarification.

Accordingly, and for the foregoing reasons, PG&E respectfully moves the Commission to dismiss MID’s Complaint with prejudice.

II.

COMMISSION-APPROVED SCHEDULE E-31

A. The Legislative and Regulatory Purpose Behind Schedule E-31

The Legislature enacted Public Utilities Code Section 454.1 in 2000 as part of Assembly Bill 2638. See Ex. G and Ex. H. As the Commission explained in Resolution E-3801 (dated August 21, 2003), Section 454.1 authorized “a flexible pricing option” for PG&E, which PG&E implemented and the Commission approved in PG&E’s Schedule E-31. See Ex. I. The Commission also approved PG&E’s E-31 service agreement, which is a standard form contract (Form No. 79-995). See Ex. J.

The Commission’s stated purpose in authorizing Schedule E-31 is to provide PG&E with the flexibility to match lower non-commodity rates that irrigation districts may offer so that PG&E may try to keep or attract medium- and large-load customers.

Applicability: Schedule E-31 is for the purpose of retaining existing load that otherwise would not remain on PG&E’s retail electric distribution system, or to attract load located, or about to locate, within PG&E’s service territory that is currently served, or might choose to be served, by an irrigation district. . . .

See Ex. A at p.1. In effect, the tariff is designed to prevent uneconomic bypass.³

B. Applicable Conditions to PG&E’s Providing Schedule E-31 Service

As detailed in the tariff, PG&E has standing authority to extend an E-31 offer to a prospective customer when: (1) the customer is eligible to receive distribution service either from PG&E or an irrigation district; (2) the customer has at least 20 kW peak demand at its

³ Bypass is uneconomic when a customer leaves the utility system even though its cost to bypass is more than the marginal cost of utility service. Uneconomic bypass includes both the loss of existing customers and of new customers, when such loss results in a foregone contribution to margin (“CTM”) that otherwise would have benefited remaining customers. See D.92-11-052, 46 CPUC 2d at 449 (Conclusion of Law 3: “Discounts to prevent uneconomic bypass can attract or retain incremental load which would otherwise be lost, and thus help to keep other rates down”).

premises; (3) the customer demonstrates that it has received a “bona fide offer” from an irrigation district for service at rates less than PG&E’s tariffed rates; (4) the customer has signed an affidavit “to that effect,” i.e., demonstrating that it has received a “bona fide offer” from an irrigation district for service at rates less than PG&E’s tariffed rates; and (5) the customer pays sufficient revenue to PG&E to assure that the customer’s payments do not fall below a “floor price” equal to (in MID’s case) 120 percent of “PG&E’s total distribution planning area-specific, marginal transmission and distribution costs.”⁴ See Ex. A at p.1 (“Eligibility”).

C. PG&E’s Commencement of E-31 Service

Schedule E-31 provides that PG&E, *in its own judgment*, may commence providing discounted service as follows:

Commencement Date: The commencement date of the discount rate period *shall be designated by PG&E* and . . . shall be no earlier than the date at which, *in PG&E’s judgment*, the customer would have begun taking service from the irrigation district. . . .

See Ex. A at p. 3 (“Commencement Date” [emphasis added].)

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⁴ Schedule E-31 sets the “floor price” at 120 percent for customers whose service alternative is MID. The applicable floor price is 100 percent for customers who have other irrigation district service alternatives. See Ex. A at p.3 (“Floor Price”).

III.

MID'S COMPLAINT IS BASED ON MISSTATEMENTS AND MISREPRESENTATIONS, AND ACCORDINGLY SHOULD BE DISMISSED

A. MID's "Bona Fide Offer" Allegations Are Unfounded and Incorrect

MID's primary allegation is that it did not extend "bona fide offers" to the subject customers, and PG&E therefore could not properly have made E-31 offers to them. MID's claim, however, is not only self-serving but made-up, as its proffered definition of "bona fide offer" contradicts well-established California law. There simply is no legal authority to support MID's contention that a "bona fide offer" must be "an actual written offer to provide service after service requirements and schedule are determined" and that its rate quotes to customers are not "bona fide offers." See Complaint ¶4 (citing its own brief in A.06-07-027 as legal authority).

MID's failure to cite any legal authority is not coincidence; there simply is no such authority. California contract law makes clear that MID's rate quotes constitute "bona fide offers" consistent with Schedule E-31. MID's rate quotes are statements establishing at what price MID would provide prospective customers – *customers as to whom MID voluntarily has taken on an obligation to serve* – with distribution service. See, e.g., B. Witkin, Summary of Cal. Law (10th ed. 2005), Vol. 1: Contracts, § 125 (defining "offer").

1. A "Bona Fide Offer" Is A Good Faith Manifestation of Willingness to Enter Into A Bargain

a. "Bona Fide"

The term "**bona fide**" is Latin for "in or with good faith." See Black's Law Dictionary (6th ed. 1990) (also defining "bona fide" as "honestly, openly, and sincerely" and "without deceit or fraud"). Thus, the legal term "bona fide offer" simply means "an offer made in or with good faith."

b. “Offer”

California law defines an “offer” as “the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it.” B. Witkin, Summary of Cal. Law (10th ed. 2005), Vol. 1: Contracts, § 125. This is the foundation for California’s “objective theory of contracts,” under which the parties’ manifestation of mutual consent dictates whether parties have entered into a contract. Id. at § 116. “The manifestation of mutual consent is usually accomplished through the medium of an offer communicated to the offeree and an acceptance communicated to the offeror.” Id. at § 117 (internal citations omitted). Indeed, it is black letter law that *the manifestation need not even be written*, a central element of MID’s proposed definition. Compare id. at § 117 (“[t]he manifestation may be made wholly or partly by written or spoken words or by other acts or by failure to act”) and Complaint ¶4 (“defining a bona fide offer as an actual written offer . . .”).

Thus, where MID has advised a prospective customer of the rate that it would charge that customer for service, making it evident that the prospective customer may “accept” those terms, MID has extended to it a “bona fide offer,” i.e., a good faith manifestation of MID’s willingness to enter into a contract with that prospective customer. Such would constitute an offer even if were not in writing, yet MID incorrectly charges that a written rate quote somehow does not qualify as a “bona fide offer.”

2. MID’s “Obligation to Serve”

As stated above, an “offer” is “the manifestation of willingness to enter into a bargain, so made as to *justify* another person in understanding that his assent to that bargain is invited and will conclude it.” B. Witkin, Summary of Cal. Law, § 125 (emphasis added). MID’s manifested

willingness to enter into contracts with the subject customers, and the customers' justification in believing a rate quote suffices as an "offer," is underscored by MID's having "voluntarily taken on the obligation to serve any customers in the area it serves that meet its rules and regulations . . ." See Ex. K (citing the Prepared Testimony of Thomas Kimball, A.06-07-027 at 9:16-18 and MID Resolution No. 2001-65, passed on May 22, 2001). In effect, MID has committed to serving any customer that can pay MID for service, justifying customers in believing that MID's rate quotes to them do in fact constitute "offers." Nothing more is needed to create a contract. See B. Witkin, Summary of Cal. Law, § 145 ("[i]t is well settled that an agreement definite in its essential elements is not rendered unenforceable by reason of uncertainty in some minor, nonessential detail"). MID's claim that its offers must contain service requirements and schedule information to qualify as a "bona fide" offer is a red herring. Id.

