

DEPARTMENT: County Counsel BY: Jeffrey G. Green PHONE: 966-3222

RECOMMENDED ACTION AND JUSTIFICATION: (Policy Item: Yes___ No_X)

Authorize Chair to sign an Order of the Board to reject Claim No. C98-28 in the amount of \$2,633.23. The claimant is requesting reimbursement for repair to electric facilities that were damaged while excavation was being performed by an individual allegedly at the direction of County staff. According to Sarah Williams and John Davis of the Planning and Building Department, the staff named in the claim, they did not direct the excavation in the area of the damaged power line as indicated in their memo, a copy of which is included in this package. Based on the information contained in the memo, Counsel does not believe the County has any liability exposure in this matter.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

The Board usually follows Counsel's recommendation in matters of this nature.

LIST ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

- > Reject claim as recommended.
- > Take no action; claim will automatically be denied if no action is taken.

COSTS: (X) Not Applicable

A. Budgeted current FY \$ _____

B. Total anticipated costs \$ _____

C. Required additional funding \$ _____

D. Internal transfers \$ _____

SOURCE: () 4/5ths Vote Required

A. Unanticipated revenues \$ _____

B. Reserve for contingencies \$ _____

C. Source description: _____

Balance in Reserve for Contingencies, if approved: \$ _____

SPECIAL INSTRUCTIONS:
List the attachments and number the pages consecutively:

Claim No. C98-28.
Notice of Rejection.

CLERK'S USE ONLY:

Res. No.: 99-57 Ord. No. _____

Vote - Ayes: 5 Noes: _____

Absent: _____ Abstained: _____

Approved () Denied ()

Minute Order Attached () No Action Necessary ()

The foregoing instrument is a correct copy of the original on file in this office.

Date: _____

ATTEST: MARGIE WILLIAMS, Clerk of the Board
County of Mariposa, State of California

By: _____
Deputy

ADMINISTRATIVE OFFICER'S RECOMMENDATION:
This item on agenda as:

Recommended

Not Recommended

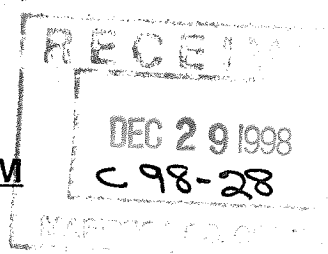
For Policy Determination

Submitted with Comment

Returned for Further Action

Comment: _____

A.O. Initials: *JG*



COUNTY OF MARIPOSA CLAIM FORM

CLAIM OF Pacific Gas & Electric Co.)
(Claimant))
v.)
COUNTY OF MARIPOSA)
_____)

**CLAIM FOR PERSONAL INJURY
AND/OR PROPERTY DAMAGE
(Government Code § 910)**

TO THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY:

YOU ARE HEREBY NOTIFIED that: (PLEASE TYPE OR PRINT)

Claimant: Pacific Gas & Electric Co.

Whose address is: P.O. Box 8329

City and State: Stockton, CA Zip: 95208

claims damages from the **COUNTY OF MARIPOSA** in the amount, computed as of the date of presentation of this claim, of \$ 2,633.23.

This claim is based on: (CHECK APPROPRIATE BOX OR BOXES)

- Property Damage Other (LIST) _____
- Personal Injury _____
- Contract _____

which occurred on October 8, 1998, in the vicinity of:
(MONTH/DAY)

Choke Cherry & Yosemite Parkway, Yosemite West
(PLACE WHERE INCIDENT OCCURRED)

Describe generally the facts and circumstances that give rise to the claim:
(PLEASE USE BACK OF THIS PAGE IF MORE SPACE IS NEEDED.)

County employee's directed an employee of Richard Long to excavate with a backhoe. Mr. Long advised the County employee's that there was an electrical line at the location. However, County employee's insisted he excavate the location. While under the direction of the County and during the excavation our 21KV line was struck and damaged.

The name(s) of the public employee(s) causing claimant's injuries or damages under the above-described circumstances is/are:
Sarah Williams, John Davies.

The injuries sustained by claimant, as far as known, as of the date of presentation of this claim consist of: (DESCRIBE GENERALLY CLAIMANT'S INJURIES OR DAMAGES)

No injuries.

The amount claimed, as of the date of presentation of this claim is computed as follows:

Damages incurred to date:

Expenses for medical and hospital care \$ _____

Loss of earnings \$ _____

Specific damages (ITEMIZE) _____

_____ \$ _____

_____ \$ _____

Other damages (ITEMIZE)

Property Damage \$ 2,633.23

_____ \$ _____

TOTAL DAMAGES INCURRED TO DATE: \$ 2,633.23

Estimated future damages as far as known from this incident:

Total estimated prospective damages: \$ _____

TOTAL AMOUNT CLAIMED AS OF DATE

OF PRESENTATION OF THIS CLAIM: \$ 2,633.23

All notices or other communications with regard to this claim should be sent

to claimant at: P.O. Box 8329 Stockton, CA 95208

(ADDRESS TO WHICH NOTICES ARE TO BE SENT)

Dated: 12/22/98

Signed: 

(CLAIMANT/AGENT FOR CLAIMANT)

Government Code § 911.2. Time of or presentation of claims

A claim relating to a cause of action for death or for injury to person or to personal property or growing crops shall be presented as provided in Article 2 (commencing with § 915) of this chapter not later than six months after the accrual of the cause of action. A claim relating to any other cause of action shall be presented as provided in Article 2 (commencing with § 915) of this chapter not later than one year after the accrual of the cause of action.

