

STAFF REPORT

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10/24/19

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A2075

M.J. Columbus

AMENDMENT OF AN INDEMNIFICATION AGREEMENT

PARTIES:

Pacific Gas and Electric Company (PG&E)

California State Lands Commission

IMPROVEMENT, LAND TYPE, AND LOCATION:

Four existing 5-inch-diameter electrical conduits in two 6-inch-diameter steel casings and appurtenant devices located on the Washington Street Bridge over sovereign land in the Petaluma River, adjacent to North Water Street and River Plaza, in the city of Petaluma, Sonoma County.

BACKGROUND:

On July 17, 1968, the Commission authorized a 49-year right-of-way permit, PRC 3987.9, to the City of Petaluma (City) for the construction, use and maintenance of a bridge on Washington Street over the Petaluma River ([Item C03, July 17, 1968](#)). The bridge was completed in 1969. That permit expired on October 25, 2016. On April 5, 2019, the Commission authorized a General Lease – Public Agency Use, Lease No. PRC 3987.9, for the existing bridge ([Item C06, April 5, 2019](#)). On April 5, 2019, the Commission also authorized an Indemnification Agreement with PG&E for a gas pipeline ([Item C05, April 5, 2019](#)). PG&E is now seeking to amend the agreement to add four 5-inch-diameter electrical conduits within two 6-inch-diameter steel casings that are attached to the bridge and in use. PG&E originally placed the electrical conduits in steel casings on the bridge sometime after the bridge was constructed in 1969. PG&E is now applying to amend Indemnification Agreement No. W 27220 for the four electrical conduits attached to the bridge to continue serving the community.

PG&E maintains a franchise agreement dated May 18, 1953, Ordinance No. 283 N.C.S., with the City for the right to use streets and places within the City for transmitting and distributing electricity. The franchise agreement (attached as Exhibit C) covers the rights-of-way within the City's lease premises for installation, operation, and maintenance of wires, conduits, and appurtenances for the conveyance, distribution, and supply of electricity to the public. Because Lease No. PRC 3987.9 is a right-of-way granted to the City, the PG&E improvements are a valid and consistent use within that lease. Consequently,

STAFF REPORT NO. 04 (CONT'D)

Commission authorization of a separate lease with PG&E for the electrical conduits is not required.

The proposed amendment to Indemnification Agreement No. W 27220 is intended to indemnify the State for any harm that may occur or arise from the installation, operation, and maintenance of the PG&E electrical conduits on the bridge.

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 Petaluma River.

In 2013, a question arose regarding the Commission's authority to require a lease or sublease from PG&E for electrical conduits installed on city- or county-maintained rights-of-way. The electrical conduits 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 to amend the Indemnification Agreement to indemnify the State for any harm that may occur or arise from the installation, operation, and maintenance of PG&E electrical conduits attached to the bridge. 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 electrical conduits and any PG&E facilities or improvements located within the lease premises of Lease No. PRC 3987.9.

STAFF REPORT NO. 04 (CONT'D)

Based on a review of the bridge plans and PG&E's electrical conduits, staff believes the electrical conduits are attached in a manner that does not interfere, inhibit, or cause an unreasonable risk to public access or navigation on sovereign land.

Staff believes that the PG&E electrical conduits on the Washington Street Bridge over the Petaluma River do not substantially interfere with the Public Trust needs and values in the area at this location, at this time. Further, the proposed amendment of Indemnification Agreement No. W 27220 should provide sufficient liability protection for the State. For all the reasons above, staff believes approval of an amendment to the Indemnification Agreement is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. 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.
2. Authorizing the amendment of 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. Land Description
- B. Site and Location Map
- C.D. Franchise Agreement, Ordinance No. 283 N.C.S.

RECOMMENDED ACTION:

It is recommended that the Commission:

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed amendment of the Indemnification Agreement will not substantially impair the public rights to navigation or fishing or substantially interfere with the Public Trust needs and values at this location, at this time; and is in the best interests of the State.

STAFF REPORT NO. **04** (CONT'D)

AUTHORIZATION:

Authorize the amendment of Indemnification Agreement W 27220, substantially in the form on file at the Sacramento office of the Commission, between the Commission and PG&E, effective October 24, 2019, concerning the installation, use, operation, and maintenance of four 5-inch-diameter electrical conduits within two 6-inch-diameter steel casings on the Washington Street Bridge, as described in Exhibit A and shown on Exhibit B (for reference purposes only), attached and by this reference made a part hereof.

