

STAFF REPORT

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PRC 9524.1

D. Simpkin

**RESCISSION OF APPROVAL AND ISSUANCE OF A GENERAL
LEASE – RIGHT-OF-WAY USE**

APPLICANT:

Pacific Gas and Electric Company

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land crossing the San Joaquin River, near Fresno,
Fresno and Madera counties.

AUTHORIZED USE:

Use and maintenance of an existing electrical double-circuit 115-kV
overhead transmission line; and the installation, use, and maintenance of
a fiber-optic cable.

LEASE TERM:

25 years, beginning February 1, 2019.

CONSIDERATION:

- \$4,681 per year, with an annual Consumer Price Index adjustment;
and the State reserving the right to fix a different rent on each 10th
anniversary of the lease term, as provided in the lease.
- Compensation in the amount of \$769 for the occupation of the
lease premises from December 3, 2018, through January 31, 2019.

SPECIFIC LEASE PROVISIONS:

Liability insurance in an amount no less than \$5,000,000 per occurrence,
or equivalent staff-approved self-insurance program.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6216, 6301, 6501.1, and 6503;
California Code of Regulations, title 2, sections 2000 and 2003.

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Public Trust and State's Best Interests Analysis:

On December 3, 2018, the Commission authorized a General Lease – Right-of-Way Use to Pacific Gas and Electric Company (PG&E) for the use and maintenance of an existing electrical overhead transmission line and the installation, use, and maintenance of a fiber-optic cable ([Item C58, December 3, 2018](#)). The lease was never executed because PG&E filed for Chapter 11 bankruptcy on January 29, 2019. Business transactions and claims against PG&E, including the proposed lease, fell under the purview of the bankruptcy court proceedings. In order to bring the previously unauthorized improvements under lease, staff requests the authorization made by the Commission at its December 3, 2018 public meeting be rescinded and a new lease be issued to the Applicant. Staff proposes that the term of the lease begin on February 1, 2019 (post-bankruptcy filing).

The Applicant has agreed to pay compensation for occupation of the lease premises from the date of the Commission's December 3, 2018 authorization through January 31, 2019, in the amount of \$769. As part of the Applicant agreeing to pay for the occupation of the lease premises, staff recommends that the Commission waive the invoice initially generated as part of the December 3, 2018 authorization and any penalty and interest associated with invoice number 46850. All other lease terms remain the same as in the lease authorized on December 3, 2018.

The Applicant has applied for a General Lease – Right-of-Way Use for the use and maintenance of an existing double-circuit 115-kilovolt (kV) overhead transmission line; and for the installation, use, and maintenance of a new fiber-optic cable crossing the San Joaquin River.

The Applicant's overhead transmission line was installed in approximately 1930. The overhead transmission line is attached to steel towers situated on the upland on either side of the river. In addition, the Applicant proposes to install a fiber-optic communication cable at the same location over the San Joaquin River. The fiber-optic cable will be installed on the towers using helicopters and will therefore require no ground disturbance. Project work is expected to begin in the summer of 2019. The Applicant has the right to use the uplands adjoining the lease premises.

PG&E services over 70,000 square miles of Northern and Central California and approximately 16 million people. The existing transmission line and proposed fiber optic cable will allow PG&E to continue to provide electricity to the residents of California. The existing overhead transmission line does not significantly alter the land, the lease does not

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alienate the State's fee simple interest, and neither permanently impairs public rights. The lease is limited to a 25-year term and does not grant the lessee exclusive rights to the lease premises. Upon termination of the lease, the lessee may be required to remove all improvements from State land. The proposed lease requires the lessee to indemnify the State for any liability incurred as a result of the lessee's activities thereon.

Climate Change:

The project includes co-location of a fiber-optic cable on existing electrical towers sited at the top of a north and south bluff above the San Joaquin River near Fresno, and above the floodplain. This section of the river is not tidally influenced and would not be subject to sea-level rise. As stated in *Safeguarding California Plan: 2018 Update* (California Natural Resources Agency 2018), climate change is projected to increase the frequency and severity of natural disasters related to flooding, drought, and storms. In rivers, more frequent and powerful storms can result in increased flooding conditions and damage from storm-created debris. Conversely, prolonged droughts could dramatically reduce river flow and water levels, leading to loss of public access and navigability. Climate change will further influence riverine areas by changing erosion and sedimentation rates, and flooding and storm flow. Runoff will likely increase scour, decreasing bank stability at a faster rate.

