

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

Agenda ID #16377
RESOLUTION E-4919
April 26, 2018

R E S O L U T I O N

Resolution E-4919. Approves Pacific Gas & Electric's revised "Agreement to Perform Tariff Schedule Related Work, Rule 20A General Conditions," for use on Rule 20A Undergrounding projects.

PROPOSED OUTCOME:

- This Resolution approves Pacific Gas & Electric's (PG&E) revisions to its General Conditions Agreement and allows PG&E to replace the current General Conditions Agreement with the revised version for use for Rule 20A projects.

SAFETY CONSIDERATIONS:

- There is no impact on safety.

ESTIMATED COST:

- There is no impact on cost.

By Advice Letter 5166-E filed on October 24, 2017.

SUMMARY

This Resolution approves Pacific Gas & Electric's (PG&E) proposed changes to its General Conditions Agreement (GCA) and allows PG&E to adopt its revised Sample Form 79-1127 for use in Electric Tariff Rule 20A Undergrounding ("Rule 20A" or "Undergrounding") projects. After working collaboratively with the California State Association of Counties (CSAC), the League of California Cities (LOCC), and interested local cities and counties, PG&E is now filing revisions to its GCA to further clarify roles and responsibilities with cities on Rule 20A projects, and to improve project cost certainty and timing. Approval of the revised GCA will enable several cities and counties (Governmental Bodies or

Entities) to move forward on Rule 20A projects which they had elected to delay until approval of a new GCA.

BACKGROUND

The Commission approved Advice Letter 3767-E on December 31, 2010, which established Form 79-1127.

The Commission's approval of PG&E's Advice Letter (AL) 3767-E on December 31, 2010 introduced PG&E's current GCA, which clarified the roles and responsibilities of the Governmental Entities and PG&E for completing Rule 20A projects.

From 2011 to 2017, PG&E negotiated with cities and counties to improve Form 79-1127 at the behest of these Governmental Entities.

Cities and counties requested that PG&E improve upon its initial GCA in order to add further clarity and streamline the undergrounding process. Since 2011, PG&E has collaborated with the CSAC, the LOCC, and other interested entities and determined the new terms that are the subject of the revised GCA.

PG&E filed AL 4948-E on October 31, 2016 to submit the revised General Conditions Agreement but subsequently withdrew it.

PG&E filed Advice Letter 4948-E on October 31, 2016 seeking Commission approval of its revised Form 79-1127. The CSAC filed a letter in support of PG&E's new terms on November 21, 2016. The City of San Jose filed a protest on that same day citing several items that the city opposed. Upon receiving this protest, PG&E withdrew its Advice Letter claiming that there was no longer an agreement regarding the modifications to the GCA and that PG&E would need to determine how to proceed.

The Commission issued an Order Instituting Rulemaking (R.17-05-010) on May 19, 2017 to consider changes to Rule 20A Undergrounding in California.

The Commission instituted R.17-05-010 (the Undergrounding Proceeding) in May 2017 to consider changes to the Rule 20A program. A sample of these issues includes the surplus of unused Rule 20A work credits, informal undergrounding work credit trading among government bodies, an audit of utility practices in Rule 20 A, and an examination of the project criteria. The timing of this OIR was not related to the withdrawal of PG&E Advice Letter 4948-E.

PG&E filed Advice Letter 5166-E on October 24, 2017 requesting Commission approval of its revised General Conditions Agreement.

After further working with the CSAC, the LOCC, and interested local cities and counties, PG&E is now filing revisions to Form 79-1127 (Revised Form 79-1127). The revisions to the GCA in AL 5166-E further clarify the roles and responsibilities with cities on Rule 20A projects, and they are intended to improve project cost certainty and project timing. Approval of the revised GCA will enable several cities and counties to move forward on Rule 20A projects for which they had elected to wait for approval of these new terms before moving forward.

PG&E stated that the filing of this Advice Letter is not intended to prejudge any issues or outcomes in the recently opened Rule 20 OIR. PG&E further states that any resulting subsequent changes from the Rule 20 OIR could result in changes and further modifications to Form 79-1127.

