

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

**AGENDA ID # 16412**  
**RESOLUTION G-3534**  
**May 10, 2018**

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

Resolution G-3534. Pacific Gas and Electric Company (PG&E) seeks approval of an agreement with the City of Alameda regarding the operation and maintenance of a gas distribution system.

**PROPOSED OUTCOME:**

- Approves PG&E's agreement with the City of Alameda to operate and maintain the gas distribution system located at the former Naval Air Station.

**SAFETY CONSIDERATIONS:**

- PG&E will perform the work in compliance with all relevant safety standards. The utility will also modernize the gas distribution system where appropriate, subject to Alameda's approval.

**ESTIMATED COST:**

- PG&E will receive approximately \$90,000 per year in revenue from Alameda for work performed under the agreement.

By PG&E Advice Letter (AL) 3893-G, filed on October 6, 2017.

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**SUMMARY**

**The agreement (Agreement) between PG&E and the City of Alameda (Alameda or City) for the operation and maintenance (O&M) of the City owned gas distribution system at the former Naval Air Station (NAS)<sup>1</sup> is reasonable and it is approved. Conditions are also imposed on the utility**

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<sup>1</sup> Also known as "Alameda Point." Agreement Recitals "A"

**including prohibiting the recovery of liability related costs from ratepayers and issuing progress reports on system upgrades.**

The Agreement specifies that PG&E will perform its work for the City in accordance with all applicable Commission safety standards. The utility will also use risk assessments and employ its distribution integrity management program practices to determine if upgrades to the City owned system are appropriate, subject to Alameda's approval. Furthermore, there are provisions allowing the Commission to make any needed future changes to the Agreement within its scope of jurisdiction.

The Agreement also shields PG&E from liability associated with the condition of the City owned system except in cases where the utility fails to adequately maintain the system in accordance with the Agreement or is a result of the utility's gross negligence or willful misconduct.

Because the Agreement binds PG&E to conduct its work for the City in compliance with all relevant safety requirements and protects PG&E from liability in cases where the utility is not at fault, it is reasonable and approved.

This Resolution also: 1) prohibits PG&E from collecting from its ratepayers any penalty, fines or payments resulting from its failure to properly perform its maintenance duties as specified in the Agreement or due to its gross negligence or willful misconduct, 2) requires PG&E to submit a report each year describing the activities it has undertaken to upgrade the City owned system, and 3) instructs PG&E to establish Alameda as a wholesale customer of the utility if the City is acting in that capacity.

PG&E shall file a Tier 2 advice letter with a new agreement no later than 30 days prior to the expiration of the Agreement approved in this Resolution if the utility and Alameda merely seek to extend the O&M arrangement. A Tier 3 advice letter is required in all other situations.

## **BACKGROUND**

**In 1997, PG&E and Alameda entered into a written agreement (1997 Agreement) wherein the utility would operate and maintain the gas distribution system owned by the City serving the former NAS. That agreement expired in 2004; however, PG&E and the City continued the O&M arrangement.**

Under the 1997 Agreement, Alameda reimbursed PG&E for the O&M work the utility performed on the gas distribution system owned by the City at the former NAS site. PG&E also provided gas service to existing and future customers at that location under the rules and conditions of service specified in its tariffs. The 1997 Agreement was approved by the Commission and lapsed after July 1, 2004.<sup>2</sup> Although the 1997 Agreement expired, PG&E has continued to provide the same service to the City without interruption.<sup>3</sup> The City owned gas distribution system was designed and constructed by the Navy.<sup>4</sup>

**In AL 3893-G, PG&E is requesting approval of an Agreement with Alameda to operate and maintain the City owned gas distribution system at the former NAS. The Agreement is similar to the prior agreement that expired in 2004.<sup>5</sup>**

As stated in the AL, the Agreement specifies that PG&E will provide service to its existing customers located at the former NAS connected to the City owned gas distribution system. Alameda will reimburse PG&E for the costs for the utility's operation and maintenance of those facilities.<sup>6</sup> PG&E will not take ownership of the City owned system as it may not meet the utility's current standards.<sup>7</sup> However, both PG&E and Alameda desire upgrading the facilities and the utility will employ its Distribution Integrity Management Program to identify pipe segments for replacement, subject to City approval.<sup>8</sup> Additionally,

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<sup>2</sup> PG&E AL 3893-G, p.1 footnote 1

<sup>3</sup> *Ibid*

<sup>4</sup> Agreement, Section 2, Definitions.

