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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Revise and Clarify Commission Regulations Relating to the Safety of Electric Utility and Communications Infrastructure Provider Facilities.

Rulemaking 08-11-005
(Filed November 6, 2008)

**ASSIGNED COMMISSIONER'S RULING AND SCOPING MEMO
FOR PHASE 2 OF THIS PROCEEDING**

This ruling and scoping memo (Scoping Memo) sets forth the scope, schedule, and the need for hearings in Phase 2 of this proceeding pursuant to Rule 7.3 of the Commission's Rules of Practice and Procedure (Rules). This Scoping Memo also addresses certain other matters as set forth below.

1. Background

The purpose of this rulemaking proceeding is to consider measures to reduce fire hazards associated with: (1) electric transmission and distribution facilities, and (2) communication infrastructure provider (CIP) facilities in close proximity to overhead electric power lines. Most of the Commission's rules regarding the construction, operation, and maintenance of utility facilities are in General Orders (GOs) 95, 128, and 165. A major goal of these GOs is to minimize the public safety risks, including fire hazards, associated with utility facilities.

The scoping memo dated January 6, 2009, divided this proceeding into two phases. In Phase 1, the Commission adopted measures to reduce fire hazards that could be implemented in time for the 2009 autumn fire season in Southern

California. Phase 1 concluded with the issuance of Decision (D.) 09-08-029 on August 20, 2009.

The purpose of Phase 2 is to address measures that require more time to consider and implement. Prehearing conference statements regarding the scope, schedule, and other matters pertaining to Phase 2 were filed on October 6, 2009.¹ A prehearing conference (PHC) for Phase 2 was held on October 9, 2009. Today's Scoping Memo for Phase 2 adopts many of the recommendations that were made by the parties in their PHC statements and at the PHC.

2. Scope of Phase 2

The scope of Phase 2 is limited to the following issues identified in Order Instituting Rulemaking (OIR) 08-11-005, the Phase 1 scoping memo, D.09-08-029, and today's Phase 2 Scoping Memo.

¹ The following parties filed written PHC statements: (i) a coalition of 14 medium to small local exchange carriers consisting of Surewest Telephone, Calaveras Telephone Company, Cal-Ore Telephone Co., Ducor Telephone Company, Foresthill Telephone Co., Happy Valley Telephone Company, Hornitos Telephone Company, Kerman Telephone Co., Pinnacles Telephone Co., The Ponderosa Telephone Co., Sierra Telephone Company, Inc., The Siskiyou Telephone Company, Volcano Telephone Company, and Winterhaven Telephone Company; (ii) the California Farm Bureau; (iii) the California Independent System Operator Corporation; (iv) the California Municipal Utilities Association; (v) the CIP Coalition consisting of AT&T California, New Cingular Wireless PCS, LLC, the California Association of Competitive Telecommunications Carriers, the California Cable and Television Association, Comcast Phone of California, LLC, CTIA-The Wireless Association, and the Verizon Companies; the (vi) Commission's Consumer Protection and Safety Division (CPSD); (vii) CoxCom, Inc. and Cox California Telecom LLC; (viii) the Commission's Division of Ratepayer Advocates; (ix) Los Angeles Department of Water and Power (LADWP); (x) the Mussey Grade Road Alliance; (xi) PacifiCorp; (xii) Pacific Gas and Electric Company; (xiii) San Diego Gas & Electric Company (SDG&E); (xiv) Sierra Pacific Power Company; (xv) Southern California Edison Company; and (xvi) The Utility Reform Network. The General Orders 95 - 128 Rules Committee submitted a letter to the service list regarding its potential role in Phase 2.

1. **Immediate reporting of fire-related incidents and full cooperation with Commission staff.** This proceeding may clarify the need for (i) immediate reporting of fire-related incidents to CPSD; (ii) preservation of documents and evidence; (iii) prompt, complete, and accurate responses to CPSD inquiries; and (iv) a utility's obligation not to impede the discovery of information from the utility's agents. This proceeding will not consider the extent that entities may deny access to material and witnesses they deem protected by attorney-client privilege and/or the attorney work product doctrine. (OIR, p. 11; Phase 1 scoping memo, p. 3.)
2. **Whether the inspection and maintenance requirements of GO 165 should apply to electric transmission and CIP facilities, including CIP facilities located on poles owned by publicly owned utilities.** (OIR, p. 12; Phase 1 scoping memo, p. 3; and D.09-08-029, pp. 10 - 11.)
3. **Overloaded utility poles.** To reduce the dangers of overloaded utility poles, this proceeding may modify existing rules and adopt new rules. (OIR, pp. 12 - 13; Phase 1 scoping memo, p. 3.)
4. **Prompt reporting and resolution of hazards/violations that one pole occupant observes in another pole occupant's facilities.²** This proceeding may consider (i) requiring pole occupants to report potential safety hazards and violations they observe in another pole occupant's facilities; (ii) ways to improve safety-related communications between pole owners and pole occupants (e.g., marking CIP facilities with contact information); and (ii) the process used by CPSD to determine if the hazard/violation reported by one pole occupant to another has been resolved. (OIR, p. 13; Phase 1 scoping memo, p. 3.) D.09-08-029 added Rule 18B to GO 95, which requires pole owners to know the identity of each entity using its pole. Phase 2 may clarify if Rule 18B requires one joint pole owner to know the identity of every entity that another joint pole owner leases its space to, and if so, how often joint pole owners must update this information.

² OIR 08-11-005 used the term "pole tenants" to identify entities with facilities attached to utility poles. Today's Scoping Memo uses the term "pole occupants."

