August 26, 2011

Advice Letter 3863-E

Brian K. Cherry
Vice President, Regulation and Rates
Pacific Gas and Electric Company
77 Beale Street, Mail Code B10C
P.O. Box 770000
San Francisco, CA 94177

Subject: Davi Place Encroachment in Contra Costa County – Request for Approval of Encroachment Agreement Under Section 851

Dear Mr. Cherry:

Advice Letter 3863-E is effective August 24, 2011.

Sincerely,

Julie A. Fitch, Director
Energy Division
June 17, 2011

Advice 3863-E
(Pacific Gas and Electric Company ID U 39 E)

Public Utilities Commission of the State of California

Subject: Davi Place Encroachment in Contra Costa County – Request for Approval of Encroachment Agreement Under Section 851

Purpose

Pacific Gas and Electric Company (“PG&E”) submits this advice letter seeking approval, under Public Utilities (P.U.) Code Section 851 (“Section 851”), for PG&E to enter into an Encroachment Agreement (“Agreement”) with Richard V. Pato and Charlotte Sue Pato (“Owners”). The Agreement regards the encroachment of a certain PG&E overhead electric transmission line easement in Contra Costa County, located on property owned by the Owners, by a private raised redwood deck, gazebo and a portion of a swimming pool and other associated improvements (“Improvements”). These Improvements were previously constructed without PG&E’s knowledge or consent and are currently being used and maintained by the Owners. The Improvements do not interfere with PG&E’s provision of utility service. A copy of the Agreement is attached hereto as Attachment 1.

Background

PG&E owns land, buildings and other facilities in connection with the provision of energy service throughout its service territory. In the provision of these services, PG&E relies on a portfolio of fee properties, rights-of-way, and facilities to support its electric transmission activities.

One such electric transmission line easement and right-of-way traverses across a fee property located in Contra Costa County in the City of Antioch (“Property”) and is owned by Richard V. Pato and Charlotte Sue Pato. Pursuant to the Final Order of Condemnation dated May 16, 1947, Owners “shall have no right to place or erect, and they hereby are prohibited from placing or erecting any building or other structure.” The portion of the Property encumbered by the Easement is hereinafter referred to as the “Easement Area.”

The Improvements were a pre-existing structure on the Property when the Owners purchased the Property in 1994. In 2009, the Owners were advised that the
Improvements were within the Easement Area when PG&E’s Vegetation Management reported to the Owners that the density of vine growth attached to the over-head gazebo structure was then within close proximity to PG&E’s transmission conductor lines. The Owners have since removed all vegetation growth from the gazebo.

PG&E advised the Owners that the location of the Improvements within the Easement Area violated the prohibition against buildings contained in the Easement. The Easement Area and the portion of the Easement Area subject to such encroachment ("Encroachment Area") are legally described in Exhibit “B” and are shown on the map attached as Exhibit “C” attached hereto and made part of the Agreement. The Encroachment Area measures approximately 2,400 square feet.

In light of this unintended encroachment, the Owners have agreed to enter into the Agreement requesting that PG&E grant them permission for the maintenance and operation of the Improvements within the Easement Area. PG&E has determined that the improvements, as initially constructed, do not interfere with PG&E’s present full use of the Easement Area. Therefore, to avert removal of the encroaching portion of the building and the likely cost of litigation that would result from a request for removal, PG&E is willing to settle the matter through an agreement to allow such encroachment on the Easement Area on the terms and subject to the conditions set in the Agreement, adoption of which is not adverse to but rather protects PG&E ratepayers interests.

In accordance with Resolution ALJ-244, Appendix A, Section IV, PG&E provides the following information related to the proposed transaction:

(1) **Identity and Addresses of All Parties to the Proposed Transaction:**

| Pacific Gas and Electric Company | Richard V. and Charlotte Sue Pato |
| Ann H. Kim                      | 3516 Davi Place                 |
| Law Department                 | Antioch, CA 94509              |
| P.O. Box 7442                  | Telephone: (925) 354-6793      |
| San Francisco, CA 94120        | Email: AHK4@pge.com             |
| Telephone: (415) 973-7467      |                                  |
| Facsimile: (415) 973-5520      |                                  |

(2) **Complete Description of the Property Including Present Location, Condition and Use:**

The Owners are the fee title owners of certain real property in the City of Antioch, Contra Costa, California. The Property address is located at 3516 Davi Place, Antioch, CA 94509 and is designated as Assessor’s Parcel Number (APN) 071-402-015. The Property is used by the Owners for residential purposes. PG&E is the owner of a 80-foot wide easement and right-of-way
commonly known as the Contra Costa-Moraga #1 230 kV electric overhead transmission line corridor and for all other purposes connected therewith, as set forth in the Final Order of Condemnation dated May 16, 1947 and recorded in Book 1115 of Official Records at page 182, Contra Costa County Records. A copy of the Easement is attached hereto as Attachment 2.

As described earlier, the Easement expressly prohibits construction of any buildings or structures within the Easement Area. The Improvements were a pre-existing structure built on the Property when the Owners purchased the Property in 1994. Notwithstanding the prohibition in the Easement, PG&E consents to the encroachment on the Improvements onto the Easement Area by approximately forty (40) feet, in the manner and location as more specifically set forth in Exhibit “B” and “C” subject to the terms and conditions set forth in the Agreement.

(3) Intended Use of the Property:

The Owners have requested that PG&E grant permission for the Owners to use and maintain the Improvements within the Easement Area. PG&E has determined that the Improvements, as initially constructed, do not interfere with the present full use of the Easement Area by PG&E, and PG&E is therefore willing to agree to allow such encroachment on the Easement Area on the terms and subject to the conditions set forth in the Encroachment Agreement.

