

**STAFF REPORT**

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10/24/19

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A. Franzoia

**CONSIDERATION OF AN INDEMNIFICATION AGREEMENT**

**PARTIES:**

Pacific Gas and Electric Company (PG&E)

California State Lands Commission

**IMPROVEMENT, LAND TYPE, AND LOCATION:**

An existing natural gas pipeline located on the Airport Road Bridge over sovereign land in the Sacramento River, near Anderson, Shasta County.

**BACKGROUND:**

On May 10, 2007, the Commission authorized Lease No. PRC 505.1 to the County of Shasta (County) for the removal of the Airport Road Bridge and construction, use and maintenance of a new Airport Road Bridge (Bridge), containing public and private utility conduits over the Sacramento River ([Item C34, May 10, 2007](#)). The new Bridge was completed in 2010 with an attached 8-inch-diameter natural gas pipeline in a 12-inch-diameter conduit to serve the communities of Cottonwood, Anderson and Redding.

PG&E maintains a franchise agreement with the County for the right to use County easements and rights-of-way adjoining the lease premises for the installation, operation, and maintenance of gas pipes, mains, and appurtenances for the conveyance, distribution, and supply of natural gas to the public. Because PG&E's use of the right-of-way is consistent with its franchise agreement with the County, its use is also consistent with Lease No. PRC 505.1 issued to the County. Consequently, Commission authorization of a separate lease with PG&E for the pipeline is not required. In lieu of a separate lease or sub-lease for the pipeline, PG&E has agreed to execute an indemnification agreement. Removal of PG&E as a sublessee of the County under Lease No. PRC 505.1 is also on the agenda for consideration at this same Commission meeting.

The proposed Indemnification Agreement is intended to indemnify the State for any harm that may occur or arise from the installation, operation, and maintenance of the PG&E gas pipeline on the Bridge.

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**STAFF ANALYSIS AND RECOMMENDATION:**

**Authority:**

Public Resources Code sections 6005, 6216, and 6301.

**Public Trust and State's Best Interests Analysis:**

As general background, the State of California acquired sovereign ownership of all tidelands and submerged lands and beds of navigable lakes and waterways upon its admission to the United States in 1850. The State holds these lands for the benefit of all people of the State for statewide Public Trust purposes that include, but are not limited to, waterborne commerce, navigation, fisheries, water-related recreation, visitor-serving amenities, habitat preservation, and open space. The Commission is the trustee of the sovereign land within the bed of the Sacramento River.

In 2013, a question arose regarding the Commission's authority to require a lease or sublease for pipelines installed on city- or county-maintained rights-of-way. The pipelines were installed pursuant to a locally granted utility franchise which, for a franchise fee, provides broad authority to install utility infrastructure to any city or county rights-of-way. After considering the broad franchise rights granted to municipalities under the California Public Utilities Code section 6201 et seq. and issues of administrative efficiency, Commission staff and PG&E agreed, in lieu of a lease or sublease, to enter into indemnification agreements.

Commission staff and PG&E have negotiated an indemnification agreement indemnifying the State for any harm that may occur or arise from the installation, operation, and maintenance of PG&E pipelines attached to bridge structures. PG&E agrees to indemnify the State, without limitation, for any claim or liability arising from the installation, use, operation, or maintenance of the PG&E gas pipeline and any PG&E facilities or improvements located within the lease premises of Lease No. PRC 505.1

Based on a review of the project design plans for the Bridge and PG&E's pipeline, Commission staff believes the PG&E pipeline improvements are attached in a manner that do not interfere, inhibit, or cause an unreasonable risk to public access or navigation on sovereign land.

PG&E inspects gas distribution pipelines for leaks every 5 years and conducts pipeline corrosion inspections every 3 years. The California Public Utility Commission (CPUC) General Order 112-E requires pipeline

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operators to submit to the CPUC annual reports required by title 49, Code of Federal Regulations, parts 191.11 and 191.17.

Staff believes that the PG&E gas pipeline on the Airport Road Bridge over the Sacramento River does not substantially interfere with the Public Trust needs and values in the area at this location, at this time. Further, the proposed Indemnification Agreement should provide sufficient liability protection for the State. For all the reasons above, staff believes approval of the Indemnification Agreement is in the best interests of the State.

