



TO THE HONORABLE MAYOR AND COUNCIL:

DATE: July 22, 2014

SUBJECT: APPROVE AN AGREEMENT WITH PACIFIC GAS & ELECTRIC COMPANY THAT DEFINES HOW THE COMPANY WILL “COME OFF OF PAUSE” ON THEIR PIPELINE PATHWAYS PROJECT

Report in Brief

Pacific Gas & Electric Company is pursuing a project that it calls the Pipeline Pathways Project (“Project”). The Project involves clearing improvements and vegetation above and adjacent to its gas transmission pipelines, to improve pipeline integrity and access. The large number of trees that PG&E initially proposed for removal in Concord and other communities in the East Bay proved very controversial.

Facing a public outcry, PG&E “paused” the project and began engaging with cities and counties in the East Bay to develop a framework for moving the project forward. A subcommittee appointed by the Contra Costa County Public Managers Association took the lead in working with PG&E on defining a framework agreement for “coming off of pause.” The subcommittee and PG&E have reached an agreement that is being presented to the City Council for approval.

Background

As part of the Project, PG&E had planned to cut down over 700 City and privately-owned trees in Concord, and over 3,000 trees countywide. PG&E states that the purpose of the Project is to enhance the safety of PG&E’s gas transmission pipelines and to facilitate access to and monitoring of those pipelines. If carried out as originally proposed, the Project would have essentially clear-cut trees and bushes in a 20-foot swath throughout many portions of the City, without regard for the functionally and aesthetically harmful impact to the community and the environment, or for the cost to the City of mitigating the loss of trees.

On February 25, 2014 PG&E Government Relations Manager, Tom Guarino, and Wes Gullett, the Strategic Planner for the Project, presented the Project overview to the Council. At that meeting, the City Council expressed a number of concerns about the Project to PG&E.

On April 8th, the Council again held a public conversation on the Project, and at this meeting adopted a Resolution stating clearly that the Concord City Council wanted PG&E to reconsider their approach to the Project, and to address a number of City concerns. This Resolution is Attachment 2.

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COMPANY AND THE CITY ON HOW PG&E WILL APPROACH THE PPP AS IT
“COMES OFF OF PAUSE”**

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The City and the community viewed PG&E’s Project very unfavorably, as did other communities in the East Bay. This led to the formation of a coalition of cities to retain a law firm to oppose the project. Concord joined the coalition and was represented by City Attorney Mark Coon. Eventually, the Contra Costa County Public Managers Association (PMA) convened a meeting involving the mayors, managers and administrators, and attorneys from nearly all of the jurisdictions in the County as well as cities from Alameda County, that led to various joint efforts in opposition to the project. In reaction to the concerns expressed by the cities and the public, PG&E decided to “pause” its efforts on the Project. On Thursday March 27th, PG&E issued a statement formally acknowledging that they had “paused” their Pipeline Pathways Project while they worked to respond to the myriad concerns being expressed by the affected cities (including Concord) and community members.

PG&E subsequently began meeting with a subcommittee from PMA to attempt to reach agreement on a framework for moving forward with the Project in a manner that addresses the concerns voiced by the cities and other agencies affected by the Project. City Manager Valerie Barone chaired this subcommittee. The subcommittee negotiated the attached “PG&E/Agency Framework” Agreement. The Agreement outlines PG&E’s commitments with regard to how it will pursue the project going forward.

Discussion

Among the issues defined in the attached “framework agreement,” it states both parties’ commitments to maintaining gas pipeline integrity and safety and to the importance of trees and landscaping to community character. PG&E also commits in the proposed agreement to, among other things:

1. Reevaluating all trees initially proposed for removal, upon request by an agency, and only proposing the removal of trees for which data supports safety concerns, all with a goal towards reducing the number of trees proposed for removal;
2. Complying with ministerial encroachment permit procedures and requirements;
3. Identifying trees protected by local tree protection ordinances;
4. Mitigation for protected tree removals as mutually agreed by the agency and PG&E;
5. Paying for the costs associated with agency evaluation of work, including third party arborists and other consultant and staff time as agreed by the agency and PG&E;
6. Evaluating various specified mitigation measures that could potentially avoid the need for tree removals;
7. Providing detailed data, as specified, to allow the agencies to evaluate and understand the project; and
8. Conducting field reviews with the agency.

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The Agreement—purposefully—does not resolve the dispute between the Cities and PG&E over whether PG&E is subject to local tree removal ordinances. Instead, the agreement is designed to develop a framework for limiting the number of trees required for removal and to develop information for the City to carefully consider PG&E’s tree removal requests. City staff and PG&E acknowledge that there may eventually be disputes over PG&E’s right to remove individual trees. If such a dispute were to arise, the City or PG&E are free to seek legal or regulatory remedies at that time.