Although the electrical towers are located above and laterally outside of the floodplain, the towers support existing electrical lines that extend above and across the river. The proposed fiber-optic cable will be installed on the electrical towers and cross the river. Although the towers and utility lines will not be subject to climate change-related riverine processes, they could be subject to storm events of increased intensity and frequency. Regular maintenance, as required by the lease and California Public Utilities Commission regulations, will reduce the likelihood of structural degradation.

Conclusion:

For all the reasons above, staff believes rescission of the December 3, 2018 authorization and the issuance of this lease will not substantially interfere with Public Trust needs at this location, at this time, and for the foreseeable term of the proposed lease; and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. Approval or denial of the application is a discretionary action by the Commission. Each time the Commission approves or rejects a use of

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sovereign land, it exercises legislatively delegated authority and responsibility as trustee of the State's Public Trust lands as authorized by law. If the Commission denies the application, the Applicant may be required to remove the overhead transmission line and restore the premises to their original condition. Upon expiration or prior termination of the lease, the lessee also has no right to a new lease or to renewal of any previous lease.

2. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction.
3. Rescission of the prior lease authorization is not a project as defined by the California Environmental Quality Act (CEQA) because it is an administrative action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

4. **Existing Overhead Transmission Line:** Staff recommends that the Commission find that this activity is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; California Code of Regulations, title 14, section 15301, example (b).

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15300.

5. **Installation of a Fiber-Optic Cable:** Staff recommends that the Commission find that this activity is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Class 3, New Construction or Conversion of Small Structures; California Code of Regulations, title 14, section 15303.

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15300.

EXHIBITS:

- A. Land Description
- B. Site and Location Map

STAFF REPORT NO. 67 (CONT'D)

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Existing Overhead Transmission Line: Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a categorically exempt project, Class 1, Existing Facilities; California Code of Regulations, title 14, section 15301, example (b).

Installation of a Fiber-Optic Cable: Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a categorically exempt project, Class 3, New Construction or Conversion of Small Structures; California Code of Regulations, title 14, section 15303.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed lease for the use and maintenance of the existing improvements and for the installation, use, and maintenance of a fiber-optic cable will not substantially interfere with the Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; and is in the best interests of the State

AUTHORIZATION:

1. Rescind authorization for Lease No. PRC 9524.1, a General Lease – Right-of-Way Use, approved by the Commission on December 3, 2018, to Pacific Gas and Electric Company.
2. Authorize issuance of a General Lease – Right-of-Way Use to Pacific Gas and Electric Company beginning February 1, 2019, for a term of 25 years, for the use and maintenance of an existing overhead transmission line; and for the installation, use, and maintenance of a fiber-optic cable, as described in Exhibit A and shown on Exhibit B (for reference purposes only), attached and by this reference made a part hereof; annual rent in the amount of \$4,681, with an annual Consumer Price Index adjustment and the State reserving the right to fix a different rent on each 10th anniversary of the Lease term, as provided in the Lease; and self-insurance or third-party liability insurance in an amount no less than \$5,000,000 per occurrence; Lessee may satisfy all or part of the insurance requirements through maintenance of a self-insurance program as outlined in the lease.

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3. Accept compensation for the occupation of the lease premises in the amount of \$769 for the period between December 3, 2018, and January 31, 2019, and waive invoice number 46850 and any associated penalty and interest.