Invoice Number	Invoice Date	Amount Due	Amount Enclosed
UTQ 6035277-2	12/17/98	\$2,633.23	

COUNTY OF MARIPOSA
P.O. BOX 189
MARIPOSA CA 95338

PG&E
Box 997300
Sacramento, CA
95899-7300

Please return this portion with your payment. Thank You.

When Making Inquiries or Address Changes,
Please Contact:

Customer Number
147257

Non-Energy Collection Unit
P. O. Box 8329
Stockton, CA 95208-8329
(800) 945-5251

Invoice Number
UTQ 6035277-2

Description	Quantity/Unit of Measure	Amount
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Reference Number: 9816473
CHOKE CHERRY 100' S/YOS PRKWY, YOSEMITE

LABOR TO REPAIR ELECTRIC FACILITIES - EXPENSE	1 EA	2,076.02
MATERIAL FOR REPAIR OF ELEC FAC - EXP	1 EA	146.56
OTHER COSTS FOR REPAIR OF ELEC FAC -EXP	1 EA	410.65

Line Item Subtotal 2,633.23

Amount Now Due \$	2,633.23
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NOTE: This invoice reflects current charges only.
Any past due amounts will be billed separately.

PLANNING AND BUILDING DEPARTMENT

EDWARD J. JOHNSON, AICP
Director

SARAH WILLIAMS, ASLA
Planning Manager

JOHN DAVIS
Chief Building Inspector



5100 Bullion Street
P.O. Box 2039
Mariposa, CA 95338-2039

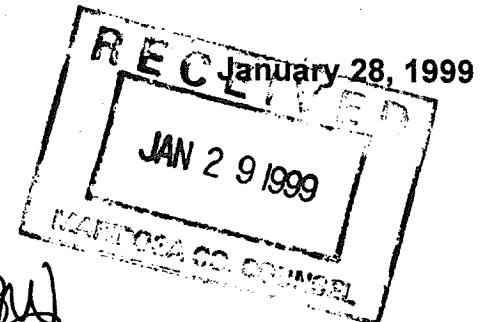
(209) 966-5151

FAX (209) 742-5024

e-Mail: planning@co.mariposa.ca.us

Web Site: www.co.mariposa.ca.us

MEMORANDUM



TO: Jeffrey G. Green, County Counsel

FROM: Sarah Williams, Planning Manager
John Davis, Chief Building Official
Ed Johnson, Director

SUBJECT: Request for Report on PG&E Claim No. C98-28

Thank you for the opportunity to review the claim submitted by PG&E. Pursuant to your request, our report on the matter follows:

This issue involves our enforcement activities regarding a grading and encroachment permit violation on APN 006-100-013, Lot 233, 7401 Choke Cherry Lane. The parcel is undeveloped, and backs up to a 31-acre parcel outside of the subdivision, which is also owned by Richard Long.

As you may recall, the violation involved an illegal encroachment onto Choke Cherry Lane, and grading which had occurred over Choke Cherry Creek. As you'll note from the photographs, there is new culvert material and grading which had occurred on this site without a permit from the County. The applicant apparently intended to use the road to access his 31-acre parcel for future commercial development (Long had actually applied for a permit to construct a two-lane road to access the 31-acre site, which we had denied.)

Initially, our letters to Richard Long told him that he had to remove the entire access road, culvert and encroachment in order to remedy the violation (based upon the moratorium, and the fact that no conditional use permit had been issued for commercial development of the 31-acre parcel). Richard Long didn't protest this requirement formally until October, 1998, when he submitted a map and signed note from PG&E which clarified that there had been buried power lines under the access road on this parcel since the 1960s. Based upon this letter, we revised our requirements for

Memo to Jeff Green, 1/28/99

remedying the violation, to require that he just remove any fill material he had recently placed on the site to widen the road (without a permit), and to remove the culvert extension which had been placed to support the widened road (without a permit). Re-vegetation of exposed soils and a permit from Fish & Game were also required, as was repair of any damaged curbing.

As a result of this revised requirement, staff was faced with the task of trying to determine exactly what was new fill material on the site (which needed to be removed) and what was existing prior to the grading work.

In a telephone conversation with Steve Cislaw (Richard Long's son-in-law, who was representing the property owner at the time), I suggested scheduling an appointment with the Chief Building Inspector, who would go to the site and look at conditions on the ground with the property owner. I did suggest having a backhoe on-site, so that they might scarify the top layer of soil and see if there was an obvious soil color differentiation or obvious previous grass/vegetation layer which would show where the original ground level was (prior to the recent grading). My intent was that they look at the area which had obviously been graded...the area at the edge of the road way. I did not direct them to dig up the power line.