The summary of proposed changes detailed in AL 5166-E are listed below:

- **Americans with Disabilities Act Requirements:** The current Form 79-1127 does not require Governmental Bodies to account for ADA requirements when determining boundaries of the Rule 20A project. Under the revised Form 79-1127, Governmental Bodies will acknowledge wheelchair access and consider it as a basis for defining the boundaries of the Rule 20A project.
- **Maps:** In the current Form 79-1127, Governmental Bodies are required to provide PG&E with base maps for the Rule 20A project. After feedback from Governmental Bodies of having difficulties in providing the base

map causing project delays, Governmental Bodies are no longer required to provide PG&E with base maps for the Rule 20A project under the revised Form 79-1127. PG&E now assumes this responsibility and the revised requirement is that Governmental Bodies will provide PG&E with the project boundary map and available drawings of known Governmental Body-owned facilities and road improvements.

- **Easements:** In the current Form 79-1127, Governmental Bodies are required to secure all rights of way and easements to the satisfaction of PG&E. After feedback from Governmental Bodies that projects are delayed due to the current process of obtaining easements, the responsibilities to secure easements for Rule 20A projects have been changed under the revised Form 79-1127 so that they are now shared between the Governmental Body and PG&E.
- **Paving and Restoration Costs:** In the current Form 79-1127, Governmental Bodies are required to pay for all paving and restoration costs beyond the standard excavation and restoration cost necessary for the Rule 20A project. In the revised Form 79-1127, the paving and restoration costs that go beyond what is necessary for the Rule 20A project are now shared responsibility with joint trench participants.¹
- **Paving Moratorium:** In the current Form 79-1127, Governmental Bodies are required to waive paving moratorium requirements or pay for the additional costs needed. In the revised Form 79-1127, Governmental Bodies are no longer required to waive their paving moratorium period in order for PG&E to perform its conversion work. The Governmental Body will now work with PG&E to schedule undergrounding projects prior to

¹ Underground electrical facilities are typically installed in common, joint trenches. Other trench participants in a joint trench would include telephone and cable providers who have their facilities in the same trench space as electrical utilities.

municipal paving projects or after the municipal paving moratorium period.

- **Streetlights:** In the current Form 79-1127, Governmental Bodies are required pay for streetlights according to a Street Light Agreement and remove streetlights attached to utility poles and located within the underground district. Due to the complexity of streetlight conversions, the revised Form 79-1127 now gives Governmental Bodies more flexibility to determine how they want to address streetlights impacted within the project scope prior to the start of the project design and PG&E is required to disclose project impacts to the existing streetlight system.
- **Permit Conditions, Fees, and Cost Details:** In the current Form 79-1127, Governmental Bodies are required to waive all fees and permit costs. After feedback from the Governmental Bodies that the costs should not be waived, the requirement is revised to allow Governmental Bodies to share all fees and permitting costs with joint trench participants.
- **Construction Yards:** In the current Form 79-1127, Governmental Bodies are required to provide acceptable construction yard for materials and equipment storage. In the revised Form 79-1127, Governmental Bodies are allowed to share the costs of providing acceptable construction yard for materials and equipment storage with joint trench participants.
- **Contaminated Soils and Cultural Resources:** In the current Form 79-1127, the Governmental Bodies own and manage all contaminated soils and cultural resource findings and Rule 20A funds cannot be used for environmental remediation costs. After much discussion with Governmental Bodies, the revised requirement does not change the responsibility of the Governmental Body to own and manage all contaminated soil and cultural resource findings, but further clarifies the process when contamination and cultural resources are encountered. Under the revised Form 79-1127, PG&E allows cities and counties to use Rule 20A funds to obtain core samples to aid cities in identifying potential

contaminated soil and cultural resource issues and to design a project that avoids these issues.

