

**APPENDIX B**

**MULTIPLE ALTERNATIVES PROCESS (MAP) ALTERNATIVES**

**PHASE 2 JOINT PARTY WORKSHOP REPORT  
FOR WORKSHOPS HELD JANUARY –AUGUST 2010**

**APPENDIX B**

**MULTIPLE ALTERNATIVES PROCESS (MAP) ALTERNATIVES**

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**APPENDIX B**  
**MULTIPLE ALTERNATIVES PROCESS (MAP)**  
**ALTERNATIVES**

**I. INTRODUCTION**

Any participant that submitted a Proposed Rule Change (PRC) that did not achieve consensus in the Phase 2 workshops had the option of submitting the PRC for consideration by the Commission via the Multiple Alternative Process (MAP). In addition, workshop participants could choose to submit an alternative to the non-consensus PRC for a Roll Call Vote, and any MAP alternatives not obtaining consensus could also be submitted via the same process. The non-consensus PRCs as well as any alternative proposals are contained here in Appendix B as “MAPs”.

Those MAPs are presented below, along with rationales and justifications. In addition, voting participants were provided the opportunity to state their positions on each non-consensus PRC and alternative in this report. Finally, the last Roll Call Vote on each MAP PRC is included in this Appendix.

This workshop report does not reflect all arguments presented by parties at the workshops. Parties had a variety of understandings regarding the ability to submit positions on MAP items in this report, which the workshop protocols did not explicitly address. Unlike consensus items, which required an initial vote and a confirmation vote, MAP items were voted on only once. In a number of instances, parties were not present for the vote on a MAP item but may have a position on it. The comments of these parties are not included in this report, however these parties may nevertheless address the particular issue through individual comments

in their briefs. Indeed, all parties will have an opportunity to provide any additional arguments they wish to make in briefs following issuance of this workshop report.

**MAP NO. 1 – GENERAL ORDER 95, RULE 11**

**II. MAP NO. 1 – GENERAL ORDER 95, RULE 11**

**A. Rule 11 Proposal by CPSD**

**1. Proposed Rule Change**

**a. Current Rule**

**11 Purpose of Rules**

The purpose of these rules is to formulate, for the State of California, uniform requirements for overhead electrical line construction, the application of which will insure adequate service and secure safety to persons engaged in the construction, maintenance, operation or use of overhead electrical lines and to the public in general.

**b. Strikeout/Underline**

The purpose of these rules is to formulate, for the State of California, ~~uniform~~ requirements for overhead ~~electrical~~-line design, construction, and maintenance, the application of which will ensure adequate service and secure safety to persons engaged in the construction, maintenance, operation or use of overhead ~~electrical~~-lines and to the public in general.

**c. Proposed Final Rule**

The purpose of these rules is to formulate, for the State of California, requirements for overhead electrical line design, construction, and maintenance, the application of which will ensure adequate service and secure safety to persons engaged in the construction, maintenance, operation or use of overhead lines and to the public in general.

**2. Rationale**

CPSD investigates incidents that involve Supply and/or Communication lines. Currently, certain companies have responded that General Order 95, Rule 11, only requires the lines to be constructed in accordance with the General Order and not maintained to the requirements of the General Order, citing this rule. However, many of the rules in General Order 95 also concern the design and maintenance of these lines. The proposed changes remove the misunderstanding that General Order 95 encompasses only construction standards and reflects the true scope and intent of General Order 95. The proposed changes clarify that, in addition to being constructed in accordance with General Order 95, lines must be designed and maintained in accordance with the requirements of General Order 95.

Furthermore, this rule was originally adopted in 1922, as Rule 11 of General Order 64 (Predecessor to General Order 95), and at that time both supply lines and communication lines conducted electricity. Thus, historically, the term “electrical lines” as used in this rule includes “communication lines.” Removing the term “electrical” should eliminate any confusion over what types of lines the General Order applies to, and ensures that all companies understand that

all overhead lines must be designed, constructed and maintained in accordance with the General Order.

### 3. Justification

- The specific electric utilities, CIPs, and others affected by the PRC.

The proposal would affect all electric supply utilities and communication companies that come within jurisdiction of this Commission.

- The current text of the affected General Order(s), if any.

See above.

- 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.

See above.

- The specific fire hazard(s) addressed by the PRC and/or other objectives accomplished by the PRC.

Currently, the purpose statement of GO 95 refers only to the “construction” of overhead electrical lines. This PRC clarifies that not only do lines need to be constructed in accordance with General Order 95, but, have to be designed and maintained in accordance with General Order 95. Furthermore, the PRC removes the word electrical to remove any misinterpretation that this rule does not apply to Communication Infrastructure Providers.

- How the PRC reduces or otherwise addresses the fire hazard(s) and/or achieves other objectives.

See above. The clarification will facilitate compliance with the safety rules set forth in General Order 95.

- The anticipated costs of the PRC, including, if available, costs incurred by investor owned utilities, POU's, CIPs, and customers.

There should be no additional cost associated with this PRC. This PRC only clarifies the existing requirements. However, if a company was not maintaining facilities in accordance with General Order 95, then there could be cost associated with bringing the facilities into compliance with the General Order.

- The anticipated benefits of the PRC.

The benefit of the PRC is that the actual scope and intent of General Order 95 will be correctly identified. The clarification will facilitate proper compliance with the safety rules set forth in General Order 95.



- Whether and how the costs will be recovered from customers.

Companies that are rate-of-return regulated are seeking an order in this proceeding regarding how the costs for complying with new rules adopted in this proceeding are to be recovered from customers. Companies that are not rate-of-return regulated may recover costs in any legally permissible manner, including through line-item charges or increased fees for services.

- Whether and how costs will be shared among electric utilities, CIPs, and others.

Not applicable.

- Why it is in the public interest to adopt the PRC.

See above.

- If the PRC applies to electric transmission, why the rule does not conflict with other federal or state regulations.

This PRC clarifies an existing rule in General Order 95, which already applies to electric transmission facilities and does not conflict with an other federal or state regulation.

- 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.

This proposal is exempt from environmental review under Section 15378 of the California Environmental Quality Act (CEQA) Guidelines because it is not a “project” under CEQA and will not have any potentially significant impact on the environment. NEPA does not apply because adoption of the proposed rule change does not constitute action by a federal agency within the meaning of 42 USC § 4332.

#### **4. Parties’ Comments**

##### **a. Parties in Support**

###### DRA

DRA supports CPSD’s proposed rule change for the reasons stated in the rationale and justification provided above.

## PG&E

CPSD wants to modify this rule to clarify that GO 95 pertains not only to the construction of electrical lines, but also covers the design and maintenance of electric lines. It also proposes to delete the word “electrical” to clarify the fact that the rule and the General Order applies to both electrical and communications lines. This is a change from the traditional focus of GO 95 on simple construction standards. The Preface to General Order 95 states:

It is recognized that the rules are not complete construction specifications, but they do embody minimum requirements which are capable of definite interpretation sufficient to form the bases of *working specifications for overhead electric line construction*.  
(Emphasis added.)

Although PG&E has supported the CPSD proposed rule change, it has concerns. The added language could substantially broaden the focus of GO 95 – and thereby weaken the General Order by the future insertion of inappropriate design criteria or maintenance requirements. Technology changes quickly; traditionally the utility professionals have been left with the flexibility to tailor their policies, practices, guidelines and procedures to the business needs of the individual utility. The more details and process that are inserted into GO 95, the less flexibility a utility has to tailor its activities to fit its business needs.

Although PG&E would prefer to keep GO 95 narrowly focused on construction standards only, PG&E does support making it clear (through the deletions of the term “electrical” in the rule) that the rule and GO 95 apply also to communications lines. It is willing to accept that positive clarification in return for not strenuously opposing the other proposed language changes.

## SCE

SCE supports CPSD’s proposed change to GO 95, Rule 11 for the reasons stated by PG&E, and joins in PG&E’s statement in support. SCE shares the concerns expressed by PG&E regarding expanding GO 95 beyond its intended focus on overhead line construction.

## SDG&E

SDG&E supports this proposal for the reasons stated in CPSD’s rationale. Elimination of the term “electrical” should eliminate potential confusion over what types of lines General Order 95 applies to. SDG&E agrees with PG&E that General Order 95 rules should give utilities the flexibility ability to react to changing technology and to tailor their activities to fit customer needs. However, SDG&E does not oppose the addition of the words « design » and « maintenance » to Rule 11 since certain rules in General Order 95 already concern the design and maintenance of overhead supply and communication lines. Because this point is not covered by CPSD’s rationale, SDG&E would also note for the record its understanding that CPSD is proposing to eliminate the word « uniform » from Rule 11 to acknowledge the fact that the requirements for overhead supply and communications lines are not uniform.

## b. Parties in Opposition

### CIP Coalition

As noted by the CPSD in proposing a change to the purpose statement of G.O. 95 contained in current Rule 11, the statement refers solely to the “construction” of overhead electrical lines.<sup>1</sup> CPSD expressed the opinion that, as many of the rules contained in G.O. 95 concern also the design and maintenance of these lines, the purpose statement set forth in Rule 11 should be amended to reflect these additional elements.<sup>2</sup> As initially proposed by CPSD in its December 2009 filing, the CIP Coalition had no objection to this amendment. A subsequent modification to the original PRC, offered by CPSD as part of the workshop process, introduced an element of uncertainty into the requested rule change, thus necessitating its rejection.

Namely, CPSD has proposed to delete the modifier “electrical” prior to line such that the purpose statement of Rule 11 would be to formulate requirements for “overhead line design, construction, and maintenance” rather than “overhead *electrical* line design construction and maintenance.” While the removal of the word “electrical” may seem elemental given that G.O. 95 clearly contains provisions applicable to communications *facilities*, the fact remains that CPSD was unable to provide a justification for its removal. Perhaps more importantly, CPSD was unable to explain how the proposed deletion of the word “electrical” would impact the other 400+ pages of the General Order nor was it able to offer any explanation as to why or how this modification was in any way related to the reduction of fire risks. Rule 11 has not been modified since its initial adoption.<sup>3</sup> Arbitrarily removing the word “electrical” as a modifier to the word “line”, without going through the entirety of the General Order and making any other necessary conforming changes, inserts an element of uncertainty into the Rule.

CPSD advanced its proposed rule change as necessary “in order to clarify that GO 95 contains rules governing the design, maintenance, and operation, as well as construction, of overhead lines in order to ensure adequate service and safety.”<sup>4</sup> The removal of the word “electrical” does not advance this purpose. The Commission should reject CPSD’s proposed rule change.

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<sup>1</sup> The Consumer Protection and Safety Division’s Proposed Rules for Phase 2, R.08-11-005 (December 16, 2009), at p. 9.

<sup>2</sup> *Id.*, p. 10.

<sup>3</sup> See General Order 95, Contents, pp. V – VIII (Change List).

<sup>4</sup> The Consumer Protection and Safety Division’s Proposed Rules for Phase 2, R.08-11-005 (December 16, 2009), at p. 11.

## 5. Record of Voting

PARTIES	NOT PRESENT	YES	NEUTRAL	NO
AT&T				X
CAISO	X			
CALTEL	X			
CCTA				X
CFBF			X	
CMUA			X	
COMCAST				X
COX				X
CPSD		X		
CTIA				X
DRA		X		
EXTENET	X			
FACILITIES MANAGEMENT		X		
FRONTIER				X
IBEW 1245		X		
LA COUNTY			X	
LADWP			X	
MUSSEY GRADE			X	
OSMOSE UTILITIES SERVICES	X			
NCPA	X			
NEXTG				X
PACIFICORP		X		
PG&E		X		
SCE		X		
SDG&E		X		
SIERRA PACIFIC			X	
SMALL LECS				X
SMUD	X			
SPRINT NEXTEL				X
SUNESYS				X
SURE WEST				X
TIMEWARNER CABLE				X
T-MOBILE				X
TURN			X	
TW TELECOM				X
VERIZON				X
DAVEY TREE		X		

**B. Rule 11 Proposal by CIP Coalition**

**1. Proposed Rule Change**

**a. Current Rule**

**11 Purpose of Rules**

The purpose of these rules is to formulate, for the State of California, uniform requirements for overhead electrical line construction, the application of which will insure adequate service and secure safety to persons engaged in the construction, maintenance, operation or use of overhead electrical lines and to the public in general.

**b. Strikeout/Underline**

The purpose of these rules is to formulate, for the State of California, ~~uniform~~ requirements for overhead electrical line design, construction, and maintenance, the application of which will ensure adequate service and secure safety to persons engaged in the construction, maintenance, operation or use of overhead electrical lines and to the public in general.

**c. Proposed Final Rule**

The purpose of these rules is to formulate, for the State of California, requirements for overhead electrical line design, construction, and maintenance, the application of which will ensure adequate service and secure safety to persons engaged in the construction, maintenance, operation or use of overhead electrical lines and to the public in general.

**2. Rationale**

As noted above, CPSD, in proposing a change to the purpose statement of G.O. 95 contained in current Rule 11, noted that it refers solely to the “construction” of overhead electrical lines,<sup>5</sup> which given the fact that many of the rules contained in GO 95 concern also the design and maintenance of these lines, the purpose statement set forth in Rule 11 should be amended to reflect these additional elements.<sup>6</sup> The CIP Coalition had no objection to the clarification to the purpose statement of G.O. 95, and, indeed, has incorporated such changes into their proposed alternative. It was the modification to Rule 11 which was proposed by CPSD as part of the workshop process – deletion of the modifier “electrical” prior to line such that the purpose statement of Rule 11 would be to formulate requirements for “overhead line design, construction, and maintenance” rather than “overhead *electrical* line design construction and maintenance” – which necessitated the CIP Coalition offering this alternative proposal. As noted above in the

<sup>5</sup> The Consumer Protection and Safety Division’s Proposed Rules for Phase 2, R.08-11-005 (December 16, 2009), at p. 9.

<sup>6</sup> Id., p. 10.

CIP Coalition's opposition to the CPSD PRC, CPSD was unable to provide a justification for its removal.

### 3. Justification

- The specific electric utilities, CIPs, and others affected by the PRC.

No affect as the General Order already addresses issues of design and maintenance.

- The current text of the affected General Order(s), if any.

See above.

- 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.

See above.

- The specific fire hazard(s) addressed by the PRC and/or other objectives accomplished by the PRC.

Currently, the purpose statement of GO 95 refers only to the "construction" of overhead electrical lines. Given that many of the present rules in GO 95 also concern criteria pertaining to the design and maintenance of these lines, it is appropriate to incorporate such elements into the General Order purpose statement in order to clarify that General Order 95 governs not only construction, but design and maintenance as well. The PRC, like the CPSD PRC on Rule 11, does not directly address fire safety issues.

- How the PRC reduces or otherwise addresses the fire hazard(s) and/or achieves other objectives.

See above.

- The anticipated costs of the PRC, including, if available, costs incurred by investor owned utilities, POU's, CIPs, and customers.

As this PRC merely clarifies the scope of General Order 95, there should be no costs associated with adoption of this PRC.

- The anticipated benefits of the PRC.

The benefit of the PRC is that the actual scope and intent of GO 95 will be correctly identified.

- Whether and how the costs will be recovered from customers.

Not applicable.

- Whether and how costs will be shared among electric utilities, CIPs, and others.

Not applicable.

- Why it is in the public interest to adopt the PRC.

Not applicable.

- If the PRC applies to electric transmission, why the rule does not conflict with other federal or state regulations.

Not applicable.

- 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.

The PRC does not implicate CEQA or NEPA.

#### **4. Parties' Comments**

##### **a. Parties in Support**

###### CIP Coalition

The CIP Coalition supports the PRC for the reasons set forth in the rationale and justification sections above.

###### CPSD

This PRC is similar to CPSD's proposed rule change to Rule 11, except it retains the word "electrical." CPSD supports either proposal. When this rule was originally adopted in 1922, as Rule 11 of General Order 64 (Predecessor to General Order 95), both supply lines and communication lines conducted electricity. Thus, historically, the term "electrical lines" as used in this rule includes "communication lines." CPSD's version removes the term "electrical" in order to eliminate any confusion over what types of lines the General Order applies to. However, retaining the term "electrical lines" does not change the fact that GO 95 applies to "communications lines" as well as supply lines.

**b. Parties in Opposition**

PG&E

The CIPs' MAP for Rule 11 is identical to the CPSD version, except the CIPs would retain the word "electrical" in this rule, which the CPSD version would delete. GO 95 applies to both electric and communications lines. It is possible that a reader might interpret the retention of the word "electrical" as intending to exclude communications lines from the Rule. The CPSD deletion clarifies the rule, and should stand. See, PG&E's comments in support of the CPSD version at MAP 1, Section A.

SDG&E

SDG&E opposes this proposal from the CIP Coalition. The CIP Coalition MAP for Rule 11 is identical to the CPSD PRC that SDG&E supports, except the CIP Coalition would retain the word "electrical." This retention could create an incorrect impression that Rule 11 does not apply to overhead communications lines. The rule proposed by CPSD is superior to this proposed rule from the CIP Coalition and the current rule as it eliminates any potential for ambiguity or misinterpretation of the applicability of GO 95.



## 5. Record of Voting

PARTIES	NOT PRESENT	YES	NEUTRAL	NO
AT&T		X		
CAISO	X			
CALTEL	X			
CCTA		X		
CFBF			X	
CMUA			X	
COMCAST		X		
COX		X		
CPSD		X		
CTIA		X		
DRA		X		
EXTENET	X			
FACILITIES MANAGEMENT		X		
FRONTIER		X		
IBEW 1245				X
LA COUNTY			X	
LADWP			X	
MUSSEY GRADE			X	
OSMOSE UTILITIES SERVICES	X			
NCPA	X			
NEXTG		X		
PACIFICORP				X
PG&E				X
SCE			X	
SDG&E				X
SIERRA PACIFIC			X	
SMALL LECS		X		
SMUD	X			
SPRINT NEXTEL		X		
SUNESYS		X		
SURE WEST		X		
TIMEWARNER CABLE		X		
T-MOBILE		X		
TURN			X	
TW TELECOM		X		
VERIZON		X		
DAVEY TREE			X	

**MAP NO. 2 – GENERAL ORDER 95, RULE 12**

**III. MAP NO. 2 – GENERAL ORDER 95, RULE 12**

**A. Rule 12 Proposal by CPSD**

**1. Proposed Rule Change**

**a. Current Rule**

**12 Applicability of Rules**

These rules apply to all overhead electrical supply and communication facilities that come within the jurisdiction of this Commission, located outside of buildings, including facilities that belong to non-electric utilities, as follows:

- 12.1 Construction and Reconstruction of Lines
- 12.2 Maintenance of Lines
- 12.3 Lines Constructed Prior to This Order
- 12.4 Reconstruction or Alteration
- 12.5 Emergency Installation
- 12.6 Third Party Nonconformance

**b. Strikeout/Underline**

**12 Applicability of Rules**

These rules apply to all overhead electrical supply and communication facilities that come within the jurisdiction of this Commission, located outside of buildings, including facilities that belong to non-electric utilities and publicly-owned utility electric supply facilities, as follows:

- 12.1 Construction and Reconstruction of Lines
- 12.2 Maintenance of Lines
- 12.3 Lines Constructed Prior to This Order
- 12.4 Reconstruction or Alteration
- 12.5 Emergency Installation
- 12.6 Third Party Nonconformance

**c. Proposed Final Rule**

**12 Applicability of Rules**

These rules apply to all overhead electrical supply and communication facilities that come within the jurisdiction of this Commission, located outside of buildings, including facilities that belong to non-electric utilities and publicly-owned utility electric supply facilities, as follows:

- |      |  |
|------|--|
| 12.1 | Construction and Reconstruction of Lines |
| 12.2 | Maintenance of Lines                     |
| 12.3 | Lines Constructed Prior to This Order    |
| 12.4 | Reconstruction or Alteration             |
| 12.5 | Emergency Installation                   |
| 12.6 | Third Party Nonconformance               |

## 2. Rationale

In D.09-08-029, the Commission held that GO 95 applies to publicly-owned utilities (POUs) (D.09-08-029, mimeo p. 16). However, nothing in GO 95 specifically states that the safety rules therein apply to POUs. CPSD has consistently met with resistance from POUs when enforcing the Commission’s rules and regulations concerning the safety of overhead and underground electric transmission and distribution facilities.

For example, CPSD inspectors have scheduled audits with POUs to ensure compliance with GO 165, and have been told by certain POUs not to show up. CPSD staff has had to get the assistance of legal counsel in order to obtain cooperation with POUs for these inspections and audits. This resistance is directly related to the fact that they are not specifically mentioned in the applicability section of GO 95. CPSD inspectors have conducted audits of POUs and have received responses stating GO 95 does not apply to them, and that they “voluntarily” comply with GO 95. Furthermore, POUs have responded to CPSD’s findings after inspections by stating they will take corrective action only as they feel is appropriate, thus the POU will not correct all violations.

There is no legal barrier to the Commission specifically naming publicly owned utilities in the applicability section of General Order 95. On March 26, 2010, Los Angeles Department of Water and Power (LADWP) filed a petition for writ of review against the Commission in the California Supreme Court challenging D.09-08-029. In that petition, LADWP challenged the Commission’s assertion of jurisdiction over POUs for safety purposes. On June 30, 2010, the California Supreme Court summarily denied LADWP’s petition for writ of review. This constitutes a denial on the merits.

## 3. Justification

- The specific electric utilities, CIPs, and others affected by the PRC.

The proposed change affects publicly owned utilities.

- The current text of the affected General Order(s), if any.

See above.

- 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.

See above.

- The specific fire hazard(s) addressed by the PRC and/or other objectives accomplished by the PRC.

In D.09-08-029, the Commission held that GO 95 applies to publicly-owned utilities (POUs). (D.09-08-029, mimeo, p. 16.) However, nothing in GO 95 specifically states that the safety rules therein apply to POUs. CPSD has been unable to engage in safety audits with some POUs because of the fact that they are not specifically mentioned in the applicability section of GO 95. Although the Commission has oversight of the safety of POUs electric facilities, the Commission's enforcement staff has been unable to verify compliance with Commission safety rules. Moreover, certain POUs have stated that they will only take corrective action if they feel it is appropriate, thus potentially leaving safety violations uncorrected.

- How the PRC reduces or otherwise addresses the fire hazard(s) and/or achieves other objectives.

The PRC clarifies that General Order 95 safety rules apply to POUs. This would ensure that POUs comply with Commission safety rules and would also facilitate CPSD's safety audits of POU electric facilities.

- The anticipated costs of the PRC, including, if available, costs incurred by investor owned utilities, POUs, CIPs, and customers.

There should be no additional costs associated with this PRC, as the Commission has already stated that the requirements of GO 95 apply to POUs. In fact, the PRC should enable CPSD to more effectively and efficiently perform its job and may result in reduced administrative costs.

- The anticipated benefits of the PRC.

The benefits of the PRC will be to reduce or eliminate any potential resistance CPSD may encounter in enforcing the Commission's rules and regulations concerning the safety of electric supply facilities against POUs. Ensuring that all entities that are subject to the Commission's jurisdiction over safety matters follow these rules will have a positive impact on safety and further the goals of this OIR to prevent or minimize the risk of fires or other safety hazards.

- Whether and how the costs will be recovered from customers.

Not applicable.

- Whether and how costs will be shared among electric utilities, CIPs, and others.

Not applicable.

- Why it is in the public interest to adopt the PRC.

The PRC will clarify that safety rules apply to POUs, and will reduce or eliminate any potential resistance CPSD may encounter in enforcing the Commission’s rules and regulations concerning the safety of electric supply facilities against POUs. Ensuring that all entities that are subject to the Commission’s jurisdiction over safety matters follow these rules will have a positive impact on safety and further the goals of this OIR to prevent or minimize the risk of fires or other safety hazards.

- If the PRC applies to electric transmission, why the rule does not conflict with other federal or state regulations.

This PRC clarifies an existing rule in General Order 95, which already applies to electric transmission facilities and does not conflict with an other federal or state regulation.

- 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.

This proposal is exempt from environmental review under Section 15378 of the California Environmental Quality Act (CEQA) Guidelines because it is not a “project” under CEQA and will not have any potentially significant impact on the environment. NEPA does not apply because adoption of the proposed rule change does not constitute action by a federal agency within the meaning of 42 USC § 4332.

#### **4. Parties’ Comments**

##### **a. Parties in Support**

###### DRA

DRA supports CPSD’s proposed rule change for the reasons stated in the rationale and justification provided above.

##### **b. Parties in Opposition**

###### CMUA

CMUA objects to the inclusion of the CPSD’s proposed changes to GO 95 Rule 12 in this workshop report. The CPSD proposed an identical rule change in Phase 1 of this proceeding. In Decision 09-08-029, the Commission rejected the CPSD’s PRC on the grounds that it was unnecessary. Instead, the Commission urged greater cooperation between POUs and the CPSD. Instead of following the Commission’s direction, the CPSD simply resubmitted the same proposal in the same proceeding. The CPSD gave no explanation as to why the Commission should now adopt a PRC that it rejected less than a year ago. CMUA still objects to the Commission’s assertion of jurisdiction over POUs. However, inserting this jurisdictional dispute

into the language of a General Order that is intended provide rules for overhead line construction is unwise and serves no purpose. In addition, CMUA believes that the CPSD has set a very poor precedent by proposing the same PRC twice in the very same proceeding without any additional justification. If every party to this Rulemaking simply chose to resubmit all of their rejected Phase 1 PRCs in Phase 2, then this process would grind to a halt and very little would have been achieved during these workshops. CMUA will address this PRC at greater length in its Opening Brief.

**c. Parties Voting Neutral**

PG&E

This rule change proposed by CPSD clarifies that General Order 95 applies to public owned utilities' electric supply facilities. As it is not directly affected by the proposed rule, PG&E takes a neutral position on this proposed rule change. PG&E does generally agree, however, that if electric utilities in the state follow the same safety-related rules, there should be more consistency in the facilities of the electric power industry in California and the goal of having a safe, reliable and efficient California electrical grid might be enhanced.

SCE

This rule change proposed by CPSD would clarify that General Order 95 applies to publicly-owned utilities' electric supply facilities. SCE believes it makes sense as a general matter that publicly-owned utilities conform to the same GO 95 requirements as California's investor-owned utilities; however, SCE understands that the ultimate decision is a legal matter regarding the jurisdiction of the Commission. SCE takes no position on the correct resolution of this jurisdictional question.

## 5. Record of Voting

PARTIES	NOT PRESENT	YES	NEUTRAL	NO
AT&T			X	
CAISO	X			
CALTEL	X			
CCTA			X	
CFBF	X			
CMUA				X
COMCAST			X	
COX			X	
CPSD		X		
CTIA	X			
DRA		X		
EXTENET	X			
FACILITIES MANAGEMENT	X			
FRONTIER			X	
IBEW 1245		X		
LA COUNTY		X		
LADWP				X
MUSSEY GRADE	X			
OSMOSE UTILITIES SERVICES	X			
NCPA	X			
NEXTG			X	
PACIFICORP			X	
PG&E			X	
SCE			X	
SDG&E			X	
SIERRA PACIFIC			X	
SMALL LECS			X	
SMUD				X
SPRINT NEXTEL	X			
SUNESYS			ABSTAIN	
SURE WEST			X	
TIMEWARNER CABLE			X	
T-MOBILE	X			
TURN			X	
TW TELECOM			X	
VERIZON			X	
DAVEY TREE	X			
BILL ADAMS			ABSTAIN	



**MAP NO. 3 – GENERAL ORDER 95, RULE 18A**

#### IV. MAP NO. 3 – GENERAL ORDER 95, RULE 18A

##### A. Rule 18A Proposal by CIP Coalition (except for Violation/Nonconformance; see Consensus Items, Appendix A)<sup>7</sup>

##### 1. Proposed Rule Change

##### a. Current Rule

#### **18 Reporting and Resolution of Safety Hazards Discovered by Utilities**

##### **A. Resolution of Safety Hazards And General Order 95 Violations**

Each company (including utilities and CIPs) is responsible for taking appropriate corrective action to remedy safety hazards and GO 95 violations posed by their facility. Upon completion of the corrective action, the company records shall show the nature of the work, the date and identity of persons performing the work. Prior to the work being completed, the company shall document the current status of the safety hazard, including whether the safety hazard is located in an Extreme and Very High Fire Threat Zone in Southern California, and shall include a scheduled date of corrective action. These records shall be preserved by the company for at least five years, and shall be of sufficient detail to allow Commission staff during an audit, if any, to determine that the safety hazard has been remedied. The records shall be made available to Commission staff immediately upon request. Additionally, for any work completed after the initial scheduled date of corrective action, the company shall document the reason or reasons that the work was not completed by the original scheduled date of corrective action.

For purposes of this rule, “safety hazard” means a condition that poses a significant threat to life or property, including, but not limited to, the ignition of a wildland or structure fire. “Extreme and Very High Fire Threat Zones” are defined in the Commission decision issued in Phase I of R.08-11-005. “Southern California” is defined as the following: Santa Barbara, Ventura, San Bernardino, Riverside, Los Angeles, Orange, and San Diego Counties.

Companies that have existing General Order 165 auditable inspection and maintenance programs that are consistent with the purpose of Rule 18 shall continue to follow their General Order 165 programs. All companies shall establish an auditable maintenance program for their facilities and lines. Further, all companies must include a timeline for corrective actions to be taken following the identification of a safety hazard or violation of General Orders 95 or 128 on the companies’ facilities.

The auditable maintenance program should be developed and implemented based on the following principles.

- (1) Priorities shall be assigned based on the specifics of the safety hazard or violation as related to direct impact and the probability for impact on safety or reliability using the following factors:
  - Type of facility or equipment;
  - Location;

<sup>7</sup> Cox, a member of the CIP Coalition, abstains from taking a position on this rule.

- Accessibility;
- Climate;
- Direct or potential impact on operations, customers, electrical company workers, communications workers, and the general public;
- Whether the safety hazard or violation is located in an Extreme or Very High Fire Threat zone.

**(2)** There will be three priority levels, as follows:

**(a)** Level 1:

- Immediate safety and/or reliability risk with high probability for significant impact.
- Take action immediately, either by fully repairing the condition, or by temporarily repairing and reclassifying the condition to a lower priority.

**(b)** Level 2:

- Variable (non-immediate high to low) safety and/or reliability risk.
- Take action to correct within specified time period (fully repair, or by temporarily repairing and reclassifying the condition to a lower priority).
- Time period for correction to be determined at the point of identification by a qualified company representative:
  - Overhead: 0-59 months
- Where communications company actions result in electric utility GO violations, the electric utility's remedial action will be to transmit a single documented notice of identified violations to the communications company for compliance.

**(c)** Level 3:

- Acceptable safety and/or reliability risk.
- Take action (re-inspect, re-evaluate, or repair) at or before the next detailed inspection.

**(d)** Exceptions (Levels 2 and 3 only) – Correction times may be extended under reasonable circumstances, such as:

- Third party refusal
- Customer issue
- No access
- Permits required
- System emergencies (e.g. fires, severe weather conditions)

**(3)** Upon completion of the corrective action, the company's records shall show the nature of the work, the date, and the identity of persons performing the work. These records should be preserved by the company for at least five years.

**(4)** The company shall prioritize implementing this maintenance plan within the

Extreme and Very High Fire Threat Zones of Southern California. With the exception of a safety hazard or violation requiring immediate correction, a company must correct a violation or safety hazard within 30 days of discovering or being notified of a violation or safety hazard, if the violation or safety hazard violates a clearance requirement listed in columns E, F, or G of Table 1 in this General Order, or violates a pole overloading requirement in Rule 44.3 of this General Order, and is located in an Extreme and Very High Fire Threat Zone in Southern California. The company must correct a violation or safety hazard within 30 days if the utility is notified that the violation must be corrected to alleviate a significant safety risk to any utility's employees.

**b. Strikeout/Underline**

**18 Reporting and Resolution of Safety Hazards Discovered by Utilities**

For purposes of this rule, "Safety Hazard" means a condition that poses a significant threat to human life or property.

"Extreme and Very High Fire Threat Zones" are defined in the Commission Decision 09-08-029. "Southern California" is defined as the following: Santa Barbara, Ventura, San Bernardino, Riverside, Los Angeles, Orange, and San Diego.

**Part A: Resolution of Safety Hazards And General Order 95 ~~Violations/~~Nonconformances**

(1) (a) Each company (including utilities and CIPs) is responsible for taking appropriate corrective action to remedy Safety Hazards and GO 95 ~~violations/nonconformances~~ posed by ~~their~~ its facilities.

(b) Upon completion of the corrective action, the company's records shall show, with sufficient detail, the nature of the work, the date, and the identity of persons performing the work. ~~Prior to the work being completed, the company shall document the current status of the safety hazard, including whether the safety hazard is located in an Extreme and Very High Fire Threat Zone in Southern California, and shall include a scheduled date of corrective action.~~ These records shall be preserved by the company for at least five years and shall be ~~of sufficient detail to allow Commission staff during an audit, if any, to determine that the safety hazard has been remedied.~~ The records made available to Commission staff upon 30 days notice immediately upon request. ~~Additionally, for any work completed after the initial scheduled date of corrective action, the company shall document the reason or reasons that the work was not completed by the original scheduled date of corrective action.~~

~~For purposes of this rule, "safety hazard" means a condition that poses a significant threat to life or property, including, but not limited to, the ignition of a wildland or structure fire. "Extreme and Very High Fire Threat Zones" are defined in the Commission decision issued in Phase I of R.08-11-005. "Southern California" is defined as the following: Santa Barbara, Ventura, San Bernardino, Riverside, Los Angeles, Orange, and San Diego Counties.~~

~~Companies that have existing General Order 165 auditable inspection and maintenance programs that are consistent with the purpose of Rule 18 shall continue to follow their General Order 165 programs. All companies shall establish an auditable maintenance program for their facilities and lines. Further, all companies must include a timeline for corrective actions to be taken following the identification of a safety hazard or violation of General Orders 95 or 128 on the companies' facilities.~~

~~The auditable maintenance program should be developed and implemented based on the following principles:~~

~~(2) (a) All companies shall establish an auditable maintenance program for their facilities and lines. All companies must include a timeline for corrective actions to be taken following the identification of a Safety Hazard or ~~violations~~/nonconformances with General Order 95 on the company's facilities. The auditable maintenance program shall prioritize corrective actions consistent with the priority levels set forth below and based on (1) Priorities shall be assigned based on the specifics of the safety hazard or violation as related to direct impact and the probability for impact on safety or reliability using the following factors, as appropriate:~~

- ~~• Safety and reliability as specified in the priority levels below;~~
- Type of facility or equipment;
- ~~• Location, including whether the Safety Hazard or ~~violation~~/nonconformance is located in an Extreme or Very High Fire Threat zone in Southern California;~~
- Accessibility;
- Climate;
- Direct or potential impact on operations, customers, electrical company workers, communications workers, and the general public;
- ~~• Whether the safety hazard is located in an Extreme or Very High Fire Threat Zone~~

~~(2) There ~~will~~shall be ~~three~~ 3 priority levels, as follows.~~

~~(a)~~(i) Level 1:

- Immediate safety and/or reliability risk with high probability for significant impact.
- Take action immediately, either by fully repairing the condition, or by temporarily repairing and reclassifying the condition to a lower priority.

~~(b)~~(ii) Level 2:

- Variable (non-immediate high to low) safety and/or reliability risk.
- Take action to correct within specified time period (fully repair, or by temporarily

repairing and reclassifying the condition to a lower priority).

- Time period for correction to be determined at the pointtime of identification by a qualified company representative; but not to exceed 59 months:

- ~~Overhead: 0-59 months~~

- ~~Where communications company actions result in electric utility GO violations, the electric utility's remedial action will be to transmit a single documented notice of identified violations to the communications company for compliance.~~

~~(e)~~ (iii) Level 3:

- Acceptable safety and/or reliability risk.
- Take action (re-inspect, re-evaluate, or repair) at or before the next detailed inspection as appropriate.

(b) ~~(d) Exceptions (Levels 2 and 3 only)~~—Correction times may be extended under reasonable circumstances, such as:

- Third party refusal
- Customer issue
- No access
- Permits required
- System emergencies (e.g. fires, severe weather conditions)

~~(3) Companies that have existing General Order 165 auditable inspection and maintenance programs that are consistent with the purpose of Rule 18A shall continue to follow their General Order 165 programs.~~

~~(3) Upon completion of the corrective action, the company's records shall show the nature of the work, the date, and the identity of persons performing the work. These records should be preserved by the company for at least five years.~~

~~(4) The company shall prioritize implementing this maintenance plan within the Extreme and Very High Fire Threat Zones of Southern California. With the exception of a safety hazard or violation requiring immediate correction, a company must correct a violation or safety hazard within 30 days of discovering or being notified of a violation or safety hazard, if the violation or safety hazard violates a clearance requirement listed in columns E, F, or G of Table 1 in this General Order, or violates a pole overloading requirement in Rule 44.3 of this General Order, and is located in an Extreme and Very High Fire Threat Zone in Southern California. The company must correct a violation or safety hazard within 30 days if the utility is notified that the violation must be corrected to alleviate a significant safety risk to any utility's employees.~~

**c. Proposed Final Rule**

**18 Reporting and Resolution of Safety Hazards Discovered by Utilities**

For purposes of this rule, “Safety Hazard” means a condition that poses a significant threat to human life or property.

“Extreme and Very High Fire Threat Zones” are defined in the Commission Decision 09-08-029. “Southern California” is defined as the following: Santa Barbara, Ventura, San Bernardino, Riverside, Los Angeles, Orange, and San Diego.

**Part A: Resolution of Safety Hazards And General Order 95 Nonconformances**

(1) (a) Each company (including utilities and CIPs) is responsible for taking appropriate corrective action to remedy Safety Hazards and GO 95 nonconformances posed by its facilities.

(b) Upon completion of the corrective action, the company’s records shall show, with sufficient detail, the nature of the work, the date, and the identity of persons performing the work. These records shall be preserved by the company for at least five years and shall be made available to Commission staff upon 30 days notice.

(2) (a) All companies shall establish an auditable maintenance program for their facilities and lines. All companies must include a timeline for corrective actions to be taken following the identification of a Safety Hazard or nonconformances with General Order 95 on the company’s facilities. The auditable maintenance program shall prioritize corrective actions consistent with the priority levels set forth below and based on the following factors, as appropriate:

- Safety and reliability as specified in the priority levels below;
- Type of facility or equipment;
- Location, including whether the Safety Hazard or nonconformance is located in an Extreme or Very High Fire Threat zone in Southern California;
- Accessibility;
- Climate;
- Direct or potential impact on operations, customers, electrical company workers, communications workers, and the general public;

There shall be 3 priority levels.

(i) Level 1:

- Immediate safety and/or reliability risk with high probability for significant impact.

- Take action immediately, either by fully repairing the condition, or by temporarily repairing and reclassifying the condition to a lower priority.

(ii) Level 2:

- Variable (non-immediate high to low) safety and/or reliability risk.
- Take action to correct within specified time period (fully repair, or by temporarily repairing and reclassifying the condition to a lower priority).
- Time period for correction to be determined at the time of identification by a qualified company representative, but not to exceed 59 months:

(iii) Level 3:

- Acceptable safety and/or reliability risk.
- Take action (re-inspect, re-evaluate, or repair) as appropriate.

(b) Correction times may be extended under reasonable circumstances, such as:

- Third party refusal
- Customer issue
- No access
- Permits required
- System emergencies (e.g. fires, severe weather conditions)

(3) Companies that have existing General Order 165 auditable inspection and maintenance programs that are consistent with the purpose of Rule 18A shall continue to follow their General Order 165 programs.

## 2. Rationale

**Note: The workshop participants reached consensus on changing the word “violations” in Rule 18 to “nonconformances.” The rationale for this change is set forth in Appendix A.**

The proposed changes to Rule 18A maintain the core elements of the existing rule (i.e., the obligation to take corrective action and establish auditable maintenance program) adopted in Phase 1. At the same time, the PRC removes conflicting, unnecessary, and redundant provisions and otherwise attempts to facilitate the operationalization of the Rule. Among others, the PRC retains the following provisions in the Phase 1 rule:

- a. The obligation to perform corrective action



- b. The record keeping obligation (modified to streamline it and to make it consistent with the provisions in GO 165)
- c. The requirement to have an auditable maintenance program
- d. The factors on which priorities must be based
- e. The three levels of priorities for taking corrective action
- f. The exception to the priorities
- g. The ability of electric utilities with auditable inspection and maintenance programs established under GO 165 to continue to rely on those programs.

As the voting shows, this MAP received nearly universal acceptance, garnering only one “No” vote from SDG&E.

### 3. Justification

- The specific electric utilities, CIPs, and others affected by the PRC.

The PRC applies to all electric utilities and CIPs although Rule 18 provides that IOUs that have maintenance plans under GO 165 consistent with the requirements of the rule should continue to follow their GO 165 programs.

- The current text of the affected General Order(s), if any

See above.

- 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.

See above.

- The specific fire hazard(s) addressed by the PRC and/or other objectives accomplished by the PRC.

The changes to Rule 18 streamline and fix structural problems with the existing rule to allow workable operationalization, and to remove conflicting, unnecessary, and redundant provisions that cause confusion or otherwise increase costs.

- How the PRC reduces or otherwise addresses the fire hazard(s) and/or achieves other objectives.

The MAP clarifies that all electric utilities and CIPs have an obligation to take corrective actions and establish an auditable maintenance program which in turn should mitigate fire risks associated with those facilities.

At the same time, the MAP eliminates duplicative, vague and/or unnecessary obligations in the current rule. For example, Rule 18 currently requires that *prior* to work performed, companies document the current status of the safety hazard, including whether in a specified Fire Zone. But there is no known safety benefit to do this, and such documentation requirements only delay work and unnecessarily increase costs. The focus of the rule under this MAP is to correct hazards wherever they occur, not create a report before any action is taken or to identify whether the issue was in a specified fire zone.

- The anticipated costs of the PRC, including, if available, costs incurred by investor owned utilities, POUs, CIPs, and customers.

The changes to Rule 18A are designed to reduce costs by streamlining its requirements and removing unnecessary, confusing and contradictory provisions.

- The anticipated benefits of the PRC.

The changes to Rule 18A clarify electric utilities and CIP obligations to take corrective action and establish auditable maintenance programs and thus should facilitate efforts to provide for safe, reliable facilities. In addition, the elimination of duplicative and/or unnecessary requirements in the existing rule should reduce operational barriers and implementation costs.

- Whether and how the costs will be recovered from customers.

Not applicable.

- Whether and how costs will be shared among electric utilities, CIPs, and others.

Costs will not be shared.

- Why it is in the public interest to adopt the PRC.

It is in the public interest to adopt this MAP because of the anticipated benefits noted above.

- If the PRC applies to electric transmission, why the rule does not conflict with other federal or state regulations.

This MAP does not apply to electric transmission.

- 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.

This MAP does not implicate CEQA or NEPA.

#### 4. Parties' Comments

##### a. Parties in Support

###### CIP Coalition<sup>8</sup>

The CIP Coalition supports the PRC for the reasons set forth in the rationale and justification sections above.

###### CMUA

CMUA believes that each communication company should have a robust maintenance and inspection program. CMUA believes that this PRC requires such a program of communication companies.

###### PG&E

Rule 18A was adopted in Phase 1 of this proceeding (D.09-08-029) in order to clarify the requirements for an auditable maintenance program. As pointed out by many parties in Phase 1, the rule as written was confusing and poorly written, and needed clarification in order for parties to implement the requirements.

The CIP Coalition proposal streamlines the rule, clarifies the elements of an auditable maintenance program, and provides adequate flexibility to the responding entities to prioritize the conditions that require attention. While this rule does not apply to PG&E, given that PG&E meets the requirements of GO 165, we feel it is important for the Commission to recognize the need for entities to have flexibility to prioritize their maintenance activities in order to maximize efficiencies.

The only difference between the CIP Coalition's proposal and SDG&E's proposal is the inclusion of mandatory timeframes to correct Level 2 conditions. PG&E strongly opposes the inclusion of mandatory timeframes for correcting maintenance conditions in a General Order for the following reasons: (1) Rigid timeframes for completing maintenance activities hinder the ability to prioritize conditions based on local conditions and available resources; (2) corrective maintenance timeframes should not be included in a General Order rule since maintenance timeframes are based on judgment calls made in the field, and can change depending on local conditions, technological advancements, and other process improvement changes; (3) if changes to the corrective maintenance timeframes are desirable, parties would have to seek a modification to GO 95 in order to implement those changes - a process that is likely to take years to complete.

For these reasons, PG&E supports the CIP Coalition proposed Rule 18A.

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<sup>8</sup> Cox, a member of the CIP Coalition, abstains from taking a position on this rule.

## SCE

SCE supports the CIP Coalition's proposed changes to Rule 18A for the reasons stated by PG&E in its comments in support, and SCE joins in those comments. Specifically, although Rule 18A does not apply to SCE since SCE meets the requirements of GO 165, the changes requested here necessarily clarify the rule while recognizing the need for entities to have flexibility to prioritize their maintenance activities in order to maximize efficiencies.

### **b. Parties in Opposition**

## SDG&E

SDG&E generally supports this PRC for the reasons set forth in the CIP Coalition's rationale. However, SDG&E cannot support changing the deadline for all Level 2 nonconformances to 59 months. If a nonconformance either compromises worker safety, or creates a fire risk and is located in an Extreme or Very High Fire Threat Zone in Southern California, it should be corrected within 12 months, not 59 months. The reasons for SDG&E's position are discussed more fully in the rationale for SDG&E's Rule 18A MAP.

