PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

 **Item #9 (Rev. 1)**

 **AGENDA ID:17085**

**ENERGY DIVISION RESOLUTION G-3543**

 **January 31, 2019**

RESOLUTION

Resolution G-3543. Pacific Gas and Electric Company seeks approval of a one-time deviation to the indemnity clause of Form 62-4527 to perform work requested by the University of California Davis.

PROPOSED OUTCOME:

* Approves Pacific Gas and Electric Company’s (PG&E) request to modify the indemnity clause of Form 62-4527 to conform to the existing policies established by the University of California Board of Regents. The utility shall file an information-only advice letter if an incident occurs invoking the revised indemnity clause.

SAFETY CONSIDERATIONS:

* No safety impacts because the requested deviation does not change the standard of care of the work to be performed by PG&E.

ESTIMATED COST:

* The cost of the work that PG&E will undertake for the University of California Davis is $75,714.

By Advice Letter 3992-G/5332-E, filed on July 20, 2018.

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# Summary

PG&E’s request for a one-time deviation from the standard language in Form 62-4527 regarding the indemnification of work PG&E will undertake for the University of California (UC) Davis is approved. PG&E uses Form 64-4527 for customer requested work involving utility-owned gas or electric infrastructure. The revised Form 62-4527 approved herein will be in conformity with the policy established by the UC Board of Regents (Regents) defining the extent of liability UC campuses assume when contracting for services.

PG&E will file an information-only advice letter if the revised Form 62-4527 indemnity clause is invoked due to an incident for which the utility is found liable. In the advice letter, PG&E shall describe the incident and list the costs that the utility incurred as a result. The recovery of such costs from ratepayers will be considered by the Commission in PG&E’s General Rate Case proceeding that is opened following the filing of the advice letter.

# Background

UC Davis is one of 10 public institutions of higher education governed by the Regents, pursuant to the California State Constitution.[[1]](#footnote-2) Through its Standing Orders, the Regents sets policies for the UC system including how commercial transactions will be conducted.

In particular, Standing Order 100.4.dd.9 applies to work UC Davis has requested PG&E to undertake involving a gas line. The relevant part of the Standing Order states the following:[[2]](#footnote-3)

“Except as otherwise specifically provided in the Bylaws and Standing Orders, the President is authorized to execute on behalf of the Corporation all contracts and other documents necessary in the exercise of the President’s duties, … except that specific authorization by resolution of the Board shall be required for documents which involve or which are:

9. Agreements by which the University assumes liability for conduct of persons other than University officers, agents, employees, students, and guests.”

Accordingly, UC Davis is not authorized to enter into an agreement with PG&E if the university is liable for a work-related incident that the university (or an affiliated party) did not cause or precipitate. An exception to this condition can be granted by the Regents through a resolution.

Form 62-4527 is a standard agreement containing Commission-approved terms and conditions PG&E uses when a customer asks the utility to perform work on the customer’s premises concerning utility-owned gas or electric infrastructure. It includes an indemnity clause specifying that PG&E is liable only in cases where the utility is negligent or engaged in willful misconduct.

In Advice Letter 3992-G/5332-E, PG&E seeks a one-time deviation to revise the indemnity clause in Form 62-4527 for work UC Davis requested the utility to undertake. The revisions are intended to conform to the requirements of Standing Order 100.4.dd.9 adopted by the Regents. A copy of the revised Form 62-4527 executed by PG&E and the Regents was included in the advice letter.

The requested Form 62-4527 deviation would only apply to the relocation of a gas line UC Davis wants performed to accommodate a new building footing. The project is estimated to cost $75,714. The proposed changes to Form 62-4527 are as follows:

Applicant shall indemnify and hold harmless PG&E, its officers, agents and employees, against all loss, damage, expense and liability resulting from injury to or death of any person, including but not limited to, employees of PG&E, Applicant or any third party, or for the loss, destruction or damage to property, including, but not limited to property of PG&E, Applicant or any third party, arising out of or in any way connected with the performance of this agreement *but only in proportion to and to the extent such liability, loss, attorneys’ fees, and expenses were caused by or result from the negligent or intentional acts or omissions of the University, its officers, employees or agents,* ~~however caused, except to the extent caused by the active negligence or willful misconduct of PG&E, its officers, agents and employees. Applicant will, on PG&E’s request defend any suit asserting a claim covered by the indemnity.~~ Applicant will pay all costs that may be incurred by PG&E in enforcing this indemnity, including reasonable attorneys’ fees.”[[3]](#footnote-4)

PG&E filed the advice letter pursuant to General Order (GO) 96-B, Rule 9.2.3, which authorizes utilities to provide services to government agencies under conditions deviating from their tariffs.[[4]](#footnote-5) Additionally, the utility concluded that it was amenable to make the changes to Form 62-4527 because UC Davis is a public institution.

The Commission has previously approved a similar deviation to PG&E Form 62-4527 for an electric line project that UC Davis requested.

