

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



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Order Instituting Rulemaking to Consider  
Revisions to Electric Rule 20 and Related  
Matters.

Rulemaking 17-05-010

**CITY OF OAKLAND APPLICATION FOR REHEARING OF DECISION 23-06-008**

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July 13, 2023

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Pursuant to Rule 16.1 of the California Public Utilities Commission’s (“Commission”) Rules of Practice and Procedure (“Rules”), the City of Oakland (“the City”) respectfully submits this Application for Rehearing of Decision 23-06-008 issued on June 13, 2023 (“Decision”). The City requests a limited rehearing of the Decision to grandfather Phase III of the Piedmont Pines Utility Underground District Project (“Piedmont Pines Project” or “Project”) into the Rule 20A Program.

**I. PROCEDURAL HISTORY**

On May 11, 2017, the Commission issued the Order Instituting Rulemaking to Consider Revisions to Electric Rule 20 and Related Matters. The Commission approved Decision (“D.”) 21-06-013 on June 3, 2021, which concluded Phase 1 of the proceeding. On August 16, 2022, the assigned Commissioner issued a Scoping Memo and Ruling (scoping memo) that established the issues for Phase 2 of this proceeding. A Proposed Decision on Phase 2 was issued on May 5, 2023. The City of Oakland filed opening and reply comments on the Proposed Decision. Decision 23-06-008 was issued on June 13, 2023.

**II. STANDARD OF REVIEW**

Rule 16.1(c) mandates that applications for rehearing “shall set forth specifically the grounds on which the applicant considers the order or decision of the Commission to be unlawful or erroneous, and must make specific references to the record or law.” Decision 23-06-008 is

erroneous because the record demonstrates that the unique history of the Piedmont Pines Project warrants that it be grandfathered into the Rule 20A Program.

### **III. THE DECISION IS ERRONEOUS BECAUSE IT DOES NOT CONSIDER THE UNIQUE HISTORY OF THE PIEDMONT PINES PROJECT**

While the City does not oppose the winding-down of the Rule 20A program, “there should be an orderly transition from the existing regulatory regime to the new”<sup>1</sup> and such changes should “be introduced in a manner that reduces or mitigates negative impacts on customers.”<sup>2</sup> The Commission should follow this equitable principle here. The record demonstrates that because of the unique circumstances applicable to the Piedmont Pines Project, the Commission should grandfather Phase 3 of the Piedmont Pines Project into the Rule 20A program so as not to inequitably impact the residents of the Piedmont Pines community.

The community of Piedmont Pines has sought to underground its utility cables for more than thirty years. Piedmont Pines homeowners first submitted a request to place utility lines underground in 1987. The City put the Project in its queue until it had accumulated sufficient Rule 20A work credits to proceed with the project.<sup>3</sup> In May 2000, the City passed the resolution to establish the Utility Undergrounding District for Piedmont Pines.<sup>4</sup> *At PG&E’s request*, the City of Oakland divided the Piedmont Pines undergrounding project into three phases of

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<sup>1</sup> D.95-08-038, 1995 Cal. PUC LEXIS 644 at \*11-12 (Ordering Para. 1) (Modifying D.94-06-014 to create a grandfathering provision for projects currently in the planning stage to be completed under the sunseting regime).

<sup>2</sup> D.17-01-006 at 47 (Adopting a grandfathering period for certain customers for a change in rate structure).

<sup>3</sup> It is important to note that the City of Oakland patiently waited to commence the Piedmont Pines project and did not borrow ahead beyond the allowed five year period, thereby accumulating “work credit debt” that would remain unresolved due to the elimination of the Rule 20A program.

<sup>4</sup> Resolution E-5040 at 12 (Findings of Fact 6). Originally the Project consisting of approximately 15 miles of roadway and 1,350 properties. *Id.*

approximately equal size to make the construction timeline more manageable for PG&E.<sup>5</sup>

Therein lies the genesis of the problem: The Piedmont Pines Project should not be viewed as three separate projects. The City has always understood the Piedmont Pines Utility Undergrounding District to be **one project** and should be permitted to proceed on that basis.

Subsequent to the formation of the Piedmont Pines Utility Undergrounding District, the MacArthur Boulevard Underground Utility District No. 233 was created in September 25, 2001.<sup>6</sup> The City decided to prioritize the undergrounding of the MacArthur corridor ahead of the Piedmont Pines district.<sup>7</sup> The City did so in part to ensure “sustainable opportunities to the local economy, environment and social equity for the MacArthur Boulevard neighborhood.”<sup>8</sup> Mindful of equity concerns, the Piedmont Pines Neighborhood Association consented to this plan because the MacArthur Boulevard district serves an underserved low-income community and was designed to encourage new investments in job creating commercial and business development.<sup>9</sup> Because the MacArthur Boulevard project was prioritized over Piedmont Pines, Phase I of the Piedmont Pines Project was not completed until 2014.

In 2020, the Commission approved PG&E’s request to deviate from Electric Rule 20A to proceed with Phase II of the Piedmont Pines Project, which is estimated to cost \$16,495,000.<sup>10</sup>

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<sup>5</sup> Resolution E-5040 at 5 and 12 (Findings of Fact 7). The City and PG&E also reduced the project scope down by 46 percent to approximately eight linear miles.

<sup>6</sup> See City Of Oakland Resolution No. 76731 (Sept. 25, 2001), <https://oakland.legistar.com/LegislationDetail.aspx?ID=736313&GUID=02788FC2-2270-4D05-AA6D-E1523C2B6F41&G=15529D0E-EFE8-4C09-817E-CE554309072E&Options=ID|Text|&Search=MacArthur>.