**5. Record of Voting**

<b>PARTIES</b>	<b>NOT PRESENT</b>	<b>YES</b>	<b>NEUTRAL</b>	<b>NO</b>
AT&T		X		
CAISO	X			
CALTEL	X			
CCTA		X		
CFBF	X			
CMUA		X		
COMCAST		X		
COX			<b>ABSTAIN</b>	
CPSD		X		
CTIA		X		
DRA		X		
EXTENET	X			
FACILITIES MANAGEMENT			X	
IBEW 1245		X		
LA COUNTY	X			
LADWP		X		
MUSSEY GRADE	X			
OSMOSE UTILITIES SERVICES	X			
NCPA	X			
NEXTG	X			
PACIFICORP		X		
PG&E		X		
SCE		X		
SDG&E				X
SIERRA PACIFIC		X		
SMALL LECS		X		
SMUD	X			
SPRINT NEXTEL		X		
SUNESYS		X		
SURE WEST		X		
TIMEWARNER CABLE		X		
T-MOBILE		X*		
TURN	X			
TW TELECOM		X		
VERIZON		X		

**B. Rule 18A Proposal by San Diego Gas & Electric Company (except for Violation/Nonconformance; see Consensus Items, Appendix A)**

**1. Proposed Rule Change**

**a. Current Rule**

**18 Reporting and Resolution of Safety Hazards Discovered by Utilities**

**A. Resolution of Safety Hazards And General Order 95 Violations**

Each company (including utilities and CIPs) is responsible for taking appropriate corrective action to remedy safety hazards and GO 95 violations posed by their facility. Upon completion of the corrective action, the company records shall show the nature of the work, the date and identity of persons performing the work. Prior to the work being completed, the company shall document the current status of the safety hazard, including whether the safety hazard is located in an Extreme and Very High Fire Threat Zone in Southern California, and shall include a scheduled date of corrective action. These records shall be preserved by the company for at least five years, and shall be of sufficient detail to allow Commission staff during an audit, if any, to determine that the safety hazard has been remedied. The records shall be made available to Commission staff immediately upon request. Additionally, for any work completed after the initial scheduled date of corrective action, the company shall document the reason or reasons that the work was not completed by the original scheduled date of corrective action.

For purposes of this rule, “safety hazard” means a condition that poses a significant threat to life or property, including, but not limited to, the ignition of a wildland or structure fire. “Extreme and Very High Fire Threat Zones” are defined in the Commission decision issued in Phase I of R.08-11-005. “Southern California” is defined as the following: Santa Barbara, Ventura, San Bernardino, Riverside, Los Angeles, Orange, and San Diego Counties.

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The auditable maintenance program should be developed and implemented based on the following principles.

- (1) Priorities shall be assigned based on the specifics of the safety hazard or violation as related to direct impact and the probability for impact on safety or reliability using the following factors:
  - Type of facility or equipment;
  - Location;
  - Accessibility;

- Climate;
- Direct or potential impact on operations, customers, electrical company workers, communications workers, and the general public;
- Whether the safety hazard or violation is located in an Extreme or Very High Fire Threat zone.

**(2)** There will be three priority levels, as follows:

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**(c)** Level 3:

- Acceptable safety and/or reliability risk.
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**(d)** Exceptions (Levels 2 and 3 only) – Correction times may be extended under reasonable circumstances, such as:

- Third party refusal
- Customer issue
- No access
- Permits required
- System emergencies (e.g. fires, severe weather conditions)

**(3)** Upon completion of the corrective action, the company's records shall show the nature of the work, the date, and the identity of persons performing the work. These records should be preserved by the company for at least five years.

- (4) The company shall prioritize implementing this maintenance plan within the Extreme and Very High Fire Threat Zones of Southern California. With the exception of a safety hazard or violation requiring immediate correction, a company must correct a violation or safety hazard within 30 days of discovering or being notified of a violation or safety hazard, if the violation or safety hazard violates a clearance requirement listed in columns E, F, or G of Table 1 in this General Order, or violates a pole overloading requirement in Rule 44.3 of this General Order, and is located in an Extreme and Very High Fire Threat Zone in Southern California. The company must correct a violation or safety hazard within 30 days if the utility is notified that the violation must be corrected to alleviate a significant safety risk to any utility's employees.

**b. Strikeout/Underline**

**18 Reporting and Resolution of Safety Hazards Discovered by Utilities**

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**Part A: Resolution of Safety Hazards And General Order 95 Violations/Nonconformances**

**(1) (a)** Each company (including utilities and CIPs) is responsible for taking appropriate corrective action to remedy Safety Hazards and GO 95 violations/nonconformances posed by their its facilities.

**(b)** Upon completion of the corrective action, the company's records shall show the date and with sufficient detail, the nature of the work, the date, and the identity of persons performing the work. ~~Prior to the work being completed, the company shall document the current status of the safety hazard, including whether the safety hazard is located in an Extreme and Very High Fire Threat Zone in Southern California, and shall include a scheduled date of corrective action.~~ These records shall be preserved by the company for at least five years, and shall be of sufficient detail to allow Commission staff during an audit, in any, to determine that the safety hazard has been remedied made available to Commission staff upon 30 days notice. ~~The records shall be made available to Commission staff immediately upon request. Additinally, for any work completed after initial scheduled date of corrective action, the company shall document the reason or reasons that the work was not completed by the original scheduled date of correction action.~~

~~For purposes of this rule, "safety hazard" means a condition that poses a significant threat to life or property, including, but not limited to, the ignition of a wildland or structure fire. "Extreme and Very High Fire Threat Zones" are defined in the Commission decision issued in Phase I of R.08-11-005. "Southern California" is defined as the following: Santa Barbara, Ventura, San~~



~~Bernardino, Riverside, Los Angeles, Orange, and San Diego Counties.~~

~~Companies that have existing General Order 165 auditable inspection and maintenance programs that are consistent with the purpose of Rule 18 shall continue to follow their General Order 165 programs.~~ **(2) (a)** All companies shall establish an auditable maintenance program for their facilities and lines. ~~Further,~~ All companies must include a timeline for corrective actions to be taken following the identification of a Safety Hazard or ~~violations/nonconformances of with~~ General Order ~~s 95 or 128~~ on the ~~companies' company's~~ facilities. The auditable maintenance program ~~should be developed and implemented~~ shall prioritize corrective actions consistent with ~~the priority levels set forth below and~~ based on the following ~~principles, factors, as appropriate:~~

~~(1) — Priorities shall be assigned based on the specifics of the safety hazard or violation as related to direct impact and the probability for impact on safety or reliability using the following factors:~~

- ~~Safety and reliability as specified in the priority levels below;~~
- Type of facility or equipment;
- ~~Location; including whether the Safety Hazard or nonconformance is located in an Extreme or Very High Fire Threat Zone in Southern California;~~
- Accessibility;
- Climate;
- Direct or potential impact on operations, customers, electrical company workers, communications workers, and the general public;
- ~~Whether the safety hazard or violation is located in an Extreme or Very High Fire Threat zone.~~

**(2)** — There ~~will~~ shall be ~~three~~ 3 priority levels; ~~as follows:~~ \_

**(a)** Level 1:

- Immediate safety and/or reliability risk with high probability for significant impact.
- Take action immediately, either by fully repairing the condition, or by temporarily repairing and reclassifying the condition to a lower priority.

**(b)** Level 2:

- Variable (non-immediate high to low) safety and/or reliability risk.
- Take action to correct within specified time period (fully repair, or by temporarily repairing and reclassifying the condition to a lower priority).

● ~~Time period for correction to be determined at the point~~ time of identification by a qualified company representative; ~~but not to exceed; (1) 12 months for~~

~~violations/nonconformances that compromise worker safety, (2) 12 months for violations/nonconformances that create a fire risk and are located in an Extreme or Very High Fire Threat Zone in Southern California, and (3) 59 months for all other Level 2 violations/nonconformances.~~

~~e) Overhead: 0-59 months~~

- ~~• Where communications company actions result in electric utility GO violations, the electric utility's remedial action will be to transmit a single documented notice of identified violations to the communications company for compliance.;~~

~~(eiii) Level 3:~~

- ~~• Acceptable safety and/or reliability risk.~~
- ~~• Take action (re-inspect, re-evaluate, or repair) at or before the next detailed inspection as appropriate.~~

~~(d) Exceptions (Levels 2 and 3 only) b) Correction times may be extended under reasonable circumstances, such as:~~

- ~~• Third party refusal~~
- ~~• Customer issue~~
- ~~• No access~~
- ~~• Permits required~~
- ~~• System emergencies (e.g. fires, severe weather conditions)~~

~~(3) Upon completion of the corrective action, the company's records shall show the nature of the work, the date, and the identity of persons performing the work. These records should be preserved by the company for at least five years.~~

~~(3) Companies that have existing General Order 165 auditable inspection and maintenance programs that are consistent with the purpose of Rule 18A shall continue to follow their General Order 165 programs.~~

~~(4) The company shall prioritize implementing this maintenance plan within the Extreme and Very High Fire Threat Zones of Southern California. With the exception of a safety hazard or violation requiring immediate correction, a company must correct a violation or safety hazard within 30 days of discovering or being notified of a violation or safety hazard, if the violation or safety hazard violates a clearance requirement listed in columns E, F, or G of Table 1 in this General Order, or violates a pole overloading requirement in Rule 44.3 of this General Order, and is located in an Extreme and Very High Fire Threat Zone in Southern California. The company must correct a violation or safety hazard within 30 days if the utility is notified that the violation must be corrected to alleviate a significant safety risk to any utility's employees.~~

**c. Proposed Final Rule**

**18 Reporting and Resolution of Safety Hazards Discovered by Utilities**

For purposes of this rule, “Safety Hazard” means a condition that poses a significant threat to human life or property.

“Extreme and Very High Fire Threat Zones” are defined in the Commission Decision 09-08-029. “Southern California” is defined as the following: Santa Barbara, Ventura, San Bernardino, Riverside, Los Angeles, Orange, and San Diego Counties.

**Part A: Resolution of Safety Hazards And General Order 95 Nonconformances**

(1) (a) Each company (including utilities and CIPs) is responsible for taking appropriate corrective action to remedy Safety Hazards and GO 95 nonconformances posed by its facilities.

(b) Upon completion of the corrective action, the company’s records shall show, with sufficient detail, the nature of the work, the date, and the identity of persons performing the work. These records shall be preserved by the company for at least five years and shall be made available to Commission staff upon 30 days notice.

(2) (a) All companies shall establish an auditable maintenance program for their facilities and lines. All companies must include a timeline for corrective actions to be taken following the identification of a Safety Hazard or nonconformances with General Order 95 on the company’s facilities. The auditable maintenance program shall prioritize corrective actions consistent with the priority levels set forth below and based on the following factors, as appropriate:

- Safety and reliability as specified in the priority levels below;
- Type of facility or equipment;
- Location, including whether the Safety Hazard or nonconformance is located in an Extreme or Very High Fire Threat Zone in Southern California;
- Accessibility;
- Climate;
- Direct or potential impact on operations, customers, electrical company workers, communications workers, and the general public;

There shall be 3 priority levels.

(i) Level 1:

- Immediate safety and/or reliability risk with high probability for significant impact.
- Take action immediately, either by fully repairing the condition, or by temporarily repairing and reclassifying the condition to a lower priority.

(ii) Level 2:

- Variable (non-immediate high to low) safety and/or reliability risk.
- Take action to correct within specified time period (fully repair, or by temporarily repairing and reclassifying the condition to a lower priority).

Time period for correction to be determined at the time of identification by a qualified company representative, but not to exceed; (1) 12 months for nonconformances that compromise worker safety, (2) 12 months for nonconformances that create a fire risk and are located in an Extreme or Very High Fire Threat Zone in Southern California, and (3) 59 months for all other Level 2 nonconformances.

(iii) Level 3:

- Acceptable safety and/or reliability risk.
- Take action (re-inspect, re-evaluate, or repair) as appropriate.

(b) Correction times may be extended under reasonable circumstances, such as:

- Third party refusal
- Customer issue
- No access
- Permits required
- System emergencies (e.g. fires, severe weather conditions)

(3) Companies that have existing General Order 165 auditable inspection and maintenance programs that are consistent with the purpose of Rule 18A shall continue to follow their General Order 165 programs.

## 2. Rationale

**Note: The workshop participants reached consensus on changing the word “violations” in Rule 18 to “nonconformances.” The rationale for this change is set forth in Appendix A.**

The revised Rule 18A proposed by SDG&E is the same as the Rule 18A proposed by the CIP Coalition in every respect, save one. Under the CIP Coalition’s proposal, Level 2 nonconformances need to be corrected within 59 months. Under SDG&E’s Rule 18A proposal, Level 2 nonconformances would still generally need to be corrected within 59 months. However, if the nonconformance either compromises worker safety, or creates a fire risk and is located in an Extreme or Very High Fire Threat Zone in Southern California, it would need to be corrected within 12 months.

For ease of reference, the two versions of this particular paragraph are set forth below:

CIP Coalition Rule 18A PRC

- Time period for correction to be determined at the time of identification by a qualified company representative, but not to exceed 59 months:

SDG&E Rule 18A PRC

- Time period for correction to be determined at the time of identification by a qualified company representative, but not to exceed; (1) 12 months for nonconformances that compromise worker safety, (2) 12 months for nonconformances that create a fire risk and are located in an Extreme or Very High Fire Threat Zone in Southern California, and (3) 59 months for all other Level 2 nonconformances.

SDG&E believes that this limited revision to the CIP Coalition Rule 18A PRC is both reasonable and necessary. By definition, Level 2 nonconformances can have high safety and/or reliability risks. If such a nonconformance compromises worker safety (e.g., a severe climbing space violation), it should be cured within a year, not five. And in fire-prone regions of Southern California, five years is simply too long to wait for correction of nonconformances that create a fire risk.

SDG&E appreciates the extensive compromises that are an integral part of the CIP Coalition Rule 18A PRC, and SDG&E does not take lightly being the sole workshop participant to vote against that PRC. But SDG&E feels very strongly that worker and fire safety demand that Level 2 nonconformances affecting either be corrected more quickly than five years. SDG&E believes that one year is more than enough time to cure such nonconformances, and that this limited change to the revised Rule 18A proposed by the CIP Coalition PRC will help to achieve the basic goals of this rulemaking by reducing fire risk and increasing public and worker safety.

In the Phase 1 decision, the Commission determined that clearance or pole overloading violations in Extreme or Very High Fire Threat Zone in Southern California, and violations anywhere that create a significant safety risk to any utility's employees, must be corrected within 30 days. SDG&E understands that the programmatic approach presented by the CIP Coalition Rule 18A may allow for somewhat greater response times for lower-risk nonconformances. But in a proceeding devoted to fire safety, it would make no sense for the Commission to switch from a 30-day correction framework to five years for the types of nonconformances addressed by SDG&E's Rule 18A PRC.

Because both SDG&E's Rule 18A PRC and the CIP Coalition Rule 18A PRC would allow companies more time to correct such violations than the current 30-day correction requirement, there should be no additional cost compared to the status quo from the one-year correction requirement in SDG&E's Rule 18A PRC

### 3. Justification

- The specific electric utilities, CIPs, and others affected by the PRC.

This proposal would affect electric utilities and communication entities subject to CPUC jurisdiction.

- The current text of the affected General Order(s), if any.

See above.

- 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.

See above.

- The specific fire hazard(s) addressed by the PRC and/or other objectives accomplished by the PRC.

The hazard addressed is fire risk and risks to worker safety created by Level 2 nonconformances that have not been corrected within a reasonable time.

- How the PRC reduces or otherwise addresses the fire hazard(s) and/or achieves other objectives.

See above.

- The anticipated costs of the PRC, including, if available, costs incurred by investor owned utilities, POUs, CIPs, and customers.

Adoption of SDG&E's Rule 18A PRC could create additional costs compared to the CIP Coalition Rule 18A PRC for companies that would otherwise choose to take longer than one year to correct Level 2 nonconformances creating a fire risk or creating a risk to worker safety. Other costs would be the same as with the CIP Coalition proposed Rule 18A. And because both SDG&E's Rule 18A PRC and the CIP Coalition Rule 18A PRC would allow companies more time to correct such violations than the current 30-day correction requirement, there should be no additional cost compared to the status quo from the one-year correction requirement in SDG&E's Rule 18A PRC.

- The anticipated benefits of the PRC.

See above.

- Whether and how the costs will be recovered from customers.

Companies that are rate-of-return regulated are seeking an order in this proceeding regarding how the costs for complying with new rules adopted in this proceeding are to be recovered from

customers. Companies that are not rate-of-return regulated may recover costs in any legally permissible manner, including through line-item charges or increased fees for services.

- Whether and how costs will be shared among electric utilities, CIPs, and others.

Not applicable. The PRC does not provide for cost sharing among or between entities.

- Why it is in the public interest to adopt the PRC.

See above.

- If the PRC applies to electric transmission, why the rule does not conflict with other federal or state regulations.

This PRC clarifies an existing General Order 95 rule, which currently complements and poses no conflict with existing 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.

The Commission adopted similar revisions to Rule 35, Appendix E in D.09-08-029 and found that CEQA did not apply. This proposal is exempt from environmental review under Section 15378 of the California Environmental Quality Act (CEQA) Guidelines because it is not a “project” under CEQA and will not have any potentially significant impact on the environment. NEPA does not apply because adoption of the proposed rule change does not constitute action by a federal agency within the meaning of 42 USC § 4332.

#### **4. Parties’ Comments**

##### **a. Parties in Support**

###### IBEW 1245

IBEW 1245 contends that any climbing space violation should be identified and corrected as soon as practical. IBEW 1245 linemen observe the climbing space rules during initial construction and reconstruction. CIPs should be required to build by the rules and where they are found in violation of the rules their corrective actions should be expedited. The SDG&E proposal does not allow for a 59 month interval to correct GO 95 violations. The CIPs are required to correct violations that threaten worker safety in 12 months.

## Los Angeles County

Los Angeles County supports this proposed rule change. SDG&E has recognized that many hazards and violations, while not needing immediate attention, do require attention within a twelve month period. Specifically, these are violations that compromise worker safety and/or create a fire risk in the extreme or very high fire threat zones of Southern California. While this proposed rule change does not have the 30-day requirement for correction that was found in the interim rule after Phase 1, it does require that significant violations be addressed within 12 months. This is significantly better than the alternate version of this rule that is being proposed, which would only require that similar violations be addressed in 59 months or less.

## SDG&E

SDG&E support this proposal for the reasons stated in the rationale.

### **b. Parties in Opposition**

#### CIP Coalition<sup>9</sup>

The CIP Coalition opposes SDG&E's MAP because it includes vague exceptions to the rule that in effect swallow the rule in its entirety. Specifically, this MAP would reduce from 59 months the time to take corrective actions to 12 months for nonconformances that "compromise" worker safety or that create "a fire risk" and are located in an Extreme or Very High Fire Threat Zone in Southern California. These requirements hinge upon two vague or undefined terms (i.e., "compromise" and "fire risk") which could be interpreted to mean any alleged nonconformance would require corrective action within 12 months, thus eliminating the entire rationale for having a 59 month range in the first place. The CIP MAP, in contrast, would assign any Safety Hazard as a Priority 1 issue and thus require immediate action.

SDG&E's version of the MAP is also unnecessary. CPSD explained that it expects the CIPs to take corrective actions within times that are reasonable within the time frame ranges for each priority level (as would be set forth in the CIPs auditable maintenance plan). The time for taking corrective actions, in other words, would be commensurate with the risk observed by ground field technicians. Finally, SDG&E's MAP unfairly imposes obligations on CIPs that are not imposed on IOUs, whose facilities are known fire risks. SDG&E's MAP adds to the Level 2 priority requirements that are not imposed on IOUs, either in GO 165 or in the Memorandum of Understanding between CPSD and SCE.

#### PG&E

Rule 18A was adopted in Phase 1 of this proceeding (D.09-08-029) in order to clarify the requirements for an auditable maintenance program. As pointed out by many parties in Phase 1, the rule as written was confusing and poorly written, and needed clarification in order for parties to implement the requirements.

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<sup>9</sup> Cox, a member of the CIP Coalition, abstains from taking a position on this rule.



PG&E supports the CIP Coalition's proposal and opposes SDG&E's proposal for the reasons stated in its comments in support of the CIP proposal. SDG&E's proposal introduces mandatory corrective maintenance timeframes into GO 95, which is inappropriate for a construction standard, and hinders the ability to prioritize maintenance work based on local conditions and available resources.

### SCE

SCE opposes SDG&E's proposed changes to Rule 18A and supports the CIP Coalition's proposal for the reasons stated by PG&E in its comments in opposition. SCE joins in PG&E's comments.

## 5. Record of Voting

PARTIES	NOT PRESENT	YES	NEUTRAL	NO
AT&T				X
CAISO	X			
CALTEL				X
CCTA				X
CFBF	X			
CMUA			X	
COMCAST				X
COX			Abstain	
CPSD			X	
CTIA				X
DRA			X	
EXTENET	X			
FACILITIES MANAGEMENT		X		
FRONTIER	X			
IBEW 1245		X		
LA COUNTY		X		
LADWP			X	
MUSSEY GRADE	X			
OSMOSE UTILITIES SERVICES	X			
NCPA	X			
NEXTG				X
PACIFICORP			X	
PG&E				X
SCE				X
SDG&E		X		
SIERRA PACIFIC			X	
SMALL LECS				X
SMUD				X
SPRINT NEXTEL	X			
SUNESYS				X
SURE WEST				X
TIMEWARNER CABLE				X
T-MOBILE				X
TURN	X			
TW TELECOM				X
VERIZON				X
DAVEY TREE	X			

**MAP NO. 4 – GENERAL ORDER 95, RULE 18C**

**V. MAP NO. 4 – GENERAL ORDER 95, RULE 18C**

**A. Rule 18C Proposal by Mussey Grade**

**1. Proposed Rule Change**

**a. Current Rule**

None

**b. Strikeout/Underline**

**18C – Contingency Planning**

Electric utilities shall have in place contingency plans for predicting and identifying hazard conditions that exceed wind loadings of Rule 43 in areas designated as having high fire risk during periods of high fire danger. These plans shall include measures to prevent ignitions of wildland fires by equipment that meets GO 95 wind loading and vegetation management requirements.

**c. Proposed Final Rule**

**18C – Contingency Planning**

Electric utilities shall have in place contingency plans for predicting and identifying hazard conditions that exceed wind loadings of Rule 43 in areas designated as having high fire risk during periods of high fire danger. These plans shall include measures to prevent ignitions of wildland fires by equipment that meets GO 95 wind loading and vegetation management requirements.

**2. Rationale**

It may not be reasonable to engineer electrical infrastructure against all possible weather contingencies. Tornadoes and hurricanes, for instance, have winds far in excess of GO 95 specified requirements, but because these weather conditions very rarely occur in California, they are not considered contingencies that need to be solved for.

We do not know the “worst case” extreme dry wind conditions that can occur in California. However, the Alliance has shown in its submittals that the consequences of a truly extreme event (significantly greater than the October 2007 wind storm, for instance) would be dire, because the number of expected ignitions goes up very rapidly as the wind speed increases – much faster

than a linear increase.<sup>10</sup> Should such an event occur, California could be faced with a veritable “wall of fire” stretching from Ventura County to San Diego.

Statistical analysis of past historical weather data can be used to estimate maximum wind loadings expected within a given time frame.<sup>11</sup> It is standard engineering practice when designing for catastrophic loadings to use the typical time expected for an extreme event that would exceed design limits – and this can and should be a very long time. Physical infrastructure hardening may not be necessary to meet this requirement – it could be that operational countermeasures (such as turning off the power) could effectively prevent the catastrophic scenario in which fires are started when winds greatly exceed design limits. It should be emphasized that operational countermeasures are no panacea and can cause physical and financial harm to residents and customers, and must only be used when much greater harm from power line fires would be the likely consequence if they are not.

Utilities should have mechanisms in place to take countermeasures if wind conditions may exceed their design requirements and put equipment at risk of failure under high fire-risk conditions. In order for them to do so, they must have mechanisms in place to anticipate and/or measure wind conditions so that they know when to take these appropriate measures. They must also have in place plans that are executed in the event that trigger criteria are met.

Due to the magnitude of harm that could be caused by events that exceed design requirements, electric utilities have a responsibility to have contingency plans in place to reduce the potential for multiple fire ignitions under the most extreme hazard conditions.

### **3. Justification**

- The specific electric utilities, CIPs, and others affected by the PRC.

All electric utilities will be affected by this PRC.

- The current text of the affected General Order(s), if any.

See above.

- 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.

See above.

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<sup>10</sup> A.08-12-021; Mussey Grade Opening Comments; Appendix A; pp. 1-6.

<sup>11</sup> In fact, SDG&E applied such an approach for the creation of its wind loading estimates for the Sunrise Powerlink transmission line. A.06-08-010; Sunrise Powerlink Project; SDG&E’s 3/3/08 Responses to MUSSEY GRADE Data Request No. 6; Mussey Grade-46 to Mussey Grade-49. [http://www.sdge.com/sunrisepowerlink/info/MUSSEY\\_GRADED6Responses3-3-08.doc](http://www.sdge.com/sunrisepowerlink/info/MUSSEY_GRADED6Responses3-3-08.doc)

This method assumes that the extreme events are statistical “outliers” of weather processes that are currently occurring, but does not take into account potential changes to current conditions – due to climate change, for example.

- The specific fire hazard(s) addressed by the PRC and/or other objectives accomplished by the PRC.

The Alliance in its filings before the Commission has identified the potential for catastrophic fire storms caused by multiple power line conditions under extreme weather conditions:

*“One general conclusion that can be reached is that the number of fires will grow with a greater than linear dependency on wind speed, possibly much greater than linear. If wind gusts greatly exceeding design limits were to strike the network they would cause a myriad of ignitions, which under those conditions would lead to catastrophic consequences. Wind events with multiple power line ignitions, such as that of October 2007, provide an indication of the threshold for the rapid increase in ignitions with increasing wind speed.*

*One disturbing fact is that current California design guidelines allow for design wind loadings less than those observed in Santa Ana wind storms. This and other regulations affecting fire safety require urgent review.”<sup>12</sup>*

It is the general understanding of the Commission that winds exceeding design limits for an electrical network would constitute an emergency that would necessitate the removal of power from the electrical network:

*“SDG&E’s statutory obligation to operate its system safely requires SDG&E to shut off its system if doing so is necessary to protect public safety. For example, there is no dispute that SDG&E may need to shut off power in order to protect public safety if Santa Ana winds exceed the design limits for SDG&E’s system and threaten to topple power lines onto tinder dry brush.”<sup>13</sup>*

- How the PRC reduces or otherwise addresses the fire hazard(s) and/or achieves other objectives.

If mechanisms that allow a utility to identify extreme hazard conditions are in place, and if the utilities have in place contingency plans to manage their systems under such conditions, it will greatly reduce the likelihood that a “power line firestorm” such as that which happened in 2007 will recur.

- The anticipated costs of the PRC, including, if available, costs incurred by investor owned utilities, POUs, CIPs, and customers.

Adopting this PRC would mean that electrical utilities would need to put together a mechanism to monitor hazard conditions within their networks using existing weather station data, and to coordinate with forecasting agencies such as the National Weather Service, fire agencies such as Cal Fire, and possibly contracted companies.

<sup>12</sup> R.08-11-005; MUSSEY GRADE ROAD ALLIANCE PRE-HEARING CONFERENCE STATEMENT; Appendix A (Mitchell, Joseph W.; Power Lines and Catastrophic Wildland Fires in Southern California; Fire & Materials 2009; San Francisco, CA; January 26-28, 2009), February 2, 2009. (Mitchell, 2009)

<sup>13</sup> D.09-09-030; pp. 61-62.

Historical weather station data may be utilized to estimate the maximum wind speeds that can be expected based on standard statistical methods. Such a mechanism was used by SDG&E to predict wind loadings for its Sunrise Powerlink transmission line project.<sup>14</sup> here will be some minimal cost for this analysis

- The anticipated benefits of the PRC.

The benefit of this PRC is that it would reduce the potential for extreme Santa Ana wind events that could be characterized by multiple ignitions by downed power lines and vegetation-line contact. weather event of greater wind intensity than the one experienced in October 2007 would be likely to cause many power-line ignitions from Ventura County to San Diego, under conditions making the fires almost impossible to suppress. any billions of dollars of damage could be expected were such an event to occur. This PRC would help to prevent such a scenario at a relatively modest cost.

- Whether and how the costs will be recovered from customers.

Costs will be recovered no differently than as they currently are in electric utilities' general rate cases.

- Whether and how costs will be shared among electric utilities, CIPs, and others.

Costs apply only to electric utilities.

- Why it is in the public interest to adopt the PRC.

The purpose of this PRC is to prevent catastrophic damage by extreme wind events that may subject electric networks to conditions that might exceed GO 95 wind loading and vegetation management requirements.

- If the PRC applies to electric transmission, why the rule does not conflict with other federal or state regulations.

Due to the higher reliability standard placed upon transmission, it is less likely that transmission lines will be intentionally de-energized during extreme events. This increases the importance of determining the maximum foreseeable wind speed that might be encountered by this infrastructure so that proper design requirements can be set. The Commission has already taken a role in regulating transmission infrastructure safety requirements, and required an exhaustive EIR to be conducted for the Sunrise Powerlink transmission project (A.06-08-010). Regardless of jurisdictional boundaries, however, information regarding recurrence times for extreme events may be incorporated into regulations by other state or federal agencies.

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<sup>14</sup> A.06-08-010; Sunrise Powerlink Project; SDG&E's 3/3/08 Responses to MUSSEY GRADE Data Request No. 6; MUSSEY GRADE-46 to MUSSEY GRADE-49. [http://www.sdge.com/sunrisepowerlink/info/MUSSEY GRADEDR6Responses3-3-08.doc](http://www.sdge.com/sunrisepowerlink/info/MUSSEY_GRADEDR6Responses3-3-08.doc)

- 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.

By reducing the number of catastrophic wildland fires started by power lines, this PRC has the potential to improve environmental quality and it is therefore likely to be exempt from CEQA and NEPA.

#### **4. Parties' Comments**

##### **a. Parties in Support**

###### LA County

During the fall months of 2003 and again during 2007 multiple large fires ignited simultaneously throughout Southern California. These fire sieges taxed local, state and federal fire fighting resources, resulted in significant loss of life and property, caused far-reaching environmental impacts and deleterious health effects on a significant percentage of the population. One must not forget that during the San Diego fires of 2007 a significant percentage of the citizens were evacuated and the City had to turn Qualcomm Stadium (home of the San Diego Chargers) into an evacuation center! Recent history and weather trends only point to more frequent and severe weather events. Contingency planning for major utilities should not be a consideration, it should be a given. While significant actions, like turning off the power, should only be considered under the most extreme conditions, the utilities need to have this procedure operationalized and available when faced with extreme circumstances.

##### **b. Parties in Opposition**

###### CIP Coalition

The CIP Coalition objects to this PRC for the reasons explained in PG&E's comments, below.

###### CMUA

CMUA commends Mussey Grade for its desire to improve the safety of the electric grid, particularly in regard to the prevention of wild fires. In concept, CMUA agrees with Mussey Grade that electric utilities should have plans to deal with emergency situations. However, the PRC submitted by Mussey Grade both lacks sufficient clarity and is ultimately unnecessary. The PRC would require electric utilities to have a contingency plan to predict and identify "hazard conditions that exceed wind loadings of Rule 43" in designated high fire risk areas. This proposal is unworkably vague. How far beyond the minimum standards of Rule 43 must this contingency plan make predictions for? How can a utility accurately identify all "hazard conditions" in such extreme circumstances? Even if such a plan exists, what value does it



provide? In light of the significant costs that would result from the development of such a far reaching contingency plan, CMUA believes that Mussey Grade has not demonstrated that proportionate benefits would occur. CMUA notes that the wildfires that occurred during the 2008 fire season did not result because of extreme weather conditions outside of the loading calculations, but according to the CPSD's investigation, were the result of GO 95 violations.

### PG&E

Mussey Grade's proposed new Rule 18C would require utilities to develop plans that will predict and identify hazard conditions that exceed GO 95's wind loading requirements in high risk fire areas and will identify measures to prevent ignition of wild land fires by facilities that conform to GO95. While the concept of contingency planning is something utilities already apply in their daily operations, and predicting hazard conditions is a something utilities strive for, the proposed rule is misplaced in GO 95 and is fundamentally flawed.

Proposed Rule 18C is misplaced for several reasons. First, GO 95 is an overhead lines design and construction standard. It does not -- nor should it -- address business issues such as contingency planning. Second, utilities currently develop contingency plans for all types of events, not just wild land fires. Examples are systems failures, normal and emergency overload conditions, major storms, and extreme heat events. It makes little sense to single out one activity in GO 95 when utilities are performing such planning for a variety of areas. Finally, pursuant to D.98-07-097, General Order 166 covers this subject area, in that it requires that utilities adopt rules that govern the electric utilities' planning for responses to major emergencies, disasters and power outages.

The proposed rule is flawed because it assumes that somehow utilities (or anyone else) can predict wildfires started by facilities that conform to GO 95. The rules in GO 95 are developed using the best information and utility expertise available within the industry and at the Commission, and by balancing the various interests of safety, reliability and costs. Utilities rely on those rules for the appropriate standards for the construction and maintenance of their facilities. However, the rules and standards are not failsafe. Given the arid climate and geography of California, the only 100% sure way to prevent the rare wildfire associated with overhead electric facilities built according to GO 95 and inspected/maintained according to GO 165 is to shut off power to identified high risk fire areas whenever the weather is hot and the winds are blowing. This is an option that was proposed and rejected in SDG&E's Power Shut Off Application proceeding.

### SCE

SCE joins in PG&E's comments in opposition to this proposed addition to GO 95. SCE agrees that the proposed new Rule 18C is misplaced and flawed. SCE also notes that the proposal will add compliance costs to the utilities, which would be recovered from customers. SCE does not believe such costs are outweighed by the uncertain benefits of this proposal.

## SDG&E

SDG&E opposes this proposal for the reasons stated in PG&E's opposition. SDG&E notes that even though in D.09-09-030 the Commission denied without prejudice SDG&E's « Emergency Power Shut-Off Plan », at the same time the Commission confirmed SDG&E's authority under Sections 399.2(a) and 451 of the Public Utilities Code to shut off power in emergency situations when necessary to protect public safety. The Commission also ordered SDG&E to convene a collaborative stakeholder process relating to fire safety and the possibility of a revised emergency power shut-off plan for certain portions of SDG&E's service territory. Mussey Grade's contingency planning proposal would duplicate work already being done in SDG&E's ongoing collaborative process. There is no need for the Commission to order SDG&E to come up with a contingency plan to deal with wind and fire danger -- SDG&E and interested stakeholders are hard at work addressing these issues already. Mussey Grade's proposal would burden SDG&E's customers with additional costs, with no reasonable prospect of benefits from the additional expenditures. Moreover, because fire safety and wind issues are already fully being considered in the collaborative process, Mussey Grade's proposal would create the potential for inconsistent Commission decisions and requirements.

## Sierra Pacific

Sierra Pacific opposes Mussey Grade's contingency planning proposal because the proposal is inappropriate for this proceeding and does not belong in GO 95. GO 95 addresses overhead line standards, not business or planning standards. Additionally, the proposal is unlikely to reduce fire risks in Sierra Pacific's service territory. High winds in Sierra Pacific's service territory typically occur during the winter and correspond with snow and rain. As the windiest periods occur in the wet season, fire risks are much lower and contingency plans like those contemplated in this proposal are unlikely to reduce fire risks. Furthermore, this proposal, if adopted, would require utilities to exceed GO 95 requirements by planning measures above and beyond what is contemplated by GO 95. Effectively, the proposal would not only require utilities to meet GO 95 wind loading and vegetation management requirements, but exceed such requirements by then planning additional measures to prevent ignitions. This proposal is not properly tailored to reduce ignition risk and, if adopted, would result in additional costs for ratepayers with no foreseeable benefits. Accordingly, the CPUC should not adopt this proposal.

## 5. Record of Voting

PARTIES	NOT PRESENT	YES	NEUTRAL	NO
AT&T				X
CAISO	X			
CALTEL	X			
CCTA				X
CFBF	X			
CMUA				X
COMCAST				X
COX				X
CPSD			X	
CTIA	X			
DRA			X	
EXTENET	X			
FACILITIES MANAGEMENT		X		
FRONTIER	X			
IBEW 1245			X	
LA COUNTY		X		
LADWP				X
MUSSEY GRADE		X		
OSMOSE UTILITIES SERVICES	X			
NCPA	X			
NEXTG	X			
PACIFICORP				X
PG&E				X
SCE				X
SDG&E				X
SIERRA PACIFIC				X
SMALL LECS				X
SMUD				X
SPRINT NEXTEL				X
SUNESYS				X
SURE WEST				X
TIMEWARNER CABLE				X
T-MOBILE				X
TURN	X			
TW TELECOM				X
VERIZON				X
DAVEY TREE	X			

**MAP NO. 5 – GENERAL ORDER 95, RULE 31.1**

**VI. MAP NO. 5 – GENERAL ORDER 95, RULE 31.1**

**A. Rule 31.1 Proposal by Joint Electric Utilities**

**1. Proposed Rule Change**

**a. Current Rule**

**31.1 Design, Construction and Maintenance**

Electrical supply and communication systems shall be designed, constructed, and maintained for their intended use, regard being given to the conditions under which they are to be operated, to enable the furnishing of safe, proper, and adequate service.

For all particulars not specified in these rules, design, construction, and maintenance should be done in accordance with accepted good practice for the given local conditions known at the time by those responsible for the design, construction, or maintenance of [the] communication or supply lines and equipment.

All work performed on public streets and highways shall be done in such a manner that the operations of other utilities and the convenience of the public will be interfered with as little as possible and no conditions unusually dangerous to workmen, pedestrians or others shall be established at any time.

**b. Strikeout/Underline**

**31.1 Design, Construction and Maintenance**

Electrical supply and communication systems shall be designed, constructed, and maintained for their intended use, regard being given to the conditions under which they are to be operated, to enable the furnishing of safe, proper, and adequate service.

For all particulars not specified in these rules, design, construction, and maintenance should be done in accordance with accepted good practice for the given local conditions known at the time by those responsible for the design, construction, or maintenance of [the] communication or supply lines and equipment.

For all particulars specified in this Order, a supply or communications company is in compliance with this rule if it designs, constructs and maintains a facility in accordance with such particulars. For all particulars not specified in this Order, a supply or communications company is in compliance with this rule if it designs, constructs and maintains a facility in accordance with accepted good practice.

All work performed on public streets and highways shall be done in such a manner that the operations of other utilities and the convenience of the public will be interfered with as little as possible and no conditions unusually dangerous to workmen, pedestrians or others shall be established at any time.

Note: The standard of accepted good practice should be applied on a case by case basis. For example, the application of “accepted good practice” may be aided by reference to any of the practices, methods, and acts engaged in or approved by a significant portion of the relevant industry, or which may be expected to accomplish the desired result with regard to safety and reliability at a reasonable cost.

### **c. Proposed Final Rule**

#### **31.1 Design, Construction and Maintenance**

Electrical supply and communication systems shall be designed, constructed, and maintained for their intended use, regard being given to the conditions under which they are to be operated, to enable the furnishing of safe, proper, and adequate service.

For all particulars not specified in these rules, design, construction, and maintenance should be done in accordance with accepted good practice for the given local conditions known at the time by those responsible for the design, construction, or maintenance of [the] communication or supply lines and equipment.

For all particulars specified in this Order, a supply or communications company is in compliance with this rule if it designs, constructs and maintains a facility in accordance with such particulars. For all particulars not specified in this Order, a supply or communications company is in compliance with this rule if it designs, constructs and maintains a facility in accordance with accepted good practice.

All work performed on public streets and highways shall be done in such a manner that the operations of other utilities and the convenience of the public will be interfered with as little as possible and no conditions unusually dangerous to workmen, pedestrians or others shall be established at any time.

Note: The standard of accepted good practice should be applied on a case by case basis. For example, the application of “accepted good practice” may be aided by reference to any of the practices, methods, and acts engaged in or approved by a significant portion of the relevant industry, or which may be expected to accomplish the desired result with regard to safety and reliability at a reasonable cost.

## **2. Rationale**

GO 95 provides rules for overhead electric line construction, with the express purpose to “formulate uniform requirements for overhead electrical line construction ... [that] will ensure adequate service and secure safety.”<sup>15</sup> Rule 31.1 echoes these general, high-level principles. It provides no specific guidance to the regulated utilities for the design, construction and

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<sup>15</sup> General Order 95, Rule 11.

maintenance of utility facilities, and is not capable of being operationalized. As such, by itself, it neither ensures adequate service nor secures safety.

The proposed change improves the meaning of the rule, making it clear that a utility that operates according to the particulars of the other, more specific GO 95 rules and requirements, is in compliance with the general order. Further, when no particulars are stated in the rules, the change provides guidance and clarity to the utility by explaining what is meant by the reference to “accepted good practice” currently in the rule.

The proposed rule change also addresses a significant problem that the utilities face. Currently, CPSD will find “violations” of Rule 31.1 for conditions for which there are no specific design or construction standards or rules because the general language in the current Rule 31.1 provides CPSD with the ability to allege a violation without identifying the specific construction or maintenance standard with which the utility is expected to comply. This form of enforcement is not only unfair, but gives no credit to a utility that is doing its best to build and maintain its system according to all known standards and rules.

The proposed rule change would require CPSD to articulate the requirement that it alleges is violated, since the proposed rule change clearly sets forth the standard for compliance. This should benefit CPSD as much as the utilities in that both entities will have clarity around what is expected for compliance.

The proposed rule change is clearly within the scope of this proceeding. The Scoping Memo allows “matters with a direct nexus to this proceeding” and further states that the PRCs should be prioritized in the following order: “(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.”<sup>16</sup> Further, given that CPSD alleged violations of GO 95, Rule 31.1 in all three of the Southern California 2007 fire investigations, it is evident that CPSD considers GO 95, Rule 31.1 to pertain to fire safety and, thus, has a direct nexus to the OIR.

In addition, the proposed rule change does not fall within the Scoping Memo’s exclusion pertaining to “legal liability.” CPSD has cited nonconformance with Rule 31.1 during its audits of utility facilities as well as during its incident investigations, including the fire investigations cited above. This proposed rule change is addressing a regulatory issue that needs correction in order to improve the safety and reliability of the system, including fire safety.

While the number of votes each proposal receives is not by itself an indication of reasonableness of the proposal, the fact that all parties but CPSD either supported this PRC, voted neutral, or abstained, indicates that the language proposed in this PRC was close to achieving consensus. Indeed, this PRC received a significant amount of attention in the workshops, and modifications to the original proposal were made in an attempt to bring parties closer together. In addition, it should be noted that the language in the Note that describes how the standard of “accepted good practice” should be applied was supported by CPSD in the Workshop Report submitted in R.01-10-001.

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<sup>16</sup> See, OIR Scoping Memo Issue #2, Clarification #1 and Matter L: D.09-08-029, p.41; Phase 2 Scoping Memo, p.8: #25, “Matters with a Direct Nexus to this Proceeding”, and p. 12: “improve the meaning and clarity...”.

## 2. Justification

- The specific electric utilities, CIPs, and others affected by the PRC.

This proposal would affect electric utilities and communication entities subject to CPUC jurisdiction.

- The current text of the affected General Order(s), if any.

See above.

- 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.

See above.

- The specific fire hazard(s) addressed by the PRC and/or other objectives accomplished by the PRC.

CPSD has alleged violations of GO 95, Rule 31.1 in all three of the investigations into the Southern California fires allegedly associated with lashing wire, failure to inspect communications lines, wires slapping together, clearances with other wires, a tree limb falling into a line, and pole loading. Indeed, in the Rice fire investigation, the only violation initially cited was a violation of Rule 31.1. Clearly, the CPSD believes that this rule addresses fire hazards.

However, Rule 31.1 mentions **none** of these conditions and gives no specific direction to utilities as to what they need to do to be in compliance with this rule or to mitigate fire hazards. This is a major problem for the utilities, and this PRC is proposed to rectify that problem. This PRC will improve the meaning of the rule(s), making it clear that a utility that designs and constructs its facilities according to the particulars of the more specific GO 95 requirements is in compliance with the General Order. It will also provide guidance and clarity to a utility on how to design and construct its facilities in cases where there are no particulars in the rules (by explaining “accepted good practices”).

- How the PRC reduces or otherwise addresses the fire hazard(s) and/or achieves other objectives.

Providing clarity to this rule will allow the utilities – as well as the Commission -- to focus their efforts and resources on ensuring compliance with identified criteria that are specifically and carefully crafted and are, thus, capable of being operationalized. The effect of this clarity will be the design and construction of utility systems that follow good engineering practices to ensure safety (including fire safety).



- The anticipated costs of the PRC, including, if available, costs incurred by investor owned utilities, POU's, CIPs, and customers.

The benefit of this PRC will be to focus resources on ensuring tangible improvements in the design and construction of utility facilities in order to mitigate fire risk. This PRC should not create any additional costs for supply and communication companies or their customers.

- The anticipated benefits of the PRC.

See above.

- Whether and how the costs will be recovered from customers.

Not applicable.

- Whether and how costs will be shared among electric utilities, CIPs, and others.

Not applicable.

- Why it is in the public interest to adopt the PRC.

