

MINUTES

CITY COUNCIL/SUCCESSOR AGENCY/PUBLIC FINANCE AUTHORITY

MEETING AGENDA

October 6, 2022

1. CALL TO ORDER 6:00PM

Council Members Present: Ramsey, Singleton, Adkisson, Horn

Others Present: City Manager Marissa Trejo, City Attorney Mario Zamora, Assistant City Manager Sean Brewer, Chief of Police Jose Garza, Fire Chief Greg DuPuis, City Treasurer Dawn Kahikina, Public Works and Utilities Coordinator Larry Miller, and City Clerk Shannon Jensen

Council Members Absent: Ramirez

Others Absent: Financial Services Director Jasmin Bains, and Administrative Analyst Mercedes Garcia

Changes to the Agenda: City Manager Marissa Trejo announced the following changes to the Agenda:

1. Regular and Special Agendas will be combined with Item 5.1 from the Special Agenda becoming 5.16 on the Regular Agenda; and
2. Item No. 5.9 will be Tabled as this was a Future Agenda Item by Councilman Ramirez and he is absent tonight.

*Motion by Horn, Second by Singleton to Approve the Changes to the Agenda and to Approve the Agenda for the meeting of October 6, 2022. Motion **Approved** by 4/0 Roll-Call Majority Vote. (Ramirez – Absent)*

2. AWARDS, PRESENTATIONS, APPOINTMENTS AND PROCLAMATIONS

1. Presentation on Local Narcotic Investigation

Chief of Police Jose Garza and Sergeant Alex Rouch presented the nearly 2 year "Fire & Ice" operation.

3. CITIZEN COMMENTS

The following individual(s) spoke under Citizen Comments:

Mrs. Mary Jones requested that the City remind residents to maintain their yards even with the City's water restrictions.

Mr. Scott Netherton announced that 2022 Candidates Night will be held on Tuesday, September 27 between 6:00pm – 8:00pm. The event will be co-hosted by West Hills Community College and held at their campus in room R10. All candidates for City Council have been invited to participate. It will also be accessible via Zoom.

Mr. Netherton announced that CoalingaFest was originally scheduled for Saturday, October 15, 2022, however it has now been rescheduled for Saturday, October 29, 2022 and will be held on the Plaza from Noon to 9pm.

The following individual(s) submitted written comment(s):

None

4. PUBLIC HEARINGS

1. Continued Public Hearing for the Introduction and Waiving of the First Reading of Ordinance No. 853 – City Initiated Zoning Text Amendment (No. ZTA 22-01) Amending the Planning and Zoning Code Related to Accessory Dwelling Units (ADUs), Floodplain Regulations and Density Bonus
Sean Brewer, Assistant City Manager

Assistant City Manager Sean Brewer stated this item had been an ongoing item and continued from several past meetings.

Mayor Ramsey asked Mr. Brewer to provide an overview of what the Council had decided over the course of the previous view meetings regarding this item.

Mr. Brewer stated that the Council had provided direction to permit garage conversions on detached accessory structures located in the rear of a main structure only. No conversion of an attached garage shall be permitted.

Mayor Ramsey asked for if there were any comments. Seeing none, Mayor Ramsey closed the Public Hearing.

*Motion by Horn Seconded by Adkisson to Approve the Introduction and Waiving of the First Reading of Ordinance No. 853 – City Initiated Zoning Text Amendment (No. ZTA 22-01) Amending the Planning and Zoning Code Related to Accessory Dwelling Units (ADUs), Floodplain Regulations and Density Bonus. **Approved** by a 4/0 Roll-Call Majority Vote. (Ramirez – Absent)*

2. Proposed Adoption of Resolution No. 4094 of Necessity Finding, Determining, and Declaring that the Public Interest and Necessity Require the Acquisition of Streetlighting Facilities by Eminent Domain
Mario Zamora, City Attorney

City Attorney Mario Zamora gave a brief overview of the item, stating that the item requires a 2/3 vote approval and since Councilman Ramirez is absent, the 4 Councilmembers present would have to pass unanimously.

Mayor Ramsey opened the Pubic Hearing for comments.

City Attorney Mario Zamora stated the City received written comments from PG&E's legal counsel objecting to the City's intent to acquire the streetlights.