Staff recommends that the City Council approve the Framework Agreement, which has been reviewed by the City Attorney’s Office. Staff believes that the commitments made by PG&E in the Agreement are appropriate, and we believe that the additional information to be developed by PG&E as it pursues the Project will allow the City to make decisions tree removal decisions with better information than is currently available. Finally, the Agreement does not prevent the City from enforcing its legal rights at some point in the future.

There is one point that is not included in the attached agreement that is still creating some controversy with one of the City’s in the Public Manager’s group. The Agreement as written does not expressly obligate PG&E to study relocating their transmission lines as part of what they consider as mitigation to tree removals. However, the agreement does state that PG&E will consider all mitigation measures, so many of the Managers, including Concord’s City Manager, find this to include the possibility of relocating lines.

Fiscal Impact

There is no negative fiscal impact to the City from approving this Agreement. In fact, there is a small positive impact, in that the agreement has PG&E committing to pay staff and consultant costs (as mutually agreed to) to review the effects of the Pipeline Pathways Project.

Public Contact

Posting of the agenda and distribution to PG&E.

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Recommendation for Action

Staff recommends the City Council approve the Agreement between Concord and Pacific Gas & Electric Company which outlines how PG&E will “come off pause” on their Pipeline Pathways Project.

Approved by:

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Valerie J. Barone
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Attachment No. 1 – Framework Agreement between the City of Concord & PG&E

Attachment No. 2 – Resolution No. 14-21

PG&E/Agency Framework

June 30, 2014

- I. On May 1, 2014 representatives from PG&E met with City/County Managers and Administrators representing public agencies in Contra Costa and Alameda Counties to continue dialogue around PG&E's implementation of their Pipeline Pathways Project (PPP).
- II. PG&E and public agencies in attendance discussed the importance of moving forward on the PPP through a collaborative process that addresses community needs and expectations including: 1) the need to maintain and promote gas pipeline integrity and safety; and 2) the importance of trees and landscaping to overall community character and aesthetics, visual buffering, etc.
- III. PG&E and public agencies share a genuine commitment to ensure the safety of communities, and agree to work cooperatively to eliminate or mitigate the threat to PG&E's pipelines posed by certain trees and structures on PG&E's pipeline rights-of-way.
- IV. Agencies support an overall pipeline integrity safety plan that includes the need to clearly mark or delineate the location of existing pipelines, ongoing monitoring and inspection of pipelines, selective vegetation management within PG&E pipeline easements, addressing the existence of incompatible structures within PG&E pipeline easements, and the need to work with agencies to ensure that future local planning and development activities and entitlements are consistent with the goal of maintaining pipeline safety.
- V. PG&E has committed to not remove any trees on public or private property, without first having an agreement in place with individual communities about a path forward.
- VI. From an agency perspective, PG&E's gas pipeline network has safely co-existed with trees and vegetation over several decades. Agencies are interested in ensuring a deliberate and transparent review process, which considers all mitigation options available moving forward.
- VII. Prior to moving forward with vegetation management activities under the PPP, PG&E agrees to work with the local agencies, including doing the following:
 1. Per an agency's request, re-evaluate all trees already submitted to agencies as trees PG&E desires to remove with a goal of reducing the number of trees proposed for removal.
 2. For those agencies that PG&E has yet to submit tree removal information, propose removal of only those trees that PG&E has data to support PG&E's safety concerns, with the goal of reducing the number of trees proposed for removal.
 3. Comply with local ministerial encroachment permit procedures and requirements related to removing or trimming any trees within the public right-of-way, including any publicly owned trees.
 4. Working with local agencies, identify any trees proposed for removal that would be protected by local agency tree preservation ordinances.
 5. Once the parties agree on the removal of the protected tree identified under section VII.4, mitigate that tree in a manner mutually agreed upon by the parties.

6. Comply with applicable environmental standards related to raptor nesting season, unique or endangered habitats, etc.

7. Pay necessary and reasonable costs and fees associated with agency evaluation of work proposed to be performed as part of the PPP. This includes reimbursement costs required for city/town/county retention of third party arborists, and/or other consultant or staff time as agreed by PG&E and the local agency.

8. Evaluate potential mitigation measures, including but not limited to:

a. Specific risk assessment on a tree by tree basis;

b. Regular, ongoing monitoring and inspection of pipelines, including possible use of subsurface radar to determine whether, and the extent to which tree roots have grown into contact with pipelines;

c. Root barriers to protect pipeline coating;

d. Tree removal and/or trimming. In the event that it is necessary to undertake tree removal and/or trimming, mitigation measures will be identified, evaluated and implemented by PG&E, as appropriate;

e. Potential pipeline retrofitting to accommodate in-line inspections or other inspection technology.