It is in the public interest to ensure that a utility provides reliable, cost effective and safe electric services. There is no benefit to the public to have design and construction rules that are so general that they provide no guidance to the utility and cannot be operationalized.

- If the PRC applies to electric transmission, why the rule does not conflict with other federal or state regulations.

This PRC clarifies an existing General Order 95 rule, which currently complements and poses no conflict with existing 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.

This proposal is exempt from environmental review under Section 15378 of the California Environmental Quality Act (CEQA) Guidelines because it is not a "project" under CEQA and will not have any potentially significant impact on the environment. NEPA does not apply because adoption of the proposed rule change does not constitute action by a federal agency within the meaning of 42 USC § 4332.

### **3. Parties' Comments**

#### **a. Parties in Support**

##### CIP Coalition

Along with proposed Rule 18A offered by the CIP Coalition, this PRC was among the most broadly supported rule changes that was not approved as a consensus item in the workshops. Only CPSD opposed it. The PRC would revise Rule 31.1 to clarify the substantive standards applicable under GO 95 and what is required of utilities and CIPs in order to meet these standards.

Rule 31.1 has been relied on as a basis for several recent enforcement proceedings regarding fire incidents, but contains no specific rules or requirements for construction, inspection or maintenance of electric utility or CIP facilities. It contains only general principles that require electric utility and CIP facilities to be designed, constructed, and maintained for their intended use to enable the furnishing of "safe, proper, and adequate service." As a result, enforcement actions may be brought under Rule 31.1 for "violations" of new "rules" that have never been clearly articulated or formally adopted. This has left utilities and CIPs with no clear notice or ability to understand what criteria they must meet in designing and maintaining their facilities or how priorities should be assigned in order to address and reduce fire safety risks and hazards consistent with the Commission's intent.

The Joint Utilities' PRC would address these deficiencies by clarifying both the substantive standards applicable under GO 95 and what is required of utilities and CIPs in order to comply with these standards. The PRC would clarify that a utility or CIP that designs and constructs its facilities in accordance with the particular rules and requirements set forth in GO 95 is in compliance with the General Order. It would also further clarify that where GO 95 contains no specific rules or requirements, utilities and CIPs are expected to design and construct their facilities in accordance with "accepted good practices." These proposed changes would help ensure that utilities and CIPs comply with applicable substantive requirements of GO 95, including fire safety requirements, and by doing so, would help ensure that fire hazards are appropriately addressed, consistent with the Commission's intent.

CPSD has provided no justification for opposing this PRC other than its desire to base future enforcement actions on broad general principles, such as those contained in existing Rule 31.1, when no other more specific requirements of GO 95 or any other rule, order or decision of the Commission has been violated. This is fundamentally unfair, however, and raises significant due process issues. CPSD's position should therefore be rejected and the Joint Utilities' PRC regarding Rule 31.1 approved.

##### CMUA

CMUA believes that this PRC provides needed clarity to Rule 31.1.

## PG&E, SCE, and SDG&E

PG&E, SCE, and SDG&E support this proposed rule change for the reasons stated in the rationale.

## Sierra Pacific

Sierra Pacific supports this proposed rule change for the reasons stated in the rationale.

### **b. Parties in Opposition**

#### CPSD

The changes in this PRC do not increase safety or reduce hazards associated with utility facilities, nor do they change the requirements of a utility or CIP to design, construct and maintain their facilities. Rule 31.1 is used by the Commission's enforcement staff to cite utilities for unsafe conditions not covered by other rules. This PRC is an attempt to diminish the regulatory authority of the Commission by preventing it from citing a utility or CIP for an unsafe condition.

Furthermore, by adding the proposed definition of accepted good practice to the rule, which states in part, " 'accepted good practice' may be aided by reference to any of the practices, methods, and acts engaged in or approved by a significant portion of the relevant industry", the electric and communication utilities will be able to collude to come up with whatever design, construction, and maintenance practices they see fit. Then, if a utility followed those self-prescribed "accepted good practices," that utility would be deemed in compliance with GO 95, and avoid any liability as a consequence. This PRC would make Rule 31.1 meaningless and unenforceable. Moreover, this definition of "Accepted Good Practice" is vague as to the meaning of a "significant portion of the relevant industry." For example, it is unclear whether this would refer to California, the Western United States, or the entire United States. The way it is written, "accepted good practice" would mean whatever the utilities and CIPs want it to mean. Having the utilities and CIPs to define what constitutes accepted good practice would allow them to skirt obligations, and control what practices constitute a violation of this rule based on what is best for the companies rather than what is best for public safety and the people of California.

#### 4. Record of Voting

<b>PARTIES</b>	<b>NOT PRESENT</b>	<b>YES</b>	<b>NEUTRAL</b>	<b>NO</b>
AT&T		X		
CAISO	X			
CALTEL	X			
CCTA	X			
CFBF			ABSTAIN	
CMUA		X		
COMCAST		X		
COX		X		
CPSD				X
CTIA		X		
DRA			X	
EXTENET	X			
FACILITIES MANAGEMENT	X			
FRONTIER		X		
IBEW 1245			X	
LA COUNTY			X	
LADWP		X		
MUSSEY GRADE	X			
OSMOSE UTILITIES SERVICES	X			
NCPA	X			
NEXTG		X		
PACIFICORP		X		
PG&E		X		
SCE		X		
SDG&E		X		
SIERRA PACIFIC		X		
SMALL LECS		X		
SMUD	X			
SPRINT NEXTEL		X		
SUNESYS		X		
SURE WEST		X		
TIMEWARNER CABLE		X		
T-MOBILE		X		
TURN			ABSTAIN	
TW TELECOM		X		
VERIZON		X		
DAVEY TREE	X			

**MAP NO. 6 – GENERAL ORDER 95, RULE 31.2**

**VII. MAP NO. 6 – GENERAL ORDER 95, RULE 31.2**

**A. Rule 31.2 Proposal 1 by CIP Coalition members CCTA, Comcast, CTIA, NextG, Sprint Nextel, Sunesys, Time Warner, T-Mobile, tw telecom and Verizon (CIP 1)<sup>17</sup>**

**1. Proposed Rule Change**

**a. Current Rule**

**31.2 Inspection of Lines**

Lines shall be inspected frequently and thoroughly for the purpose of insuring that they are in good condition so as to conform with these rules. Lines temporarily out of service shall be inspected and maintained in such condition as not to create a hazard.

**b. Strikeout/Underline**

**31.2 Inspection of Lines**

Lines shall be inspected frequently and thoroughly for the purpose of insuring that they are in good condition so as to conform with these rules. Lines temporarily out of service shall be inspected and maintained in such condition as not to create a hazard.

**A. Communications Lines In Specified Fire Areas:**

Communication lines shall be inspected in Specified Fire Areas, as follows:

- (1) Patrols shall be performed not less often than once every three (3) years on overhead communications lines installed on joint use poles with electric distribution or transmission facilities, as well as on communication lines one span away.**

Patrol means a simple visual inspection of communications equipment and structures that is designed to identify obvious structural problems and hazards. Patrols may be carried out in the course of other company business.

- (2) Detail Inspections shall be performed not less often than once every nine (9) years on overhead communications lines installed on joint use poles with electric distribution or transmission facilities, as well as on communication lines one span away.**

Detail Inspection means a careful visual inspection of communications equipment and structures using inspection tools such as binoculars and measuring devices, as appropriate. Detail Inspections may be carried out in the course of other company business.

<sup>17</sup> Cox, a member of the CIP Coalition, abstains from taking a position on this rule.

(3) For all patrols and details, records shall specify the facility or equipment inspected; the name of the inspector; the date of the inspection; and any problems (or items requiring corrective action) identified during each inspection, as well as the scheduled date of corrective action. Records of Patrols and Details shall be made available to Commission staff upon 30 days notice.

Note: Specified Fire Areas shall be defined as [in Southern California – FRAP Maps; in Central and Northern California - to be worked out in workshops].

**B. Electric Lines: shall be inspected in compliance with the minimum intervals set forth in General Order 165.**

### c. **Proposed Final Rule**

#### **31.2 Inspection of Lines**

Lines shall be inspected frequently and thoroughly for the purpose of insuring that they are in good condition so as to conform with these rules. Lines temporarily out of service shall be inspected and maintained in such condition as not to create a hazard.

##### **A. Communications Lines In Specified Fire Areas:**

Communication lines shall be inspected in Specified Fire Areas, as follows:

- (1) Patrols** shall be performed not less often than once every three (3) years on overhead communications lines installed on joint use poles with electric distribution or transmission facilities, as well as on communication lines one span away.

Patrol means a simple visual inspection of communications equipment and structures that is designed to identify obvious structural problems and hazards. Patrols may be carried out in the course of other company business.

- (2) Detail Inspections** shall be performed not less often than once every nine (9) years on overhead communications lines installed on joint use poles with electric distribution or transmission facilities, as well as on communication lines one span away.

Detail Inspection means a careful visual inspection of communications equipment and structures using inspection tools such as binoculars and measuring devices, as appropriate. Detail Inspections may be carried out in the course of other company business.

- (3) For all patrols and details, records shall specify the facility or equipment inspected; the name of the inspector; the date of the inspection; and any problems (or items requiring corrective action) identified during each inspection, as well as the scheduled date of corrective action. Records of Patrols and Details shall be made available to Commission staff upon 30 days notice.

Note: Specified Fire Areas shall be defined as [*in Southern California – FRAP Maps; in Central and Northern California - to be worked out in workshops*].

- C. **Electric Lines:** shall be inspected in compliance with the minimum intervals set forth in General Order 165.

## 2. Rationale

*Note:* See Map No. 14 for **proposed** definition of Specific Fire Areas.

The current Rule 31.2 of General Order 95 imposes an obligation on both electric utilities and CIPs to frequently and thoroughly inspect their lines. In Phase 1 of this proceeding, the Commission, through Ordering Paragraph 1 of Decision 09-08-029 noted above, imposed a specific inspection obligation on CIPs, requiring CIPs to perform patrol inspections of their facilities in designated extreme and very high fire threat zones in Southern California. In doing so, the Commission recognized the Ordering Paragraph was serving to temporarily supplement General Order 95 and would remain in effect only until the Commission issued a decision in Phase 2. It was contemplated that the Commission would utilize Phase 2 to incorporate all or a part of the Ordering Paragraph into final rules, with parties being afforded the opportunity to provide refinements to the rule. It is in this context that the CIPs noted above offer modifications to Rule 31.2 of General Order 95. The issue of CIP inspections was also placed into the scope of Phase 2 as Issue 11 in the Assigned Commissioner’s Ruling and Scoping Memo for Phase 2 of this proceeding.

CIP 1 addresses cyclical inspections in “Specified Fire Areas” (as defined) and is consistent with the “[t]he purpose of this rulemaking proceeding [which] is to consider measures to reduce fire hazards associated with (1) electric transmission and distribution facilities, and (2) communications infrastructure provider (CIP) facilities in close proximity to overhead electric power lines.”

In particular, CIP 1 provides for (i) a three-year “patrol” inspection cycle for all CIP facilities located on supply poles or that are one pole length away throughout the state in designated fire zones; (ii) a nine-year “detail” inspection cycle on those same facilities; and (iii) an auditable inspection record keeping requirement. At the same time, it leaves intact the current inspection requirements imposed on electric utilities through GO 165.

In brief, this PRC expands the interim rule to provide for inspections of facilities throughout the state in high fire risk areas, establishes a reasonable inspection cycle for those inspections and



imposes a detailed inspection requirement to supplement the tri-annual patrol inspection requirement. Thus, the PRC is appropriately focused on addressing potential fire hazards associated with CIP facilities, if any, in these high risk areas and does so in a responsible and measured manner

### 3. Justification

- The specific electric utilities, CIPs, and others affected by the PRC.

Only CIPs are affected by the PRC.

- The current text of the affected General Order(s), if any.

See above.

- 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.

See above.

- The specific fire hazard(s) addressed by the PRC and/or other objectives accomplished by the PRC.

The findings of the Exponent Study presented in Phase 1 of this proceeding concluded that the contribution of communication lines/wireless equipment to fire risk is “negligible.” It is unclear whether inspection of CIP facilities materially promotes fire safety. However, Ordering Paragraph No. 1 of D.09-08-029 contemplates a CIP inspection rule consistent with the scope of this proceeding. To that end, this PRC focuses inspection efforts on the extreme and high risk fire zones in the state and provides for responsible and reasonable inspection cycles. These inspections have the potential benefit of promoting the Commission’s (and the carriers’) interest to further reduce or eliminate fire hazards related to CIPs’ facilities, if any, and to find and correct fire hazards in designated fire zones in a cost-effective manner.

- How the PRC reduces or otherwise addresses the fire hazard(s) and/or achieves other objectives.

See above.

- The anticipated costs of the PRC, including, if available, costs incurred by investor owned utilities, POUs, CIPs, and customers.

There will be additional costs incurred by CIP, but the amount is not known.

- The anticipated benefits of the PRC.

See above.

- Whether and how the costs will be recovered from customers.

Most of the CIPs are not regulated rate-of-return companies so the costs for these carriers may be either absorbed by the inspecting CIPs or recovered through price increases or a line-item charge on bills as allowed by the Phase 1 Decision.

- Whether and how costs will be shared among electric utilities, CIPs, and others.

The PRC does not propose nor contemplate cost sharing.

- Why it is in the public interest to adopt the PRC.

The PRC is consistent with the scope of this proceeding and otherwise provides for regular inspections of CIP facilities on or near supply lines in extreme and very high fire threat zones. Thus, to the extent there are any fire hazards associated with those facilities, these inspections are aimed at mitigating the risk. In addition, the PRC focuses these efforts in areas where any potential risk is greatest and thus appropriately balances the potential costs of the inspections (which will ultimately be borne by consumers) with the potential benefits of the inspections.

- If the PRC applies to electric transmission, why the rule does not conflict with other federal or state regulations.

Not applicable.

- 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.

The PRC does not implicate CEQA and/or NEPA.

#### **4. Parties' Comments**

##### **a. Parties in Support**

CCTA, Comcast, CTIA, NextG, Sprint Nextel, Sunesys, Time Warner, T-Mobile, tw telecom and Verizon

CCTA, Comcast, CTIA, NextG, Sprint Nextel, Sunesys, Time Warner, T-Mobile, tw telecom and Verizon support the PRC for the reasons set forth in the rationale and justification sections above.

## CMUA

CMUA believes that this PRC represents a reasonable compromise of the various positions articulated by the parties during the Phase 2 workshops. CMUA believes that this PRC would result in a significant improvement over the current program.

## PG&E

Rule 31.2 requires all entities subject to GO 95 to inspect their facilities thoroughly and frequently. In 1997, the Commission adopted GO 165, which sets forth detailed inspection requirements for electric distribution facilities. To date, detailed inspection requirements have not been adopted by the Commission for communication companies. In Phase 1 of this proceeding, the Commission adopted an interim requirement for CIPs to perform patrols in specified high fire danger areas in southern California by September 30, 2010. The Commission intends to adopt permanent detailed inspection requirements for CIP facilities in Phase 2 of this proceeding.

There are four proposals that address detailed inspection cycles for CIP facilities:

**CIP Coalition-1** would require patrols every 3 years and detailed inspections every 9 years in specified fire areas proposed in the CIP's Mapping Proposals contained in MAP No. 14.

**CIP Coalition-2** would require patrols every 5 years in specified fire areas proposed in the CIP's Mapping Proposals contained in MAP No. 14, and no detailed inspections.

**CPSD** would require patrols every year in urban areas, every 2 years in rural areas (except in specified fire areas in southern California which would be subject to annual patrols), and detailed inspections every 10 years.

**SDG&E** would agree with the CPSD proposal, with the difference between the CPSD and the SDG&E alternatives for this MAP being to require CIP inspections of poles 3 span lengths away, rather than CPSD's 1 span length away.

While none of these proposals applies to PG&E's electric distribution inspection program, since PG&E is subject to the requirements in GO 165, PG&E supports CIP Coalition-1, is neutral on CPSD's and SDG&E's proposals, and opposes CIP Coalition-2 for the following reasons:

**CIP Coalition-1** proposes a reasonable approach to the adoption of detailed inspection requirements in this proceeding that is intended to focus on fire mitigation activities. While many of the communication companies in this proceeding have maintained that CIP facilities do not pose any material risk to the ignition of fires in California, those CIP facilities that are in proximity to electric facilities certainly can and have contributed to the ignition of fires. Because of this proximity to electric facilities, CIP facilities must be routinely patrolled and inspected. While PG&E admittedly is not an expert in inspection requirements for communication facilities, CIP Coalition-1 appears to strike the right balance between the frequency of patrols and detailed inspection activities.

**CIP Coalition-2** limits the inspection activities of CIP facilities to a 5-year patrol cycle in specified fire areas. Given PG&E’s experience, through its inspection and patrol programs, with communication facilities compromising the integrity of poles and electric facilities, it is not adequate for communication companies to patrol their facilities every 5 years, with no requirement to perform detailed inspections. Without an inspection requirement, and without more frequent patrols, PG&E does not believe CIP Coalition-2 will effectively reduce fire risk.

**CPSD’s and SDG&E’s proposals** to adopt inspection and patrol requirements for CIP facilities state-wide are reasonable. PG&E supports the need to develop and adopt inspection and patrol requirements for all CIP facilities regardless of whether they are located in high fire danger areas. However, this proceeding is intended to focus on rule changes that will reduce fire risk. CIP Coalition-1 has that focus; these proposals do not. Given the considerable debate and disagreement among the CIPs and CPSD on how best to structure a state-wide CIP inspection and patrol program, it may be premature to adopt these proposals in this proceeding. For this reason, PG&E is neutral on these proposals.

#### SCE

SCE notes that there are four proposals that address inspection cycles for CIP facilities. During the workshops, SCE supported both proposals put forth by the CIP Coalition parties and voted neutral on the CPSD and SDG&E proposals. SCE agrees with the importance of inspecting communications facilities in high fire hazard areas that are in proximity to electric facilities according to a prescribed frequency. Each of the proposals accomplishes this. SCE understands that there are benefits to each approach and costs that increase with the frequency of inspections. SCE takes no position on which of the proposals achieves the best overall outcome, which decision should be made after considering all the costs and benefits of each option.

### **b. Parties in Opposition**

#### CPSD

This PRC requires CIPs to do patrol inspections every three years and detailed inspections every nine years, only in “Specified Fire Areas” for overhead communications lines that are located either on joint use poles or one span away from joint use poles. The problem with this PRC is that it is too limited in geographic scope. It does not contain specific requirements for inspections of communication facilities located on joint use poles that are located outside of the “Specified Fire Areas”, including the urban–wildland interface areas, rural areas, and urban areas which pose threats to the safety of the public. Requiring inspections only in certain “specified fire areas” does nothing to clarify how often CIPs should be inspecting their lines in the rest of the state. Instead, this PRC relies on the text of “frequent and thorough” in the existing rule which has been misinterpreted by CIPs in a way that does not ensure that their entire systems are inspected in any specified period of time. Most CIPs have interpreted “frequent and thorough” to mean they perform a quick visual scan only when a customer calls with a service problem. Otherwise, there is no program in place to ensure that all of the lines are inspected. CPSD has found numerous facilities of CIPs which have not been properly maintained and which utilize electric poles. Specific inspection requirements are needed for all CIP facilities that are located on or near joint use poles that support electric facilities because of the inherent dangers of

electric supply lines and the hazards associated with poorly maintained CIPs facilities on joint poles with electric wires.

### LA County

While the County of Los Angeles appreciates this attempt by the CIPs to put forth a rule that includes both patrol and detail inspection, we must reject this proposed rule change because it does not go far enough to ensure the safety of communication lines. The proposed rule requires that a patrol inspection be completed once every three years and that detail inspections be completed once every nine years. In areas where trees can grow rapidly in response to above average rainfall, and significant winds blow each year, completing a patrol inspection every three years simply is not frequently enough. In addition, the proposed rule change does not require intrusive inspections, which is the only way to truly determine pole soundness.

### SDG&E

SDG&E opposes this proposal for the reasons stated in CPSD's opposition.

## 5. Record of Voting

PARTIES	NOT PRESENT	YES	NEUTRAL	NO
AT&T				X
CAISO	X			
CALTEL	X			
CCTA		X		
CFBF			Abstain	
CMUA		X		
COMCAST		X		
COX			Abstain	
CPSD				X
CTIA		X		
DRA			X	
EXTENET	X			
FACILITIES MANAGEMENT				X
FRONTIER				X
IBEW 1245				X
LA COUNTY				X
LADWP		X		
MUSSEY GRADE			Abstain	
OSMOSE UTILITIES SERVICES	X			
NCPA	X			
NEXTG		X		
PACIFICORP				X
PG&E		X		
SCE		X		
SDG&E				X
SIERRA PACIFIC			X	
SMALL LECS				X
SMUD			X	
SPRINT NEXTEL		X		
SUNESYS		X		
SURE WEST				X
TIMEWARNER CABLE		X		
T-MOBILE		X		
TURN			Abstain	
TW TELECOM		X		
VERIZON		X		
DAVEY TREE	X			

**B. Rule 31.2 Proposal 2 by CIP Coalition members AT&T, Frontier Communications and Small LECs (CIP2)<sup>18</sup>**

**1. Proposed Rule Change**

**a. Current Rule**

**31.2 Inspection of Lines**

Lines shall be inspected frequently and thoroughly for the purpose of insuring that they are in good condition so as to conform with these rules. Lines temporarily out of service shall be inspected and maintained in such condition as not to create a hazard.

**b. Strikeout/Underline**

**31.2 Inspection of Lines**

A. Lines shall be inspected frequently and thoroughly for the purpose of ensuring that they are in good condition so as to conform with these rules. Lines temporarily out of service shall be inspected and maintained in such condition as not to create a hazard.

For the purpose of the remaining subsections of this Rule:

“Patrol” means a simple visual inspection designed to identify obvious structural problems and hazards. Patrols may be carried out in the course of other company business.

“Specified Fire Areas” shall be defined as: for Southern California, the Extreme and Very High Threat Zones on the California Department of Forestry and Fire Protection’s Fire and Resource Assessment Program’s map in Santa Barbara, Ventura, Los Angeles, Orange, San Diego, Riverside, and San Bernardino; for Central and Northern California, [to be determined in the workshops.]

B. Patrols shall encompass overhead communication lines installed on joint use poles with electric distribution facilities, as well as those facilities that are one span away in the Specified Fire Areas. Each Specified Fire Area shall be inspected not less than once every five (5) years.

C. Records demonstrating compliance with subsection (B) of this Rule shall be maintained. Company records shall specify the plant, area or equipment inspected, the name of the inspector and the date of the inspection. Such documentation shall be retained for five (5) years.

<sup>18</sup> Cox, a member of the CIP Coalition, abstains from taking a position on this rule.

**c. Proposed Final Rule**

**31.2 Inspection of Lines**

A. Lines shall be inspected frequently and thoroughly for the purpose of ensuring that they are in good condition so as to conform with these rules. Lines temporarily out of service shall be inspected and maintained in such condition as not to create a hazard.

For the purpose of the remaining subsections of this Rule:

“Patrol” means a simple visual inspection designed to identify obvious structural problems and hazards. Patrols may be carried out in the course of other company business.

“Specified Fire Areas” shall be defined as: for Southern California, the Extreme and Very High Threat Zones on the California Department of Forestry and Fire Protection’s Fire and Resource Assessment Program’s map in Santa Barbara, Ventura, Los Angeles, Orange, San Diego, Riverside, and San Bernardino; for Central and Northern California, [*to be determined in the workshops.*]

B. Patrols shall encompass overhead communication lines installed on joint use poles with electric distribution facilities, as well as those facilities that are one span away in the Specified Fire Areas. Each Specified Fire Area shall be inspected not less than once every five (5) years.

C. Records demonstrating compliance with subsection (B) of this Rule shall be maintained. Company records shall specify the plant, area or equipment inspected, the name of the inspector and the date of the inspection. Such documentation shall be retained for five (5) years.

**2. Rationale**

*Note:* See Map No. 14 for **proposed** definition of Specific Fire Areas.

PRC 31.2 Proposal 2 (CIP 2) incorporates three major elements from the inspection requirements adopted by the Commission in Phase 1 of this proceeding. In Phase 1, the Commission considered the type of inspection to be performed by CIPs with respect to fire safety. Specifically, Ordering Paragraph 1 of the Phase 1 Decision required, in relevant part:

- Communication Infrastructure Providers shall begin performing patrol inspections of their facilities in designated Extreme and Very High Fire Threat Zones as identified in Cal Fire’s Fire and Resource Assessment Program Fire Threat Map, in the following Southern California counties: Santa Barbara, Ventura, Los Angeles, Orange, San Diego, Riverside, and San Bernardino....



- The Communication Infrastructure Providers’ patrol inspections shall encompass all of their overhead lines installed on joint use poles with electric distribution or transmission facilities, as well as those facilities that are one pole length away from joint use poles with electric distribution or transmission lines in the designated areas....
- “Patrol inspection” shall be defined as a simple visual inspection of applicable communications infrastructure equipment and structures that is designed to identify obvious structural problems and hazards. Patrol inspections may be carried out in the course of other company business.

CIP 2 incorporates each of these elements from Ordering Paragraph 1, namely the geographic requirements for the inspections (with the addition of the other extreme and very high fire zones throughout the State), the scope of what should be inspected, and the type of inspection to be done, i.e., patrol inspections. These issues were fully vetted in Phase 1, and there was no new evidence introduced in Phase 2 to cause the Commission to revise these requirements. Indeed, the Commission should continue to focus inspections on the defined CIP facilities in the extreme and very high fire zones throughout the State as contemplated by CIP 2. Additionally, patrol inspections are adequate for CIP facilities. As discussed during the workshops, the detailed inspections conducted by electric utilities with respect to their facilities and defined in GO 165 do not make sense with respect to the types of facilities that CIPs attach to poles, or the negligible risk presented by CIP facilities on joint use poles.

CIP2 does add one new element for the CIP inspections that was not resolved in Phase 1, namely, the time cycle for inspections. Phase 1 specified that the first round of inspections required by Ordering Paragraph 1 should be completed by September 30, 2010. The Commission left to Phase 2 the issue of how frequently the patrol inspections should occur after the completion of the initial round of inspections. We propose that these inspections occur every five years given the negligible fire risks that these facilities pose. We also propose that records of inspections be retained for five years.

### 3. Justification

- The specific electric utilities, CIPs, and others affected by the PRC.

This PRC only affects CIPs.

- The current text of the affected General Order(s), if any.

See above.

- 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.

See above.

- The specific fire hazard(s) addressed by the PRC and/or other objectives accomplished by the PRC.

As explained in the Exponent Report submitted in Phase 1 of this proceeding, the fire risk contributed by CIP facilities on joint poles is negligible. And there is no evidence that inspection of such facilities significantly decreases the risk of fires. Nonetheless, in an effort to work with the Commission on this issue, the CIP Coalition members noted above offer CIP 2.

- How the PRC reduces or otherwise addresses the fire hazard(s) and/or achieves other objectives.

See above.

- The anticipated costs of the PRC, including, if available, costs incurred by investor owned utilities, POUs, CIPs, and customers.

Based on a preliminary cost-feasibility review of the CIP 2 proposal, AT&T is willing to absorb the costs associated with this proposal. However, CIPs sponsoring this proposal, including AT&T, believe that any inspection requirements above existing practices are unwarranted and costs associated with new requirements would be in addition to CIPs' existing operational costs to maintain their aerial infrastructure including system development costs, required equipment and tools to perform the inspections, and any associated administrative costs.

- The anticipated benefits of the PRC.

See above.

- Whether and how the costs will be recovered from customers.

Unlike the electric utilities participating in this proceeding, most of the CIPs are not rate-of-return regulated. Thus, the costs will either be absorbed by the CIPs or passed on to customers through a line-item charge on bills as allowed by the Phase 1 Decision.

- Whether and how costs will be shared among electric utilities, CIPs, and others.

CIP 2 does not rely on any sort of cost sharing amongst electric utilities, CIPs, and others.

- Why it is in the public interest to adopt the PRC.

The PRC is in the public interest because the risk of CIP facilities causing fires is negligible. Therefore, it is wasteful to impose burdensome inspection requirements on CIPs that do not measurably contribute to fire safety. This proposal sets forth a reasonable inspection cycle that focuses on extreme and very high fire zones, and does not burden CIPs and their customers with excessive costs.

- If the PRC applies to electric transmission, why the rule does not conflict with other federal or state regulations.

Not applicable.

- 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 statues and/or regulations where the exemption is listed. Conversely, any assertion that CEQA and/or NEPA do apply must (1) cite the relevant statues 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.

We are not aware of any CEQA or NEPA implications that are raised by CIP PRC 31.2(2).

#### **4. Parties' Comments**

##### **a. Parties in Support**

AT&T, CTIA, Frontier Communications, Small LECs, Sprint Nextel, Sunesys, SureWest Telephone, Time Warner Cable, tw telecom, and Verizon

AT&T, CTIA, Frontier Communications, Small LECs, Sprint Nextel, Sunesys, SureWest Telephone, Time Warner Cable, tw telecom, and Verizon support the PRC for the reasons set forth in the rationale and justification sections above.

##### SCE

SCE notes that there are four proposals that address inspection cycles for CIP facilities. During the workshops, SCE supported both proposals put forth by the CIP Coalition parties and voted neutral on the CPSD and SDG&E proposals. SCE agrees with the importance of inspecting communications facilities in high fire hazard areas that are in proximity to electric facilities according to a prescribed frequency. Each of the proposals accomplishes this. SCE understands that there are benefits to each approach and costs that increase with the frequency of inspections. SCE takes no position on which of the proposals achieves the best overall outcome, which decision should be made after considering all the costs and benefits of each option.

##### **b. Parties in Opposition**

##### CPSD

This PRC requires CIPs to do a patrol inspection every five years and only in "Specified Fire Areas" for overhead communications lines that are located either on joint use poles or one span away from joint use poles. The main problem with this PRC is that it contains no requirements for detailed inspections. Patrol inspections are intended to detect obvious safety hazards, and are reactive in nature. Detailed inspections are more proactive and preventative in nature and are intended to detect non-obvious GO 95 safety violations and conditions that may become safety hazards. The scope of each type of inspection is different both in terms of the types of

conditions companies should be looking for, but also in terms of how they are performed (i.e., patrol inspections may be done by aerial flyovers or by simple visual scans during the ordinary course of business v. having a dedicated inspector visit every pole for detailed inspections). Detailed and patrol inspections work hand-in-hand, and both are necessary to identify and correct safety violations on a utility or CIP's facilities. In addition, the five-year patrol cycle is too long, and does not comport with the current requirement to inspect lines "frequently." A five-year patrol inspection cycle would allow violations to exist for several years before being inspected and discovered.

The next problem with this PRC is that it is too limited in geographic scope. It does not contain specific requirements for inspections of communication facilities located on joint use poles that are located outside of the "Specified Fire Areas", including the urban-wildland interface areas, rural areas, and urban areas which pose threats to the safety of the public. Requiring patrol cycles only in certain "specified fire areas" does nothing to clarify how often CIPs should be inspecting their lines in the rest of the state. Instead, this PRC relies on the text of "frequent and thorough" in the existing rule which has been misinterpreted by CIPs in a way that does not ensure that their entire systems are inspected in any specified period of time. Most CIPs have interpreted "frequent and thorough" to mean they perform a quick visual scan only when a customer calls with a service problem. Otherwise, there is no program in place to ensure that all of the lines are inspected. CPSD has found numerous facilities of CIPs which have not been properly maintained and which utilize electric poles. Specific inspection requirements are needed for all CIP facilities that are located on or near joint use poles that support electric facilities because of the inherent dangers of electric supply lines and the hazards associated with poorly maintained CIPs facilities on joint poles with electric wires.

#### LA County

This weak and ineffective attempt at inspecting CIP facilities will do little to enhance safety of communication lines and prevent fires. A patrol inspection may be completed from the roadway in a vehicle and would not even require the inspector to touch or examine the pole. Using this inspection regimen, many companies would only learn that a pole or wires need to be replaced when they failed. In addition, the Commission needs to remember how rapidly vegetation grows in California, especially after years when rainfall is higher than average. Completing a patrol inspection every five years is simply not frequent enough to ensure that lines and equipment have not been compromised by rapidly growing vegetation. Lack of a detail and/or intrusive inspection requirement provides further reason to not support this proposed rule change.

#### PG&E

PG&E opposes the CIP Coalition-2 proposal as insufficient to reduce fire risk. Please refer to the reasons stated in PG&E's comments to MAP No. 6, CIP Coalition-1.

#### SDG&E

SDG&E opposes this proposal for the reasons stated in CPSD's opposition.

## 5. Record of Voting

PARTIES	NOT PRESENT	YES	NEUTRAL	NO
AT&T		X		
CAISO	X			
CALTEL	X			
CCTA		X		
CFBF			Abstain	
CMUA			X	
COMCAST		X		
COX			Abstain	
CPSD				X
CTIA		X		
DRA				X
EXTENET	X			
FACILITIES MANAGEMENT				X
FRONTIER		X		
IBEW 1245				X
LA COUNTY				X
LADWP			X	
MUSSEY GRADE			Abstain	
OSMOSE UTILITIES SERVICES	X			
NCPA	X			
NEXTG		X		
PACIFICORP				X
PG&E				X
SCE		X		
SDG&E				X
SIERRA PACIFIC			X	
SMALL LECS		X		
SMUD			X	
SPRINT NEXTEL		X		
SUNESYS		X		
SURE WEST		X		
TIMEWARNER CABLE		X		
T-MOBILE		X		
TURN			Abstain	
TW TELECOM		X		
VERIZON		X		
DAVEY TREE	X			

**C. Rules 31.2 and 80.1 Part A Proposal by CPSD**

**1. Proposed Rule Change**

**a. Current Rule**

Lines shall be inspected frequently and thoroughly for the purpose of insuring that they are in good condition so as to conform with these rules. Lines temporarily out of service shall be inspected and maintained in such condition as not to create a hazard.

**b. Strikeout/Underline**

**31.2 Inspection of Lines**

Lines shall be inspected frequently and thoroughly for the purpose of ensuring that they are in good condition so as to conform with these rules.

Lines temporarily out of service shall be inspected and maintained in such condition as not to create a hazard.

**A. Communication Lines (See Rule 80.1)**

**B. Supply Lines shall be inspected in compliance with the requirements of General Order 165.**

**80.1 Inspection Requirements for Communication Lines:**

**A. Each company shall prepare, follow and modify as necessary procedures for conducting inspections for all Communication Lines. The procedures at a minimum shall contain the following:**

- Maximum allowable intervals between inspections. The intervals between inspections shall be based upon the following factors:
  - Proximity to electric facilities
  - Terrain
  - Accessibility
  - Location

In no case may the period between inspections (measured in calendar years) for Communication Lines located on Joint Use Poles (See Rule 21.8) that support Supply Lines, as well as those Communication Lines attached to a pole that are one span away from Joint Use Poles that support Supply Lines, exceed the time specified in the below Table.

<u>Patrol</u>		<u>Detailed</u>
<u>Urban</u>	<u>Rural</u>	
<u>1</u>	<u>2<sup>1</sup></u>	<u>10</u>

(1) Patrol inspections in rural areas shall be increased to once per year in Extreme and Very High Fire Threat Zones in the following counties: Santa Barbara, Ventura, Los Angeles, San Bernardino, Orange, Riverside, and San Diego. Extreme and Very High Fire Threat Zones are defined by California Department of Forestry and Fire Protection’s Fire and Resource Assessment Program (FRAP) Fire Threat Map. The FRAP Fire Threat Map is to be used to establish approximate boundaries and Utilities should use their own expertise and judgment to determine if local conditions require them to adjust the boundaries of the map.

- Methodology to ensure that all lines are subjected to:

- Detailed Inspections

Note: For the purpose of this rule Detailed Inspection shall be defined as a careful visual inspection of Communication facilities and structures using inspection tools such as binoculars and measuring devices, as appropriate.

- Patrol Inspections

Note: For the purpose of this rule Patrol Inspection shall be defined as a simple visual inspection, of applicable communications facilities equipment and structures that is designed to identify obvious structural problems and hazards. Patrol inspections may be carried out in the course of other company business.

- Procedures specifying what problems shall be identified

Each company shall maintain records of inspections. Commission staff shall be permitted to inspect records and procedures consistent with Public Utilities Code Section 314 (a).

**c. Proposed Final Rule**

**31.2 Inspection of Lines**

Lines shall be inspected frequently and thoroughly for the purpose of ensuring that they are in good condition so as to conform with these rules.

Lines temporarily out of service shall be inspected and maintained in such condition as not to create a hazard.

- A. **Communication Lines** (See Rule 80.1)
- B. **Supply Lines** shall be inspected in compliance with the requirements of General Order 165.

**80.1 Inspection Requirements for Communication Lines:**

- A. Each company shall prepare, follow and modify as necessary procedures for conducting inspections for all Communication Lines. The procedures at a minimum shall contain the following:
  - Maximum allowable intervals between inspections. The intervals between inspections shall be based upon the following factors:
    - Proximity to electric facilities
    - Terrain
    - Accessibility
    - Location

In no case may the period between inspections (measured in calendar years) for Communication Lines located on Joint Use Poles (See Rule 21.8) that support Supply Lines, as well as those Communication Lines attached to a pole that are one span away from Joint Use Poles that support Supply Lines, exceed the time specified in the below Table.

Patrol		Detailed
Urban	Rural	
<b>1</b>	<b>2<sup>1</sup></b>	<b>10</b>

- (1) Patrol inspections in rural areas shall be increased to once per year in Extreme and Very High Fire Threat Zones in the following counties: Santa Barbara, Ventura, Los Angeles, San Bernardino, Orange, Riverside, and San Diego. Extreme and Very High Fire Threat Zones are defined by California Department of Forestry and Fire Protection’s Fire and Resource Assessment Program (FRAP) Fire Threat Map. The FRAP Fire Threat Map is to be used to establish approximate boundaries and Utilities should use their own expertise and judgment to determine if local conditions require them to adjust the boundaries of the map.
  - Methodology to ensure that all lines are subjected to:
    - Detailed Inspections

Note: For the purpose of this rule Detailed Inspection shall be defined as a careful visual inspection of Communication facilities and structures using inspection tools such as binoculars and measuring devices, as appropriate.



- Patrol Inspections

Note: For the purpose of this rule Patrol Inspection shall be defined as a simple visual inspection, of applicable communications facilities equipment and structures that is designed to identify obvious structural problems and hazards. Patrol inspections may be carried out in the course of other company business.

- Procedures specifying what problems shall be identified

Each company shall maintain records of inspections. Commission staff shall be permitted to inspect records and procedures consistent with Public Utilities Code Section 314 (a).

## 2. Rationale

As discussed in Phase 1 of this proceeding, currently there is no explicit requirement in GO 95 setting minimum inspection cycle lengths on CIPs. Even though these utilities are already obligated to inspect and maintain their facilities in a safe manner under Cal. Pub. Util. Code § 451, and Rule 31.2 of GO 95 explicitly requires that electrical supply and communications lines must be “inspected frequently and thoroughly,” CPSD has found that certain CIPs and other utilities have not complied with this requirement. CPSD has found numerous facilities of CIPs which have not been properly maintained and which utilize electric poles. At the very minimum, there is not a uniform interpretation of what the phrase “inspected frequently and thoroughly” means. CPSD also has found that certain CIPs do not have any program or procedures in place for conducting “frequent and thorough” inspections, and do not maintain records indicating that they are frequently and thoroughly inspecting their facilities. It is a fundamental aspect of GO 95, however, to have an auditable inspection and maintenance program, in order to ensure that the rules are being complied with. Thus, this PRC requires CIPs to have procedures in place using the listed factors to ensure that all of their lines are subject to patrol and detailed inspections. Furthermore, due to the inherent dangers of electric supply lines and the hazards associated with poorly maintained CIPs facilities on joint poles with electric wires, the PRC provides specified cycles for CIP lines that are located on or near poles supporting electrical supply lines. Thus, the proposed rule is designed to give CIPs considerable flexibility to design inspection programs for their lines, but it is also designed to provide reasonable specified cycles to address situations where additional attention is needed to reduce fire risks.

## 3. Justification

- The specific electric utilities, CIPs, and others affected by the PRC.

This proposed rule would apply to owners of all electrical distribution and transmission facilities that come within the jurisdiction of this Commission, located outside of buildings, including owners of electric facilities that belong to non-electric utilities, electric POUs and CIPs. However, new Rule 80.1 are intended to specifically encompass all CIPs that utilize electric

utilities poles, as well as CIP facilities that are one pole length away from joint use poles with electric distribution or transmission lines.

- The current text of the affected General Order(s), if any.

See above.

- 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.

See above.

- The specific fire hazard(s) addressed by the PRC and/or other objectives accomplished by the PRC.

Rule 31.2 currently requires CIPs to inspect their lines “frequently and thoroughly,” yet many CIPs do not have any inspection program in place to ensure that all of their systems are inspected on any specified time frame. This PRC would require CIPs to have inspection programs and procedures in place to comply with Rule 31.2. In addition, communication facilities that are not maintained in accordance with General Order 95 and are located near supply facilities could result in a contact between the facilities, resulting in a fire.

- How the PRC reduces or otherwise addresses the fire hazard(s) and/or achieves other objectives.

This PRC would require CIPs to have inspection programs and procedures in place to comply with Rule 31.2. This in turn should result in greater overall compliance with the safety rules in General Order 95. This PRC also reduces fire hazards and other safety hazards associated with poorly maintained CIP facilities in close proximity to electric supply facilities by establishing minimum inspection cycles for joint use poles, including more frequent inspections in high fire threat areas in Southern California. Requiring CIPs to have inspection procedures in place and specifying minimum inspection cycles for certain situations will lead to more discovery and remediation of potential safety hazards, and would also mitigate the risk of fires.

- The anticipated costs of the PRC, including, if available, costs incurred by investor owned utilities, POU, CIPs, and customers.

CPSD does not believe that this proposal should result in major additional costs, because CIPs already have an obligation under GO 95, Rule 31.2, to inspect their communications lines “frequently and thoroughly” to ensure that they are in good condition and in conformance with the rules. Furthermore, in D.09-08-029, the Commission adopted an ordering paragraph directing CIPs to begin taking specific inspection and corrective actions in Extreme and High Fire Threat Zones in Southern California. Thus, CIPs should already have some procedures in place for complying with this PRC, and can further adapt these procedures to include the rest of the State, and to include detailed inspections. If CIPs are not complying with the existing safety requirements, including the inspection requirements of Rule 31.2, then they

may incur additional costs. However, that would be due to their own non-compliance, which jeopardizes the safety of California citizens by not ensuring that their facilities are maintained in good condition to comply with the clearance requirements or other safety features of GO 95. Thus, in order to help prevent significant and potentially deadly fires, any additional costs imposed by this PRC are clearly outweighed by the benefits.

- The anticipated benefits of the PRC.

By CIPs discovering and correcting nonconformances, there will be a reduction in the possibility of fires, the dangers to CIP and electric utility workers and the general public, and an increase in reliability of service.

- Whether and how the costs will be recovered from customers.

For CIPs with market-based rates, CPSD submits that they should recover costs from their customers through market-based rates. Small LECs which are on cost-of-service regulation should be able to seek recovery of their compliance costs in rate cases, where DRA and other ratepayer representatives can scrutinize the costs to ensure that they were actually incurred, prudently incurred, and otherwise follow other ratemaking principles.

- Whether and how costs will be shared among electric utilities, CIPs, and others.

The proposed rule does not require costs to be shared among utilities. However, utilities are free to explore the possibility of performing joint inspections and may determine amongst themselves how to share the cost of doing so.

- Why it is in the public interest to adopt the PRC.

By CIPs discovering and correcting nonconformances, there will be a reduction in the possibility of fires, the dangers to CIP and electric utility workers and the general public, and an increase in reliability of service.

- If the PRC applies to electric transmission, why the rule does not conflict with other federal or state regulations.

This PRC clarifies an existing rule in General Order 95, which already applies to electric transmission facilities and does not conflict with an other federal or state regulation.

- 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.

This proposal is exempt from environmental review under Section 15378 of the California Environmental Quality Act (CEQA) Guidelines because it is not a “project” under CEQA and will not have any potentially significant impact on the environment. NEPA does not apply because adoption of the proposed rule change does not constitute action by a federal agency within the meaning of 42 USC § 4332.

#### **4. Parties’ Comments**

##### **a. Parties in Support**

###### DRA

DRA supports CPSD’s proposed rule change for the reasons stated in the rationale and justification provided above.

###### IBEW 1245

IBEW 1245 supports the more aggressive timeline for patrols advanced by the CPSD proposal.

###### LA County

While Rule 31.2 in GO 95 explicitly requires that all companies’ electrical supply and communications lines be ‘inspected frequently and thoroughly’ it became readily apparent during the proceeding that many CIPs do not have an auditable inspection and maintenance program and, at the very least, many CIPs do not maintain standard terminology that would define what ‘frequently and thoroughly’ would be. This proposed rule change, put forth by CPSD, removes the guess work and uncertainty. As a result, all companies will be required to have inspection program and procedures in place to comply with Rule 31.2.