- **Electric Service Panel Conversions:** In the current Form 79-1127, the electric service panel conversion responsibility was solely under the PG&E responsibility section creating confusion. The revised Form 79-1127 clarifies that Governmental Bodies may elect to be the lead in the conversion of electric service panels and clarifies the payment and reimbursement process.
- **Subsurface Equipment:** The current Form 79-1127, does not specify a process to deal with subsurface equipment. In the revised Form 79-1127, Governmental Bodies may request PG&E to install subsurface equipment (i.e. underground transformers) and if PG&E agrees, then the Rule 20A allocation funds may be used for the capital costs and installation. The Governmental Bodies will be required to pay the one-time maintenance charge associated with maintaining the subsurface equipment.

These changes are widely supported by cities and counties across California and representative organizations such as the California Association of Counties and the League of California Cities. However, two proposed changes were protested by the Cities of San Jose and Cupertino (“Protestors”). These changes were contaminated soils and cultural resources, and subsurface equipment. The two items are described in more detail below.

Contaminated Soils and Cultural Resources

Under the current GCA, the cities and counties own and manage all contaminated soil and cultural resource findings. This means that the cities are responsible for all remediation costs associated with contaminated soils and cultural resources. The revised GCA does not change this responsibility. However, the revised GCA allows the Governmental Entities to use Rule 20A work credits to fund core sampling so they can design their projects to potentially avoid contaminated soils and cultural resources. In addition, the revised GCA clarifies that in the event where contamination or cultural resources are encountered, PG&E will suspend work in the affected area until all

remediation measures required by law are completed by the Governmental Body or other responsible party.

Subsurface Equipment

The current GCA does not allow the cities and counties to use their Rule 20A work credits to pay for the capital costs, installation or maintenance costs for subsurface equipment. The revised GCA clarifies that cities and counties may request PG&E to install subsurface equipment in an underground vault (rather than using a pad-mounted facility). If PG&E agrees, then the Governmental Body may use Rule 20A credits to pay for the subsurface equipment capital and installation costs. However, the Governmental Body would be required to pay a one-time maintenance fee under the revised GCA.

NOTICE

Notice of AL 5166-E was made by publication in the Commission's Daily Calendar. PG&E states that a copy of AL 5166-E was distributed in accordance with Section 4.3 of G.O. 96-B.

PROTESTS AND LETTERS OF SUPPORT

The Cities of San Jose and Cupertino submitted identical, timely protests to Advice Letter 5166-E on November 9, 2017. PG&E filed a reply to the Cities' protests on November 20, 2017. Letters of support for AL 5166-E and the proposed GCA were received from various Governmental Entities in late 2017. These include: the counties of Contra Costa (December 5), Humboldt (December 12), Mendocino (December 5), Marin (November 13), Orange (December 6), Tuolumne (December 6), and Stanislaus (December 4), the cities of Watsonville and Redwood City (both November 13), and the CSAC (October 25). The CSAC is a non-profit organization representing the interests of California's 58 counties. In their letter of support, CSAC expressed appreciation for PG&E's collaborative efforts with their organization and city and county representatives over the course of 7 years. CSAC states:

"The revised form represents a carefully negotiated compromise that not only provides greater clarity to the roles and responsibilities for Rule 20A

projects, but also facilitates project execution and helps reduce the overall timeline for project completion. Moreover, CSAC fully expects that the revised General Conditions and the additional certainty they provide will lead to the immediate implementation of Rule 20A-funded projects and a reduction in the current work credit backlog.”

The Cities protested Advice Letter 5166-E primarily because they oppose the proposed terms for the contaminated soils and cultural resources, and for the subsurface equipment. The Protestors argue five main points: (1) the Commission’s lack of jurisdiction over charter cities; (2) PG&E’s failure to properly serve AL 3767-E, which sought Commission approval for the original GCA; (3) the terms for contaminated soils and cultural resources; (4) the new terms for subsurface transformers; and (5) treatment of Advice Letter 5166-E in light of the Undergrounding OIR.

(1) First Claim: the Commission lacks of jurisdiction over charter cities

San Jose and Cupertino argue that because they are charter law cities, the Commission does not have the legal authority to compel them to pursue undergrounding projects and be bound by the revised GCA.