5. **Vegetation management in high risk fire areas.** This proceeding may consider (i) increased inspection and trimming of vegetation near utility facilities; (ii) expedited trimming of vegetation that has been identified as needing to be trimmed; and (iii) increased tree-to-line clearances. (OIR, pp. 13 - 14; Phase 1 scoping memo, p. 3.)
6. **Mitigating hazards posed by high wind speeds.** This proceeding may consider measures to mitigate the risk of wildfire ignitions from high winds, including (i) infrastructure modifications such as reinforcing overhead lines and undergrounding lines, and (ii) revised inspection requirements in high-wind areas. (OIR, p. 14; Phase 1 scoping memo, p. 3.)
7. **Electric Lines Belonging to Non-Electric Utilities.** The scope of this proceeding encompasses electric lines that belong to non-electric utilities. (Phase 1 scoping memo, p. 4.)
8. **Jurisdiction re: Publicly Owned Electric Utilities (POUs).** This proceeding will not litigate the Commission's determination in the OIR and D.09-08-029 that it may adopt safety-related regulations for POU electric transmission and distribution facilities pursuant to Pub. Util. Code §§ 8002, 8037, and 8056. (OIR, p. 6; Phase 1 scoping memo, p. 4; and D.09-08-029, pp. 8 - 9 and Conclusion of Law 3.)³
9. **Electric Transmission.** This proceeding may consider safety-related regulations for electric transmission facilities, provided such regulations do not conflict with (i) reliability standards issued by an Electric Reliability Organization that is certified by the Federal Energy Regulatory Commission (FERC), and (ii) performance standards promulgated by the California Independent System Operator for transmission facilities under its control pursuant to Pub. Util. Code § 348 or FERC-approved Transmission Control Agreements. (Phase 1 scoping memo, pp. 4 - 5.)

³ The extent this matter should be included in the scope of Phase 2 will be reconsidered, as necessary, following the outcome of the pending application for rehearing of D.09-08-029 that was filed by LADWP on September 17, 2009.

10. **Concurrent Commission Investigations.** This proceeding will not determine the cause of particular wildfires or resolve issues that will be addressed in pending investigations of wildfires. (OIR, p. 1.) The pending investigations include Investigation (I.) 08-11-006 and I.08-11-007. This proceeding may, at some point, consider any findings that are ultimately reached in the pending investigations. (Phase 1 scoping memo, pp. 5 - 6.)
11. **Whether GO 95 should include the requirements in Ordering Paragraph (OP) 1 of D.09-08-029.** OP 1 requires CIPs to (i) inspect their facilities in areas of Southern California that are marked as Extreme and Very High Fire Threat Zones on the Fire Threat Maps prepared by the California Department of Forestry and Fires, and (ii) to correct safety hazards and violations that are discovered (hereafter, “the CIP inspection rule”). In Phase 2, the Commission may incorporate all or part of OP 1 into GO 95. (D.09-08-029, p. 12.) In Phase 2, parties may propose refinements to the CIP inspection rule, but the need to inspect CIP facilities and to correct any hazards or violations that are discovered will not be reconsidered. (D.09-08-029, Findings of Fact 3 and 4, and Conclusion of Law 4.)
12. **Interpreting Fire Threat Maps.** OP 1 of D.09-08-029 provides guidance for interpreting the Fire Threat Maps. This guidance may be modified in Phase 2. (D.09-08-029, pp. 12 – 15, and Conclusion of Law 4.)
13. **“Meritorious issues” raised by CPSD in Phase 1 regarding the application of GO 95 to CIPs and CPSD’s “suggested modifications” to GO 95.** (D.09-08-029, p. 13.)
14. **Whether additional revisions to GO 95, Rule 12, are needed.** (D.09-08-029, p. 15, and Finding of Fact 5.) In D.09-08-029, the Commission held that GO 95 applies to publicly owned utilities. (D.09-08-029, p. 16.) This holding will not be revisited in Phase 2.
15. **Expansion of the CIP inspection rule.** The CIP inspection rule adopted by D.09-08-029 is limited to areas in Southern California marked as Extreme and Very High Fire Threat Zones on the Fire Threat Maps. Phase 2 may consider if the Fire Threat Maps should be used to establish the geographic scope of the CIP inspection rule in Central and Northern California. (D.09-08-029, p. 23.) Related issues that may be considered in Phase 2 include:

- (i) Whether the fire hazards in Central and Northern California are different from Southern California, and if so, whether different maps or other tools should be used to determine the geographic scope of any CIP inspection rule that may be adopted for Central and Northern California.
 - (ii) Whether CIPs in Central and Northern California with facilities located exclusively in suburban and urban areas that are outside of Extreme and Very High Fire Threat Zones should be exempt from the CIP inspection rule.
 - (iii) Phase 2 will not consider if small local exchange carriers (LECs) should be exempt from all rules adopted in Phase 2 because of their small base of customers and revenues. The determination of which rules should apply to small LECs will be based on the fire hazard posed by LEC facilities.
 - (iv). How the Fire Threat Maps used by utilities should be updated and the implications for utilities that relied on previous Maps when Cal Fire creates new Maps.
 - (v) Whether a better, utility-specific map can be developed.
16. **The following matters regarding vegetation management:** (i) cost data for increased clearances at time of trim in Extreme and Very High Fire Threat Zones in Southern California; (ii) PG&E's proposal for greater clearances in high fire threat areas; (iii) options for dealing with landowners who resist vegetation management; and (iv) final revisions to GO 95, Rule 35, Appendix E, based on (i) – (iii). (D.09-08-029, pp. 29 – 30.) Phase 2 may also consider whether to increase the geographic applicability of the vegetation clearance requirements adopted in D.09-08-029.
17. **Proposals to expand the vegetation clearances in GO 95, Interim Rule 37,** and to what extent actively managed orchards should be exempt from expanded requirements. (D.09-08-029, pp. 31 – 32.)
18. **Area-specific rules for sharing information between utilities regarding pole overloading discovered during inspections.** (D.09-08-029, p. 37.) This issue includes sharing information in coordination with the Northern California Joint Pole Committee and the Southern California Joint Pole Committee.