###### SDG&E

SDG&E supports this proposal for the reasons stated in CPSD’s rationale. However, SDG&E believes that requiring inspections of CIP-only poles one span away from joint use poles does not go far enough, and therefore SDG&E has presented a PRC that changes CPSD’s proposed new 80.1 inspection requirement for CIP-only poles from *one span away* to *within three spans* of Joint Use Poles that contain Supply Circuits. SDG&E’s proposed new Rule 80.1 also decreases the maximum interval between detailed inspections for communication facilities located in Extreme and Very High Fire Threat Zones in Southern California from the 10 years proposed by CPSD to five years. This proposed revision would put communication companies on the same schedule for detailed inspections as electric utilities in these high-risk fire threat areas. The

reasons for both changes are discussed more fully in the rationale for SDG&E's revised Rule 31.2 and new Rule 80.1 PRC.

## **b. Parties in Opposition**

### CIP Coalition<sup>19</sup>

CPSD proposes a CIP inspection rule that greatly expands the scope and frequency of the inspections required by the Phase 1 Decision without providing a sufficient basis for doing so. For example, under the CPSD proposal, CIPs would have to inspect communications lines through both patrol and detailed inspections, while the Phase 1 Decision only required patrol inspections. In addition, CPSD would impose patrol inspection obligations on all overhead communication facilities located on joint poles (or one span length away) throughout the state on the same schedule as those required of electric facilities despite the undisputed difference in risk factors. Under CPSD's proposal, "detailed" inspections also must be performed on all overhead communication lines installed on joint use poles with electric distribution or transmission lines once every 10 calendar years, also statewide. The statewide requirement is not specifically stated, but CPSD only restricts inspections with regard to rural areas which coincide with Cal Fire's Extreme and Very High Fire Threat zones.

In Phase 1, the CIPs introduced significant evidence that the risk of causing fires from CIP facilities attached to joint use poles is negligible.<sup>20</sup> None of the workshop participants provided evidence compelling a significant expansion of the scope of inspections, certainly no evidence requiring inspections beyond specified fire areas, and failed to offer any compelling reasoning to go beyond the inspection obligations provided for in either of the CIP proposals. Nevertheless, the CIPs have offered two proposals, both of which would increase the CIP inspection obligations in high fire areas. Unlike either of the proposals presented by CIP Coalition member, the CPSD proposal is entirely inconsistent with the Scoping Memo's focus on fire prevention.

CPSD has also failed to address in workshops (or elsewhere) how the benefits of its proposed inspection rule would outweigh the costs of the rule. CPSD claims that the new inspection rule would not result in major additional cost because CIPs are already required to inspect their lines. But while companies subject to Rule 31.2 must frequently and thoroughly inspect their facilities, CPSD offers an unsupported and incorrect claim, and otherwise seems to completely ignore that the CPSD PRC would substantively expand the Rule adopted in Phase 1 in terms of frequency, type and geographic scope of the proposed inspections.

### **1. Patrol Inspections**

With respect to patrol inspections, CPSD offers an unsupportable proposal. For example, CPSD proposes that patrol inspections of communication lines on joint poles occur every year in designated high fire areas in Southern California and in urban areas. Those inspections occur no less than once every two years in all other areas of the state. These requirements have no basis in the record and are otherwise internally inconsistent. First, it is well-recognized that rural, not urban areas, generally pose a greater risk of fire. The CPSD proposal, however, would require

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<sup>19</sup> Cox, a member of the CIP Coalition, abstains from taking a position on this rule.

<sup>20</sup> This evidence was based on a study conducted by Exponent.

more frequent inspections of urban areas. Moreover, the CPSD proposal would require more frequent inspections in extreme and very high fire zones in rural Southern California but does not address the issue or fire threat zones in the rest of the state. Finally, the CPSD proposal would have CIPs perform inspections on their facilities on the same schedule as the electric utilities despite the vast difference in risk factors.

In fact, CPSD has provided neither evidence nor compelling reasoning that it is necessary for CIPs to conduct such inspections on the basis set forth in its MAP. The evidence in this proceeding, and the experience of the past 100 years, which clearly establishes that communications lines attached to joint use poles pose a negligible, if any, risk of fire, has only been met with weak speculation of what might happen given the proximity to electric conductors. There is simply no basis to impose the same inspection cycle on CIPs as that imposed on electric utilities and, as noted above, it is inconsistent with the scope of this Phase 2.

On the other hand, both of the proposals presented by CIP Coalition members provide for patrol inspections to be focused on joint poles in designated fire areas and to conduct those inspections on a more reasonable, and appropriate, schedule (e.g., 3 years or 5 years depending on the proposal) for these type of low-risk facilities.

## **2. Detailed Inspections**

CPSD's proposal for detailed inspections is similarly fundamentally flawed. CPSD's detailed inspection requirement is simply not consistent with the purpose of Phase 2 "to consider measures to reduce fire hazards associated with (1) electric transmission and distribution facilities, and (2) communications infrastructure provider (CIP) facilities in close proximity to overhead electric power lines".<sup>21</sup> This proceeding's overarching objective is fire prevention, not monitoring compliance with all of General Order 95 or otherwise imposing new obligations without any foundation at all. There has been no showing or substantive arguments to support that statewide detailed inspection of CIP facilities on joint poles materially supplements a patrol inspection's findings or are in any way related to the purpose of this proceeding. Inspections for the sake of inspections are simply outside the scope of this proceeding.

At a minimum, there is no basis to support detailed inspections of CIP facilities outside of the specified fire areas. Thus, despite serious misgivings about the need for these types of inspections, some members of the CIP coalition have proposed to perform detailed inspections in specified fire risk areas once every nine (9) years which at least has the benefit of properly focusing on the overarching goal of this proceeding.

## **3. Costs of Inspections**

Based on a preliminary cost-feasibility, AT&T has estimated the costs for this proposal to be over \$18 million per year for its company. This estimate is incremental to AT&T's existing operational costs to maintain its aerial infrastructure and is exclusive of system development

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<sup>21</sup> R. 08-11-005, Assigned Commissioner's ruling and Scoping Memo for Phase 2 of This Proceeding, (Nov. 5, 2009) ("Scoping Memo") at 1; see also CPSD June 8, 2010 Motion at 10 ("[t]he Phase 2 Scoping Memo specifically states that 'the *overarching objective* of Phase 2 is to consider measures to reduce the fire hazards associated with utility facilities.')(citing Scoping Memo at 8) (emphasis added).

costs, required equipment and tools to perform the inspections and any associated administrative costs. The imposition of these costs is not merited given that there has not been any evidence submitted that the imposition of CPSD's inspection rule would decrease fire hazards associated with CIP facilities. Given that the contribution to fire risk by CIP facilities is negligible, the imposition of these costs is completely unreasonable. Moreover, these cost estimates reflect only those attributed to AT&T and not the other CIP members.

**c. Parties Voting Neutral**

PG&E

PG&E considers CPSD's proposal for CIP inspection cycles to be reasonable. However, given that this proceeding is focused on fire risk mitigation and in light of the considerable disagreement among the CIPs and CPSD over what constitutes a reasonable inspection requirement for CIP facilities, PG&E suggests that a state-wide inspection program be developed in another proceeding.

PG&E does like the fact that CPSD put the CIP inspection requirements in a separate rule 80.1, rather than in Rule 31.2. Since the electric inspection requirements are in a separate location (GO 165), it makes sense to locate any CIP inspection requirements in Section VIII of General Order 95, which applies only to communications lines.

Please refer to PG&E's comments to MAP No. 6, CIP Coalition-1.

## 5. Record of Voting

PARTIES	NOT PRESENT	YES	NEUTRAL	NO
AT&T				X
CAISO	X			
CALTEL				X
CCTA				X
CFBF	X			
CMUA	X			
COMCAST				X
COX			Abstain	
CPSD		X		
CTIA				X
DRA		X		
EXTENET	X			
FACILITIES MANAGEMENT	X			
FRONTIER				X
IBEW 1245		X		
LA COUNTY		X		
LADWP			X	
MUSSEY GRADE			Abstain	
OSMOSE UTILITIES SERVICES	X			
NCPA	X			
NEXTG				X
PACIFICORP		X		
PG&E			X	
SCE			X	
SDG&E		X		
SIERRA PACIFIC			X	
SMALL LECS				X
SMUD			X	
SPRINT NEXTEL				X
SUNESYS				X
SURE WEST				X
TIMEWARNER CABLE				X
T-MOBILE				X
TURN			X	
TW TELECOM				X
VERIZON				X
DAVEY TREE	X			
BILL ADAMS			X	



**D. Rules 31.2 and 80.1 Proposal by San Diego Gas & Electric Company**

**1. Proposed Rule Change**

**a. Current Rule**

**31.2 Inspection of Lines**

Lines shall be inspected frequently and thoroughly for the purpose of insuring that they are in good condition so as to conform with these rules. Lines temporarily out of service shall be inspected and maintained in such condition as not to create a hazard.

**b. Strikeout/Underline**

**31.2 Inspection of Lines**

Lines shall be inspected frequently and thoroughly for the purpose of einsuring that they are in good condition so as to conform with these rules.

Lines temporarily out of service shall be inspected and maintained in such condition as not to create a hazard.

**A. Communication Lines (See Rule 80.1)**

**B. Supply Lines shall be inspected in compliance with the requirements of General Order 165.**

**80.1 Inspection Requirements for Communication Lines:**

Each company shall prepare, follow and modify as necessary procedures for conducting inspections for all Communication Lines. The procedures at a minimum shall contain the following:

- Maximum allowable intervals between inspections. The intervals between inspections shall be based upon the following factors:
  - Proximity to electric facilities
  - Terrain
  - Accessibility
  - Location

In no case may the period between inspections (measured in years) for Communication Lines located on Joint Use Poles (See Rule 21.8) that contain Supply Circuits (See Rule 20.6-D), as well as those Communication Lines attached to a pole that are within three spans of Joint Use Poles that contain Supply Circuits, exceed the time specified in the below Table.

<u>Patrol</u>		<u>Detailed</u>
<u>Urban</u>	<u>Rural</u>	
<u>1</u>	<u>2<sup>1</sup></u>	<u>10<sup>1</sup></u>

(1) Patrol inspections in rural areas shall be increased to once per year, and detailed inspections shall be increased to once every five years, in Extreme and Very High Fire Threat Zones in the following counties: Santa Barbara, Ventura, Los Angeles, San Bernardino, Orange, Riverside, and San Diego. Extreme and Very High Fire Threat Zones are defined by California Department of Forestry and Fire Protection’s Fire and Resource Assessment Program (FRAP) Fire Threat Map. The FRAP Fire Threat Map is to be used to establish approximate boundaries and Utilities should use their own expertise and judgment to determine if local conditions require them to adjust the boundaries of the map.

- Methodology to ensure that all lines are subjected to:

- Detailed Inspections

Note: For the purpose of this rule Detailed Inspection shall be defined as a careful visual inspection of Communication facilities and structures using inspection tools such as binoculars and measuring devices, as appropriate.

- Patrol Inspections

Note: For the purpose of this rule Patrol Inspection shall be defined as a simple visual inspection, of applicable communications facilities equipment and structures that is designed to identify obvious structural problems and hazards. Patrol inspections may be carried out in the course of other company business.

- Procedures specifying what problems shall be identified

Each company shall maintain records of inspections. Commission staff shall be permitted to inspect records and procedures consistent with Public Utilities Code Section 314 (a).

**c. Proposed Final Rule**

**31.2 Inspection of Lines**

Lines shall be inspected frequently and thoroughly for the purpose of ensuring that they are in good condition so as to conform with these rules.

Lines temporarily out of service shall be inspected and maintained in such condition as not to create a hazard.

**A. Communication Lines** (See Rule 80.1)

**B. Supply Lines** shall be inspected in compliance with the requirements of General Order 165.

**80.1 Inspection Requirements for Communication Lines:**

Each company shall prepare, follow and modify as necessary procedures for conducting inspections for all Communication Lines. The procedures at a minimum shall contain the following:

- Maximum allowable intervals between inspections. The intervals between inspections shall be based upon the following factors:
  - Proximity to electric facilities
  - Terrain
  - Accessibility
  - Location

In no case may the period between inspections (measured in years) for Communication Lines located on Joint Use Poles (See Rule 21.8) that contain Supply Circuits (See Rule 20.6-D), as well as those Communication Lines attached to a pole that are within three spans of Joint Use Poles that contain Supply Circuits, exceed the time specified in the below Table.

Patrol		Detailed
Urban	Rural	
1	2 <sup>1</sup>	10 <sup>1</sup>

(1) Patrol inspections in rural areas shall be increased to once per year, and detailed inspections shall be increased to once every five years, in Extreme and Very High Fire Threat Zones in the following counties: Santa Barbara, Ventura, Los Angeles, San Bernardino, Orange, Riverside, and San Diego. Extreme and Very High Fire Threat Zones are defined by California Department of Forestry and Fire Protection’s Fire and Resource Assessment Program (FRAP) Fire Threat Map. The FRAP Fire Threat Map is to be used to establish approximate boundaries and Utilities should use their own expertise and judgment to determine if local conditions require them to adjust the boundaries of the map.

- Methodology to ensure that all lines are subjected to:
  - Detailed Inspections

Note: For the purpose of this rule Detailed Inspection shall be defined as a careful visual inspection of Communication facilities and structures using inspection tools such as binoculars and measuring devices, as appropriate.

- Patrol Inspections

Note: For the purpose of this rule Patrol Inspection shall be defined as a simple visual inspection, of applicable communications facilities equipment and structures that is designed to identify obvious structural problems and hazards. Patrol inspections may be carried out in the course of other company business.

- Procedures specifying what problems shall be identified

Each company shall maintain records of inspections. Commission staff shall be permitted to inspect records and procedures consistent with Public Utilities Code Section 314 (a).

## 2. Rationale

The revised Rule 31.2 and new Rule 80.1 proposed by SDG&E are the same as the revised Rule 31.2 and new Rule 80.1 proposed by CPSD in all but two respects.

### Inspection of CIP-Only Poles within Three Spans of Electric Supply Facilities

CPSD's proposed new 80.1 inspection requirement for communications lines applies to: "Communication Lines located on Joint Use Poles (See Rule 21.8) that contain Supply Circuits (See Rule 20.6-D), as well as those Communication Lines attached to a pole that are *one span away* from Joint Use Poles that contain Supply Circuits." SDG&E's PRC changes *one span away* to *within three spans*. Both CPSD's and SDG&E's proposals recognize that poles supporting only communication equipment should still be inspected on a regular basis if they are located close to joint use poles that support electric conductors or other electric supply equipment. The reason for this provision is that a failure of the communications pole, or significant stress on the communications equipment on that pole, could adversely affect nearby joint use poles.

SDG&E believes that requiring inspections of CIP-only poles one span away from joint use poles does not go far enough. In our experience, significant stress on CIP-only poles two or even three spans away can adversely affect nearby joint use poles. At some point the "cascading" effect from a CIP-only pole failure will no longer be a danger to nearby electric facilities. But CIP-only poles within three spans of our electric facilities definitely pose a danger, and therefore should be inspected on a regular basis. It would not make sense for the Commission to enact detailed inspection requirements for joint use poles, but ignore the potential danger presented by uninspected CIP-only poles located close enough to electric circuits to do harm.

SDG&E believes that inspection of CIP-only poles within three spans of electric facilities is a reasonable compromise. A failure of CIP-only poles five or even 10 spans away could in theory cascade into nearby electric circuits. But the risk of such a major cascade is relatively low. And if CIPs are already in the field inspecting CIP-only poles located within one span of electric supply facilities, the addition cost to inspect two adjacent poles should be relatively low.

## Detailed Inspection of Communications facilities in Extreme and Very High Fire Threat Zones in Southern California

The second change proposed by SDG&E to CPSD's new Rule 80.1 is to decrease the maximum interval between detailed inspections for communication facilities located in Extreme and Very High Fire Threat Zones in Southern California from the 10 years proposed by CPSD to five years. This proposed revision (in footnote (1) to the inspection table) would put communication companies on the same schedule for detailed inspections as electric utilities in these high-risk fire threat areas. SDG&E believes this change is both reasonable and necessary. In Extreme and Very High Fire Threat Zones in Southern California, 10 years is too long of an interval for detailed inspections of CIP facilities that are located in close proximity to electric circuits. The Commission has already established five years as a reasonable detailed inspection interval for electric facilities. In high-risk fire areas, CIPs should have the same detailed inspection interval as electric utilities do. Facilities on joint use poles are only as strong and safe as their weakest link.

### 3. Justification

- The specific electric utilities, CIPs, and others affected by the PRC.

This proposal would affect electric utilities and communication entities subject to CPUC jurisdiction.

- The current text of the affected General Order(s), if any.

See above.

- 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.

See above.

- The specific fire hazard(s) addressed by the PRC and/or other objectives accomplished by the PRC.

The hazard addressed is fire risk and risks to worker safety created by CIP facilities that are not inspected frequently enough.

- How the PRC reduces or otherwise addresses the fire hazard(s) and/or achieves other objectives.

See above.

- The anticipated costs of the PRC, including, if available, costs incurred by investor owned utilities, POU's, CIPs, and customers.

Adoption of SDG&E's Rule 31.2 and new Rule 80.1 PRC could create additional costs for CIPs compared to CPSD's Rule 31.2 and new Rule 80.1 PRC because CIPs would be required to perform detailed inspections more frequently in Extreme and Very High Fire Threat Zones in Southern California, and because CIPs would be required to inspect additional CIP-only poles that might otherwise not be inspected. SDG&E believes the cost for the additional CIP-only pole inspections would be limited because CIPs would already be in the field inspecting CIP-only poles located within one span of electric supply facilities under CPSD's PRC.

- The anticipated benefits of the PRC.

See above.

- Whether and how the costs will be recovered from customers.

Companies that are rate-of-return regulated are seeking an order in this proceeding regarding how the costs for complying with new rules adopted in this proceeding are to be recovered from customers. Companies that are not rate-of-return regulated may recover costs in any legally permissible manner, including through line-item charges or increased fees for services.

- Whether and how costs will be shared among electric utilities, CIPs, and others.

Not applicable. The PRC does not provide for cost sharing among or between entities.

- Why it is in the public interest to adopt the PRC.

See above.

- If the PRC applies to electric transmission, why the rule does not conflict with other federal or state regulations.

This PRC clarifies an existing General Order 95 rule and create a new General Order 95 rule, both of which will complement and pose no conflict with existing 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 statues and/or regulations where the exemption is listed. Conversely, any assertion that CEQA and/or NEPA do apply must (1) cite the relevant statues 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.

This proposal is exempt from environmental review under Section 15378 of the California Environmental Quality Act (CEQA) Guidelines because it is not a "project" under CEQA and will not have any potentially significant impact on the environment. NEPA does not apply because adoption of the proposed rule change does not constitute action by a federal agency within the meaning of 42 USC § 4332.

#### **4. Parties' Comments**

##### **a. Parties in Support**

###### CPSD

CPSD supports the adoption of either its PRC or SDG&E's proposal for CIP inspections. The only difference between the two proposals is that CPSD's version has specified cycles for communication lines attached to a pole that are one span away from joint use poles that support supply lines, while SDG&E's version applies to communication lines attached to a pole that are three spans away from joint use poles. Both proposals contain reasonable specified intervals for detailed and patrol inspections for CIP lines located on or near joint use poles.

###### LA County

The County of Los Angeles supports this proposed rule change. This rule firmly establishes the requirement to inspect all communication facilities. Furthermore, by requiring patrol inspections in the high fire threat zones of Southern California once every year, and detailed inspections once every five years a finite timeframe for inspection of all facilities in these areas will be established. This rule also requires that poles that support communication lines, within three spans of Joint Use Poles that contain Supply Circuits, be inspected on a more rigorous cycle. While the proposed rule stops short of requiring intrusive inspections, it is a vast improvement of the existing language.

###### SDG&E

SDG&E support this proposal for the reasons stated in the rationale.

##### **b. Parties in Opposition**

###### CIP Coalition<sup>22</sup>

The CIP Coalition opposes SDG&E's MAP for the same reasons it opposes the CPSD MAP and specifically incorporates its comments on the CPSD MAP in these comments. Not only does the SDG&E MAP contain all the defects of the CPSD MAP, it also imposes unsubstantiated and unwarranted inspection requirements on CIPs, that are actually more onerous than CPSD's, attenuated to fire prevention, and in no manner cost effective.

The SDG&E MAP would (a) double the number of detailed inspections to be performed by CIPs in fire threat areas in Southern California (once every five years as opposed to CPSD's proposal of once every 10 years), and (b) triple the number of CIP-only facilities subject to annual inspections by requiring inspection of such facilities within "3 pole spans" of joint use poles as opposed to one span in the CPSD MAP.

SDG&E's MAP is completely unsubstantiated. Like CPSD, SDG&E did not present any evidence or substantive justification for statewide inspections of joint poles throughout the state

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<sup>22</sup> Cox, a member of the CIP Coalition, abstains from taking a position on this rule.

or for detailed inspections. Moreover, SDG&E also failed to provide any support for its proposed 5-year cycle for detailed inspections in high fire areas (e.g., what safety hazard would be discovered from a detailed inspection that would not be revealed by a patrol inspection) or for expansion of CPSD's proposal to inspect one pole span away. Furthermore, SDG&E's proposal is difficult to operationalize because it would require a differentiation in CIP facilities (e.g. facilities three span lengths away) and then require CIPs to identify and monitor those facilities in a manner which differs from their other facilities.

SDG&E's MAP also imposes burdensome costs on CIPs that are not outweighed by any commensurate benefit. For example, AT&T has estimated its costs for this proposal to be over \$20 million per year. This estimate is incremental to AT&T's existing operational costs to maintain its aerial infrastructure and is exclusive of system development costs, required equipment and tools to perform the inspections, and any associated administrative costs. Thus, SDG&E's modification of CPSD's MAP should be rejected out of hand.

Similarly, SDG&E's purported desire to apply to CIPs the same standards imposed on electrical utilities—required under GO 165 to perform detailed inspections every 5 years—is not persuasive. It is well recognized that electric facilities are inherently dangerous both to line workers and to the general public. In addition, there is little debate that electric facilities pose a significant fire risk, especially given the high voltage associated with supply lines and related elements such as transformers. There is no such comparable risk associated with CIP facilities. Applying GO 165 standards across the board to CIPs—especially without cost-benefit analysis or any evidence to support the need for such standards—would be unnecessary and wasteful.

**c. Parties Voting Neutral**

PG&E

The only difference between the CPSD and the SDG&E alternatives for this MAP was to require CIP inspections of poles 3 span lengths away, rather than CPSD's 1 span length away. As stated above, PG&E does like the fact that CPSD put the CIP inspection requirements in a separate rule 80.1, rather than in rule 31.2. Since the electric inspection requirements are in a separate location (GO 165), it makes sense to locate any CIP inspection requirements in Section VIII of GO 95, which applies only to communications lines.

Please refer to PG&E's comments to MAP No. 6, CIP Coalition-1 and the CPSD proposal.



## 5. Record of Voting

PARTIES	NOT PRESENT	YES	NEUTRAL	NO
AT&T				X
CAISO	X			
CALTEL	X			
CCTA				X
CFBF			Abstain	
CMUA			X	
COMCAST				X
COX			Abstain	
CPSD		X		
CTIA				X
DRA		X		
EXTENET	X			
FACILITIES MANAGEMENT		X		
FRONTIER				X
IBEW 1245		X		
LA COUNTY		X		
LADWP			X	
MUSSEY GRADE			Abstain	
OSMOSE UTILITIES SERVICES	X			
NCPA	X			
NEXTG				X
PACIFICORP		X		
PG&E			X	
SCE			X	
SDG&E		X		
SIERRA PACIFIC			X	
SMALL LECS				X
SMUD			X	
SPRINT NEXTEL				X
SUNESYS				X
SURE WEST				X
TIMEWARNER CABLE				X
T-MOBILE				X
TURN			Abstain	
TW TELECOM				X
VERIZON				X
DAVEY TREE	X			

**E. Rules 31.2 and 80.1 Part B Proposal by CPSD (Intrusive Testing)**

**1. Proposed Rule Change**

**a. Current Rule**

None.

**b. Strikeout/Underline**

**80.1 Inspection Requirements for Communication Lines:**

**B. Intrusive Inspections**

Wood poles supporting only Communication Lines or equipment, that are:

Located in Extreme or Very High Fire Threat Zones in Southern California and inter-set between joint use poles supporting Supply Lines,

Or,

Located in Extreme or Very High Fire Threat Zones in Southern California and extend up to three spans from a joint use pole supporting Supply Lines,

Or,

Located in areas outside Extreme or Very High Fire Threat Zones in Southern California and extend one span from a joint use pole supporting Supply Lines,

shall be intrusively inspected accordance with the schedule established in General Order 165 for wood poles that support Supply Lines.

Note: For the purpose of this rule Intrusive Inspections shall be defined as an inspection involving movement of soil, and/or using more sophisticated diagnostic tools beyond visual inspections or instrument reading.

**c. Proposed Final Rule**

**80.1 Inspection Requirements for Communication Lines:**

**B. Intrusive Inspections**

Wood poles supporting only Communication Lines or equipment, that are:

Located in Extreme or Very High Fire Threat Zones in Southern California and inter-set between joint use poles supporting Supply Lines,

Or,

Located in Extreme or Very High Fire Threat Zones in Southern California and extend up to three spans from a joint use pole supporting Supply Lines,

Or,

Located in areas outside Extreme or Very High Fire Threat Zones in Southern California and extend one span from a joint use pole supporting Supply Lines,

shall be intrusively inspected accordance with the schedule established in General Order 165 for wood poles that support Supply Lines.

Note: For the purpose of this rule Intrusive Inspections shall be defined as an inspection involving movement of soil, and/or using more sophisticated diagnostic tools beyond visual inspections or instrument reading.

## **2. Rationale**

An intrusive inspection is currently the only way to determine the remaining strength of a wood pole. General Order 165 requires all wood poles that support supply lines to be intrusively inspected. However, there is no specific requirement for poles that support only communication lines to be intrusively inspected, even if those poles are connected to poles that support supply lines. This PRC will require those poles that support only communication lines and are physically connected to poles that support supply lines be intrusively inspected. This will reduce the likelihood of a communication-only pole failing and resulting in problems to the supply lines, for example by causing adjacent supply lines to “slap” and make contact, thus causing arcing that could lead to fires, or by pulling down poles supporting supply lines.

In addition, wood poles that support only CIP facilities have a lower safety factor than poles that support supply lines, therefore they can break more easily in high winds. High wind conditions that can cause CIP-only poles to break are the same conditions that can lead to catastrophic fire events, especially in Southern California which experiences Santa Ana winds. Thus, the PRC increases the range of CIP-only poles to be intrusively inspected to three spans away from poles that support supply lines in Extreme and Very High Fire Threat Zones in Southern California. This is to reduce the risk of the domino effect whereby several weaker communications-only poles fall and pull down a pole supporting electric supply lines. CIP-only pole failure could cause other public safety issues such as blocking evacuation routes or causing the loss of reverse 911 in emergency situations.

### 3. Justification

- The specific electric utilities, CIPs, and others affected by the PRC.

This PRC would only affect CIPs.

- The current text of the affected General Order(s), if any.

See above.

- 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.

See above.

- The specific fire hazard(s) addressed by the PRC and/or other objectives accomplished by the PRC.

This PRC will help reduce the possibility of a cascading pole line failure which originates on a CIP-only pole and causes damage to poles that support electric lines. A CIP-only pole that fails in close proximity to poles that support supply lines could cause supply lines to slap together, or could result in a pole that supports supply lines to fail. These situations could result in fires. CIP-only pole failure could also cause other public safety issues including blocking evacuation routes or preventing public safety agencies from using reverse 911.

- How the PRC reduces or otherwise addresses the fire hazard(s) and/or achieves other objectives.

This PRC requires intrusive inspections for wood poles that support CIP-only lines under certain conditions. This should result in poles being replaced prior to failure, which in turn will reduce the risk of damage or failure of electric facilities. This will also reduce the risk of CIP-only poles failing and causing other public safety hazards.

- The anticipated costs of the PRC, including, if available, costs incurred by investor owned utilities, POUs, CIPs, and customers.

At the workshops, a representative for Osmose Utility (which performs intrusive pole inspections) stated that the cost for intrusive inspections, including full excavation with pole treatment, is approximately \$30-50 per pole. PG&E estimated its costs at about \$45 per pole to test and treat. PacifiCorp stated that its costs were \$39 per pole. Thus the cost should be an average of \$40 per pole that is subject to this PRC (not all CIP-only poles are subject to this PRC –only those poles that are one to three spans away from poles supporting supply lines are subject to intrusive pole inspections under this rule). In addition, this PRC may be cost effective and save money. According to the Osmose Utility representative, wood poles will last approximately 45 years with no inspection or treatment, but will last 80 years with 2-3 treatments. Thus, with treatment poles may need to be replaced less often.

- The anticipated benefits of the PRC.

The anticipated benefits of this PRC include reducing the risk of fires by identifying and replacing weaker poles that could cause supply line damage or failure, and also reducing the risk of harm to communication employees and/or the general public.

- Whether and how the costs will be recovered from customers.

For CIPs with market-based rates, CPSD submits that they should recover costs from their customers through market-based rates. Small LECs which are on cost-of-service regulation should be able to seek recovery of their compliance costs in rate cases, where DRA and other ratepayer representatives can scrutinize the costs to ensure that they were actually incurred, prudently incurred, and otherwise follow other ratemaking principles.

- Whether and how costs will be shared among electric utilities, CIPs, and others.

The proposed rule does not require costs to be shared among utilities. However, utilities are free to explore the possibility of performing joint inspections and may determine amongst themselves how to share the cost of doing so.

- Why it is in the public interest to adopt the PRC.

See above. The PRC will reduce the risk of fire hazards and other public safety hazards.

- If the PRC applies to electric transmission, why the rule does not conflict with other federal or state regulations.

This PRC does not apply to electric transmission.

- 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.

This proposal is exempt from environmental review under Section 15378 of the California Environmental Quality Act (CEQA) Guidelines because it is not a “project” under CEQA and will not have any potentially significant impact on the environment. NEPA does not apply because adoption of the proposed rule change does not constitute action by a federal agency within the meaning of 42 USC § 4332.

#### **4. Parties' Comments**

##### **a. Parties in Support**

###### DRA

DRA supports CPSD's proposed rule change for the reasons stated in the rationale and justification provided above.

###### LA County

Currently, poles supporting only CIP communication lines are not required to go through periodic intrusive testing. However, it became readily apparent during the workshops that communication lines and electrical supply lines often intermingle, share poles or remain in close proximity within a utility corridor. Due to the fact that CIP poles that fail can have a deleterious effect on poles that have charged conductors, requiring intrusive inspections on CIP poles that are in close proximity or are connected to these facilities will enhance safety and reduce the chance of failure when the dry 'Santa Ana' winds of Southern California blow. CPSD wisely moderates their intrusive pole inspection requirements to one span away from poles with electrical facilities in areas outside of the Extreme and Very High Fire Hazard Zones in Southern California. Poles that fail during wind events can not only ignite fires, they can block egress and ingress of both evacuees and first responders, quickly turning a hazardous condition into a life-threatening one. In an effort to increase public safety, the County of Los Angeles would prefer that all poles that are along right-of-ways in very high and extreme fire hazards area be intrusively inspected. In the absence of a rule requiring this, CPSD's requirements will provide the greatest benefit to public safety.

###### PG&E

Intrusive pole inspections are a common and effective method of evaluating the condition of wood poles. Currently, GO 165 requires electric distribution utilities to routinely intrusively inspect wood poles every 20 years after their first intrusive inspection. Those intrusive inspections provide valuable information that allows PG&E to identify those poles in need of repair.

While PG&E has an established intrusive pole inspection program to address its 2.3 million poles, PG&E is unaware of similar programs to intrusively inspect communication-only poles in close proximity to electric facilities. From a public safety perspective, it is prudent for the Commission to adopt a rule that requires periodic intrusive inspections on communication-only poles that are in close proximity to or connected with electric facilities. If communication-only poles that are connected to poles with electric facilities fail, there is a risk that the electric facilities will be compromised, and a fire could ignite. CPSD's proposal is focused specifically on fire risk mitigation and public safety, and should be adopted.

###### SCE

SCE voted to support CPSD's intrusive inspection rule because SCE believes that requiring intrusive inspections of communications wood poles near electric facilities could prevent a

failure of the communications pole and therefore prevent damage to nearby electric facilities. SCE does not take a position on whether each of the three categories identified in CPSD's proposed rule is necessary or cost effective. Although no alternative rule was proposed, SCE would have voted in favor of a rule that limits intrusive inspections for communications wood poles to high fire hazard areas.

### SDG&E

SDG&E supports this proposal for the reasons stated in CPSD's rationale.

### Sierra Pacific

Sierra Pacific supports CPSD's proposed rule change because it is designed to help reduce fire risks. Any failure by CIP facilities in close proximity or connected to electric facilities can compromise electric facilities and could ignite a fire. Therefore, requiring intrusive inspections of CIP facilities is in the public interest as it will help to locate facilities in need of repair and thereby reduce the risk of fires.

## **b. Parties in Opposition**

### The CIP Coaliton<sup>23</sup>

The CIP Coalition opposes adoption of the intrusive testing rule introduced by CPSD (PRC 80.1) because (1) it is not focused on addressing fire hazards associated with electric and CIP lines attached to joint poles, (2) it is not limited to extreme and very high fire zones in the State of California, and (3) it imposes costs upon CIPs without creating any demonstrated reduction of fire hazards.

The Commission has made abundantly clear that this proceeding should focus upon mitigating fire hazards associated with electric facilities and CIP facilities on joint use poles. In Ordering Paragraph 1 of the Phase 1 Decision, the Commission specifically ordered:

The Communication Infrastructure Providers' patrol inspections shall encompass all of their overhead lines installed on joint use poles with electric distribution or transmission facilities, as well as those facilities that are one pole length away from joint use poles with electric distribution or transmission lines in the designated areas.

Thus, in Phase 1, this proceeding focused on electric and CIP facilities on joint use poles and facilities that are one pole length away from joint use poles in extreme and very high fire zones. The Commission confirmed the same scope for Phase 2 by stating in the Phase 2 Scoping Memo (p.1):

The purpose of this rulemaking proceeding is to consider measures to reduce fire hazards associated with: (1) electric transmission and distribution facilities and (2)

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<sup>23</sup> Cox, a member of the CIP Coalition, abstains from taking a position on this rule.

communication infrastructure provider (CIP) facilities in close proximity to overhead electric power lines.

The PRC 80.1 goes beyond this defined scope by imposing requirements on poles that are owned by CIPs and that have only CIP facilities on them. There are no electric lines attached to these poles and, thus, the fire hazard associated with electric facilities is not present. For this reason alone, the PRC should be rejected.

The CPSD PRC is also beyond the scope of this proceeding because it is not limited to areas of high fire risk. As discussed by the CIPs with respect to the inspection rules above, any rule adopted in this proceeding should be limited to the extreme and very high fire zones of the State. The Commission expressly, and appropriately, adopted this limitation in its inspection rule in Ordering Paragraph 1 of the Phase 1 Decision. This PRC, however, would impose state-wide obligations on CIP facilities that simply do not have even the remotest relation to fire or fire safety issues or electric facilities for that matter.

As indicated by the Commission's definition of the scope of this proceeding, there must be at least some evidence that any rule adopted actually does reduce fire hazards. The flaw with PRC 80.1 is that there has been no evidence provided in this proceeding that the intrusive testing of poles with only CIP facilities attached will in any way contribute to a reduction in fires. No evidence has been introduced – or even suggested - that the intrusive inspection of these poles has any bearing on fire safety or that there is any history of CIP only pole failures.

Because there is no benefit vis-à-vis fire prevention to be obtained from PRC 80.1, any costs associated with such intrusive inspections would be unreasonable in the context of a proceeding aimed at reduction of fire hazards. Furthermore, the costs of intrusive testing as required by PRC 80.1 are not trivial. In the case of AT&T alone, the estimated costs for the first round of intrusively testing all of its solely-owned poles with only CIP facilities on them would be approximately \$11 million.<sup>24</sup> These costs are in addition to the other inspection costs described above with respect to visual inspections. Given that there would be no reduction to fire hazards associated with CPSD's PRC, these costs should not be imposed on the CIPs.

Finally, the intrusive inspection of poles in fire areas with CIP-only facilities is also unjustified in the context of this proceeding. There is no evidence that the structural integrity of those poles has any bearing on fire safety. In addition, the CIPs have already agreed to undertake new inspection obligations in the context of this proceeding which are designed to mitigate the risk, if any, those facilities present. Moreover, the PRC is vague and is difficult to operationalize since it would in essence create various categories of CIP facilities (e.g., inter-set poles, facilities three span lengths away) and then require CIPs to identify and monitor those categories.

In brief, this PRC is outside the scope of this proceeding and otherwise completely unjustified.

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<sup>24</sup> AT&T has included intrusive testing costs for all its solely-owned poles with only CIP facilities in this cost estimate because it does not have data that identifies how many of these poles are inter-set between joint use poles, three spans from a joint use pole, or one span for a joint use pole as specified in PRC 80.1.



## 5. Record of Voting

PARTIES	NOT PRESENT	YES	NEUTRAL	NO
AT&T				X
CAISO	X			
CALTEL				X
CCTA				X
CFBF	X			
CMUA	X			
COMCAST				X
COX			Abstain	
CPSD		X		
CTIA				X
DRA		X		
EXTENET	X			
FACILITIES MANAGEMENT	X			
FRONTIER				X
IBEW 1245		X		
LA COUNTY		X		
LADWP			X	
MUSSEY GRADE	Abstain			
OSMOSE UTILITIES SERVICES	X			
NCPA	X			
NEXTG				X
PACIFICORP		X		
PG&E		X		
SCE		X		
SDG&E		X		
SIERRA PACIFIC		X		
SMALL LECS				X
SMUD			X	
SPRINT NEXTEL				X
SUNESYS				X
SURE WEST				X
TIMEWARNER CABLE				X
T-MOBILE				X
TURN		X		
TW TELECOM				X
VERIZON				X
DAVEY TREE	X			
BILL ADAMS			X	

**MAP NO. 7 – GENERAL ORDER 95, RULE 35**

**VIII. MAP NO. 7 – GENERAL ORDER 95, RULE 35**

**A. Rule 35, Paragraph 4 Proposal by Joint Electric Utilities**

**1. Proposed Rule Change**

**a. Current Rule**

None.

**b. Strikeout/Underline**

**35 Vegetation Management**

Insert new fourth Paragraph as follows:

Whenever a property owner obstructs access to, or fails to make accessible, overhead facilities for vegetation management activities, such that the supply company cannot inspect its facilities or there is an imminent threat of violation of required regulatory or statutory clearances, the supply company, at its discretion and with proper notice, may discontinue electric service the property owner is receiving at any location where the owner may receive the supply company’s electric service. “Proper notice” shall, at a minimum, consist of five days written notice, unless the condition poses an imminent safety hazard to the public.

**c. Proposed Final Rule**

**35 Vegetation Management**

Insert new fourth Paragraph as follows:

Whenever a property owner obstructs access to, or fails to make accessible, overhead facilities for vegetation management activities, such that the supply company cannot inspect its facilities or there is an imminent threat of violation of required regulatory or statutory clearances, the supply company, at its discretion and with proper notice, may discontinue electric service the property owner is receiving at any location where the owner may receive the supply company’s electric service. “Proper notice” shall, at a minimum, consist of five days written notice, unless the condition poses an imminent safety hazard to the public.

**2. Rationale**

This proposed rule change addresses the problem of property owners who refuse to allow utilities to perform necessary vegetation management work on the customer’s property. Such owners can

prevent access, block work or take other steps that impede utilities from completing necessary tree work. This addition to Rule 35 emphasizes the importance of vegetation management work and provides specific support to the utilities in this needed work by allowing utilities to disconnect electric service to property owners who refuse to cooperate with vegetation management work and thereby expose their neighbors, workers<sup>25</sup> and the state to unacceptable risks of fire, injury or outages.

This rule builds on principles contained in Tariff Rule 11 (H) (which allows the discontinuance of service when the customer threatens to create a hazardous condition) by specifically applying that remedy in the context of vegetation management. This new language will be used in the written correspondence to the refusal property owner, and the threat of discontinuance of service is expected to remedy most, if not all, refusal customer problems.<sup>26</sup>

The proposed rule change does not give blanket permission. It may be used only in very specific circumstances: 1) when the utility cannot inspect its facilities; or 2) if there is an imminent threat of violation of regulatory or statutory clearances. It should be stressed that disconnecting a customer is not a preferred solution – utilities are in the business of providing power, so it is not in their economic best interests to disconnect or otherwise antagonize a customer. As we learned in the technical workshops, the utilities have several layers of approaches or tools that are preferred and would be used before such a measure might be employed. For example, PG&E's current process includes a minimum of the following steps:

1. The first customer contact by a field inspector
2. Contact by the inspector's supervisor
3. Research of property rights (easements, etc.)
4. Letter to the customer
5. Wait a minimum of 10 days after the letter before work is performed

For most customers who have concerns, the process stops at the first step and the tree work is performed. For those few who do continue to refuse to allow necessary vegetation management work, the letter listed in step 4 currently describes the importance of work, the dangers that results from the customers' actions, the regulations involved, the utilities' legal rights and the risks the customers are incurring for themselves and their neighbors. The proposed process would include a statement that describes the additional risk to the customer of having his or her power terminated.

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<sup>25</sup> Worker safety is a very important reason that this provision should be adopted. Often these refusal situations result in a tree getting very close to the energized wires, and this creates a significant safety risk for the tree workers. Speedy resolution of the refusal helps keep the tree workers out of harms way.

<sup>26</sup> The rule change allows disconnection at any location. This option addresses the situation, for example, where an owner refuses to allow vegetation management around a cabin or land in the mountains, but lives in the Bay Area. Since the owner does not live full-time in the mountain cabin, a disconnection of that location may not get the same positive response as disconnecting the home in the Bay Area. This rule change does not contemplate disconnecting State or City buildings or facilities.

Incompatible vegetation cannot be allowed to exist near supply lines – and especially electric power lines. The risk of significant consequences – whether from a potential fire, injury to the public/workers, or major outages – is too great. This proposal is supported by the IBEW 1245, TURN, CMUA and all the major electric utilities.

This rule is within scope of this proceeding.<sup>27</sup>

### 3. Justification

- The specific electric utilities, CIPs, and others affected by the PRC.

This proposal would affect electric utilities subject to CPUC jurisdiction.

- The current text of the affected General Order(s), if any.

See above.

- 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.

See above.

- The specific fire hazard(s) addressed by the PRC and/or other objectives accomplished by the PRC.

Property owners obstructing access to, or failing to make accessible, overhead facilities for vegetation management activities.

- How the PRC reduces or otherwise addresses the fire hazard(s) and/or achieves other objectives.

When customers prevent utilities from achieving tree clearances or hazard tree removal they often do not understand the dangers or recognize the importance of vegetation management work. By making vegetation management work a “condition of service”, customers will more readily see the importance of proper tree clearances and allow utilities to conduct the necessary work.

- The anticipated costs of the PRC, including, if available, costs incurred by investor owned utilities, POUs, CIPs, and customers.

Customers who refuse to allow necessary vegetation management work often require multiple follow up communications and field verifications to assure the condition hasn’t escalated to a

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<sup>27</sup> See, D. 09-08-029, p. 29-30: “We will also consider PG&E’s proposal regarding the need for even greater clearances in high fire threat areas and options to assist utilities who meet resistance from landowners affected by vegetation management. Many parties expressed support for these proposals and we intend to address these matters fully in phase 2.”

more hazardous state. It is estimated that this change will encourage customers to allow the necessary work to proceed. The resulting costs are expected to be neutral.

- The anticipated benefits of the PRC.

See above.

- Whether and how the costs will be recovered from customers.

The cost to reconnect service is at the customer's expense prior to service being re-established.

- Whether and how costs will be shared among electric utilities, CIPs, and others.

Not applicable.

- Why it is in the public interest to adopt the PRC.

A customer who refuses to allow necessary vegetation management work is potentially placing the entire community in jeopardy of potential fires, personal injury or power outages. The proposed rule emphasizes the greater community's need for reduced fire risk and reliable power by making vegetation management work a condition of service for any single electric customer.

- If the PRC applies to electric transmission, why the rule does not conflict with other federal or state regulations.

This PRC clarifies an existing General Order 95 rule, which currently complements and poses no conflict with existing 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.

This proposal is exempt from environmental review under Section 15378 of the California Environmental Quality Act (CEQA) Guidelines because it is not a "project" under CEQA and will not have any potentially significant impact on the environment. NEPA does not apply because adoption of the proposed rule change does not constitute action by a federal agency within the meaning of 42 USC § 4332.

#### 4. Parties' Comments

##### a. Parties in Support

###### CMUA

CMUA supports this PRC as an extreme remedy that would be used in rare cases that necessitated such action. CMUA's members are very sensitive to the needs of their customers and believe that the remedy provided in this PRC should and would be used with great care and discretion.

###### IBEW 1245

IBEW 1245 represents linemen and line clearance tree trimmers in Northern California. These workers are threatened with a more hazardous workplace by the small number of property owners who obstruct appropriate tree trimming. They also increase the possibility of outages for adjacent electric utility customers. This option should be available to the utilities to foster appropriate line clearance tree trimming.

###### PG&E, SCE, and SDG&E

PG&E, SCE, and SDG&E support this proposed rule change for the reasons stated in the rationale.

###### Sierra Pacific

Sierra Pacific supports this proposed rule change for the reasons stated in the rationale. The proposal will help utilities conduct vegetation maintenance and ensure that necessary clearances are achieved. This, in turn, will reduce the risk of fire and benefit all customers.