3. MID's Proffered Definition of "Bona Fide Offer" Contradicts California Contract Law

While MID distinguishes its "rate quotes" from "bona fide offers," this plainly is not the law. PG&E can appreciate why MID might *prefer* this to be so, but it is neither what Section 454.1 nor Schedule E-31 requires. In fact, MID's interpretation of this requirement is so extreme that it would nullify both Section 454.1 and Schedule E-31, undermining both the Legislature's purpose in enacting the statute and the Commission's action in authorizing E-31.

As the Commission likely is aware, MID's Rules do not require it to prepare written offers containing the terms already set forth in its Rules. And since its Rules do not require it to issue any additional documentation (i.e., that it actually concedes constitutes a "bona fide offer"), it is empowered to enter into a contract with a prospective customer without anything more than its existing Rules. This, of course, underscores MID's extreme interpretation of Schedule E-31: by asking the Commission to require PG&E to demonstrate that MID has re-

written the terms of its Rules on a separate document that it need not prepare, MID could dramatically undermine PG&E's ability to pursue E-31 contracts, and itself sign those customers to contracts.⁵

In short, as much as MID might prefer the arrangement it herein proposes, it contradicts well-established contract law and would undermine both the Legislature and the Commission, which already passed judgment and approved Section 454.1 and Schedule E-31.

4. MID's Allegations Ignore that PG&E's E-31 Customers All Have Submitted Sworn Affidavits to PG&E Attesting to Having Received "Bona Fide Offers"

Schedule E-31's eligibility criteria state that for PG&E's existing customers to qualify for E-31 service, "they" – that is, the customers – must "demonstrate that they have received a bona fide offer from an irrigation district . . ." See Ex. A at p.1 ("Eligibility"). MID's Complaint wholly ignores that every one of PG&E's E-31 customers has submitted a sworn affidavit to that effect to PG&E. Not only does this substantiate PG&E's good faith in extending E-31 offers to these customers, but it is a *demonstration* that these customers did in fact receive such bona fide offers.

B. MID's Complaint Misrepresents PG&E's Testimony in A.06-07-027

Not only has MID made up a definition of "bona fide offer" that contradicts black-letter California law, it also has misrepresented PG&E's purported agreement with MID's position.

⁵ Indeed, MID pursued a similarly self-serving tack in A.06-07-027, to which Mr. Rubin testified as follows:

We're trying to avoid a situation, again, where a deal is made between a developer and a POU verbally, and there is nothing in writing, and we're handicapped from being able to respond if our condition of being able to provide a counteroffer is we have to see something from the POU to the developer in writing.

Ex. L.

See Complaint ¶4 (asserting that PG&E-witness David Rubin “admitted and confirmed” MID’s statement of the law in A.06-07-027). PG&E has never so agreed.

Specifically, during the evidentiary hearing in A.06-07-027, MID’s counsel asked Mr. Rubin about various E-31-related matters, including the definition of “bona fide offer.” See Ex. E at 114:8 – 123:1. PG&E’s counsel objected to the relevance of MID’s E-31-related questions in the context of PG&E’s CLE application, which led the two counsel to debate the relevance of the E-31-related questions. See id. at 116:27 – 120:22. With the ALJ’s guidance, MID’s counsel refocused his question, and in response Mr. Rubin several times distinguished PG&E’s CLE proposal (which expressly differentiated how PG&E would respond to (a) MID-offers based on MID’s Rules and (ii) MID-offers that deviated from those Rules) and E-31 (which does not expressly differentiate between these types of offers).

Q. How does PG&E define bona fide offer in the E-31 [sic]? Well, let me ask a different question. Would PG&E define bona fide offer the same in the E-31 context and in this proceeding, should your proposal be approved?

A. I’m generally familiar, your Honor, with E-31. I’d really have to take a look at the specific details around exactly what the eligibility criteria are in order to be able to make that kind of connection.

Q. Okay. Do you know how PG&E defines the term bona fide offer?

A. That’s what I’m saying. I’d really have to take a look at the specific terms of the tariff in order to be able to answer your question.

Q. Is it true that your testimony proposes the use of a bona fide offer as part of the precursor to the special program that you’re asking for here – your personal testimony.

A. Yes.

Q. Okay. So you have provided that testimony, but you have not defined that term in your testimony, is that correct?

A. Well, we’ve explained it as we have. And I’ll have to go back to the specific passage of testimony. I’m just not able, again, to contrast it to what’s required under E-31 at this time.

Q. Okay. And I'm backing away from that at this point. I want to know in this proceeding how would you define the term bona fide offer.

Ex. F at 121:28 – 123:1 (emphasis added).

MID's reliance on PG&E's testimony not only overlooks the significant fact that Schedule E-31 does not distinguish between MID-offers that contain Rule-based rates and those that deviate from MID's published Rules, but it ignores pages of objections and debate, substantial additional testimony in which Mr. Rubin stated expressly that he was not prepared to address Schedule E-31, and even MID's own attorney's statement that he was changing his focus away from E-31 and only to PG&E's line-extension application. See id. at 122:27 – 123:1 (“And I'm backing away from that at this point. I want to know in this proceeding how would you define the term bona fide offer” [emphasis added.]).

MID's misrepresentation of PG&E's testimony in its verified Complaint provides a proper basis for dismissing the Complaint. PG&E respectfully urges the Commission to do so.

C. MID Misstates How E-31 Operates, As the Commission Granted PG&E Discretion to Determine When to Commence E-31 Service, Stating The Date Shall Be “*In PG&E's Judgment*”

MID's challenges to the dates on which PG&E initiated E-31 service are based on a misstatement of the law. MID challenges the date on which PG&E commenced E-31 service to each of these nine customers based on its subjective assessment of “the earliest [dates] Modesto could have provided electric service to [the subject customers],” see, e.g., Complaint ¶16, but this is not the law. Rather, as Schedule E-31 itself provides, PG&E may commence E-31 service on “the date at which, in PG&E's judgment, the customer would have begun taking service from the irrigation district.” See Ex. A at p.3 (“Commencement Date”). MID's arguments concerning when it could have provided service (see Complaint ¶16, 21, 24, 27, 30, 33, 36, 39, 43) are irrelevant. Even if MID's allegations all were correct, Schedule E-31 does not require PG&E to

obtain MID's input concerning when MID *actually* could have begun providing service. Rather, PG&E's *good faith judgment* of when the customer would have begun taking service from MID is controlling. MID has not cited any basis for PG&E's having to solicit MID's input regarding when MID could have begun providing service; nor has MID proffered any evidence of – nor even asserted – any bad faith on PG&E's part. Indeed, PG&E has acted in good faith in judging when it could commence E-31 service, and MID's unfounded allegations should be dismissed.

