

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

Agenda ID: 19552
RESOLUTION E-5149
July 15, 2021

R E S O L U T I O N

Resolution E-5149. Pacific Gas and Electric requests approval of agreements with the State of California Department of Water Resources to relocate electric facilities to accommodate levee projects.

PROPOSED OUTCOME:

- Approves the Tier 3 Advice Letter 6135-E filed by Pacific Gas and Electric (PG&E), which includes two Relocation Agreements specifying the terms and conditions for the relocation of PG&E's overhead electric facilities that are in conflict with the State of California Department of Water Resources' (CDWR) Feather River Right Bank PL 84-99 Emergency Levee Repairs project (Feather River) and Lower Elkhorn Basin Levee Setback Project (LEBLS).

SAFETY CONSIDERATIONS:

- Work to relocate overhead electric utility facilities will conform to all current and applicable laws, Commission regulations, and industry and PG&E safety requirements as discussed in this Resolution and documented in the agreements.

ESTIMATED COST:

- CDWR is responsible for costs associated with the relocation work addressed in this Resolution. Under the Relocation Agreements, PG&E accommodated CDWR's request to pay for the work on an actual cost basis. These Relocation Agreements allow for progress billing during the course of the

work; the final invoice will reflect the full actual cost of relocation work, with appropriate credits for payments received from CDWR.

By Advice Letter 6135-E, Filed on March 26, 2021.

SUMMARY

This Resolution approves the Relocation Agreements that PG&E entered into with CDWR to accommodate CDWR's Feather River and LEBLS projects. The Relocation Agreements govern the obligations of PG&E and CDWR regarding overhead electric facility relocations, including progress billing, engineering and design, labor, materials, permitting, land rights acquisition, and construction. The relocations of PG&E facilities to accommodate CDWR's levee projects will be performed at CDWR's expense. PG&E requests approval under Section 9.2.3 of General Order 96-B.

BACKGROUND

This Resolution addresses Advice Letter (AL) 6135-E submitted by PG&E on March 26, 2021. Due to timing issues, but in the interest of having the CPUC review the Relocation Agreements in one Advice Letter, AL 6135-E presents agreements for the Feather River project completed August 2020 and the LEBLS project expected to begin construction in April 2021.

Relocation Work Regulation

Relocation work is governed by Electric Rule 15.I.1, which states that any relocation or rearrangement of PG&E's existing facilities, at the request of, or to meet the convenience of an applicant or customer, and agreed upon by PG&E, normally shall be performed by PG&E. In addition, the applicant or customer shall be responsible for the costs of all related relocation, rearrangement and removal work.

For a typical relocation project, PG&E would use its form agreement on file with the CPUC, Electric Form No. 62-4527, Agreement to Perform Tariff Schedule

Related Work (Work Performance Agreement). Under the Work Performance Agreement, the applicant agrees to pay PG&E a set contract price, which is based on PG&E's estimated cost of the work to be performed by PG&E, in accordance with Rule 15.G. The cost is collected at the time the Work Performance Agreement is entered into, in advance of the work.

The Relocation Agreements PG&E entered into with CDWR entail substantial scopes of work for each project. Performing such large-scale projects on an estimated cost basis creates a risk to both parties that the cost estimate may not accurately capture the actual costs incurred over the course of work. For instance, if the cost estimate is higher than the actual costs CDWR would pay more than the amount PG&E actually incurred to complete the work. Conversely, if the cost estimate turns out to be lower than the actual costs incurred then PG&E would bear those additional costs that exceed the cost estimate. CDWR requested to pay for the work on an actual cost basis, and the Relocation Agreements allow for progress billing.

Levee Projects Scope

CDWR has two levee projects that require the relocation of PG&E electric facilities:

Feather River

The Feather River project is located in Sutter County. Flood damage caused erosion and stability concerns, necessitating levee repair. The scope of this project required PG&E to relocate transmission facilities with distribution underbuild. PG&E's estimated cost was \$1,735,400; the actual cost of this work is \$1,669,625.05.

LEBLS

The LEBLS project is located in Yolo County. The project scope involves PG&E relocating its electric distribution pole line. Specifically, this work will include PG&E removing 31 poles, relocating 18 poles, and installing 17 new poles. This will accommodate levee improvement efforts to increase public safety, system resiliency, and ecosystem function. The estimated cost of this work is \$1,163,170.55.