19. **Exemption from pole loading calculations.** Utilities must perform pole loading calculations for new attachments, except when the load increase is less than 5% of the current load or 10% over a 12-month span. This exemption may be refined in Phase 2. (D.09-08-029, p. 38 - 39.)
20. **Loading Standards.** The scope of Phase 2 includes (i) what is the proper interpretation of the pole loading standards in GO 95, including (a) the safety factors in Rule 44 and (b) the design, construction, and performance requirements in the first paragraph of Rule 48; (ii) what constitutes overloading; (iii) identifying the party responsible for determining how strong the pole is at the time an attachment is requested; and (iv) how long to retain information regarding facilities added to a pole and related pole-loading calculations or exemptions; and (v) whether it would be useful to add a third loading condition to Rule 43, to be entitled "Loading Conditions for Fire Prone Areas." These conditions would encompass those encountered in fire prone areas such as dry vegetation, high temperatures, strong winds, etc. The actual conditions will be specified, discussed, and vetted in the workshops.
21. **Timeframe for exchanging data for load calculations.** Any utility that plans to add facilities that materially increase the load on a structure must perform load calculations to ensure that it is safe to add the facilities. Other utilities must provide data needed for the load calculations within 15 business days. Phase 2 may consider if 15 days is reasonable and/or whether contractual agreements or other arrangements are sufficient. To help determine if the 15-day rule is reasonable, utilities are required to track their response time and present this data in Phase 2. (D.09-08-029, p. 38 - 39.)
22. **Costs for increased patrols.** D.09-08-029 revised GO 165 to increase the frequency of patrol inspections in Extreme and Very High Fire Threat Zones in Southern California. The costs for the increased patrols will be addressed in Phase 2. (D.09-08-029, p. 41.)
23. **CPSD's proposed revisions to GO 165 that were not resolved in Phase 1.** (D.09-08-029, p. 41.)
24. **Regulatory procedures.** The scope of Phase 2 includes regulatory procedures for recording, tracking, and recovery of costs incurred

by utilities to comply with regulations adopted in this proceeding. (D.09-08-029, p. 43.) Although D.09-08-029 expects cost data to be provided in Phase 2 (D.09-08-029, p. 43.), Phase 2 will not address the reasonableness of the actual costs incurred by any utility.

25. **Matters with a Direct Nexus to this Proceeding.** The scope of Phase 2 includes matters with a direct nexus to the above issues, including the cost and benefits of proposed rules; sharing of costs between electric utilities and CIPs for proposed rules affecting jointly used facilities; recovery of costs from customers; and environmental considerations. (Phase 1 Scoping Memo, p. 4.)

In addition to the above matters, Phase 2 may consider adding fire risk to the list of reasons to permit undergrounding under Tariff Rule 20. Phase 2 may also consider implementation issues associated with any adopted rules, including the amount of time that utilities may need to implement any new rules.

Finally, the scope of Phase 2 excludes matters that are focused on reducing utilities' legal liability. The overarching objective of Phase 2 is to consider measures to reduce the fire hazards associated with utility facilities. Considering ways to reduce liability would divert attention from the main focus of Phase 2.⁴

2.1. SDG&E's Collaborative Process

Decision 09-09-030 ordered SDG&E to initiate a collaborative process to develop a fire prevention program applicable to SDG&E's overhead electric transmission and distribution systems. (D.09-09-030, Ordering Paragraph 2.) Phase 2 of R.08-11-005 will not address issues that are the subject of the collaborative process that is being undertaken pursuant to D.09-09-030.

⁴ The topic of reducing utilities' legal liability for fires may be considered in other proceedings, as appropriate.

2.2. Environmental Review

It is conceivable that proposed rule changes (PRCs) submitted by the parties in Phase 2 could require an environmental review under the California Environmental Quality Act (CEQA) before such rules are adopted by the Commission.⁵ The need for an environmental review will be assessed, as necessary, after PRCs are submitted in Phase 2. Any PRC that requires an environmental review may be deferred to a new phase of this proceeding or dropped from this proceeding entirely.

2.3. Priority Consideration of Proposals Submitted by CPSD

OIR 08-11-005 limits the scope of this proceeding to proposals submitted by CPSD. (OIR 08-11-005, pp. 4, 5, and 9.) However, other parties may have proposals for mitigating fire hazards that deserve consideration.

Consistent with OIR 08-11-005, proposals submitted by CPSD will receive priority consideration in Phase 2, including the Phase 2 workshops described below. Proposals from other parties will be considered in the Phase 2 workshops to the extent there is time to do so after CPSD's proposals have been dealt with.

3. Workshop Process for Resolving Phase 2 Issues

D.09-08-029 contemplates that Phase 2 issues will be considered and resolved primarily through all-party workshops. There is a broad consensus in the written PHC statements that the workshops will take many months.

3.1. Workshop Facilitator

To help the workshop process, D.09-08-029 provides for the appointment of a Commission staff member to serve as a neutral facilitator:

⁵ The Commission determined in D.09-08-029 that CEQA does not apply to the rules adopted in Phase 1. (D.09-08-029, Conclusion of Law 2, p. 49.)

We will appoint a neutral facilitator for phase 2 workshops. The neutral facilitator will be one of the Commission's Alternative Dispute Resolution ALJs, the assigned ALJ, or another appropriate staff member. (D.09-08-029, p. 45.)

* * * * *

It is reasonable to appoint a neutral facilitator for phase 2 workshops. The neutral facilitator will be one of the Commission's Alternative Dispute Resolution ALJs, the assigned ALJ, or another appropriate staff member. (D.09-08-029, Conclusion of Law 19, p. 52.)