D. MID Concedes It Has No Basis for Complaining About PG&E's "Price Floors" and Marginal Cost Calculations

MID's challenges to PG&E's "floor price" and marginal cost calculations are wholly without merit. MID's claims amount to a desire to know and review the rates contained in PG&E's E-31 contracts, not an assertion of malfeasance. See, e.g., Complaint ¶7 (asserting that PG&E has not submitted its E-31 contracts to the Commission for review), and Complaint ¶18 (alleging that PG&E failed to attach Schedule A to an Oak Valley Hospital District agreement). These are logistical challenges concerning how and when PG&E's contracts are reviewed, not fact-based accusations that PG&E violated Schedule E-31. Indeed, *MID itself concedes it has no basis for alleging any violation of Schedule E-31's floor price limitations.* See, e.g., Complaint ¶7, 18 ("there is no way to know if the discount falls below the marginal costs;" and "it [is] impossible to determine whether the discount given to OVHD impermissibly falls below the marginal costs allowed by law"). MID's allegations are unfounded, and its charges should be dismissed.

IV.

MID'S ALLEGATIONS ARE IMPROPER IN A COMPLAINT CASE

MID's allegations are not fact-based, but reflect MID's general dissatisfaction with Section 454.1 and Schedule E-31. This is most transparent with respect to its request for a new

annual “special exceptions and rates review proceeding” to evaluate not just PG&E’s E-31 compliance, but also Schedule ED (regarding PG&E’s Commission-authorized “Economic Development” discounted rate) and “future special contracts and rates the Commission may authorize.” See Complaint ¶45. These sorts of requests are improper in a complaint case, and to the extent that MID wants to pursue this subject matter, it should appropriately petition the Commission for such relief.⁶ And to the extent that MID’s requests would duplicate analysis that will occur in the Commission’s reasonableness review of these contracts – which issue is before the Commission in A.06-07-027, and which review PG&E expects will take place in 2008 – MID’s Complaint is superfluous and should be dismissed.

V.

CONCLUSION

MID unfounded attacks on PG&E’s use of Schedule E-31 are wholly inappropriate. Its misstatement of how this tariff operates, its misrepresentation of PG&E’s prior testimony, and its overzealous overreaching in an attempt to advance its own business interests all are proper grounds for dismissal of its Complaint. At a minimum, MID’s allegations are improper in a complaint case, and should be dismissed on that ground alone.

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⁶ PG&E does not agree that such is necessary, but certainly an adjudicatory proceeding is not the proper means for seeking such relief.

Accordingly, and for the foregoing reasons, PG&E respectfully urges the Commission to dismiss MID's improper Complaint, and each of its requests for relief, with prejudice.

Respectfully submitted,

RANDALL J. LITTENEKER
CLIFFORD J. GLEICHER

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Attorneys for
PACIFIC GAS AND ELECTRIC COMPANY

Dated: October 4, 2007

CERTIFICATE OF SERVICE BY MAIL

I, the undersigned, state that I am a citizen of the United States and am employed in the City and County of San Francisco; that I am over the age of eighteen (18) years and not a party to the within cause; and that my business address is Pacific Gas and Electric Company, Law Department B30A, 77 Beale Street, San Francisco, California 94105.

I am readily familiar with the business practice of Pacific Gas and Electric Company for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

On the 4th day of October 2007, I caused to be served a true copy of:

**PACIFIC GAS AND ELECTRIC COMPANY'S
MOTION TO DISMISS
MODESTO IRRIGATION DISTRICT'S COMPLAINT**

[XX] By U.S. Mail – by placing it for collection and mailing, in the course of ordinary business practice, with other correspondence of Pacific Gas and Electric Company, enclosed in a sealed envelope, with postage fully prepaid, addressed to:

Jeffrey P. O'Donnell
Administrative Law Judge
505 Van Ness Ave
San Francisco, CA 94102

[XX] By Electronic Mail – serving the enclosed via e-mail transmission to the service list for **C.07-08-027**.

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

Executed in San Francisco, California on the 4th day of October, 2007.

/s/
WANDA M. LOW

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

Downloaded October 4, 2007, last updated on September 12, 2007

Commissioner Assigned: Dian Grueneich on September 11, 2007

ALJ Assigned: Jeffrey P. O'Donnell on September 11, 2007

CPUC DOCKET NO. C0708027

Total number of addressees: 3

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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

MODESTO IRRIGATION DISTRICT,

Complainant,

PACIFIC GAS AND ELECTRIC COMPANY,
(U39E)

Defendant.

Case 07-08-027
(Filed August 28, 2007)

**JOINT MOTION FOR APPROVAL OF SETTLEMENT
AGREEMENT**

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March 19, 2009

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**BEFORE THE PUBLIC UTILITIES COMMISSION
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MODESTO IRRIGATION DISTRICT,

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**JOINT MOTION FOR APPROVAL OF SETTLEMENT
AGREEMENT**

I. INTRODUCTION

Pursuant to Rule 12.1(a) of the Rules of Practice and Procedure of the California Public Utilities Commission (“CPUC” or the “Commission”), complainant Modesto Irrigation District (“MID”) and defendant Pacific Gas and Electric Company (U39E) (“PG&E”) (collectively, the “Parties”) hereby request prompt Commission approval of the attached Settlement Agreement and Release of Claims (“Settlement Agreement”).^{1/} As required by Rule 12.1(d), the Settlement Agreement is reasonable in light of the whole record, consistent with law, and in the public interest.

On the grounds detailed in this motion, the Commission should approve the Settlement Agreement without modification.

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^{1/} PG&E and MID submit this motion jointly, but pursuant to Rule 1.8(d), only PG&E’s counsel has signed it.

II. BACKGROUND

This settlement, as well as the Complaint that led to it, derives from ambiguities contained in PG&E's Schedule E-31. Since its enactment in 2003, MID and PG&E have vehemently disagreed with each other regarding certain fundamental aspects of how this electric rate schedule works, and over the past 18 months, PG&E and MID representatives (sometimes counsel, sometimes business representatives, and sometimes both) have met and/or talked more than 50 times to address and resolve their longstanding disagreements. Working strictly within the parameters of existing law, including State legislation (Assembly Bill 2638), Commission policy (Resolution E-3801), and PG&E's tariffs (Schedule E-31), MID and PG&E have worked to establish mutually-acceptable rules by which both could agree to abide prospectively, as well as resolve the past disagreements that MID's Complaint reflects. Through these detailed negotiations, the Parties designed procedures that promote transparency, including customers' ability to compare the two utilities' offerings, and thus establish a framework to which both Parties are prepared to commit prospectively. Accordingly, this motion lays out the fundamental history of Schedule E-31, the Parties' conflict and proposed resolution, and the benefits to the Parties, customers, and the Commission.