Agreement Terms

Design, Procurement and Construction

PG&E is responsible for the design, procurement of supplies, and construction of the utility facilities.

Progress Billing

PG&E bills CDWR on a progress basis. Invoices may be issued monthly, but in some cases may be issued less frequently. The invoices detail information relating to the labor, materials, transportation and equipment, other direct costs, and the usual indirect and overhead charges billed. CDWR's payment is due within 45 days of receipt of the itemized bill.

Compliance with Permits

CDWR will obtain all governmental approvals and permits needed in order for PG&E to undertake the work needed to relocate PG&E's facilities.

Land Rights for the Relocated Facilities

The relocation of PG&E's facilities may require the acquisition of additional land rights on third party property. CDWR will acquire satisfactory replacement land rights that correspond to PG&E's existing rights of way and in a form acceptable to PG&E. PG&E anticipates that CDWR will obtain needed replacement land rights by reaching an informal agreement with the third-party landowner to modify the location of PG&E's existing land rights.

Safety

The design and engineering work under these agreements presents no specific safety risks to the public or employees. All designs and specifications produced will conform to all current and applicable Commission, industry and Company safety requirements and will be performed by PG&E or its contractors or subcontractors.

NOTICE

Notice of AL 6135-E was made by publication in the Commission's Daily Calendar. PG&E confirms that a copy of the Advice Letter was mailed and distributed in accordance with Section 4 of General Order 96-B.

PROTESTS

No protests were submitted for Advice Letter 6135-E.

DISCUSSION

1. Two Relocation Agreements have been executed for PG&E facility relocation work required to accommodate CDWR levee projects: Feather River and LEBLS. The Relocation Agreements establish CDWR and PG&E obligations regarding the relocation of PG&E facilities. PG&E, and its contractors or subcontractors, will be responsible for the design and engineering, procurement of supplies, and construction of PG&E's facility relocations. All reports, designs, drawings, plans, specifications and other material prepared by PG&E under the Relocation Agreements shall be owned by PG&E. CDWR is responsible for acquiring, at no cost to PG&E and in a form satisfactory to PG&E, all governmental approvals required for the temporary or permanent rearrangement of PG&E's facilities. CDWR is also responsible for securing for PG&E all necessary land rights in a form satisfactory to both parties to allow PG&E to perform the work and own the new PG&E facilities in the new locations.

PG&E will commence relocation work upon receipt from CDWR of a notice to proceed, all necessary procured land rights vested in PG&E and submitted to the County Recorder's Office, and the issuance of all necessary governmental approvals. PG&E may bill CDWR no more than once each month for actual costs incurred by PG&E and not previously reimbursed by CDWR. CDWR is responsible for costs associated with the relocation work; PG&E's customer rates will not be impacted as a result of the Relocation Agreements.

2. The Relocation Agreements establishing PG&E's obligations to carry out the facility relocation and CDWR's obligations to secure the necessary permitting and land rights are subject to approval by the Commission.

PG&E is required to file copies of the Relocation Agreements via Advice Letter pursuant to General Order 96-B and request Commission approval. CDWR has agreed to cooperate fully in support of PG&E's advice filing and supports Commission approval. The Relocation Agreements shall at all times be subject to such changes or modifications by the Commission as the Commission, from time to time, may direct in the exercise of its jurisdiction. Work done pursuant to the Relocation Agreements shall be in compliance with all applicable Commission General Orders.

Under certain circumstances, the Relocation Agreements may also potentially be subject to Federal Energy Regulatory Commission (FERC) jurisdiction and approval. If applicable, work done pursuant to the Relocation Agreements will be in compliance with FERC requirements.

Regarding the Feather River project, PG&E did not have authority to proceed and complete construction without CPUC approval. PG&E should have followed the established review process of submitting an advice letter to CPUC prior to construction to request approval for its Relocation Agreement. We expect PG&E to follow the established approval process for all future projects.

3. CDWR has requested the relocation work to be performed by PG&E be invoiced at actual cost. This request deviates from the payment structure outlined in the Work Performance Agreement used for regular relocation projects and is reflected in the Relocation Agreements. As defined in the Relocation Agreements, "Actual Costs" means PG&E's fully loaded costs, including direct, indirect, and overhead costs billed in accordance with PG&E's systems for allocating charges to customers. Direct, indirect, and overhead costs include, without limitation, payroll, payroll taxes, external charges, benefits, Allowance for Funds Used During Construction, Administrative and General Costs, estimating, mapping, surveying, land rights acquisition, transportation, service planning, contract management, sourcing, stores and tool expense, material and supplies, public liability and property damage insurance, as set

forth in PG&E's tariffs, estimated state and federal income tax, and other costs charged under such systems, all as in effect from time to time.