<sup>5</sup> PG&E AL 3893-G, p. 1

<sup>6</sup> Operation and Maintenance includes both routine maintenance and extraordinary expenditures, such as, without limitation, repairing any line, valve or other equipment that suffers a leak or other failure or providing special reports as described in Section 4(d)(ii). See Section 4 Operation and Maintenance, Part (b) Scope of PG&E O&M Services. Also, Exhibit E attached to the AL provides a list of specific services that would be performed by the utility and estimated costs.

<sup>7</sup> PG&E AL 3893-G, page 2

<sup>8</sup> Agreement, Section 3, (b) and (c)

PG&E will map the system, which should assist the utility and City to prioritize assets for replacement.<sup>9</sup>

PG&E will provide service to new customers at the former NAS under the utility's applicable extension rules, but not new customers that locate on the City owned system.<sup>10</sup> The utility may also replace mains and services based on leak history and pipe characteristics. If PG&E identifies mains or services for replacement using its risk informed replacement criteria, the utility will pay for the replacement through the appropriate General Rate Case (GRC) authorized replacement program. PG&E will own any main or service extensions it installs or that are constructed through the applicant installation or work at the request of others processes.<sup>11</sup>

The Agreement also contains the following provisions regarding the Commission's jurisdiction over the arrangement:

"CPUC Jurisdiction. This Agreement is subject to approval by the CPUC. City agrees to cooperate fully in support of CPUC approval of this Agreement. This Agreement shall at all times be subject to such changes or modifications by the CPUC as the CPUC may, from time to time, direct in the exercise of its jurisdiction. Work done pursuant to this Agreement shall be in compliance with all applicable CPUC General Orders. PG&E and its activities under this Agreement are subject to applicable laws, regulations, rules and other restrictions. Nothing in the Agreement will be deemed to require PG&E to perform any act or fail to perform any at which would cause PG&E to be in violation thereof." (Section 9 (c))

Additionally, at the request of the Commission's Safety and Enforcement Division (SED), PG&E and Alameda agreed to insert the following sentence in the Agreement:

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<sup>9</sup> Agreement, Section 3(a)

<sup>10</sup> Any new customers served through the Legacy Facilities will be customers of the City. Agreement Section 4(g)

<sup>11</sup> PG&E Advice Letter 3893-G, p.2.

“Nothing in this Agreement shall be construed to prohibit PG&E from complying with all applicable laws, rules, regulations, orders, tariffs and operating standards in the performance of this Agreement.” (7/24/2017 Addendum to the Agreement)

Furthermore, the Agreement stipulates that the City will hold PG&E harmless in the case of injury, death, property damage or similar incident arising from the condition of the City owned system except in cases where the incident could have been prevented if maintenance was performed in accordance with the standards in the Agreement or by the utility’s gross negligence or willful misconduct.<sup>12</sup> PG&E is also responsible to hold the City harmless from acts due to the utility’s negligent or willful misconduct in connection with the performance of the Agreement.<sup>13</sup>

The Agreement will remain in effect for at least five years; thereafter, it will be extended for three one year periods unless a party elects to decline the extension.

In response to an Energy Division data request, PG&E explained that the revenues it forecasts it will receive from the City for the O&M work will be credited to ratepayers through the utility’s GRC processes.<sup>14</sup> This offsets the O&M costs for the work that the utility forecasted in its gas distribution revenue requirement collected from customers.