<sup>7</sup> See City of Oakland Resolution No. 76616 (July 24, 2001), <https://oakland.legistar.com/LegislationDetail.aspx?ID=736312&GUID=16BC1E75-52E0-432F-AB7E-0CF5CB4D318F&G=15529D0E-EFE8-4C09-817E-CE554309072E&Options=ID|Text|&Search=MacArthur>.

<sup>8</sup> See City of Oakland Resolution No. 79165 (Apr. 19, 2015), <https://oakland.legistar.com/LegislationDetail.aspx?ID=742163&GUID=438F90C6-42EA-4A7B-81DB-597E5AE6F836&G=15529D0E-EFE8-4C09-817E-CE554309072E&Options=Advanced&Search=>.

<sup>9</sup> See Comment Letter from Richard L. Spees on Resolution E-4993 (Aug. 25, 2019).

<sup>10</sup> Resolution E-5040 at 12 (Findings of Fact 9).

The remaining Phase III is estimated to cost \$14,975,842.<sup>11</sup> The City of Oakland currently has a work credit balance of \$23,757,357 and can utilize an additional \$8,461,280 pursuant to the Rule 20(A)(2)(c).<sup>12</sup>

Equity compels the Commission to use its discretion to grandfather Phase III of the Project into the Rule 20A Program. “A grandfather provision to allow projects currently in the planning stage to be completed under the [current] regime [...] is a reasonable exercise of the Commission's discretion.”<sup>13</sup> Here, the Decision’s abrupt cut-off of the Rule 20A program jeopardizes the long-awaited completion of the Piedmont Pines Project, not merely because of the elimination of the rule 20A program, but because Piedmont Pines Project was *artificially subdivided*, leaving the final phase of the project in jeopardy.

The residents of Piedmont Pines have seen their undergrounding project delayed again and again over 30 years due to their cooperation with PG&E and the Commission to subdivide the Project and willingness to cede their priority in line to the MacArthur Boulevard project. Had Piedmont Pines insisted on maintaining their place in line, the entire Piedmont Pines Project would have proceeded as a single project and would likely have been either completed prior to the issuance of this Decision or scheduled for completion within the confines of the eventual termination of the program.

The City recognizes that the MacArthur Boulevard project would have been delayed, but likely would still have been prioritized for reallocation of credits as an “Underserved Community” under the Decision. If Phase III is not permitted to go forward, the residents of Piedmont Pine will be penalized for their consideration for, and cooperation with, their neighbors

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<sup>11</sup> Resolution E-5040 at 12 (Findings of Fact 10).

<sup>12</sup> Resolution E-5040 at 12 (Findings of Fact 11).

<sup>13</sup> See D.95-08-038, 1995 Cal. PUC LEXIS 644 \*13 (Ordering Para. 3).

and PG&E. Based on the unique history of the Piedmont Pines Project, the Commission should allow Phase III of the Project to proceed under the Rule 20A program.

#### **IV. WILDFIRE AND COMMUNITY INTEREST**

The Piedmont Pines community is densely wooded and borders the Reinhardt Redwood Regional Park, Roberts Regional Recreation Area, and Joaquin Miller Park, which are High or Very High Fire Hazard Zones as designated by the California Department of Forestry and Fire Protection. Situated in the wildland-urban interface, Piedmont Pines is vulnerable to wildfire risk.

For these residents in the Oakland hills that witnessed up close the devastating firestorm of 1991 that killed 25 people and injured 150 others,<sup>14</sup> the compelling need to reduce wildfire risk and ensure safe evacuation routes was paramount to their decision to not only seek Rule 20A funds, but to commit to levy a significant assessment on themselves – averaging between \$20,000 and \$25,000 – to ensure that this undergrounding would occur.<sup>15</sup> Furthermore, the economic impact to the broader Oakland community and the whole Bay Area associated with the 1991 fires – an estimated \$1.5 billion<sup>16</sup> – provided an additional compelling argument for why this particular undergrounding project for power lines in an area within a CalFIRE-designated high or very high hazard zone was in the broader public interest.

Piedmont Pines also has a very high proportion of senior citizens (over the age of 65), as reported in the 2012-2016 5-year American Community Survey, with 22.0% of Piedmont Pines

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<sup>14</sup> Captain Donald R. Parker, "The Oakland-Berkeley Hills Fire: An Overview," Oakland Office of Fire Services (ed.). (Jan. 1992) <http://www.sfmuseum.org/oakfire/overview.html>.

<sup>15</sup> Property owners in the Piedmont Pines overwhelmingly responded favorably in a straw poll conducted in 1999 that they would assess themselves if the project was approved. Residents in Phase 1 of the project where undergrounding has concluded have already begun to pay their assessments.

<sup>16</sup> See *supra* Note 14.

residents over the age of 65 as compared to the citywide percentage of 12.2%. Accordingly, the safety and accessibility of evacuation routes for senior citizens in the Piedmont Pines area is of particular importance.

Allowing Phase III of the Piedmont Pines Project to proceed will significantly reduce the threat of wildfire to Piedmont Pines *and the surrounding communities* as well as improve evacuation routes should a wildfire occur, which is squarely in the broader public interest. Although the Rule 20A criteria currently do not expressly include safety benefits related to reducing wildfire risks, such benefits support Phase III of the Piedmont Pines Project moving forward. The City asks that the Commission consider this additional fire safety benefit and allow Phase III to be grandfathered into the Rule 20A Program.

## **V. CONCLUSION**

For the reasons provided above, the City respectfully requests that the Commission grant limited rehearing of Decision 20-03-014 to grandfather the final Phase of the Piedmont Pines Project into the Rule 20A Program.

Respectfully submitted,

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