###### TURN

TURN supported this PRC because it feels that vegetation management is important for the reduction of fire risk and that the actions of one customer may endanger the lives and property of their neighbors if they consistently prevent the electric utilities from performing their required vegetation management. As the electric utilities argued in the workshops, this PRC would provide them one more tool to ensure that the vegetation management requirements are met.

There are certain instances, however, where a customer's reluctance to allow a utility onto their property may be entirely reasonable. During the workshops TURN attempted to place more language into the proposed rule that would create a process for utilities to follow before a utility could take the drastic measure of shutting off power at the customer's property, but the utilities resisted, stating that such specificity should not be placed into the General Orders.

Therefore, in its brief, TURN will propose modifications to the utility tariff rules to clarify the process by which vegetation management shut offs are conducted, including an opportunity for appeal and stringent notification requirements to ensure that customers (and end users, where the two are not the same) are not unduly or inadvertently harmed by this new rule.

## **b. Parties in Opposition**

### California Farm Bureau Federation

Farm Bureau raised a number of concerns to this proposal when it was introduced in the proceeding in December 2009 and the concerns have not changed with the minimal revisions made to the proposal during the workshops. The Joint Utilities stated in their rationale for the PRC at that time: “The threat of discontinuance of service is expected to remedy most, if not all, refusal customer problems.” Severe threats often do shape behaviors, but the shut-off threat here is inappropriate for use as a remedy for “refusal customers.” Subjecting all accounts to potential shut-off based on the limited notice should not be countenanced. The utilities have indicated shutting-off power would be a last resort type of remedy. It would be naïve, however, of the Commission or any participant in the proceeding to take any comfort in such assurances. Once such a strong tool of enforcement is available, it becomes a tempting tool unless specifically constrained.

The shut-off threat as the utilities outline is far too broad a remedy for the problems faced by the utilities. The Joint Utilities request use of their threat to be available in any area of the state, not just those designated as particularly vulnerable to fire hazards. Fire prone areas continue to be the priority for this proceeding. The use of their proposed threat would also be applicable no matter how unrelated the electrical line at issue was to the customer’s service connection. This proposal raises significant concerns for our members, as agricultural properties in the State are crossed by thousands of miles of distribution level lines and transmission level lines of varying voltage size.

The issue of the utilities’ ability to operate and maintain their easements for electric facilities is fundamentally a question relating to use of the real property. Certain rights are assured to both parties when a landowner conveys an easement in his real property, even when taken by eminent domain as frequently occurs for utility easements. State law provides a process for remedies for interference with the use of an easement, which remedies relate to the rights and obligations provided for in the conveyance of the easement. This proposal is an effort to circumvent established processes for resolution of disputes between utilities and customers with multiple electric accounts. Agriculture’s reliance on land for its business and production often requires multiple electric accounts on several different parcels of land separated geographically. Under the utility proposal, a refusal related to one parcel of property would allow the utility to shut-off power on all the accounts, including residences. In addition, a manager may oversee the operations of a property and a landowner may not be involved with the day-to-day operations. Yet, under the proposal the landowner would be susceptible to shut-off of his utility service with limited notice requirements. The written notice required provides no assurance that affected landowner will have been notified about the impending shut-off of power.

A customer may have a legitimate reason for balking at the proposed trimming actions to be undertaken by a utility or limiting access in particular circumstances. Efforts should be focused on identification of a process that encourages expedited resolution of the parties’ dispute, rather than provision of such a severe tool as proposed. Although expedited processes were discussed during the course of the workshops, no specific process could be identified that currently exists. Under this shut-off proposal, if a utility acts hastily, creating serious consequences, the customer



has very limited opportunities for recourse and no opportunity to be heard by an independent entity. If the utilities are seeking an expedited determination of disputes, any determination should be made in a venue that assures each party is heard prior to the proposed dramatic step of shutting-off all of a customer's accounts.

### CPSD

Under this proposal, whenever a property owner obstructs access to overhead facilities for vegetation management activities, then the utility, at its discretion, may discontinue electric service at any location where that property owner may receive the utility's electric service. Allowing a utility, at its discretion, to cut off service to a "refusing" property owner at any location where that property owner receives service from the utility is an extremely radical and severe reaction. The PRC is too broadly written with no pragmatic limitations on when a utility can shut off service to a customer's property. Under this proposal, if a State or City agency blocked a utility from performing vegetation management work at a particular location, the utility could cut off all power to all State or City buildings and facilities. Specifically, during the workshops PG&E representatives stated that one of their biggest challenges is dealing with Caltrans; if this rule was adopted, PG&E could potentially shut off the power to the CPUC, or any other State agency, if Caltrans denied access to trim a tree. Rather than address the actual hazard on the subject property, this PRC could create additional hazards at other properties. The utilities should not have so much power to shut off services to properties where no demonstrated safety hazard exists.

In addition, the rule would apply "whenever" a property owner obstructs access to overhead facilities. There is no requirement that a utility at least engage in a "good faith" effort to obtain permission before the rule becomes effective. Therefore, it is internally inconsistent with the rest of Rule 35. Utilities already have other means to obtain access to property, including involving law enforcement and obtaining a court order allowing access.

While CPSD is sympathetic to the difficulties that electric utilities have had and may have in dealing with certain customers regarding tree trimming, this proposal does not belong in General Order 95, which governs design, maintenance, and construction standards for overhead lines. The right to access property is a tariff issue; utilities should look to their tariffs for provisions concerning shut-off of service to customers.

### Mussey Grade

The Alliance considers this measure both ill-considered and ineffective. The electric utilities are effectively seeking police powers (the ability to deprive paying customers of the right to safely occupy their property without due process) in order to force entry onto property. In the case where the situation presents an immediate safety hazard, there is no argument that the utilities have the right and responsibility to remove power in order to protect the public from harm. However, this measure goes much further by allowing the utilities to remove power from facilities owned by the customer *elsewhere*, in locations that present no risk to the public. This could affect persons other than the customer (for instance, employees of the customer's businesses or residents of properties for which the customer pays utilities). Additionally, it is a

strictly punitive – not preventative – measure, which should correctly be the responsibility of law enforcement agencies and the courts.

Furthermore, there was no data presented by the utilities regarding how much this measure would reduce refusals if it were to be implemented. The measure would only directly pressure individuals who resided in a place other than the property where access was refused, and whose additional holdings were in the service area of the same utility. No information was provided regarding how many such customers there were, or what fraction of refusals was due to customers matching these characteristics.

As residents of a high fire risk area, Mussey Grade residents are concerned about fire and support enabling the utilities to address safety issues. Where the utilities are unable to do so because of property owner refusals, we believe that seeking the support of law enforcement agencies is the proper way to address the issue. Approaching the problem in this way respects the legal rights of property owners and residents as well as the utilities. We believe that the efforts of the Commission and the utilities would be better focused on finding ways to enhance law enforcement support and cooperation with utilities rather than placing the right of enforcement and punishment in the hands of electric utilities.

## 5. Record of Voting

PARTIES	NOT PRESENT	YES	NEUTRAL	NO
AT&T			X	
CAISO	X			
CALTEL	X			
CCTA			X	
CFBF				X
CMUA		X		
COMCAST			X	
COX			X	
CPSD				X
CTIA			X	
DRA				X
EXTENET	X			
FACILITIES MANAGEMENT			X	
FRONTIER			X	
IBEW 1245		X		
LA COUNTY			X	
LADWP		X		
MUSSEY GRADE				X
OSMOSE UTILITIES SERVICES	X			
NCPA	X			
NEXTG	X			
PACIFICORP		X		
PG&E		X		
SCE		X		
SDG&E		X		
SIERRA PACIFIC		X		
SMALL LECS			X	
SMUD			X	
SPRINT NEXTEL			X	
SUNESYS			Abstain	
SURE WEST			X	
TIMEWARNER CABLE			X	
T-MOBILE			X	
TURN		X		
TW TELECOM			X	
VERIZON	X			
DAVEY TREE			X	

**B. Rule 35, Exception 3 Proposal by Joint Electric Utilities**

**1. Proposed Rule Change**

**a. Current Rule**

**35 Vegetation Management**

Where overhead conductors traverse trees and vegetation, safety and reliability of service demand that certain vegetation management activities be performed in order to establish necessary and reasonable clearances. The minimum clearances established in Table 1, Cases 13 and 14, measured between line conductors and vegetation under normal conditions, shall be maintained. (Also see Appendix E for tree trimming guidelines).

When a utility has actual knowledge, obtained either through normal operating practices or notification to the utility, dead, rotten and diseased trees or portions thereof, that overhang or lean toward and may fall into a span, should be removed.

Communication and electric supply circuits, energized at 750 volts or less, including their service drops, should be kept clear of vegetation in new construction and when circuits are reconstructed or repaired, whenever practicable. When a utility has actual knowledge, obtained either through normal operating practices or notification to the utility, that any circuit energized at 750 volts or less shows strain or evidences abrasion from vegetation contact, the condition shall be corrected by reducing conductor tension rearranging or replacing the conductor, pruning the vegetation or placing mechanical protection on the conductor(s). For the purpose of this rule, abrasion is defined as damage to the insulation resulting from the friction between the tree and conductor. Scuffing or polishing of the insulating covering is not considered abrasion. Strain on a conductor is present when there is additional tension causing a deflection of the conductor beyond the slack of the span. Contact between vegetation and conductors, in and of itself, does not constitute a violation of the rule.

**EXCEPTIONS:**

1. Rule 35 requirements do not apply to conductors, or aerial cable that complies with Rule 57.4-C, energized at less than 60,000 volts, where trimming or removal is not practicable and the conductor is separated from the tree with suitable materials or devices to avoid conductor damage by abrasion and grounding of the circuit through the tree.

2. Rule 35 requirements do not apply where the utility has made a “good faith” effort to obtain permission to trim or remove vegetation but permission was refused or unobtainable. A “good faith” effort shall consist of current documentation of a minimum of an attempted personal contact and a written communication, including documentation of mailing or delivery. However, this does not preclude other action or actions from demonstrating “good faith”. If permission to trim or remove vegetation is unobtainable and requirements of exception 2 are met, the utility is not compelled to comply with the requirements of exception 1.

3. The Commission recognizes that unusual circumstances beyond the control of the utility may result in nonconformance with the rules. In such cases, the utility may be directed by the

Commission to take prompt remedial action to come into conformance, whether or not the nonconformance gives rise to penalties or is alleged to fall within permitted exceptions or phase-in requirements.

**b. Strikeout/Underline**

**35 Vegetation Management**

Where overhead conductors traverse trees and vegetation, safety and reliability of service demand that certain vegetation management activities be performed in order to establish necessary and reasonable clearances. The minimum clearances established in Table 1, Cases 13 and 14, measured between line conductors and vegetation under normal conditions, shall be maintained. (Also see Appendix E for tree trimming guidelines).

When a utility has actual knowledge, obtained either through normal operating practices or notification to the utility, dead, rotten and diseased trees or portions thereof, that overhang or lean toward and may fall into a span, should be removed.

Communication and electric supply circuits, energized at 750 volts or less, including their service drops, should be kept clear of vegetation in new construction and when circuits are reconstructed or repaired, whenever practicable. When a utility has actual knowledge, obtained either through normal operating practices or notification to the utility, that any circuit energized at 750 volts or less shows strain or evidences abrasion from vegetation contact, the condition shall be corrected by reducing conductor tension rearranging or replacing the conductor, pruning the vegetation or placing mechanical protection on the conductor(s). For the purpose of this rule, abrasion is defined as damage to the insulation resulting from the friction between the tree and conductor. Scuffing or polishing of the insulating covering is not considered abrasion. Strain on a conductor is present when there is additional tension causing a deflection of the conductor beyond the slack of the span. Contact between vegetation and conductors, in and of itself, does not constitute a violation of the rule.

**EXCEPTIONS:**

1. Rule 35 requirements do not apply to conductors, or aerial cable that complies with Rule 57.4-C, energized at less than 60,000 volts, where trimming or removal is not practicable and the conductor is separated from the tree with suitable materials or devices to avoid conductor damage by abrasion and grounding of the circuit through the tree.

2. Rule 35 requirements do not apply where the ~~utility~~ supply or communication company has made a “good faith” effort to obtain permission to trim or remove vegetation but permission was refused or unobtainable. A “good faith” effort shall consist of current documentation of a minimum of an attempted personal contact and a written communication, including documentation of mailing or delivery. However, this does not preclude other action or actions from demonstrating “good faith”. If permission to trim or remove vegetation is unobtainable and requirements of exception 2 are met, the ~~utility~~ company is not compelled to comply with the requirements of exception 1.

3. Whenever a property owner obstructs access to, or fails to make accessible, overhead facilities for vegetation management activities, the supply or communication company shall not be responsible for the consequences of failing to trim or remove such vegetation so long as the supply or communication company can document (1) at least one attempted personal contact with the owner, (2) at least one written communication to the owner, including documentation of mailing or delivery, and (3) notification to Commission Staff.

~~3.~~4. The Commission recognizes that unusual circumstances beyond the control of the utility may result in nonconformance with the rules. In such cases, the utility may be directed by the Commission to take prompt remedial action to come into conformance, whether or not the nonconformance gives rise to penalties or is alleged to fall within permitted exceptions or phase-in requirements.

### c. Proposed Final Rule

#### 35 Vegetation Management

Where overhead conductors traverse trees and vegetation, safety and reliability of service demand that certain vegetation management activities be performed in order to establish necessary and reasonable clearances. The minimum clearances established in Table 1, Cases 13 and 14, measured between line conductors and vegetation under normal conditions, shall be maintained. (Also see Appendix E for tree trimming guidelines).

When a utility has actual knowledge, obtained either through normal operating practices or notification to the utility, dead, rotten and diseased trees or portions thereof, that overhang or lean toward and may fall into a span, should be removed.

Communication and electric supply circuits, energized at 750 volts or less, including their service drops, should be kept clear of vegetation in new construction and when circuits are reconstructed or repaired, whenever practicable. When a utility has actual knowledge, obtained either through normal operating practices or notification to the utility, that any circuit energized at 750 volts or less shows strain or evidences abrasion from vegetation contact, the condition shall be corrected by reducing conductor tension rearranging or replacing the conductor, pruning the vegetation or placing mechanical protection on the conductor(s). For the purpose of this rule, abrasion is defined as damage to the insulation resulting from the friction between the tree and conductor. Scuffing or polishing of the insulating covering is not considered abrasion. Strain on a conductor is present when there is additional tension causing a deflection of the conductor beyond the slack of the span. Contact between vegetation and conductors, in and of itself, does not constitute a violation of the rule.

#### **EXCEPTIONS:**

1. Rule 35 requirements do not apply to conductors, or aerial cable that complies with Rule 57.4-C, energized at less than 60,000 volts, where trimming or removal is not practicable and the conductor is separated from the tree with suitable materials or devices to avoid conductor damage by abrasion and grounding of the circuit through the tree.

2. Rule 35 requirements do not apply where the supply or communication company has made a “good faith” effort to obtain permission to trim or remove vegetation but permission was refused or unobtainable. A “good faith” effort shall consist of current documentation of a minimum of an attempted personal contact and a written communication, including documentation of mailing or delivery. However, this does not preclude other action or actions from demonstrating “good faith”. If permission to trim or remove vegetation is unobtainable and requirements of exception 2 are met, the company is not compelled to comply with the requirements of exception 1.
3. Whenever a property owner obstructs access to, or fails to make accessible, overhead facilities for vegetation management activities, the supply or communication company shall not be responsible for the consequences of failing to trim or remove such vegetation so long as the supply or communication company can document (1) at least one attempted personal contact with the owner, (2) at least one written communication to the owner, including documentation of mailing or delivery, and (3) notification to Commission Staff.
4. The Commission recognizes that unusual circumstances beyond the control of the utility may result in nonconformance with the rules. In such cases, the utility may be directed by the Commission to take prompt remedial action to come into conformance, whether or not the nonconformance gives rise to penalties or is alleged to fall within permitted exceptions or phase-in requirements.

## 2. Rationale

This PRC addresses property owners who refuse to allow supply and communication companies to perform necessary vegetation management work on the customer’s property. Pursuant to this change, whenever a property owner obstructs access to, or fails to make accessible, overhead facilities for vegetation management activities, the supply or communication company will not be responsible for the consequences of failing to trim or remove such vegetation if they can document (1) at least one attempted personal contact with the owner, (2) at least one written communication to the owner, including documentation of mailing or delivery, and (3) notification to Commission Staff.

This addition to Rule 35 emphasizes the importance of vegetation management by removing the onus of property owners’ refusals to allow supply and communication companies to perform necessary vegetation management work from the supply and communication companies. The Joint Electric Utilities believe that this change in responsibility will result in far fewer refusals, particularly since we can point customers to a specific Commission rule on this topic. Based upon our collective experience with recalcitrant property owners over the years, it is our belief that many property owners who might otherwise refuse access are likely to change their minds if it is clear that their refusal absolves the supply or communication company of legal responsibility if the resulting inability to trim causes a fire or other safety problems. This shift in responsibility is fundamentally fair, and is likely to have a particular importance to refusing property owners with significant assets (such as the property the supply and communication companies wish to access in order to perform needed vegetation management activities).

This PRC is reasonable, and the shift in responsibility away from supply and communication companies that are prevented from conducting vegetation management activities will only occur after at least one attempted personal contact with the owner, at least one written communication to the owner, including documentation of mailing or delivery, and notification to Commission Staff. These limitations will help ensure that minor misunderstandings do not trigger this exception. Moreover, as the Joint Electric Utilities emphasized during workshops, only a very small percentage of property owners refuse us access to perform necessary vegetation management work. But this very small percentage of property owners creates substantial risks for everyone, and substantial additional costs for our customers. This new proposed Exception 3 would be a very valuable tool in our efforts to implement our vegetation management programs.

This PRC also changes Exception No. 2 to clarify that the exception applies to any “supply or communication company” making a “good faith” effort to obtain permission to trim or remove vegetation, rather than to any “utility” making such efforts. This clarification is consistent with the same clarification in certain consensus PRCs.

This PRC is within scope of this proceeding.<sup>28</sup>

### 3. Justification

- The specific electric utilities, CIPs, and others affected by the PRC.

This proposal would affect electric utilities and communication entities subject to CPUC jurisdiction.

- The current text of the affected General Order(s), if any.

See above.

- 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.

See above.

- The specific fire hazard(s) addressed by the PRC and/or other objectives accomplished by the PRC.

Property owners obstructing access to, or failing to make accessible, overhead facilities for vegetation management activities.

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<sup>28</sup> See D.09-08-029, mimeo., at 29-30: “We will also consider PG&E’s proposal regarding the need for even greater clearances in high fire threat areas and options to assist utilities who meet resistance from landowners affected by vegetation management. Many parties expressed support for these proposals and we intend to address these matters fully in phase 2.”



- How the PRC reduces or otherwise addresses the fire hazard(s) and/or achieves other objectives.

See above.

- The anticipated costs of the PRC, including, if available, costs incurred by investor owned utilities, POU's, CIPs, and customers.

This PRC should not create any additional costs for supply and communication companies or their customers.

- The anticipated benefits of the PRC.

See above.

- Whether and how the costs will be recovered from customers.

Not applicable.

- Whether and how costs will be shared among electric utilities, CIPs, and others.

Not applicable.

- Why it is in the public interest to adopt the PRC.

See above.

- If the PRC applies to electric transmission, why the rule does not conflict with other federal or state regulations.

This PRC clarifies an existing General Order 95 rule, which currently complements and poses no conflict with existing 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 statues and/or regulations where the exemption is listed. Conversely, any assertion that CEQA and/or NEPA do apply must (1) cite the relevant statues 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.

This proposal is exempt from environmental review under Section 15378 of the California Environmental Quality Act (CEQA) Guidelines because it is not a "project" under CEQA and will not have any potentially significant impact on the environment. NEPA does not apply because adoption of the proposed rule change does not constitute action by a federal agency within the meaning of 42 USC § 4332.

#### **4. Parties' Comments**

##### **a. Parties in Support**

###### AT&T, CTIA, Small LECS, Sprint/Nextel, Sunesys, SureWest Telephone, T-Mobile, and Verizon

AT&T, CTIA, Small LECS, Sprint/Nextel, Sunesys, SureWest Telephone, T-Mobile, and Verizon support the Joint Electric Utilities' proposal. The primary driver of this rulemaking is the modification of the Commission's existing rules for the purpose of decreasing the incidents of fire precipitated by facilities under its jurisdiction. Vegetation coming in contact with a charged electrical facility creates the possibility of fire ignition. The Joint Electric Utilities' proposal is aimed at giving landowners an additional incentive to allow supply and communications companies on to their property to perform necessary vegetation removal in order to minimize sources of fire ignition.

###### PG&E, SCE, and SDG&E

PG&E, SCE, and SDG&E support this proposal for the reasons stated in the rationale.

###### Sierra Pacific

Sierra Pacific supports the Joint Electric Utilities' proposal. Equity and fundamental fairness dictate that electric supply and communication companies should not be held responsible for the consequences of failing to trim or remove vegetation that is made inaccessible by a property owner.

##### **b. Parties in Opposition**

###### CPSD

This PRC attempts to deal with customers that refuse to allow utilities to perform vegetation management work on the customer's property, and changes what constitutes a "good faith effort" to obtain permission to trim. Under this proposal, whenever a property owner obstructs access to, or fails to make overhead facilities accessible for vegetation management activities, then the utility is deemed not responsible for the consequences of failing to trim or remove such vegetation. As the utilities admitted in the workshops, this PRC is an attempt to limit liability, both regulatory and civil liability, and is accordingly outside the scope of this proceeding. (See Phase 2 Scoping Memo, p. 8.). Someone is going to be "on the hook" for the utilities' failure to trim, and the utilities want it to be the property owner, rather than the utility. Shifting liability in this manner, however, does not resolve the problem if there is an imminent safety hazard on the property. Although the utilities claim they want to resolve the safety issue, lessening the utilities' burden in trying to get permission from the property owner is not an effective tool to enhance safety.

In addition, the proposal to "clarify" when a utility shall be deemed to have made a "good faith effort" is also misguided and inserts more confusion than clarification to the rule. The rule currently provides a minimum standard for demonstrating a good faith effort to obtain

permission to trim, including documentation of an attempted personal contact and a written communication. However, the rule further states that this does not preclude other actions to demonstrate a “good faith” effort. Thus, what constitutes a “good faith” effort under the rule is and should be determined on a case-by-case basis. The utilities’ proposal eliminates the need to deal with refusals on a case-by-case basis, and attempt to shift liability onto the property owner after only the bare minimum amount of effort. Therefore, the proposed additional language provides a standard for “good faith” effort that is inconsistent with the existing minimum requirements in the rule. In addition, allowing the utilities to avoid liability after only making the bare minimum effort disincentivizes the utilities from taking additional actions to obtain permission to trim. For example, the utilities’ current processes to obtain permission to trim include advising property owners to inform their private homeowner insurance companies that they are refusing to cooperate and may be putting the property at risk, and involving law enforcement. However, under this proposal, the utilities would not need to take these steps before they are absolved of responsibility for failing to trim.

Rule 35 already provides that its requirements do not apply where the utility has made a “good faith” effort to obtain permission to trim or remove vegetation but permission was refused or unobtainable. Commission staff has will continue to assist utilities in obtaining permission from property owners to perform vegetation management, including testifying on behalf of the utilities in court if necessary. In CPSD’s experience, the rule as written appears to be working and the utilities have not shown sufficient reason for this proposed rule change.

#### California Farm Bureau Federation

Farm Bureau supports the comments of CPSD on this proposal. It should be noted that the minimal requirements proposed for contact with the property owner may be exacerbated in rural areas, where property owners may not visit the property every day. Because greater effort is required to make personal contact with a property owner, in reality only mail service may be seriously attempted. The extensive amount of utility infrastructure throughout the state on farm and ranch property raises concerns about implementation of a rule of this type. In some instances the daily manager for a parcel of property may not be the property owner, which may create a risk for miscommunication about activities on the property. Adding to the complexities is the fact that it may not be the utility representative to whom the landowner makes the objection about access to the property. Contractors for the utility are frequently the representative conducting vegetation management activities. The objection for access may be based on legitimate reasons, which the rule does not address. The proposal requires only attempts at contact, not any assurance that actual contact has occurred with the property owner. This is a broad proposal that could provide the utility with significant discretion to affect rights of landowners.

#### Mussey Grade

The Alliance concurs with CPSD’s comments on this PRC. We are concerned that this change, if adopted, would increase fire risks by decreasing the obligation of utilities to conduct maintenance and vegetation management activities. The utilities provided no data that indicated that either they or ratepayers were adversely affected by complying with the current rule.

TURN

TURN agrees with and joins CPSD's comments on this PRC. This PRC is merely an attempt to limit the electric utilities' liability, which, in addition to being outside the scope of this proceeding, will do nothing to reduce fire risks.

## 5. Record of Voting

PARTIES	NOT PRESENT	YES	NEUTRAL	NO
AT&T		X		
CAISO	X			
CALTEL	X			
CCTA			X	
CFBF				X
CMUA			X	
COMCAST			X	
COX			X	
CPSD				X
CTIA		X		
DRA				X
EXTENET	X			
FACILITIES MANAGEMENT		X		
FRONTIER		X		
IBEW 1245		X		
LA COUNTY		X		
LADWP			X	
MUSSEY GRADE				X
OSMOSE UTILITIES SERVICES	X			
NCPA	X			
NEXTG	X			
PACIFICORP		X		
PG&E		X		
SCE		X		
SDG&E		X		
SIERRA PACIFIC		X		
SMALL LECS		X		
SMUD			X	
SPRINT NEXTEL		X		
SUNESYS		X		
SURE WEST		X		
TIMEWARNER CABLE			X	
T-MOBILE		X		
TURN				X
TW TELECOM			X	
VERIZON		X		
DAVEY TREE		X		

**MAP NO. 8 – GENERAL ORDER 95, RULE 35, APPENDIX E**

**IX. MAP NO. 8 – GENERAL ORDER 95, RULE 35, APPENDIX E**

**A. Rule 35, Appendix E Proposal by Joint Electric Utilities (Table 1)**

**1. Proposed Rule Change**

**a. Current Rule**

<u>Voltage of Lines</u>	<u>Case 13 Of Table 1</u>	<u>Case 14 of Table 1</u>
Radial clearances for any conductor of a line operating at 2,400 or more volts, but less than 72,000 volts	4 feet	6.5 feet
Radial clearances for any conductor of a line operating at 72,000 or more volts, but less than 110,000 volts	6 feet	10 feet
Radial clearances for any conductor of a line operating at 110,000 or more volts, but less than 300,000 volts	10 feet	20 feet
Radial clearances for any conductor of a line operating at 300,000 or more volts	15 feet	20 feet

**b. Strikeout/Underline**

<u>Voltage of Lines</u>	<u>Case 13 of Table 1</u>	<u>Case 14 of Table 1</u>
Radial clearances for any conductor of a line operating at 2,400 <u>V</u> or more <del>volts</del> , but less than 72,000 <del>volts</del> <u>V</u>	4 feet	<del>6.5</del> <u>10</u> feet
Radial clearances for any conductor of a line operating at 72,000 <u>V</u> or more <del>volts</del> , but less than 110,000 <del>volts</del> <u>V</u>	6 feet	<del>10</del> <u>15</u> feet
Radial clearances for any conductor of a line operating at 110,000 <u>V</u> or more <del>volts</del> , but less than 300,000 <del>volts</del> <u>V</u>	10 feet	20 feet
Radial clearances for any conductor of a line operating at 300,000 <del>or more volts</del> <u>V</u>	15 feet	20 feet

**c. Proposed Final Rule**

<u>Voltage of Lines</u>	<u>Case 13 of Table 1</u>	<u>Case 14 of Table 1</u>
Radial clearances for any conductor of a line operating at 2,400 V or more, but less than 72,000 V	4 feet	10 feet
Radial clearances for any conductor of a line operating at 72,000 V or more, but less than 110,000 V	6 feet	15 feet
Radial clearances for any conductor of a line operating at 110,000 V or more, but less than 300,000 V	10 feet	20 feet
Radial clearances for any conductor of a line operating at 300,000 V	15 feet	20 feet

## 2. Rationale

This PRC would increase the guidelines for minimum time-of-trim vegetation-to-conductor radial clearances for Extreme and Very High Fire Threat Zones in Southern California from 6.5 feet to 10 feet for conductors operating at 2,400 volts or more but less than 72,000 volts, and from 10 feet to 15 feet for conductor of a line operating at 72,000 volts or more but less than 110,000 volts. The Joint Electric Utilities believe these new recommended time-of-trim minimum radial clearances are more appropriate than the current recommended minimums adopted for these voltages in D.09-08-029 because of the extreme fire risk faced by Southern California, and given that Santa Ana winds can move even newly-trimmed trees towards conductors.

Combined with the Joint Electric Utilities' proposal to revise the written guidelines in Appendix E, this PRC will help ensure that utilities in Southern California have the ability to obtain reasonable clearances between vegetation and conductors located in Extreme and Very High Fire Threat Zones. This is particularly important in situations where property owners refuse to allow trimming beyond the guidelines set forth in Table 1 to Appendix E. Given the high growth rates of certain tree species (many of which are not native to fire-prone regions in Southern California), the proposed revisions are reasonable, and would be a very positive step towards enhancing fire safety efforts.

This PRC also changes the term "volts" to the abbreviation "V" to better conform with commonly used utility abbreviations.

This rule is within scope of this proceeding.<sup>29</sup>

## 3. Justification

- The specific electric utilities, CIPs, and others affected by the PRC.

This proposal would affect electric utilities and communication entities subject to CPUC jurisdiction.

- The current text of the affected General Order(s), if any.

See above.

- 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.

See above.

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<sup>29</sup> See D.09-08-029, mimeo., at 29-30: "We will also consider PG&E's proposal regarding the need for even greater clearances in high fire threat areas and options to assist utilities who meet resistance from landowners affected by vegetation management. Many parties expressed support for these proposals and we intend to address these matters fully in phase 2."



- The specific fire hazard(s) addressed by the PRC and/or other objectives accomplished by the PRC.

The hazard addressed is the danger that vegetation will come into contact with power lines and become a fire threat, a safety risk, or a reliability problem.

- How the PRC reduces or otherwise addresses the fire hazard(s) and/or achieves other objectives.

See above.

- The anticipated costs of the PRC, including, if available, costs incurred by investor owned utilities, POU's, CIPs, and customers.

Adoption of this PRC could create a one-time cost for companies not currently trimming to the new minimum levels.

- The anticipated benefits of the PRC.

See above.

- Whether and how the costs will be recovered from customers.

Companies that are rate-of-return regulated are seeking an order in this proceeding regarding how the costs for complying with new rules adopted in this proceeding are to be recovered from customers. Companies that are not rate-of-return regulated may recover costs in any legally permissible manner, including through line-item charges or increased fees for services.

- Whether and how costs will be shared among electric utilities, CIPs, and others.

Not applicable. The PRC does not provide for cost sharing among or between entities.

- Why it is in the public interest to adopt the PRC.

See above.

- If the PRC applies to electric transmission, why the rule does not conflict with other federal or state regulations.

This PRC clarifies an existing General Order 95 rule, which currently complements and poses no conflict with existing 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.

The Commission adopted similar revisions to Rule 35, Appendix E in D.09-08-029 and found that CEQA did not apply. This proposal is exempt from environmental review under Section 15378 of the California Environmental Quality Act (CEQA) Guidelines because it is not a “project” under CEQA and will not have any potentially significant impact on the environment. NEPA does not apply because adoption of the proposed rule change does not constitute action by a federal agency within the meaning of 42 USC § 4332.

#### **4. Parties’ Comments**

##### **a. Parties in Support**

###### PG&E, SCE, and SDG&E

PG&E, SCE, and SDG&E support this proposal for the reasons stated in the rationale.

##### **b. Parties in Opposition**

###### Mussey Grade

The Mussey Grade Road Alliance opposes changes to the proposed table because we believe that the current language of the guidance paragraph in Appendix E provides all necessary flexibility to the electrical utilities to trim trees in a manner that protects public safety. It is made extraordinarily clear in the original language from Phase 1 (“Reasonable vegetation management practices may make it advantageous to obtain greater clearances than those listed below.”) that the values given in Case 14 of the table are a floor, not a ceiling. This language is further enhanced and clarified by the proposed language of both the Mussey Grade Road Alliance and Farm Bureau, and in the language proposed by the Joint Electrical Utilities.

Furthermore, it has been the daily experience of the Mussey Grade community that San Diego Electric Company has already put in practice a 10 to 15 foot trimming radius through the oak canopy in Mussey Grade Road and even greater clearances along arterial roads of Mussey Grade . This practice of trimming well beyond the established floor was began last year by SDG&E, and is being continued through the 2010 trimming cycle. While many residents consider this trimming draconian, and its visual impacts are quite significant, no formal challenge has yet been raised. The Commission’s admonition to the utilities to avoid “ham handed” trimming<sup>30</sup> has been the only recourse citizens have had to date.

It is for this reason that the Alliance is gravely concerned about the increase in the minimum trimming distance proposed in Case 14 of the Appendix E table. We are concerned that if a greater trim radius is adopted, then SDG&E, along with other electrical utilities, would feel free to regularly extend trim far beyond the 10 to 15 foot trim distance specified in the proposed rule,

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<sup>30</sup> D.97-01-044; p. 6: “...to the extent that we promulgate any guidelines that may later be claimed to be a standard for reasonableness, we must act with a restrained hand. We must also temper our determination with aesthetic and environmental considerations to discourage ham-handed trimming by utilities.”

just as they presently feel free to extend beyond the minimum 6.5 foot to maximum 10 foot trim distance adopted in the Phase 1 Decision for Case 13 and Case 14, respectively. It must be remembered that within this proceeding, SDG&E's original proposed minimum trim distance extended up to 25 feet.<sup>31</sup> While the utility may no longer be advocating for a 25 foot minimum trim distance, they have signled their interest in drastically increasing minimum trim distances by supporting this change, have actually cut trees in the Alliance's own neighborhood to much great trim distances and nothing would prevent them or another electrical utility from adopting through actual practice such a guideline in the future, particularly if the minimum trim radius was extended out by a factor of two already, as proposed in this rule change. While the Alliance understands that the fire safety considerations are key vis a vis trimming of trees, we also understand that presently there is no limit to tree trimming distances in the CPUC rules and therefore no need for electrical utilities to justify, absent a formal complaint with the Commission, drastic tree trimming, which they would justify on the basis of their own potential liability. This is not a reasonable way to balance the issue of safety with the issue of efficacy of extreme tree trimming practices that result, for example, in the mutilation of ancient trees in historic canopies such as the oak canopy of Mussey Grade Road, and other such canopies throughout California.

In consideration of the above, the Alliance opposes this proposed rule change, because it is clear from the experience of Mussey Grade Road residents that the electrical utilities have sufficient authority to trim under the existing rule.

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<sup>31</sup> R.08-11-005; OPENING COMMENTS OF SAN DIEGO GAS & ELECTRIC COMPANY (U902E) REGARDING THE CONSUMER PROTECTION AND SAFETY DIVISION'S PROPOSED RULES; March 27, 2009; pp. 9-11.

**5. Record of Voting**

<b>PARTIES</b>	<b>NOT PRESENT</b>	<b>YES</b>	<b>NEUTRAL</b>	<b>NO</b>
AT&T			X	
CAISO	X			
CALTEL	X			
CCTA			X	
CFBF			X	
CMUA			X	
COMCAST			X	
COX			X	
CPSD			X	
CTIA			X	
DRA			X	
EXTENET	X			
FACILITIES MANAGEMENT				X
FRONTIER			X	
IBEW 1245			X	
LA COUNTY				X
LADWP				X
MUSSEY GRADE				X
OSMOSE UTILITIES SERVICES	X			
NCPA	X			
NEXTG			X	
PACIFICORP		X		
PG&E		X		
SCE		X		
SDG&E		X		
SIERRA PACIFIC			X	
SMALL LECS			X	
SMUD			X	
SPRINT NEXTEL			X	
SUNESYS			X	
SURE WEST			X	
TIMEWARNER CABLE			X	
T-MOBILE			X	
TURN			X	
TW TELECOM			X	
VERIZON			X	
DAVEY TREE		X		

**B. Rule 35, Appendix E Proposal by Joint Electric Utilities (Guidelines)**

**1. Proposed Rule Change**

**a. Current Rule**

The following are guidelines to Rule 35.

The radial clearances shown below are minimum clearances that should be established, at time of trimming, between the vegetation and the energized conductors and associated live parts where practicable. Reasonable vegetation management practices may make it advantageous to obtain greater clearances than those listed below:

**b. Strikeout/Underline**

The following are guidelines to Rule 35.

The radial clearances shown below are recommended minimum clearances that should be established, at time of trimming, between the vegetation and the energized conductors and associated live parts where practicable. Reasonable vegetation management practices may make it advantageous to obtain greater clearances than those listed below: ~~to ensure compliance until the next scheduled maintenance. Each utility may determine and apply additional appropriate clearances beyond clearances listed below, which take into consideration various factors, including: line operating voltage, length of span, line sag, planned maintenance cycles, location of vegetation within the span, species type, experience with particular species, vegetation growth rate and characteristics, vegetation management standards and best practices, local climate, elevation, and fire risk.~~

**c. Proposed Final Rule**

The following are guidelines to Rule 35.

The radial clearances shown below are recommended minimum clearances that should be established, at time of trimming, between the vegetation and the energized conductors and associated live parts where practicable. Reasonable vegetation management practices may make it advantageous to obtain greater clearances than those listed below to ensure compliance until the next scheduled maintenance. Each utility may determine and apply additional appropriate clearances beyond clearances listed below, which take into consideration various factors, including: line operating voltage, length of span, line sag, planned maintenance cycles, location of vegetation within the span, species type, experience with particular species, vegetation growth rate and characteristics, vegetation management standards and best practices, local climate, elevation, and fire risk.

## 2. Rationale

The existing guidelines to Rule 35 provide that “[r]easonable vegetation management practices may make it advantageous to obtain greater clearances than those listed below [in Table 1].” The clarifying language proposed by the Joint Electric Utilities in this PRC builds upon this provision by: (1) explaining that supply and communications companies would obtain these greater clearances in order to ensure compliance until the next scheduled maintenance; and (2) providing a description of the numerous factors that will be taken into consideration when determining the appropriate level of additional clearances that need to be obtained.

These additions to the guidelines would not change the operations of the Joint Electric Utilities. We already obtain additional appropriate clearances at time of trim, and take into consideration all of the listed factors, and we believe that other utilities likely do so as well. But this PRC is important for dealing with the small subset of property owners who want to limit trimming to the minimums set forth in Table 1 to the Appendix E guidelines. Such property owners pose a threat to energized conductors (whether a fire threat, a safety issue, or a reliability problem), and the existing language in the Rule 35 guidelines is sometimes not sufficient to convince property owners that there is a need to obtain greater clearances than those listed in the table. By making it clear that utilities may obtain greater clearances in order to ensure compliance until the next scheduled maintenance, and by providing a description of the numerous factors that will be taken into consideration when determining the appropriate level of additional clearances that need to be obtained, this PRC will encourage customers to allow the necessary vegetation management work to proceed.

A customer that refuses to allow necessary vegetation management work is potentially placing the entire community in jeopardy of power outages and potential fires. Property owners who limit trimming to the Appendix E recommended minimums may seriously compromise safety. For example, a 4-foot minimum clearance might require a trim of 10 feet or more when line sag and tree growth rates are factored in. The language in this PRC, combined with the greater minimum time-of-trim vegetation-to-conductor radial clearances for Extreme and Very High Fire Threat Zones in Southern California also being proposed by the Joint Electric Utilities, should help bridge the gap between required minimum clearances and the substantially greater trim distances that supply and communication companies need to achieve to maintain the minimum clearances over the course of a normal trim cycle. The proposed revisions to the guidelines also help to emphasize that utilities can clear less when they are working with slower growing species, and need to clear greater distances when working with faster-growing species, which should be helpful dealing with customers concerned about trimming distances as they relate to particular trees.

This PRC emphasizes the greater community’s need for reliable power and reduced fire risk by allowing utilities to use their experience and expertise to determine the necessary vegetation-to-line clearances beyond the recommended minimums. In addition, trimming trees is a costly endeavor, and property owners who do not allow utilities the flexibility to complete greater clearance distances may increase the frequency of inspection and trimming cycles. This PRC should help cut down on these additional expenditures.

Appropriate and reasonable utility vegetation management requires the ability to manage a program that obtains clearances beyond the minimum, taking into consideration the factors enumerated by the Joint Electric utilities in their PRC. Given its role in ensuring safe and reliable power, the Commission should support the Joint Electric Utilities' efforts to improve California's vegetation management guidelines so that everyone involved understands and supports the need to keep California's electric power lines clear and safe.

### 3. Justification

- The specific electric utilities, CIPs, and others affected by the PRC.

This proposal would affect electric utilities and communication entities subject to CPUC jurisdiction.

- The current text of the affected General Order(s), if any.

See above.

- 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.

See above.

- The specific fire hazard(s) addressed by the PRC and/or other objectives accomplished by the PRC.

The hazard addressed is the danger that vegetation will come into contact with power lines and become a fire threat, a safety risk, or a reliability problem.

- How the PRC reduces or otherwise addresses the fire hazard(s) and/or achieves other objectives.

The rule provides important additional information and guidance about how vegetation clearances should be managed, which will support utilities in the field as they conduct their mandated tree trimming. Improved clearances and a better educated public will improve safety and reliability.

- The anticipated costs of the PRC, including, if available, costs incurred by investor owned utilities, POUs, CIPs, and customers.

This PRC should not create any additional costs for supply and communication companies or their customers.

- The anticipated benefits of the PRC.

See above.

- Whether and how the costs will be recovered from customers.

Not applicable.

- Whether and how costs will be shared among electric utilities, CIPs, and others.

Not applicable.

- Why it is in the public interest to adopt the PRC.

See above.

- If the PRC applies to electric transmission, why the rule does not conflict with other federal or state regulations.

This PRC clarifies an existing General Order 95 rule, which currently complements and poses no conflict with existing 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.

The Commission adopted similar revisions to Rule 35, Appendix E in D.09-08-029 and found that CEQA did not apply. This proposal is exempt from environmental review under Section 15378 of the California Environmental Quality Act (CEQA) Guidelines because it is not a “project” under CEQA and will not have any potentially significant impact on the environment. NEPA does not apply because adoption of the proposed rule change does not constitute action by a federal agency within the meaning of 42 USC § 4332.

#### **4. Parties’ Comments**

##### **a. Parties in Support**

##### CMUA

CMUA supports the additional clarity that this PRC provides to the Guidelines to Rule 35. CMUA particularly supports the addition of the word “recommended” in the first sentence. The current language is confusing because it seems to provide absolute minimum clearances. However, these clearances are in a guideline and are therefore discretionary. By adding the word “recommended,” the PRC clears up any confusion.



PG&E, SCE, and SDG&E

PG&E, SCE, and SDG&E support this proposal for the reasons stated in the rationale.

**b. Parties in Opposition**

California Farm Bureau Federation

Farm Bureau and Mussey Grade Road Alliance have proposed an alternative, Map 8B, to this MAP. Farm Bureau opposes this one in preference to 8B. If the guidelines are to include the factors to be considered in assessing the need for clearances beyond those set out in Appendix E, additional factors as detailed in discussion of 8B should be included. Because the change to this guideline reaches out to all areas of the state, not just those areas for which fire risk is a factor, it is important that a broader range of factors is taken into account in providing the context for exceeding the minimum requirements in particular circumstances. Although the utilities included factors that they deemed relevant, the additional factors in 8B are reflective of concerns expressed from customer/owners affected by the utility programs. The additional language in 8B will reduce misunderstandings regarding the requirements and expectations.

LA County

Los Angeles County does not support increasing minimum distances at the time of pruning vegetation. These distances were already increased during Phase I of the rulemaking and language is included that allows for greater pruning distances if any number of circumstances are met. Any further increase in minimum pruning distances will have a negative effect on aesthetics and surrounding vegetation. If additional clearance is needed beyond the accepted clearance distance, the utilities have justification within the existing rule to complete any necessary pruning.

## 5. Record of Voting

PARTIES	NOT PRESENT	YES	NEUTRAL	NO
AT&T			X	
CAISO	X			
CALTEL	X			
CCTA			X	
CFBF				X
CMUA		X		
COMCAST			X	
COX			X	
CPSD			X	
CTIA			X	
DRA			X	
EXTENET	X			
FACILITIES MANAGEMENT				X
FRONTIER			X	
IBEW 1245			X	
LA COUNTY				X
LADWP			X	
MUSSEY GRADE			X	
OSMOSE UTILITIES SERVICES	X			
NCPA	X			
NEXTG			X	
PACIFICORP		X		
PG&E		X		
SCE		X		
SDG&E		X		
SIERRA PACIFIC		X		
SMALL LECS			X	
SMUD		X		
SPRINT NEXTEL			X	
SUNESYS			X	
SURE WEST			X	
TIMEWARNER CABLE			X	
T-MOBILE			X	
TURN		X		
TW TELECOM			X	
VERIZON			X	
DAVEY TREE		X		

**C. Rule 35, Appendix E, “Guidelines to Rule 35” Proposal by Mussey Grade and Farm Bureau (Guidelines Only)**

**1. Proposed Rule Change**

**a. Current Rule**

The following are guidelines to Rule 35.