## **NOTICE**

Notice of PG&E AL 3893-G was made by publication in the Commission’s Daily Calendar. PG&E states that a copy of the Advice Letter was mailed and distributed in accordance with Section 4 of General Order 96-B.

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<sup>12</sup> Agreement, Section 7 (a)

<sup>13</sup> Agreement Section 7(c)

<sup>14</sup> PG&E 11/27/17 data request response Question 2. PG&E estimated that Alameda will be assessed about \$90,000 per year for the service.

## **PROTESTS**

PG&E Advice Letter 3893-G was not protested.

## **DISCUSSION**

**The Agreement between PG&E and Alameda includes provisions that adequately address safety and that appropriately limits the utility's liability. The Agreement is reasonable and is approved.**

A key consideration in our review is whether the Agreement obligates PG&E to operate the City owned system safely and keep it well maintained. In this regard, the Agreement stipulates that the work the utility will conduct for the City will be in compliance with all applicable Commission General Orders, regulations and laws.<sup>15</sup> Additionally, language inserted into the Agreement provided by SED further strengthens the responsibility PG&E has to ensure the work it performs is done in accordance with all relevant safety standards.<sup>16</sup> The Commission also has continuing oversight of the Agreement and can modify it as circumstances dictate within the scope of its authority.<sup>17</sup> Furthermore, PG&E can replace mains and services, subject to Alameda's approval, of the City owned system in accordance with its distribution integrity management program practices. Using a risk informed decision making process, the utility would prioritize this work according to residential addresses, sites slated for redevelopment and then commercial sites. These priorities could shift as new information about the City owned system becomes known.<sup>18</sup> The Agreement also contains procedures regarding the handling of hazardous substances including authorizing PG&E to prioritize mitigating any unsafe system condition without needing to provide notice or other impediments.<sup>19</sup>

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<sup>15</sup> Agreement Section 9 (c)

<sup>16</sup> 7/24/2017 Addendum to the Agreement

<sup>17</sup> Agreement Section 9 (c)

<sup>18</sup> Agreement Section 3 (c)

<sup>19</sup> Agreement Section 6 (d)

Additionally, PG&E is held harmless by the City in the event of injury, death, property destruction or similar occurrence due to the condition of the City owned system unless the incident could have been prevented had the utility properly maintained the system in accordance with the Agreement or by the utility's gross negligence or willful misconduct.<sup>20</sup>

We find that these elements of the Agreement sufficiently bind PG&E to undertake the contracted work for the City in accordance with all relevant safety standards. The Agreement also includes provisions that appropriately limit PG&E's liability. Thus, the Agreement is reasonable and is approved.

**The treatment of revenues received by PG&E for its work under the Agreement is reasonable.**

PG&E said it will include a forecast of the revenues it expects to receive from the City as Other Operating Revenues in its GRC rate case. This has the effect of reducing the utility's revenue requirement and offset the cost of the work that the utility will include in its gas distribution revenue requirement forecast. We will require PG&E to include workpapers in its GRC testimony showing how such forecasts were developed and describe any variance between the forecasts and actual amount received from Alameda.

**We will impose conditions on PG&E that serve to protect ratepayers from paying any amounts the utility may be assessed if it is found liable under the Agreement.**

Under the Agreement, PG&E is liable for injury, death, property damage and other specified situations if the incident could have been prevented by maintenance according to the standards in Agreement or caused by the utility's gross negligence or willful misconduct.<sup>21</sup> PG&E is also is responsible to hold the

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<sup>20</sup> Agreement Section 7(a)

<sup>21</sup> See Agreement Section 7(a) and (c) for the list of situations where PG&E can be financially exposed if found liable.