A. Schedule E-31

In September 2000, the Legislature enacted Assembly Bill 2638, which included Public Utilities Code Section 454.1. That statute authorized electrical corporations, including PG&E, to offer discounted electric rates under specified circumstances. Subsequently, and "in accordance with Public Utilities Code Section 454.1," the Commission issued Resolution E-3801. Specifically, Resolution E-3801 acknowledges "a flexible pricing option" for PG&E by "allowing 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.” Thereafter, on 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.

The Commission’s stated purpose in authorizing Schedule E-31 was to provide PG&E with the flexibility to match lower non-commodity rates that irrigation districts may offer so that PG&E may try to keep or attract medium- and large-load customers.

Applicability: Schedule E-31 is for the purpose of retaining existing load that otherwise would not remain on PG&E’s retail electric distribution system, or to attract load located, or about to locate, within PG&E’s service territory that is currently served, or might choose to be served, by an irrigation district. . . .

See “Schedule E-31 – Distribution Bypass Deferral Rate” at p.1 (“Applicability”), a true and correct copy of which is attached hereto as Exhibit A.

Accordingly, Schedule E-31 permits PG&E to discount its electric distribution rate under the following circumstances:

- (1) the customer is eligible to receive distribution service either from PG&E or an irrigation district;
- (2) the customer has at least 20 kW peak demand at its premises;
- (3) the customer demonstrates that it has received a “bona fide offer” from an irrigation district for service at rates less than PG&E’s tariffed rates;
- (4) the customer has signed an affidavit demonstrating that it has received a “bona fide offer” from an irrigation district for service at rates less than PG&E’s tariffed rates; and
- (5) the customer pays sufficient revenue to PG&E to assure that the customer’s payments do not fall below a “floor price” equal to (in MID’s case) 120 percent of “PG&E’s total distribution planning area-specific, marginal transmission and distribution cost.” See Ex. A at

p.1 (“Eligibility”).^{2/} PG&E may commence E-31 service to a qualified customer on “the date at which, in PG&E’s judgment, the customer would have begun taking service from the irrigation district.” *See* Ex. A at p.3 (“Commencement Date”).

B. PG&E’s and MID’s Mutual Service Area

Assembly Bill 2638 also established boundaries for a geographic area in which both PG&E and MID could provide electric-distribution service. The Legislature described this area – commonly known as “the Four Cities Area” of Ripon, Escalon, Oakdale, and Riverbank – in Public Utilities Code Section 9610(b)(1), and the Parties generally refer to it here as “the Mutual Service Area.”

All of the E-31 contracts into which PG&E ever has entered are located in the Mutual Service Area. To date, this consists of 30 contracts with 18 customers.

C. MID’s Allegations and PG&E’s Responses

MID initiated this Complaint proceeding on August 28, 2007. *See* C.07-08-027. It presently is pending at the Commission before Assigned Commissioner Dian M. Grueneich and Administrative Law Judge Jeffrey P. O’Donnell.

In its Complaint, MID alleged that PG&E’s offers of discounted E-31 service violated Schedule E-31. MID principally charged that PG&E offered customers E-31 service before MID ever presented those customers with “bona fide offers.” Since Schedule E-31 requires a “bona fide offer,” but does not define what constitutes a “bona fide offer,” MID set forth its interpretation of “bona fide offer” and, consistent with that interpretation, called upon the Commission to ensure that PG&E’s ability to implement Schedule E-31 was limited to instances

^{2/} Schedule E-31 sets the “floor price” at 120 percent for customers whose service alternative is MID. The applicable floor price is 100 percent for customers who have other irrigation district service alternatives, such as Merced ID. *See* Ex. A at p.3 (“Floor Price”).

in which MID had issued a *written* “bona fide offer.” MID also alleged that PG&E commenced E-31 service prior to the date that MID could have served those customers, and thus prematurely. In addition, MID challenged the “floor price” and marginal cost calculations on which PG&E based its assessments that it could provide discounts to its E-31 customers. Based on these alleged violations, MID proposed that the Commission “institute a new annual special exceptions and rates review” proceeding to address “contracts offered under Schedules E-31 and ED (Economic Development discount) and future special contracts and rates the Commission may authorize.” Complaint ¶ 45. PG&E timely answered and moved to dismiss the Complaint on October 4, 2007. PG&E charged that it had complied with Schedule E-31, challenged the requirement that “bona fide offers” must be written on the basis that MID has no such legal obligation and imposing one thus would nullify Schedule E-31, and set forth its contrasting definition of “bona fide offer.” In addition, PG&E challenged MID’s allegation that PG&E prematurely commenced service on the basis that the tariff authorizes PG&E to exercise its judgment in designating the discount period. Finally, PG&E questioned the need for and unnecessary expense associated with another annual proceeding.

D. Schedule E-31’s Ambiguity

Later in October, the Parties mutually agreed to meet and confer regarding their distinctly different views of the case. PG&E and MID negotiated a strict “attorney’s eyes only” confidentiality agreement that permitted the Parties to discuss their respective views, and found that their initial impressions of respective bad faith practices (i.e., MID’s charges of violations and PG&E’s claims of unfounded allegations) were unfair; rather, they determined that Schedule E-31 contained substantial ambiguity – including that the tariff failed to define the critical term “bona fide offer” – and that each side simply had reached its own conclusion about how E-31

should work. Accordingly, and in the interests of an efficient and economic resolution, the Parties endeavored to collaborate on a new and agreed-upon set of rules, including a mutually-agreeable definition of “bona fide offer.” And so the Parties initiated substantial discovery, while asking ALJ O’Donnell to continue the Parties’ Pre-Hearing Conference and ruling on PG&E’s Motion to Dismiss so that the Parties could set aside the litigation while working to better understand each other’s perspective and establish mutually-agreeable rules. To be clear, the Parties undertook this effort within the strict confines of existing law consistent with Public Utilities Code Section 454.1, Resolution E-3801, and Schedule E-31.

After intensive negotiations, the Parties achieved a settlement in December 2008, and in February 2009 reached and executed the Settlement Agreement attached hereto as Exhibit B. The Parties are enthusiastic about the common ground that they have achieved. This settlement not only resolves the past-focused allegations in MID’s Complaint, but limits the likelihood of future litigation on these issues, while increasing transparency to customers and eliminating any need for a costly annual proceeding. Indeed, PG&E and Merced Irrigation District (“Merced ID”) have commenced discussing whether the Settlement Agreement’s rules also should govern Merced ID’s and PG&E’s future interactions concerning Schedule E-31.

Accordingly, by this motion, the Parties respectfully seek Commission approval of the Settlement Agreement as presented.