On October 26, 2009, the active parties sent an email to the assigned Administrative Law Judge (ALJ) in which they recommended that either of the following two individuals from the Commission's list of Alternative Dispute Resolution Neutrals be appointed to facilitate the Phase 2 workshops: ALJ Jean Vieth or ALJ Angie Minkin. In accordance with D.09-08-029 and the recommendation of the active parties, ALJ Jean Vieth and ALJ Angie Minkin are appointed as the neutral co-facilitators for the Phase 2 all-party workshops.

3.2. Scope of Issues to Be Considered at the Phase 2 Workshops

The scope of issues to be considered at the Phase 2 workshops consists of (1) proposed rule changes (PRCs) offered by CPSD, and (2) PRCs offered by other workshop participants. All PRCs must be limited to matters within the scope of Phase 2 as described previously in today's Scoping Memo.

All PRCs offered by CPSD that are within the scope of Phase 2 shall be considered at the Phase 2 workshops. The PRCs offered by other parties may be considered at the workshops to the extent there is time do so after CPSD's PRCs have been dealt with.

To identify the specific issues to be considered at the Phase 2 workshops, parties may file and serve written PRCs in accordance with the schedule set forth

later in this Scoping Memo. Each PRC shall be accompanied by a detailed description and justification that includes:

- The specific electric utilities, CIPs, and others affected by the PRC.
- Why the PRC is within the scope of Phase 2.
- New and/or revised text for the affected General Order(s), if applicable.
- The specific fire hazard(s) addressed by the PRC and/or other reason(s) for the PRC.
- How the PRC reduces or otherwise addresses the identified fire hazard(s) and/or achieves other intended purposes.
- The anticipated costs and benefits of the PRC.
- Whether and how the costs will be recovered from customers.
- Whether and how costs will be shared among electric utilities, CIPs, and others.
- Why it is in the public interest to adopt the PRC.
- If the PRC applies to electric transmission, why the PRC does not duplicate or conflict with other federal or state regulations.
- Whether adoption of the PRC is exempt from CEQA and/or the National Environmental Policy Act (NEPA) and, if so, why. If not, what steps need to occur under CEQA and/or NEPA before the PRC can be adopted.

The specific PRCs that will be considered during the Phase 2 workshops will be determined at the pre-workshop conference that is described below.

3.3. Pre-Workshop Conference and Workshop Schedule

A pre-workshop conference will be held to (1) agree on workshop process, (2) prioritize the issues to be considered during the workshops, (3) schedule the workshops, and (4) delegate issues to the GO 95-128 Rules Committee. Each of these matters is addressed below. The facilitators will prepare a draft agenda for

the pre-workshop conference and will provide it beforehand, by email service to the service list for this rulemaking.

First, the participants at the pre-workshop conference should agree on the process for conducting the Phase 2 workshops. There is general agreement among the parties that the Phase 2 workshops should use a process like the one described in D.05-01-030, Appendix 1, pp. 16-21, a copy of which is attached to today's Scoping Memo. That process, known as the Telecommunications and Electric Line Rulemaking Plan (TELRP), was developed for use in reviewing and revising GOs 95 and 128. Today's Scoping Memo does not require use of the TELRP, but workshop participants are urged to consider its use. Workshop participants are free to modify the TELRP to fit the needs of Phase 2.

Second, the participants at the pre-workshop conference should select the PRCs that will be considered during the Phase 2 workshops based on the following order of priority: (i) PRCs offered by CPSD; (ii) other PRCs that mitigate fire risks; and (iii) other PRCs that reduce costs, enhance efficiency, and/or improve the meaning and clarity of those provisions in the General Orders that pertain to fire safety. All PRCs considered in the Phase 2 workshops must be within the scope of this proceeding. PRCs that are vague or excessively broad should be excluded from the Phase 2 workshops.

Third, the pre-workshop conference should establish a schedule for the Phase 2 workshops, including the dates and locations for workshops. All workshops should be held at locations that are accessible to persons with disabilities. The facilitators and workshop participants should discuss whether specific workshops might accommodate a phone bridge, internet access, or other means to enable workshop participants to participate remotely.

The workshop participants are free to adjust the workshop schedule to suit their needs. All workshops should be noticed in the Commission's Daily Calendar by the facilitators.

Finally, the pre-workshop conference should decide what issues, if any, should be delegated to the Rules Committee. This matter is addressed in more detail later in today's Scoping Memo. A workshop should be scheduled to consider any recommendations voted out of the Rules Committee.

3.4. Workshop Report and Briefs

The final product of the Phase 2 workshops shall be a written report that presents proposals for mitigating fire hazards. The workshop participants should decide who will (1) draft the workshop report, and (2) file and serve the report. The report shall include the following:

- The final iteration of PRCs that are (i) proposed CPSD, (ii) proposed by other parties, and (iii) alternatives to (i) and (ii).
- For each PRC and alternative PRC, a list of the parties that support the rule and the parties that oppose the rule. Parties may explain their support/opposition to specific PRCs in their briefs.
- Alternate PRCs should be based on the proponent's PRC, with alternatives consisting of edits, modifications, clarifications, deletions, and other revisions to the proponent's PRC.
- Each PRC and alternate PRC shall be accompanied by a detailed description and justification that includes the following:
 - The specific electric utilities, CIPs, and others affected by the PRC.
 - The current text of the affected General Order(s), if any.
 - New and/or revised text for the affected General Order(s), if applicable, showing (i) proposed revisions in strikeout/underline form, and (ii) the final proposed rule.
 - The specific fire hazard(s) addressed by the PRC and/or other objectives accomplished by the PRC.