PG&E’s Response to First Claim

In PG&E’s Reply to the Protests it explains that while the Commission may not have direct authority over charter cities, the California Constitution vests the Commission with exclusive power and authority to all matters germane to the regulation of public utilities. This includes the policies, practices and rules governing the Rule 20A program.

(2) Second Claim: PG&E failed to properly serve AL 3767-E

Protestors claim that PG&E violated GO 96-B § 3.2(1) by failing to properly serve AL 3767-E in 2010 to the Protestors and others cities, which led the Protestors to protest of AL 4948-E and AL 5166-E. They argue that § 3.2(1) requires the utilities to serve Advice Letters to “all parties to the Contract or other deviation.” Since PG&E did not properly serve AL 3767-E, Protestors argue that they never had the opportunity to protest these terms before they came into effect.

PG&E's Response to Second Claim

PG&E argues that this claim is irrelevant and moot in the context of this Advice Letter filing 5166-E since the Cities did not take action until nearly 6 years after AL 3767 was filed.

(3) Third Claim: the terms for contaminated soils and cultural resources expose cities to unlimited liability and financial exposure

The Protestors are opposed to the terms for contaminated soils and cultural resources. The Protestors believe that PG&E is the owner of the Rule 20A projects and for that reason the Protestors should not be exposed to unlimited liability and financial exposure from contaminated soil or cultural resource findings. The Protestors argue that PG&E is the owner because Rule 20A projects are funded primarily by the ratepayers for their own benefit, and because PG&E is not the Cities' contractor.

PG&E's Response to Third Claim

PG&E argues that the Protestors misunderstand who has ownership of the project. Cities initiate Rule 20A projects, not PG&E or its ratepayers. PG&E would not undertake work on a proposed project if it were not for a request from a municipality. Therefore, PG&E should not be responsible for contaminated soil and cultural resource issues.

Additionally, PG&E argues that the Commission has already approved these terms in the current Form 79-1127 and the revised version at issue in this Resolution does not change these terms. In the revised GCA, PG&E allows cities and counties to use their work credits to pay for core sampling, so cities and counties can be better informed regarding contamination as they decide whether to move forward with projects. Since the cities and counties would have the best knowledge of contaminated areas, PG&E finds it to be reasonable for cities and counties to pay for the remediation when cities and counties know a project will likely encounter cultural resources or soil contamination.

(4) Fourth Claim: the one-time maintenance charge for subsurface equipment should be paid for with Rule 20A funds

Protestors contend that even though PG&E agreed to allow use of Rule 20A work credits to pay for the undergrounding of transformers in the revised GCA, PG&E is simply using the one-time maintenance charge to shift the costs back onto the Cities.

PG&E's Response to Fourth Claim

PG&E's responds that underground transformers are not standard installations for undergrounding, but rather special facilities that are subject to Electric Tariff Rule 2. PG&E explains that since the cities and counties initiate the request to have subsurface equipment installed for a project, they are required to pay for the installation and maintenance costs according to Electric Tariff Rule 2. PG&E also explains that these new terms for subsurface equipment represent a compromise as PG&E would otherwise not allow Rule 20A funds to be used towards the installation. Furthermore, PG&E asserts that the Rule 20A program is a capital program and Rule 20A funds are intended as capital funds that cannot be used towards the expense cost in maintenance of underground transformers.

(5) Fifth Claim: Advice Letter 5166-E's request is unreasonable in light of the Undergrounding OIR R.17-05-010.

Protestors argue that according to GO 96B § 7.4.2(5-6), it is unreasonable to impose costs for contaminated soils and cultural resources, and the undergrounding of transformers because these issues are to be considered in a formal Rulemaking, R.17-05-010. The OIR's § 5.2.4 has a list of Initial Scoping Questions, including Item 23 which asks if the Commission should consider the use of Rule 20 A funds towards "conversion-related work" such as "subsurface transformers and hazardous waste cleanup."

