

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

ENERGY DIVISION

**AGENDA ID 15220  
RESOLUTION E-4752  
October 27, 2016**

**R E S O L U T I O N**

Resolution E-4752. Authorization for Pacific Gas & Electric Company to deviate from Electric Rule 20A in accordance with General Order 96-B, Section 8.2.3.

PROPOSED OUTCOME:

- This resolution approves PG&E's request for deviation from Rule 20A to include within the City of Berkeley's (City's) Grizzly Peak Boulevard Underground (UG) Project portions of some ancillary streets and associated laterals to 36 residential properties that do not meet the public interest criteria of Rule 20A, per Decision (D.) 01-12-009.

SAFETY CONSIDERATIONS:

- The City sent a letter to the California Public Utilities Commission (CPUC) on February 18, 2016 expressing the City's support for including undergrounding of all of the streets contained within their Underground Utility District boundary for this project and states that following the 1991 East Bay Hills fire, residents of the Grizzly Peak neighborhood petitioned the City to approve a utility undergrounding project to address concerns about falling electric and telephone wires in an emergency requiring evacuation.

ESTIMATED COST:

- PG&E's estimate for the Grizzly Peak UG Project cost is \$3,616,000 with approximately \$658,000 of this total attributable to undergrounding the portion of the project that does not meet Rule 20A public interest criteria.
- Approval of PG&E's request will have no net impact on ratepayer costs. It will however reduce the City's Rule 20A allocations available for other Rule 20A projects within the City accordingly.

By Advice Letter 4729-E Filed on October 28, 2015.

## **SUMMARY**

**This Resolution approves PG&E's request to deviate from Rule 20A to include within the Grizzly Peak Boulevard UG Project portions of ancillary streets that do not meet the revised Rule 20A public interest criteria. Approval of the deviation is reasonable because the Underground Utility District (UUD) was adopted by the City's Council long before the 2001 Commission Decision (D.) 01-12-009 revised the Rule 20A public interest criteria. In addition, this approval acknowledges the fact that the UUD residents have been assessed by the City and have already paid to replace the streetlights and other City improvements associated with this Rule 20A UG conversion project. Approval of this deviation will allow the City to use an additional \$658,000 from its Rule 20A allocation that would otherwise be available to other UG projects in the City's queue of UG projects.**

On October 28, 2015, PG&E filed a Tier 3 Advice Letter 4729-E requesting authorization to deviate from Rule 20A for a City of Berkeley Grizzly Peak Blvd UG Project pursuant to General Order (GO) 96-B Section 8.2.3, which allows utilities to provide service to governmental agencies under terms and conditions of service otherwise deviating from its tariffs then on file with the Commission. Although GO 96-B Section 8.2.3 allows a utility to begin providing service to a government agency without prior Commission approval and allows the utility to have the advice letter effective pending disposition, PG&E's requested effective date is pending a resolution approving the advice letter as soon as practicable.<sup>1</sup>

This request for deviation from Rule 20A would require ratepayers to pay the entire underground project cost, not just the amount of the undergrounding project costs that meet the Rule 20A public interest criteria. As explained by PG&E, a map attached to Advice Letter 4729-E drawn by the City of Berkeley (see Attachment A) for the Grizzly Peak Underground Project (Underground Utility District or UUD 48) includes approximately 176 parcels over portions of

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<sup>1</sup> Tier 3 is required for all ALs filed under 8.2.3 per Energy Industry Rule 5.3(8) which includes Service to a government agency pursuant to General Rule 8.2.3 as a matter appropriate to Tier 3 (Effective After Commission Approval) but also states specifically that an advice letter submitted under 5.3(8) may be designated by the Utility as effective pending disposition.

seven streets.<sup>2</sup> Per the revised Rule 20A public interest criteria set by D.01-12-009 only two streets in the project area, Grizzly Peak Blvd and Summit Road, meets Rule 20A public interest criteria. These two streets traverse the project area from north to south and are the longest in UUD 48 representing 113 parcels or (64%) of the affected 176 properties. The remaining ancillary streets do not meet any of the Rule 20A public interest criteria to qualify for 100% ratepayer funding.