EXHIBIT A

A 2075

LAND DESCRIPTION

A parcel of tide and submerged land in the natural bed of the Petaluma River situated in the City of Petaluma, County of Sonoma, State of California described as follows:

Commencing at a monument located at the intersection of the center lines of Washington Street and Petaluma Boulevard North in the City of Petaluma; thence along the center line of Washington Street N 68° 01' 35" E 149.55 feet; thence N 69° 40' 11" E 47.67 feet to the true point of beginning, which point is located at the intersection of the center line of Washington Street with the westerly boundary of the State-owned lands in the Petaluma River and has a coordinate of N 208,005.45, E 1,816,329.84 on the California Coordinate System, Zone II; thence N 15° 59' 29" W 30.09 feet, thence N 69° 40' 11" E 56.49 feet; thence S 12° 51' 29" E 24.62 feet; thence S 30° 28' 43" E 66.63 feet; thence S 69° 40' 11" W 66.09 feet; thence N 30° 06' 49" W 23.57 feet; thence N 15° 59' 29" W 36.88 feet to the true point of beginning.

Containing 0.125 acre, more or less.

END OF DESCRIPTION

The above description is based on that original description prepared by CSLC Boundary Unit on 07/17/1968 as found in PRC 3987 file, Calendar Item 1.

NO SCALE

SITE

EXISTING BRIDGE
LEASE PRC 3987.1
(AREA FOR INDEMNITY
AGREEMENT)

WASHINGTON

PETALUMA

RIVER

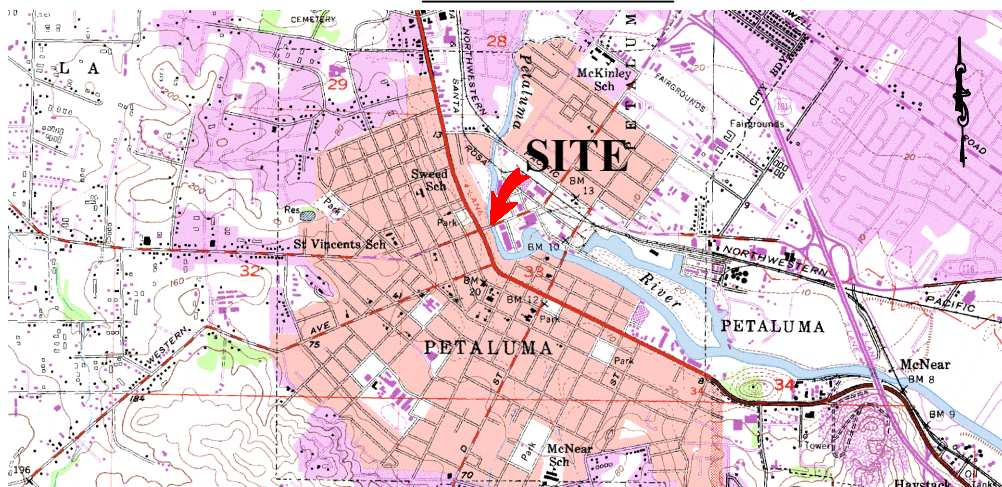
STREET

EXISTING PG&E
ELECTRICAL
CONDUITS IN TWO
6" DIA. SLEEVES

WASHINGTON STREET BRIDGE CROSSING PETALUMA RIVER, PETALUMA

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

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

A 2075

PACIFIC GAS &
ELECTRIC COMPANY
INDEMNITY
AGREEMENT
SONOMA COUNTY



TS 09/06/19

Verified Copy

ORDINANCE NO. 283 N.C.S.

INTRODUCED BY COUNCILMAN

SECONDED BY COUNCILMAN

W. C. BrownLeigh Shoemaker

ORDINANCE GRANTING TO PACIFIC GAS AND ELECTRIC COMPANY, ITS SUCCESSORS AND ASSIGNS, THE FRANCHISE (1) TO USE, FOR TRANSMITTING AND DISTRIBUTING ELECTRICITY, SUITED FOR LIGHTING, FOR USE BY CONSUMERS FOR ANY AND ALL LAWFUL PURPOSES OTHER THAN LIGHTING, ALL POLES, WIRES, CONDUITS AND APPURTENANCES WHICH ARE NOW OR MAY HEREAFTER BE LAWFULLY PLACED AND MAINTAINED IN THE PUBLIC STREETS AND PLACES WITHIN THE CITY OF PETALUMA UNDER THAT CERTAIN FRANCHISE OF GRANTEE ACQUIRED PURSUANT TO SECTION 19 OF ARTICLE XI OF THE CONSTITUTION OF THE STATE OF CALIFORNIA, AS SAID SECTION EXISTED PRIOR TO ITS AMENDMENT ON OCTOBER 10, 1911, AND (2) TO CONSTRUCT, MAINTAIN AND USE IN SAID PUBLIC STREETS AND PLACES ALL POLES, WIRES, CONDUITS AND APPURTENANCES, INCLUDING COMMUNICATION CIRCUITS, WHENEVER AND WHEREVER SAID CONSTITUTIONAL FRANCHISE SHALL NOT BE AVAILABLE THEREFOR, NECESSARY TO TRANSMIT AND DISTRIBUTE ELECTRICITY SUITED FOR, AND FOR USE BY CONSUMERS FOR, ANY OR ALL LAWFUL PURPOSES.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PETALUMA