Following my conversation, John Davis met with Steve Cislaw and Richard Williams (Richard Long's contractor) on the site. According to John, when they arrived on the site, there was no backhoe there. John told them he was supposed to look at a hole, and Cislaw and Williams decided to find the backhoe (it was at another location in the community). Before Cislaw and Williams left, they talked with John about the PG&E buried line. PG&E had painted the alignment of the buried line on the ground (apparently at Cislaw and Williams' request), so that its location was known (this is standard procedure in construction, when construction activities are going to potentially impact existing buried lines). As John recalls, Richard Williams talked with John about digging up the line. He said that they would dig a few feet away from the line, and then use a shovel to find the line. That way, they could show the County that the PG&E line was buried at least 36 inches deep (the required cover for a PG&E line), and hence establish that no grading had occurred there. John recalls telling them that if they could find the line, that'd be fine with him, but that they had better stay back away from the line.

At that point, John left to do his other inspections in the community while Cislaw and Williams went to find a backhoe. When John returned to the site, Williams had already hit the power line and broken it.

In conclusion, we do not believe that County staff is responsible for the power line repair based upon the following:

- County staff did not direct Williams and Cislaw to dig up the line. Staff directed that digging occur in the area where fill had obviously been placed.

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- Digging up the line to establish the depth of cover was Williams and Cislaw's proposal, not County staff's direction.
- It is standard in the construction industry to have to work around buried utility lines. That is why utility companies will come to a site upon request to locate their buried lines for construction workers. Then, it is the worker's responsibility to exercise caution when working near the lines. Usually, this is accomplished by hand work, and not by use of heavy equipment.

Should you need additional information regarding this report, please contact us.

Memo to Jeff Green, 1/28/99

Photographs of Site, showing areas of obvious grading activity.



1 JEFFREY G. GREEN
2 County Counsel
3 P. O. Box 189
4 5100 Bullion Street
5 Mariposa, CA 95338

6 BEFORE THE BOARD OF SUPERVISORS

7 OF

8 MARIPOSA COUNTY, STATE OF CALIFORNIA

9 In the Matter of:)
10 CLAIM FOR DAMAGES PURSUANT)
11 TO GOVERNMENT CODE § 911.6)
_____)

CLAIM NO. C98-28

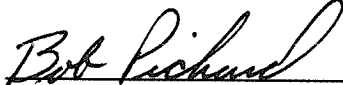
12 PACIFIC, GAS & ELECTRIC, P.O. Box 8329, Stockton, CA 95208, having filed with
13 this Board on December 29 1998, a claim for damages in the amount of \$2,633.23.

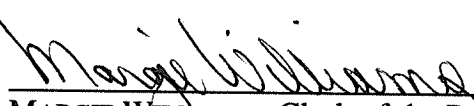
14 NOW, THEREFORE, IT IS ORDERED by the Board of Supervisors that the claim is
15 hereby rejected.

16 The foregoing order was passed by the following vote of the Board:

- 17 AYES: Reilly, Balmain, Stewart, Parker, Pickard
18 NOES: None
19 ABSENT: None
20 ABSTAINED: None

21 Dated this 23rd day of February, 1999.

22 
23 BOB PICKARD, Chair
24 Board of Supervisors

25 ATTEST:
26 
27 MARGIE WILLIAMS, Clerk of the Board
28

1 TO: Pacific, Gas & Electric Co.
2 P.O. Box 8329
3 Stockton, CA 95208

4 RE: CLAIM FOR DAMAGES (Claim No. C98-28) AMOUNT OF CLAIM: \$2,633.23
5 NOTICE OF REJECTION

6 NOTICE IS HEREBY GIVEN that the claim, which you presented to the Board of
7 Supervisors of Mariposa County on December 29, 1998 was rejected by action of the Board on
8 February 23, 1999.

9 **WARNING**

10 "Subject to certain exceptions, you have only six (6) months from the date this notice was
11 personally delivered or deposited in the mail to file a court action on this claim." (See
12 Government Code § 945.6)

13 "NOTE: This six-month filing period applies only to State Court actions. If your action is
14 based on federal law and/or you intend to file it in Federal Court, a shorter or longer period within
15 which to file the action may apply."

16 "You may seek the advice of an attorney of your choice in connection with this matter. If
17 you desire to consult an attorney, you should do so immediately."

18 JEFFREY G. GREEN
19 Mariposa County Counsel

20 **PROOF OF SERVICE BY MAIL (1013a, 2015.5 C.C.P.)**


21 STATE OF CALIFORNIA, COUNTY OF MARIPOSA:

22 I am a citizen of the United States and a resident of the County aforesaid. I am over the
23 age of eighteen years and not a party to the within entitled action; my business address is 5100
24 Bullion Street (P. O. Box 189), Mariposa, CA 95338. On March 23, 1999, I served
25 the within Notice of Rejection of Claim No. C98-28 on the claimant in said action by placing a
26 true copy in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing
27 said envelope in the U.S. Mail, or by placing a copy into an inter-office delivery receptacle located
28 in Counsel's office:

Pacific, Gas & Electric
P.O. Box 8329
Stockton, CA 95208

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on March 23, 1999 at Mariposa, California.


Sandra V. Adams