PG&E's Response to Fifth Claim

PG&E states that it does not object to these issues being in scope of the OIR. PG&E explains that in the context of the OIR, Advice Letter 5166-E does not prejudice the outcome of the OIR. PG&E furthermore recognizes that the

Commission very well could require PG&E to revise its GCA terms again to reflect the Commission's determinations in the OIR.

The Commission addresses the Protestors' claims and PG&E's replies in the "Discussion" section below.

DISCUSSION

AL 5166-E is approved based on the following considerations:

The revised Form 79-1127 has widespread support across PG&E's service territory as a means of improving project cost certainty and timing. It will also help reduce unused Rule 20A work credit surpluses.

From years of extensive consultation with cities and counties, PG&E and its Governmental partners arrived at the revised GCA. The revised GCA represents a step forward as it clarifies the roles and responsibilities for the Governmental Entities and PG&E, making it easier for projects to get completed and reduce the cities' and counties' growing balances of unused work credits. The revised GCA is supported by a wide range of parties and protested by only two cities. Several cities believe the revised GCA terms are important enough that they have elected to wait to move forward on undergrounding projects until the GCA is approved.

Of the various proposed changes, the change to the maps has been lauded as one of the most valuable of these to the Governmental Entities. Under the revised GCA, PG&E assumes responsibility for base mapping and allows the Governmental Entities to use their Rule 20A work credits to pay PG&E to provide the maps instead. According to PG&E, entities such as the cities of Watsonville and Redwood City, and CSAC, find this change to be a critical step towards facilitating project completion as many cities and counties simply do not have the resources to provide base mapping to PG&E on their own.

In addition the following sections describe the Commission's response to the Protestors' claims, described above.

The Commission's Discussion of San Jose's and Cupertino's Protests

The Commission Does Not Compel Cities to Participate in Rule 20A. The Program is Voluntary for Cities.

The Commission does not have the legal authority to compel charter cities to pursue undergrounding projects and be bound by the revised GCA. However, the Rule 20A program is voluntary. The Protestors are not compelled to work with PG&E on Rule 20A projects. If Protestors decide to pursue Rule 20A projects, they may do so according to the rules that the Commission approves.

AL 3767-E is Not Relevant to the Issue at Stake in Advice Letter 5166-E

The question of whether or not PG&E previously violated GO 96-B in a separate Advice Letter filing is outside the scope of this Resolution. The Protestors were served the revised Form 79-1127 and have been active participants in Energy Division's consideration of the merits of PG&E's proposal.

The Cities and Counties can use Core Sample Data to Avoid Contaminated Soil and Cultural Resource Issues

In the Rule 20A program, cities and counties are voluntarily initiating projects. Therefore, it is unreasonable that ratepayers would be expected to fund cities' remediation efforts when the cities and counties could choose to underground facilities in other, uncontaminated locations or cancel a project. To aid cities' ability to identify contaminated soils and cultural resources the new GCA will allow them to use Rule 20 A credits to analyze core samples. This will help cities avoid more expensive sites. The cities and counties freely choose the sites, and would know best whether or not remediation will be necessary to move projects forward from knowledge of their jurisdiction and from core sample data.

The One-Time Maintenance Charge for Subsurface Equipment Represents a Reasonable Compromise to PG&E's Partner Cities and Counties

Compared to the status quo of not using Rule 20A funds to pay for subsurface equipment, the new GCA represents a compromise in PG&E's service territory.

In San Diego Gas & Electric and Southern California Edison service territories, Governmental Entities are, at present, not given the option to put transformers underground and must install their transformers as pad mounts. PG&E has proposed to allow cities and counties the option to use work credits to pay for subsurface equipment if the cities and counties agree to pay a one-time maintenance cost. This is a reasonable compromise over the status quo and gives Governmental Bodies more options.

Advice Letter 5166-E's Request is Not Unreasonable in Light of the Undergrounding OIR

This Resolution may be superseded by R.17-05-010 (the Undergrounding Proceeding) and this Resolution is not binding on that Proceeding. Approving this AL now provides many cities a more favorable GCA for them to move forward on delayed projects. Though the PG&E Rule 20A Program changes introduced here may ultimately be resolved in R.17-05-010.