The radial clearances shown below are minimum clearances that should be established, at time of trimming, between the vegetation and the energized conductors and associated live parts where practicable. Reasonable vegetation management practices may make it advantageous to obtain greater clearances than those listed below:

**b. Strikeout/Underline**

The following are guidelines to Rule 35.

The radial clearances shown below are **recommended** minimum clearances that should be established, at time of trimming, between the vegetation and the energized conductors and associated live parts where practicable. Reasonable vegetation management practices may make it advantageous for the purposes of public safety, reliability or tree health to obtain greater clearances than those listed below: to ensure compliance until the next scheduled maintenance. Each utility may determine and apply additional appropriate clearances beyond clearances listed below, which take into consideration various factors, including: line operating voltage, length of span, line sag, planned maintenance cycles, location of vegetation within the span, species type, experience with particular species, vegetation growth rate and characteristics, vegetation management standards and best practices (including when feasible appropriate tree crop production manuals), local climate, elevation, and fire risk.

**c. Proposed Final Rule**

The following are guidelines to Rule 35.

The radial clearances shown below are recommended minimum clearances that should be established, at time of trimming, between the vegetation and the energized conductors and associated live parts where practicable. Reasonable vegetation management practices may make it advantageous for the purposes of public safety, reliability or tree health to obtain greater clearances than those listed below to ensure compliance until the next scheduled maintenance. Each utility may determine and apply additional appropriate clearances beyond clearances listed below, which take into consideration various factors, including: line operating voltage, length of span, line sag, planned maintenance cycles, location of vegetation within the span, species type, experience with particular species, vegetation growth rate and characteristics, vegetation management standards and best practices (including when feasible appropriate tree crop production manuals), local climate, elevation, and fire risk.

## 2. Rationale

The Mussey Grade Road Alliance (Mussey Grade) and Farm Bureau offer additional explanatory context to the reasons for expanding beyond the minimum clearances at the time of trimming outlined in the chart contained in Appendix E of Rule 35. The Mussey Grade/Farm Bureau proposal is an amendment to the additional language proposed for Appendix E presented by PG&E/Joint Electric Utilities in Map No. 8C. Proponents believe the added language – “for the purposes of public safety, reliability or tree health” and “(including when feasible appropriate tree crop production manuals)”, better informs and bounds the purposes of the additional clearances to facilitate a better understanding on the part of affected tree owners. Because the change to this guideline reaches out to all areas of the state, not just those areas for which fire risk is a factor, it is important that a broader range of factors are taken into account than what was proposed in 8C. Although the utilities included lists of factors that they deemed relevant, the proponents’ inclusions are reflective of concerns that they have observed from owners affected by the utility programs.

The first added language – “for the purposes of public safety, reliability or tree health” provides a context to justifying the need to comply with subsequent maintenance obligations. This is useful to utilities in explaining the justification for trim to property owners, and additionally helps to clarify the intent of the Commission’s requirement that tree trimming be “reasonable”.

The second portion of added language –“(including when feasible appropriate tree crop production manuals)” – is meant to capture the importance in a best practice context of accounting for the many orchard crops that fall within the utility vegetation management programs. The factors proposed by utilities do not make clear that they will apply factors that take into account distinctions between those trees which have been planted for the purpose of producing a crop and other trees. Crop producing trees are pruned to facilitate setting and maturation of fruits or nuts and in many instances can be managed to meet both the landowners’ and utilities’ goals. The language does not bind the utilities to any particular methodology, but instead provides that in appropriate circumstances pruning to account for production purposes be considered.

## 3. Justification

- The specific electric utilities, CIPs, and others affected by the PRC.

This proposed rule would apply to owners of any overhead electrical supply and communications facilities that come within the jurisdiction of this Commission, located outside of buildings, including owners of electric facilities that belong to non-electric utilities and publicly-owned utility electric supply facilities. However, in the majority of instances only electric utilities are affected.

- The current text of the affected General Order(s), if any.

See above.

- 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.

See above.

- The specific fire hazard(s) addressed by the PRC and/or other objectives accomplished by the PRC.

The objective is to clarify the parameters within which the utilities exercise their discretion to trim vegetation beyond the chart contained in Appendix E.

- How the PRC reduces or otherwise addresses the fire hazard(s) and/or achieves other objectives.

The additional specific parameters proposed here will better inform the public about the goals of vegetation management and make clear that the utilities are to take into consideration a variety of factors when assessing the level of clearance required when trimming vegetation. It is accepted that a variety of conditions require flexibility in considering the clearance levels, the additional considerations provide for perspectives that have been expressed as important to property owners impacted by the rules. By clarifying the Commission's intent, the PRC would reduce challenges to utility trimming based on misunderstandings of utility authority under GO 95, and thus facilitate trimming programs.

- The anticipated costs of the PRC, including, if available, costs incurred by investor owned utilities, POU's, CIPs, and customers.

The proposal does not change the cost requirements, but merely clarifies existing practices.

- The anticipated benefits of the PRC.

Affected parties frequently do not understand or are not aware of the reasons for vegetation management work. The proposal expands on clarifying language to better inform the public about the need for clearances greater than reflected in the chart. And for parties whose trees provide their livelihood, it recognizes the production considerations may be taken into account when feasible. This reduces the potential for costly legal action and challenges, and instead encourages cooperation between a utility (which would have an incentive to demonstrate the reasonableness of its trimming program under the language of the rule), and the property owner.

- Whether and how the costs will be recovered from customers.

The proposal does not change the cost requirements, but merely clarifies existing practices.

- Whether and how costs will be shared among electric utilities, CIPs, and others.

See comment above regarding costs.

- Why it is in the public interest to adopt the PRC.

Affected parties frequently do not understand or are not aware of the reasons for vegetation management work. The proposal expands on clarifying language to better inform the public about the need for clearances greater than reflected in the chart. And for parties whose trees provide their livelihood, it recognizes the production considerations may be taken into account when feasible.

- If the PRC applies to electric transmission, why the rule does not conflict with other federal or state regulations.

This PRC clarifies an existing General Order 95 rule, which already applies to electric transmission facilities.

- 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.

This PRC simply clarifies an existing General Order 95 rule.

#### **4. Parties' Comments**

##### **a. Parties in Support**

###### LA County

Los Angeles County supports the additional language that is proposed for Rule 35, Appendix E. Most people understand that vegetation needs to be pruned for utility right-a-ways, but few people understand the various parameters that need to be addressed when completing pruning. This proposed rule change, by expanding on the current rule, provides clear reasoning for both the public and the employees of the utility as to why clearance distance may need to be greater than the minimum clearance distances recommended at the time of pruning. At the same time, the expanded reasoning in the proposed rule could require less pruning than minimally required if the tree species are particularly slow growing or there are other mitigating circumstances. In this situation, expanding the existing rule is a good thing, as it will lead to better understanding on the public's behalf, and it will provide the utility company employee the necessary justification to complete the appropriate amount of pruning.

##### **b. Parties in Opposition**

###### CMUA

CMUA supports a very similar PRC proposed by the Joint Utilities. The primary difference between these two PRCs, is that PRC proposed by Mussey Grade and the Farm Bureau includes

the phrase “for the purposes of the reliability, safety and tree health.” CMUA believes that this phrase is unnecessary and could result in unintended consequences. This PRC seemingly seeks to restrict the extra clearances sought at the time of trim to reasons related to one of the three stated purposes: reliability, safety, and tree health. However, there is no reason why a utility should not be able to seek additional time of trim clearance for other reasons, such as cost savings. CMUA believes that this language is unnecessary and should not be added to the Rule 35 guidelines.

#### PG&E, SCE, and SDG&E (Joint Electric Utilities)

In the PRC, Mussey Grade and the Farm Bureau make two proposed additions to the revisions to the Rule 35 guidelines sponsored by the Joint Electric Utilities. The Joint Electric Utilities oppose both proposed additions.

The first change from Mussey Grade and Farm Bureau is the addition of the italicized language in the following sentence: “Reasonable vegetation management practices may make it advantageous *for the purposes of public safety, reliability or tree health* to obtain greater clearances than those listed below to ensure compliance until the next scheduled maintenance.” This addition would be extremely counterproductive. The Joint Electric Utility PRC that Mussey Grade and Farm Bureau are building upon is not designed to change utility operations -- we already obtain additional appropriate clearances at time of trim, and take into consideration all of the listed factors. Rather, our PRC is important for dealing with the small subset of property owners who want to limit trimming to the minimums set forth in Table 1 to the Appendix E guidelines. The PRC proposed by Mussey Grade and Farm Bureau would make this problem worse, not better. With the addition of *for the purposes of public safety, reliability or tree health*, problem property owners would claim that none of these three factors requires trimming beyond the recommended minimums since the trimming utility could simply come back and re-trim their property every few months.

The second change from Mussey Grade and Farm Bureau is the addition of *(including when feasible appropriate tree crop production manuals)* to “vegetation management standards and best practices.” This change would also be counterproductive since recalcitrant property owners -- particularly those who own orchards -- would be empowered to argue that the “appropriate” tree crop production manual recommends against pruning at a particular time of year, pruning more than a very limited amount, or even pruning at all.

Customers who refuse to allow necessary vegetation management work are potentially placing the entire community in jeopardy of power outages and potential fires. The Commission should not give them even more arguments to endanger their communities. The Commission should support the Joint Electric Utilities’ efforts to improve California’s vegetation management guidelines, and not buy into efforts by Mussey Grade and the Farm Bureau to make the guidelines worse.

**5. Record of Voting**

<b>PARTIES</b>	<b>NOT PRESENT</b>	<b>YES</b>	<b>NEUTRAL</b>	<b>NO</b>
AT&T			X	
CAISO	X			
CALTEL	X			
CCTA			X	
CFBF		X		
CMUA				X
COMCAST			X	
COX			X	
CPSD			X	
CTIA			X	
DRA		X		
EXTENET	X			
FACILITIES MANAGEMENT		X		
FRONTIER			X	
IBEW 1245			X	
LA COUNTY		X		
LADWP				X
MUSSEY GRADE		X		
OSMOSE UTILITIES SERVICES	X			
NCPA	X			
NEXTG			X	
PACIFICORP		X		
PG&E				X
SCE				X
SDG&E				X
SIERRA PACIFIC			X	
SMALL LECS			X	
SMUD				X
SPRINT NEXTEL			X	
SUNESYS			X	
SURE WEST			X	
TIMEWARNER CABLE			X	
T-MOBILE			X	
TURN		X		
TW TELECOM			X	
VERIZON			X	
DAVEY TREE				X



**MAP NO. 9 – GENERAL ORDER 95, RULE 38 FOOTNOTE (AAA)**

**X. MAP NO. 9 – GENERAL ORDER 95, RULE 38 FOOTNOTE (AAA)**

**A. Rule 38, Footnote (aaa) Proposal by Joint Electric Utilities**

**1. Proposed Rule Change**

**a. Current Rule**

None.

**b. Strikeout/Underline**

**New Footnote “aaa” to clearances specified in Rule 38, Table 2, Cases 1-13:**

(aaa) The vertical separation requirement between conductors in the adjoining mid-span may or may not require increased vertical separation at the pole based on the sag characteristics of the conductors.

**c. Proposed Final Rule**

(aaa) The vertical separation requirement between conductors in the adjoining mid-span may or may not require increased vertical separation at the pole based on the sag characteristics of the conductors.

**2. Rationale**

Proper wire-to-wire clearances are essential for worker safety, the reliability of supply and communication systems, and for public safety, including the prevention of fires. The proposed new footnote (aaa) would serve to assist electric and communication personnel responsible for designing their respective overhead wires and cables in those situations where electric and communication lines **are not** supported on the same structure (Cases 1-7), and in those situations where the lines **are** supported on the same structure (Cases 8-13).

Rule 38 Table 2 establishes the minimum vertical, horizontal or radial clearances of wires to other wires. In addition, Rule 38 allows for a 10% reduction in clearances due to temperature and loading. Although advisory in nature, the proponents believe it is necessary to remind responsible personnel that conductor sag is a function of temperature and loading and that it may be necessary to increase clearances at the pole or support structure in order to maintain specified clearances throughout the span. This is especially important in wildland areas that are subject to strong winds and extreme changes in temperature. This proposed rule change does not impose new requirements, but it does clarify current requirements. With supply conductors often operating at increased thermal loads and with the introduction of new high temperature conductors, it has become even more important for entities with facilities affixed to the same support structure and/or crossing under supply lines to account for the sag characteristics of every line.

Further, past precedent supports the addition of notes and footnotes to GO 95 rules that are advisory in nature.

### 3. Justification

- The specific electric utilities, CIPs, and others affected by the PRC.

Supply and communication entities subject to CPUC jurisdiction would be affected by this rule change.

- The current text of the affected General Order(s), if any.

See above.

- 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.

See above.

- The specific fire hazard(s) addressed by the PRC and/or other objectives accomplished by the PRC.

The principal hazard addressed by this PRC is the potential contact between electric lines; and contact between electric and communication lines.

- How the PRC reduces or otherwise addresses the fire hazard(s) and/or achieves other objectives.

Achieving and maintaining the required minimum clearances between electric lines; and/or electric and communication lines is important in areas that are subject to winds, extreme changes in temperature and include combustible vegetation. The sag of supply lines can change dramatically depending on thermal loading, while communication lines often tend to be more static in nature. This new footnote reminds supply and communication entities to consider all expected sag scenarios when applying the clearances specified in Rule 38, Table 2.

- The anticipated costs of the PRC, including, if available, costs incurred by investor owned utilities, POU's, CIPs, and customers.

This PRC should not create any additional costs for supply and communication companies or their customers.

- The anticipated benefits of the PRC.

The new footnote is intended to promote public and worker safety and the reliability of electrical and communication systems, and may reduce the risk of wildfire, by reminding responsible personnel that the various clearances specified in Cases 1-13 must be met under all expected operating conditions.

- Whether and how the costs will be recovered from customers.

Not applicable.

- Whether and how costs will be shared among electric utilities, CIPs, and others.

Not applicable.

- Why it is in the public interest to adopt the PRC.

The new footnote is intended to promote public and worker safety and the reliability of electrical and communication systems, and may reduce the risk of wildfire, by reminding responsible personnel that the various clearances specified in Cases 1-13 must be met under all expected operating conditions.

- If the PRC applies to electric transmission, why the rule does not conflict with other federal or state regulations.

This PRC clarifies an existing General Order 95 rule, which currently complements and poses no conflict with existing 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.

This proposal is exempt from environmental review under Section 15378 of the California Environmental Quality Act (CEQA) Guidelines because it is not a “project” under CEQA and will not have any potentially significant impact on the environment. NEPA does not apply because adoption of the proposed rule change does not constitute action by a federal agency within the meaning of 42 USC § 4332.

#### **4. Parties’ Comments**

##### **a. Parties in Support**

###### IBEW 1245

The vertical separation between energized lines and communication lines needs to be maintained at the point of attachment and within the span between poles. There are numerous instances where the midspan separations are reduced dramatically. These situations result in a hazard for both linemen working midspan on energized conductors as well as communication workers who may inadvertently cause a communication line/electrical line contact while performing their work.

## PG&E, SCE, and SDG&E

PG&E, SCE, and SDG&E support this proposed rule change for the reasons stated in the rationale.

### **b. Parties in Opposition**

#### CIP Coalition

The Joint Utilities advocate this PRC on grounds that it is necessary to clarify existing rules and as a reminder that the sag characteristics of conductors may affect conductor clearances. The Joint Utilities' PRC attracted little support in the workshops. It was opposed by every CIP party present. CPSD, DRA, Sierra Pacific, CMUA, LADWP and SMUD were either neutral or abstained. In discussions during the workshops CPSD made clear that it considered the PRC unnecessary and flawed. The CIP Coalition agrees with CPSD that the PRC is unnecessary, but also opposes it on the additional grounds that it is unclear, poorly thought out and would be difficult or impossible to operationalize.

GO 95 contains numerous existing requirements pertaining to conductor clearances and sags that in many respects are quite detailed. In addition to the minimum vertical, horizontal and radial clearance requirements set forth in Rule 38, Table 2, numerous other rules and appendices set forth specific requirements regarding the effect of temperature, wind, ice, and different conductor types, materials, sizes, and span lengths on conductor clearances and sags.<sup>32</sup> It is unclear what effect the Joint Utilities' PRC is intended to have or would have on the many provisions of the Commission's existing rules that affect conductor clearance and sag requirements since the PRC fails to explain this. The PRC contains no specific requirements and no explanation of how it relates to the Commission's existing requirements. The only hint at how the PRC should be interpreted is contained in the vague and ambiguous statement that, the

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<sup>32</sup> Rule 38, Table 2 sets forth the basic minimum vertical, horizontal and radial clearances between conductors and states that these clearances shall be determined at 60°F and no wind. Rule 38 further states that the clearances set forth in Table 2 may be reduced due to different temperature and loading conditions, but not more than 10 percent due to such conditions. Rule 43 sets forth a number of additional temperature and loading conditions that must be considered in determining conductor clearances, including certain conditions pertaining to conductor sags. For facilities installed in areas above 3,000 feet in elevation, Rule 43.1 requires that the facilities be designed for wind pressure of 6 pounds per square foot on conductors and ½ inch of ice. For facilities installed in areas below 3,000 feet, Rule 43.2 requires that the facilities be designed for wind pressure of 8 pounds per square foot on conductors and no ice. Both Rule 43.1 and Rule 43.2 also require that conductor sags be considered at the "normal temperature for computing erection conditions" of 60°F and at a "maximum temperature" condition of 130°F. Additional sag requirements are set forth in GO 95, Rule 49.4 C (5), Rule 84.5, and Appendix C. Appendix C contains sag curves and formulas for determining the minimum sag necessary to comply with applicable requirements for different conductor types and span lengths at different temperatures. See GO 95, Appendix C, Chart 7 and Table 25, for example. These curves and formulas are based upon the "initial sag" of conductors that are not prestressed. Appendix C at C-1. GO 95, Appendix F also contains examples illustrating "typical problems" encountered in line construction and explains how the conductor sags and tensions should be determined under hypothetical conditions in order to comply with the specific requirements set forth elsewhere in GO 95. See GO 95, Appendix F, Part I at F-1 through F-18. In addition to these requirements, Rule 31.1 states that for all particulars not specified in these rules, "design, construction and maintenance should be done in accordance with accepted good practice for the given local conditions known at the time." Finally, Appendix C specifically states that the sag values contained in Appendix C, Table 25 are greater than required to meet minimum requirements, but are "considered to be in accordance with good practice." See Appendix C at C-2.

sag characteristics of conductors “*may or may not require increased vertical separation at the pole.*” This statement provides no substantive information, beyond that contained in the Commission’s existing rules. It contains nothing to inform utility and CIP engineers, contractors, inspectors or maintenance personnel what would be required in order to ensure that their facilities are designed, constructed, inspected and maintained in conformance with this rule. As a result, it adds nothing meaningful to the Commission’s existing rules and requirements and provides no means for utilities and CIPs to operationalize the PRC.

More importantly, the Joint Utilities have failed to demonstrate any justification or need for this rule change. The purpose of this proceeding is to reduce fire risks associated with communications facilities installed on joint use poles with electric facilities. While there is no doubt that conductor clearances can affect fire risks and fire safety, the Joint Utilities have failed to provide any evidence that the Commission’s existing conductor clearance and sag requirements are not sufficient to ensure a reasonable margin of fire safety so long as they are interpreted and implemented in accordance with accepted good practice. The CIP Coalition, in contrast, has presented evidence that CIP facilities installed on joint use poles entail a negligible fire risk<sup>33</sup> and that the Commission’s existing vertical conductor clearance requirements are reasonably conservative and in certain respects exceed minimum conductor clearance requirements contained in the National Electric Safety Code (“NESC”) applicable in nearly every other state.<sup>34</sup>

In the absence of clear and convincing evidence that there is a deficiency in the Commission’s existing conductor clearance rules that increases fire risks associated with facilities on joint use poles in material respects and that the Joint Utilities’ PRC will effectively address such deficiencies, there is no justification for adopting the proposed change. The Joint Utilities have presented no such evidence.

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<sup>33</sup> See Larry W. Anderson, et al, Exponent Failure Analysis Associates, Study to Assess Fire Risk Associated With Collocated Communications Equipment (Wired Telephone Lines and Wireless Equipment) with Utility Power Lines on Poles (March 27, 2009), AT&T Opening Comments in R.08-11-005, Phase 1, Attachment A (Exponent Report).

<sup>34</sup> See Don Hooper, “PRC No: JEF-7, GO 95, Rule 38, Table 2, Footnote (aaa)” presented on behalf of CIP Coalition at workshop of May 5, 2010.

## 5. Record of Voting

PARTIES	NOT PRESENT	YES	NEUTRAL	NO
AT&T				X
CAISO	X			
CALTEL	X			
CCTA				X
CFBF	X			
CMUA			X	
COMCAST				X
COX				X
CPSD			X	
CTIA				X
DRA			X	
EXTENET	x			
FACILITIES MANAGEMENT		X		
FRONTIER				X
IBEW 1245		X		
LA COUNTY		X		
LADWP			X	
MUSSEY GRADE	X			
OSMOSE UTILITIES SERVICES	X			
NCPA	X			
NEXTG	X			
PACIFICORP		X		
PG&E		X		
SCE		X		
SDG&E		X		
SIERRA PACIFIC			X	
SMALL LECS				X
SMUD			Abstain	
SPRINT NEXTEL	X			
SUNESYS				X
SURE WEST				X
TIMEWARNER CABLE				X
T-MOBILE				X
TURN	X			
TW TELECOM				X
VERIZON				X
DAVEY TREE	X			

**MAP NO. 10 – GENERAL ORDER 95, RULE 44.4**



**XI. MAP NO. 10 – GENERAL ORDER 95, RULE 44.4**

**A. Rule 44.4 Proposal by CIP Coalition<sup>35</sup>**

**1. Proposed Rule Change**

**a. Current Rule**

None.

**b. Strikeout/Underline**

**44.4 Cooperation**

All entities with facilities on the subject pole shall cooperate with the company performing the load calculations necessitated by the provisions of Rule 44.1, 44.2 or 44.3, including, but not limited to, promptly providing or making reasonably available, upon request and to the extent it exists, the following:

(a) The most recent intrusive pole test data;

(b) Any information regarding its facilities necessary to perform a pole loading calculation that is not readily available to the company performing the pole loading calculations through a field visit; and

(c) A table of standard input values used by the Responding Company in pole loading calculations (e.g., standard conductor or cable sizes, tension values, and equipment sizes and weights).

In the event a pole attachment application or a joint pole application submitted to a pole owner is rejected, the pole owner shall provide the applicant with the reason(s) for the rejection with the returned application. In the event a pole attachment application or a joint pole application is rejected by a pole owner because it has failed to meet the pole loading limitations established by the pole owner (consistent with General Order 95 or any subsequent regulation), the pole owner should also provide the applicant with sufficient information to determine how the pole loading limitations were exceeded with the returned application.

Note: “Promptly” means as soon as practicable but, absent exigent circumstances or mutual agreement, no more than fifteen (15) business days from the date of the request. (Exigent circumstances include requests for intrusive data or other necessary information on transmission poles, or requests for information on a large number of poles in a limited time period.)

<sup>35</sup> Sunesys does not join the CIP Coalition in proposing this PRC.

**c. Proposed Final Rule**

**44.4 Cooperation**

All entities with facilities on the subject pole shall cooperate with the company performing the load calculations necessitated by the provisions of Rule 44.1, 44.2 or 44.3, including, but not limited to, promptly providing or making reasonably available, upon request and to the extent it exists, the following:

- a. The most recent intrusive pole test data;
- b. Any information regarding its facilities necessary to perform a pole loading calculation that is not readily available to the company performing the pole loading calculations through a field visit; and
- c. A table of standard input values used by the Responding Company in pole loading calculations (e.g., standard conductor or cable sizes, tension values, and equipment sizes and weights).

In the event a pole attachment application or a joint pole application submitted to a pole owner is rejected, the pole owner shall provide the applicant with the reason(s) for the rejection with the returned application. In the event a pole attachment application or a joint pole application is rejected by a pole owner because it has failed to meet the pole loading limitations established by the pole owner (consistent with General Order 95 or any subsequent regulation), the pole owner should also provide the applicant with sufficient information to determine how the pole loading limitations were exceeded with the returned application.

Note: “Promptly” means as soon as practicable but, absent exigent circumstances or mutual agreement, no more than fifteen (15) business days from the date of the request. (Exigent circumstances include requests for intrusive data or other necessary information on transmission poles, or requests for information on a large number of poles in a limited time period.)

**2. Rationale**

In order to make sure that joint poles are designed, constructed and modified in compliance with appropriate pole loading/safety factors standards – and thus mitigate the chances of pole failure which can create fire hazards - cooperation by, between and among the electric utilities and the CIPs is critical. Phase 1 explicitly contemplated that a permanent cooperation provision was to be drafted in the context of this Phase 2.

Several key concepts underly the CIPs’ cooperation PRC including the following :

- all entities on a joint pole should be required to cooperate with entities seeking to perform pole loading calculations necessitated by the General Orders;

- the timely exchange of information required to perform pole loading calculations is critical;
- parties should be provided with flexibility on how the information will be exchanged;
- only information that is already available is to be provided;
- parties must be timely informed of the basis for any rejected pole attachment/joint pole applications including the basis for any rejections based on pole loading calculations (as parties use different programs and assumptions in making those calculations);
- in order to minimize the burden of pole loading data requests, there should be an exception to the maximum 15-day response time for exigent circumstances such as requests for data on a large number of poles; and
- cooperation is critical to all aspects of Rule 44 and thus should be applicable to Rule 44 in general, and not just Rule 44.2.

To that end, this PRC was drafted with the intent of ensuring that all necessary information was timely exchanged by the necessary parties so that pole loading calculations can be completed and safety factors set by the General Order fully observed. In addition, the PRC was drafted so that in the event that an entity's joint pole and/or pole attachment application is rejected, the requesting party will receive timely information as to the reason for the rejection so that the parties can cooperatively discuss those issues and, where appropriate, corrections to the application can be made. It also contains a specific provision to address the particular issue of application rejections which result from differing pole loading calculations by the applicant and pole owner since that has proven to be a particular problem among certain parties. Finally, the PRC maintains the current 15-day response time but allows for exceptions in exigent circumstances. This was included to make sure that utilities were not unduly burdened by requests for pole loading data.

The PRC attempted to take into account all of the concerns expressed by the parties participating at the workshop as reflected by the fact that the MAP to this PRC presented by the IOUs contains identical language. The only substantive difference between the two MAPs is that the CIPs believe that cooperation is such a critical and fundamental element that it properly belongs in the General Orders whereas the IOUs' MAP would relegate the cooperation provisions to an appendix. By placing the cooperation provisions in the General Order, as suggested by the CIPs' MAP, carriers obligations to comply with these provisions and the Commission's role in enforcing those provisions, where necessary, are clear.

### **3. Justification**

- The specific electric utilities, CIPs, and others affected by the PRC.

The PRC affects all entities with facilities on joint poles.

- The current text of the affected General Order(s), if any.

See above. At a minimum, the PRC would replace the interim provisions of Rule 44.2, although the CIPs note that there is no need for any of the cooperation language currently contained in Rule 44.2 in light of the PRC.

- 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.

See above.

- The specific fire hazard(s) addressed by the PRC and/or other objectives accomplished by the PRC.

The PRC addresses the need to make sure that facilities on joint poles continue to be constructed in a manner consistent with the safety factors identified in Rule 44. This should reduce the potential for pole failure and thus reduce potential fire hazards caused or otherwise related to such failures, if any.

- How the PRC reduces or otherwise addresses the fire hazard(s) and/or achieves other objectives.

The PRC promotes the safe design, construction and modification of joint facilities by ensuring the entities have timely and sufficient information to perform proper pole loading calculations. It also ensures that parties receive adequate information about any rejected pole applications so that appropriate adjustments can be made so that facilities are constructed in a safe manner. The PRC has the added benefit of promoting communications between and among entities with facilities on the poles.

- The anticipated costs of the PRC, including, if available, costs incurred by investor owned utilities, POUs, CIPs, and customers.

There is no cost data available although the costs are anticipated to be nominal as the PRC essentially requires the exchange of information which already exists.

- The anticipated benefits of the PRC.

The anticipated benefits of the PRC include the construction and modification of facilities on joint poles in a manner that meets the safety standards of the General Order as well as improved communications between and among entities with facilities on the poles.

- Whether and how the costs will be recovered from customers.

To the extent there are costs associated with implementing this PRC, entities will either recover them through the appropriate Commission cost recovery procedures if they are rate regulated or, if not, they will absorb the costs or pass them on to consumers.

- Whether and how costs will be shared among electric utilities, CIPs, and others.

No cost sharing is anticipated.

- Why it is in the public interest to adopt the PRC.

It is in the public interest to adopt this PRC because it will facilitate the safe construction of facilities on joint poles and the communications between entities that place those facilities on the poles. It will also facilitate the ability of entities to enhance their networks on existing poles throughout the state by reducing potential delays in processing/preparing pole attachment/joint pole applications and facilitating any disputes over those applications with respect to pole loading calculations.

- If the PRC applies to electric transmission, why the rule does not conflict with other federal or state regulations.

Not applicable.

- 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.

Neither CEQA nor NEPA are implicated by this PRC.

#### **4. Parties' Comments**

##### **a. Parties in Support**

###### CIP Coalition<sup>36</sup>

The CIP Coalition supports the PRC for the reasons set forth in the rationale and justification sections above.

###### CPSD

In Phase 1 of the OIR, the Commission added new Rule 44.2, which requires companies to conduct pole loading calculations prior to adding facilities to poles. In a related ordering paragraph, the Commission ordered data to be shared within 15 business days, with further evaluation of this timeframe in Phase 2. This rule proposal codifies what data shall be shared and how it shall be shared. Specifically, this proposal will codify the data exchanged so that the exchange can be simplified and streamlined between companies. Additionally, the rule requires

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<sup>36</sup> Sunesys does not join the CIP Coalition in proposing this PRC.

data to be shared within 15 business days, absent a mutually agreed upon timeframe or exigent circumstances. The proposed rule will require greater cooperation and communication between utilities using joint-use poles. It will also assist utilities in conducting safety factor calculations prior to installing facilities that reduce the safety factor of a pole below the limits allowed by General Order 95. It is important to keep the safety factors above the required values because if they fall too low this increases the likelihood that a pole will fail and result in a death or fire.

### LA County

The proposal put forth by the CIP coalition for GO 95, new Rule 44.4, is a sound effort to create a climate of cooperation among companies that have not always been willing to share information. The proposed rule change will ensure that necessary pole loading data and calculations will be exchanged between companies promptly and when needed. The Commission will ultimately put forth many new rules at the end of the Phase 2. If cooperation is not a requirement going forward, the effort of the workshop participants would be wasted as their will be no mandate that companies cooperate and some new efforts to increase safety may again be stymied.

### **b. Parties in Opposition**

#### PG&E, SCE, and SDG&E

The Joint Electric Utilities (JEUs) agree that existing and incoming pole occupants need to cooperate when preparing to add facilities to a joint use pole. The JEUs also agree that certain information should be provided and/or shared among existing and incoming pole occupants, in a timely manner. However, the JEUs wholly disagree with the notion that a new General Order (GO) 95 rule is needed to force “cooperation” among existing and incoming pole occupants. Notably, GO 95 includes two succinct rules addressing “joint use” (31.5 and 91.1) and other rules addressing “mutual consent” and “mutual agreement”. The JEUs also respectfully call to the Commission’s attention the millions of joint use poles in California, which we believe demonstrates the electric utilities and communication companies have established a sufficient number of workable agreements, policies, practices and procedures to continue their longstanding cooperative efforts, without the additional burden of a prescriptive GO 95 rule.

The JEUs oppose the CIP Coalition’s proposed rule change because it would add unnecessary, prescriptive requirements to a General Order that by and large establishes requirements for the design, construction, and maintenance of electric supply and communication facilities and also serves as the foundational document for long standing joint use agreements.

**Please see the discussion set forth more fully in the Rationale and Justification for the JEU version of this rule in Section XI (B) of MAP No. 10.**

#### Sierra Pacific

Although Sierra Pacific supports efforts amongst pole occupants to cooperate and share information on a timely basis, Sierra Pacific opposes this proposal because it formalizes cooperation requirements within GO 95, effectively dictating the only method in which cooperation may take place. Instead, Sierra Pacific supports the Joint Electric Utilities proposal

described in Section XI (B) below for the reasons stated in the rationale accompanying that proposal.

**5. Record of Voting**

<b>PARTIES</b>	<b>NOT PRESENT</b>	<b>YES</b>	<b>NEUTRAL</b>	<b>NO</b>
AT&T		X		
CAISO	X			
CALTEL	X			
CCTA		X		
CFBF	X			
CMUA	X			
COMCAST		X		
COX		X		
CPSD		X		
CTIA		X		
DRA			X	
EXTENET	X			
FACILITIES MANAGEMENT	X			
FRONTIER		X		
IBEW 1245		X		
LA COUNTY		X		
LADWP	X			
MUSSEY GRADE	X			
OSMOSE UTILITIES SERVICES	X			
NCPA	X			
NEXTG		X		
PACIFICORP				X
PG&E				X
SCE				X
SDG&E				X
SIERRA PACIFIC				X
SMALL LECS			X	
SMUD	X			
SPRINT NEXTEL		X		
SUNESYS				X
SURE WEST		X		
TIMEWARNER CABLE		X		
T-MOBILE		X		
TURN			X	
TW TELECOM		X		
VERIZON		X		
DAVEY TREE	X			
BILL ADAMS		X		



**B. Rule 44.2/44.4/Appendix I Proposal by Joint Electric Utilities**

**1. Proposed Rule Change**

**a. Current Rule**

**44.2 Additional Construction**

Any utility planning the addition of facilities that materially increases the load on a structure shall perform a loading calculation to ensure that the addition of the facilities will not reduce the safety factors below the values specified by Section IV. Such utility shall maintain these pole loading calculations and shall provide such information to authorized joint use pole occupants and the Commission upon request.

All other utilities on the subject pole shall cooperate with the utility performing the load calculations described above including, but not limited to, providing intrusive pole loading data and other data necessary to perform those calculations.

Note: Nothing contained in this rule shall be construed as allowing the safety factor of a facility to be reduced below the required values specified in Rules 44.1 and 44.3.

**b. Strikeout/Underline**

**Proposed Revisions to Rule 44.2 and Addition of New Rule 44.4**

**44.2 Additional Construction**

Any ~~utility~~ entity planning the addition of facilities that materially increase the load on a structure shall perform a loading calculation to ensure that the addition of the facilities will not reduce the safety factors below the values specified by Section IV. Such ~~utility~~ entity shall maintain these pole loading calculations and shall provide such information to authorized joint use pole occupants and the Commission upon request.

~~All other utilities or on the subject pole shall cooperate with the utility performing the load calculations described above including, but not limited to, providing intrusive pole loading data and other data necessary to perform those calculations.~~

Note: Nothing contained in this rule shall be construed as allowing the safety factor of a facility to be reduced below the required values specified in Rules 44.1 and 44.3.

**44.4 Cooperation**

Entities with facilities on a pole shall cooperate with entities performing pole load calculations necessitated by Rules 44.1, 44.2 and 44.3 including, but not limited to, providing upon request intrusive pole test results and other data necessary to perform those calculations. (See Appendix D)

**General Order 95 Appendix I**  
**Guidelines to Rule 44.4**

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The following are guidelines to Rule 44.4

Entities with facilities on a pole should cooperate with the entity performing the load calculations necessitated by the provisions of Rule 44.1, 44.2 or 44.3, including, but not limited to, promptly providing, upon request and if available, the following:

- (a) The most recent intrusive pole test data;
- (b) Any information regarding its facilities necessary to perform a pole loading calculation that is not readily available to the company performing the pole loading calculations through a field visit; and
- (c) A table of standard input values used by the responding entity in pole loading calculations (e.g., standard conductor or cable sizes, tension values, and equipment sizes and weights).

“Promptly providing” means as soon as practicable but, absent exigent circumstances or mutual agreement, no more than fifteen (15) business days from the date of the request. (Exigent circumstances include requests for intrusive data or other necessary information on transmission poles, or requests for information on a large number of poles in a limited time period.)

In the event a pole attachment application or a joint pole application submitted to a pole owner is rejected, the pole owner should provide the applicant with an explanation of the reason(s) for the rejection with the returned application. In the event a pole attachment application or a joint pole application is rejected by a pole owner because it has failed to meet the pole loading limitations established by the pole owner (consistent with General Order 95 or any subsequent regulation), the pole owner should also provide the applicant with, sufficient information to determine how the pole loading limitations were exceeded.

**c. Proposed Final Rule**

**44.2 Additional Construction**

Any entity planning the addition of facilities that materially increase the load on a structure shall perform a loading calculation to ensure that the addition of the facilities will not reduce the safety factors below the values specified by Section IV. Such entity shall maintain these pole loading calculations and shall provide such information to authorized joint use pole occupants and the Commission upon request.

Note: Nothing contained in this rule shall be construed as allowing the safety factor of a facility to be reduced below the required values specified in Rules 44.1 and 44.3.

#### **44.4 Cooperation**

Entities with facilities on a pole shall cooperate with entities performing pole load calculations necessitated by Rules 44.1, 44.2 and 44.3 including, but not limited to, providing upon request intrusive pole test results and other data necessary to perform those calculations. (See Appendix I)

#### **General Order 95 Appendix I Guidelines to Rule 44.4**

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The following are guidelines to Rule 44.4

Entities with facilities on a pole should cooperate with the entity performing the load calculations necessitated by the provisions of Rule 44.1, 44.2 or 44.3, including, but not limited to, promptly providing, upon request and if available, the following:

- d.** The most recent intrusive pole test data;
- e.** Any information regarding its facilities necessary to perform a pole loading calculation that is not readily available to the company performing the pole loading calculations through a field visit; and
- f.** A table of standard input values used by the responding entity in pole loading calculations (e.g., standard conductor or cable sizes, tension values, and equipment sizes and weights).

“Promptly providing” means as soon as practicable but, absent exigent circumstances or mutual agreement, no more than fifteen (15) business days from the date of the request. (Exigent circumstances include requests for intrusive data or other necessary information on transmission poles, or requests for information on a large number of poles in a limited time period.)

In the event a pole attachment application or a joint pole application submitted to a pole owner is rejected, the pole owner should provide the applicant with an explanation of the reason(s) for the rejection with the returned application. In the event a pole attachment application or a joint pole application is rejected by a pole owner because it has failed to meet the pole loading limitations established by the pole owner (consistent with General Order 95 or any subsequent regulation), the pole owner should also provide the applicant with, sufficient information to determine how the pole loading limitations were exceeded.

## **2. Rationale**

No one disputes the need for pole occupants to cooperate with each other when an entity is adding load to a pole. No one disputes what information should be shared among pole occupants, or how long it should take the pole occupant to provide the information. The only issue remaining in dispute between the CIPs and the Joint Electric Utilities (JEUs) is whether the actions to cooperate should take the form of a prescriptive rule in General Order 95 (which the CIPs propose) or whether the actions should take the form of guidelines or principles in an Appendix in GO 95.

It is the view of the JEUs that rules in GO 95 should set out construction, design, and maintenance standards, and not contain inflexible, one-size-fits-all procedures for complying with those standards. The JEUs' proposal to adopt a requirement in Rule 44.4 to cooperate along with Guidelines in Appendix I that lay out principles for how that cooperation is to take place among pole occupants strikes the appropriate balance between articulating a requirement for cooperation among pole occupants, and allowing entities the flexibility to adapt to experiences over time and deviate from the specific requirements when such deviation would improve the cooperation outcome.

The CIP Proposed Rule 44.4 sets forth a specific and restrictive procedure for pole occupants to follow to ensure that they are cooperating with pole occupants who wish to add load to poles. The JEUs believe that procedures for cooperating with pole occupants should not be embodied in a General Order that cannot easily be changed. Rather, high-level principles should be adopted to guide the accomplishment of a task. This allows improvements to be incorporated into the process in a timely manner. The CIPs' proposal would not allow the cooperation process to be easily improved in response to experience.

Under both proposals, if a pole occupant feels that an entity is not adequately cooperating, the pole occupant can raise the issue with CPSD or bring a complaint before the CPUC, since Rule 44.4 in both proposals requires "cooperation." The difference is that under the JEUs' proposal, the CPSD and the Commission will ask whether the entity applied the principles of cooperation that are set forth in Appendix I. Under the CIP proposal, the CPSD and Commission will ask whether the entity followed the prescriptive process set forth in the rule, without regard to whether other actions were taken to cooperate with the pole occupant. Such rigid prescriptive procedures are not appropriate in a General Order that is intended to provide standards for construction, design, and maintenance of supply and communication facilities.

In light of the fact that the wording in the two proposals is almost identical, it is clear that the CIPs and the JEUs came very close to achieving consensus on this cooperation rule. The JEUs fully intend to follow the guidelines in Appendix I. Indeed, many of the JEUs have practices in place that meet or exceed the expectations set forth in Appendix I.

### **3. Justification**

- The specific electric utilities, CIPs, and others affected by the PRC.

This proposal would affect electric utilities and communication entities subject to CPUC jurisdiction.

- The current text of the affected General Order(s), if any.

See above.

- 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.

See above.

- The specific fire hazard(s) addressed by the PRC and/or other objectives accomplished by the PRC.

Maintaining adequate strength of wood poles enhances fire safety, worker safety, and general public safety. The adoption of this PRC will encourage greater cooperation among pole occupants, which in turn will help ensure effective compliance by pole occupants with GO 95 pole loading requirements.

- How the PRC reduces or otherwise addresses the fire hazard(s) and/or achieves other objectives.

This PRC will help ensure that all pole occupants communicate effectively with each other when it comes to adding load on existing poles. That enhanced communication has the potential to help avoid pole overloading.

- The anticipated costs of the PRC, including, if available, costs incurred by investor owned utilities, POUs, CIPs, and customers.

This PRC may result in increased costs to IOUs, POUs, and CIPs for enhancing communication processes and data retrieval.

- The anticipated benefits of the PRC.

See above.

- Whether and how the costs will be recovered from customers.

Companies that are rate-of-return regulated are seeking an order in this proceeding regarding how the costs for complying with new rules adopted in this proceeding are to be recovered from customers. Companies that are not rate-of-return regulated may recover costs in any legally permissible manner, including through line-item charges or increased fees for services.

- Whether and how costs will be shared among electric utilities, CIPs, and others.

Not applicable. The PRC does not provide for cost sharing among or between entities.

- Why it is in the public interest to adopt the PRC.

See above.

- If the PRC applies to electric transmission, why the rule does not conflict with other federal or state regulations.

This PRC clarifies an existing General Order 95 rule, which currently complements and poses no conflict with existing 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 statues and/or regulations where the exemption is listed. Conversely, any assertion that CEQA and/or NEPA do apply must (1) cite the relevant statues 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.

This proposal is exempt from environmental review under Section 15378 of the California Environmental Quality Act (CEQA) Guidelines because it is not a “project” under CEQA and will not have any potentially significant impact on the environment. NEPA does not apply because adoption of the proposed rule change does not constitute action by a federal agency within the meaning of 42 USC § 4332.

#### **4. Parties’ Comments**

##### **a. Parties in Support**

###### PG&E, SCE, and SDG&E

PG&E, SCE, and SDG&E support this proposed rule change for the reasons stated in the rationale.

###### Sierra Pacific

Sierra Pacific supports this proposed rule change for the reasons stated in the rationale.

##### **b. Parties in Opposition**

###### CIP Coalition<sup>37</sup>

As noted in the discussion of MAP 11.A, the CIP PRC on cooperation, the text of the CIP proposal and the text of the proposal by the Joint Electric Utilities are identical. The only substantive difference between the two proposals is that this IOU cooperation MAP relegates the specific requirements to an Appendix as “guidelines.” However, the ramifications of placing these provisions in an Appendix is at best unknown and could have unintended consequences. Among other things, it is unclear if the utilities would be obligated to comply with the guidelines, what an entity would do if a party did not “cooperate” or what role, if any, the Commission would have in addressing issues that might come up related to these provisions.

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<sup>37</sup> Sunesys does not join the CIP Coalition in opposing this PRC.

Moreover, cooperation by, between and among the entities with facilities on a joint pole is critical. It allows the parties to obtain timely information so that poles can be designed, constructed and modified in a safe manner which should mitigate the possibility of pole failure. Cooperation, especially as set forth in the CIP and the IOU provisions, also ensures that entities are provided with sufficient information to address any issues that may arise in the context of pole attachment/joint pole applications. As discussed at the workshops, the exchange of that information has been problematic in certain instances. Accordingly, the CIPs submit that the cooperation provisions should be made a part of the General Order itself where the interpretation and implementation, as well as any required enforcement, of these provisions will be less ambiguous.

As a final note, and regardless of which MAP the Commission is inclined to adopt, the CIPs note that they support the deletion of the cooperation language in Rule 44.2 as proposed in this MAP. In either event, that language is superfluous.

**c. Parties Voting Neutral**

CPSD

In Phase 1 of the OIR, the Commission added new Rule 44.2, which requires companies to conduct pole loading calculations prior to adding facilities to poles. In a related ordering paragraph, the Commission ordered data to be shared within 15 business days, with further evaluation of this timeframe in Phase 2. This rule proposal requires companies to cooperate with entities performing necessary pole loading calculations, and provides guidelines on what data should be shared and how it should be shared. The proposed rule should result in greater cooperation and communication between utilities using joint-use poles. It should also assist utilities in conducting safety factor calculations prior to installing facilities that reduce the safety factor of a pole below the limits allowed by General Order 95. It is important to keep the safety factors above the required values because if they fall too low this increases the likelihood that a pole will fail and result in a death or fire.