III. SUMMARY OF SETTLEMENT

The Settlement Agreement details a global resolution of the matters that the Parties raised in the Complaint, Answer, and Motion to Dismiss. The following generally describes the Settlement Agreement’s key terms:

- Purpose. This Settlement Agreement achieves multiple purposes. First, it eliminates ambiguity in Schedule E-31 and establishes a mutually-agreeable framework of rules

to which the Parties voluntarily commit vis-à-vis PG&E's provision of discounted electric-distribution service pursuant to Schedule E-31. In so doing, it not only minimizes the likelihood of future disputes between PG&E and Modesto Irrigation District (as well as, perhaps, Merced ID) but it increases the transparency of PG&E's and MID's processes so that customers have more and better information available to them. In addition, the Agreement resolves litigation that otherwise will consume substantial Party and Commission resources and establishes a streamlined process for Commission review of PG&E's E-31 contracts to minimize the time and cost otherwise necessary for such review. *See generally* Paragraph 1.1.

- Customer Categories. The Parties have agreed that PG&E may, consistent with the conditions set forth in the Settlement Agreement, offer E-31 electric 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"). *See* Paragraph 2.1.

- Definition of "Bona Fide Offer." To finally end the Parties' years-long debate over what constitutes a "bona fide offer" ("BFO") under Schedule E-31, and whether the offering utility must provide it in writing, PG&E and MID have agreed to the following:

- Both PG&E and MID commit to providing customers in the Mutual Service Area with written BFO letters. *See* Ex. B, Settlement Agreement, Exhibits A and B thereto. In so doing, the Parties have resolved their respective primary concerns (for MID, assuring written evidence of a BFO to prove the appropriateness of an E-31 offer; and for PG&E, resolving that MID previously had no legal obligation to extend any offer in writing, and that the

proposed requirement of a written BFO would nullify Schedule E-31). *See* Paragraphs 2.3(a), 2.4(a), 2.5(a).

- As reflected in attached Exhibits A and B, the Parties' pro forma BFOs contain information regarding the utility's electric distribution rate, proposed line extensions and facilities, and construction schedule. *See* Exhibits A and B.

- The Parties further agreed that PG&E may discuss E-31 as an option with any Existing PG&E Customer and/or New Construction Customer at any time, but PG&E cannot actually extend an offer or enter into a contract for E-31 service unless MID has provided the customer with its BFO. *See* Paragraph 2.3(c) and 2.5(c).

- PG&E Existing Customers and Applicable "Hold" Provision. With respect to PG&E's Existing Customers, MID has agreed that after it issues its BFO (as the Schedule anticipates), MID *cannot* enter into a contract with the customer and/or physically connect that customer for a period of 7 days to enable the customer to communicate with PG&E and to allow PG&E to extend an E-31 offer during that time. *See* Paragraph 2.3(b) and (c).

- MID Existing Customers and Applicable "Hold" Provision. With respect to MID's Existing Customers, PG&E has agreed that after it issues its BFO (as the Schedule anticipates), PG&E *cannot* enter into a contract with the customer and/or physically connect that customer for a period of 7 days to enable the customer to communicate with MID about continued MID service. *See* Paragraph 2.4(b) and (c).

- The Parties agreed that PG&E may discuss E-31 as an option with any Existing MID Customer at any time, but PG&E only may actually extend an offer to an Existing MID Customer or enter into a contract for E-31 service with an Existing MID Customer at the following times:

- If the Existing MID Customer is receiving MID-electric-distribution-service at a rate set pursuant to a written contract, then PG&E may extend an E-31 offer to that customer within 90 days of the contract’s expiration date. *See* Paragraph 2.4(c)(i).
 - If the Existing MID Customer is receiving MID-electric-distribution-service at a rate set pursuant to an MID rate schedule, then PG&E may extend an E-31 offer to that customer once per calendar year and/or within 60 days of any “Material Change” in the MID rate schedule applicable to that customer (e.g., a change in the price per unit of energy, a change in the applicability of the schedule, the customer’s change from an MID-schedule to a term agreement, and/or a change to impose a new charge or surcharge on the customer). *See* Paragraph 2.4(c)(ii).
- New Construction Customers and Applicable “Hold” Provision. With respect to New Construction Customers, after MID issues its BFO (as the Schedule anticipates), MID *cannot* enter into a contract with the customer and/or physically connect that customer for a period of 28 days to enable the customer to communicate with PG&E and to allow PG&E to extend an E-31 offer during that time. *See* Paragraph 2.5(b) and (c).^{3/}
 - Date of Commencement. With respect to Existing PG&E Customers and New Construction Customers, the date of commencement cannot precede the anticipated date of commencement set forth in MID’s written BFO. With respect to Existing MID Customers, if the customer is on a term contract, then the date of commencement cannot precede the contract’s expiration date. *See* Paragraph 2.3(d), 2.4(d), and 2.5(d).

^{3/} The Parties also agreed that a New Construction Customer may, upon a sworn showing of a material business justification, avoid the 28-day hold period. *See* Paragraph 2.5(b)(i), and Exhibit C.

- Settlement Funds. PG&E has agreed to submit a one-time payment of \$925,000 to MID to resolve the current litigation, eliminate any and all past claims arising from Section 454.1, Resolution E-3801, and/or Schedule E-31, and initiate the currently-proposed framework of E-31 rules. *See* Paragraph 3.4.

- Exchange of Information. The Parties have agreed to exchange certain information about their respective efforts to provide electric-distribution-service to customers within the Mutual Service Area in order to oversee each other's compliance with these settlement rules. *See* Paragraph 3.5.

- Reasonableness Review. The Parties have agreed upon an efficient process by which, if approved, (1) the Commission will review the reasonableness of PG&E's E-31 contracts on an annual basis, and (2) the Energy Division will review and confirm both (a) the accuracy of PG&E's calculations, and (b) the attendant E-31 rates on which PG&E bases its E-31 contracts. PG&E in turn would request the full Commission's approval by resolution. *See* Paragraph 4.1.

- PG&E will submit an annual advice letter to the Commission, under which the Energy Division will conduct both a "Rate Review" (e.g., ensuring PG&E's compliance with the marginal cost floor price) and a "Procedural Review" (e.g., ensuring PG&E's compliance with the procedures set forth in Public Utilities Code Section 454.1, Resolution E-3801, Schedule E-31, the underlying E-31 contracts between PG&E and its customers, and this Settlement Agreement). *See* Paragraph 4.1.

- PG&E shall submit its first such advice letter to the Energy Division within 90 days of the effective date of this Settlement Agreement. *See* Paragraph 4.2.

○ PG&E will submit substantial documentation to the Energy Division for its full review of PG&E's compliance with the Settlement Agreement, Schedule E-31, and Public Utilities Code Section 454.1, but shall not share all of that information with MID and may file certain of that information under seal with the Commission. *See* Paragraph 4.4.