The Encroachment Agreement includes all the provisions that have typically been used in PG&E Encroachment Agreements that have been approved by the CPUC prior to 2009, and provides various protections that may be beneficial to PG&E and its ratepayers, including:

- the right of PG&E to terminate the Agreement and to require restoration of the Easement Area upon 90 days' notice;
- express insurance requirements carried by the Owners that meets Owner’s and Employer’s Liability insurance limits;
- indemnification and release by the Owner of PG&E against all claims arising from this use;
- reaffirmation of the prohibition against the construction of any additional buildings or structures within PG&E's Easement Area; and
- a requirement that that the Owners must be responsible for maintenance of the existing improvements in good condition and coordination of such maintenance with PG&E.

Furthermore, upon the CPUC’s issuance of its P.U. Code Section 851 approval, the Encroachment Agreement will be executed and be recorded so as to run with the land. This will provide all future owners of the property with constructive notice of the terms of the Agreement, which will be binding on any successors in interest.
Approval of this Agreement is in the interests of PG&E’s customers as it avoids the costs and uncertainties of potential litigation while providing the same types of protections the CPUC has approved in various Section 851 Decisions approving encroachment agreements for other minor encroachments. In addition, the Commission has long recognized that the public interest is served when utility property is used for other productive purposes without interfering with the utility's operations or the provision of utility service to the public. (D.04-07-023, mimeo, p. 1.)

In view of the protections afforded by the Agreement and the fact that the Improvements do not interfere with PG&E’s utility operations, this transaction is not adverse to the public interest. In fact, the CPUC has repeatedly approved Section 851 filings for such encroachment agreements, including instances where a utility later discovers that small portions of existing structures were built without a utility’s knowledge and consent on PG&E property or into its easements.

Therefore, PG&E seeks authorization from the Commission, pursuant to Section 851, to approve prospectively this Agreement and to grant approval for the pre-existing Improvements that were later found to be unintentionally encroaching into PG&E’s Easement Area without interfering with PG&E’s provision of service, as reasonable and not adverse to the public interest.

(4) Complete Description of Financial Terms of the Proposed Transaction:

PG&E is not collecting any fee associated with granting an encroachment agreement to the Owners. PG&E is seeking approval of the restrictive requirements in the Agreement as a condition of allowing the Owners to encroach upon PG&E’s easements for operation and maintenance of an existing gazebo structure and Improvements on the Owners’ Property. PG&E’s consent to allow the Owners to encroach upon the easement area on the Owners’ Property does not rise to the level of a right that has any realizable economic value to PG&E.

(5) Description of How Financial Proceeds of the Transaction Will Be Distributed:

Not applicable.

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1 See, e.g., Resolutions E-4303 (December 3, 2009, Healdsburg Water Well Encroachment), E-4089 (May 24, 2007, Saintsbury Winery Solar Panels), E-4099 (February 14, 2008, Lennar Block Wall), G-3423 (September 18, 2008, Suisun Pedestrian/Bike Bridge); and Energy Division Director’s Letter dated September 21, 2006, approving Advice Letter 2801-E (pre-existing swimming pool later discovered to be a minor encroachment into PG&E’s right-of-way).

2 See, e.g., D.05-11-023; Energy Division Director’s Letter dated September 21, 2006 approving Advice Letter 2801-E; Resolution E-4267 (August 21, 2009); and Resolution E-4284 (November 20, 2009).
(6) **Statement on the Impact of the Transaction on Ratebase and Any Effect on the Ability of the Utility to Serve Customers and the Public:**

Not applicable.

(7) **The Original Cost, Present Book Value, and Present Fair Market Value for Sales of Real Property and Depreciable Assets, and a Detailed Description of How the Fair Market Value Was Determined (e.g., Appraisal):**

Not applicable.

(8) **The Fair Market Rental Value for Leases of Real Property, and a Detailed Description of How the Fair Market Rental Value Was Determined:**

Not applicable.

(9) **For Fair Market Rental Value of the Easement or Right-of-Way and a Detailed Description of How the Fair Market Rental Value Was Determined:**

Not applicable.

(10) **A Complete Description of any Recent Past (Within the Prior Two Years) or Anticipated Future Transactions that May Appear To Be Related to the Present Transaction**:3

Not applicable.

(11) **Sufficient Information and Documentation (Including Environmental Review Information) to Indicate that All Criteria Set Forth in Section II of Resolution ALJ-244 Are Satisfied:**

PG&E has provided sufficient information and documentation in this Advice Letter to meet the eligibility criteria under Resolution ALJ-244:

- Under the CEQA Checklist, the activity proposed in the transaction will not require an environmental review by the CPUC as a lead agency.

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3 During adoption of the Advice Letter pilot program in ALJ-186 (later followed by ALJ-202 and ALJ-244), this category of information was included to enable the CPUC to ensure that utilities were not seeking to circumvent the $5 million Advice Letter threshold by dividing what is a single asset with a value of more than $5 million into component parts each valued at less than $5 million, which is clearly not the case here. (See CPUC Resolution ALJ-186, issued August 25, 2005, mimeo, p.5.)
• The proposed transaction will not have an adverse effect on the public interest because it will not interfere in any way with the operation of PG&E’s facilities or with the provision of service to PG&E’s customers.

• The proposed transaction meets the financial threshold of $5 million since PG&E is not collecting any fee associated with granting this encroachment agreement.

• Finally, the transaction does not involve the transfer or change in ownership of facilities currently used in utility operations.

(12) Additional Information to Assist in the Review of the Advice Letter:

Not applicable.

(13) Environmental Information

Pursuant to ALJ-244, the Advice Letter program applies to proposed transactions that: (a) will not require environmental review by the CPUC as a lead agency under CEQA either because a statutory or categorical exemption applies or the CPUC is acting as a responsible agency only, and the Lead Agency has completed its CEQA review and has certified its environmental documents, or (b) because the transaction is not a project under CEQA.

a. Exemption

i. Has the proposed transaction been found exempt from CEQA by a government agency?

1. If yes, please attach notice of exemption. Please provide name of agency, date of Notice of Exemption, and State Clearinghouse number.

   Not applicable.