As proposed by the City of Berkeley, UUD 48 includes four intersections where unqualified ancillary streets intersect with either Summit or Grizzly Peak. To avoid unsightly riser poles at each intersection, it is PG&E's practice to work with the project sponsor to extend the underground area boundary down each side street for a distance of at least one span length and then to transition back to overhead wires. This allows for a more flexible underground district boundary and improves sightlines at intersections along the qualified streets. Applying this principle, PG&E would normally expand the UUD 48 project boundary along Summit Lane, Avenida and Senior to include an additional 21 parcels (as denoted by the blue line on Attachment B). This expanded project boundary would include 140 (about 80%) of the 176 parcels within the qualifying project boundary.<sup>3</sup>

No protests were received.

This Resolution approves PG&E's request for deviation of Rule 20A to allow ratepayer funding for areas in the City of Berkeley's Grizzly Peak Blvd UG Project (UUD 48) that do not meet the required public interest criteria.

## **BACKGROUND**

Under Electric Rule 20A, Replacement of Overhead with Underground Electric Facilities, PG&E annually allocates work credits to communities –either cities or unincorporated areas of counties – to convert overhead electric facilities to underground for projects that meet the criteria outlined in the filed tariff. The

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<sup>2</sup>PG&E's estimator updated the total number from 170 parcels in the original Advice Letter filing but the difference for the deviation request is the same.

<sup>3</sup> PG&E updated these numbers in a data request response from 134 of 170 parcels in the Advice Letter filing but the requested deviation request for 36 parcels is still the same.

communities may either bank (accumulate) their annual allocations, or borrow (mortgage) future allocations. Upon completion of an undergrounding project, the utility records its costs in its electric plant account for inclusion in its rate base.

To qualify for ratepayer funding, pursuant to Rule 20A, a proposed project must meet certain public interest criteria detailed in Electric Rule 20. In particular, the proposed underground project area must include streets with an unusual concentration of overhead lines (i.e., through circuits or over-built circuits), arterial or major collector streets as identified in the community's general plan, or streets that pass through or adjoin parks or other areas of unique scenic or public interest.

On April 27, 1993, the Berkeley City Council adopted Resolution No 56,934 – N.S. that conversion of overhead electric, telephone and cable television lines to underground in UUD 48 was in the public interest. The City Council resolution adopted findings of the Public Works Commission that all of the streets within the project boundary met the Rule 20A public interest criteria as either heavily travelled streets or streets which adjoin or pass through an area of unique scenic interest to the general public. In response to a data request asking why PG&E and the City waited 22 years to go forward with the adopted Grizzly Peak Blvd UG Project, PG&E stated that it is up to the City or County to prioritize for PG&E the undergrounding commitments for which it adopts resolutions. Since the City adopted the Resolution approving Grizzly Peak in 1993, PG&E has completed several other undergrounding projects that the City had assigned a higher priority.

PG&E and the City, in their February 18, 2016 letter, state that the City's adopted resolution creating UUD 48 was compliant with Rule 20A at that time. In addition, both parties emphasize that the City also has been assessing each property owner within the District to pay for the streetlight conversions and other improvements associated with the undergrounding project. PG&E states that at the time of this Advice Letter filing, the residents of UUD 48 have paid a total about \$120,000 toward the municipal improvements associated with the project.

## **NOTICE**

Notice of AL 4729-E was made by publication in the Commission's Daily Calendar. PG&E states that a copy of the Advice Letters was mailed and distributed in accordance with Section 4 of General Order 96-B.

## **PROTESTS**

Advice Letter AL 4729-E was not protested.