• Dispute Resolution. The Parties have agreed to a detailed dispute resolution process that would require multiple meetings between both businesspersons of the Parties and their respective counsel; would permit mediation by mutual consent; and would create a bifurcated arbitration procedure. The Parties have designed this procedure to improve communications, limit complaints, and expedite resolution of future disputes. *See* Paragraph 5.1.

• No Admission of Wrongdoing. The Settlement Agreement and its terms shall not constitute nor be taken to indicate either (a) an admission of liability or wrongdoing by either Party, or (b) that either Party's position on any issue lacks merit. *See* Paragraph 6.4.

• Effective Date of Provisions. The Settlement Agreement provides that it shall become effective upon the date that a Commission order approving the Agreement and dismissing the Complaint with prejudice, with no required modifications or conditions to the Agreement, is no longer subject to appeal. Should the Commission approve the Settlement Agreement subject to modifications or conditions, the Parties agree to meet and confer concerning whether such modifications or conditions are acceptable. *See* Paragraph 1.3.

• Dismissal of Complaint. The Settlement Agreement provides that, upon approval by the CPUC, the CPUC shall also concurrently order the dismissal of the Complaint with prejudice. *See* Paragraph 1.2.

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IV. REASONABLENESS OF THE SETTLEMENT

A. The Standard for Approving Settlement Agreements.

Before approving a settlement, the Commission must find that it is “reasonable in light of the whole record, consistent with law, and in the public interest.” Rule 12.1(d). Factors to be considered include whether the settlement reflects the relative risks and costs of litigation, whether it fairly and reasonably resolves the disputed issues and conserves public and private resources, and whether it falls well within the range of possible outcomes had the lawsuit gone to trial. *See Application of Southern California Edison for Order Approving Settlement Agreement Between Southern California Edison Company and Del Ranch, L.P. and Elmore, L.P.*, 2000 CPUC LEXIS 371, *5, Decision No. 00-05-046 (May 18, 2000). The Commission also has considered factors such as whether the parties conducted their settlement negotiations at arms’ length and without collusion, whether the parties had adequate representation, and how far the proceedings progressed when the parties settled. *Id.*

B. The Settlement Agreement Meets the Standard for Commission Approval.

The Settlement Agreement represents a fair compromise of the disputes between the Parties relating to the matters at issue. Each of these factors supports Commission approval of the Settlement Agreement.

1. Range of Possible Outcomes, Expense of Litigation, and Progress of Case

This settlement falls well within the range of possible outcomes of the litigation, and represents a significant benefit to each Party by eliminating the significant litigation risk, cost, and uncertainty that each Party would have faced in the absence of the settlement. Because the Complaint raised not only difficult issues of fact, but also questions of legal interpretation on

which the Commission may or may not have spoken before, each Party faced pronounced and identifiable risks of litigation.

The Parties engaged in substantial briefing and were engaged in extensive and at times contentious negotiations throughout the settlement process. Given the briefing, settlement discussions, and exchanges of documents and other information between the Parties, the Parties were well aware of their respective positions, litigation exposure, and the substantial expense involved in pursuing the matter through trial and beyond. The Parties recognized the possibility that the Commission could resolve the issues in this matter in favor of either MID or PG&E, or in a fashion where each Party “won some and lost some.” Each Party also recognized the possibility that even if the Commission found in its favor, the non-prevailing Party might seek to appeal the Commission’s decision; and if a court granted such an appeal, the court might overturn the Commission’s decision or delay its implementation, leading to further consumption of time, legal fees, and personnel resources. All of these considerations convinced the Parties that their agreement is in each Party’s individual best interests, well within the range of possible outcomes, and takes into account the substantial expense of litigation. Moreover, the Parties recognized that agreeing to an expedited reasonableness review process would create substantial savings for customers, the Parties, and the Commission in the future.

With respect to the settlement payment in particular (as opposed to the non-monetary aspects of the settlement), MID sought two categories of damages: (1) damages for its alleged losses for transmission and distribution (“T&D”) infrastructure costs; and (2) damages for its alleged losses on capacity investments. The two categories of damages are distinct, but MID based each on the costs it incurred to meet anticipated demand that did not materialize due to what MID contended was PG&E’s wrongful extension of E-31 service to customers. MID

alleged total damages of \$4.6 million, consisting of alleged T&D damages of \$2,753,880, and alleged capacity damages of \$1,866,400.

PG&E challenged its alleged liability, MID's damage-calculations, and the actual dollar amount that MID sought. PG&E rejected MID's damages theory, and instead – assuming for purposes of the negotiations that the Commission accepted MID's interpretation of Schedule E-31 – proposed an alternative damages analysis based on MID's lost contribution to margin. In so doing, PG&E valued MID's claim at \$618,000.

Between June and December 2008, the Parties met and/or talked literally dozens of times, and exchanged views on the relative merits of their respective damage theories, including the factual and legal bases for each. The Parties evaluated the relative strengths and weaknesses of their cases, and considered the possibility that any evidentiary hearing would require customers to testify – putting customers “in the middle” of this inter-utility dispute. The Parties also attempted to evaluate one another's settlement positions using different assumptions and inputs, all while discounting potential outcomes based on the risk of adverse findings of fact or law at hearing. Finally, the Parties also factored in the substantial attorneys' fees and costs that each would incur if the matter proceeded through hearing to final order, post-order litigation, and appeal(s). In the end, through a months-long series of demands, offers, counter-demands, and counter-offers, the Parties agreed to settle this aspect of their dispute at a figure that is well within the range of potential outcomes if they litigated their action to finality.

2. Arms' Length Negotiation

There can be no serious claim that the Parties did anything other than engage, both in the litigation and settlement negotiations, at arms' length. Indeed, the Parties vigorously litigated the case, and, in the settlement talks, engaged in intensive and extensive settlement negotiations spanning nearly 18 months of discussions.

3. Adequate Representation

Both Parties had adequate representation in this proceeding. PG&E had in-house counsel with significant civil litigation experience as well as regulatory litigation experience before the Commission. MID's Regulatory Administrator, an attorney with many years of experience before the Commission, represented it, and MID also retained attorneys from a Sacramento law firm with experienced regulatory lawyers with substantial experience before the Commission, and significant civil litigation experience as well.

4. Public Interest and Conservation of Resources

Finally, the settlement is in the public interest. It will increase the transparency of the Parties' provision of electric-distribution service in the Mutual Service Area, streamline future reviews of PG&E's E-31 agreements, and eliminate future (previously inevitable) disputes between PG&E and the Districts. Last but certainly not least, the settlement will also allow the Commission to resolve the issues before it without further expenditure of scarce public resources and thus dedicate those scarce resources to other pending and more pressing regulatory matters.

Based on the foregoing, the Settlement Agreement fairly balances all the pertinent considerations and meets the requirements of Rule 12.1(d). It is a reasonable compromise, consistent with law, and in the public interest. As such, the Commission should approve this Settlement Agreement, without modifications.