For the reasons stated above AL 5166-E is approved.

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. Accordingly, this draft resolution was mailed to all parties for comment, and was placed on the Commission's agenda to be voted on no sooner than 30 days after mailing.

FINDINGS AND CONCLUSIONS

1. The Commission approved Advice Letter 3767-E on December 31, 2010, which established Form 79-1127, the Rule 20A General Conditions Agreement. Form 79-1127 clarified the roles and responsibilities of the Governmental Entities and PG&E for completing Rule 20A projects.
2. From 2011 to 2017, PG&E negotiated with cities and counties to improve Form 79-1127 at the behest of these Governmental Entities.

3. PG&E filed Advice Letter 4948-E in October 2016 seeking approval of the revised GCA, but withdrew following the City of San Jose's protest.
4. In May 19, 2017, the Commission opened an Order Instituting Rulemaking (R.17-05-010) for considering changes to the Rule 20A program. The timing of this OIR was not related to the withdrawal of PG&E Advice Letter 4948-E.
5. PG&E filed Advice Letter 5166-E on October 24, 2017 requesting Commission approval of its revised General Conditions Agreement.
6. PG&E's revisions to the GCA incorporate compromises made after 7 years of collaborative work with cities and counties.
7. The intent of the GCA is to further clarify roles and responsibilities with Governmental Entities on Rule 20A projects, and to improve project cost certainty and timing.
8. Some Governmental Entities put their Rule 20 A projects on hold for several years to wait for Commission approval of the new GCA.
9. PG&E stated that the filing of Advice Letter 5166-E is not intended to prejudge any issues or outcomes in the recently opened Rule 20 OIR. PG&E further stated that any resulting subsequent changes from the Rule 20 OIR could result in changes and further modifications to Form 79-1127.
10. The cities of San Jose and Cupertino filed protests to Advice Letter 4948-E on November 9, 2017.
11. PG&E filed a reply to the Cities' protests on November 20, 2017.
12. Letters of support for Advice Letter 5166-E and the proposed GCA were filed by: the counties of Contra Costa (December 5), Humboldt (December 12), Mendocino (December 5), Marin (November 13), Orange (December 6), Tuolumne (December 6), and Stanislaus (December 4); the cities of Watsonville and Redwood City (both November 13); and the California State Association of Counties (October 25).
13. Many cities and counties are under-resourced, and unable to provide base mapping for Rule 20A projects without significant cost, making it difficult to complete projects. Shifting base mapping responsibility to PG&E would facilitate increased levels of project completion.

14. The Rule 20A program is voluntary and the Commission does not compel charter cities to pursue undergrounding projects.
15. The question of whether or not PG&E previously violated GO 96-B through its service of Advice Letter 3736-E is outside the scope of this Resolution.
16. Ratepayers should not be expected to fund cities' remediation efforts when Governmental Bodies could use knowledge of their jurisdiction and core sample data to choose to underground other, uncontaminated locations or cancel a project.
17. PG&E's agreement to pay for the installation and capital costs of subsurface equipment and requirement for Governmental Bodies to pay a one-time maintenance cost is a reasonable compromise over the status quo.
18. This Resolution may be superseded by R.17-05-010 (the Undergrounding Proceeding) and this Resolution is not binding on the Proceeding.
19. The PG&E Rule 20A Program changes introduced here may be further addressed in the Rule 20 OIR (R.17-05-010)
20. Approval of the revised GCA will enable several Governmental Bodies to move forward on Rule 20A projects which they had elected to delay until approval of a new GCA.

THEREFORE IT IS ORDERED THAT:

1. PG&E's revised Form 79-1127 is adopted and replaces PG&E's current Form 79-1127. PG&E Advice Letter 5166-E is approved.
2. Within 7 days of this Resolution's effective date PG&E shall file a tier 1 supplemental compliance Advice Letter incorporating the revisions to Form 79-1127.

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 April 26, 2018; the following Commissioners voting favorably thereon:

ALICE STEBBINS
Executive Director