



BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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4 Order Instituting Investigation And Order
5 to Show Cause on the Commission's Own
6 Motion into the Operations and Practices
7 of Pacific Gas and Electric Company with
8 Respect to Facilities Records for its
9 Natural Gas Distribution System
10 Pipelines.

Investigation 14-11-008
(Filed November 20, 2014)

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12 **CITY OF CARMEL-BY-THE-SEA'S REQUEST FOR OFFICIAL NOTICE IN**
13 **SUPPORT OF ITS OPENING BRIEF**

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28 CITY OF CARMEL-BY-THE-SEA

February 26, 2016

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2 **OF THE STATE OF CALIFORNIA**

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12 Pursuant to Rule 13.9 of the California Public Utilities Commission's ("Commission")
13 Rules of Practice and Procedure ("Rules") and Evidence Code § 452 and in accordance with
14 California Rules of Court, Rule 3.1306(c), the City of Carmel-by-the-Sea requests official notice
15 of the following documents: Carmel-by-the Sea City Council Ordinance Nos. 82 C.S., 83 C.S.,
16 and 164.

17 Rule 13.9 permits the Commission to take official notice similar to evidence submitted for
18 judicial notice under Evidence Code § 450 *et seq.* Evidence Code § 452(b) permits this
19 Commission to take official notice of regulations and legislative enactments of any public entity in
20 the United States, including local ordinances. Further, a request for judicial notice by this
21 Commission should be granted because the City of Carmel-by-the-Sea gave sufficient notice of
22 the request, through the pleading or otherwise, to enable such adverse party to prepare to meet the
23 request; and has furnished the Commission with sufficient information to enable it to take judicial
24 notice of the matter. (Evid. Code § 453.)

25 The following document meets the requirements for permissible official notice under Rule
26 13.9, Evidence Code §§ 452 and 453 and California Rules of Court, Rule 3.1306(c). True and
27 correct copies of the ordinances are attached as Exhibit A.

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Respectfully submitted,

/s/ Steven R. Meyers

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February 26, 2016

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EXHIBIT A

AN ORDINANCE AMENDING PART XI, DIVISION 2, OF THE MUNICIPAL CODE AND GRANTING TO PACIFIC GAS AND ELECTRIC COMPANY, ITS SUCCESSORS AND ASSIGNS, THE FRANCHISE TO CONSTRUCT, MAINTAIN AND USE POLES, WIRES, CONDUITS AND APPURTENANCES, INCLUDING COMMUNICATION CIRCUITS, NECESSARY OR PROPER FOR TRANSMITTING AND DISTRIBUTING ELECTRICITY TO THE PUBLIC FOR ANY AND ALL PURPOSES IN, ALONG, ACROSS, UPON, UNDER AND OVER THE PUBLIC STREETS AND PLACES WITHIN THE CITY OF CARMEL-BY-THE-SEA.

THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA DOES ORDAIN as follows:

Section 1. That Sections 1406 through 1409, inclusive, of the Municipal Code be, and the same are hereby repealed, and that the Municipal Code be, and the same is hereby amended by the addition of new sections which shall read as follows:

"Section 1406.01 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;
- (b) The word "City" shall mean the City of Carmel-by-the-Sea, 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 City, including State highways, now or hereafter established within City, and freeways hereafter established within 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, without limitation to the foregoing, any other property located or to be located in, upon, along, across, under or over the streets of City, and used or useful in transmitting and/or distributing electricity;
- (e) The phrase "construct, maintain and use" shall mean to construct, erect, install, lay, operate, maintain, use, repair or replace.

"Section 1406.02 The franchise to construct, maintain and use poles, wires, conduits and appurtenances necessary or proper for transmitting and distributing electricity to the public for any and all purposes, in, along, across, upon, under and over the streets within City is hereby granted to Grantee.

"Section 1406.3 Grantee shall relocate, at its own expense, without expense to City or adjacent property owners, any poles, wires, conduits and appurtenances theretofore installed, and then maintained or used under this franchise. If and when

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 1406.04 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 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 noncompliance with its terms by Grantee.