- How the PRC reduces or otherwise addresses the fire hazard(s) and/or achieves other objectives.
 - The anticipated costs of the PRC, including, if available, costs incurred by investor owned utilities, POUs, CIPs, and customers.
 - The anticipated benefits of the PRC.
 - Whether and how the costs will be recovered from customers.
 - Whether and how costs will be shared among electric utilities, CIPs, and others.
 - Why it is in the public interest to adopt the PRC.
 - If the PRC applies to electric transmission, why the rule does not conflict with other federal or state regulations.
 - Whether the PRC is exempt from CEQA and/or NEPA and, if so, why. Any assertion that CEQA and NEPA do not apply must cite the relevant statutes and/or regulations where the exemption is listed. Conversely, any assertion that CEQA and/or NEPA do apply must (1) cite the relevant statutes and/or regulations that show this, and (2) list the steps that need to occur under CEQA and/or NEPA before the PRC can be adopted.
- A detailed summary of any ancillary issues with a direct nexus to the PRCs and alternative PRCs. The workshop report shall list which parties support or oppose a particular ancillary issue. Parties may explain their support/opposition in their briefs.
 - Any other material the workshop participants deem appropriate.

The workshop participants shall: (1) file and serve a copy of the workshop report, and (2) provide to the assigned ALJ both a hardcopy of the workshop report and an electronic copy of the workshop report in Microsoft Word format.

Parties will have an opportunity to file briefs regarding the PRCs and alternate PRCs in the workshop report. The workshop report and briefs will together provide an opportunity to present all sides of disputed issues to the

Commission for resolution. The briefs should follow a common outline that is agreed to at the workshops.

The workshop report and briefs should together provide a comprehensive summary of each party's position on Phase 2 issues. These documents may be used as a primary source of material for drafting the proposed decision. Parties should assume that if a particular fact, argument, recommendation, etc., does not appear in (or is not cited in) the workshop report or briefs, it may not be considered in the proposed decision.

3.5. Role of the GOs 95 – 128 Rules Committee

D.09-08-029 authorizes the General Orders 95 - 128 Rules Committee ("Rules Committee") to provide recommendations in Phase 2 regarding the requirement adopted in D.09-08-029 for utilities to perform pole-loading calculations, with certain exceptions, and to exchange data needed for such calculations.⁶ (D.09-08-029, p. 38 - 39.)

Workshop participants and the Rules Committee may jointly agree to delegate issues to the Rules Committee for the Committee's consideration and possible development into recommendations for workshop participants to consider. No issues will be delegated to the Rules Committee unless all parties and the Rules Committee agree.

All parties participating in the Phase 2 workshops may send observers to Rules Committee meetings. The Rules Committee should follow its existing

⁶ The purpose of the Rules Committee is to review, revise, and submit proposed changes for GOs 95 and 128 to the Commission. The members of the Rules Committee represent California's public and privately owned electric and telecommunication companies, related associations, and labor unions.

procedures to formulate recommendations for consideration at the Phase 2 workshops.

Any recommendations voted out by the Rules Committee shall be considered in the Phase 2 workshops, and the Rules Committee may revise its recommendations in response to feedback at the workshops. The Rules Committee's recommendations will be purely advisory. The workshop participants may accept, modify, or reject the recommendations in any manner they deem appropriate. Workshop participants may also decide which recommendations, if any, should be included in the workshop report described previously.

There are at least two tasks that could be delegated to the Rules Committee. First, the Committee could consider technical rule changes, such as the technical aspects of exchanging pole-loading calculations.⁷ Second, the Committee could review the final PRCs and alternate PRCs to ensure they conform to GO 95 and other Commission regulations. If this second task is selected, the Rules Committee should be given sufficient time to recommend final conforming changes for inclusion in the workshop report.

4. Need for Hearings

In OIR 08-11-005, the Commission preliminarily determined pursuant to Rule 7.1(d) that hearings are not needed in this proceeding. The Phase 1 scoping memo confirmed that hearings are not needed.

It does not appear at this time that evidentiary hearings will be needed in Phase 2. However, if factual issues arise during Phase 2 that require sworn

⁷ D.09-08-029, pp. 38 - 39.

testimony and cross examination, parties may file motions for evidentiary hearings. The due date for filing such motions is set forth in the schedule below.

If hearings become necessary, the changed determination on the need for hearings will be placed on the Commission's consent agenda for approval pursuant to Rule 7.5. The principal hearing officer for the evidentiary hearings, if any, will be the assigned ALJ.

5. Public Participation

There will be an opportunity for public participation in Phase 2 during the public agency workshops that are described below. The public may also submit written comments at anytime via email and regular mail. People who need help in submitting written comments may contact the Commission's Public Advisor via the methods set forth below.

6. Public Agency Workshops

Phase 2 may consider measures to reduce fire hazards that affect lands, facilities, and activities that are regulated in some fashion by local, state, and federal agencies, including the California Department of Transportation, California State Lands Commission, California State Park Service, U.S. Forest Service, U.S. Fish and Game, U.S. Bureau of Land Management, California Independent System Operator, the Western Electricity Coordinating Council, and the North American Electric Reliability Corporation.

Phase 2 will include workshops where public agencies can share their views and expertise regarding matters within the scope of Phase 2. The public agency workshops will be separate from the Phase 2 workshops described

previously in today's Scoping Memo.⁸ The dates, times, locations, subjects, and format of the public agency workshops will be set forth in a ruling issued by the Assigned Commissioner and/or the assigned ALJ.⁹ The parties to this proceeding are encouraged to suggest particular individuals and organizations that should be invited to participate in the public agency workshops.

The public agency workshops will be transcribed and made part of the record of this proceeding. The Commission's Energy Division shall take the lead in organizing the public agency workshops.

There will be an opportunity at the public agency workshops for input from the public, including elected representatives, customer groups, environmental organizations, and the general public. This may include allowing the public to ask questions of the workshop panelists and/or traditional public participation hearings. Utilities may be required to provide notice of the public agency workshops to their customers by mail (bill imprints, bill inserts, or separate mailers) and newspaper advertisements.