**OTHER PERTINENT INFORMATION:**

1. The proposed Indemnification Agreement will be in effect concurrently with the term of Lease No. PRC 505.1 that expires May 9, 2032 ([Item C34, May 10, 2007](#)), or upon the sooner termination of that lease, or upon termination of PG&E's franchise agreement with the County, or as mutually agreed upon by PG&E and the Commission.
2. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation and responsible economic use of the lands and resources under the Commission's jurisdiction.
3. Authorizing the Indemnification Agreement between the Commission and PG&E is not a project as defined by the California Environmental Quality Act because it is an administrative action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

**EXHIBITS:**

- A. Site and Location Map
- B. Franchise Agreement

**RECOMMENDED ACTION:**

It is recommended that the Commission:

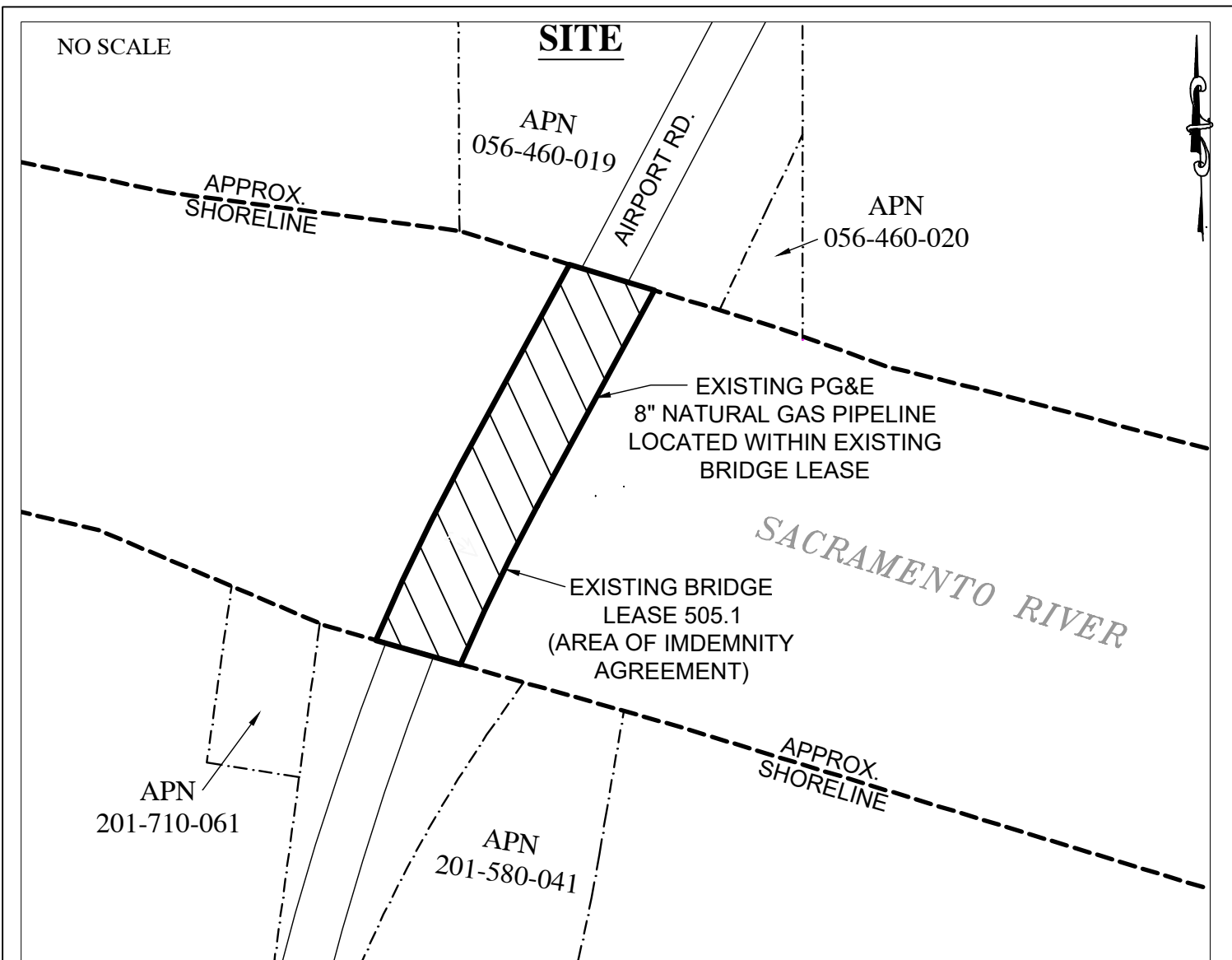
**PUBLIC TRUST AND STATE'S BEST INTERESTS:**

Find that the proposed Indemnification Agreement will not substantially impair the public rights to navigation and fishing or substantially interfere with the Public Trust needs and values at this location, at this time and for the foreseeable term of Lease No. PRC 505.1; and is in the best interests of the State.

