

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298



June 22, 2010

**Advice Letter 3095-G**

Jane K. Yura  
Vice President, Regulation and Rates  
Pacific Gas and Electric Company  
77 Beale Street, Mail Code B10B  
P.O. Box 770000  
San Francisco, CA 94177

**Subject: Johnson Barn Encroachment in San Luis Obispo County – Request  
for Approval of Encroachment Agreement Under Section 851**

Dear Ms. Yura:

Advice Letter 3095-G is effective June 11, 2010.

Sincerely,

A handwritten signature in blue ink, appearing to read "Julie A. Fitch".

Julie A. Fitch, Director  
Energy Division



**Brian K. Cherry**  
Vice President  
Regulatory Relations

77 Beale Street, Room 1087  
San Francisco, CA 94105

*Mailing Address*  
Mail Code B10C  
Pacific Gas and Electric Company  
P.O. Box 770000  
San Francisco, CA 94177

Fax: 415.973.7226

February 12, 2010

**Advice 3095-G**

(Pacific Gas and Electric Company ID U 39 G)

Public Utilities Commission of the State of California

**Subject: Johnson Barn Encroachment in San Luis Obispo 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 (the “Agreement”) with Dennis E. Johnson and Colleen M. Johnson, Trustees of The Johnson Revocable Living Trust dated August 11, 2003 (the “Owners”). The Agreement regards the encroachment of a certain PG&E underground gas transmission pipeline easement in San Luis Obispo County, located on property owned by the Owners, by an private barn that was previously constructed there without PG&E’s knowledge or consent and is now being used and maintained by the Owners, but which does 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 gas and electric services to its customers throughout northern and central California. In the provision of its natural gas transportation services, PG&E relies on a wide system of gas transmission and distribution pipelines. One such gas transmission pipeline is located in the unincorporated area of San Luis Obispo County near the City of Atascadero (the “Property”) owned by Dennis E. Johnson and Colleen M. Johnson.

PG&E is the owner of a certain easement and right-of-way for underground gas transmission pipeline facilities and for all other purposes connected therewith, as set forth in the deed from Fred F. Jackson and wife to PG&E dated June 15, 1961, located in San Luis Obispo County for the portion of the underground gas transmission pipeline that crosses the Property (the “Easement”) which provides in part “first party shall not erect or construct any building or other structure or drill or operate any well, or construct

any reservoir or other obstruction on said strip.” The 50-foot wide strip of land described in the Easement is hereinafter referred to as the “Easement Area.”

The barn was a pre-existing structure on the Property when the Owners purchased the Property in 2009. It was not until the Owners made certain inquiries about the Property with the City of Atascadero (the “City”) that the City discovered that a portion of the barn was within the Easement Area. There are no fences or demarcations indicating the presence of this right-of-way and PG&E’s 50-foot wide Easement.

PG&E advised the Owners that the barn location 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 (the “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.

In light of this unintended encroachment, the Owners have requested 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 ratepayers interests.

In accordance with the format of for Section 851 Advice Letters directed in Resolution ALJ-202 (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	Dennis E. and Colleen M. Johnson
Lise H. Jordan	8605 Del Rio Road
Gail L. Slocum	Atascadero, CA 93422-1229
Law Department	Telephone: (805) 460-0133
P.O. Box 7442	Email: dennisejohnson2@gmail.com
San Francisco, CA 94120	
Telephone: (415) 973-6583	
Facsimile: (415) 973-0516	
Email: GLSG@pge.com	

**(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 Atascadero, San Luis County, California. The Property address is 8605 Del Rio

Road, Atascadero, CA 93422 and is designated as Assessor's Parcel Number (APN) 050-101-001. The Property is used by the Owners for residential purposes. PG&E is the owner of a 50-foot wide easement and right-of-way for underground gas transmission facilities and for all other purposes connected therewith, as set forth in the deed from Fred F. Jackson and wife to PG&E dated June 15, 1961 and recorded in Book 1134 of Official Records at page 575, San Luis Obispo County Records, for the portion of the underground gas transmission pipeline that crosses the Property. 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 barn was a pre-existing structure built on the Property when the Owners purchased the Property in 2009. The overall barn measures approximately 1,545 square feet of which 354 square feet encroach into PG&E's Easement Area.