2. If no, does the applicant contend that the project is exempt from CEQA? If yes, please identify the specific CEQA exemption or exemptions that apply to the transaction, citing to the applicable State CEQA Guideline(s) and/or Statute(s).

   Even if approval of this encroachment agreement were a “project” for CEQA purposes, the CEQA guidelines, adopted by the Commission in Rule 2.4 of the Commission’s Rules of Practice and Procedure, include a list of categories of projects that have been determined not to have a significant effect on the
environment and that are therefore exempt from the provisions of CEQA. (Cal. Code Regs., tit. 14, §§15300, et seq.) Among them is an exemption for the “issuance of minor encroachment permits (Section 15305(b). (See CPUC D.05-03-015) Also among the classes of exempt projects are “construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure.” (Id., § 15303.) In particular, subpart (e) specifically exempts the construction of accessory (appurtenant) structures. The Improvements are of the nature of such an accessory structure. Therefore, even if the proposed transaction were a CEQA project (which it is not, as discussed below), it would be categorically exempt from CEQA under both Sections 15305(b) and 15303.

b. Not a “Project” Under CEQA

i. If the transaction is not a “project” under CEQA, please explain why.

Approval of this Agreement is not a project for purposes of CEQA review as no physical change to the property will result from the approval of this Agreement, as the Improvements have already been constructed. Rather, denial of this request would necessitate removal of the Improvements, which would itself constitute a physical change that could potentially affect the environment.

Protests

Anyone wishing to protest this filing may do so by letter sent via U.S. mail by facsimile or electronically, any of which must be received no later than July 7, 2011 which is 20 days after the date of this filing. Protests should be mailed to:

CPUC Energy Division
Attention: Tariff Unit, 4th Floor
505 Van Ness Avenue
San Francisco, CA 94102

Facsimile: (415) 703-2200
E-mail: mas@cpuc.ca.gov and jnj@cpuc.ca.gov

Copies of protests also should be mailed to the attention of the Director, Energy Division, Room 4004, at the address shown above.
The protest also should be sent via U.S. mail (and by facsimile and electronically, if possible) to PG&E at the address shown below on the same date it is mailed or delivered to the Commission:

Brian Cherry  
Vice President, Regulation and Rates  
Pacific Gas and Electric Company  
77 Beale Street, Mail Code B10C  
P.O. Box 770000  
San Francisco, California 94177  
Facsimile: (415) 973-6520  
E-mail: PGETariffs@pge.com

**Effective Date**

Pursuant to the review process outlined in Resolution ALJ-244, PG&E requests that this advice filing become effective as soon as possible. Pursuant to Provision VII.A.5 of the Section 851 Pilot Program Regulations (Resolution ALJ-244, Appendix A), PG&E submits this filing as a Tier 2 (meaning that it may be approved by the Executive Director or Energy Division Director) if unprotested, or as Tier 3 (if protested).

**Notice**

In accordance with General Order 96-B, Section IV, a copy of this advice letter is being sent electronically and via U.S. mail to parties shown on the attached list and Appendix A. Address change requests and electronic approvals should be directed to e-mail PGETariffs@pge.com. Advice letter filings can also be accessed electronically at http://www.pge.com/tariffs.

Vice President - Regulation and Rates

**Attachments**

Attachment 1: Encroachment Agreement  
Attachment 2: Final Order of Condemnation
********** SERVICE LIST Advice 3863-E **********
APPENDIX A

Karen Clopton
Administrative Law Judge Division
505 Van Ness Avenue
San Francisco, CA 94102
(415) 703-2008
kvc@cpuc.ca.gov

Myra J. Prestidge
Administrative Law Judge Division
505 Van Ness Avenue
San Francisco, CA 94102
(415) 703-2629
tom@cpuc.ca.gov

Jonathan Reiger
Legal Division
505 Van Ness Avenue
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(415) 355-5596
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Kenneth Lewis
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Julie Fitch
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San Francisco, CA 94102
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Jf2@cpuc.ca.gov

Brewster Fong
Division of Ratepayer Advocates
505 Van Ness Avenue
San Francisco, CA 94102
(415) 703-2187
bfs@cpuc.ca.gov

Andrew Barnsdale
Energy Division
505 Van Ness Avenue
San Francisco, CA 94102
(415) 703-3221
bca@cpuc.ca.gov

********** AGENCIES **********
Contra Costa County
Public Works Department
Attention: Julie Bueren
255 Glacier Drive
Martinez, CA 94553
Telephone: (925) 313-2201
Facsimile: (925) 313-2333

********* 3rd Party *********
Richard V. and Charlotte Sue Pato
3516 Davi Place
Antioch, CA 94509
Telephone: (925) 354-6793
Company name/CPUC Utility No. **Pacific Gas and Electric Company (ID U39 M)**

Utility type: ☑ ELC ☑ GAS ☑ PLC ☑ HEAT ☑ WATER

Contact Person: Conor Doyle
Phone #: (415) 973-7817
E-mail: jcdt@pge.com

**EXPLANATION OF UTILITY TYPE**
ELC = Electric GAS = Gas PLC = Pipeline HEAT = Heat WATER = Water

Advice Letter (AL) #: **3863-E**
Tier: **2**

Subject of AL: **Davi Place Encroachment in Contra Costa County – Request for Approval of Encroachment Agreement Under Section 851**

Keywords (choose from CPUC listing):

- AL filing type: ☐ Monthly ☐ Quarterly ☑ Annual ☐ One-Time ☐ Other _____________________________

If AL filed in compliance with a Commission order, indicate relevant Decision/Resolution #: **NA**

Does AL replace a withdrawn or rejected AL? If so, identify the prior AL: **No**

Summarize differences between the AL and the prior withdrawn or rejected AL:

Is AL requesting confidential treatment? If so, what information is the utility seeking confidential treatment for: **No**

Confidential information will be made available to those who have executed a nondisclosure agreement: **N/A**

Name(s) and contact information of the person(s) who will provide the nondisclosure agreement and access to the confidential information: ________________________________

Resolution Required? ☐ Yes ☑ No

Requested effective date: **NA**

No. of tariff sheets: **NA**

Estimated system annual revenue effect (%): **N/A**

Estimated system average rate effect (%): **N/A**

When rates are affected by AL, include attachment in AL showing average rate effects on customer classes (residential, small commercial, large C/I, agricultural, lighting).

