

DRAFT

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

**Agenda I.D. # 12253
RESOLUTION E-4605
August 15, 2013**

R E S O L U T I O N

Resolution E-4605: Pacific Gas and Electric Company requests authority to enter into an encroachment agreement with the City of Lemoore.

PROPOSED OUTCOME: This Resolution adopts the findings and conclusions in the City of Lemoore's Mitigated Negative Declaration, pursuant to the California Environmental Quality Act, and approves Pacific Gas and Electric Company Advice Letter 4202-E seeking authority to enter into an encroachment agreement with the City of Lemoore, CA.

SAFETY: All utilities are expected to comply with all federal and state safety regulations, including Public Utilities Code Section 451.

ESTIMATED COST: None.

By Advice Letter 4202-E filed on March 14, 2013

SUMMARY

Pacific Gas and Electric Company (PG&E) submitted Advice Letter (AL) 4202-E seeking approval under Public Utilities (PU) Code Section 851 to grant the City of Lemoore an encroachment agreement to construct a 7-foot high block wall around a new subdivision unit in Lemoore, California. This Resolution adopts the findings and conclusions in the City of Lemoore's Mitigated Negative Declaration (MND), pursuant to the California Environmental Quality Act (CEQA)¹, and approves PG&E AL 4202-E.

¹ Section 21000 et seq. of the California Public Resources Code and CEQA Guidelines (Title 14, Section 15000 et seq. of the California Code of Regulations [14 CCR 15000 et seq.]).

BACKGROUND

PG&E owns land, buildings and other facilities in connection with the provision of electric service to its customers throughout northern and central California.

Lennar Fresno, Inc. (LFI) obtained approvals for a new single-family residential subdivision development in the City of Lemoore, California. As a condition of the development approval, LFI was responsible for installing a permanent 7-foot high concrete masonry block wall as a decorative barrier between the subdivision boundary of the proposed housing development and nearby public roads. LFI determined that the only feasible location for the block wall was within PG&E's Easement for the Henrietta - Lemoore 70 kV overhead electric transmission wood pole line. On April 3, 2007, PG&E submitted Advice Letter 3028-E seeking authorization to enter into an encroachment agreement with LFI. The advice letter was approved by Resolution E-4099 on February 14, 2008, and the masonry block wall was thereafter constructed by LFI. The City of Lemoore now maintains this block wall.

Last year, the City of Lemoore approached PG&E about constructing a second portion of the decorative masonry block wall, including concrete foundations and other associated improvements that would also encroach on PG&E's Easement. The block wall will be located along a parcel of land owned by the City on the north side of Fallen Leaf Drive between 19th Avenue and Liberty Avenue in Lemoore, California.

PG&E asserts that this encroachment agreement will not interfere with their ability to provide utility services and is not adverse to the public interest.

AL 4202-E was appropriately filed pursuant to a pilot program to expedite certain transactions via AL that otherwise would be subject to a full PU Code Section 851 application (Resolution ALJ-244).

The CPUC's decision to grant or deny the relief sought in AL 4202-E requires Commission review and adoption of the analysis and conclusions of the City of Lemoore's MND, issued for public comment from January 24 - February 14, 2005, and adopted by the City of Lemoore on February 15, 2005. In its review, conducted pursuant to CEQA, the City acted as Lead Agency and concluded that the proposed project, and all activities associated with it, would not have any significant impact on the environment, provided that the mitigation

activities proposed by the City are implemented. Such a review and adoption by the Commission is a discretionary decision pursuant to CEQA, and the CPUC will act as a Responsible Agency for compliance with CEQA. This Resolution adopts the conclusions and findings in the City of Lemoore's MND, in accordance with the CEQA Guidelines and the Public Resources Code, and approves the encroachment agreement between PG&E and The City of Lemoore.

NOTICE

PG&E filed AL 4202-E on March 14, 2013. In accordance with General Order 96-B, Section IV, a copy of this AL was served to the Advice Filing List, Commission staff, and the City of Lemoore.

PROTESTS

Protests to AL 4202-E were due no later than April 3, 2013. No protests were received.

DISCUSSION

CEQA requires the Commission to consider the environmental consequences of its discretionary decisions. Pursuant to CEQA and Rule 2.4 of the Commission's Rules of Practice and Procedure, the Commission examines projects to determine any potential environmental impacts in order that adverse effects are avoided and environmental quality is restored or enhanced to the fullest extent possible under CEQA. In this instance, the Commission is a Responsible Agency under CEQA with respect to the environmental review of The City of Lemoore's project and the MND underlying the encroachment agreement with PG&E. The Commission, as a Responsible Agency, must adopt the City of Lemoore's findings and conclusions as set out in the City's MND.

An Initial Study was prepared by the City of Lemoore pursuant to CEQA that evaluated potential environmental impacts of the project. Potentially significant impacts to several resource areas were identified in the Initial Study; mitigation measures were developed to reduce the significance of the potential impacts; and a MND was prepared as the appropriate environmental document for this project. The MND was circulated to various governmental agencies and departments for comment during the public review period from January 24 - February 14, 2005.