**(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 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.<sup>1</sup> 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 this barn structure does not interfere with PG&E's utility operations, this transaction is not adverse to the public interest, and in fact the CPUC has repeatedly approved Section 851 filings for such encroachment agreements, including in 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.<sup>2</sup>

PG&E therefore seeks authorization from the Commission pursuant to Section 851 prospectively approving this Agreement and granting approval for the pre-existing barn that was 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 collecting a nominal administrative fee of \$1,000 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 barn on the Owner's Property. PG&E's consent to allow the Owners to encroach upon the easement area on the Owner's 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:**

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<sup>1</sup> See e.g., Resolutions E-4303 (12/03/09, Healdsburg Water Well Encroachment), E-4089 (5/24/07, Saintsbury Winery Solar Panels), E-4099 (2/14/08, Lennar Block Wall), G-3423 (9/18/08, Suisun Pedestrian/Bike Bridge); and Section 851 Approval Letter of then-Energy Division Director Sean Gallagher 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.).

<sup>2</sup> See e.g., D.05-11-023; a September 21, 2006 Energy Division Director's Approval Letter of A.L. 2801-E; Resolution E-4267 issued August 21, 2009; and Resolution E-4284 issued November 20, 2009.

Not applicable.

**(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<sup>3</sup>:**

Not applicable.

**(11) Sufficient Information and Documentation (Including Environmental Review Information) to Indicate that All Criteria Set Forth in Section II(A) of Resolution ALJ-202 Are Satisfied:**

PG&E has provided information in this advice letter to meet the eligibility criteria under the Section 851 Expedited Advice Letter Pilot Program adopted in ALJ-186 as modified by ALJ-202:

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

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<sup>3</sup> During adoption of the Advice Letter pilot program in ALJ-186 (later followed by ALJ-202), 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 meets the financial threshold of \$5 million since PG&E is not collecting any fees associated with granting an 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-202, the Section 851 advice letter pilot program only applies to proposed transactions that will not require environmental review by the CPUC as a lead or responsible agency under CEQA either because (a) a statutory or categorical exemption applies or (b) because the transaction is not a “project” under CEQA. Here the approval of this transaction does not cause any physical change to the environment and therefore is not a project for CEQA purposes, and even if it were, would be categorically exempt under Section 15305(b) and 15303, as shown below.

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 barn is of the nature of such an accessory structure. Therefore, even if the proposed transaction were a CEQA project (which it is not –See 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 Encroachment Agreement is not a project for purposes of CEQA review as no physical change to the property will result from the approval of this Encroachment Agreement, as the barn has already been constructed. Rather, denial of this request would necessitate removal of the barn, 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 **March 4, 2010**, 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](mailto:mas@cpuc.ca.gov) and [jnj@cpuc.ca.gov](mailto: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:

Pacific Gas and Electric Company  
Attention: Brian Cherry  
Vice President, Regulatory Relations  
77 Beale Street, Mail Code B10C  
P.O. Box 770000  
San Francisco, CA 94177

Facsimile: (415) 973-7226  
E-mail: PGETariffs@pge.com

### **Effective Date**

Pursuant to the review process outlined in Resolution ALJ-202, PG&E requests that this advice filing become effective by Commission resolution as soon as possible. **PG&E submits this filing as a Tier 3.**

### **Notice**

In accordance with General Order 96-B, Section IV, a copy of this advice letter is being served on the Energy Division and the Division of Ratepayer Advocates. In addition, 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. Address change requests should be directed to e-mail PGETariffs@pge.com. Please send all electronic approvals to PGETariffs@pge.com. Advice letter filings can also be accessed electronically at <http://www.pge.com/tariffs>.

A handwritten signature in cursive script that reads "Brian Cherry / mt".