EXHIBIT "A"

PRC 9524.1

LAND DESCRIPTION

A strip of submerged land 50 feet wide in the bed of the San Joaquin River situate in the east half of the northeast quarter of Section 32, Township 12 South Range 19 East MDB&M located in Fresno and Madera Counties and lying 25 feet on each side of the line described as follows:

Commencing at the found brass cap marking the east quarter corner of said Section 32 and running thence along the easterly boundary line of said Section 32

(a) north 00°11' 51" east 309.66 feet; thence leaving said easterly boundary line and running

(b) north 89°48' 09" west 26.65 feet, more or less, to the center of an existing Pacific Gas and Electric Company transmission tower, being also the TRUE POINT OF BEGINNING; thence

(1) north 46°40' 14" west 1229.95 feet, more or less, to the center of a similar Pacific Gas and Electric Company tower, being the point of termination.

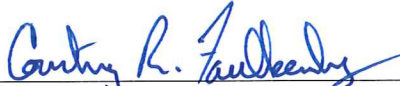
Excepting therefrom all portions of said strip lying landward of the low water mark of said San Joaquin River.

END OF DESCRIPTION

The foregoing description is based on a survey by Pacific Gas and Electric in May 2018. Bearings are based on the east line of the northeast quarter of said Section 32, which has a bearing of north 00°11' 51" east.



APPROVED AS TO DESCRIPTION



Courtney R. Faulkenberry
P.L.S. 8467 5-29-19

Attach to LD: 2212-19-10005
Area, Region or Location: 4
Land Service Office: Fresno
Line of Business: Electric Transmission (42)
Business Doc Type: Easements
MTRSQ: 22.13.19.32.11, 22.13.19.32.12,
FERC License Number:
PG&E Drawing Number:
Plat No.: n/a
LD of Affected Documents: n/a
LD of Cross Referenced Documents: n/a
Type of interest: Licenses to PGE (58)
SBE Parcel: n/a
% Being Quitclaimed:
Order or PM: 74018121
JCN: 03-18-010
County: Fresno
Utility Notice Number:
851 Approval Application No: ;Decision:
Prepared By: crfj
Checked By: crfj *CLF*
Approved By:
Revised by: crfj(9-10-18)

NO SCALE

SITE

APN 048-280-010

MADERA COUNTY

LEASE AREA
(115 kV ELECTRICAL
TRANSMISSION LINE)

LOW WATER LINE

SAN JOAQUIN RIVER

LOW WATER LINE

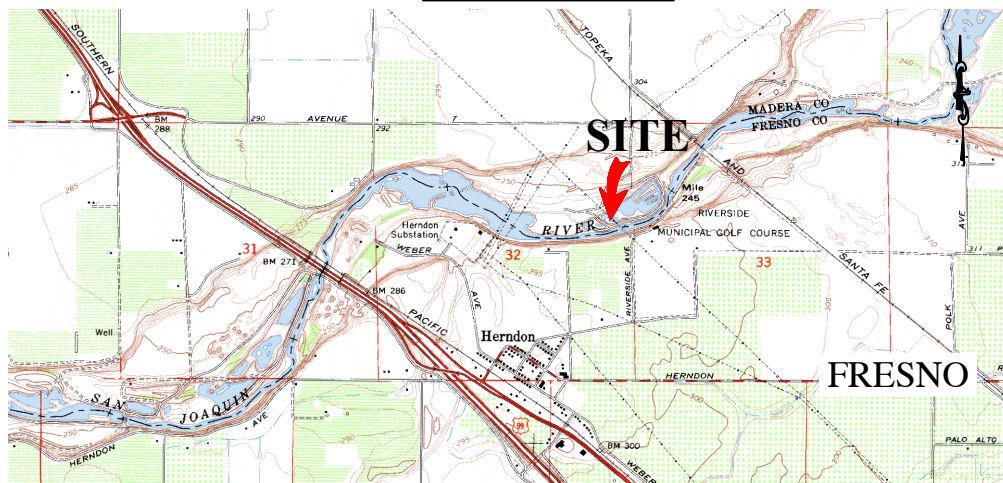
FRESNO COUNTY

APN 504-230-35ST

CROSSING OF THE SAN JOAQUIN RIVER, PORTION OF SECTION 32, T.12S., R.19E., MDM

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 9524.1

PG&E

APNs 504-230-35ST &

048-280-010

GENERAL LEASE -
RIGHT-OF-WAY USE
FRESNO & MADERA
COUNTIES



This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

TS 05/28/19