

**AGREEMENT BETWEEN PACIFIC GAS AND ELECTRIC COMPANY  
AND MODESTO IRRIGATION DISTRICT  
REGARDING LUMP-SUM PAYMENT OF NON-BYPASSABLE CHARGES  
ASSOCIATED WITH THE MOUNTAIN HOUSE AREA**

**I. INTRODUCTION**

**WHEREAS**, pursuant to Public Utilities Code § 9610, a total of 137 Mountain House customers ("Departing Customers") departed PG&E's service territory on January 1, 2001, and began receiving electric service from Modesto Irrigation District ("MID");

**WHEREAS**, the California Public Utilities Commission ("CPUC") issued Decision ("D.") 04-03-036 approving, among other things, an agreement between PG&E and MID for the lease of certain electric distribution facilities in the Mountain House area ("the Lease Agreement");

**WHEREAS**, the Lease Agreement provides that MID will pay Nonbypassable Charges ("NBCs") to PG&E on behalf of the Departing Customers;

**WHEREAS**, Ordering Paragraph ("OP") 6 of D.04-03-036 requires that PG&E file an annual advice letter that contains the proposed calculations and methodologies for determining the amount of NBCs to be paid by MID for the year at least 90 days before the due date for MID's payment of the NBCs for approval by the CPUC's Energy Division;

**WHEREAS**, PG&E has filed such advice letters, and MID has made its NBC payments, consistent with the terms of the Lease Agreement and D.04-03-036 every year since D.04-03-036 was issued;

**WHEREAS**, some of the 137 Departing Customer accounts have subsequently gone out of existence, to make way for new development, and PG&E has adjusted its previous NBCs billings to account for these removals and their removal dates;

**WHEREAS** PG&E and MID (collectively, "the Parties") believe that it is expedient and cost-effective to enter into an agreement to provide for a lump-sum payment of future NBCs applicable to remaining Departing Customers and that such lump-sum payments are permitted under PG&E's CPUC-approved departing load tariffs and D.04-03-036;

**THEREFORE**, PG&E and MID desire to enter into this Agreement Regarding Lump-Sum Payment of Nonbypassable Charges Associated With The Mountain House Area ("Lump-Sum Agreement").

## **II. CONDITIONS**

1. The Parties agree that this Lump-Sum Agreement embodies the entire understanding and agreement of the Parties with respect to the matters described, and it supersedes prior oral or written agreements, principles, negotiations, statements, representations, or understandings among the Parties with respect to those matters.
2. The Parties agree that this Lump-Sum Agreement is reasonable in light of the information shared by the Parties, consistent with law, and in the public interest.
4. The Parties agree that no provision of this Lump-Sum Agreement shall be construed against either Party because that Party or its counsel or advocate drafted the provision.
5. The Parties agree that this Lump-Sum Agreement may be amended or changed only by a written agreement signed by the Parties.
6. The Parties intend this Lump-Sum Agreement to be interpreted and treated as a

unified, integrated agreement.

### III. TERMS

1. The Parties have thoroughly investigated the past, present and estimated future NBCs under D.04-03-036 and the Lease Agreement, the historic usage amounts, and other relevant factors, and have concluded that \$17,606.00 represents a reasonable lump-sum payment for the remaining NBCs associated with the Departing Customers ("Lump Sum Amount").

2. PG&E shall invoice MID for the Lump Sum Amount by November 25, 2013. MID shall provide payment to PG&E within thirty (30) days after receipt of the invoice.

Invoices shall be sent to MID at the following address:

Modesto Irrigation District  
Attn: Robert Hondeville  
P.O. Box 4060  
Modesto, CA 95352

Payments shall be made to PG&E by wire transfer to the following:

Mellon Trust of New England, N.A.  
Boston, MA  
ABA Routing Number: 011001234  
For credit to: PG & E Depository Account  
Account number: 075477

3. The Parties agree that the payment made by MID of the Lump-Sum Amount, as described in Sections III.1 and III.2, above, shall be a full and complete satisfaction of the obligations of MID on behalf of the Departing Customers for NBCs under D.04-03-036 and the Lease Agreement. PG&E expressly waives any and all claims for additional payment of NBCs from MID or the Departing Customers, it being understood that this Lump-Sum Agreement constitutes a full and complete settlement of PG&E's past and future claims against MID or the Departing Customers for charges under D.04-03-036 and the Lease Agreement.