Vice President, Regulatory Relations

### Attachments

cc: Service List - Advice Letter 3095-G

\*\*\*\*\* SERVICE LIST Advice 3095-G \*\*\*\*\*  
**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

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 505 Van Ness Avenue  
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 kl1@cpuc.ca.gov

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

\*\*\*\*\* AGENCIES \*\*\*\*\*

Kami Griffin – Assistant Director  
 County of San Luis Obispo  
 Planning and Building Department  
 976 Osos Street, Room 200  
 San Luis Obispo, CA, 93408

\*\*\*\*\* 3<sup>rd</sup> Party \*\*\*\*\*

Dennis E. and Colleen M. Johnson  
 8605 Del Rio Road  
 Atascadero, CA 93422-1229  
 Telephone: (805) 460-0133  
 Email: dennisejohnson2@gmail.com

# CALIFORNIA PUBLIC UTILITIES COMMISSION

## ADVICE LETTER FILING SUMMARY ENERGY UTILITY

MUST BE COMPLETED BY UTILITY (Attach additional pages as needed)

Company name/CPUC Utility No. **Pacific Gas and Electric Company (ID U39 M)**

Utility type:

ELC       GAS  
 PLC       HEAT       WATER

Contact Person: Linda Tom-Martinez

Phone #: (415) 973-4612

E-mail: lmt1@pge.com

EXPLANATION OF UTILITY TYPE

ELC = Electric      GAS = Gas  
PLC = Pipeline      HEAT = Heat      WATER = Water

(Date Filed/ Received Stamp by CPUC)

Advice Letter (AL) #: **3095-G**

Tier: **3**

Subject of AL: **Johnson Barn Encroachment in San Luis Obispo County - Request for Approval of Encroachment Agreement Under Section 851**

Keywords (choose from CPUC listing): Section 851

AL filing type:  Monthly  Quarterly  Annual  One-Time  Other \_\_\_\_\_

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

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<sup>1</sup>: \_\_\_\_\_

Is AL requesting confidential treatment? If so, what information is the utility seeking confidential treatment for:

Confidential information will be made available to those who have executed a nondisclosure agreement:  Yes  No

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: **Upon Commission Approval**

No. of tariff sheets: N/A

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: N/A

Service affected and changes proposed<sup>1</sup>: N/A

Pending advice letters that revise the same tariff sheets: N/A

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 K. Cherry**

**Vice President, Regulatory Relations**

**77 Beale Street, Mail Code B10C**

**P.O. Box 770000**

**San Francisco, CA 94177**

**E-mail: PGETariffs@pge.com**

3095-G

Attachment 1

Encroachment Agreement

RECORDING REQUESTED BY AND RETURN TO:

PACIFIC GAS AND ELECTRIC COMPANY

Land Services Office

4325 S. Higuera St.

San Luis Obispo, CA 93401

Attention: Land Agent

Location: City/Uninc \_\_\_\_\_

Recording Fee \$ \_\_\_\_\_

Document Transfer Tax \$ \_\_\_\_\_

This is a conveyance where the consideration and Value is less than \$100.00 (R&T 11911).

Computed on Full Value of Property Conveyed, or

Computed on Full Value Less Liens & Encumbrances Remaining at Time of Sale

\_\_\_\_\_  
Signature of declarant or agent determining tax

**LD 2228-12-1390**

2009150 (22-09-071) 8 09 1

Barn Encroachment at Del Rio Road

Gas Transmission Line 306

(APN 050-101-001)

**ENCROACHMENT AGREEMENT**

This Encroachment Agreement (this "**Agreement**") is made and entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_ by PACIFIC GAS AND ELECTRIC COMPANY, a California corporation, hereinafter called "**PG&E**", and DENNIS E. JOHNSON and COLLEEN M. JOHNSON, Trustees of The Johnson Revocable Living Trust dated August 11, 2003, hereinafter called "**Owners.**"