PG&E provided preliminary estimates for both projects showing actual net costs, the agency percentage of actual costs (100%) minus betterment (replacements costing more than the replaced PG&E Facilities because of greater capacity, durability, or efficiency) and salvage value (the salvage value of any materials removed and retained by PG&E in the course of the work). Preliminary estimates are not binding upon PG&E. If at any time PG&E becomes aware that a revised estimate of actual costs exceeds the current estimate by more than 20% PG&E will notify CDWR of the new estimated amounts. The Relocation Agreements may be amended to account for a revised cost estimate.

4. The billing arrangements specified in the Relocation Agreements are appropriate for the large-scale work required to accommodate CDWR's Feather River and LEBLS levee projects. Providing a cost estimate that becomes a set contract price is common practice in fee for service arrangements. However, developing a set price cost estimate for large-scale construction carries inherent risk that, even if accurate within a few percentage points over or under actual cost, the equivalent dollar amount under or over actual expense may be significant. If developing a contracted price that accounts for this uncertainty and protects against cost overruns typical to large construction projects, PG&E's estimated cost would likely need to be set conservatively high--as any prudent organization would do when performing projects of this magnitude. Despite this precaution, over the course of work actual costs may still overtake the cost estimate.

It is reasonable that CDWR should pay what it costs to relocate PG&E's facilities to accommodate its own levee work, and no more. The risk of CDWR overpaying if contracting with PG&E to perform the work at a set price is material, and the payment terms for large projects with greater cost impacts than normal relocation work should be considered carefully. CDWR requested progress billing to pay the actual cost, deviating from the standard practice yet electing an alternative payment arrangement that seeks fair reimbursement to PG&E by both parties.

The Relocation Agreement requirements stipulate detailed accounting of project costs by PG&E and reporting through itemized invoices. This serves to appropriately document expenses and aid in transparency as work is completed. In addition, it allows for payments to be made over the course of work rather than paid in full and in advance of the work as is normally required.

5. The performance of large-scale relocation work on an actual cost basis at the request of a governmental agency has been approved by the Commission in other matters. As PG&E notes in its advice letter, Commission Resolution G-3498 approved relocation agreements for work performed at the request of the California High-Speed Rail Authority, with deviations to utility-company Rules allowing reimbursement on actual costs as required by the California High-Speed Rail Act. As in the Relocation Agreements under consideration here, invoicing is on a progress bill basis for actual costs incurred.

The Commission also approved Advice Letter 5762-E, which approved relocation agreements for work performed at the request of the Santa Clara County Valley Transportation Authority. PG&E entered into two master agreements to address the billing procedures and allocation of costs associated with the relocation of PG&E's facilities to accommodate rail and rapid transit projects. The responsibility for utility relocation costs vary depending on the property rights for PG&E's facilities, and progressive billing was structured to proportionally share costs on an actual cost basis.

COMMENTS

This is an uncontested matter in which the resolution grants the relief requested. Accordingly, pursuant to PU Code 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

FINDINGS

1. Two Relocation Agreements have been executed for PG&E facility relocation work required to accommodate CDWR levee work: Feather River and LEBLS.

2. The Relocation Agreements establishing PG&E's obligations to carry out the facility relocation and CDWR's obligations to secure the necessary permitting and land rights are subject to approval by the Commission.
3. CDWR has requested the relocation work to be performed by PG&E be invoiced at actual cost.
4. The billing arrangements specified in the Relocation Agreements are appropriate for the large-scale work required to accommodate CDWR's Feather River and LEBLS levee projects.
5. The performance of large-scale relocation work on an actual cost basis at the request of a governmental agency has been approved by the Commission in other matters.

THEREFORE IT IS ORDERED THAT:

1. The Relocation Agreements for Feather River and LEBLS submitted by PG&E in Advice Letter 6135-E are approved under Section 9.2.3 of GO 96-B.

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 July 15, 2021; the following Commissioners voting favorably thereon:

Rachel Peterson
Executive Director