City harmless from acts due to the utility's negligent or willful misconduct in connection with its performance under the Agreement.<sup>22</sup>

It would be unreasonable for PG&E to recover any costs from ratepayers as a result of its actions found liable under the Agreement. Therefore, PG&E is prohibited from recovering from its ratepayers any payments including penalties, fines, financial settlements, and outside legal fees it incurred as a result of its failure to properly maintain the City owned system pursuant to the Agreement or engages in gross negligence or willful misconduct.<sup>23</sup>

**PG&E is to submit a report annually to SED describing the progress that is being made to modernize the City owned system.**

Both PG&E and Alameda seek to bring the City owned system up to the utility's current standards.<sup>24</sup> To do so, PG&E is utilizing its integrity management program and risk informed pipeline replacement practices to identify pipe segments that should be replaced. To monitor the pace of this effort, we direct PG&E to submit an annual report to SED describing, at minimum, the pipe replacement and upgrades of the City owned system that has been achieved each year, the mileage of the City owned system that has not been upgraded, and an estimate when the entire City owned system will be upgraded to PG&E's current standards.

The annual reports are due on January 31 of each year until the City owned system has been completely upgraded to meet PG&E's current standards. If PG&E and the City terminate their O&M agreement and the City owned system is not fully upgraded, the utility shall submit the report to SED regarding the status of the City owned system no later than 3 months after the agreement's termination. This reporting requirement shall resume if PG&E and the City re-establish an O&M arrangement after any lapse.

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<sup>22</sup> Agreement Section 7(c)

<sup>23</sup> This condition is consistent with Public Utilities Code Section 959 (a).

<sup>24</sup> Agreement Section 3 (b)

**PG&E shall file a Tier 2 advice letter if the parties seek to extend the Agreement approved in this Resolution beyond the expiration date. The advice letter is to be filed no later than 30 days prior to the Agreement's expiration date. PG&E shall file a Tier 3 advice letter in all other cases.**

PG&E continued to provide O&M service to the City when the 1997 Agreement lapsed in 2004. Although keeping the system safe is of utmost importance, the lack of a formal agreement to govern the relationship between PG&E and the City for such a long duration is a concern and Staff will look further into the circumstances of this situation. It is our expectation that a formal agreement is in place specifying the responsibilities of each party if the O&M arrangement is to continue. Thus, we have devised the following process for our review of any future agreements:

- 1) PG&E shall file a Tier 2 advice letter with a new agreement if the utility and Alameda merely seek to extend the Agreement approved in this Resolution beyond the expiration date. This advice letter shall be filed no later than 30 days prior to the Agreement's expiration.
- 2) PG&E shall file a Tier 3 advice letter with a proposed agreement if the utility and Alameda seek substantive changes to the Agreement approved in this Resolution or to re-establish an O&M arrangement.<sup>25</sup>

Each advice letter must explain PG&E's ratemaking treatment of the revenues it expects to receive under the agreement and that the utility states that it will not seek the recovery of any costs from ratepayers related to its liability under the agreement, as discussed herein.

If the Agreement approved in this Resolution expires without being renewed or is terminated, PG&E shall file an Information Only advice letter as soon as practicable thereafter.<sup>26</sup>

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<sup>25</sup> Substantive changes would include modifying the liability provisions, altering the Commission's jurisdiction over the Agreement, and changing elements of the Agreement related to safety.

<sup>26</sup> General Order 96-B, Rule 3.9

**If Alameda is acting as a wholesale customer, PG&E shall file a Tier 2 advice letter to make the appropriate adjustments to its tariffs.**

The Agreement specified that PG&E will no longer take new customers except those served solely through PG&E facilities. Any new customers served through the City owned system would be customers of Alameda.<sup>27</sup>

If PG&E determines that Alameda is acting as a wholesale customer, the utility shall file a Tier 2 advice letter as soon as practicable to make the appropriate adjustments to its rates and tariffs to include the City as a wholesale customer.<sup>28</sup>

### **COMMENTS**

Public Utilities 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 Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments, and will be placed on the Commission's agenda no earlier than 30 days from today.