RECITALS

A. Owners are the fee title owners of certain real property within the County of San Luis Obispo, State of California, Assessor's Parcel Number 050-101-001 (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 for gas pipe line facilities and for all other purposes connected therewith, as set forth in the deed from Fred F. Jackson and wife to PG&E dated June 15, 1961 and recorded in Book 1134 of Official Records at page 575, San Luis Obispo County Records (the "**Easement**") which provides in part that "first party shall not erect or construct any building or other structure, or drill or operate any well, or construct any reservoir or other obstruction on said strip". The 50-foot wide strip of land described in the Easement is hereinafter referred to as the "**Easement Area.**"

C. Owners acquired the Property on which an existing barn and associated improvements (the "**Improvements**") were constructed. A portion of the Improvements were constructed within the Easement Area. The portion of the Improvements constructed within the Easement Area (the "**Encroachment Area**") violates the prohibition against buildings or other structures contained in the Easement. The Encroachment area is legally described in **Exhibit "B"** and shown on the map attached as **Exhibit "C"**, both of which are attached hereto and made a part hereof.

D. Owners have requested that PG&E grant to Owners permission to maintain and use the portion of the Improvements located 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 fifteen (15) feet, in the manner and location as more specifically set forth in **Exhibit "B" and Exhibit "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 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 the 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 therefor 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 therefor. 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, "Indemnitees") 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 their 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 Indemnitees 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 the 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 the 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 their 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: Worker's Compensation in compliance with applicable labor codes, acts, laws or statutes, state or federal, where Owners perform work and Employer's Liability insurance with limits not to be less than \$1,000,000 for injury or death, each accident; Commercial General Liability for bodily injury and property damage with limits of not less than \$1,000,000 each occurrence/\$2,000,000 aggregate; Business Auto, code 1 "any auto" combined single limit no less than \$1,000,000 each accident.

Owners are also responsible for causing their agents, contractors and subcontractors to comply with the insurance requirements of this Agreement at all relevant times.

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  
Technical and Land Services  
4325 S. Higuera St.  
San Luis Obispo, CA 93401  
Attention: Land Agent

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:

Dennis E. and Colleen M. Johnson  
8605 Del Rio Road  
Atascadero, CA 93422-1229

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 Easement, supersede all previous oral and written agreements between and representations by or on behalf of the parties and constitute 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

their 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 Easement. Except as modified by this Agreement in regard to the Property, all of the terms, conditions and provisions of the Easement shall remain in full force and effect and are hereby ratified and confirmed. To the extent the terms of the Easement 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"

"Owners"

PACIFIC GAS AND ELECTRIC COMPANY,  
a California corporation

By \_\_\_\_\_  
Richard A. Gigliotti  
Manager, Land Survey and Acquisition  
Land and Environmental Management

\_\_\_\_\_  
Dennis E. Johnson, as trustee aforesaid

\_\_\_\_\_  
Colleen M. Johnson, as trustee aforesaid

Area 4, Mission Trail Region, Los Padres Division  
Land Service Office: San Francisco  
Operating Department: Gas Transmission  
T28S, R12E, MDM  
Sec 7, SW4ofNW4  
FERC License Number(s): NA  
PG&E Drawing Number(s): R-3839, Sh 10  
PLAT NO.  
LD of any affected documents: 2228-12-0291  
LD of any Cross-referenced documents: NA  
TYPE OF INTEREST: 11b, 52  
SBE Parcel Number: NA  
(For Quitclaims, % being quitclaimed): NA  
Order # or PM #: 2009809  
JCN: 22-09-071  
County: San Luis Obispo  
Utility Notice Numbers: NA  
851 Approval Application No. \_\_\_\_\_ Resolution \_\_\_\_\_  
Prepared By: TEP  
Checked By:

State of California  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
Here insert name and title of the officer

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.

\_\_\_\_\_  
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 \_\_\_\_\_

State of California  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
Here insert name and title of the officer

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.

