

FILE NO. 259-97-1

RESOLUTION NO. 693-97

1 [[APPROVING USE OF FIBER OPTIC CABLES PURSUANT TO GAS AND ELECTRIC
 2 FRANCHISES FOR UTILITY PURPOSES]
 3 APPROVING THE USE BY THE PACIFIC GAS AND ELECTRIC COMPANY FOR UTILITY
 4 PURPOSES THOSE FIBER OPTIC FACILITIES CONSTRUCTED, LAID, AND USED
 5 PURSUANT TO THE GAS AND ELECTRIC FRANCHISES (ORDINANCE NOS. 413 AND
 6 414 [SERIES 1939], RESPECTIVELY)

7 Be it ordained by the People of the City and County of San
 8 Francisco:

9 Section 1. WHEREAS, Pacific Gas & Electric Company ("PG&E") is
 10 the grantee of those certain franchise ordinances to introduce into,
 11 transmit, distribute and supply gas (No. 413 series 1939) and
 12 electricity (No. 414 series 1939) to the City and County of San
 13 Francisco (the "City") and its inhabitants (the "Franchises"); and

14 WHEREAS, Pursuant to such franchises PG&E is authorized to
 15 construct, lay and use in the public streets and rights-of-way of the
 16 City those facilities necessary or proper for the introduction into,
 17 transmission, distribution and supply of gas or electricity to the
 18 City and its inhabitants; and

19 WHEREAS, PG&E has, pursuant to such franchises, constructed,
 20 laid and used in the public streets and rights-of-way of the City
 21 certain communications circuits, including fiber optic facilities, to
 22 facilitate and enhance the introduction into, transmission,
 23 distribution and supply of gas and electricity to and within the
 24 City, which facilities are "used or useful" for said purpose; and

25

1 WHEREAS, It is in the public interest that PG&E construct, lay
2 and use such communications circuits, including fiber optic
3 facilities, so as to facilitate the provision of franchised utility
4 services and to enhance the safety and reliability of the gas and
5 electricity transmission, distribution and supply systems in the
6 City; and

7 WHEREAS, PG&E and the City contemporaneously herewith have
8 entered into certain other agreements, including the Master Agreement
9 on file with the Clerk of the Board of Supervisors; now, therefore be
10 it

11 RESOLVED, That the City shall and hereby does recognize and
12 acknowledge that communications circuits, including fiber optic
13 facilities used to facilitate telecommunications in connection with
14 the franchised activities, are "used or useful" for the introduction
15 into, transmission, distribution and supply of gas and electricity to
16 and within the City and that the construction, laying and use of such
17 communications circuits, including fiber optic facilities, in the
18 public streets and rights-of-way pursuant to the Franchises is
19 necessary or proper therefor; and be it

20 FURTHER RESOLVED, That the recognition and acknowledgement in
21 this resolution is limited insofar as such communications circuits,
22 including fiber optic facilities, are constructed, laid and used for
23 the reasonable and demonstrable purpose of facilitating
24 telecommunications in connection with the franchised activities and
25 are not constructed, laid or used solely for the purpose of

1 undertaking any lease, license, or other arrangement whereby third-
2 parties may use or share such facilities; and be it

3 FURTHER RESOLVED, That the City recognizes and acknowledges that
4 communications circuits, including fiber optic facilities, are and
5 may be "used and useful" in the introduction into, transmission,
6 distribution and supply of gas and electricity within the City; and
7 be it

8 FURTHER RESOLVED, That PG&E may, consistent with the Franchises,
9 lease or license unused capacity in properly constructed, laid and
10 used communications circuits, including fiber optic facilities, to
11 third parties, including any affiliate of PG&E engaged in the
12 business of providing telecommunications services (so long as such
13 third-parties, including any affiliate of PG&E engaged in the
14 provision of telecommunications services, have obtained a valid
15 franchise, encroachment or other legal authority to occupy the public
16 streets and rights-of-way of the City for such purpose as the
17 communications circuits, including fiber optic facilities, are to be
18 used), provided that any lease is approved by the California Public
19 Utilities Commission pursuant to any necessary proceeding under
20 section 851 of the California Public Utilities Code, and that for a
21 commercially reasonable period of time prior to the filing and
22 approval of an 851 petition, PG&E may license the use of such
23 facilities to the third-party that is the subject of the petition;
24 and be it

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1 FURTHER RESOLVED, That to the extent reasonably deemed necessary
2 by City to verify and enforce the terms and conditions of the
3 Franchises or this Resolution, PG&E shall cooperate with the City in
4 any audit or inquiry related thereto including but not limited to the
5 production of documentary, topographic, financial or other such
6 information as may be relevant to such audit or inquiry, provided
7 however that such information shall, where appropriate, be treated as
8 confidential by the City pursuant to Evidence Code section 1040, and
9 provided further that such information may not be considered or used
10 by the City for purposes other than the audit or inquiry as stated
11 above; and be it

12 FURTHER RESOLVED, that this resolution shall be null and void
13 unless the Master Agreement shall become and remain effective for its
14 term; and be it

15 FURTHER RESOLVED, That this resolution shall be null and void in
16 the event that the Fiber Optic Cable Agreement by and between PG&E
17 and the City (Appendix J to the Master Agreement of 1997 by and
18 between PG&E and City) is rejected by the California Public Utilities
19 Commission, or is approved in such a manner or with such conditions
20 as are not mutually acceptable to the City and to PG&E; and, be it

21 FURTHER RESOLVED, That no agreements or contracts shall be
22 executed or implemented under the provisions of this Resolution unless
23 and until PG&E agrees that it shall be bound by all applicable laws,
24 ordinances and regulations, including the provisions of Chapters 12B
25 and 12C of the City's Administrative Code.

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APPROVED AS TO FORM:

LOUISE H. RENNE
City Attorney

By Thomas M. Berliner
Thomas M. Berliner
Utilities General Counsel

Clerk, SAN FRANCISCO BOARD OF SUPERVISORS

N/A

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Ordinance No. _____