Local PG&E representative Erica Cabrera, referencing the reported maintenance issues, urged the Council to work with them to resolve the concerns prior to entering into a lengthy legal process. Ms. Cabrera stated that the lighting is not for sale and noted the valuation method used to determine the price per streetlight is not valid.

Councilman Adkisson asked Ms. Cabrera what value PG&E would give for each streetlight?

Ms. Cabrera stated \$832 per light.

Jim Brader, a local Troubleman, spoke in opposition of Council's approval of Resolution No. 4094.

Councilman Horn asked how much this acquisition could cost the City should the process drag on?

City Attorney Mario Zamora stated the process outlined by Ms. Cabrera is accurate and it is possible that a jury could decide the value to be paid for each streetlight, however the letter received from PG&E's legal counsel does not include an evaluation, only that the City's evaluation is wrong and furthermore, it does not include a basis for what the value should be. Yes, it would be ideal if the two parties could come to an agreement.

Mayor Ramsey called for a five-minute recess.

Mayor Ramsey resumed the meeting at 6:37pm.

Councilman Adkisson stated his disappointment that PG&E could not provide a value.

*Motion by Singleton Seconded by Horn to Adopt Resolution No. 4094, a Resolution of Necessity Finding, Determining, and Declaring that the Public Interest and Necessity Require the Acquisition of the Streetlight Facilities by Eminent Domain. **Approved** by a 4/0 Roll-Call Majority Vote. (Ramirez – Absent)*

5. CONSENT CALENDAR

1. Approve MNUTES – September 1, 2022
2. Approve MNUTES – September 15, 2022
3. Check Register: 08/01/2022 – 08/31/2022
4. Information on Cannabis Taxes Due for Calendar Year 2022
5. Direct Staff to Proceed with a Final Draft of the Gray Water Rebate Program

Mayor Pro-Tem Singleton pulled Item No. 5.5 for discussion.

Mayor Pro-Tem Singleton suggested adjusting the rebate amount in order to benefit more households.

City Manager Marissa Trejo suggested adjusting the rebate to \$250 or \$300.

Mayor Pro-Tem Singleton spoke in favor of adjusting the rebate to \$350 per household.

6. Direct Staff to Obtain a Cost Estimate for a 5-10 Mile Range Drone for the Police Department

Councilman Horn pulled Item No. 5.6 for discussion.

Noting the recent accident in the creek bed and referencing Item Nos. 5.6 and 5.8, Councilman Horn spoke in favor of purchasing a drone and razor for use by the Police Department.

Councilman Adkisson commented that he believed the City already owned a drone.

City Manager Marissa Trejo stated the City does own a "Public Safety" drone that is housed at the Fire Department and is available for use by both the Police and Fire departments.

Councilman Horn asked if staff recalled the cost of the drone.

Fire Chief Greg DuPuis stated it was \$5,000 and included a tablet.

7. Direct Staff to Obtain Local Quote for Fire Extinguisher Services to Compare Costs to Current Service Contract

Councilman Horn pulled Item No. 5.7 for discussion.

Councilman Horn stated he requested this item because he is curious of the cost difference of the local company versus the current company. If possible, he would like to keep it local.

8. Direct Staff to Obtain Cost Estimates to Purchase a New Razor and Repair the Existing Razor for the Police Department

Councilman Horn pulled Item No. 5.8 for discussion.

9. Receive Cost Estimate and Approve Safety Improvements at Intersection of Hayes/Harrison/Third Streets
10. Approve Beer, Wine and Spirits Off-Sale Business License, through the Department of Alcoholic Beverage Control (ABC) within Census Tract 81 in the City of Coalinga for the Grocery Outlet located at 25 W. Polk Street
11. Authorize Police Department to Purchase Additional Body Cameras and Tasers
12. Consideration of Bid Award for the Sanitary Sewer Collection System Closed Circuit Television (CCTV) Inspection Services
13. Approve Four (4) Task Orders with the City Engineer for the ATP 5 Polk West Safety Improvements Project
14. Authorize Purchase of Two (2) Shade Structures for the Small Package Outdoor Fitness Equipment at Centennial Park and Sandalwood Park Under the Parks Per Capital Grant
15. Approve Additional Needed Upgrades to Police Department Dispatch Radios/Repeater and Officer Handheld Radios
16. Declare Miscellaneous Office Furniture and Equipment as Surplus and Authorize Disposal

Item No. 5.16 originally appeared as Item No. 5.1 from the Special Meeting and was added to the Regular Meeting as Item No. 5.16 during Changes to the Agenda.