4. The Parties agree that all workpapers and documentation relative to this Lump-Sum Agreement, whether in written or electronic form, and the substantive content of the discussions and related communications, whether written or verbal, leading up to this Lump-Sum Agreement, shall be considered Confidential Information and shall not be disclosed by either Party during the term of this Lump-Sum Agreement, except to such employees and agents of each Party who need access to the Confidential Information in order to ensure performance of this Lump-Sum Agreement. In the event that a Party is required by law or regulatory authority to disclose any Confidential Information, such Party will provide the other Party with prompt written notice so that the other Party may seek a protective order or other remedy. In the event such protective order or other remedy is not obtained or that the Party waives compliance with the provisions of this Section 5, the first Party will furnish only that portion of the Confidential Information that is legally required. If a Party elects to contest the disclosure of any Confidential Information, that Party may, at its own cost and expense, assume the defense of such claim or litigation. The Parties agree to abide by the final decision of a court of competent jurisdiction in connection with such claim.

Notwithstanding the foregoing, the Parties hereby acknowledge that MID is a local government agency and is subject to provisions of the California Public Records Act (California Government Code Sections 6250 *et seq.*) and the Ralph M. Brown Act (California Government Code Sections 54950 *et seq.*), and that MID will be entitled to make records related to this Lump-Sum Agreement public to the extent required under these statutory provisions.

5. Each Party expressly agrees to waive the provisions of California Civil Code section 1542, which section provides as follows: "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."

6. While this Lump-Sum Agreement is between PG&E and MID, it is understood that it fully satisfies the NBC obligations of MID and the Departing Customers, and PG&E agrees that it will have no right to seek further payment or pursue any claim for NBCs against MID or the Departing Customers under D.04-03-036 or the Lease Agreement.

7. In no event shall either Party be liable to the other Party for any indirect, special, consequential, or punitive damages of any kind whatsoever, whether in contract, tort, or special liability.

8. Except as otherwise provided for in this Lump-Sum Agreement, any dispute arising between the Parties relating to interpretation of the provisions of this Lump-Sum Agreement or to the performance of either Party of its obligations hereunder shall be reduced to writing and referred to the Parties' duly appointed representatives for resolution, as indicated below:

For PG&E: Ann Kim  
PG&E Law Department  
77 Beale Street  
San Francisco, CA 94105  
Phone: (415) 973-7467  
Email: [ahk4@pge.com](mailto:ahk4@pge.com)

For MID: Joy A. Warren  
General Counsel  
Modesto Irrigation District  
P.O. Box 4060  
Modesto, CA 95352

Should such a dispute arise, the Parties shall be required to meet and confer in an effort to resolve their dispute. Pending resolution, the Parties shall proceed diligently with the performance of their respective obligations under this Lump-Sum Agreement. If the Parties fail to reach agreement within a reasonable period of time, the matter shall, upon demand of either Party, be submitted to arbitration or mediation on such terms and conditions as the Parties may agree.

Notwithstanding the foregoing paragraph, disputes expressly referred for resolution hereunder shall be resolved in the following manner:

- (a) Within fifteen (15) days of the conclusion of the meet and confer process, either Party may initiate an arbitration at JAMS, with the Parties bearing equally the costs of such arbitration.
- (b) There shall be a single arbitrator.
- (c) The arbitration shall be governed by JAMS Comprehensive Rules in effect at the time of the commencement of the arbitration.
- (d) 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.
- (e) 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.

#### **IV. EXECUTION**

Each Party represents and warrants that (1) it has the full power and authority to execute and deliver this Lump-Sum Agreement and to perform its terms and conditions; (2) the execution, delivery and performance of this Lump-Sum Agreement have been duly authorized by all necessary corporate, municipal, or other action by such Party; and (3) this Lump-Sum Agreement constitutes such Party's legal, valid, and binding obligation, enforceable against such Party in accordance with its terms.

This Lump-Sum Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Lump-Sum Agreement shall become effective on the date the last Party executes this Lump-Sum Agreement, as indicated below.

In witness whereof, intending to be legally bound, the Parties hereto have duly executed this Lump-Sum Agreement on behalf of the Parties they represent.

Pacific Gas and Electric Company

By: David E. Rubin

Title: Director, Service Analysis

Date: Nov. 18, 2013

In witness whereof, intending to be legally bound, the Parties hereto have duly executed this Lump-Sum Agreement on behalf of the Parties they represent.

Modesto Irrigation District

By: 

Roger VanHoy

Title: General Manager

Date: 11/14/13