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 (unless, in the given instance, the context wherein they are used shall clearly import a different meaning):

- (a) The word "grantee" shall mean Pacific Gas and Electric Company, its lawful successors or assigns;
- (b) The word "city" shall mean the City of Petaluma, a municipal corporation of the State of California, in its present incorporated form or in any later reorganized, consolidated, enlarged or reincorporated form;
- (c) The word "streets" shall mean the public streets, ways, alleys and places as the same now or may hereafter exist within said city, including state highways, now or hereafter established within said city, and freeways hereafter established within said city;
- (d) The phrase "poles, wires, conduits and appurtenances" shall mean poles, towers, supports, wires, conductors, cables, guys, stubs, platforms, crossarms, braces, transformers, insulators,

- conduits, ducts, vaults, manholes, meters, cut-outs, switches, communication circuits, appliances, attachments, appurtenances and any other property located or to be located in, upon, along, across, under or over the streets of the city, and used or useful in the transmitting and/or distributing or electricity;
- (e) The phrase "construct, maintain and use" shall mean to construct, erect, install, operate, maintain, use, repair or replace.
- (f) The phrase "constitutional franchise" shall mean the right acquired through acceptance by said grantee or its predecessor in estate of the offer contained in the provisions of Section 19 of Article XI of the Constitution of the State of California, as said section existed prior to its amendment on October 10, 1911.

Section 2. The franchise (1) to use, for transmitting and distributing electricity, suited for lighting, for use by consumers for any and all lawful purposes other than lighting, all poles, wires, conduits and appurtenances which are now or may hereafter be lawfully placed and maintained in the public streets and places within said city under that certain franchise of grantee acquired pursuant to Section 19 of Article XI of the Constitution of the State of California, as said section existed prior to its amendment on October 10, 1911, and (2) to construct, maintain and use in said public streets and places all poles, wires, conduits and appurtenances, including communication circuits, whenever and wherever said constitutional franchise shall not be available therefor, necessary to transmit and distribute electricity suited for, and for use by consumers for, any or all lawful purposes, is hereby granted to Pacific Gas and Electric Company, its successors and assigns.

Section 3. Said franchise shall be indeterminate, that is to say, said franchise shall endure in full force and effect until the same shall, with the consent of the Public Utilities Commission of the State of California, be voluntarily surrendered or abandoned.

by the grantee, or until the state or some municipal or public corporation thereunto duly authorized by law shall purchase by voluntary agreement or shall condemn and take under the power of eminent domain, all property actually used and useful in the exercise of said franchise and situate in the territorial limits of the state, municipal or public corporation purchasing or condemning such property, or until said franchise shall be forfeited for non-compliance with its terms by the grantee.

Section 4. The grantee of said franchise shall during the term thereof pay to said city a sum annually which shall be equivalent to two per cent of the gross annual receipts of said grantee arising from the use, operation or possession of said franchise; provided, however, that such payment shall in no event be less than a sum which shall be equivalent to one-half per cent of the gross annual receipts derived by grantee from the sale of electricity within the limits of such city under said franchise and said constitutional franchise.

Section 5. The grantee shall file with the Clerk of said city, within three months after the expiration of the calendar year, or fractional calendar year, following the date of the granting hereof, and within three months after the expiration of each and every calendar year thereafter, a duly verified statement showing in detail the total gross receipts of such grantee during the preceding calendar year, or such fractional calendar year, from the sale of electricity within said city. Such grantee shall pay to said city within fifteen days after the time for filing such statement, in lawful money of the United States, the aforesaid percentage of its gross receipts for such calendar year, or such fractional calendar year, covered by such statement. Any neglect, omission or refusal by said grantee to file such verified statement, or to pay said percentage at the time and in the manner specified, shall be grounds for the declaration of a forfeiture of this franchise and of all rights of grantee hereunder.

Section 6. This franchise is granted under the Franchise Act of 1937, and pursuant to the City Charter.

Section 7. The compensation reserved to the city for the privilege hereby granted shall be that set forth in Section 4 hereof, which is deemed by the city to be adequate compensation for such privilege.