In Advice Letter 4396-E, PG&E sought to change the Form 62-4527 indemnity clause to comply with university policy regarding the removal and replacement of an electric line for UC Davis. PG&E’s deviation to the form was found reasonable and it was approved in Resolution E-4658, issued June 26, 2014.

# Notice

Notice of PG&E Advice Letter 3992-G/5332-E 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.

# Protests

PG&E Advice Letter 3992-G/5332-E was not protested.

# Discussion

PG&E requests approval to modify the indemnity clause of Form 62-4527 to conform to the contracting policy of UC Davis. Although we approved a similar deviation to the form in Resolution E-4658, we consider the merits of each such request on a case-by-case basis.

An important aspect of PG&E’s request is that the Form 62-4527 revisions meet the requirements of Standing Order 100.4dd.9, which was adopted by the Regents.[[5]](#footnote-6) Since the Regents are responsible for setting policies for the public UC system, PG&E indicated that it was “comfortable with this one-time change ” to the indemnity clause for the work UC Davis asked the utility to perform.[[6]](#footnote-7) Additionally, this deference to government organizations is manifested in GO 96-B Rule 9.2.3, which authorizes utilities to provide service to such entities under terms that differ with their tariffs. These factors weigh in favor of granting the requested deviation.

Another issue to consider is the substance and effect of the requested deviation, as GO 96-B Rule 9.2.3 provides.[[7]](#footnote-8) The modifications to Form 62-4527 do not entirely relieve UC Davis from liability connected with the gas line project. Instead, the university’s liability would be limited to only those instances that are explicitly stated in the revised indemnity clause.[[8]](#footnote-9) Consequently, PG&E may be liable for situations that it would not otherwise have been if the indemnity clause was not altered. The treatment of any additional costs incurred by PG&E due to the increased liability exposure is beyond the scope of the advice letter. We address this issue in our disposition of PG&E’s request discussed below.

Since the Form 62-4527 deviation is consistent with a policy of the Regents, a state entity, and permissible under GO 96-B Rule 9.2.3, we find PG&E Advice Letter 3992-G/5332-E reasonable, and it is approved. In the event the Form 62-4527 indemnity clause approved in this Resolution is invoked because PG&E was found liable, the utility shall file an information-only advice letter pursuant to GO 96-B Rule 3.9. In the advice letter, PG&E shall describe the incident and list the costs that the utility incurred as a result. The recovery of such costs from ratepayers will be considered in the next PG&E General Rate Case proceeding that is opened following the filing of the advice letter.

# 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.

No comments were received on the draft Resolution, which was mailed December 13, 2018.

# Findings

1. The UC Board of Regents is a state organization governing the UC system, which includes UC Davis.
2. Standing Order 100.4dd.9, issued by the UC Board of Regents, specifies the level of liability that UC institutions will assume when contracting for services.
3. Form 62-4527 is an agreement PG&E uses for work requested by customers, and it includes an indemnity clause.
4. The revisions to PG&E Form 62-4527 limit the extent of liability UC Davis will assume for a gas line relocation project in conformity with Standing Order 100.4dd.9.
5. The revised PG&E Form 62-4527 may expose the utility to additional liability compared to the original terms of the agreement.
6. The revised PG&E Form 62-4527 would be used only for a gas line relocation project requested by UC Davis, as described in PG&E Advice Letter 3992-G/5332-E.

# Therefore it is ordered that:

1. Pacific Gas and Electric Company (PG&E) Advice Letter 3992-G/5332-E is approved and effective today.

1. PG&E shall file an information-only advice letter as General Order 96-B Rule 3.9 provides if the indemnity clause approved herein is invoked because the utility was found liable. The advice letter shall include a description of the incident and list the costs that the utility incurred as a result. The advice letter is to be filed as soon as practicable following the occurrence of the incident.

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 January 31, 2019; the following Commissioners voting favorably thereon:

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 ALICE STEBBINS

 Executive Director

1. https://regents.universityofcalifornia.edu/ [↑](#footnote-ref-2)
2. https://regents.universityofcalifornia.edu/governance/standing-orders/index.html [↑](#footnote-ref-3)
3. PG&E Advice Letter 3992-G/5332-E p.2 [↑](#footnote-ref-4)
4. In the advice letter, PG&E cited GO 96-B Rule 8.2.3 at p. 2. The GO 96-B Rule was subsequently re-numbered 9.2.3. [↑](#footnote-ref-5)
5. A copy of the revised Form 62-4527 executed by the Regents was included in advice letter, signifying that it complies with the Standing Order. [↑](#footnote-ref-6)
6. PG&E Advice Letter 3992-G/5332-E, p.2 [↑](#footnote-ref-7)
7. GO 96-B Rule 8.2.3 states, in part: “…the Commission may determine, in an appropriate proceeding, the reasonableness of such service…” [↑](#footnote-ref-8)
8. As specified in the revised indemnity clause: “… the negligent or intentional acts or omissions of the University, its officers, employees or agents,” PG&E Advice Letter 3992-G/5332-E, p.2 [↑](#footnote-ref-9)