\_\_\_\_\_  
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 \_\_\_\_\_

**LD 2228-12-1390**  
2009150 (22-09-071) 8 09 1  
Barn Encroachment at Del Rio Road  
Gas Transmission Line 306

Exhibit "A"

The Property

The parcel of land situate in the City of Atascadero, County of San Luis Obispo, State of California, described as follows:

(APN 050-101-001)

The parcel of land conveyed by Dennis E. Johnson and Colleen M. Johnson, husband and wife, to Dennis E. Johnson and Colleen M. Johnson, as trustees, by deed dated February 19, 2009 and recorded as Document Number 2009011355 in the Official Records of San Luis Obispo County.

**LD 2228-12-1390**

2009150 (22-09-071) 8 09 1

Barn Encroachment at Del Rio Road

Gas Transmission Line 306

Exhibit "B"

The Encroachment Area

The parcel of land situate in the City of Atascadero, County of San Luis Obispo, State of California, described as follows:

(APN 050-101-001)

Commencing at the found 1" iron pipe shown upon the Record of Survey filed for record February 17, 1988 in Book 56 of Licensed Surveys at page 32, San Luis Obispo County Records, as marking the southeasterly terminus of a course shown upon said Record of Survey, which course has a bearing of N 30°55'21" W and a length of 25.16 feet, and running along said course and along the southwesterly boundary line of the parcel of land conveyed by Dennis E. Johnson and Colleen M. Johnson, husband and wife, to Dennis E. Johnson and Colleen M. Johnson, as trustees, by deed dated February 19, 2009 and recorded as Document Number 2009011355 in the Official Records of San Luis Obispo County,

(a) north 30°55'21" west 180.57 feet

to the TRUE POINT OF BEGINNING of the parcel of land herein described; thence leaving said southwesterly boundary line

(1) north 28°41'36" east 43.76 feet; thence

(2) south 60°38'32" east 16 feet, more or less,

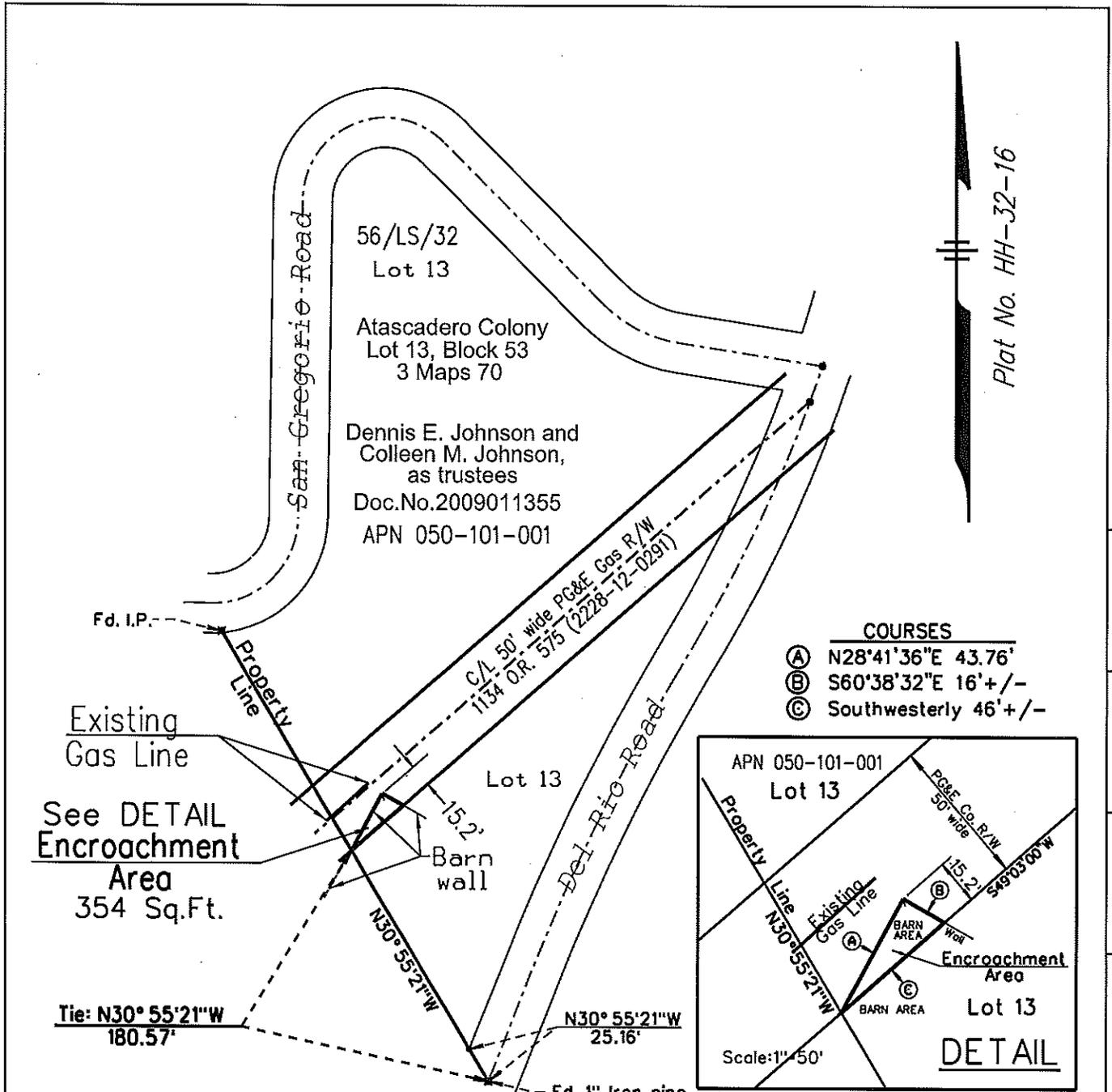
to a point in the southeasterly boundary line of the strip of land described in the deed from Fred F. Jackson and Ida O. Jackson, husband and wife, to Pacific Gas and Electric Company dated June 15, 1961 and recorded in Book 1134 of Official Records at page 575, San Luis Obispo County Records; thence running along said southeasterly boundary line