*Motion by Singleton, Second by Horn to **Approve** Consent Calendar Item Nos. 5.1 through 5.16 with the Change of the Gray Water Rebate Program to \$350 per Household. Motion **Approved** by 4/0 Roll-Call Majority Vote. (Ramirez – Absent)*

6. ORDINANCE PRESENTATION, DISCUSSION AND POTENTIAL ACTION ITEMS

None

7. ANNOUNCEMENTS

City Manager's Announcements:

Assistant City Manager reminded the community that the City holds the Monthly Chief's Breakfast at Café 101 every 1st Tuesday of the month at 9:00am.

Mrs. Trejo announced that the City would be opening up the 2022 Christmas Gift Program on Monday, October 10, 2022, for children who did not participate in the 2021 Christmas Gift Program. And, on Monday, October 24, 2022, parents may begin registering children who did participate in the 2021 Christmas Program. The link to apply will be posted to the City's Facebook page.

Mrs. Trejo announced that the Fire Department will be having their Open House on October 15, 2022 from 11am to 4pm and invited the community to attend.

Mrs. Trejo announced that the Coalinga-Huron Recreation and Parks District will be holding a Down Syndrome Awareness Walk at Keck Park on Friday, October 21, 2022 at 3:21pm.

Assistant City Manager Sean Brewer announced that staff has been in contact with Westland Water District and will be providing a letter of support for the Department of Water Resources Water Desalination Grant Program. They are looking at a pilot program for water desalination of groundwater to assist westside cities like Coalinga, Huron and Avenal.

Council Member's Announcements:

None.

Mayor's Announcements:

None.

8. FUTURE AGENDA ITEMS

Mayor Pro-Tem Singleton requested a Future Agenda Item to revisit restricting watering for businesses to once per week or none at all.

9. CLOSED SESSION

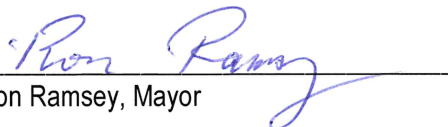
1. Conference with Real Property Negotiations (\$54956.8), Property: Water Rights Agency; Negotiators: City Manager, Assistant City Manager, City Attorney. Negotiating Parties: Patterson Irrigation District. Under Negotiation: Price and terms for water.

10. CLOSED SESSION REPORT

None.

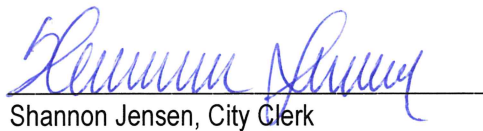
11. ADJOURNMENT 6:54 PM

APPROVED:



Ron Ramsey, Mayor

ATTEST:



Shannon Jensen, City Clerk

November 3, 2022

Date



David T. Moran
Manatt, Phelps & Phillips, LLP
Direct Dial: (310) 312-4365
dmoran@manatt.com

September 27, 2022

BY E-MAIL AND CERTIFIED MAIL

Sean Brewer
Assistant City Manager
155 West Durian,
Coalinga, CA 93210

Re: October 6, 2022 City of Coalinga Meeting
Resolution of Necessity re Pacific Gas & Electric Company

Dear Mr. Brewer:

We have received the document titled "City of Coalinga Notice of Intent to Adopt Resolution of Necessity to Acquire Street Lighting Facilities Owned By PG&E By Eminent Domain," dated September 16, 2022 ("the Notice"). The Notice states that the City of Coalinga ("City") will hold a meeting on October 6, 2022, "to discuss the proposed Resolution of Necessity." This letter constitutes Pacific Gas & Electric Company's ("PG&E") written response to the Notice in place of a personal appearance. PG&E understands that the City has agreed to accept written comments in lieu of personal appearances and will treat such written comments in the same manner as if they were stated in person at the hearing.