Tariff schedules affected: **NA**

Service affected and changes proposed:

Protests, dispositions, and all other correspondence regarding this AL are due no later than 20 days after the date of this filing, unless otherwise authorized by the Commission, and shall be sent to:

**CPUC, Energy Division**
Tariff Files, Room 4005
DMS Branch
505 Van Ness Ave., San Francisco, CA 94102
jnj@cpuc.ca.gov and mas@cpuc.ca.gov

**Pacific Gas and Electric Company**
Attn: Brian Cherry, Vice President, Regulation and Rates
77 Beale Street, Mail Code B10C
P.O. Box 770000
San Francisco, CA 94177
E-mail: PGETariffs@pge.com
Attachment 1
Encroachment Agreement
ENCROACHMENT AGREEMENT

This Encroachment Agreement (this "Agreement") is made and entered into this ___ day of ____________, 2011 by PACIFIC GAS AND ELECTRIC COMPANY, a California corporation, hereinafter called "PG&E", and Richard V. Pato and Charlotte Sue Pato, husband and wife, hereinafter called "Owners."

RECITALS

A. Owners are the fee title owners of certain real property within the City of Antioch, County of Contra Costa, state of California, Assessor’s Parcel Number 071-402-015 (hereinafter, the "Property") legally described in Exhibit "A" attached hereto and made a part hereof.

B. PG&E is the owner of a certain easement and right-of-way (the "Easement") for the electric transmission facilities and for all other purposes connected therewith, as set forth in the Final Order of Condemnation dated May 16, 1947 and recorded in Book 1115 of Official Records at page 182, Contra Costa County Records which provides in part that owners "shall have no right to place or erect, and they hereby are prohibited from placing or erecting any building or other structure". The portion of the Property encumbered by the Easement is hereinafter referred to as the "Easement Area."

C. Owners existing encroachment includes a raised redwood deck with 36 inch railings, a gazebo and portion of a swimming pool including concrete foundations and other
improvements associated therewith (the "Improvements") on the Easement Area, the
construction of which violates the prohibition against buildings or other structures contained in the
Easement. The Easement Area and the portion of the Easement Area subject to such encroachment
(the “Encroachment Area”) are legally described in Exhibit “B” attached hereto and made a part
hereof, and are shown on the map attached as Exhibit "C".

D. Owners have requested that PG&E grant permission for the Improvements within
the Easement Area. PG&E has determined that the Improvements, do not interfere with the
present full use of the Easement Area by PG&E, and PG&E is therefore willing to agree to allow
such encroachment on the Easement Area on the terms and subject to the conditions set forth
herein.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable
consideration, the receipt and sufficiency of which are hereby acknowledged, Owners and PG&E
hereby agree as follows:

1. Consent to Encroachment. Notwithstanding the prohibition in the Easement,
PG&E hereby consents to the encroachment of the Improvements onto the Easement Area by
approximately forty (40) feet, in the manner and location as more specifically set forth in Exhibit
“B” and “C” subject to the terms and conditions set forth herein. In addition, Owners shall have
the right of ingress and egress over the Easement Area to obtain access to the Encroachment Area
and the Improvements when necessary to fulfill Owners' obligations under this Agreement, in such
areas as PG&E determines, in its sole and absolute discretion, will occasion the least practicable
damage and inconvenience to PG&E, its facilities and operations.

2. Governmental Approvals. This Agreement shall not become effective,
notwithstanding that it may have been executed and delivered by the parties, and Owners shall not
commence any activity hereunder, unless and until the California Public Utilities Commission (the
"CPUC") approves this Agreement by an order which is final, unconditional and unappealable
(including exhaustion of all administrative appeals or remedies before the CPUC), and the terms
and conditions of such CPUC approval are satisfactory to PG&E in its sole and absolute discretion.
This Agreement is made subject to all the provisions of such approval, as more particularly set
forth in CPUC Decision ___________ (Application No. ___________), in like
manner as though said provisions were set forth in full herein.

3. Termination; Restoration. PG&E may terminate Owners' rights under this
Agreement, at any time, upon ninety (90) days written notice to the Owners, if PG&E, in its
sole and absolute discretion, should determine that Owners' use of the Easement Area is
inconsistent with PG&E's operational needs in the future, or in any way interferes with,
impairs or otherwise impedes PG&E's full use of facilities installed or that may be installed
by PG&E in the vicinity of the Easement Area. Upon such termination, Owners, at Owners' sole
cost and expense, shall remove all Improvements that encroach upon the Easement Area
and shall repair and restore the Easement Area as nearly as possible to the condition that
existed prior to the construction of said Improvements. Owners shall pay the entire cost of
such removal and restoration, and PG&E shall have no liability for any costs caused by or
related to any such termination. If Owners fail to remove all Improvements that encroach
onto the Easement Area or fail to repair or restore the Property within said ninety (90) day
period, PG&E may perform such removal, repair or restoration as necessary and recover such costs and expenses therefore from Owners. Owners agree to allow access to PG&E onto the Property for such purpose, and Owners shall pay all such costs and expenses within ten (10) days of receipt of an invoice therefore. Owners further acknowledge that PG&E’s termination right shall not be affected by any Improvements that Owners have made to the Easement Area, regardless of the nature or extent of those Improvements. Owners understand and agree that notwithstanding that Owners may have made a substantial investment in such improvements, Owners shall not be entitled to any compensation whatsoever for the termination of Owners’ rights under this Agreement by PG&E. (Owners to initial here ____________.)