(3) southwesterly approximately 46 feet

to the True Point of Beginning; being a portion of the parcel of land conveyed by said deed dated February 19, 2009.

The foregoing description is based on a survey made by Pacific Gas and Electric Company in March, 2009. Bearings are based on said Record of Survey filed for record February 17, 1988.

# Exhibit "C"



Section 7, SW<sup>1</sup>/<sub>4</sub> of NW<sup>1</sup>/<sub>4</sub>  
CITY, RANCHO, SUBDIVISION, ETC.

Atascadero Colony

SCALE: 1" = 100'  
DATE: 03/10/09

CHG	DATE	DESCRIPTION	AUTH	BY	CH	SECTION	TOWNSHIP	RANGE	MERIDIAN
						7	28S	12E	MDM
REFERENCES DelRioGas.dwg						COUNTY OF: San Luis Obispo			
PG&E						F.B.: Los Padres DIVISION			
						DR.BY: trp CH.BY: cjm			
						N/A			
						DRAWING NO. CHG.			

# Exhibit "C"

3095-G

Attachment 2

Easement

2228-12-0291

K:HL  
COPY SENT  
TO DIVISION  
DATE

#50 10. ; R. v. l.

FRED F. JACKSON and IDA O. JACKSON, husband and wife,

Consideration of value of interest conveyed  
herein does not exceed \$100.00

hereinafter called first party, in consideration of value paid by PACIFIC GAS AND ELECTRIC COMPANY, a California corporation, hereinafter called second party, the adequacy and receipt whereof are hereby acknowledged, hereby grants to second party the right to excavate for, install, replace (of the initial or any other size), maintain and use such pipe lines as second party shall from time to time elect for conveying gas, with necessary and proper valves and other appliances and fittings, and devices for controlling electrolysis for use in connection with said pipe lines, together with adequate protection therefor, and also a right of way, within the hereinafter described strip of those certain lands which are situate in the.....County of.....San Luis Obispo....., State of California, and described as follows:

Lot 13 of Block 53, as said lot and block are shown upon the map of Atascadero Colony filed for record in the office of the County Recorder of said County of San Luis Obispo in Book 3 of Maps at page 1.