V. WAIVER OF RULE 12.1(b)

There are only two Parties to this Complaint proceeding – complainant MID and defendant PG&E. No other party moved to intervene. For this reason, the Parties request that the Commission waive Rule 12.1(b), which provides as most pertinent here: “Prior to signing any settlement, the settling parties shall convene at least one conference with notice and opportunity to participate provided to all parties for the purpose of discussing settlements in the

proceeding. Notice of the date, time, and place shall be served on all parties at least seven (7) days in advance of the conference.”

VI. CONCLUSION

WHEREFORE, for the reasons set forth above, the Parties urge the Commission to approve the Settlement Agreement expeditiously, without modification, as a reasonable resolution of this intensive litigation, consistent with the public interest.

Respectfully submitted,

CLIFFORD J. GLEICHER

By: _____ /s/
CLIFFORD J. GLEICHER

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Attorneys for
PACIFIC GAS AND ELECTRIC COMPANY

Dated: March 19, 2009

EXHIBIT A



SCHEDULE E-31—DISTRIBUTION BYPASS DEFERRAL RATE

APPLICABILITY: Schedule E-31 is for the purpose of retaining existing load that otherwise would not remain on PG&E's retail electric distribution system, or to attract load located, or about to locate, within PG&E's service territory that is currently served, or might choose to be served, by an irrigation district. This voluntary schedule is available to qualified customers, at PG&E's discretion.

(N)

Customers taking service on Schedule E-31 must sign Form 79-995—Agreement for Customers Taking Service on Schedule E-31 (Agreement).

ELIGIBILITY: For existing PG&E customers to be eligible to take service under Schedule E-31, they must: (1) have at least 20 kW peak demand at their premises on PG&E's system; (2) demonstrate that they have received a bona fide offer from an irrigation district for service at rates less than PG&E's tariffed rates; and (3) sign an affidavit to that effect.

For new customers to be eligible to take service under Schedule E-31, they must: (1) have at least 20 kW peak demand at their premises that could be served by an irrigation district; (2) demonstrate that they have received a bona fide offer from an irrigation district for service at rates less than PG&E's tariffed rates; and (3) sign an affidavit to that effect.

For existing irrigation district customers to be eligible to take service under Schedule E-31, they must: (1) have at least 20 kW peak demand at their premises that is currently served by an irrigation district; (2) demonstrate that they have a contract with an irrigation district that is due to expire and have received a bona fide offer from an irrigation district for service at rates less than PG&E's tariffed rates; and (3) sign an affidavit to that effect.

For PG&E customers located within the boundaries of Merced Irrigation District (as those boundaries existed on December 20, 1995), together with the territory of the former Castle Air Force Base, who have received electric service offers from Merced Irrigation District, this schedule is available at such time as Merced Irrigation District has served 75 megawatts (cumulative) of former PG&E load at the time the customer signs the affidavit. Former PG&E load is defined as load served by PG&E prior to December 31, 2000, which subsequently is served by Merced Irrigation District. However, customers who move to the area defined by the boundaries of Merced Irrigation District, together with the territory of the former Castle Air Force Base, after December 31, 2000, are immediately eligible for service under this schedule if they have received a service offer from Merced Irrigation District. The load definition adopted by the California Energy Resource Conservation and Development Commission in Docket No. 96-IRR-1890 will be used to calculate the amount of former PG&E customer load that is served by Merced Irrigation District.

TERRITORY: Schedule E-31 applies everywhere PG&E provides electric distribution service where an irrigation district electric service option exists.

(N)

(Continued)

Advice Letter No. 2276-E-A
Decision No.

Issued by
Karen A. Tomcala
Vice President
Regulatory Relations

Date Filed September 2, 2003
Effective September 2, 2003
Resolution No. E-3801



SCHEDULE E-31—DISTRIBUTION BYPASS DEFERRAL RATE
(Continued)

RATES: An eligible customer's non-commodity rates (excluding non-bypassable charges owed by the customer) will be discounted from the customer's otherwise-applicable rate schedule so that the total non-commodity rate (net of taxes and surcharges) is competitive with the total non-commodity rate (net of any applicable taxes and surcharges) that is, or would be, received by the customer taking transmission and/or distribution service from an irrigation district. In calculating the non-commodity rate of the irrigation district, PG&E shall include all applicable out-of-pocket competitive transition and other non-by-passable charges that the customer is currently paying, or would be obligated to and would itself pay PG&E and/or the irrigation district, upon departure of the respective system. PG&E will estimate the customer's annual commodity cost based on the generation component in PG&E's own respective tariff as a proxy for what the Competitor would pay for its generation. The generation rate in PG&E's rate schedules will be reduced by the charges provided in Schedule E-ERA to determine the generation portion of the rates. In addition, PG&E may not discount the energy charges provided in Schedule E-ERA. The customer's discounted rate will be subject to an annual review, with potential additional lump-sum charges due to PG&E, to ensure that the rate does not fall below the price floor described below. In no case, however, shall the rate exceed that of the customer's otherwise-applicable schedule.

The calculation of the customer's rates, and annual adjustments thereto, are specifically described in the customer's Agreement.

BILLING DETERMINANTS: To calculate the discount, the customer's annual usage will be determined using PG&E's billing data for the twelve (12) months immediately preceding the date the customer requests to be considered for service under this schedule. If such billing data is not available, or if the customer's operation is expected to significantly change within the next year, PG&E's estimate of the customer's upcoming twelve (12) months of usage will be used for purposes of calculating the discount.

REQUIREMENTS OF DELIVERY OF ELECTRICITY THROUGH PG&E'S SYSTEM: Customers shall use PG&E-delivered electricity for their total electrical load requirement throughout the term of the Agreement. A customer shall not use any electricity that is not delivered by PG&E unless the customer is: (1) utilizing emergency generation in the event of an outage; (2) testing emergency generation facilities (not to exceed 10 hours per month); or (3) given prior written permission by PG&E for similar operational events. If a customer utilizes any electricity not delivered by PG&E other than as provided above, PG&E may terminate the Agreement as specified in Section 9 ("Cancellation and Termination"). This requirement does not preclude a customer from taking commodity service from any supplier chosen via a direct access or community choice aggregation service arrangement in accordance with Rule 22, Rule 23 and other applicable tariffs. (T)
(T)

DISQUALIFICATION: PG&E may, at its sole discretion, disqualify a customer from obtaining the discount under this schedule if: (1) the discounted rate does not exceed the distribution marginal costs of providing service to that customer; or (2) a customer severely constrains, or would constrain in the case of a new customer, the existing distribution system in such a way that the customer's marginal costs in the future are expected to be above the price that would otherwise result from this schedule.