7. Schedule for Phase 2

The schedule for Phase 2 is as follows:

Phase 2 Milestones	Date
Parties file and serve Proposed Rule Changes (PRCs). Factual assertions should be verified in accordance with Rule 1.11.	Dec. 2, 2009
Reply comments filed and served re: PRCs. Factual assertions should be verified in accordance with Rule 1.11.	Dec. 11, 2009
Pre-Workshop Conference.	Dec. 17, 2009

⁸ Public agencies are welcome to attend the Phase 2 workshops.

⁹ Although the schedule in today's Scoping Memo shows two public agency workshops, the number of public agency workshops will be decided at a later time.

Phase 2 Milestones	Date
Multiple Phase 2 workshops. Schedule of workshops determined by workshop participants.	Dec. 2009 – May 2010
Rules Committee considers issues delegated to it, if any, and submits its final recommendations to the Phase 2 workshops.	Dec. 2009 – May 2010
Deadline for workshop participants to file & serve consensus recommendations for persons and organizations to invite to participate in the public agency workshops.	March 15, 2010
Public Agency Workshop #1.	TBD
Public Agency Workshop #2.	TBD
Deadline for filing motions for evidentiary hearings.	April 20, 2010
Evidentiary Hearings (if needed).	TBD
Workshop Report Filed and Served.	June 11, 2010
Opening Briefs on Workshop Report. (Note 1)	July 2, 2010
Reply Briefs on Workshop Report. (Note 1)	July 16, 2010
Proposed Decision.	Oct. 2010
Proposed Decision Considered at Commission Meeting.	Nov. 19, 2010
Note 1: The briefs and reply briefs should follow a common outline agreed to by the parties at the Phase 2 workshops.	

The Assigned Commissioner and the assigned ALJ may revise the schedule, as necessary.

8. Extension of the Proceeding

In quasi-legislative proceedings such as this one, the Commission is required by Pub. Util. Code § 1701.5(a) to resolve all issues raised in the scoping memo within 18 months of the date the scoping memo is issued. However, the Commission is also authorized by § 1701.5(b) to specify in the scoping memo a resolution date later than 18 months, provided the scoping memo explains the necessity of a later date and the Assigned Commissioner approves the later date.

The Phase 1 scoping memo issued on January 6, 2009, stated this proceeding would be resolved no later than 18 months from the date of the scoping memo. Since then, the Commission has completed Phase 1 and is now starting Phase 2. The issues in Phase 2 will require more time to consider than the issues addressed in Phase 1. (Phase 1 Scoping Memo, p. 3.)

All the parties who submitted written PHC statements agree that because of the complexity of the issues to be addressed in Phase 2 and the need for a lengthy workshop process, there is not enough time remaining in the 18-month schedule set by the Phase 1 scoping memo to complete Phase 2. To provide the necessary time, today's Scoping Memo hereby extends the proceeding schedule pursuant to § 1701.5(b). All issues within the scope of Phase 2 shall be resolved within 18 months from the date of today's Scoping Memo. This extension of time takes into account the number and complexity of the issues in Phase 2, as well as the need to coordinate with numerous federal, state, and local agencies.

9. Proceeding Category

OIR 08-11-005 preliminarily determined pursuant to Rule 7.1(d) that the category of this proceeding is quasi-legislative as that term is defined by Rule 1.3(d). The Phase 1 Scoping Memo confirmed that the category for this proceeding is quasi-legislative. There was no appeal of the Phase 1 Scoping Memo's determination of category pursuant to Rule 7.6.

10. Notices of Intent to Claim Intervenor Compensation

Publ. Util. Code § 1804(a)(1) requires notices of intent (NOIs) to seek intervenor compensation to be filed no later than 30 days after the prehearing conference (PHC). The PHC for Phase 2 was held on October 9, 2009. Therefore, the deadline for submitting NOIs is November 8, 2009.

All parties who intend to seek intervenor compensation must (1) coordinate with other parties to avoid duplication, and (2) maintain daily records for all hours claimed and a description for each time entry. The description must provide more detail than “review correspondence” or “attend meeting.” Intervenors must also track and report time by issue.

11. Ex Parte Communications

The category for this proceeding is quasi-legislative. Therefore, in accordance with Rule 8.2(a), ex parte communications are allowed without restrictions or reporting requirements.

12. Service List for This Proceeding

The official service list is available on the Commission’s website (http://docs.cpuc.ca.gov/published/service_lists/R0811005_77981.htm). Parties should confirm their information on the service list is correct and notify the Commission’s Process Office (process_office@cpuc.ca.gov) of any errors.

13. Ways to Monitor This Proceeding

Persons and entities that wish to monitor this proceeding may contact the Commission’s Process Office to be placed on the service list under the category of “Information Only.¹⁰” Requests to be placed on the service list can be sent by email (Process_Office@cpuc.ca.gov) or by postal mail (Process Office, California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, California, 94102). All requests must include the following:

- Docket Number: Rulemaking 08-11-005
- Name and entity represented, if any

¹⁰ Information Only status is for those who wish to receive all documents that are filed in the proceeding, but who will not be participating actively.

- Address
- Telephone number
- Email address
- Request for Information Only status

This proceeding can also be monitored by subscribing to electronic copies of documents in this proceeding that are published on the Commission's website. There is no need to be on the service list in order to use the subscriptions service. Instructions for enrolling in the subscription service are available on the Commission's website at <http://subscribecpuc.cpuc.ca.gov/>.

14. Service of Documents and Filing Documents

When serving documents, parties should use the most up-to-date service list on the Commission's website. Service of documents shall be done in accordance with Rules 1.9 and 1.10.

Electronic service is standard under Rule 1.10. All parties shall serve documents using electronic mail, whenever possible, transmitted no later than 4:00 p.m. on the date the documents are scheduled to be served. If no email address has been provided, service should be made by United States mail or similar means. Parties are reminded that the format of documents served by email must conform to the requirements set forth in Rule 1.10(c). Parties shall provide paper copies of served documents upon request.