Section 8. The right is hereby reserved to the city to take over at any time during the duration of this franchise, in the manner provided by law for condemnation of public utility properties, such portion of the public utility's properties owned by the grantee, its successors or assigns, as are located within the limits of the City of Petaluma, without compensation for the value of the franchise granted hereby.

Section 9. The grantee of this franchise shall (a) construct, install and maintain all poles, wires, conduits and appurtenances in accordance with and in conformity with all of the ordinances, rules and regulations heretofore or hereafter adopted by the legislative body of the City of Petaluma in the exercise of its police powers; (b) pay to the City of Petaluma on demand, the cost of all repairs to public property made necessary by any operations of the grantee under this franchise; (c) indemnify and hold harmless the City of Petaluma and its officers from any and all liability for damages proximately resulting from any operations under this franchise; (d) remove or relocate, without expense to the City of Petaluma any facilities installed, used and maintained under this franchise in any streets, including on any bridge or artificial support in or underlying any such street, so long as such street, bridge or artificial support shall remain under the jurisdiction of the city as a city street, where such removal or relocation is made necessary by any lawful change of grade, alignment or width of such street, including the construction of any subway or viaduct, and also where such removal or relocation is

made necessary by reason of any repair or alteration or improvement of any such street, including any such bridge or artificial support, provided that this provision shall cease to be applicable to any such street, bridge or support if and when the same shall become a state freeway, nor shall it constitute a contractual obligation in respect to such freeway within the purview of Section 703 of the Streets and Highways Code of the State of California; and (e) file with the legislative body of the City of Petaluma within thirty (30) days after any sale, transfer, assignment or lease of this franchise, or any part thereof, or of any of the rights or privileges granted hereby, written evidence of the same, certified thereto by the grantee or its duly authorized officers.

Section 10. The grantee of this franchise agrees that the City of Petaluma when acting in a governmental capacity, may improve any street or portion thereof, in which franchise properties have theretofore been constructed or installed, and may remove from any such street any public improvement. If notice in writing is given to the grantee ten (10) days in advance of the fact that work is to be done pursuant to any right reserved in this section, specifying the general nature of the work and the area in which the same is to be performed, then the grantee shall do all things necessary to protect its franchise property during the progress of such work so as to permit the maintenance, operation and use of such public improvement so long as such street shall remain under the jurisdiction of the city as a city street, provided that this provision shall cease to be applicable to any such street if and when the same shall become a state freeway, nor shall this provision constitute a contractual obligation after such street shall have become a state freeway within the purview of Section 703 of the Streets and Highways Code of the State of California.

Section 11. No provision of this franchise shall be so

construed as to impose upon the city any duty or obligation to construct, repair or maintain any highway, including those areas in which grantee's franchise property is located, in any particular manner or to any particular standard.

Section 12. This ordinance shall become effective thirty days after its final passage, unless suspended by a referendum petition filed as provided by law.

Section 13. The grantee of said franchise shall pay to the city a sum of money sufficient to reimburse it for all publication expenses incurred by it in connection with the granting thereof; such payment to be made within thirty days after the city shall have furnished such grantee with a written statement of such expenses.

Section 14. The City Clerk shall cause this ordinance to be published once at least two (2) days before final passage in the Petaluma Argus-Courier, a newspaper of general circulation published and circulated in said city.

First read and introduced and ordered published at a regular meeting of the City Council of said city held on the 18th day of May, 1953.

AYES: COUNCILMEN: ADAMS, BROWN, HORTON, SCHONENINGH, SCHWOBDA,
SCHOEMAKER AND MAYOR MYERS

NOES: NONE.

ABSENT: NONE.

Attest: Charles R. Wallin
City Clerk.

Signed: Leander J. Myers
Mayor.

STATE OF CALIFORNIA, }
COUNTY OF SONOMA, } SS.
CITY OF PETALUMA. }

I, Gladys R. Wallin, City Clerk of the City of Petaluma,
and ex-officio Clerk of the Council of said City, do hereby
certify that the above and foregoing is a full, true and
correct copy of the original of Ordinance No. 283 N.C.S.
of the City of Petaluma, adopted by the Council of the City
of Petaluma on June 18, 1953 and effective July 18, 1953
 , which said Ordinance is now of record and on
file in my office, together with my certificate of the vote
thereon, and that the copy has been compared by me with the
original and is a correct transcript therefrom and of the
whole of said original.

WITNESS my hand and the seal of said City of Petaluma
affixed at my office in the City of Petaluma, County of Sonoma,
State of California, this 19th day of June, 1953.

Gladys R. Wallin
CLERK OF THE CITY OF PETALUMA.

SEAL.