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<sup>27</sup> Agreement Section 4(g). PG&E 3/16/18 data request response stated that one existing service location is not a PG&E customer, but is downstream from a PG&E master meter and that all natural gas serving the gas distribution system goes through one of five PG&E master meters.

<sup>28</sup> PG&E's Gas Rule 2 contains the following definition: WHOLESALER/RESALE CUSTOMER: A customer who takes service under gas Schedule G-WSL - GAS Transportation Service to Wholesale/Resale Customers, which applies to the transportation of natural gas for resale. PG&E wholesale customer tariff: [https://www.pge.com/tariffs/assets/pdf/tariffbook/GAS\\_SCHS\\_G-WSL.pdf](https://www.pge.com/tariffs/assets/pdf/tariffbook/GAS_SCHS_G-WSL.pdf). Also see, Decision D.03-12-061, "As a wholesale customer, Coalinga is both a purchaser and reseller of natural gas." p. 323 and "The wholesale [market] segment consists of municipal or private entities that purchase transportation-only service for gas for resale through non-PG&E distribution systems." p. 226

**FINDINGS**

1. The City of Alameda owns sections of the gas distribution system located at the former NAS.
2. The City of Alameda and PG&E have entered into an agreement wherein the utility would operate and maintain the City owned gas distribution system located at the former NAS.
3. The Agreement stipulates that PG&E will perform the work pursuant to all applicable Commission General Orders.
4. The Commission has continuing authority over the Agreement within its scope of jurisdiction.
5. Through its GRC process, PG&E will credit ratepayers the revenues that it receives from the City of Alameda for the work performed under the Agreement.
6. PG&E's treatment of the revenues it will receive from the City of Alameda is reasonable.
7. Portions of the gas distribution system owned by the City of Alameda at the former NAS might not meet PG&E's current design and construction standards.
8. The City of Alameda and PG&E desire that the City owned system be replaced with facilities designed and constructed to PG&E's current standards.
9. It would be unreasonable for PG&E to recover any costs from its ratepayers due to its failure to adequately maintain the City owned system pursuant to the Agreement or from gross negligence or willful misconduct.

**THEREFORE IT IS ORDERED THAT:**

1. Pacific Gas and Electric Company (PG&E) Advice Letter 3893-G is approved and effective today.
2. PG&E shall file a Tier 2 advice letter with a new agreement if the utility and Alameda seek to extend the Agreement approved herein beyond the expiration date. The advice letter is to be filed no later than 30 days prior to the expiration of the current agreement. PG&E shall file a Tier 3 advice letter with a proposed agreement in all other situations. The advice letters shall include the additional information specified in this Resolution.

3. PG&E shall file an Information Only advice letter if the Agreement approved herein expires without being renewed or is terminated as soon as practicable thereafter.
4. PG&E is prohibited from recovering any costs including fines, penalties, financial settlements, and outside legal fees from its ratepayers resulting from an incident that could have been prevented by maintenance it was responsible to undertake or its performance pursuant to the Agreement or by the utility's gross negligence or willful misconduct.
5. PG&E shall submit reports on system upgrades to the Director of the Commission's Safety and Enforcement Division (SED) on January 31 annually containing the specified information. If PG&E and Alameda terminate their operating and maintenance agreement and the City owned system is not fully upgraded, PG&E shall submit the report to SED no later than 3 months after the agreement's termination. This requirement will remain in effect as specified in this Resolution.
6. PG&E shall file a Tier 2 Advice Letter as soon as practicable to revise its tariff including rates to establish Alameda as a wholesale customer of the utility if the City is acting in that capacity.
7. PG&E shall include workpapers in its GRC testimony showing how it developed forecasts of the expected revenues from Alameda and its gas distribution revenue requirement and describe any variances between the actual revenues it receives from Alameda and the amount forecasted.

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 May 10, 2018; the following Commissioners voting favorably thereon:

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ALICE STEBBINS  
Executive Director