## 5. Record of Voting

PARTIES	NOT PRESENT	YES	NEUTRAL	NO
AT&T				X
CAISO	X			
CALTEL	X			
CCTA				X
CFBF	X			
CMUA	X			
COMCAST				X
COX				X
CPSD			X	
CTIA				X
DRA			X	
EXTENET	X			
FACILITIES MANAGEMENT	X			
FRONTIER				X
IBEW 1245			X	
LA COUNTY			X	
LADWP	X			
MUSSEY GRADE	X			
OSMOSE UTILITIES SERVICES	X			
NCPA	X			
NEXTG	X			
PACIFICORP		X		
PG&E		X		
SCE		X		
SDG&E		X		
SIERRA PACIFIC		X		
SMALL LECS				X
SMUD	X			
SPRINT NEXTEL				X
SUNESYS		X		
SURE WEST				X
TIMEWARNER CABLE				X
T-MOBILE				X
TURN			X	
TW TELECOM				X
VERIZON				X
DAVEY TREE	X			
BILL ADAMS		X		



**MAP NO. 11 – GENERAL ORDER 95, RULE 48**

**XII. MAP NO. 11 – GENERAL ORDER 95, RULE 48**

**A. Rule 48 Proposal by Joint Electric Utilities**

**1. Proposed Rule Change**

**a. Current Rule**

**48 Ultimate Strength of Materials**

Structural members and their connection shall be designed and constructed so that the structures and parts thereof will not fail or be seriously distorted at any load less than their maximum working loads (developed under the current construction arrangements with loadings as specified in Rule 43) multiplied by the safety factor specified in Rule 44.

Values used for the ultimate strength of material shall comply with the safety factors specified in Rule 44.

**b. Strikeout/Underline**

**48 Ultimate Strength of Materials**

Structural members, ~~and their connections, and other elements of overhead lines~~ shall be designed and constructed in accordance with the loading criteria specified in Rule 43 ~~so that the structures and parts thereof will not fail or be seriously distorted at any load less than their maximum working loads (developed under the current construction arrangements with loadings as specified in Rule 43)~~ and the safety factors specified in Rule 44.

~~Values used for the ultimate strength of material shall comply with the safety factors specified in Rule 44.~~

**c. Proposed Final Rule**

**48 Ultimate Strength of Materials**

Structural members, connections, and other elements of overhead lines shall be designed and constructed in accordance with the loading criteria specified in Rule 43 and the safety factors specified in Rule 44.

**2. Rationale**

This proposed rule change seeks to clarify and eliminate an inconsistency between Rules 44 and 48 regarding whether the safety factors denoted in Rule 44 are to be used to determine maximum working stresses or whether the safety factors should be applied to the loads of Rule 43.

In 1992, Resolution SU-10 changed the language in Rule 48. The wording “will not fail” was cut and pasted from the subsections related to steel and concrete. This change created an inconsistency between the opening paragraph in Rule 48 and subsequent subsections pertaining to material properties (e.g., subsection 48.1 and Appendix F example problems).

The way the rule is currently written, no allowance is made for failure. This conflicts with the subsections pertaining to materials (e.g., wood, steel, concrete) which refer to strength properties that are not absolute minimum values for the respective materials. For example, in the case of wood poles, the referenced strengths for the listed species are approximately average values; an average, by definition, implies that approximately 50% of the poles will have strengths less than the average. Hence, the rule is inconsistent because it disallows failures while at the same time referencing use of strength properties that by definition, and in spite of the use of safety factors, result in an inherent probability of failure for every facility designed in accordance with the rule.

The rule change does not change the requirement for electric and communication entities to use, as a minimum, the loading criteria in Rule 43 and the Safety Factors denoted in Rule 44.

The proponents view this change as a critical first step in improving Section IV of GO 95, including, but not limited to Rule 48.7 which includes “no fail” language. It should be noted that Rule 48.7 contains similar inconsistencies pertaining to application of safety factors and prohibiting the possibility of failures to those described above for Rule 48.1, workshop participants generally agreed that revising Rule 48.7 could be deferred pending the planned effort to review and amend other Section IV rules, as appropriate.

### 3. Justification

- The specific electric utilities, CIPs, and others affected by the PRC.

This proposal would affect electric utilities and communication entities subject to CPUC jurisdiction.

- The current text of the affected General Order(s), if any.

See above.

- 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.

See above.

- The specific fire hazard(s) addressed by the PRC and/or other objectives accomplished by the PRC.

This PRC does not directly address a specific fire hazard. However, pole strength/loading and Rule 44.1 et seq. are areas that are within the scope of this proceeding, and this proposed rule clarification eliminates an inconsistency between Rules 44 and 48 regarding whether the safety

factors of Rule 44 are to be used to determine maximum working stresses or are to be applied to the loads of rule 43. Rule 48 currently does not make any allowance for failures, but subsections of Rule 48 acknowledge that there is a probability of failure.

In the proponent's view, it is not practically or economically feasible for electric and communication entities to design and construct facilities to comply with a rule that makes no allowance for failure.

- How the PRC reduces or otherwise addresses the fire hazard(s) and/or achieves other objectives.

The proposed rule change would resolve inconsistencies and align Rule 48 with other GO 95 rules that recognize "failures" of structures and line supports are possible.

- The anticipated costs of the PRC, including, if available, costs incurred by investor owned utilities, POU's, CIPs, and customers.

No additional costs are anticipated due to this proposed rule change.

- The anticipated benefits of the PRC.

The proposed rule change would resolve inconsistencies and align Rule 48 with other GO 95 rules that recognize "failures" of structures and line supports are possible.

- Whether and how the costs will be recovered from customers.

Not applicable.

- Whether and how costs will be shared among electric utilities, CIPs, and others.

Not applicable.

- Why it is in the public interest to adopt the PRC.

The proposed rule change would resolve inconsistencies and align Rule 48 with other GO 95 rules that recognize "failures" of structures and line supports are possible.

- If the PRC applies to electric transmission, why the rule does not conflict with other federal or state regulations.

This PRC clarifies an existing General Order 95 rule, which currently complements and poses no conflict with existing 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 statues 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.

This proposal is exempt from environmental review under Section 15378 of the California Environmental Quality Act (CEQA) Guidelines because it is not a “project” under CEQA and will not have any potentially significant impact on the environment. NEPA does not apply because adoption of the proposed rule change does not constitute action by a federal agency within the meaning of 42 USC § 4332.

#### **4. Parties’ Comments**

##### **a. Parties in Support**

###### CIP Coalition

The Commission’s Energy Division, CIPs and IOUs collectively recognize that it is impossible to literally comply with the “will not fail” language contained in current GO 95, Rule 48, a rule that specifies the ultimate strength of material for purpose of determining pole strength and loading safety factors. The “will not fail” requirement not only sets utilities and the Commission on a Quixotic quest to achieve what is considered unattainable by recognized engineering standards, but also conflicts with Rule 43 and subsections of Rule 48 where the potential for failure is acknowledged. The Proposal by the Joint Electric Utilities addresses the dilemma imposed by Rule 48 by resolving inconsistencies between Rule 44 and Rule 48 regarding whether safety factors to be used to determine maximum working stresses are to be applied to loads of Rule 43. The Joint Electric Utilities proposal preserves what must be the practical intent of the Commission rule concerning the ultimate strength of materials.

###### PG&E, SCE, SDG&E, and Sierra Pacific

PG&E, SCE, SDG&E, and Sierra Pacific support this proposed rule change for the reasons stated in the rationale.

##### **b. Parties in Opposition**

###### CPSD

This proposal changes the requirements of Rule 48 by eliminating the phrase “will not fail or be seriously distorted.” The changes proposed in this PRC do nothing to decrease the risk of fires caused by electric and communication lines. In fact this proposal does the exact opposite by lowering the safety requirements of line elements by removing the phrase “will not fail.” Furthermore, this PRC is nothing less than an attempt to lower the utilities’ obligations and civil liabilities. This is in part because the PRC changes Rule 48 from a performance standard into just a design standard. The PRC would allow a pole to fail when no wind was present, and a utility to not be in violation of any General Orders or Public Utilities Code because they can point to the fact that they designed it correctly in accordance with the rule. In addition, in order for CPSD to enforce this proposed revision to Rule 48, CPSD would need to obtain data that

CPSD is not currently getting from the utilities. CPSD would be unable to analyze whether utilities are in compliance with the proposed rule without the appropriate data.

This PRC constitutes the type of piecemeal approach to revising Section IV of GO 95 that is ill-advised from an engineering point of view. The various rules in this section, including safety factors, loading conditions, and classifications of lines, work together to provide appropriate strength requirements. Changes to just one rule in this section necessitates considering changes to other rules. This is why a comprehensive review of the section is necessary, rather than this piecemeal approach. CPSD staff has been meeting with engineers from PG&E and SDG&E, as well as staff from SCE, in an attempt to reach an agreement on the interpretation of, or possible revisions to, this rule. CPSD would like to continue meeting with electric utilities' staff outside this proceeding with the intent of looking at comprehensive rule changes to Section IV that will promote safety and reliability.

### LA County

The County of Los Angeles does not support this proposed rule change. Removing the “will not fail language” will allow utilities to design and construct their systems in accordance with “design standards” instead of the more rigorous “performance standards.” As a result, utilities would have less incentive to design for the worst-case scenario. If this proposed rule will allow utilities to design equipment at a lower standard, it is difficult to understand how this proposal will increase safety.

### IBEW 1245

IBEW 1245 opposes changes to the current “Ultimate Strength of Materials” rule. The current rule places an emphasis on how the structure responds to those stresses that are placed on it in the field in operation. Often field personnel demand that construction goes beyond the engineering design. It is our responsibility as experienced journeymen to build structures on poles to avoid failure, not merely comply with an engineering standard.

**5. Record of Voting**

<b>PARTIES</b>	<b>NOT PRESENT</b>	<b>YES</b>	<b>NEUTRAL</b>	<b>NO</b>
AT&T		X		
CAISO	X			
CALTEL		X		
CCTA		X		
CFBF	X			
CMUA		X		
COMCAST		X		
COX		X		
CPSD				X
CTIA		X		
DRA	X			
EXTENET	X			
FACILITIES MANAGEMENT	X			
FRONTIER		X		
IBEW 1245				X
LA COUNTY				X
LADWP		X		
MUSSEY GRADE	X			
OSMOSE UTILITIES SERVICES			X	
NCPA	X			
NEXTG		X		
PACIFICORP		X		
PG&E		X		
SCE		X		
SDG&E		X		
SIERRA PACIFIC		X		
SMALL LECS		X		
SMUD		X		
SPRINT NEXTEL		X		
SUNESYS		X		
SURE WEST		X		
TIMEWARNER CABLE		X		
T-MOBILE		X		
TURN	X			
TW TELECOM		X		
VERIZON		X		
DAVEY TREE	X			

**B. Ordering Paragraph Proposed by CPSD Regarding Revisions to GO 95, Section IV**

**1. Proposed Rule Change**

**a. Current Rule**

None

**b. Strikeout/Underline**

**Proposed Ordering Paragraph:**

The Consumer Protection and Safety Division shall establish a technical working group to address possible changes to Section IV of General Order 95. The technical working group shall consider appropriate revisions, if any, to Section IV of General Order 95 to update the section to incorporate modern materials and practices. CPSD shall report back to the Commission within 12 months.

**c. Proposed Final Rule**

**Proposed Ordering Paragraph:**

The Consumer Protection and Safety Division shall establish a technical working group to address possible changes to Section IV of General Order 95. The technical working group shall consider appropriate revisions, if any, to Section IV of General Order 95 to update the section to incorporate modern materials and practices. CPSD shall report back to the Commission within 12 months.

**2. Rationale**

The proposed ordering paragraph is an alternate to the revisions to Rule 48 proposed by the Joint Electric Utilities (see MAP No. 11(A) above). Section IV of General Order 95 is titled “Strength Requirements for All Classes of Lines” and it establishes the minimum Safety Factors of Lines and Equipment, Loading Conditions and Classifications of Lines. This section of General Order has in large part remained un-revised since being adopted in 1941. With changes in technology this section of the General Order should be thoroughly examined to ensure that the requirements are still appropriate and adequate to ensure the safety and reliability of the electrical and communications systems of California. The various rules in this section, including safety factors, loading conditions, and classifications of lines, work together to provide appropriate strength requirements. It is ill-advised from an engineering point of view to change just one rule in this section without considering changes to other rules. This is why a comprehensive review of the section is necessary, rather than a piecemeal approach.



### 3. Justification

- The specific electric utilities, CIPs, and others affected by the PRC.

The proposal would affect all electric supply utilities and communication companies that come within jurisdiction of this Commission.

- The current text of the affected General Order(s), if any.

None.

- 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.

This PRC is an ordering paragraph. See above.

- The specific fire hazard(s) addressed by the PRC and/or other objectives accomplished by the PRC.

This PRC would provide for a comprehensive examination of all of Section IV and may result in changes that would incorporate new technologies and practices, or remove antiquated requirements, in order to enhance safety.

- How the PRC reduces or otherwise addresses the fire hazard(s) and/or achieves other objectives.

This PRC would provide for a comprehensive examination of all of Section IV and may result in changes that would incorporate new technologies and practices, or remove antiquated requirements, in order to enhance safety.

- The anticipated costs of the PRC, including, if available, costs incurred by investor owned utilities, POUs, CIPs, and customers.

There should be no costs associated with establishing a technical working group in order to review Section IV. The review may result in proposed revisions to Section IV which may result in additional costs or cost savings to affected companies. However, the extent of these additional costs or cost savings is unknown at this time.

- The anticipated benefits of the PRC.

This PRC would provide for a comprehensive examination of all of Section IV and may result in changes that would incorporate new technologies and practices, or remove antiquated requirements, in order to enhance safety. The revisions may lead to cost savings for affected companies.

- Whether and how the costs will be recovered from customers.

Companies that are rate-of-return regulated are seeking an order in this proceeding regarding how the costs for complying with new rules adopted in this proceeding are to be recovered from customers. Companies that are not rate-of-return regulated may recover costs in any legally permissible manner, including through line-item charges or increased fees for services.

- Whether and how costs will be shared among electric utilities, CIPs, and others.

Not applicable. The PRC does not provide for cost sharing among or between entities.

- Why it is in the public interest to adopt the PRC.

See above.

- If the PRC applies to electric transmission, why the rule does not conflict with other federal or state regulations.

This PRC clarifies an existing rule in General Order 95, which already applies to electric transmission facilities and does not conflict with an other federal or state regulation.

- 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.

This proposal is exempt from environmental review under Section 15378 of the California Environmental Quality Act (CEQA) Guidelines because it is not a “project” under CEQA and will not have any potentially significant impact on the environment. NEPA does not apply because adoption of the proposed rule change does not constitute action by a federal agency within the meaning of 42 USC § 4332.

#### **4. Parties’ Comments**

##### **a. Parties in Support**

###### Cox and CCTA

CPSD’s alternate would establish a “technical working group” to address possible changes to Section IV of General Order 95 and to update the section to incorporate modern materials and practices. While Cox and CCTA prefer the Rule 48 revision proposed by the Joint Electric Utilities, we would, as an alternative, support the CPSD proposal because the approach at least provides a path forward to address a seriously deficient rule. Our qualified support is based on the understanding that any technical working group established under the proposed Ordering

Paragraph would specifically work to resolve the dilemma imposed by Rule 48's "will not fail" requirement. We also expect that CPSD would be an equal partner in any technical workshop, with no less, or greater, influence over workshop findings or recommendations.

### PG&E and SDG&E

PG&E and SDG&E support CPSD's recommendation that the Commission order the formation of a technical workgroup for the purpose of refreshing Section IV rules, as appropriate, in consideration of modern materials and practices. PG&E and SDG&E support this proposal in addition to the JEUs' proposed revision to GO 95, Rule 48 (MAP 11), and request that both proposals be adopted by the Commission. PG&E and SDG&E note that the Phase II workshop discussions revealed inconsistencies within Section IV as well as other GO 95 Rules and Appendices, which is the primary reason they support the creation of such a workgroup. PG&E and SDG&E also believe the Commission's adoption of the JEUs' proposed revision to Rule 48 is the correct first step to revising other Section IV rules, and would provide necessary, meaningful direction for the workgroup.

Should the Commission agree and order the formation of a special technical workgroup, PG&E and SDG&E would respectfully propose that the Ordering Paragraph include guidance as to the nature and content of CPSD's follow up report, including but not limited to, consensus recommendations and explanations of non-consensus matters.

### **b. Parties in Opposition**

*Note* even though no parties opposed this CPSD's proposed Ordering Paragraph, it is included with the MAPs in Appendix B (rather than with the consensus rules in Appendix A) because CPSD has offered its proposal as an alternative to the Joint Electric Utilities PRC regarding Rule 48.

### **c. Parties Voting Neutral**

#### DRA

DRA supports CPSD's proposed rule change for the reasons stated in the rationale and justification provided above.

#### SCE

SCE supports CPSD's proposed rule change for the reasons stated in PG&E and SDG&E's statement in support, above.

**d. Record of Voting**

<b>PARTIES</b>	<b>NOT PRESENT</b>	<b>YES</b>	<b>NEUTRAL</b>	<b>NO</b>
AT&T			X	
CAISO	X			
CALTEL	X			
CCTA		X		
CFBF			X	
CMUA			X	
COMCAST		X		
COX		X		
CPSD		X		
CTIA			X	
DRA			X	
EXTENET	X			
FACILITIES MANAGEMENT		X		
FRONTIER			X	
IBEW 1245		X		
LA COUNTY		X		
LADWP		X		
MUSSEY GRADE			X	
OSMOSE UTILITIES SERVICES	X			
NCPA	X			
NEXTG	X			
PACIFICORP			X	
PG&E		X		
SCE			X	
SDG&E		X		
SIERRA PACIFIC			X	
SMALL LECS			X	
SMUD			X	
SPRINT NEXTEL			X	
SUNESYS		X		
SURE WEST			X	
TIMEWARNER CABLE		X		
T-MOBILE			X	
TURN			Abstain	
TW TELECOM		X		
VERIZON			X	
DAVEY TREE			X	

**MAP NO. 12 - GENERAL ORDER 95, RULE 91.5**

**XIII. MAP NO. 12 - GENERAL ORDER 95, RULE 91.5**

**A. Rule 91.5 Proposal by San Diego Gas & Electric Company**

**1. Proposed Rule Change**

**a. Current Rule**

None.

**b. Strikeout/Underline**

**91.5 Marking**

Communication cables and conductors shall be marked as to ownership to facilitate identification.

**c. Proposed Final Rule**

**91.5 Marking**

Communication cables and conductors shall be marked as to ownership to facilitate identification.

**2. Rationale**

This proposed new GO 95 Rule would require that communication cables and conductors be marked as to ownership to facilitate identification. Identification of communication facilities will help facilitate the timely exchange of pole loading data, and the timely notification and correction of Safety Hazards and General Order 95 nonconformances, including those that create fire risks in Extreme and Very High Fire Threat Zones in Southern California.

SDG&E believes that this new rule is reasonable, and an important step towards greater worker and fire safety. Too often it is difficult to identify which particular communications company is responsible for Safety Hazards and General Order 95 nonconformances on our poles. We send out notices as required by Rule 18A, only to hear “not us.” As a result, correction is delayed and our workers and the general public put at risk. This identification problem is even greater in emergency situations, when field crews need to reach the owners of particular communications facilities immediately. Simple unobtrusive and inexpensive marking of the facilities will solve the problem. SDG&E believes that physical marking is particularly important now due to the tremendous growth of the telecommunications industry in recent years. It is our experience that often three or more communications providers are attached to a single joint use pole.

SDG&E has deliberately left this marking requirement non-specific, in order to allow communications companies to mark their facilities in a way that makes sense for them. The

method of marking does not matter, so long as the end result is achieved -- pole owners and other pole tenants being able to readily identify the owner of particular communications facilities. Requiring physical identification of communications facilities attached to joint use poles is consistent with marking requirements in both the Northern and Southern Joint Pole Agreements (see section 15 in both agreements), so this is not an unfamiliar concept to the CIPs. SDG&E's proposed marking requirement is also consistent with GO 95 Rule 94, which requires wireless communications providers to physically mark their facilities. See GO 95 Rule 94.5 and Exhibit A to Appendix H.

### 3. Justification

- The specific electric utilities, CIPs, and others affected by the PRC.

This proposal would affect communication entities subject to CPUC jurisdiction.

- The current text of the affected General Order(s), if any.

See above.

- 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.

See above.

- The specific fire hazard(s) addressed by the PRC and/or other objectives accomplished by the PRC.

Marking communication facilities attached to joint use poles will help facilitate the timely identification and correction of Safety Hazards or General Order 95 nonconformances, including those that affect fire safety.

- How the PRC reduces or otherwise addresses the fire hazard(s) and/or achieves other objectives.

See above.

- The anticipated costs of the PRC, including, if available, costs incurred by investor owned utilities, POU's, CIPs, and customers.

Adoption of this PRC could create additional costs related to marking facilities. These additional costs are likely to be minimal due to the ease of tagging poles and equipment during construction, inspections, and routine maintenance.

- The anticipated benefits of the PRC.

See above.

- Whether and how the costs will be recovered from customers.

Companies that are rate-of-return regulated are seeking an order in this proceeding regarding how the costs for complying with new rules adopted in this proceeding are to be recovered from customers. Companies that are not rate-of-return regulated may recover costs in any legally permissible manner, including through line-item charges or increased fees for services.

- Whether and how costs will be shared among electric utilities, CIPs, and others.

Not applicable. The PRC does not provide for cost sharing among or between entities.

- Why it is in the public interest to adopt the PRC.

See above.

- If the PRC applies to electric transmission, why the rule does not conflict with other federal or state regulations.

This PRC will create a new General Order 95 rule which will complement and pose no conflict with existing 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.

The Commission adopted similar revisions to Rule 35, Appendix E in D.09-08-029 and found that CEQA did not apply. This proposal is exempt from environmental review under Section 15378 of the California Environmental Quality Act (CEQA) Guidelines because it is not a “project” under CEQA and will not have any potentially significant impact on the environment. NEPA does not apply because adoption of the proposed rule change does not constitute action by a federal agency within the meaning of 42 USC § 4332.

#### **4. Parties’ Comments**

##### **a. Parties in Support**

##### LA County

Los Angeles County supports this proposed rule change. Throughout the rulemaking we have discussed the best ways to cooperate and inform each other when equipment violations are found or repairs are needed. Requiring that equipment be marked is one of the easiest things that can be done that will ensure that the responsible party is quickly informed about violations or hazards that need to be repaired on their lines and equipment.



## SDG&E

SDG&E supports this proposal for the reasons stated in the rationale.

### **b. Parties in Opposition**

#### CIP Coalition

There has been no evidence introduced in this proceeding (including at workshops) which would support the establishment of the requirement in the proposed rule. SDG&E's proposed addition to General Order 95 requiring communication cables and conductors to be marked as to ownership does not have the support of CPSD, the other major electric investor-owned utilities, the consumer groups or the CIPs. This lack of support is indicative of the lack of evidence of a legitimate problem arising from unmarked aerial communication facilities. At best the issue rises to the level of an administrative problem, better addressed through an internal record-keeping process or some tracking mechanism, rather than through a General Order 95 rule.

In this regard, as acknowledged by SDG&E, both the Northern California Joint Pole Association and the Southern California Joint Pole Committee ("SCJPC") have databases that track joint owners on a particular pole. While, SDG&E has chosen not to become a member of the SCJPC, the activities of these associations indicate that a system is already in place to address this issue for joint ownership facilities in a vast majority of the state while also highlighting the fact that the issue raised by SDG&E is limited to its own service territory. In addition the proposal ignores the written records already available to SDG&E to identify facility ownership

As was discussed at both the Phase 1 and Phase 2 workshops, SDG&E solely owns its poles and CIPs must lease space from them. As a result, SDG&E has contact information for all CIPs on their poles, and communicates with CIPs whenever there is a particular issue on a pole. SDG&E's pole attachment agreements also require that an attacher complete a pole attachment application each time that it wishes to attach and that the attachment cannot be effectuated unless and until the attacher receives a fully executed copy by SDG&E of the application. In turn, SDG&E keeps the original fully-executed application in its records so that SDG&E knows precisely when and which attachments have been made by each attacher. Finally, SDG&E also bills each of their lessees for pole attachments. Given all of these administrative trackers, SDG&E should be able to identify facilities on its poles. In short, SDG&E has in its possession all information necessary for it to identify the owners of all the facilities on its poles, rendering the proposed rule entirely unnecessary even for SDG&E's service territory.

#### CMUA

CMUA believes that this PRC would be costly without providing significant benefits. While CMUA agrees that there have been communication problems between electric utilities and communication companies, requiring marking is not the solution. This rule would be costly and difficult to implement in light of the complicated and widely varying ownership and lease structures of utility poles throughout the state. Even if such marking could be reasonably accomplished, communication companies change ownership often enough that a great number of marked facilities would be out of date, and therefore, of little use to electric utility employees. CMUA agrees with SDG&E that more needs to be done to improve communication between

communication companies and electric utilities, but CMUA believes that this PRC is not the solution

### PG&E

This rule proposes to mark all communication cables and conductors as to ownership. On the surface, this proposed rule appears reasonable and necessary. However, after much discussion in the workshops, PG&E was convinced that this rule is not workable as currently written and that the costs would exceed the potential benefits.

There are a variety of reasons why this proposed rule is not helpful:

- If this rule were adopted on a going forward basis, practically speaking, it would be many, many years before there were enough cables/conductors marked with ownership information to have any value.
- The ownership of (especially) communication lines changes often. This has two impacts: 1) keeping line ownership labels current would be a nightmare for the line owners; and 2) those working around the facilities or inspecting them would not be able to rely on the accuracy or currency of the labels.
- There would be a substantial cost to install the labels, and then to maintain them. It is unclear how the benefit of being able to instantly identify the owner of the communications line outweighs the costs associated with a marking installation and maintenance program.
- The rule lacks specificity. The proposed rule does not indicate specific requirements on how, where or when communication cables or conductors will be marked. As a barometer for marking, Rule 51.6 (Marking and Guarding) is very detailed and establishes the marking requirements for conductors over 750 volts. Rule 51.6 establishes the required minimum size of the sign(s) or marking, the color, the location on the pole, and requires that every pole with conductors over 750 volts be marked. While this level of specificity may not be desirable or necessary for marking communication conductors, this PRC lacks the information necessary for a company to know how to comply with the rule. As an example, it is unclear as to whether every conductor on every pole must be marked or if it would be acceptable to mark every other pole, every third pole etc.
- It is also unclear whether the marking must be legible from the ground or only legible to workers on the pole.

For the above reasons, PG&E recommends that this PRC be rejected.

### SCE

SCE opposes this proposed new marking rule for the reasons stated by PG&E in its comments in opposition, and SCE joins in those comments.

## 5. Record of Voting

PARTIES	NOT PRESENT	YES	NEUTRAL	NO
AT&T				X
CAISO	X			
CALTEL				X
CCTA				X
CFBF	X			
CMUA				X
COMCAST				X
COX				X
CPSD			X	
CTIA				X
DRA			X	
EXTENET				X
FACILITIES MANAGEMENT	X			
IBEW 1245	X			
LA COUNTY		X		
LADWP			X	
MUSSEY GRADE	X			
OSMOSE UTILITIES SERVICES	X			
NCPA	X			
NEXTG				X
PACIFICORP		X		
PG&E				X
SCE				X
SDG&E		X		
SIERRA PACIFIC			X	
SMALL LECS	X			
SMUD	X			
SPRINT NEXTEL				X
SUNESYS				X
SURE WEST	X			
TIMEWARNER CABLE				X
T-MOBILE				X
TURN	X			
TW TELECOM				X
VERIZON				X
DAVEY TREE	X			

**MAP NO. 13 - GENERAL ORDER 165, SECTION V**

**XIV. MAP NO. 13 - GENERAL ORDER 165, SECTION V**

**A. Ordering Paragraph Proposed by Mussey Grade and CPSD**

**1. Proposed Rule Change**

**a. Current Rule**

None.

**b. Strikeout/Underline**

**V. Fire Incident Reporting and Data Collection Requirements**

California investor-owned electric utilities shall collect information on all fire incidents which are attributable or allegedly attributable to their overhead electric distribution lines or transmission lines. Data to be collected per incident shall include date, time, general location, specific geographical coordinates, equipment, voltage, fire agencies involved, weather conditions, vegetation conditions, and apparent cause. Collected data shall be provided electronically under General Order 66-C and Section 583 of the Public Utilities Code annually to the Director of CPSD or its successor. Summaries of collected data shall be provided electronically annually to the Director of CPSD or its successor, which may be made available to the public and state or local fire agencies.

**c. Proposed Final Rule**

**V. Fire Incident Reporting and Data Collection Requirements**

California investor-owned electric utilities shall collect information on all fire incidents which are attributable or allegedly attributable to their overhead electric distribution lines or transmission lines. Data to be collected per incident shall include date, time, general location, specific geographical coordinates, equipment, voltage, fire agencies involved, weather conditions, vegetation conditions, and apparent cause. Collected data shall be provided electronically under General Order 66-C and Section 583 of the Public Utilities Code annually to the Director of CPSD or its successor. Summaries of collected data shall be provided electronically annually to the Director of CPSD or its successor, which may be made available to the public and state or local fire agencies.

**2. Rationale**

This PRC would require electric utilities to provide data to the CPSD annually that would allow specific characteristics of power line fires to be identified and that could be used to formulate

future fire prevention strategies. The reduction of severe fires depends on the reduction in the number of ignitions. Requiring electric utilities to collect data on fire incidents attributable or allegedly attributable to their power lines, whether minor or significant, could be used to develop strategies to avoid catastrophic fires. This data would provide a means to evaluate and understand the causal mechanisms leading to the large number of minor fires, which in turn will help to identify preventative measures that will reduce the chance of both major and minor fires. CPSD recently obtained funding to create and manage a database to help track safety audits and other safety-related incidents, and is now capable of developing the ability to receive, safely store, and analyze the data.

### 3. Justification

- The specific electric utilities, CIPs, and others affected by the PRC.

This data collection rule would affect investor owned electric utilities, which are owners of electric transmission facilities or distribution facilities.

- The current text of the affected General Order(s), if any.

See above.

- 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.

See above.

- The specific fire hazard(s) addressed by the PRC and/or other objectives accomplished by the PRC.

The proposed rule would obtain information about power line fires so that specific fire threats can be identified, means of preventing these fires can be devised, and effectiveness of countermeasures can be evaluated.

Large fires can occur when electrical equipment fails under hazardous weather conditions in areas rich in fuel. This rule aims to quantitatively identify causal mechanisms for ignition so that they can be addressed.

- How the PRC reduces or otherwise addresses the fire hazard(s) and/or achieves other objectives.

The reduction of severe fires depends on the reduction in the number of ignitions. The distinction between “minor” and “significant” incidents is artificial, since the severity of an incident usually does not depend upon details of how an ignition occurs, but rather on wind, humidity, and vegetation characteristics. Requiring electric utilities to collect data on fire incidents attributable or allegedly attributable to their power lines, whether minor or significant, could be used to develop strategies to avoid catastrophic fires. The proposed rule is designed to obtain information about power line fires so that specific fire threats can be

identified, and means of preventing these fires can be devised. Moreover, pooled data collected by the electric utilities should give a baseline by which the effectiveness of present and future corrective measures can be judged for cost-effectiveness.

- The anticipated costs of the PRC, including, if available, costs incurred by investor owned utilities, POUs, CIPs, and customers.

The proposed rule may entail some additional costs in collecting such data, however, many electric utilities already collect fire data in one form or another, so it should not be too burdensome for them to present such data in a report. Moreover, the rule is intended to collect data that is normally available during the course of regular inspection and maintenance obligations.

Additionally, funding for development of the database which will be used to store and analyze this data has already been provided to CPSD.

- The anticipated benefits of the PRC.

The beneficial knowledge that the Commission, fire agencies and the public could gain from learning the number of fire incidents and location of fire incidents on a year-to-year basis would be very useful in measuring current fire risks and identifying safety improvements that might be applied by the utilities. Benefits also include enhancement of public safety and minimizing occurrence of fire ignition from electric power lines. Any reduction in power line fires under extreme weather conditions would have a significant positive impact on public safety and avoided losses. In the long run, data collection on fire incidents should prove economically beneficial as it would allow for the identification of ineffective fire prevention measures, so that these can be eliminated.

By collecting and identifying the causes of minor fires, it is possible for electrical utilities and the Commission to take proactive steps to eliminate common failure mechanisms. This will reduce the probability of ignition of major fires.

- Whether and how the costs will be recovered from customers.

Costs will be recovered no differently than as they currently are in electric utilities' general rate cases.

- Whether and how costs will be shared among electric utilities, CIPs, and others.

Costs apply only to IOUs.

- Why it is in the public interest to adopt the PRC.

See "Anticipated Benefits", above. There is currently no other data set maintained by fire agencies, the CPUC or utilities that provides specific causal and location information regarding fires started by electrical distribution or transmission equipment (including the NFIRS – National Fire Incident Reporting System – which lumps electrical fires into one category and does not contain reliable and specific information). Likewise, data accumulated by CAL FIRE

is reliably obtained for fire sizes greater than 100 acres. Hence, adoption of this rule is the only measure that would allow utility fire causes to be rigorously identified and quantified. This will result in the development of more effective measures to reduce the ignition of major fires associated with electric supply facilities.

- If the PRC applies to electric transmission, why the rule does not conflict with other federal or state regulations.

This PRC will enhance safety and does not impact the operation or reliability of transmission lines that are owned by the IOUs. The Energy Policy Act of 2005 explicitly provides in its “Savings provision,” 16 U.S.C. § 824o(i)(3), that it does *not* preempt any authority of any State to take action to ensure the safety, adequacy and reliability of electric service within that State, as long as such action is not inconsistent with any reliability standard of a Federal Energy Regulatory Commission (FERC) certified Electric Reliability Organization. As the PRC does not concern reliability, it is not inconsistent with the reliability standards of the North American Electric Reliability Corporation (NERC). For those entities which have turned over their transmission facilities to the CAISO, their Transmission Control Agreements (TCAs) with the CAISO make clear that there would be no conflict between the CAISO and state safety requirements. Indeed, in the TCAs’ Appendix C, “ISO Transmission Maintenance Standards,” Section 10 explicitly provides:

#### **10. Compliance With Other Regulations/Laws**

Each PTO shall maintain and the ISO shall operate Transmission Facilities in accordance with Good Utility Practice, sound engineering judgment, the guidelines as outlined in the Transmission Control Agreement, *and all other applicable laws and regulations.* (Emphasis added).

More to the point, in the TCAs’ Appendix C, “ISO Transmission Maintenance Standards,” Section 10.1 explicitly provides:

#### **10.1 Safety**

Each PTO shall take proper care to ensure the safety of personnel and the public in performing Maintenance duties. The ISO shall operate Transmission Facilities in a manner compatible with the priority of safety. *In the event there is a conflict between safety and reliability, the jurisdictional agency regulations for safety shall take precedence.* (Emphasis added).

Consequently, it is clear that the FERC, CAISO and the TCAs are all consistent with the Energy Policy Act of 2005, 16 U.S.C. § 824o(i)(3), in avoiding preemption of States’ safety requirements. Thus, this PRC does not conflict with any other state or federal 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 statues 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.

This proposal is exempt from environmental review under Section 15378 of the California Environmental Quality Act (CEQA) Guidelines because it is not a “project” under CEQA and will not have any potentially significant impact on the environment. NEPA does not apply because adoption of the proposed rule change does not constitute action by a federal agency within the meaning of 42 USC § 4332.

#### **4. Parties’ Comments**

##### **a. Parties in Support**

###### DRA

DRA supports Mussey Grade’s and CPSD’s proposed rule change for the reasons stated in the rationale and justification provided above.

###### LA County

Analysis of data collected on fire related incidents attributable to overhead electrical or transmission lines could enhance future fire prevention efforts. Current fire data collection systems (NFIRS) do not capture data related to power line fires effectively. Fires have to grow to a certain size before they are captured by the system. A database dedicated to fires caused by power lines would illuminate new safety concerns or trends that may have otherwise gone undetected. Investor-owned electrical utilities already record this type of information, so it should not be too much of a hardship for them to share it with CPSD.

##### **b. Parties in Opposition**

###### CIP Coalition

This PRC was opposed by every electric utility and CIP, and for good reason. It would require electric utilities to compile and report additional detailed information on every single fire incident involving their facilities, no matter how minor or where they occur, including incidents that involve no property damage or personal injury and have nothing to do with the risk of wildland fires. The PRC also fails to adequately explain what fire data CPSD requires that it is not already receiving or able to obtain or how the data it already receives is otherwise utilized by CPSD today. It also fails to explain why the new data would be collected or to what use, if any, it may be put. This is a critical oversight.

The PRC also fails to include any means, funding or staffing for independent review or verification of the data. Without such independent verification, there will be no assurance that the data reported by electric utilities is accurate, complete or free of bias. For any significant fire incidents, electric utility personnel will have a natural inclination to report the facts and data in a manner most favorable to their employer, particularly any information pertaining to the cause of the incidents. Electric utility attorneys will ensure that they do and any third parties involved in

such incidents will have no means of correcting the electric utility reports since under the PRC the data will be reported by the electric utilities directly to the CPUC on a confidential basis.

The data reported by electric utilities may also be an attractive and inappropriate source of information for plaintiff's attorneys trolling for clients and new potential causes of action. This risk cannot be eliminated by filing the information on a confidential basis under Public Utilities Code section 583 and General Order 66-C because courts have held that neither section 583 nor the General Order protect information provided to the Commission from discovery by third parties in civil litigation.

Any data that may be reported under this PRC would thus be highly suspect, extremely burdensome, of little probative value or benefit and may tend to promote further costly litigation.

### CMUA

CMUA objects to this PRC as unnecessary, costly, and fraught with potential unintended consequences. While CMUA recognizes that this PRC explicitly only applies to the IOUs, CMUA believes that all the requirements found in GO 95 and GO 165 should be necessary, well reasoned, and not cost prohibitive.

### PG&E

Mussey Grade and CPSD propose to have the electric utilities collect detailed and prescriptive information on fire incidents which are "attributable or allegedly attributable" to overhead distribution and transmission lines, and to submit that data annually to the CPSD. They propose that summaries of that data also be provided to CPSD, who may make the summaries available to the public.

PG&E appreciates the need to review incident data in order to improve processes to avoid future incidents from occurring. However, this proposed rule will not achieve the desired result. This proposed rule should be rejected because (1) CPSD has failed to demonstrate a need for this information; (2) it would be burdensome and costly to comply with as some of the data to be collected is not currently collected by utilities; (3) it fails to require the same data from communication companies that own facilities that can be the cause of fire ignition; and (4) while it requires the data to be submitted under GO 66-C and Public utilities Code section 583, the data will not be protected from discovery in litigation, and could increase liability risks to the electric utilities, which ultimately harms the utilities' customers.

(1) It is not clear that the collection of this data is even needed. As reflected in the Anderson study<sup>38</sup> and even in the Mussey Grade Phase 1 Comments, there are already several collections of fire data that can be "mined" by an interested party. Cal Fire maintains wild land fire information in its FRAP database as well as information about all ignitions in California in an ignition database (CARS). The Anderson study referenced data and information from a variety of sources, including the National Fire Protection Association as well as FEMA's National Fire

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<sup>38</sup> [Phase 1] *Opening Comments of AT&T...*, March 27, 2009 with Attachment A: Larry W. Anderson, *Study to Assess Fire Risk Associated with Collocated Communications Equipment (Wired Telephone Lines and Wireless Equipment) With Utility Power Lines on Poles*, March 27, 2009.

Incident Reporting System (NFIRS) (which is used by a wide variety of agencies that study fire issues).

Before embarking on a new additional layer of fire incident reporting, the Commission should require CPSD to articulate what it plans to do with the data. It could very well be that what they are asking for is not what they want or need or will ever use.

For example, the electric utilities were required for a number of years to report all vegetation-related fires to the Commission through the Electric Incident Reporting process. After a substantial period of time collecting this information, PG&E suggested to the Commission that the burden of collecting and maintaining that information far outweighed whatever value and use was made of it. The Commission in its wisdom agreed with PG&E and discontinued this burdensome requirement. CPSD has not explained what has changed from that earlier decision.

As another example, the Commission adopted GO 165 in 1997, which included very prescriptive reporting requirements. Over the years, the utilities spent a lot of time and effort providing exactly what was required in the GO, and CPSD spent a lot of time and effort trying to understand the relevance of the data. Recognizing that the reporting requirements in GO 165 were seeking too much information in an unhelpful format, the utilities and CPSD staff have worked together to modify the reporting requirements to make them more useful and efficient. Those changes to GO 165 are reflected in the Consensus Rule Changes in Appendix A to this Workshop Report.

While PG&E understands that it is required to provide whatever information CPSD requests, as long as it is not privileged or otherwise protected, PG&E has provided information to CPSD and other Commission staff in the past which has been ignored or misunderstood. The utilities' resources to gather and provide the data are then wasted, as are the Commission's resources to review the data and ask clarifying questions. CPSD has not explained how it will use the voluminous data required to be produced under this proposed rule. Rather than adopt a rule directing the utilities to provide data for an unspecified purpose, PG&E's Proposed Ordering Paragraph suggests that parties should collaborate with each other to determine whether the data is really needed, the purpose of the data and how best to address that purpose.

(2) PG&E does not currently collect all of the data as specified in the proposed rule. PG&E previously estimated that the costs associated with implementing the original Mussey Grade/CPSD proposed rule was up to \$2 million, which covers database programming, development of standards and procedures, and training.<sup>39</sup> Before incurring this increase in costs and using the precious time and resources of both its staff and utility staff, the Commission should be confident that the information requested is necessary for CPSD to accomplish its intended task. That task has yet to be defined.

(3) This proposed rule excludes communication infrastructure providers from having to collect and provide the fire incident data. Given that this proceeding is intended to address fire risk associated with both electric and communication facilities, it is puzzling that the proposal would exclude CIPs from having to collect and report fire incident data.

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<sup>39</sup> Verified *Opening Comments of Pacific Gas and Electric Company (U39E) on CPSD's Proposed Rules in Phase 1 of R.08-11-005* at p.11 (March 27, 2009).

(4) There are due process and privilege issues at play. Utilities and their personnel can be subject to regulatory, civil and criminal prosecution related to a serious fire. Fire incident investigations performed by a utility are usually performed in anticipation of litigation and are protected by the attorney work product privilege. The Commission has recognized that it cannot require a utility to disclose the fruits of its privileged investigations.<sup>40</sup>

However, this proposed rule would inevitably run afoul of that privilege as it seeks information (especially “apparent cause”) that is developed as part of any protected privileged incident investigation done by a utility and is fundamental to the defense of potential civil, criminal or regulatory litigation associated with a fire. Providing privileged fire incident data under GO 66-C and Public Utilities Code section 583 is no protection. The Commission has stated many times as a matter of public policy that it considers its investigations to be part of the public record once they are concluded, and routinely hands over information provided in the course of those investigations to any member of the public who requests it.

Mussey Grade, and particularly Dr. Mitchell, would like to have the electric utilities collect fire incident data on the theory that it *might* be helpful for study in the future or on the off chance that some member of the public might find the information interesting. In addition, CPSD has not been specific about what it would use the information for. Given the substantial experience utilities have had with being required to collect information that ends up not particularly useful or being used by CPSD and the fact that there are other existing credible and independent fire incident data resources housed with the fire agencies (which have the benefit of the most complete information available), PG&E would expect the Commission to require that Mussey Grade and CPSD establish that it is absolutely necessary to impose yet another duplicative, burdensome and expensive data and documentation duty on electric utilities and their customers before adopting this proposed rule.

See also, PG&E’s comments in support of its alternative suggestion of an Ordering Paragraph at MAP 13, Section B that would require the utilities to work with CPSD to determine whether it makes sense to collect such data, and what data might be effectively and efficiently collected.

#### SCE

SCE opposes this PRC from Mussey Grade and CPSD for the reasons stated in PG&E’s opposition. SCE joins in PG&E’s comments.

#### SDG&E

SDG&E opposes this PRC from Mussey Grade and CPSD for the reasons stated in PG&E’s opposition.

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<sup>40</sup> General Order 95, Rule 17 (A) (“Nothing in this rule is intended to extend, waive, or limit any claim of attorney client privileged and/or attorney work product privilege”); General Order 95, Rule 19 (“Any and all documents...not subject to the attorney-client privilege or attorney work product doctrine.”).

## Sierra Pacific

Sierra Pacific opposes Mussey Grade and CPSD's Section V proposal for a number of reasons. The proposal is not reasonably tailored to reduce fire risks, is likely to impose unnecessary costs on ratepayers, and is likely to expose utilities to increased liability from potential litigation. It is unclear whether the information sought under the proposal would be used, and, if so, how it would be used. However, the costs of collecting such information will be significant and will come at the expense of utility ratepayers. Ratepayers should not be forced to pay for the collection of such information when it is unclear that such information will even help to reduce fire risks. Furthermore, the task of investigating and collecting information on fire incidents should be handled by fire experts and would be more appropriately conducted by state and local fire agencies. Sierra additionally opposes the proposal because the public could misconstrue any information provided, particularly information collected and compiled by utilities rather than fire agencies, which could lead to misallocations of blame as to the actual cause of a fire. This, in turn, could lead to frivolous litigation against utilities, subjecting utilities and their ratepayers to higher costs. For these reasons, the CPUC should not adopt this proposal.