Rules 1.9 and 1.10 govern service of documents but not the filing of documents at the Commission. Parties can find information about electronic filing of documents at www.cpuc.ca.gov/PUC/efiling. All documents filed at the Commission's Docket Office must include the caption for this proceeding. Parties are reminded that written testimony, if any, shall be served on the service list but not filed at the Commission's Docket Office.

Parties serving documents shall provide the assigned ALJ with both a hard copy and an electronic copy of the documents. The electronic copy shall be in Microsoft Word and/or Excel formats to the extent practical.

15. Help with Commission Procedures

Any person who is unfamiliar with the Commission's procedures, including electronic filing procedures, may contact the Commission's Public Advisor at (866) 849-8390, (415) 703-2074, or (866) 836-7825 (TTY-toll free), or send an e-mail to public.advisor@cpuc.ca.gov.

Therefore, **IT IS RULED** that:

1. The scope and schedule for Phase 2 of this proceeding are set forth in the body of this ruling. The schedule may be revised, as necessary, by the assigned Commissioner or the assigned Administrative Law Judge (ALJ).
2. ALJs Jean Vieth and Angie Minkin shall serve as neutral co-facilitators for the Phase 2 all-party workshops.
3. Evidentiary hearings are not needed at this time. If evidentiary hearings become necessary, the principal hearing officer will be the assigned ALJ.
4. The Commission's Energy Division shall arrange the public agency workshops that are described in the body of this ruling.
5. The schedule for this proceeding is extended pursuant to Pub. Util. Code § 1701.5(b). This proceeding will conclude within 18 months from the date of today's Scoping Memo.
6. Ex parte communications are allowed in this proceeding without restrictions or reporting requirements pursuant to Rule 8.2(a).
7. Parties serving documents shall comply with Rules 1.9 and 1.10 and provide the assigned ALJ with both: (i) a hard copy, and (ii) an electronic copy in Microsoft Word and/or Excel format, to the extent practicable.

8. Any intervenor that has not yet filed a notice of intent to seek intervenor compensation must do so by November 8, 2009.

Dated November 5, 2009, at San Francisco, California.

/s/ TIMOTHY ALAN SIMON
Timothy Alan Simon
Commissioner

Appendix A

Decision 05-01-020, Appendix A, pp. 16-21

Attached are the recommended protocols for conducting workshops that are set forth in D.05-01-030, Appendix A, pp. 16-21. These protocols are advisory, and are provided here to help the workshop participants in the instant proceeding to agree on the appropriate process for conducting the Phase 2 workshops.

Recommended Protocols for TELRP Workshops

1. PURPOSE OF WORKSHOP

The purpose of the workshop in **[INSERT RULEMAKING DOCKET NUMBER]** is to collaboratively explore the proposed rule changes (PRCs) relating to General Orders 95 and 128 previously filed in this proceeding, and to the extent possible to agree on specific PRCs to be recommended for adoption by the Commission.

2. WORKSHOP REPORT

The final product of the workshop will be a written workshop report that documents the agreed-upon PRCs and -- if necessary -- alternative PRCs. The workshop report will be filed with the -Commission or otherwise made a part of the official record in this proceeding as directed by the assigned Administrative Law Judge (ALJ).

- 2.1 Each agreed-upon PRC and alternative PRC will include specific text proposed to be added, deleted or modified, and a statement of supporting rationale.

3. WORKSHOP PARTICIPANTS

Workshop "Participant" is defined as any representative of a party to this proceeding who participates in discussing one or more of the PRCs during one or more scheduled workshop meetings. A party may bring as many representatives to participate in the workshop as it deems necessary to address the issues. A primary contact/spokesperson for each party shall be designated for purposes of notices and document distribution.

4. WORKSHOP AGENDA

An agenda for each workshop meeting will be developed by the Participants starting at the beginning of the first meeting, and will be updated through the workshop meetings as agreed by the Participants. The agenda will specify the date, time, location and host /contact person for the meeting and will list the PRCs to be addressed at the meeting.

- 4.1 To the extent possible, PRCs requiring the presence of Participants with special qualifications or expertise are to be scheduled for discussion on the same or consecutive days.

- 4.2 The Participants may agree to defer a PRC if, during discussion, it becomes apparent that participants with special qualifications or expertise, not then present, are needed to adequately address the PRC.
- 4.3 A party represented by a single Participant may request that a PRC of particular interest to them not be addressed on a specific date if they cannot be present on that date. Such request should be made as soon as the party's scheduling constraint becomes known to them, and all reasonable efforts shall be made to accommodate such requests.

5. DISCUSSION PRINCIPLES

- 5.1 The discussion of PRCs will be governed by the following general principles:
 - 5.1.1 Describe the current situation, the reason for the PRC, and identify all material issues associated with the PRC.
 - 5.1.2 Identify and understand the Participants' respective points of view, interests and desired outcomes relative to the PRC.
 - 5.1.3 Obtain (to the extent feasible) data that Participants believe is necessary to understand the issues and make an informed decision on the PRC.
 - 5.1.4 Address all interests insofar as possible.
- 5.2 During meetings, opportunities will be allowed for a brief ongoing evaluation of progress and process ("process checks").

6. DECISION MAKING PROCESS

- 6.1 Agreement should be sought utilizing the "levels of agreement" process:
 - 6.1.1 Agreement is defined as "all parties present when levels of agreement are called for being at level 4 or above on the levels of agreement scale."
 - 6.1.2 Levels of agreement scale:
 - Level 1 - I am **enthusiastic** about this PRC. I am satisfied that this PRC is an expression of the wisdom of the group.

Level 2 - I find the PRC to be a **good choice**. It is the best of the options that we have available.

Level 3 - I can **live with** the PRC; I am not especially enthusiastic about it.