The aforesaid strip extends entirely across said lands and is particularly described as follows:

A strip of land of the uniform width of 50 feet lying equally on each side of the line which begins at a point in the center line of Del Rio Road, as said Del Rio Road is shown upon said map, from which the 1 inch iron pipe marking the intersection thereof with the center line of San Gregorio Road, as said San Gregorio Road is shown upon said map, bears N. 19° 30½' E. 25.3 feet distant and runs thence S. 49° 03' W. 444.2 feet, more or less, to a point in the southwesterly boundary line of said Lot 13.

JUL 24 1931

15162

First party further grants to second party:

- (a) the right of grading said strip for the full width thereof and to extend the cuts and fills for such grading into and on said lands along and outside of said strip to such extent as second party may find reasonably necessary;
- (b) the right to support said pipe lines across ravines and water courses with such structures as second party shall from time to time elect;
- (c) the right of ingress to and egress from said strip over and across said lands by means of roads and lanes thereon, if such there be, otherwise by such route or routes as shall occasion the least practicable damage and inconvenience to first party; provided that such right of ingress and egress shall not extend to any portion of said lands which is isolated from said strip by any public road or highway now crossing or hereafter crossing said lands; provided, further, that if any portion of said lands is or shall be subdivided and dedicated roads or highway on such portion shall extend to said strip, said right of ingress and egress on said portion shall be confined to such dedicated roads and highways;
- (d) the right of grading for, constructing, maintaining and using such roads on and across said lands as second party may deem necessary in the exercise of said right of ingress and egress or to provide access to lands adjacent to said lands;
- (e) the right from time to time to trim and to cut down and clear away any and all trees and brush now or hereafter on said strip and to trim and to cut down and clear away any trees on either side of said strip which now or hereafter in the opinion of second party may be a hazard to said pipe lines, valves, appliances or fittings, by reason of the danger of falling thereon, or may interfere with the exercise of second party's rights hereunder; provided, however, that all trees which second party is hereby authorized to cut and remove, if valuable for timber or wood, shall continue to be the property of first party, but all tops, lops, brush and refuse wood shall be burned or removed by second party;
- (f) the right to install, maintain and use gates in all fences which now cross or shall hereafter cross said strip.
- (g) the right to mark the location of said strip by suitable markers set in the ground; provided that said markers shall be placed in fences or other locations which will not interfere with any reasonable use first party shall make of said strip;

Second party hereby covenants and agrees:

- (a) second party shall not fence said strip;
- (b) second party shall promptly backfill any trench made by it on said strip and repair any damage it shall do to first party's private roads or lanes on said lands;
- (c) second party shall indemnify first party against any loss and damage which shall be caused by the exercise of said ingress and egress or by any wrongful or negligent act or omission of second party or of its agents or employees in the course of their employment.

First party reserves the right to use said strip for purposes which will not interfere with second party's full enjoyment of the rights hereby granted; provided that first party shall not erect or construct any building or other structure, or drill or operate any well, or construct any reservoir or other obstruction on said strip, or diminish or substantially add to the ground cover over said pipe lines.

The provisions hereof shall inure to the benefit of and bind the successors and assigns of the respective parties hereto, and all covenants shall apply to and run with the land.