4. Indemnification; Release.

(a) Indemnification. Owners shall, to the maximum extent permitted by law, indemnify, protect, defend and hold harmless PG&E, its parent corporation, subsidiaries and affiliates, and their respective officers, managers, directors, representatives, agents, employees, transferees, successors and assigns (each, an “Indemnitee” and collectively, “Indemnities”) from and against all claims, losses (including, but not limited to, diminution in value), actions, demands, damages, costs, expenses (including, but not limited to, experts fees and reasonable attorneys’ fees and costs) and liabilities of whatever kind or nature (collectively, “Claims”), which arise from or are in any way connected with the occupancy or use of the Easement Area by Owners or Owners’ contractors, agents, or invitees, or the exercise by Owners of its rights hereunder, or the performance of, or failure to perform, Owners’ duties under this Agreement, including, but not limited to, Claims arising out of: (1) injury to or death of persons, including but not limited to employees of PG&E; (2) injury to property or other interest of PG&E, Owners or any third party; (3) violation of any applicable federal, state, or local laws, statutes, regulations, or ordinances, including all legal requirements relating to human health or the environment, and including any liability which may be imposed by law or regulation without regard to fault; excepting only with respect to any Indemnitee, any Claim arising from the sole, active negligence or willful misconduct of such Indemnitee. In the event any action or proceeding is brought against any Indemnitee for any Claim against which Owners are obligated to indemnify or provide a defense hereunder, Owners upon written notice from PG&E shall defend such action or proceeding at Owners’ sole expense by counsel approved by PG&E, which approval shall not be unreasonably withheld, conditioned or delayed.

(b) Release. Owners accept all risk relating to its occupancy and use of the Easement Area. PG&E shall not be liable to Owners for, and Owners hereby waive, release, exonerate, discharge and covenant not to sue PG&E and the other Indemnities from, any and all liability, whether in contract, tort or on any other basis, for any injury, damage, or loss resulting from or attributable to any occurrence on or about the Easement Area, the condition of Easement Area, the use or occupancy of the Easement Area by Owners, or PG&E’s operation and maintenance of PG&E’s facilities in the vicinity of the Easement Area, except in the case of any Indemnitee, any injury, damage, or loss arising from the sole, active negligence or willful misconduct of such Indemnitee.
5. **Compliance with Laws.** Owners shall, at its sole cost and expense, promptly comply with all laws, statutes, ordinances, rules, regulations, requirements or orders of municipal, state, and federal authorities now in force or that may later be in force, with the conditions of any permit, relating to Owners' use or occupancy of the Easement Area.

6. **Alterations.** Except for the Improvements authorized pursuant to this Agreement, Owners shall not construct any additional buildings or structures on the Easement Area, nor shall Owners make any alteration, addition or improvement to the Easement Area that would increase the Encroachment Area, either horizontally or vertically. Owner shall not drill, bore or excavate on the Easement Area except in connection with construction of the Improvements pursuant to plans and specifications approved by PG&E, or a removal of the Improvements as required by this Agreement.

7. **Damage or Destruction.** In the event that the Improvements which encroach onto the Easement Area shall be destroyed or demolished, Owners shall not rebuild the Improvements on any part of the Easement Area except pursuant to plans and specifications approved by PG&E.

8. **Condition of Easement Area.** Owners accept the Encroachment Area and the Easement Area in its existing physical condition, without warranty by PG&E or any duty or obligation on the part of PG&E to maintain the Easement Area. Owners understand that numerous hazards, environmental or otherwise, may be located in, on, or underlying the Easement Area, and that hazardous materials may be used in connection with PG&E facilities that may be operated in the Easement Area, and agrees that entry onto the Easement Area is at Owners' sole risk and expense.

9. **Maintenance.** Owners shall be responsible for the maintenance of the Improvements in good condition and repair, and Owners shall coordinate all activities regarding the maintenance of the Improvements to reasonably minimize any interference with the use by PG&E of the Easement Area, and Owners shall conduct its activities in such a manner so as not to endanger the Easement, the environment and human health and safety. Owners shall be responsible for remediation of any hazardous materials release caused by Owners, and to clean and remove debris and/or promptly repair any damages to the Easement Area following any entry or activity by Owners, returning the Easement Area to a like or better condition.

10. **Reserved Rights.** PG&E reserves the right to use the Easement Area for such purposes as it may deem necessary or appropriate if, and whenever, in the interest of its service to its patrons or consumers or the public, it shall appear necessary or desirable to do so. Furthermore, PG&E reserves the right to restrict access to the Easement Area if emergency repairs or maintenance are required to PG&E facilities in the vicinity of the Easement Area.

11. **Insurance.** Prior to the Effective Date of this Agreement, Owners shall procure, and thereafter Owners shall carry and maintain in effect at all times the following insurance: Personal Liability coverage at least as broad as the Insurance Services Office (ISO) Homeowners' or Personal...
Liability Coverage “occurrence” form. The limit shall not be less than One Million Dollars ($1,000,000) each occurrence for bodily injury, property damage and personal injury.

12. Notice. Any notices or communications hereunder shall be in writing and shall be personally delivered or sent by first class mail, certified or registered, postage prepaid, or sent by national overnight courier, with charges prepaid for next business day delivery, addressed to the addressee party at its address or addresses listed below, or to such other address or addresses for a party as such party may from time to time designate by notice given to the other party. Notices shall be deemed received, if sent by personal delivery upon actual receipt by the party being sent the notice, or on the expiration of three (3) business days after the date of mailing, or on the following business day if sent by overnight courier.

If to PG&E:

Pacific Gas and Electric Company
Attention: Alan Spatcher, Land Agent
Land and Environmental Management
1820 Gateway Blvd., 8th Floor
Concord, CA 94520

With a copy to:

Pacific Gas and Electric Company
P.O. Box 7442, Mail Code B30A
San Francisco, California 94120
Attention: Grant Guerra

If to Owners:

Mr. Richard Pato
3516 Davi Place
Antioch, CA 94509

13. Governing Law. This Agreement shall in all respects be interpreted, enforced, and governed by and under the laws of the State of California.