PG&E objects to the City adopting a resolution of necessity as stated in the Notice on, *inter alia*, the grounds stated below. PG&E requests that this letter be made part of the record of proceedings for the hearing referenced in the Notice.

There Is No Proper Description of the Project

Code Civ. Proc. §1240.030 specifically references three matters that must be established to exercise the power of eminent domain. Specifically, the three matters referred to in Code Civ. Proc. §1240.030 are:

- “(a) The public interest and necessity require the project.
- (b) The project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.
- (c) The property sought to be acquired is necessary for the project.”



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The three matters referred to in Code Civ. Proc. §1240.030 each relate to “the project.” Accordingly, “the project” must be adequately defined so the statutory analysis can properly be performed.

The Notice does not define or describe the project. It merely identifies the street lighting facilities purportedly “required” by the City, but does not specify for what public use the facilities are being acquired. This is not an intelligible description of a project. *See, e.g., City of Stockton v. Marina Towers LLC*, 171 Cal. App. 4th 93, 108 (2009) (“[i]t is inconceivable that the Legislature intended to permit a public entity to circumvent all [] defenses by defining the project in language that is either hopelessly vague or so broad that it encompasses virtually every conceivable public use”). Without an adequate project description, the determinations required by Code Civ. Proc. §1240.030(a), (b), and (c) cannot be made.

The City has Predetermined the Outcome of the Hearing on the Resolution of Necessity.

When a public agency predetermines the outcome of a hearing on a resolution of necessity, the agency is not engaged in good faith and judicious consideration of the pros and cons of the issue, and the adoption of the resolution is considered a sham. *Redevelopment Agency v. Norm's Slauson*, 173 Cal.App.3d 1121 (1985). There is substantial evidence that the City has predetermined the outcome of the resolution of necessity. For example, as discussed further below, the City did not make an adequate offer, as required by Government Code 7267.2, and instead predetermined that it would utilize the power of eminent domain to acquire PG&E's property. The City is unable now to act as an open-minded agency to consider the pros and cons of the acquisition in good faith.

The Public Interest and Necessity Do Not Require the Project

PG&E's property constitutes “electric, gas, or water public utility property,” as defined in Code Civ. Proc. §1235.193. Accordingly, if the City proceeds to adopt a resolution of necessity to acquire property of PG&E, its resolution of necessity will not conclusively establish the three requirements set forth in Code Civ. Proc. §§1240.030(a) – (c). At most, any adopted resolutions of necessity would create a rebuttable presumption that the three requirements are true, under Code Civ. Proc. §1245.250(b).

Here, the public interest and necessity do not require the project. The City has not identified any issues or deficiencies with respect to the manner by which PG&E operates the street lighting facilities. The City has not established that it can operate the facilities more efficiently or cost effectively than PG&E. The City also has not specified how it intends to utilize the facilities or to what public use the City intends to put the facilities.



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The Project Does Not Satisfy the Greatest Public Good/Least Private Injury Requirement

Likewise, the project does not satisfy the requirement of Code Civ. Proc. §1240.030(b) that “[t]he project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.” Here, this means that the City’s acquisition of the street light facilities must be weighed against PG&E’s continued operation of the facilities, and the former must be shown to be superior.

The acquisition of PG&E’s property will cause private injury to PG&E and to its employees and customers in the Coalinga service area. The City has not adequately explained what public good will result from its takeover of PG&E’s property. PG&E’s electricity rates are “just and reasonable” as a matter of law (Pub. Util. Code §451), and supplanting the role of the California Public Utilities Commission in the setting of electricity rates, or the establishment of a maintenance schedule, is not, as a matter of law, a “public benefit.”

The City’s proposed acquisition of PG&E’s street lighting facilities is not most compatible with the greatest public good and the least private injury.

The Property Sought to be Acquired is Not Necessary for the Project

The final requirement of necessity is contained in Code Civ. Proc. §1240.030(c) — that “[t]he property sought to be acquired is necessary for the project.” To make this determination, a clear statement defining “the project” is required. As explained above, no such statement exists here, so the requisite determination cannot be made.