## **DISCUSSION**

**The Commission approves the requested deviation in order to "grandfather" a UUD approved by the City's council in 1993. The City has chosen to spend their Rule 20A allocation on this project even though it will be at the expense of other pending or future undergrounding projects in the City of Berkeley. At this time, the Commission is only aware of one other pending Rule 20A project in the City of Berkeley called the Vistamont Ave UG Project (also in the Berkeley hills near Tilden Park). The Vistamont Ave UG project is in the planning stages. The Commission is not setting precedence by approving this requested deviation as this is a unique situation whereby both the boundaries of the UUD were defined and adopted long before Rule 20A tariff was revised in 2002 and because the City assessed and the residents paid for associated costs for streetlight conversion and other public improvements associated with the underground project that did not qualify for Rule 20A funds. As of the date of the Advice Letter filing, the City has collected \$120,000 from residents for these other costs.**

The Commission evaluated this request based on compliance with Electric Rule 20A, the rate impact on other PG&E ratepayers, and the impact to the City's residents who receive approximately \$530,000 annually towards undergrounding projects in their Rule 20A allocation budget. We also consider policy issues, precedence of granting a deviation, and the appropriateness of GO 96 Rule 8.2.3.

### Compliance with Rule 20A and General Order 96-B, Section 8.2.3

PG&E and the City of Berkeley both agree that the 1993 UUG 48 has portions that do not meet the updated 2002 Rule 20A requirements for Rule 20A allocated funding. An undergrounding project in areas that do not meet the Rule 20A public interest criteria would normally have to seek alternative

funding sources.

PG&E proposes to extend the Rule 20A boundary for Berkeley to include all the streets and all the parcels identified in the 1993 Underground Utility District because the City Council adopted this boundary, including these as “heavily travelled” streets well before the 2002 CPUC Rule 20A update. The City has assessed and the owners of all 176 parcels have paid to replace the streetlights and other City improvements associated with the Rule 20A UG conversion project for the UUD. At the time of the Advice Letter filing, the amount collected, including accumulated interest was about \$120,000.

General Order 96-B, Section 8.2.3 Request for Deviation for Government Agency GO 96-B Section 8.2.3 states: “At all times, a utility other than a telephone corporation may provide service (other than resale service) to a government agency for free, or at reduced rates and charges, or under terms and conditions otherwise deviating from its tariffs then in effect. The utility may begin such service without prior written Commission approval, but the utility shall promptly submit an advice letter to the appropriate industry Division to notify the Commission of the utility’s provision of such service and of the rates, charges, terms and conditions under which the service is provided. Although the advice letter may be effective pending disposition under General Rule 7.5.3, the Commission may determine, in an appropriate proceeding, the reasonableness of such service.”

This request is consistent with General Order 96-B, Section 8.2.3.

#### Impact on Other Pending Rule 20A Undergrounding Projects in Berkeley and the General Ratepayers

Rule 20A.2 details how each city or unincorporated area is allocated Rule 20A funds. Due to this allocation methodology, revised slightly in PG&E’s 2014 General Rate Case Settlement, the City of Berkeley is allocated roughly \$524,000 annually. In a data request response, PG&E stated that the City or County prioritizes the PG&E undergrounding conversions for which it adopts resolutions. Specifically, since the City of Berkeley adopted their resolution approving Grizzly Peak in 1993, PG&E has completed several other undergrounding projects that the City had assigned a higher priority.

Approving this requested deviation would have the effect of reducing the City’s available Rule 20A allocation by \$678,000. At this time there is only one other pending UG project in the City. The Vistamount Ave UG project is also in

the Berkeley hills and is in the planning stages. Approval of this deviation should not prevent the City from covering both of these Rule 20A projects from with its existing Rule 20A allocation. The City of Berkeley currently has \$6.8 million in Rule 20A allocations and will spend approximately \$3.6 million for this Grizzly Peak Blvd UG Project which will leave approximately \$3.2 million in the City's Rule 20A allocation. Because the deviation would draw down the City's Rule 20A allocation, there is not net impact to ratepayers.