14. Entire Agreement. This Agreement and the Deed, supersedes all previous oral and written agreements between and representations by or on behalf of the parties and constitutes the entire agreement of the parties with respect to the subject matter hereof. This Agreement may not be amended except by a written agreement executed by the parties.

15. Binding Effect. This Agreement and the covenants and agreements contained herein shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, successors and assigns (subject to the provisions of Section 17 below). No assignment or delegation by Owners, whether by operation of law or otherwise, shall relieve Owners of any of its
duties, obligations or liabilities hereunder, in whole or in part. The covenants of Owners hereunder shall run with the land.

16. **Assignment.** This Agreement and the rights of Owners hereunder are appurtenant to the Property presently owned by Owners and may not be separately assigned, transferred, conveyed or encumbered. Any purported assignment, transfer, conveyance or encumbrance violating the foregoing condition shall be void and of no effect.

17. **Attorneys’ Fees.** Should either party bring an action against the other party, by reason of or alleging the failure of the other party with respect to any or all of its obligations hereunder, whether for declaratory or other relief, then the party which prevails in such action shall be entitled to its reasonable attorneys’ fees (of both in-house and outside counsel) and expenses related to such action, in addition to all other recovery or relief. A party shall be deemed to have prevailed in any such action (without limiting the generality of the foregoing) if such action is dismissed upon the payment by the other party of the sums allegedly due or the performance of obligations allegedly not complied with, or if such party obtains substantially the relief sought by it in the action, irrespective of whether such action is prosecuted to judgment.

18. **Survival of Obligations.** Owners’ obligations under Sections 3 and 4 of this Agreement, and all representations, warranties, indemnities or other provisions which by their nature survive termination shall survive the exercise of PG&E’s termination rights pursuant to Section 3 of this Agreement.

19. **No Waiver.** No waiver with respect to any provision of this Agreement shall be effective unless in writing and signed by the party against whom it is asserted. No waiver of any provision of this Agreement by a party shall be construed as a waiver of any subsequent breach or failure of the same term or condition, or as a waiver of any other provision of this Agreement.

20. **Captions.** The captions in this Agreement are for reference only and shall in no way define or interpret any provision hereof.

21. **Counterparts.** This Agreement may be executed in identical counterpart copies, each of which shall be an original, but all of which taken together shall constitute one and the same agreement.

22. **Recording.** Owners hereby consent and agree to the recording by PG&E of this Agreement against the Property. Owners agree to sign any additional documents reasonably required to complete such recording.

23. **Ratification of Deed.** Except as modified by this Agreement in regard to the Property, all of the terms, conditions and provisions of the Deed shall remain in full force and effect and are hereby ratified and confirmed. To the extent the terms of the Deed are inconsistent with this Agreement, the terms of this Agreement shall control.
IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first set forth above.

"PG&E"

PACIFIC GAS AND ELECTRIC COMPANY,
a California corporation

By: Robert L. Jones

Its: Manager
Land Management

"Owners"

Richard V. Pato
Charlotte Sue Pato
State of California
County of _________________________)

On _____________________, before me, ____________________________,
personally appeared _______________________________________

______________________________________, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

__________________________________________  (Seal)

Signature of Notary Public

CAPACITY CLAIMED BY SIGNER

[ ] Individual(s) signing for oneself/themselves

[ ] Corporate Officer(s) of the above named corporation(s)

[ ] Trustee(s) of the above named Trust(s)

[ ] Partner(s) of the above named Partnership(s)

[ ] Attorney(s)-in-Fact of the above named Principal(s)

[ ] Other ________________________________
State of California
County of Contra Costa

On March 30th, 2011, before me, Ventura Flores, Notary Public,

personally appeared Richard V. Plato and Charlotte Sue Plato

__________, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s)

is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the

same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the

instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the

instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the

foregoing paragraph is true and correct.

WITNESS my hand and official seal.

[Signature of Notary Public]

(Seal)

CAPACITY CLAIMED BY SIGNER

[ ] Individual(s) signing for oneself/themselves

[ ] Corporate Officer(s) of the above named corporation(s)

[ ] Trustee(s) of the above named Trust(s)

[ ] Partner(s) of the above named Partnership(s)

[ ] Attorney(s)-in-Fact of the above named Principal(s)

[ ] Other __________________________
Exhibit “A”

Property description is located within the City of Antioch:

Lot 708 as shown upon the map of Subdivision 4740 filed for record in Book 199 of maps at Page 5, Contra Costa County records.
Exhibit “B”

“Encroachment Area”

A strip of land of the uniform width of 40.0’ lying contiguous to and southeasterly of the northwesterly boundary line of Lot 708, as said lot is shown upon the map of Subdivision 4740 filed for record in Book 199 of maps at Page 5, Contra Costa County records and extending from the southwesterly boundary line of said Lot 708 northeasterly to the northeasterly boundary line of said Lot 708 said strip of land being a portion of said Lot 708.
Renewal Certificate

Policy Number: 57-QQ-2318-1

Personal Liability Umbrella Policy

NOV 19 2010 to NOV 19 2011

Date Due: SEE BALANCE DUE NOTICE

Nov 19 2010 $245.00

Coverages and Limits

L Personal Liability $1,000,000

Self-Insured Retention None

Farm Insured Retention 1,000

Underlying Exposures

Our records show the following underlying information. This information was used in determining the rate of the policy.

Automobile Exposures

Automobile(s) 3
Automobile Operator(s) 2

Other Liability Exposures

Farm
Employers

Annual Premium $245.00
Amount Due $245.00

*Notify your agent immediately if the above listed Coverages and/or Underlying Exposures are incorrect. Your Coverages and/or bill can be affected if this information is not correct.

Required Underlying Insurance on reverse side

Agent RICHARD STORELLEE
Telephone (510) 490-2566

If you have moved, please contact your agent.
See reverse side for important information.