Level 4 - I will not block consensus on the PRC.

Level 5 - I do not agree with the PRC and I feel the need to **block** it from being agreed upon by the group.

Level 6 - I feel that we have no clear sense of unity in the group. We need to **talk more** before agreement can be reached.

6.1.3 Each party shall state a single level of agreement, regardless of how many Participants it has brought to the workshop meeting.

6.1.4 A “straw vote” to ascertain the level of support for, or opposition to, a PRC may be called for at any time.

6.1.5 Tentative working agreements may be reached on parts of complex PRCs, subject to final agreement on the entire PRC.

6.1.6 If no party gives the PRC a “5” or a “6”, the PRC is agreed upon as submitted. However, if it is blocked or held for further discussion, the PRC is either:

6.1.6.1 Submitted to a smaller working group or Committee to refine outside of the workshop process to be brought back for later consideration;

6.1.6.2 Assigned to a Multiple Alternatives Process (MAP) in which one or more parties, individually or in small working groups, return to a later workshop meeting with alternative PRCs; or

6.1.6.3 In the case of a level “6,” the Participants continue to work as a full group to address the parties’ concerns and reach agreement.

6.1.7 If a PRC is assigned to a MAP but does lead to agreement, the proponent(s) of each MAP alternative may submit their alternative(s), with statement(s) of rationale, for inclusion in the Workshop Report (see section 11, below).

- 6.2 Parties are responsible to have a Participant at each meeting who has authority to decide on the topics to be addressed in that meeting, and who will seek management input prior to each meeting in order to expedite the work of the workshop.
- 6.3 Any party that, without prior notice to the other parties, is absent from a meeting at which a PRC is agreed upon, is deemed to have abstained from the determination of levels of agreement, and has waived the opportunity to challenge the PRC or propose an alternative PRC. This protocol may be waived by agreement of the parties at a subsequent meeting in the event the party's absence was due to circumstances beyond its control.
- 6.4 Agreed-upon PRCs will be placed on a consent agenda, to be addressed at the start of the subsequent meeting, in order to allow parties time to seek final approval of the PRCs by their respective managements, when such approval has been stated by parties to be necessary. Any party may remove any PRC from the consent calendar for further workshop consideration, based on their management's direction.
- 6.5 Each Participant is responsible to keep his or her organization/constituency group(s) informed of the progress of the workshops and to timely seek advice, comments and authorization as required.
- 6.6 Participation by Proxy
- Parties represented by a single Participant may designate another Participant to serve as their proxy for purposes of expressing levels of agreement, if they are unable to attend a workshop meeting. In order to utilize a proxy, the party must satisfy the following requirements:
- 6.6.1 The party shall notify the other parties by email or facsimile at least 1 business day prior to the meeting at which they expect to be absent;
- 6.6.2 The party shall provide clear directions to the proxy regarding any limitations on the proxy's authority, in the event the PRC is modified in the course of discussion; and
- 6.6.3 The proxy must inform the facilitator and Participants of their role at the beginning of the meeting.

7. COMMUNICATIONS AND PUBLIC NOTICE

- 7.1 Any or all Participants may meet or conference call among themselves between workshop meetings as desired or necessary to negotiate an advancement of their work.
- 7.2 Audio and video recording devices are not to be used in meetings for any purpose. Participants are encouraged to explore ideas freely and the only agreements are those explicitly reached.
- 7.3 A Participant shall be designated to keep the assigned ALJ informed of the dates, times, location and host contacts for upcoming workshop meetings, in time for that information to be posted on the Commission's website and to be periodically issued in rulings as the ALJ deems appropriate.

8. INFORMATION MANAGEMENT

- 8.1 A meeting summary will be prepared following each working group meeting stating:
 - 8.1.1 All Participants at the meeting, including their e-mail addresses and telephone and facsimile numbers;
 - 8.1.2 PRCs discussed;
 - 8.1.3 Agreements, if any, with supporting rationale; and
 - 8.1.4 MAP proposals, if any.
- 8.2 The meeting summary will be prepared by the facilitator (see Section 9, below). Meeting summaries will be available the following week and will be emailed or faxed to all Participants. The meeting summary will be reviewed for corrections by the Participants, preferably by email or teleconference between workshop meetings.
- 8.3 The Facilitator will maintain a file containing copies of all written information distributed by the Participants.
 - 8.3.1 Workshop Participants, and the parties they represent, reserve all rights to preserve the confidentiality of information in their possession, and participation in the workshop shall not be implied or understood to constitute a waiver of such rights.

9. PARTICIPANT ROLES

9.1 The Facilitator

- 9.1.1 Works on behalf of the Participants under the direction of the participants;
- 9.1.2 Makes participation easier and encourages participation by all who wish to participate;
- 9.1.3 Reminds participants of the protocols as necessary;
- 9.1.4 Suggests strategies to move the discussion along, as appropriate;
- 9.1.5 Uses a computer as appropriate; and
- 9.1.6 Carries out such other supportive activities as agreed upon by the Participants or as directed by the ALJ.

9.2 The Secretary or Technographer assists the Facilitator and Participants by taking notes on a computer, flip charts or other media that serve as “workshop memory.”

9.3 The Participants:

- 9.3.1 Listen carefully, ask pertinent questions and educate themselves and others regarding the issues and interests that must be addressed, in a collaborative rather than confrontational manner.
- 9.3.2 Fully and thoughtfully explore the issues before forming conclusions.
- 9.3.3 Search for creative solutions that best serve the issues and interests that must be addressed.

10. WORKSHOP ACCESS AND ACCOMMODATIONS

Workshops shall be scheduled in locations that comply with the Americans with Disabilities Act.

(END OF APPENDIX A)

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability of the filed document is current as of today's date.

Dated November 5, 2009, at San Francisco, California.

/s/ GLADYS M. DINGLASAN
Gladys M. Dinglasan