(Continued)



SCHEDULE E-31—DISTRIBUTION BYPASS DEFERRAL RATE
(Continued)

DISCOUNT PERIOD:	The Agreement established by this tariff has a discount period that matches the term of the irrigation district's bona fide offer. In the event the irrigation district's bona fide offer contains no term, the Agreement may have a term not to exceed five years. In the event the irrigation district's bona fide offer contains a term of six months or less, the Agreement may have a term not to exceed one year.	(N)
COMMENCEMENT DATE:	The commencement date of the discount rate period shall be designated by PG&E and, for an existing customer, shall be no earlier than the date at which, in PG&E's judgment, the customer would have begun taking service from the irrigation district. For a new customer, the commencement date shall be the date on which the customer begins taking service. The customer will be billed at the Schedule E-31 rate on the customer's first regular scheduled meter read date after the commencement date.	(N)
FLOOR PRICE:	During the term of the Agreement, the sum of the non-commodity charges collected by PG&E from the customer, exclusive of any additional applicable taxes and surcharges, and expressed in units of dollars per kilowatt-hour, shall not fall below a floor price equal to PG&E's total distribution planning area-specific, marginal transmission and distribution cost, also expressed in units of dollars per kilowatt-hour (or, if the Customer is located in the area described in P.U. Code Section 9610(b), 120 percent thereof). The floor price is further defined in the Agreement.	(N)
RATES AND RULES:	All applicable PG&E rules and tariffs shall remain in force for a customer who signs the Agreement. All other provisions of the customer's otherwise-applicable rate schedule shall remain in force.	(N)

Advice Letter No. 2276-E-A
Decision No.

Issued by
Karen A. Tomcala
Vice President
Regulatory Relations

Date Filed September 2, 2003
Effective September 2, 2003
Resolution No. E-3801

EXHIBIT B

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.

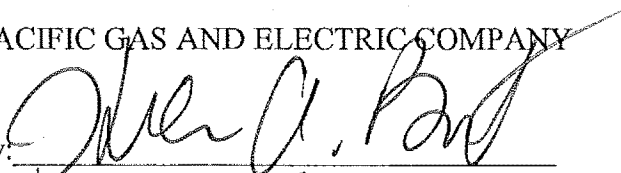
6.14 **Authority to Sign and Implement Settlement.** Each Party represents and warrants that it has the necessary Board, corporate, and/or legal authority to enter into this Agreement and to perform each and every duty and obligation provided for herein, and that this Agreement, when executed by the 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 ***

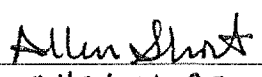
PACIFIC GAS AND ELECTRIC COMPANY

2/20, 2009

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

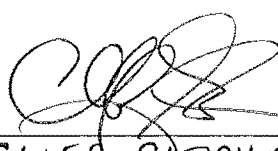
MODESTO IRRIGATION DISTRICT

2/27, 2009

By: 
Name: ALLEN SHORT
Title: GM

Approved as to form.

2/20, 2009

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

Approved as to form.

FEBRUARY 25, 2009

DAY CARTER & MURPHY LLP

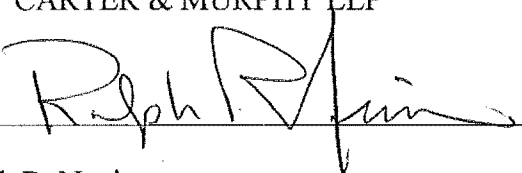
By: 
Ralph R. Nevis
Attorneys for Modesto Irrigation District

Exhibit A

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 ***.

{00903945}

[Signature Block]

[Customer Acceptance Block]

(00903945)

Exhibit B

_____, 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]

Exhibit C

**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) _____

Form No. 79-995
Tariffs and Compliance
September 2003

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)

CERTIFICATE OF SERVICE BY ELECTRONIC MAIL

I, the undersigned, state that I am a citizen of the United States and am employed in the City and County of San Francisco; that I am over the age of eighteen (18) years and not a party to the within cause; and that my business address is Pacific Gas and Electric Company, Law Department B30A, Post Office Box 7442, San Francisco, CA 94120.

On the 19th day of March, 2009, I served a true copy of the:

JOINT MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT

by electronic service to the e-mail addresses for the parties listed on the official service lists for **C.07-08-027**.

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

Executed on this 19th day of March, 2009, at San Francisco, California.

/s/

WANDA M. LOW

**THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
EMAIL SERVICE LIST**

Downloaded March 19, 2009, last updated on December 1, 2008

Commissioner Assigned: Dian Grueneich on September 11, 2007

ALJ Assigned: Jeffrey P. O'Donnell on September 11, 2007

CPUC DOCKET NO. C0708027

Modesto Irrigation District,
Complainant,
vs.
Pacific Gas and Electric Company (U39E),
Defendant.

Case No. C07-08-027

aln2@pge.com;atrowbridge@daycartermurphy.com;cem@newsdata.com;CJGf@PGE.com;joyw@mid.org;jpo@cpuc.ca.gov;rjl9@pge.com;

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

Downloaded March 19, 2009, last updated on December 1, 2008

Commissioner Assigned: Dian Grueneich on September 11, 2007

ALJ Assigned: Jeffrey P. O'Donnell on September 11, 2007

CPUC DOCKET NO. C0708027

Total number of addressees:

ANDREW NIVEN
PACIFIC GAS AND ELECTRIC COMPANY
MAIL CODE B30A
PO BOX 7442
SAN FRANCISCO CA 94120-7442
FOR: Pacific Gas & Electric Company
Email: aln2@pge.com
Status: PARTY

Jeffrey P. O'Donnell
CALIF PUBLIC UTILITIES COMMISSION
DIVISION OF ADMINISTRATIVE LAW JUDGES
505 VAN NESS AVE RM 5111
SAN FRANCISCO CA 94102-3214
Email: jpo@cpuc.ca.gov
Status: STATE-SERVICE

JOY A. WARREN REGULATORY ADMINISTRATOR
MODESTO IRRIGATION DISTRICT
1231 11TH ST
MODESTO CA 95354
FOR: MODESTO IRRIGATION DISTRICT
Email: joyw@mid.org
Status: INFORMATION

RANDALL J. LITTENEKER ATTORNEY
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 7442, B30A
SAN FRANCISCO CA 94120
FOR: PG&E
Email: rjl9@pge.com
Status: INFORMATION

CALIFORNIA ENERGY MARKETS
425 DIVISADERO ST. STE 303
SAN FRANCISCO CA 94117-2242
Email: cem@newsdata.com
Status: INFORMATION

ANN TROWBRIDGE
DAY CARTER MURPHY LLC
3620 AMERICAN RIVER DRIVE, STE 205
SACRAMENTO CA 95864
FOR: Modesto Irrigation District
Email: atrowbridge@daycartermurphy.com
Status: PARTY

CLIFFORD J. GLEICHER, ESQ. ATTORNEY
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 7442
SAN FRANCISCO CA 94120
FOR: PACIFIC GAS AND ELECTRIC COMPANY
Email: CJGf@PGE.com
Status: INFORMATION