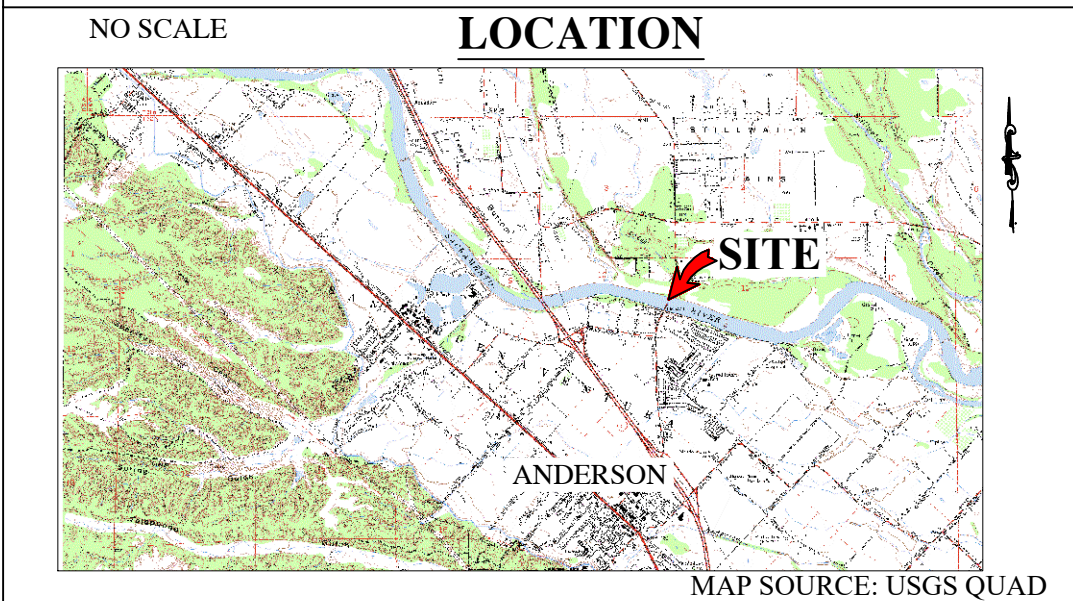
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**AUTHORIZATION:**

Authorize the Indemnification Agreement, substantially in the form on file at the Sacramento office of the Commission, between the Commission and PG&E, beginning October 24, 2019, and ending May 9, 2032, or sooner termination of Lease No. PRC 505.1 or upon termination of PG&E's franchise agreement with the County of Shasta, or as mutually agreed upon by the Parties; concerning the installation, use, operation, and maintenance a 8-inch-diameter natural gas pipeline within a 12-inch-diameter steel casing on the Airport Road Bridge, as shown on Exhibit A, attached and by this reference made a part hereof.



**AIRPORT ROAD, NORTH OF ANDERSON**



**Exhibit A**  
 A2171  
 PACIFIC GAS &  
 ELECTRIC  
 INDEMNITY AGREEMENT  
 SHASTA COUNTY



This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

## EXHIBIT B

ORDINANCE NO. 416

ORDINANCE GRANTING TO PACIFIC GAS AND ELECTRIC COMPANY, ITS SUCCESSORS AND ASSIGNS, THE FRANCHISE OF INSTALLING, MAINTAINING AND USING PIPES AND APPURTENANCES IN SO MANY AND IN SUCH PARTS OF THE PUBLIC ROADS WITHIN THE COUNTY OF SHASTA, STATE OF CALIFORNIA, AS THE GRANTEE OF SAID FRANCHISE MAY FROM TIME TO TIME ELECT TO USE FOR THE PURPOSE OF CONVEYING AND DISTRIBUTING GAS TO THE PUBLIC FOR ANY AND ALL PURPOSES.

THE BOARD OF SUPERVISORS OF THE COUNTY OF SHASTA

DO ORDAIN AS FOLLOWS:

Section 1. Whenever in this ordinance the words or phrases hereinafter in this section defined are used, they shall have the respective meanings assigned to them in the following definitions:

- (a) The word "grantee" shall mean Pacific Gas and Electric Company, and its lawful successors or assigns in respect to the franchise hereby granted;
- (b) The word "County" shall mean the County of Shasta, a political subdivision of the State of California, in its present form or in any later reorganized, consolidated or enlarged form;
- (c) The word "franchise" shall mean the right, privilege and franchise hereinafter more particularly described;
- (d) The phrase "public roads" shall mean the public highways, streets, roads, ways and places as the same now or may hereafter exist within County, including State highways and/or freeways now or hereafter established within County;
- (e) The phrase "pipes and appurtenances" shall mean pipes, pipe-lines, mains, services, traps, vents, vaults, manholes, meters, gauges, regulators, valves, conduits, appliances, attachments, appurtenances and, without limitation to the foregoing, any other property, located or to be located in, upon, along, across, under or over the public roads within County, and used or useful in conveying and/or distributing gas;
- (f) The phrase "installing, maintaining and using" shall mean to lay, construct, erect, install, operate, maintain, use, repair or replace.