IN WITNESS WHEREOF first party has executed these presents this 15<sup>th</sup> day of June, 1961

*Fred F. Jackson*  
*I do Jackson*

Executed in the presence of

*Fred A. Crum*  
Witness

FOR NOTARIAL USE ONLY  
State of California,  
City and County of San Francisco ss.  
On this 21st day of June, 1961  
before me, Rita J. Green  
a Notary Public in and for said City & County, duly commissioned and sworn, personally appeared Fred F. Crum  
known to me to be the same person whose name is subscribed to the within instrument, at a witness thereto, who, being duly sworn, deposed and said, that he resides in the City of San Francisco, County of San Francisco, State of California, that he is present and saw Fred F. Jackson  
Ida O. Jackson  
(personally known to him to be the person subscribed to and who executed the said instrument, or saw Fred F. Crum execute the same, and that, at that place, he, the said affiant, thereupon subscribed his name as a witness thereto.  
In Witness Whereof, I have hereunto set my hand and affixed my official seal, at my office, in the City of San Francisco, County of San Francisco, State of California, this 15th day of June, 1961, at San Francisco, California.  
Rita J. Green  
Notary Public in and for the City and County of San Francisco, State of California.  
My Commission Expires: July 16, 1963

Coast Valleys  
GM 148721  
Dwg.  
T. 28S, R. 12E,  
M. D. B. & M.  
100  
Prepared WHP  
Checked WHP  
JUN - 8 '61

FOR RECORDER'S USE ONLY  
Document No. 15162  
RECORDED AT REQUEST OF  
PAC GAS & ELECT. CO.  
AT 11:34 MIN. PAST 3:25 P.M.  
VOL. 1134, O.R. P. 578  
SAN LUIS OBISPO COUNTY, CAL.  
JUL 24 1961  
Mary C. Hamlin  
County Recorder  
By Adrian S. ... Deputy  
Fee \$ 2.80 Indexed  
COMPARED

**PG&E Gas and Electric  
Advice Filing List  
General Order 96-B, Section IV**

Aglet	Day Carter Murphy	North Coast SolarResources
Alcantar & Kahl	Defense Energy Support Center	Occidental Energy Marketing, Inc.
Ameresco	Department of Water Resources	OnGrid Solar
Anderson & Poole	Department of the Army	Praxair
Arizona Public Service Company	Dept of General Services	R. W. Beck & Associates
BART	Division of Business Advisory Services	RCS, Inc.
BP Energy Company	Douglass & Liddell	Recon Research
Barkovich & Yap, Inc.	Downey & Brand	SCD Energy Solutions
Bartle Wells Associates	Duke Energy	SCE
Boston Properties	Dutcher, John	SMUD
C & H Sugar Co.	Economic Sciences Corporation	SPURR
CA Bldg Industry Association	Ellison Schneider & Harris LLP	Santa Fe Jets
CAISO	FPL Energy Project Management, Inc.	Seattle City Light
CLECA Law Office	Foster Farms	Sempra Utilities
CSC Energy Services	G. A. Krause & Assoc.	Sierra Pacific Power Company
California Cotton Ginners & Growers Assn	GLJ Publications	Silicon Valley Power
California Energy Commission	Goodin, MacBride, Squeri, Schlotz & Ritchie	Silo Energy LLC
California League of Food Processors	Green Power Institute	Southern California Edison Company
California Public Utilities Commission	Hanna & Morton	Sunshine Design
Calpine	International Power Technology	Sutherland, Asbill & Brennan
Cameron McKenna	Intestate Gas Services, Inc.	Tabors Caramanis & Associates
Casner, Steve	Los Angeles Dept of Water & Power	Tecogen, Inc.
Chamberlain, Eric	Luce, Forward, Hamilton & Scripps LLP	Tiger Natural Gas, Inc.
Chris, King	MBMC, Inc.	Tioga Energy
City of Glendale	MRW & Associates	TransCanada
City of Palo Alto	Manatt Phelps Phillips	Turlock Irrigation District
Clean Energy Fuels	McKenzie & Associates	U S Borax, Inc.
Coast Economic Consulting	Merced Irrigation District	United Cogen
Commerce Energy	Mirant	Utility Cost Management
Commercial Energy	Modesto Irrigation District	Utility Specialists
Consumer Federation of California	Morgan Stanley	Verizon
Crossborder Energy	Morrison & Foerster	Wellhead Electric Company
Davis Wright Tremaine LLP	New United Motor Mfg., Inc.	Western Manufactured Housing Communities Association (WMA)
	Norris & Wong Associates	eMeter Corporation