The Project Does Not Serve a More Necessary Public Use

PG&E’s street lighting facilities constitute “property appropriated for a public use” under Code Civ. Proc. §1235.180. Further, PG&E’s property constitutes “electric, gas or water public utility property” under Code Civ. Proc. §1235.193. As such, the City must demonstrate that the use for which it seeks to take PG&E’s property is a *more necessary* public use than the use to which the property is appropriated. (Code Civ. Proc. §§1240.610, 1240.620.) The City’s status as a public entity creates only a rebuttable presumption of a more necessary public use. (Code Civ. Proc. §1240.650(c).)

Here, the City’s takeover of PG&E’s property does not constitute a more necessary public use. The Legislature’s use of the word “more” is a comparative term that requires the City’s ownership and operation of street lighting facilities to serve a greater public necessity as compared to PG&E’s continued ownership and operation.



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The City's ownership will not improve the quality of operation of the street lighting facilities or alter their use in any way. Accordingly, the City's planned taking is not for a more necessary public use.

The City Has Not and Cannot Establish that It Has Made an Adequate Offer Required by Gov't Code §7267.2

Before adopting a resolution of necessity, the City is required to make an offer that complies with Gov't Code §7267.2. The City has failed to do so here and it is therefore prohibited from proceeding to adopt the resolution of necessity. The offer submitted by the City to PG&E on August 16, 2022 is defective in numerous particulars including, but not limited to, relying on work by Cushman & Wakefield that does not constitute a valid appraisal of the fair market value of the Property. Cushman & Wakefield made no effort to determine the fair market value of the Property, nor to gather even the minimal information necessary to provide an informed evaluation. (See David T. Moran's September 15, 2022 Letter to Mario Zamora, attached hereto as **Exhibit A** and incorporated by reference herein). To the extent the City's resolution of necessity relies in any manner upon the appraisal prepared by Cushman & Wakefield, it demonstrates that the City has not performed reasonable due diligence or made a good faith effort to evaluate and prepare a reasonable and adequate offer prior to its vote.

Conclusion

For the reasons stated above, the City may not properly adopt a resolution of necessity to acquire any of PG&E's property. If it does so, PG&E intends to assert all applicable objections to the City's right to take in any subsequent eminent domain proceeding or as otherwise provided by law.

PG&E has the right (but not the obligation) to address only the matters referred to in Code Civ. Proc. §1240.030 at the hearing, and has neither the right nor the obligation to address any other matters at the hearing. Accordingly, PG&E expressly reserves all applicable objections to the right to take which it may assert in any subsequent eminent domain proceeding or as otherwise provided by law.

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PG&E objects to the City considering or relying upon any written materials or evidence at the hearing which have not previously been provided to PG&E, as doing so would fail to allow PG&E a meaningful opportunity to review and respond to all such materials or evidence at, or prior to, the hearing.

Sincerely,

David T. Moran
David T. Moran

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EXHIBIT A



David T. Moran
Manatt, Phelps & Phillips, LLP
Direct Dial: (310) 312-4365
dmoran@manatt.com

September 15, 2022

Client-Matter: 28781-072

Mario U. Zamora
Griswold, LaSalle, Cobb, Dowd & Gin, LLP
111 E. Seventh Street
Hanford, CA 93230

VIA E-MAIL (zamora@griswoldlasalle.com) AND U.S. MAIL

Dear Mr. Zamora:

On behalf of our client Pacific Gas & Electric Company ("PG&E"), we have received the City's August 16, 2022 letter in which the City conditionally offers PG&E \$93,850 to acquire "all streetlights located on any type of pole within the boundaries of the City." (the "Property"). We write on behalf of PG&E to respond substantively to the letter as well as to provide the City with additional information that we believe bears on the City's decision whether to pursue the acquisition.

As an initial matter, PG&E declines the offer, which significantly undervalues the Property. In your letter, you state that the City relied on an appraisal performed by Cushman & Wakefield to determine the fair market value of the Property. But the Cushman & Wakefield document is not an appraisal by any means. As a cursory review reveals, it made no effort to determine the fair market value of the Property, nor to gather even the minimal information necessary to provide an informed evaluation.