Section 2. The franchise of installing, maintaining and using pipes and appurtenances in so many and in such parts of the public roads as the grantee of said franchise may from time to time elect to use, subject to Section 4 hereof, for the purpose of conveying and distributing gas to the public for any and all purposes, is hereby granted by County to Pacific Gas and Electric Company, its successors and assigns.

Section 3. The term of said franchise shall commence with the effective date hereof, and continue and remain in full force and effect until such time as grantee shall surrender or abandon same or said franchise shall be forfeited for noncompliance by the possessor thereof with its terms, or the State of California, County or other public corporation thereunto duly authorized, shall purchase by voluntary agreement or shall condemn and take under the power of eminent domain in accordance with then existing law all property actually used and useful in the exercise of said franchise situate within the unincorporated area of County. Said franchise shall never be considered or taken into account, in fixing the value of said property, in excess of the actual cost to grantee hereof in procuring the same.

Section 4. All pipes and appurtenances which shall be laid and used under and pursuant to the provisions of this ordinance, and in the exercise of said franchise shall be installed, constructed and maintained in a good and workmanlike manner under the direction of the County Road Commissioner and shall be maintained in compliance with all valid laws and ordinances from time to time in force.

Section 5. Grantee of this franchise shall relocate, without expense to County, any pipes and appurtenances theretofore installed, and then maintained or used under this franchise, if and when made necessary by any lawful change of grade, alignment or width of any public road by County, including the construction of any subway or viaduct, provided, however, that the cost of any such relocation made necessary by the construction or any lawful change

of grade, alignment or width of any freeway constructed by the State of California shall be divided equally between grantee and the State of California.

Section 6. Grantee shall, immediately upon installing, maintaining and using said pipes and appurtenances, or any part thereof, at its own cost and expense place said public roads, or so much thereof as may have been damaged thereby, in as good order and condition as that in which they were before being disturbed or excavated for the purpose of installing, maintaining and using said pipes and appurtenances, or any part thereof.

Section 7. Grantee shall have the right of installing, maintaining and using any or all of such pipes and appurtenances from time to time as may be necessary and proper.

Section 8. Grantee shall, during the term for which this franchise is granted, pay to County two per cent (2%) of its or their gross annual receipts arising from the use, operation or possession thereof; provided, however, that no percentage shall be paid for the first five (5) years succeeding the date of the grant of said franchise, but thereafter such percentage shall be payable annually, and if such payment shall not be made, such franchise shall be forfeited; provided, however, that if said franchise be a renewal of a right already in existence, the payment of said percentage of gross receipts shall begin at once. The method of computing said payment shall be in accordance with that laid down by the Supreme Court of the State of California in its construction of the foregoing language, and any future modification of such method set forth in any decision of the Supreme Court hereafter rendered shall supersede the method employed prior to such decision.

Section 9. The measure or amount of annual payment hereunder may



be changed at the end of any fifty (50) year period of this franchise in accordance with the following procedure and subject to the following conditions:

a) At least one (1) year prior to the end of any fifty (50) year period, one party may give written notice to the other party that it desires to change the measure or amount of annual payment hereunder; such written notice shall specify the proposed new measure or amount of annual payment.

b) This franchise shall be subject to a change in measure or amount of annual payment only if there has occurred an amendment to the Broughton Act making a change in the compensation formula currently contained in Section 6006 of the California Public Utilities Code.

c) If the parties cannot agree as to the proposed change in the measure or amount of annual payment, the matter or matters shall be submitted to a board of arbitration for determination thereon. Such determination by said board shall be in writing and shall be final and conclusive and binding on both parties. Such board of arbitration shall consist of three (3) members, one to be selected by County, one to be selected by Grantee, and one to be selected by the two so named by the parties.

Section 10. The said franchise is granted under and pursuant to the provisions of the laws of the State of California which relate to the granting of franchises by counties.

Section 11. This franchise shall not be exclusive.

Section 12. This ordinance shall take effect and be in force upon the expiration of thirty (30) days after its passage, unless suspended from going into operation by a referendum petition filed as provided by law, and shall, before the expiration of fifteen (15) days after the passage thereof, be published once, with the names of the members of said Board of Supervisors voting

for and against the same, in the Redding Record Searchlight, a newspaper published in County.

PASSED this 18th day of January, 1960, by the following vote:

AYES: Supervisors Keefer, Foster, Wagoner, Tibbitts  
Morgan

NAYS: Supervisors None

ABSENT: Supervisors None

W. D. Foster  
Chairman of the Board of Supervisors  
of the County of Shasta.

ATTEST:

A. Ray Taylor  
County Clerk of the County  
of Shasta.