### Precedence

The Commission considered whether approving the request could be precedential and lead to other requests for deviations to extend the boundaries of UG districts to include areas that do not meet public interest criteria for Rule 20A. We conclude it does not set precedent and is reasonable on the merits of the project's unique history and the fact that the City has only one other UG project awaiting Rule 20A funds.

### Policy Considerations

The Commission also considered whether the requested deviation raises policy questions as to the intent of Rule 20. We find it does not. The City acted in good faith by establishing this UGG in 1993 based on then effective Rule 20A public interest criteria. The fact that the City subsequently chose to prioritize completion of several other UG projects with its Rule 20A allocations is a reflection the City's undergrounding priorities and not a reason to reject this deviation. This UG project is next in cue according to the City's prioritization of Rule 20A UG projects and the next UG project in line will not be adversely affected.

In conclusion, the Commission approves PG&E's requests for deviation from Rule 20A to include portions of some ancillary streets and associated laterals to the 36 residential properties that do not meet the public interest criteria, clarified in D.01-12-009 and adopted in July 2002 Rule 20A Tariff revisions.

### **COMMENTS**

P.U. Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the CPUC. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

All parties in the proceeding have stipulated to waive the 30-day waiting period required by P.U. Code section 311(g)(1) and the opportunity to file comments on

the draft resolution. Accordingly, this matter will be placed on the CPUC's agenda directly for prompt action.

## **FINDINGS**

1. By Advice Letter 4729-E dated October 28, 2015, PG&E requested a deviation to allow ratepayer funding for undergrounding electric facilities that do not meet the July 2002 Rule 20A revised public interest criteria, and add this deviation into PG&E's List of Contracts and Deviations. Advice Letter 4729-E requests approval of a deviation from overhead to underground electric facilities conversion rules under Rule 20 of PG&E's electrical tariff.
2. PG&E filed Advice Letter 4729-E as Tier 3. Tier 3 is appropriate because this Advice Letter deviates from tariff rules which do not follow directly from the statute or Commission order under General Order 96-B, Energy Industry Rule 5.3, a tariff rule change which does not follow directly from the statute or Commission order must receive a disposition via Resolution.
3. PG&E and the City of Berkeley both agreed that Rule 20A was revised in 2002 to clarify the definition of public interest criteria to be in accordance with the Governor's Office of Planning and Research definition.
4. Approval of PG&E's request for deviation from Rule 20A will have no net impact on ratepayer costs. It will however reduce the City's Rule 20A allocations available for other Rule 20A projects within the City accordingly.
5. PG&E states that as of 12/31/2015, the City of Berkeley had accrued approximately \$6.8 million in its Rule 20A allocation. Since the Grizzly Peak Blvd UG Project will cost approximately \$3.6 million, once it is complete, there will be approximately \$3.2 million remaining in the City of Berkeley's Rule 20A allocation for other UG projects.
6. At this time, the Commission is only aware of one other pending Rule 20A project in the City of Berkeley called the Vistamount Ave UG Project (also in the Berkeley hills near Tilden Park). The Vistamount Ave UG project is in the planning stages.
7. Approval of this deviation should not prevent the City from covering both of these Rule 20A projects from within its existing Rule 20A allocation.
8. Commission approval of this request Rule 20A deviation would be beneficial for the City of Berkeley since the City has been assessing residents in the Grizzly Peak Blvd underground district annually since 1993 to accrue funds for streetlight conversion and other UG project related improvements.



**THEREFORE, IT IS ORDERED THAT:**

1. PG&E Advice Letter 4729-E is approved.
2. The request of Pacific Gas & Electric Company to approve a request for deviation from Rule 20 and to add this requested deviation into PG&E's List of Contracts and Deviations as requested in Advice Letter 4729-E 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 October 27, 2016; the following Commissioners voting favorably thereon:

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TIMOTHY J. SULLIVAN  
Executive Director