"Section 1406.05 Grantee shall during the term hereof pay to City two per cent (2%) of the gross annual receipts of Grantee arising from the use, operation or possession of said franchise; provided, however, that such payment shall in no event be less than one per cent (1%) of the gross annual receipts of Grantee derived from the sale of electricity within the limits of City.

"Section 1406.06 Grantee shall file with the City Clerk of City, within three (3) months after the expiration of the calendar year, or fractional calendar year, following the date of the granting hereof, and within three (3) months after the expiration of each and every calendar year thereafter, a duly verified statement showing in detail the total gross receipts of Grantee during the preceding calendar year, or such fractional calendar year, from the sale of electricity within City. Grantee shall pay to City within fifteen (15) 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 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 1406.07 Said franchise is granted under the Franchise Act of 1937.

"Section 1406.08 All poles, wires, conduits and appurtenances which shall be constructed, maintained and used under and pursuant to the provisions of this ordinance and in the exercise of the right, privilege and franchise herein

prescribed by City under its police power.

Grantee shall not use any portion of any street in City for the construction, maintenance or use of poles, wires, conduits and appurtenances in such manner as to injure or destroy any tree or tree shrub therein, unless a permit in writing is first obtained for such purpose from said Superintendent of Streets, or other officer having charge thereof. In the event said Superintendent of Streets or other officer refuses to issue any such permit when applied for by Grantee, Grantee may appeal such refusal by filing an appeal in writing with the City Clerk of City, addressed to the City Council. Such appeal shall be heard at the next ensuing regular meeting of said City Council, and the determination of said City Council thereupon after such hearing shall be final and conclusive, and binding on all parties interested.

"Section 1406.09 Grantee shall, immediately upon installing, replacing or repairing any poles, wires, conduits and appurtenances, at its own cost and expense, place said streets, 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, replacing or repairing said poles, wires, conduits and appurtenances.

"Section 1406.10 Grantee shall comply with the terms and provisions in existence on the effective date of this ordinance of City's ~~XXXXXX~~ MUNICIPAL CODE SECTIONS ~~XXXXXX~~ 1137 AND 1409.01 THROUGH 1409.12, INCLUSIVE.

"Section 1406.11 Grantee shall pay to City a sum of money sufficient to reimburse it for all publication expenses incurred by it in connection with the granting hereof; such payment to be made within thirty (30) days after City shall have furnished Grantee with a written statement of such expenses."

Section 2. The franchise granted hereby shall not become effective until written acceptance thereof shall have been filed by Grantee with the City Clerk of City.

Section 3. Effective Date. This Ordinance shall become effective thirty (30) days after its final passage and adoption, unless suspended by a referendum petition filed as provided by law.

CERTIFICATION OF CITY CLERK

I, HUGH BAYLESS, the undersigned, City Clerk of the City of Carmel-by-the-Sea, California, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 83-C.S., which was given its First Reading at a Regular Meeting of the City Council of the City of Carmel-by-the-Sea, held on the 4th day of September, 1963, and finally adopted at a Regular Meeting of the said Council on the 9th day of October, 1963.

I further certify that upon its passage the foregoing Ordinance was signed

ORDINANCE NO. 82 C.S.

AN ORDINANCE AMENDING PART XI, DIVISION I, OF THE MUNICIPAL CODE AND GRANTING TO PACIFIC GAS AND ELECTRIC COMPANY, IT SUCCESSORS AND ASSIGNS, THE FRANCHISE TO INSTALL, MAINTAIN AND USE PIPES AND APPURTENANCES FOR TRANSMITTING AND DISTRIBUTING GAS FOR ANY AND ALL PURPOSES UNDER, ALONG, ACROSS OR UPON THE PUBLIC STREETS AND PLACES AS THE SAME NOW OR MAY HEREAFTER EXIST WITHIN THE CITY OF CARMEL-BY-THE-SEA.

THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA DOES ORDAIN as follows:

Section 1. That Sections 1400 through 1405, inclusive, of the Municipal Code be, and the same are hereby repealed, and that the Municipal Code be, and the same is hereby amended by the addition of new sections which shall read as follows:

"Section 1400.01 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;
- (b) The word "City" shall mean the City of Carmel-by-the-Sea, 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 City, including State highways, now or hereafter established within City, and freeways hereafter established within City;
- (d) The word "gas" shall mean natural or artificial gas, or a mixture of natural and artificial gas;
- (e) The phrase "pipes and appurtenances" shall mean pipes, pipelines, 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 streets of City, and used or useful in transmitting and/or distributing gas;
- (f) The phrase "install, maintain and use" shall mean to lay, construct, erect, install, operate, maintain, use, repair or replace.

"Section 1400.02 The franchise to install, maintain and use in the streets of City all pipes and appurtenances for transmitting and distributing gas to the public for any and all purposes is hereby granted to Grantee.

"Section 1400.03 Grantee shall relocate, at its own expense, without expense to City or adjacent property owners, any pipes and appurtenances theretofore

or the bringing of the traveled portion of such streets to lawful grade, 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 1400.04 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 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 noncompliance with its terms by Grantee.

"Section 1400.05 Grantee shall during the term hereof pay to City two per cent (2%) of the gross annual receipts of Grantee arising from the use, operation or possession of said franchise; provided, however, that such payment shall in no event be less than one per cent (1%) of the gross annual receipts of Grantee derived from the sale of gas within the limits of City..

"Section 1400.06 Grantee shall file with the City Clerk of City, within three (3) months after the expiration of the calendar year, or fractional calendar year, following the date of the granting hereof, and within three (3) months after the expiration of each and every calendar year thereafter, a duly verified statement showing in detail the total gross receipts of Grantee during the preceding calendar year, or such fractional calendar year, from the sale of gas within City. Grantee shall pay to City within fifteen (15) 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 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 1400.07 Said franchise is granted under the Franchise Act of 1937.

"Section 1400.08 All pipes and appurtenances which shall be installed,

and workmanlike manner and at least eighteen (18") inches below the surface of said streets under the direction of the Superintendent of Streets of City, or other officer having charge thereof, and in compliance with all valid ordinances and regulations which are now or hereafter shall be enacted and prescribed by City under its police power.

Grantee shall not use any portion of any street in City for the installation, maintenance or use of pipes and appurtenances in such manner as to injure or destroy any tree or tree shrub therein, unless a permit in writing is first obtained for such purpose from said Superintendent of Streets, or other officer having charge thereof. In the event said Superintendent of Streets or other officer refuses to issue any such permit when applied for by Grantee, Grantee may appeal such refusal by filing an appeal in writing with the City Clerk of City, addressed to the City Council. Such appeal shall be heard at the next ensuing regular meeting of said City Council, and the determination of said City Council thereupon after such hearing shall be final and conclusive, and binding on all parties interested.

"Section 1400.09 Grantee shall, immediately upon laying, replacing, or repairing any pipes and appurtenances, at its own cost and expense, place said streets, 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 laying, replacing or repairing said pipes and appurtenances.

"Section 1400.10 Grantee shall pay to City a sum of money sufficient to reimburse it for all publication expenses incurred by it in connection with the granting hereof; such payment to be made within thirty (30) days after City shall have furnished Grantee with a written statement of such expenses."

Section 2. The franchise granted hereby shall not become effective until written acceptance thereof shall have been filed by Grantee with the City Clerk of City.

Section 3. Effective Date. This Ordinance shall become effective thirty (30) days after its final passage and adoption, unless suspended by a referendum petition filed as provided by law.