The City's MND examined the project, including all associated activities and all related impacts; made findings and conclusions; and developed avoidance or mitigation measures for each potentially significant impact. Environmental protection measures to protect sensitive environmental resources were incorporated into the project and were made conditions of project approval by the City. Because these measures have been incorporated into the project's design, construction and operation, impacts to sensitive environmental resources will be avoided or minimized to less-than-significant levels.

Based on this evaluation, the City's MND concluded that all impacts of the project could be reduced to less-than-significant levels. On February 15, 2005, the City of Lemoore adopted the findings and conclusions of the MND in Resolution No. 2005-08 and found that the construction and operation of the project, as mitigated, will not create any significant adverse environmental impacts or impacts on public health and safety.

This Commission has reviewed the City of Lemoore's MND as part of our consideration of whether they have complied with CEQA. Based on that review, we find that the City's MND, with findings and conclusions, represents our independent judgment regarding the environmental impact of the proposed project. Therefore, the Commission will adopt the MND and the City's findings and conclusions for the proposed project pursuant to and in compliance with CEQA.

COMMENTS

PU Code Section 311(g)(1) requires that Draft Resolutions be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. PU Code Section 311(g)(2) and Rule 14.6(c)(2) both provide that the 30-day comment period may be waived "...for an uncontested matter in which the decision grants the relief requested." Therefore pursuant to PU Code Section 311(g)(2) and Rule 14.6(c)(2) the 30-day comment period for Draft Resolutions is being waived.

FINDINGS

1. The City of Lemoore acted as the Lead Agency pursuant to CEQA for the environmental review of the City of Lemoore's proposed project.
2. The City of Lemoore's Initial Study examined the project in detail, including the portions affecting PG&E's Easement, and all related impacts.
3. The City of Lemoore prepared an MND as the appropriate environmental document for this project.
4. The MND concluded that all impacts of the project, including those on PG&E's Easement, could be reduced to less-than-significant levels.
5. The City of Lemoore issued an MND for twenty-one days of public comment from January 24 - February 14, 2005.
6. On February 15, 2005, the City of Lemoore adopted the MND for the project in Resolution 2005-08.
7. The City of Lemoore also adopted the findings, conclusions and mitigation measures contained in the MND, and found that construction of the project, as mitigated, would not create any significant adverse environmental impacts or impacts on public health and safety.
8. PG&E submitted AL 4202-E on March 14, 2013, seeking authority pursuant to PU Code Section 851 to enter into an encroachment agreement with the City of Lemoore.
9. PG&E appropriately filed AL 4202-E pursuant to a pilot program to expedite certain transactions via AL that otherwise would be subject to a full PU Code Section 851 application (Resolution ALJ-244).
10. PG&E served all required parties in accordance with General Order 96-B, Section IV.
11. Protests to AL 4202-E were due no later than April 3, 2013, and no protests were received.
12. This agreement would allow the City of Lemoore to construct a second portion of a decorative masonry block wall, including concrete foundations and other associated improvements within PG&E's Easement as identified in the City of Lemoore's MND, and outlined in the encroachment agreement.
13. The decision to grant or deny the relief sought in AL 4202-E requires Commission review and adoption of the analysis and conclusions of the

MND -- including the findings, conclusions, and mitigation measures identified therein -- as adopted by the City of Lemoore on February 15, 2005.

14. The Commission will act as a Responsible Agency for compliance with CEQA with respect to the environmental review of the City of Lemoore's project underlying the encroachment agreement with PG&E.
15. The Commission has reviewed and considered the City of Lemoore's MND prior to adopting the findings, conclusions, and mitigation measures therein.
16. The Commission finds that the findings and conclusions in the City of Lemoore's MND reflect the Commission's independent judgment.
17. The Commission concludes that the City of Lemoore's MND is competent, comprehensive and has been completed in compliance with CEQA and the Public Resources Code.
18. The City of Lemoore's MND should be adopted by the Commission as adequate for decision-making purposes pursuant to CEQA.
19. Pursuant to PU Code Section 311(g)(2) and Rule 14.6(c)(2) the 30-day comment period for Draft Resolutions is being waived.

THEREFORE IT IS ORDERED THAT:

1. The City of Lemoore's MND for the City of Lemoore's proposed project is adequate for the Commission's decision-making purposes and is hereby adopted pursuant to the CEQA Guidelines and the Public Resources Code.
2. The encroachment agreement presented in AL 4202-E between PG&E and the City of Lemoore to facilitate the construction of a second portion of the decorative masonry block wall within PG&E's existing Easement on the north side of Fallen Leaf Drive between 19th Avenue and Liberty Avenue is approved.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on August 15, 2013, the following Commissioners voting favorably thereon:

PAUL CLANON
Executive Director