VIII. In order to facilitate agency evaluation and understanding of the proposed PPP work, PG&E will submit the following information:

1. Mapping and/or data showing:

a. trunk diameter, species and location of landscaping proposed to be affected by PPP;

b. all trees that would be covered by local tree preservation ordinances;

c. location of the pipeline within any public right of way or PG&E easement;

d. location of the pipeline in proximity to private property lines and structures;

e. depth of the pipeline in areas where trees are proposed to be removed or trimmed;

f. location of certain non-compatible structures to be removed or relocated, excluding any private customer information.

2. Reports or surveys prepared by or for PG&E addressing the condition and health of trees proposed to be removed or trimmed.

3. Information about the safety risk associated with the trees proposed to be removed or trimmed.

4. Other information and/or data as may be requested by the agency.

5. Nothing in this Agreement shall require PG&E to disclose any confidential or otherwise protected information, including private customer-specific data.

IX. PG&E and agency will undertake joint field review to verify the location of: affected pipelines, structures proximate to the pipelines; trees and shrubs potentially affected as well as the health and condition of same. Following the receipt of additional information and completing a field review, the agency will provide written feedback within a timeframe to be determined between PG&E and each local agency.

X. Prior to performing public outreach, PG&E will work with agency to identify appropriate community outreach activities to be undertaken to ensure that community members are informed of the project, and have the opportunity to provide feedback, receive answers to questions, etc.

XI. If any tree or structure poses an imminent threat to the safe operation of PG&E's gas pipelines, PG&E will provide notice to the agency at least twenty-four hours prior to the start of its work removing such tree or structure. As part of that notice, PG&E will provide the agency with its documentation of the imminent threat. If immediate tree or structure removal is required, PG&E shall provide such notice and documentation immediately after the removal is completed.

XII. Nothing in this framework is intended to change the existing rights and duties of any of the parties, including with respect to the applicability of local ordinances or the jurisdiction of the California Public Utilities Commission.

DATE: June 30, 2014

By: 

M. Kirk Johnson
Vice President, Gas Operations Major Projects and Programs
Pacific Gas & Electric Company

DATE: _____, 2014

By: _____

DATE: _____, 2014

By: _____

DATE: _____, 2014

By: _____

ORIGINAL

**BEFORE THE CITY COUNCIL OF THE CITY OF CONCORD
COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA**

**A Resolution Demanding that Pacific Gas & Electric
Company Refrain from all Tree Removal Activities in
the City of Concord**

Resolution No. 14-21

WHEREAS, the City of Concord (“City”) was incorporated in 1905. Included within the rights and responsibilities that it assumed as a city under the California Constitution and State Laws is the right to own and manage the public rights-of-way, parks and other public property, and to adopt laws furthering the health, safety and general welfare of the citizens of Concord; and

WHEREAS, in managing the public rights-of-way and public property, the City must balance many interests, including: vehicular, bicycle and pedestrian traffic; water, sewer, storm water, gas, electric and telecommunications utilities both above ground and underground; pipelines carrying fuel, telecommunication fiber or other materials; environmental protection; the visual attractiveness of the community, whether in a business or rural setting; environmental concerns, including protection of the habitat for flora and fauna; and the interests of neighboring property owners and the residents in the communities comprising the City; and

WHEREAS, trees in our City provide not only life-sustaining oxygen, but also shade, privacy, mitigation of topsoil erosion and flood hazards, wind protection, beauty, and critical habitat for birds and many wildlife species; and

WHEREAS, since 1981, Concord has been named a “Tree City USA” community, and since 1998 the City has received a “Tree City Growth Award” by the National Arbor Day Foundation for demonstrating progress in our community forestry program and for recognizing the value of trees in our community by planting and nurturing hundreds of trees; and

WHEREAS, the presence of landscaping, and particularly mature trees, increases the value of property, whether public or private, and is often critical in economic development efforts in our communities throughout the City; and

WHEREAS, the shade provided by trees mitigates the degradation of roadway surfaces caused by prolonged exposure to direct sunlight, prolonging the life of affected roadways and

1 resulting in attendant cost savings to the City; and

2 **WHEREAS**, the City has adopted Tree Protection Ordinances in both its Municipal and
3 Development Codes (Concord Municipal Code Chapter 8.40, Concord Development Code Sections
4 122-825 through 122-832), to provide oversight and protection of City-owned trees and shrubs and
5 privately owned trees that meet specified species and size requirements. In particular, the Tree
6 Protection Ordinances preclude the pruning or removal of any City-owned trees growing in, along or
7 upon any street, park or public place without written approval by the City Manager. The Tree
8 Protection Ordinances also establish a discretionary permitting process and provide a detailed set of
9 criteria that must be met before any protected trees on private property may be removed. The purpose
10 of the Tree Protection Ordinances is to ensure the proper care of trees, shrubs, and hedges in parks, in
11 public places, and streets; to provide for the public health, safety, and general welfare; to contribute to
12 the attractiveness of the City and the quality of life of citizens and visitors; to maintain the climatic
13 and ecological balance of the area; and to protect large native trees, trees of historic or cultural
14 significance, groves and stands of mature trees, and mature trees in general; and