CERTIFICATION OF CITY CLERK

I, HUGH BAYLESS, the undersigned, City Clerk of the City of Carmel-by-the-Sea, California, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 82 C.S., which was given its First Reading at a Regular Meeting of the City Council of the City of Carmel-by-the-Sea, California, held on the 4th day of September, 1963, and finally adopted at a Regular Meeting of the said Council on the 9th day of October, 1963.

I further certify that upon its passage the foregoing Ordinance was signed

ORDINANCE NO: 164

ORDINANCE GRANTING TO PACIFIC GAS AND ELECTRIC COMPANY, ITS SUCCESSORS AND ASSIGNS, THE FRANCHISE OF ERECTING, CONSTRUCTING, MAINTAINING AND USING CONDUITS, CONDUCTORS, STRUCTURES, POLES, WIRES AND NECESSARY AND PROPER APPLIANCES IN SO MANY AND IN SUCH PARTS OF THE PUBLIC STREETS, WAYS, AND PLACES WITHIN THE CITY OF CARMEL-BY-THE-SEA AS THE GRANTEE OF SAID FRANCHISE MAY FROM TIME TO TIME ELECT TO USE, FOR THE PURPOSE OF TRANSMITTING AND DISTRIBUTING ELECTRIC ENERGY TO THE PUBLIC FOR LIGHT, HEAT, POWER AND ALL LAWFUL USES:

* * * * *

The City Council of the City of Carmel-by-the-Sea do ordain as follows:

Section 1: The franchise of erecting, constructing, maintaining and using conduits, conductors, structures, poles, wires and necessary and proper appliances in so many and in such parts of the public streets, ways and places within the City of Carmel-by-the-Sea as the grantee of said franchise may from time to time elect to use, for the purpose of transmitting and distributing electric energy to the public for light, heat, power and all lawful uses, is hereby granted to Pacific Gas and Electric Company, its successors and assigns, for the term of fifty years from and after the effective date of this ordinance upon the terms and conditions in this ordinance prescribed.

Section 2: All construction done under said franchise shall be done subject to the general supervision and direction of the proper authorities of said City and in compliance with all valid ordinances and regulations which are now or shall hereafter be enacted and prescribed by said City under its police power.

Section 3: All public streets, ways or places disturbed or excavated by grantee, its successors or assigns, hereunder, shall at its or their own cost and expense immediately be placed in as good order and condition as same were in before being so disturbed or excavated.

Section 4: The grantee of said franchise, its successors or assigns, shall during the life of said franchise pay to said City two per cent (2%) of the gross annual receipts of said grantee, its successors or assigns, arising from the use, operation or possession of said franchise. No percentage shall be paid for the first five years succeeding the date of this franchise, but thereafter such percentage shall be payable annually, and in the event said payment shall not be made said 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.

Section 5: This ordinance shall become effective thirty days after its passage, unless suspended by a referendum petition as provided by law.

Section 6: This ordinance shall be published once within twenty days after its final passage in The Carmel Pine Cone, a newspaper of general circulation published and circulated in said City.

First read at a regular meeting of the City Council of the City of Carmel-by-the-Sea held on the 4th day of December, 1935, and finally adopted and ordered published at an adjourned regular meeting of said Council on the 18th day of December, 1935, by the following vote:

AYES: COUNCILMEN: Thoburn, Burge, Brownell, Catlin, Rowntree
NOES: COUNCILMEN: None
ABSENT: COUNCILMEN: None

* * * * *

APPROVED: December 18th, 1935

Mayor of said City.

ATTEST:
Saideo Van Brough
Clerk of said City

First read at a regular meeting of the City Council of the City of Carmel-by-the-Sea held on the 4th day of December, 1935, and finally adopted and ordered published at an ^{adjourned} regular meeting of said Council held on the 18th day of December, 1935, by the following vote:

AYES: Councilmen Thoburn, Burge, Brownell, Catlin, Rowntree
NOES: Councilmen None
ABSENT: Councilmen None

ATTEST: *Saideo Van Brough* Clerk of said city
James H. Thoburn Mayor of the City of Carmel-by-the-Sea.