REB Prepared SEP 22 2010
Attachment 2
Final Order of Condemnation
ROBERT H. GERDES
R. H. PEARSON
245 Market Street
San Francisco 8, California

MESSRS. GERALD, COLLINS & GORDON
1917 McDonald Avenue
Richmond, California

Attorneys for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF CONTRA COSTA

PACIFIC GAS AND ELECTRIC COMPANY,
a corporation,

Plaintiff,

vs.

FRANK S. ARATA AND DAVE E. ARATA,
et al.,

Defendants.

No. 35149

FINAL ORDER OF CONDEMNATION

Judgment of condemnation having been heretofore duly
and regularly entered in the above entitled action in the office
of the County Clerk of the County of Contra Costa, State of Cali-
ffornia, and it appearing to the satisfaction of the Court that the
above named plaintiff, pursuant to said judgment, has paid into
Court for defendants FRANK S. ARATA and DAVE E. ARATA the sum of
Three Thousand Six Hundred Dollars ($3,600.00) and for defendants
SALARAC LAND CO. and A. M. WITTE the sum of Eleven Dollars ($11.00)
so awarded to said defendants by said judgment as just compen-
sation for and on account of the property herein condemned to public
use by said judgment and that the said judgment has been satisfied

MAY 20, 1947
20025
NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND
DECREED:

I.

That an easement and right of way in, along, over and
upon the strips of land which are hereinafter in Paragraph II and
in Paragraph II of the judgment herein and in Paragraph V of the
first cause of action in the complaint stated, and herein and
therein designated Parcel 1, Parcel 2 and Parcel 3, and in each
Paragraph IV of the second and third causes of action in the com-
plaint stated, particularly described and bounded be and the same
are hereby condemned to and taken for the public uses as stated
in the complaint herein, to-wit: for the construction, reconstruc-
tion, maintenance and operation by plaintiff, its successors and
assigns, of a double circuit electric transmission line for the
purpose of transmitting, furnishing and supplying electric energy
to the public generally in the State of California for light, heat,
power and for such other purposes as electric energy may hereafter
be employed, said electric transmission line to consist of five
metal towers, to-gethether with the necessary crossarms to be attach-
ed thereto, with such wires and cables as plaintiff, its successors
and assigns, may from time to time suspend therefrom for the trans-
mission of electricity and for telephone and telegraph lines to
be used in the conduct of plaintiff's business, said towers to be
constructed approximately at the location shown and indicated on
the blue print map which is attached to the complaint herein
(marked Exhibit A) by white squares on a broken white line within
the red lines designating the boundaries of said strips of land in
Paragraph V of the complaint described and therein designated as
Parcel 1, Parcel 2 and Parcel 3.
II.

Said strips of land wherein said easement and right of way are hereby condemned to and taken for said public uses in the foregoing paragraph stated are situate in the County of Contra Costa, State of California, and are more particularly described and bounded as follows, to-wit:

Parcel 1. A strip of land of the uniform width of 80 feet extending from the southwesterly boundary line of the parcel of land conveyed by Lester J. Bower, et ux., to Charles K. Webb, et ux., by deed dated October 24, 1942 and recorded in Volume 703 of Official Records at page 395, in the office of the County Recorder of Contra Costa County, State of California, southwesterly to the northeasterly boundary line of the parcel of land conveyed by H. Jensen, et ux., to East Bay Municipal Utility District by deed dated November 10, 1925 and recorded in Volume 8 of Official Records at page 347, in the office of the County Recorder of said Contra Costa County, and lying equally on each side of that certain line which begins at a point in the southwesterly boundary line of said parcel of land conveyed by said deed dated October 24, 1942, from which the iron monument marking the east quarter corner of Section 25, Township 2 North, Range 1 East, M.D.B. & M., bears north 26° 37' east 969.4 feet distant and runs thence south 73° 54' west 1567.0 feet, more or less, to the northeasterly boundary line of said parcel of land conveyed by said deed dated November 10, 1925 containing 2.8 acres.

Parcel 2. A strip of land of the uniform width of 80 feet extending from the southwesterly boundary line of said parcel of land conveyed by said H. Jensen, et ux., by said deed dated November 10, 1925 southwesterly to the northeasterly boundary line of the parcel of land conveyed by James G. Woodruff, et ux., to Egbert Judson, et al., by deed dated March 14, 1877 and recorded in Volume 32 of Deeds at page 218, in the office of the County Recorder of said Contra Costa County, and lying equally on each side of that certain line which begins at a point in the southwesterly boundary line of said parcel of land conveyed by said deed dated November 10, 1925 from which said iron monument bears north 55° 00' east 2339.1 feet distant and runs thence south 73° 54' west 186.0 feet, more or less, to the northeasterly boundary line of said parcel of land conveyed by said deed dated March 14, 1877, containing 0.34 acre.

Parcel 3. A strip of land of the uniform width of 80 feet extending from the westerly boundary line of said Section 25 northeasterly to the westerly boundary line of said parcel of land conveyed by said James G. Woodruff, et ux., by said deed dated March 14, 1877 and lying equally on each side of that certain line which begins at a point in the westerly boundary line
of said Section 25 from which the iron monument marking the southwest corner of said Section 25 bears south 1° 46' east 363.0 feet distant and runs thence north 73° 54' east 3091.3 feet, more or less, to the southeasterly boundary line of said parcel of land conveyed by said deed dated March 14, 1877, containing 5.67 acres.

That the said respective strips of land in each paragraph IV of the second and third cause of action in the complaint stated are located in the County of Contra Costa, state aforesaid, are here designated Parcel 5 and Parcel 6, and are particularly described and bounded as follows, to-wit:

Parcel 5. A strip of land of the uniform width of 80 feet extending entirely across the parcel of land conveyed by James G. Woodruff, et ux., to Ebright Judson, et al., by deed dated March 14, 1877 and recorded in Volume 32 of Deeds at page 218, in the office of the County Recorder of said Contra Costa County, State of California and lying equally on each side of that certain line which begins at a point in the southeasterly boundary line of the last mentioned parcel of land from which the iron monument marking the east quarter corner of Section 25, Township 2 North, Range 1 East, M. D. B. & M., bears north 56° 46' east 2638.8 feet distant and runs thence north 73° 34' east 67 feet, more or less, to the northeasterly boundary line of the last mentioned parcel of land.