15 **WHEREAS**, the City supports Pacific Gas & Electric's ("PG&E") goal of ensuring that
16 improvements and trees and other flora planted over or near gas transmission pipelines do not
17 compromise the safe operation of those pipelines, and recognizes PG&E's interest in efficiently
18 accessing its gas transmission pipelines; and

19 **WHEREAS**, the City nevertheless disagrees with the manner in which PG&E is pursuing its
20 Pipeline Pathways Program, which threatens the destruction of over 700 public and privately-owned
21 trees throughout the City. Many of those trees are decades old, and are expressly protected under the
22 City's Tree Protection Ordinances, and/or under other city ordinances, regulations or City-issued
23 entitlements, including entitlements mandating tree/flora maintenance as a condition of a discretionary
24 approval, or as an environmental mitigation measure. Moreover, many of the trees/flora at issue were
25 growing in place before PG&E constructed its gas transmission pipelines.

26 Notwithstanding PG&E's acknowledgment that the California Public Utilities Commission has not
27 issued any orders specifically requiring implementation of the Program, and that none of PG&E's gas
28 transmission pipelines in the City are in imminent danger of tree-related damage or compromised

1 structural safety, PG&E has attempted to institute its Program with minimal advance notice, without
2 any meaningful dialogue with City representatives or other stakeholders, without following the
3 permitting requirements set forth in the City's Tree Protection Ordinances or in other City regulations,
4 without complying with the procedures of California's Environmental Quality Act (CEQA), and
5 without considering viable alternatives or mitigation measures; and

6 **WHEREAS**, PG&E does not have the legal authority to unilaterally remove or prune either
7 City or privately-owned trees and other flora, as reflected in the Franchise Act of 1937 and decisions
8 issued by the California Supreme Court; and

9 **WHEREAS**, in response to PG&E's actions and the stated intentions of its Pipeline Pathways
10 Program, the City is compelled to demand that PG&E cease its tree removal activities under that
11 Program throughout the City until the issues described above can be addressed to the satisfaction of
12 the City and other stakeholders.

13 **NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CONCORD DOES**
14 **RESOLVE AS FOLLOWS:**

15 **Section 1.** PG&E must provide the City with the precise locations of the public and privately-
16 owned trees /flora under consideration for removal, and demonstrate the necessity of removing them
17 to protect its gas transmission pipelines.

18 **Section 2.** PG&E must engage in meaningful discussions to consider appropriate alternatives
19 and mitigation measures to achieve the goals of all stakeholders, including adequate compensation for
20 any public or privately-owned trees/flora that ultimately are removed by PG&E.

21 **Section 3.** PG&E must comply with all applicable federal, state and local laws and
22 requirements, including but not limited to the California Environmental Quality Act (CEQA), and the
23 permitting process set forth in the City's Tree Protection Ordinances, and where applicable, other City
24 ordinances, regulations and requirements.

25 **Section 4.** PG&E must provide full reimbursement to the City and to affected private
26 homeowners for all mitigation and other costs incurred as a result of PG&E's Pipeline Pathways
27 Project.

28 **Section 5.** This resolution shall become effective immediately upon its passage and adoption.

1 **PASSED AND ADOPTED** by the City Council of the City of Concord on April 8, 2014, by
2 the following vote:

3 **AYES:** Councilmembers - E. Birsan, D. Helix, L. Hoffmeister, R. Leone, T. Grayson

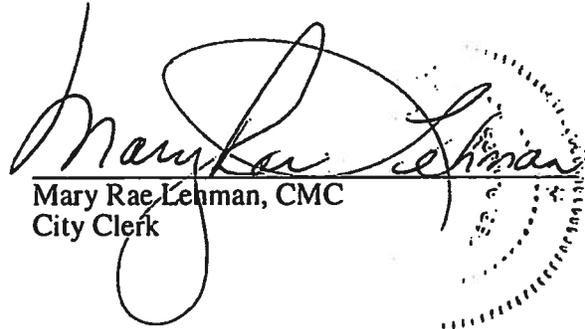
4 **NOES:** Councilmembers - None

5 **ABSTAIN:** Councilmembers - None

6 **ABSENT:** Councilmembers - None

7 **I HEREBY CERTIFY** that the foregoing Resolution No. 14-21 was duly and regularly
8 adopted at a regular meeting of the City Council of the City of Concord on April 8, 2014.

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Mary Rae Lehman, CMC
City Clerk

APPROVED AS TO FORM:



Mark S. Coon
City Attorney