Instead, Cushman & Wakefield's appraisal rests upon an unsupported (and improper) determination that the fair market value should be set at 17 percent of the value of the Property, though the appraisal also lacks any explanation of how it determined the full value of the Property. The appraisal's justification for setting the appraised value at 17 percent of the full value is based upon an unsupported and acknowledged "extraordinary assumption," which simply assumes: "PG&E contributed an average of 17 percent to the value of the [Property] . . ." But Cushman & Wakefield's appraisal acknowledges that the 17 percent figure is nothing more than the average of zero and a 34% number described as the federal Income Tax Component of Contribution ("ITCC") obtained from an article that appeared in the Manteca Bulletin about Manteca's purchase of streetlights over 18 years ago that was provided to Cushman & Wakefield by the City's consultant, Tanko Streetlighting, Inc. The author of the article upon which the appraisal relies for its determinative "extraordinary assumption," Dennis Wyatt, is a newspaper columnist and the article about Manteca streetlights does not provide any evidence to support his suggestion—which forms the foundation of the appraisal's approach—that PG&E "rarely pays much of the 34 percent surcharge collected from developers in the form of taxes." Cushman &



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Wakefield apparently made no effort to verify that the article's statement (or any of its information) was accurate. Importantly, it was not. Nor does the appraisal explain why, even if the article was accurate, the ITCC figure might be relevant here or why it would be appropriate to use the average of zero and the purported ITCC percentage as a tool for preparing the appraisal. Moreover, there is nothing in the appraisal that explains how it established the full value of the Property before discounting it to 17%. As such, the City's appraisal is not reliable or even remotely connected to the Property and does not reflect a good faith attempt on behalf of the City to establish and offer PG&E the fair market value of the Property. Most importantly, there is no support for Cushman & Wakefield's position or approach under California Eminent Domain law.

Article I, Section 19 of the California Constitution requires a public agency to pay just compensation for any property it takes by eminent domain. The amount of compensation to be paid is "the fair market value of the property taken." Code Civ. Proc. § 1263.310. The fair market value of the Property is "the highest price on the date of valuation that would be agreed to by a seller being willing to sell but under no particular or urgent necessity for so doing, nor obligated to sell, and a buyer being ready, willing and able to buy but under no particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available." Code Civ. Proc. § 1263.320.

PG&E currently owns the Property that the City seeks to acquire. There is no reason to believe that PG&E would agree to sell the Property (including the base, pole, wiring above ground, arm and light fixture) in an arms-length transaction for 17 percent of its purported value. Apparently, Cushman & Wakefield believes PG&E is only entitled to 17 percent of its estimated value of the Property because PG&E allegedly only "contributed" an average of 17 percent to the value of the Property. Even if it were true that PG&E only contributed 17 percent to the value of the Property (it is not), there is no carve out to the Constitution's just compensation requirement simply because an appraiser believes (or assumes based upon incorrect information in an unsupported article about a different circumstance) that the property owner acquired the Property for a discount. The Constitution simply does not allow a public agency to avoid paying the full fair market value for the Property it desires to take by eminent domain.

In addition, the Cushman & Wakefield document fails to consider the significant revenue that could be generated in the future by retrofitting the Property with ancillary devices that add new services (such as cell phone towers, wifi hotspots, weather sensors, cameras etc.). PG&E expects the Property will be retrofitted in the future to host ancillary devices that will generate significant revenue. That future revenue stream must be considered in an appraisal to determine the Fair Market Value of the Property as defined in Code Civ. Proc. § 1263.310.

The deficiencies in the Cushman & Wakefield document are so serious that the document cannot reasonably serve as a basis for "the public entity's approved appraisal of the fair market

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value of the property,” which is a prerequisite to the adoption of a Resolution of Necessity. Govt. Code § 7267.2.

In light of the foregoing, we believe the City has failed to make a reasonable, good-faith effort both to appraise the Property and to provide PG&E with a reasonable offer for the Property. As such, the City’s offer significantly understates the value of the Property. Acquiring PG&E’s streetlights involuntarily through eminent domain will be far more expensive and complex than the City apparently anticipates. To the extent the City is open to discussing the issues addressed above in more detail or discussing any concerns it has about its existing streetlight service,¹ PG&E welcomes that course of action either through an in-person or virtual meeting.

Sincerely,

David T. Moran

David T. Moran

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¹ For example, in its complaint and Resolution of Necessity, the City mentioned five streetlights on Elm Avenue that were apparently in need of attention.