Parcel 6. A strip of land of the uniform width of 80 feet extending entirely across the parcel of land conveyed by H. Jensen, et al., to East Bay Municipal Utility District by deed dated November 10, 1925 and recorded in Volume 8 of Official Records at page 347 in the office of the County Recorder of said Contra Costa County, State of California, and lying equally on each side of that certain line which begins at a point in the southeasterly boundary line of said parcel of land conveyed by said deed dated November 10, 1925 from which the east quarter corner of Section 25, Township 2 North, Range 1 East, M. D. B. & M., bears north 55° 00' east 2399.1 feet distant and runs thence north 73° 54' east 123.2 feet, more or less, to the northeasterly boundary line of said parcel of land conveyed by said deed dated November 10, 1925.

III.

That an easement and right of way be and the same are hereby condemned to and taken for the following public use, to-wit: the construction, reconstruction, maintenance and use by plaintiff,
its successors and assigns, in connection with the construction,
reconstruction, maintenance, operation and patrol of said electric
transmission line, of a road in, along and upon that certain strip
of land described in Paragraph III of the judgment herein and in
Paragraph VI of the first cause of action in the complaint stated,
therein and herein designated as Parcel 4, the boundaries thereof
being indicated on said blue print map attached to the complaint
(marked Exhibit A) by yellow lines and which said strip of land
is more particularly described as follows, to-wit:

Parcel 4. A strip of land of the uniform width of 25
feet extending southerly from the southeasterly
boundary line of the strip of land hereinbefore described
and designated Parcel 3 and lying equally on each side of
that certain line which begins at a point from which said
iron monument marking the southwest corner of said Section
25 bears south 50 22' west 100.8 feet distant and runs
thence north 1 45' west 224.9 feet, more or less, to the
southeasterly boundary line of the strip of land herein-
before described and designated Parcel 3, containing 0.13
acre.

IV.

That the four strips of land hereinbefore in Paragraphs:
II and III hereof described and therein designated Parcel 1, Par-
cele 2, Parcel 3 and Parcel 4 are only parts of an entire tract of
land located in the County of Contra Costa, state aforesaid, which
is more particularly described as follows, to-wit:

The south half of Section 25, Township 2 North, Range
1 East, M. D. B. & M., save and excepting therefrom
(a) the parcel of land conveyed by James W. Woodruff,
et ux., to Egbert Judson, et al, by deed dated March 14,
1877 and recorded in Volume 32 of Deeds at page 213
in the office of the County Recorder of said Contra
Costa County; (b) the parcel of land conveyed by W.H.
Hagadorn to M. W. Belshaw, et al, by deed dated March
14, 1877 and recorded in Volume 32 of Deeds at page
623 in the office of the County Recorder of said Contra
Costa County; (c) the parcel of land conveyed by
Mortimer E. Veale, et ux., to Standard Oil Company by
deed dated October 7, 1925 and recorded in Volume 3 of
Official Records at page 228 in the office of the County
Recorder of said Contra Costa County; (d) the parcel
of land conveyed by H. Jensen, et ux., to East Bay Munici-
pal Utility District by deed dated November 10, 1925 and
recorded in Volume 8 of Official Records at page 347 in the office of the County Recorder of said Contra Costa County; (e) the parcel of land conveyed by H. Jensen to Roberts Island Dredging and Improvement Company, Inc., by deed dated December 19, 1936 and recorded in Volume 469 of Official Records at page 169, in the office of the County Recorder of said Contra Costa County; and (f) the parcel of land conveyed by Lester J. Bower, et ux, to Charles K. Webb, et ux, by deed dated October 24, 1942 and recorded in Volume 703 of Official Records at page 395 in the office of the County Recorder of said Contra Costa County.

The strip of land in Paragraph II hereof designated Parcel 5 is only part of an entire tract of land located in the County of Contra Costa, state aforesaid, which is more particularly described as follows, to-wit:


VI.

The strip of land in Paragraph II hereof designated Parcel 6 is only part of an entire tract of land located in the County of Contra Costa, state aforesaid, which is more particularly described as follows, to-wit:


VII.

That plaintiff, its successors and assigns, be and they hereby are authorized as occasion therefor may hereafter arise in the construction, reconstruction, maintenance, operation and patrol
of said electric transmission line and said telephone and tele-
graph lines to pass to and fro in, along, over and upon the said
strips of land hereinafore in Paragraph II described, and to cut
and clear from the said strip of land any brush or trees now grow-
ing upon or extending over or that may hereafter grow upon or
extend over the same and which might in the judgment of plaintiff,
its successors or assigns, interfere with the construction, recon-
struction, maintenance or operation of said transmission line;
and to erect suitable gates in any and all fences that may now or
hereafter be constructed across said strips of land.

That the defendants, their successors and assigns, shall
have no right to place or erect, and they hereby are prohibited
from placing or erecting any building or other structure upon, or
drilling any well or wells in, said strips of land hereinafore
in Paragraph II described.

VIII.

That on filing a copy of this Final Order of Condemna-
tion with the County Recorder of Contra Costa County, state afo-
said, the aforesaid easements and rights of way and rights shall
vest in plaintiff, its successors and assigns.

Done in open Court this 16th day of May, 1947.

[Signature]
Judge

W. T. Paasch
County Clerk and County Recorder of Contra Costa County, State of California,
[Signature]
Deputy Clerk

Recorded at request of
Caswell, Caswell & Gordon
at 1 min. past
P.M., MAY 20, 1947
Deputy County Recorder
Ralph Cunningham, County Recorder
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