**5. Record of Voting**

<b>PARTIES</b>	<b>NOT PRESENT</b>	<b>YES</b>	<b>NEUTRAL</b>	<b>NO</b>
AT&T				X
CAISO	X			
CALTEL	X			
CCTA				X
CFBF			X	
CMUA				X
COMCAST				X
COX				X
CPSD		X		
CTIA				X
DRA		X		
EXTENET	X			
FACILITIES MANAGEMENT		X		
FRONTIER				X
IBEW 1245				X
LA COUNTY		X		
LADWP				X
MUSSEY GRADE		X		
OSMOSE UTILITIES SERVICES	X			
NCPA	X			
NEXTG				X
PACIFICORP				X
PG&E				X
SCE				X
SDG&E				X
SIERRA PACIFIC				X
SMALL LECS				X
SMUD				X
SPRINT NEXTEL				X
SUNESYS				X
SURE WEST				X
TIMEWARNER CABLE				X
T-MOBILE				X
TURN			X	
TW TELECOM				X
VERIZON				X
DAVEY TREE	X			

**B. Ordering Paragraph Proposed Ordering Paragraph Proposed by Pacific Gas and Electric Company**

**1. Proposed Rule Change**

**a. Current Rule**

None.

**b. Strikeout/Underline**

**Proposed Ordering Paragraph:**

Within 6 months of the effective date of this decision, the electric utilities and CPSD shall meet and confer regarding electric utility collection and utilization of fire-related data. Such discussions shall consider whether CPSD is receiving the fire-related data it needs from the electric utilities, and whether it would be useful for the electric utilities to collect different and/or additional data that would be provided to CPSD and/or fire agencies such as Cal Fire. Within 9 months of the effective date of this decision, the electric utilities and CPSD shall submit a report to the Executive Director of the Commission regarding the results of such discussions. State fire agencies shall be invited to participate in the discussions and report. These discussions shall be conducted in such a manner as to protect the confidentiality of the utilities' data.

**c. Proposed Final Rule**

**Proposed Ordering Paragraph:**

Within 6 months of the effective date of this decision, the electric utilities and CPSD shall meet and confer regarding electric utility collection and utilization of fire-related data. Such discussions shall consider whether CPSD is receiving the fire-related data it needs from the electric utilities, and whether it would be useful for the electric utilities to collect different and/or additional data that would be provided to CPSD and/or fire agencies such as Cal Fire. Within 9 months of the effective date of this decision, the electric utilities and CPSD shall submit a report to the Executive Director of the Commission regarding the results of such discussions. State fire agencies shall be invited to participate in the discussions and report. These discussions shall be conducted in such a manner as to protect the confidentiality of the utilities' data.

**2. Rationale**

As an alternative to the Mussey Grade and CPSD Proposed Rule (which they would inappropriately locate at GO 165, Paragraph V), PG&E proposes an Ordering Paragraph that would require the electric utilities and CPSD to meet and confer to discuss what data is currently available, what is currently being reported and whether it would be useful for the electric utilities

to collect different and/or additional data (which would be provided to CPSD and CalFire for their respective uses).

PG&E notes that it used to provide fire incident reports as part of the Electric Incident Reporting process. After a number of years of reporting fires, the CPSD agreed that such reporting should be discontinued as unnecessary and overly burdensome for both PG&E and the Commission staff.

CPSD and most other parties do not oppose this Proposed Ordering Paragraph. Given that CPSD will be the entity that makes use of the data, it is important that CPSD understands what data is available, and how it can best be used. This approach is likely to result in a much more useful exchange of information. The utilities will have the opportunity to learn what CPSD intends to do with the fire incident data, and with that knowledge, the utilities will be better able to determine how best to meet the CPSD's needs.

There also needs to be a discussion about how to protect any proprietary or privileged data.

The discussions among the electric utilities and CPSD that are proposed in the Proposed Ordering Paragraph are the most efficient and effective way of resolving what data should be shared with CPSD.

NOTE: The proposed Ordering Paragraph does not include CIPs in the initial discussions. If it is determined that the collection of fire incident data is helpful or necessary, the CIPs should probably be brought into the discussion at that point.

### **3. Justification**

- The specific electric utilities, CIPs, and others affected by the PRC.

This Proposed Ordering Paragraph affects the electric utilities under the CPUC's jurisdiction.

- The current text of the affected General Order(s), if any.

None.

- 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.

See above.

- The specific fire hazard(s) addressed by the PRC and/or other objectives accomplished by the PRC.

The PRC is proposed as an alternative to the Mussey Grade/CPSD Data Collection proposal. It will result in a more efficient and effective process for providing data, if any, to CPSD.



- How the PRC reduces or otherwise addresses the fire hazard(s) and/or achieves other objectives.

This PRC is intended to provide a more effective process for determining what, if any, data CPSD requires for performing its analysis.

- The anticipated costs of the PRC, including, if available, costs incurred by investor owned utilities, POU's, CIPs, and customers.

The costs to comply with the PRC would be negligible, unlike the costs to comply with the Mussey Grade/CPSD proposal.

- The anticipated benefits of the PRC.

The proposal would result in more efficient use of utility and CPSD staff resources than the Mussey Grade/CPSD proposal.

- Whether and how the costs will be recovered from customers.

Not applicable.

- Whether and how costs will be shared among electric utilities, CIPs, and others.

Not applicable.

- Why it is in the public interest to adopt the PRC.

Regulatory efficiency will save money and time for utility customers and taxpayers.

- If the PRC applies to electric transmission, why the rule does not conflict with other federal or state regulations.

Discussing data collection of transmission fire incidents 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.

This proposal is exempt from environmental review under Section 15378 of the California Environmental Quality Act (CEQA) Guidelines because it is not a "project" under CEQA and will not have any potentially significant impact on the environment. NEPA does not apply

because adoption of the proposed rule change does not constitute action by a federal agency within the meaning of 42 USC § 4332.

#### **4. Parties' Comments**

##### **a. Parties in Support**

###### PG&E

PG&E supports this proposal for the reasons stated in the rationale.

###### SDG&E

SDG&E supports this proposal for the reasons stated in PG&E's rationale.

###### SCE

SCE supports PG&E's proposed ordering paragraph, which would require that CPSD and the electric utilities meet and confer regarding the collection of fire incident data. PG&E's proposal is a sound alternative to the costly, duplicative data collection rule proposed by CPSD and Mussey Grade.

##### **b. Parties in Opposition**

###### LA County

Los Angeles County does not support the proposed ordering paragraph. Throughout the workshops, the utilities have been less than enthusiastic about sharing data related to fires caused by power lines and equipment. Postponing the establishment of a data collection rule until after the rulemaking has ended will offer little recourse to CPSD and other public safety agencies if data offered or collected is insufficient. In addition, the proposed ordering paragraph provides no goals or objectives, just plans for future discussions. Finally, if this ordering paragraph was adopted, local fire agencies (cities and counties), who are the first responders to many power line caused fires, would be excluded from receiving the report as the proposed rule change only requires that the report be shared with state fire agencies.

###### Mussey Grade

Mussey Grade opposes this proposed ordering paragraph. We believe that the data requirements for collection of fire data are clear, and were laid out ten years ago in the Power Line Fire Field Prevention Guide<sup>41</sup>. The purpose of data collection is also clear: to collect information on minor incidents in order to obtain information necessary to prevent major incidents. None of the necessary data regarding such incidents is currently reported by the electric utilities. For this reason, the Alliance and CPSD have cooperated on the sponsorship of a data collection rule that would initiate data collection and processing under the supervision of CPSD. We believe that

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<sup>41</sup> OSFM, CDF, USFS, PG&E, SC Edison, SDG&E; Power Line Fire Prevention Field Guide; Mar 27, 2001.

this ordering paragraph would simply delay the collection of this important data. Furthermore, the proposed ordering paragraph contains no goals, objectives or solid deliverables aside from a report that CPSD and the utilities would co-author as a result of their discussions. The Alliance has been discussing data collection with other parties since Phase 1, when we first offered a data collection rule, and have not seen any indication that electric utilities are eager to conduct data collection on fire incidents or to provide such data to CPSD if they already collect it. We see no reason to believe that they will have any reason to change their minds after discussions with CPSD. We therefore oppose the adoption of this ordering paragraph and support the adoption of the data collection rule co-sponsored by CPSD and Mussey Grade.

**c. Parties Voting Neutral**

CPSD

Although CPSD voted neutral on this PRC, CPSD strongly believes that the data collection requirement belongs in a General Order, and that there is no need for further discussions pursuant to an ordering paragraph. CPSD sees a need to collect fire-related data in order to better track the effectiveness of its safety audits and to identify possible trends in minor fire-related incidents in order to prevent major incidents. CPSD is not currently getting this data from the electric utilities, therefore there is no need to discuss “whether CPSD is receiving the fire-related data it needs” as this ordering paragraph proposes. CPSD and MGRA have clearly identified the type of data that should be collected, as well as identified the purpose for which this data will be collected and how it will be used. Accordingly, there is also no need to further discuss whether different or additional data should be provided to CPSD, as this PRC states.

**d. Record of Voting**

<b>PARTIES</b>	<b>NOT PRESENT</b>	<b>YES</b>	<b>NEUTRAL</b>	<b>NO</b>
AT&T			X	
CAISO	X			
CALTEL	X			
CCTA			X	
CFBF	X			
CMUA			Abstain	
COMCAST			X	
COX			X	
CPSD			X	
CTIA	X			
DRA			X	
EXTENET	X			
FACILITIES MANAGEMENT				X
FRONTIER	X			
IBEW 1245		X		
LA COUNTY				X
LADWP			Abstain	
MUSSEY GRADE				X
OSMOSE UTILITIES SERVICES	X			
NCPA	X			
NEXTG	X			
PACIFICORP		X		
PG&E		X		
SCE		X		
SDG&E		X		
SIERRA PACIFIC			X	
SMALL LECS			X	
SMUD	X			
SPRINT NEXTEL			X	
SUNESYS			X	
SURE WEST			X	
TIMEWARNER CABLE			X	
T-MOBILE			X	
TURN	X			
TW TELECOM			X	
VERIZON			X	
DAVEY TREE	X			

**MAP NO. 14 – FIRE MAPS**

**XV. MAP NO. 14 – FIRE MAPS**

**A. Ordering Paragraph Proposed by CPSD and Mussey Grade re Fire Maps**

**1. Proposed Rule Change**

**a. Current Rule**

None.

**b. Strikeout/Underline**

**Proposed Ordering Paragraph**

Investor-owned electric utilities (IOUs) and communication infrastructure providers (CIPs) shall provide funding to support the development of a working plan to determine how to create utility-specific high-resolution maps combining wind and vegetation data that identify areas at the greatest risk of catastrophic power line wildland fire ignitions. Within 60 days of the issuance of this decision, or at a time mutually agreed to by the participating parties, investor-owned electric utilities (IOUs) and communication infrastructure providers (CIPs) shall meet and confer with CAL FIRE and CPSD staff in order to discuss how to create utility-specific high-resolution maps combining wind and vegetation data that identify areas at the greatest risk of catastrophic power line wildland fire ignitions. The purpose of the maps will be for determining inspection and maintenance cycles in all cases where geographic locations and maps are referred to in General Orders 95 and 165, and the maps may be used in the future to determine geography-specific construction, maintenance, and operational standards. The IOUs and CIPs shall cooperate with CAL FIRE and CPSD staff to develop a working plan to determine the process by which the maps would be produced, estimate the time and costs required to produce and maintain maps, devise a proposed revision cycle under which subsequent updates to the maps would be undertaken to incorporate changes to the underlying data or improvements or changes to analysis techniques, and any other actions that the Commission would need to take to enable the creation of utility-specific maps, including the use of funding provided by IOUs and CIPs. IOUs and CIPs shall further meet and confer with CAL FIRE to determine what funding may be required to produce such a working plan. Within six months after the issuance of this decision, IOUs and CIPs shall report back to the Commission and CPSD staff on the status of the working plan. Upon completion of the working plan, the Commission will decide whether to order the investor-owned electric utilities and communication infrastructure providers to fund the creation and maintenance of utility-specific high-resolution maps. Maps adopted in Phase 1 or Phase 2 of this OIR shall remain applicable until further order by the Commission.

**c. Proposed Final Rule**

**Proposed Ordering Paragraph**

Investor-owned electric utilities (IOUs) and communication infrastructure providers (CIPs) shall provide funding to support the development of a working plan to determine how to create utility-specific high-resolution maps combining wind and vegetation data that identify areas at the greatest risk of catastrophic power line wildland fire ignitions. Within 60 days of the issuance of this decision, or at a time mutually agreed to by the participating parties, investor-owned electric utilities (IOUs) and communication infrastructure providers (CIPs) shall meet and confer with CAL FIRE and CPSD staff in order to discuss how to create utility-specific high-resolution maps combining wind and vegetation data that identify areas at the greatest risk of catastrophic power line wildland fire ignitions. The purpose of the maps will be for determining inspection and maintenance cycles in all cases where geographic locations and maps are referred to in General Orders 95 and 165, and the maps may be used in the future to determine geography-specific construction, maintenance, and operational standards. The IOUs and CIPs shall cooperate with CAL FIRE and CPSD staff to develop a working plan to determine the process by which the maps would be produced, estimate the time and costs required to produce and maintain maps, devise a proposed revision cycle under which subsequent updates to the maps would be undertaken to incorporate changes to the underlying data or improvements or changes to analysis techniques, and any other actions that the Commission would need to take to enable the creation of utility-specific maps, including the use of funding provided by IOUs and CIPs. IOUs and CIPs shall further meet and confer with CAL FIRE to determine what funding may be required to produce such a working plan. Within six months after the issuance of this decision, IOUs and CIPs shall report back to the Commission and CPSD staff on the status of the working plan. Upon completion of the working plan, the Commission will decide whether to order the investor-owned electric utilities and communication infrastructure providers to fund the creation and maintenance of utility-specific high-resolution maps. Maps adopted in Phase 1 or Phase 2 of this OIR shall remain applicable until further order by the Commission.

**2. Rationale**

The intent of this proposed ordering paragraph is to develop a statewide, utility-specific high resolution wind and fuel map to be used in conjunction with certain inspection, maintenance, and vegetation management requirements in GO 95. Identifying the specific areas where power line fires are likely to occur would allow stronger countermeasures to be brought to bear in a more cost-efficient manner. Historically, dangerous power line fires have occurred during specific weather patterns, such as the Santa Ana winds of Southern California. These winds tend to come from specific directions, which makes estimation of wind strengths based on landscape and geography possible. The value of high resolution wind and fuel maps could also, in the long term, extend beyond the current function of specifying high fire threat areas for additional inspection, maintenance, and vegetation management activities, and could be used to identify extreme risk areas where countermeasures such as undergrounding or system hardening could be applied in a targeted and cost-effective way.

The value of focusing countermeasures to specific areas was recognized during Phase 1 of these proceedings, when the Commission decided that the CAL FIRE Resource Adequacy Program (FRAP) fire threat maps were to be used as the basis for the application of certain rule changes in Southern California. It must be remembered, however, that CAL FIRE cautioned against the use of these maps, arguing that both the data quality and methodology were not appropriate for this purpose. However, many parties (including Mussey Grade and CPSD) favored adoption of the maps on an interim basis, because although imperfect, the maps were the best available tool for identifying high fire threat areas in Southern California. Due to various problems associated with implementing the FRAP maps in Northern California, the Commission did not adopt the map for use outside Southern California. The Commission decided in Phase 2 to consider whether different maps should be used for Central and Northern California, and whether a better, utility-specific map could be developed.

The Alliance and CPSD worked with communication providers and electric utilities during the mapping subcommittee meetings early in Phase 2, during which we put forward the assertion that the wind effects that lead to ignition need to be closely modeled in a utility-specific wind map. We solicited the participation in these workshops of Professor Max Moritz of the University of California at Berkeley and Professor David Saah of the University of San Francisco, both of whom have deep expertise in landscape modeling and wildland fire. While this subcommittee was unable to agree to a unified approach, the CIP Coalition has produced wind and fuel maps for Northern California that address many of the issues raised during the subcommittee meetings, while SDG&E has produced maps for its own service area which are modified versions of the CAL FIRE FRAP maps.

There are two main problems with the approach taken by the CIPs and utilities during the workshops. First, entirely missing in the final product of Phase 2 are high-resolution wind maps for Southern California, which historically has proven to be subject to the highest risk of catastrophic power line fires. Second, while the maps produced by the CIP Coalition seem to address the correct problems using plausible methods and approaches, these methods are novel and have not yet been subject to professional review. Ideally, technical fire problems should be addressed by CAL FIRE in its role as our state fire agency. CPSD does not have the in-house expertise in this area, and neither do the utilities. Essentially, some scientific research and development needs to be done to validate fire mapping. Based on conversations with CAL FIRE staff, it is CPSD's understanding that CAL FIRE does not adopt maps until they have been thoroughly vetted and reviewed. While CAL FIRE certainly has expertise in this area, it is not clear that it is within the mandate of CAL FIRE to create maps for a specific industry sector at the cost of California taxpayers. Conversations between CAL FIRE representatives, CPSD and Mussey Grade have revealed, however, that there is interest from CAL FIRE in pursuing review and guidance roles for the creation of detailed wind and fuel maps that would be relevant to identifying problem areas for power line ignitions. Because this is an industry-specific problem, the industry should be responsible for funding the creation and maintenance of the maps.

The scope of this effort and devising a review process (for whatever map is ultimately adopted by the Commission) will take cooperation between participating electric utilities, CPSD, CAL FIRE, and any other participating stakeholders. For this reason, CPSD and Mussey Grade have crafted an ordering paragraph with the intent of gathering all the stakeholders to discuss the development and technical review of a statewide utility specific map. The ordering paragraph



comes in two parts – one which lays out the overall goal of creating high resolution wind maps, and the other lays out a short-term process to come up with the mechanisms for review and funding through cooperation of CAL FIRE, the CPUC, and the electric utilities. The first phase, to be completed within six months of the Commission’s Decision, would allow the participating agencies and utilities to work out a viable mechanism for the creation and maintenance of wind and fuel maps. At this point the Commission would decide whether to order the utilities to fund the map creation program.

The intent of this proposed Ordering Paragraph is to create an open process for the creation and review of the technical analysis required for the creation of utility-specific hazard maps. It was not our intent that any group be either included or excluded from those who would create the map. The Reax consulting firm hired by the CIP Coalition, for instance, purportedly has the capability of extending the analysis they did for Northern California to the Southern California counties as well. In fact, the Reax representatives stated at the workshops that it was actually more difficult to create a map that excluded Southern California. This analysis might well form the foundation of the final statewide maps – provided that the analysis is found to be adequate by a review involving CAL FIRE. The decision is a technical decision, and will require competent technical review. The purpose of this ordering paragraph is to lay out the processes by which such a review mechanism can be put into place so that all of California can benefit from the knowledge of where high-risk areas for power line ignitions are to be found.

### **3. Justification**

- The specific electric utilities, CIPs, and others affected by the PRC.

This Ordering Paragraph would affect investor owned electric utilities and CIPs.

- The current text of the affected General Order(s), if any.

None.

- 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.

See above.

- The specific fire hazard(s) addressed by the PRC and/or other objectives accomplished by the PRC.

Electric utilities and CIPs are currently using CAL FIRE’s FRAP Fire Threat Map in Southern California for the purpose of certain inspection, maintenance and vegetation management activities, despite CAL FIRE’s admonition that its maps were inappropriate for this purpose. While there was a good argument for using this map on an interim basis in Phase 1, a mechanism for developing, reviewing, and maintaining a statewide, utility specific map should be put in place as a result of this Rulemaking.

Additionally, utilities are required to take “known local conditions” into account when designing, constructing, and maintaining their infrastructure. If utilities cannot differentiate between areas that are high risk and lower risk because adequate maps are not available, they may under-spend on maintenance and prevention in high risk areas and over-spend on maintenance and prevention in lower risk areas, thus increasing overall risk and costs to the public.

- How the PRC reduces or otherwise addresses the fire hazard(s) and/or achieves other objectives.

If a given amount of resources are to be committed to power line safety and wildland fire prevention, it is clear that the greatest reduction of wildland fire risk will be achieved by applying these resources in the areas where catastrophic power line fires are most likely to start. Adding a wind component to existing fire hazard maps will allow a clearer specification of local conditions, and should increase the effectiveness and reduce the cost of measures to protect against wildland fire ignitions by power lines. In addition to identifying certain areas in the state where increased inspection, maintenance, and vegetation management activities may be warranted, such maps would enable the use of highly effective countermeasures (such as hardening and undergrounding) in specifically targeted areas.

The proposed Ordering Paragraph is intended to establish the process that would allow the creation, review and approval of utility-specific hazard maps in conjunction with the state agency having expertise in this area, CAL FIRE.

- The anticipated costs of the PRC, including, if available, costs incurred by investor owned utilities, POUs, CIPs, and customers.

Initial costs for the start-up phase of the process specified in the Ordering Paragraph would be small, as it consists of meetings between CPUC staff, utility staff, and CAL FIRE staff to determine how to fund and implement the process. An output of these meetings would be cost estimates for the creation, review, and maintenance of utility-specific maps.

It should be pointed out that the maps created by the Reax consultants for the CIP Coalition are purportedly also available for Southern California if there is demand for them. Should these maps be vetted and approved, it is possible that maps in a ready or near-ready state already exist and would require no further production cost.

- The anticipated benefits of the PRC.

The Ordering Paragraph would put forward a process that would:

- Replace maps that CAL FIRE does not recommend for utility usage with those specifically designated for such usage
- Create a process and mechanism for expert review of fire maps used by the utilities; and
- Allow the identification of specific hazard areas that could be specifically targeted with preventative measures such as hardening or undergrounding in a cost-effective manner.

- Whether and how the costs will be recovered from customers.

The production of these maps and their use to reduce fire hazards are in the interest of the public, and it is reasonable that such costs be recovered from ratepayers. While CAL FIRE is a state agency and is funded by taxpayers, it has no mandate to make special efforts for a specific industrial sector that has experienced wildland fire issues. Hence, it is reasonable that the affected industry (in this case the electric IOUs and CIPs) pay for special work and analysis on the part of CAL FIRE.

Furthermore, ratepayers are more impacted by the costs of wildland fire than California taxpayers in general. Utility damages due to wildland fire may be passed onto ratepayers. Utility insurance costs may be passed on to ratepayers. Additionally, the electrical utilities are requesting in their current application A.09-08-020 that even liability costs due to wildland fires be passed on to ratepayers. Any measure that reduces the costs of wildland fire will de facto save ratepayers money. Hence it is prudent to invest ratepayer funds in measures likely to yield reductions in wildland fire losses.

For those utilities on cost-of-service rate regulation, costs will be recovered no differently than as they currently are in general rate cases. Companies with market-based rates may recover their from their customers through market-based rates.

- Whether and how costs will be shared among electric utilities, CIPs, and others.

Costs apply equally to electric investor owned utilities and CIPs, since both groups would benefit from more specific hazard maps.

- Why it is in the public interest to adopt the PRC.

The purpose of this Rulemaking is to reduce the risk to the public from wildland fires ignited by power lines. Being able to target risk areas more accurately will optimize public safety by reducing fire losses, while at the same time reducing the cost required to achieve a given safety standard

- If the PRC applies to electric transmission, why the rule does not conflict with other federal or state regulations.

There is no proposed rule at this time that would apply to electric transmission, therefore there is no conflict with other state or federal regulations. In addition, if a statewide map is developed and incorporated into General Order 95, there would be no conflict as General Order 95 already applies to electric transmission facilities and does not conflict with any 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 statues 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.

This proposal is exempt from environmental review under Section 15378 of the California Environmental Quality Act (CEQA) Guidelines because it is not a “project” under CEQA and will not have any potentially significant impact on the environment. NEPA does not apply because adoption of the proposed rule change does not constitute action by a federal agency within the meaning of 42 USC § 4332.

#### **4. Parties’ Comments**

##### **a. Parties in Support**

###### DRA

DRA supports MGRA’s and CPSD’s proposed rule change for the reasons stated in the rationale and justification provided above.

##### **b. Parties in Opposition**

###### CIP Coalition<sup>42</sup>

The ordering paragraph proposed by CPSD and Mussey Grade would require that parties to this proceeding recreate the work which has already been undertaken and completed in this Phase 2. Specifically, the CIP Coalition, as part of its efforts in Phase 2 to present the Commission with an inspection rule for communication infrastructure providers, engaged fire experts from Reax Engineering and the University of California at Berkeley to develop a map which specifically characterizes the fire threat in Northern and Central California by taking into account, among other things, high resolution, statewide variation in wind conditions which are widely recognized as critical in assessing fire risk and which are otherwise not accounted for in the FRAP maps. The results of this undertaking are attached to this Workshop Report as Appendix E. The CIP Coalition has proposed the use of the map resulting from these efforts for the purposes of defining their inspection obligations (See Sections XV.B. and C., below).

The Phase 2 Scoping Memo clearly placed within this phase of the proceeding the issue of developing the appropriate maps for use for CIP inspection purposes. In this regard, the Scoping Memo set forth various alternatives for consideration – (1) use of the FRAP Maps; (2) modification to the FRAP Maps; and (3) the creation of a new map.<sup>43</sup> In its initial filing on proposed rule changes in this phase of the proceeding, CPSD appeared to promote the first alternative – use of the FRAP MAPs – vis-à-vis any proposed rule which relied on the designation of defined geographic areas.<sup>44</sup> Later in the proceeding, CPSD modified or withdrew any of its proposed rule changes which relied upon mapping of high fire threat in zones outside

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<sup>42</sup> Cox, a member of the CIP Coalition, abstains from taking a position on this rule.

<sup>43</sup> Scoping Memo, pp. 5-6.

<sup>44</sup> See The Consumer Protection and Safety Division Proposed Rules for Phase 2, R. 08-11-005 (December 16, 2010), Attachment A, p. 4.

of Southern California. In other words, CPSD distanced itself from the need to create or modify any maps for use in the rules it was advancing for adoption in this Phase 2.

It was not until the 11th hour of this Phase 2 – four days prior to the close of workshops-- that CPSD completed its reversal in position by urging adoption of an Ordering Paragraph which would in essence push off the creation of a fire map until an unanticipated Phase 3 of this proceeding. This maneuver is contrary to the Scoping Memo and the good faith work of the parties in the Workshop to create a map that could be used in the immediate future in connection with inspection regimes. Indeed, the CIP inspection proposals closely followed the Scoping Memo so as to create inspection requirements that were tailored to devote (i) more time and resources to Extreme and Very High Threat Fire Zones using the contemplated maps that have been developed, and (ii) less time and resources to other parts of service areas that are not considered to be high fire hazard areas.

In contrast, CPSD/Mussey Grade request that the Commission ignore the work of the workshop participants and the consultants that produced the maps and, instead, direct “participating parties, investor-owned electric utilities (IOUs) and communication infrastructure providers (CIPs) [to] meet and confer with CAL FIRE and CPSD staff in order to discuss how to create utility-specific high-resolution maps combining wind and vegetation data that identify areas at the greatest risk of catastrophic power line wildland fire ignitions.” These maps would be used “for determining inspection and maintenance cycles in all cases where geographic locations and maps are referred to in General Orders 95 and 165.” In other words, CPSD/Mussey Grade are proposing to “reinvent the wheel” (i.e., create a high resolution fire map which emphasizes wind data) for the purpose of determining inspection obligations (the very purpose which the CIP Coalition map is being presented) with a proportional inspection regime based on the maps.

A further CIP Coalition concern is the provision at the end of the proposed ordering paragraph that provides that any “maps adopted in Phase 1 or Phase 2 of this OIR shall remain applicable until further order by the Commission.” Such provision indicates the significant cost implications of the CPSD/Mussey Grade proposal. As noted above, in Phase 1 the Commission adopted the use of the FRAP Maps for CIP inspection cycles in Southern California. These maps have been utilized to operationalize the required inspections. In this Phase 2 the Commission may adopt the CIP Coalition map for use in Northern / Central California. Again this map will be used to operationalize the CIP inspection requirement in those areas. The CPSD/Mussey Grade proposal contemplates, upon creation of the new map as proposed by CPSD/Mussey Grade, discarding these cost intensive efforts and requiring the CIPs to reformulate their inspection efforts around the new maps. The Commission should not ignore the significant waste of resources – resources which could be better used to implement the proposed CIP Coalition inspection regimes and refine them as they are undertaken.

### PG&E

The Ordering Paragraph proposed by CPSD and Mussey Grade has the following elements:

- The Commission will order the IOUs and CIPs to provide funding to support the development of a working plan to determine how to create utility specific high resolution maps that combine wind and vegetation data that identify the areas of

greatest fire risk. This plan includes meeting and working with Cal Fire and CPSD to develop the working plan, define the parameters for the maps, determine the process by which maps would be produced, estimate the time and costs required to produce and maintain the maps, and determine the frequency of updates.

- Within six months of the decision, the IOUs and CIPs will report back to the Commission and CPSD staff on the status of the plan.
- Upon completion of the plan, the Commission will decide whether to order the IOU's and CIP's to fund the creation of the actual maps themselves

There are a number of reasons why this proposed rule should not be adopted. First, as the Commission and all the parties are aware, a number of different fire maps developed by a more appropriate body, Cal Fire, are already in place. While not all of these maps have been updated in recent years due to a lack of funding by the State and there are questions as to the appropriateness of their use to identify potential fire risk associated with IOU and CIP facilities, they are still useful and in use. In fact, the Commission adopted new rules based on the Cal Fire FRAP maps for use in Southern California in Phase 1 and these maps have been operationalized by the utilities and CIPs operating in those areas.

Second, the utilities and CIPs lack the expertise to develop the maps as prescribed by CPSD and Mussey Grade. At the start of the workshops in Phase 2, a mapping workgroup was created to look into the development of utility specific fire threat maps. After a number of months and meetings it became apparent that the workgroup lacked the expertise, knowledge and experience to develop these maps.

Third, as evidenced by the Cal Fire experience, substantial costs and significant resources are needed to keep any new map current. If another fire map is desirable, it must be very clear who will maintain that map and how that maintenance will be funded. Again, the creation and maintenance of fire threat maps should be left to those like Cal Fire who have the knowledge and expertise in map development and not thrown in the laps of the utilities and CIPs.

Fourth, in Phase 2, the CIPs funded the development by Reax Engineering, Inc. of fire threat maps that combine vegetation and wind data. The end result was to create high resolution maps defining the areas of highest fire risk. The Reax Engineering report and map(s) are included as part of the workshop report. Reax Engineering has indicated that its report will be published and a peer review will be completed as part of that process. The final report and peer review was not complete prior to the conclusion of the workshop process.

The CIPs have proposed that the Reax maps be adopted by the Commission as part of their MAP proposals for Rule 31.2. Requesting the Commission to order the utilities to fund another effort to develop fire threat maps is ill-advised, redundant and simply makes no sense. PG&E understands the concern expressed by CPSD: that there was not adequate time in the Phase 2 workshop process to fully examine and review the Reax report and maps. The most appropriate course of action is to allow CPSD's review, the peer review and publishing of the Reax Engineering report to occur, and then have the Commission consider the adoption of the REAX Engineering maps – perhaps in a Phase 3 of this proceeding.

Requesting that the Commission order the utilities and CIPs to create a working plan, cost, timeline etc. to develop fire risk maps is asking the Commission to send the utilities and CIPs down the same path they went down with the mapping workgroup, which resulted in the realization that CIPs and IOUs are not qualified to develop a fire risk map. For the above reasons this proposed Ordering Paragraph should be rejected.

### SCE

SCE opposes adoption of this proposed ordering paragraph because it would be a duplicative and costly endeavor as explained in PG&E's comments as a party in opposition. SCE joins in PG&E's comments in opposition to this proposal.

### SDG&E

SDG&E opposes this PRC from Mussey Grade and CPSD. As demonstrated during the technical workshops, in response to the Phase 1 decision in this proceeding SDG&E has already developed and operationalized a utility-specific high-resolution map for its service territory that combines wind and vegetation data and identifies areas at the greatest risk of catastrophic power line wildland fire ignitions. At least for SDG&E's service territory, there is no need for the type of new customer-funded mapping process proposed by Mussey Grade and CPSD.

Moreover, SDG&E's believes that the basic premise of Mussey Grade's mapping plan is fundamentally flawed. Mussey Grade wants utilities and their customers to fund additional mapping work that would focus on wind and vegetation data. Even though these factors are important, they are just part of a complex puzzle. By contrast, SDG&E has used a much more comprehensive risk assessment to develop a utility-specific high-resolution map for its service territory. SDG&E analyzed wind, vegetation, local topography, historical fires, and other practical considerations for operations and maintenance of equipment. Even an excellent analysis from a wind and wind-induced equipment failure perspective lacks vital components that are necessary for a utility map's fire risk map-- namely downstream impacts of ignitions, and practical concerns for operations and maintenance of equipment. It is not enough to generate a risk assessment at specific points. One must consider the consequences of ignitions were they to occur. To illustrate, a wind-only study could locate two unique points of equal risk, but due to the location, downstream topography, and assets downstream of each point, there would be large differences in consequences from ignitions starting at those two points. SDG&E's analysis focused on all relevant aspects, including potential downstream impacts. Moreover, our work in this area has led us to conclude that an even higher-resolution wind map such as the one proposed by Mussey Grade would not change the shape or size of SDG&E's Fire Threat Zone. Basic wind data is important, but in most instances basic wind data is sufficient. Once utilities have basic wind data, they and their customers would be much better served focusing on vegetation and the potential downstream impacts of ignitions, which SDG&E has already done.

### Sierra Pacific

Sierra Pacific opposes CPSD and Mussey Grade's proposal for a number of reasons. CAL FIRE already has fire maps and there is no evidence that any additional maps are needed or that

additional maps would help reduce fire risks. Requiring IOUs and CIPs to provide funding to develop maps that may provide no benefits increases customer costs without achieving the goals of this proceeding by reducing fire risks. Additionally, CAL FIRE, not the IOUs or CIPs, has the necessary expertise to update existing maps or develop new maps. However, it is not the responsibility of IOUs and CIPs to provide funding to other agencies like CAL FIRE to develop fire maps. Forcing IOUs and CIPs to fund state or local fire agencies is inappropriate and outside the scope of this proceeding. Furthermore, this proposal is improper because mapping efforts have already been undertaken by multiple parties. Any efforts to develop new maps should have been coordinated with the mapping groups that were formed during workshops in this proceeding. To require additional mapping efforts at this time will result in duplicative and unnecessary expenditures. Finally, it is unclear how any maps developed under this proposed rule change would be used to interpret or enforce GO 95 requirements, if at all. The CPUC should not require the IOUs and CIPs to fund a mapping effort that may ultimately have no bearing on the requirements applicable to IOUs or CIPs. For these reasons, the CPUC should not adopt this proposal.

### TURN

This proposed ordering paragraph would require the electric utilities (IOUs) and communications infrastructure providers (CIPs) to provide funding to support the development of a working plan to determine how to create utility specific, high-resolution maps “combining wind and vegetation data that identify areas at the greatest risk of catastrophic power line wildland fire ignitions.” After completion of a working plan, the ordering paragraph contemplates that the Commission would determine whether or not the IOUs and CIPs would fund the creation of new maps.

While TURN agrees that such maps could provide valuable information, the real question is whether such high-resolution maps are absolutely necessary for utilities to engage in vegetation management, and patrols and inspections of poles. Presumably higher resolution maps could more precisely pinpoint locations where such fire risk mitigation activities should take place, but dialing-in maps to such a high resolution could have the negative result of restricting mitigation activities to too small an area. The inputs to such a map (weather, wind, vegetation cover, vegetation growth, etc.) are variable from year to year and, if utilities are going to rely on a single map for their fire risk mitigation activities over several years, lower resolution maps could mean that more area will be covered by the utilities’ activities. In the case of fire risk mitigation activities, including more areas for vegetation management and pole inspections would provide a better margin of safety than trying to precisely target such activities with a higher resolution map.

TURN also feels that it is premature to start creating new maps when it is still uncertain whether the FRAP maps are sufficient for vegetation management and other fire risk mitigation activities. The utilities should be allowed to gain more experience in using the existing maps before we decide to effectively throw the maps out. Again, while TURN has no doubt that high resolution maps could provide interesting and valuable information, for the purposes of this Rulemaking, the question that the Commission should be asking is whether the existing maps are sufficient for the required use, not whether they provide the most detailed and highly accurate information possible. TURN notes that ratepayers, not utility shareholders, would bear the burden of funding



the creation of new, high-resolution maps, and ratepayers should not be required to pay for maps that are not strictly necessary.

**5. Record of Voting**

<b>PARTIES</b>	<b>NOT PRESENT</b>	<b>YES</b>	<b>NEUTRAL</b>	<b>NO</b>
AT&T				X
CAISO	X			
CALTEL				X
CCTA				X
CFBF				X
CMUA	X			
COMCAST				X
COX			Abstain	
CPSD		X		
CTIA				X
DRA		X		
EXTENET	X			
FACILITIES MANAGEMENT	X			
FRONTIER				X
IBEW 1245	X			
LA COUNTY		X		
LADWP				X
MUSSEY GRADE		X		
OSMOSE UTILITIES SERVICES	X			
NCPA	X			
NEXTG				X
PACIFICORP				X
PG&E				X
SCE				X
SDG&E				X
SIERRA PACIFIC				X
SMALL LECS				X
SMUD				X
SPRINT NEXTEL				X
SUNESYS				X
SURE WEST				X
TIMEWARNER CABLE				X
T-MOBILE				X
TURN				X
TW TELECOM				X
VERIZON				X
DAVEY TREE	X			
BILL ADAMS			X	

**B. Designation of Specified Fire Maps for Purpose of CIP Inspections (CIP 1) (Highlighted Language and Map) Proposal by CIP Coalition<sup>45</sup>**

**1. Proposed Rule Change**

**a. Current Rule**

**31.2 Inspection of Lines**

Lines shall be inspected frequently and thoroughly for the purpose of insuring that they are in good condition so as to conform with these rules. Lines temporarily out of service shall be inspected and maintained in such condition as not to create a hazard.

**b. Strikeout/Underline**

**31.2 Inspection of Lines**

Lines shall be inspected frequently and thoroughly for the purpose of insuring that they are in good condition so as to conform with these rules. Lines temporarily out of service shall be inspected and maintained in such condition as not to create a hazard.

**A. Communications Lines In Specified Fire Areas:**

Communication lines shall be inspected in Specified Fire Areas, as follows:

- (1) Patrols shall be performed not less often than once every three (3) years on overhead communications lines installed on joint use poles with electric distribution or transmission facilities, as well as on communication lines one span away.**

Patrol means a simple visual inspection of communications equipment and structures that is designed to identify obvious structural problems and hazards. Patrols may be carried out in the course of other company business.

- (2) Detail Inspections shall be performed not less often than once every nine (9) years on overhead communications lines installed on joint use poles with electric distribution or transmission facilities, as well as on communication lines one span away.**

Detail Inspection means a careful visual inspection of communications equipment and structures using inspection tools such as binoculars and measuring devices, as appropriate. Detail Inspections may be carried out in the course of other company business.

<sup>45</sup> Cox, a member of CIP Coalition, abstains from taking a position on this rule.

(3) For all patrols and details, records shall specify the facility or equipment inspected; the name of the inspector; the date of the inspection; and any problems (or items requiring corrective action) identified during each inspection, as well as the scheduled date of corrective action. Records of Patrols and Details shall be made available to Commission staff upon 30 days notice.

Note: For the following Southern California counties: Santa Barbara, Ventura, Los Angeles, Orange, San Diego, Riverside, and San Bernardino, Specified Fire Areas shall be defined as the Extreme and Very High Fire Threat Zones as identified in Cal Fire's Fire and Resource Assessment Program Fire Threat Map. For the remaining counties in the State of California, Specified Fire Areas are defined as the areas designated as Threat Class 3 and 4 identified on Threat Class 3 and 4 Map attached as Appendix G, Figure 90. Communication Infrastructure Providers shall have the discretion to use their own expertise and judgment to determine if local conditions require them to adjust the boundaries of the maps.

**B. Electric Lines:** shall be inspected in compliance with the minimum intervals set forth in General Order 165.

APPENDIX G

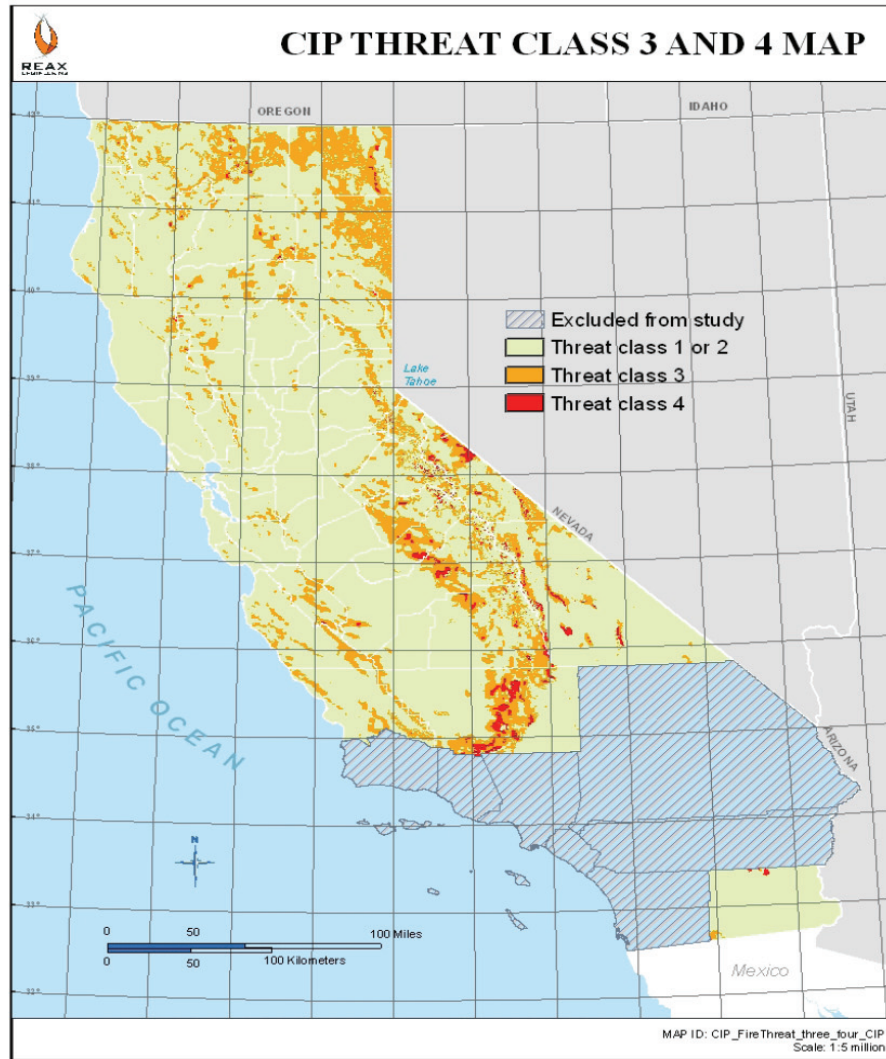


Figure 24. CIP fire threat class three and four map. (three\_4\_cip.jpg)

Figure 90

**c. Proposed Final Rule**

**31.2 Inspection of Lines**

Lines shall be inspected frequently and thoroughly for the purpose of insuring that they are in good condition so as to conform with these rules. Lines temporarily out of service shall be inspected and maintained in such condition as not to create a hazard.

**A. Communications Lines In Specified Fire Areas:**

Communication lines shall be inspected in Specified Fire Areas, as follows:

- (1) **Patrols** shall be performed not less often than once every three (3) years on overhead communications lines installed on joint use poles with electric distribution or transmission facilities, as well as on communication lines one span away.

Patrol means a simple visual inspection of communications equipment and structures that is designed to identify obvious structural problems and hazards. Patrols may be carried out in the course of other company business.

- (2) **Detail Inspections** shall be performed not less often than once every nine (9) years on overhead communications lines installed on joint use poles with electric distribution or transmission facilities, as well as on communication lines one span away.

Detail Inspection means a careful visual inspection of communications equipment and structures using inspection tools such as binoculars and measuring devices, as appropriate. Detail Inspections may be carried out in the course of other company business.

- (3) For all patrols and details, records shall specify the facility or equipment inspected; the name of the inspector; the date of the inspection; and any problems (or items requiring corrective action) identified during each inspection, as well as the scheduled date of corrective action. Records of Patrols and Details shall be made available to Commission staff upon 30 days notice.

Note: For the following Southern California counties: Santa Barbara, Ventura, Los Angeles, Orange, San Diego, Riverside, and San Bernardino, Specified Fire Areas shall be defined as the Extreme and Very High Fire Threat Zones as identified in Cal Fire's Fire and Resource Assessment Program Fire Threat Map. For the remaining counties in the State of California, Specified Fire Areas are defined as the areas designated as Threat Class 3 and 4 identified on Threat Class 3 and 4 Map attached as Appendix G, Figure 90. Communication Infrastructure Providers shall have the discretion to use their own expertise and judgment to determine if local conditions require them to adjust the boundaries of the maps.

- B. Electric Lines:** shall be inspected in compliance with the minimum intervals set forth in General Order 165.

APPENDIX G

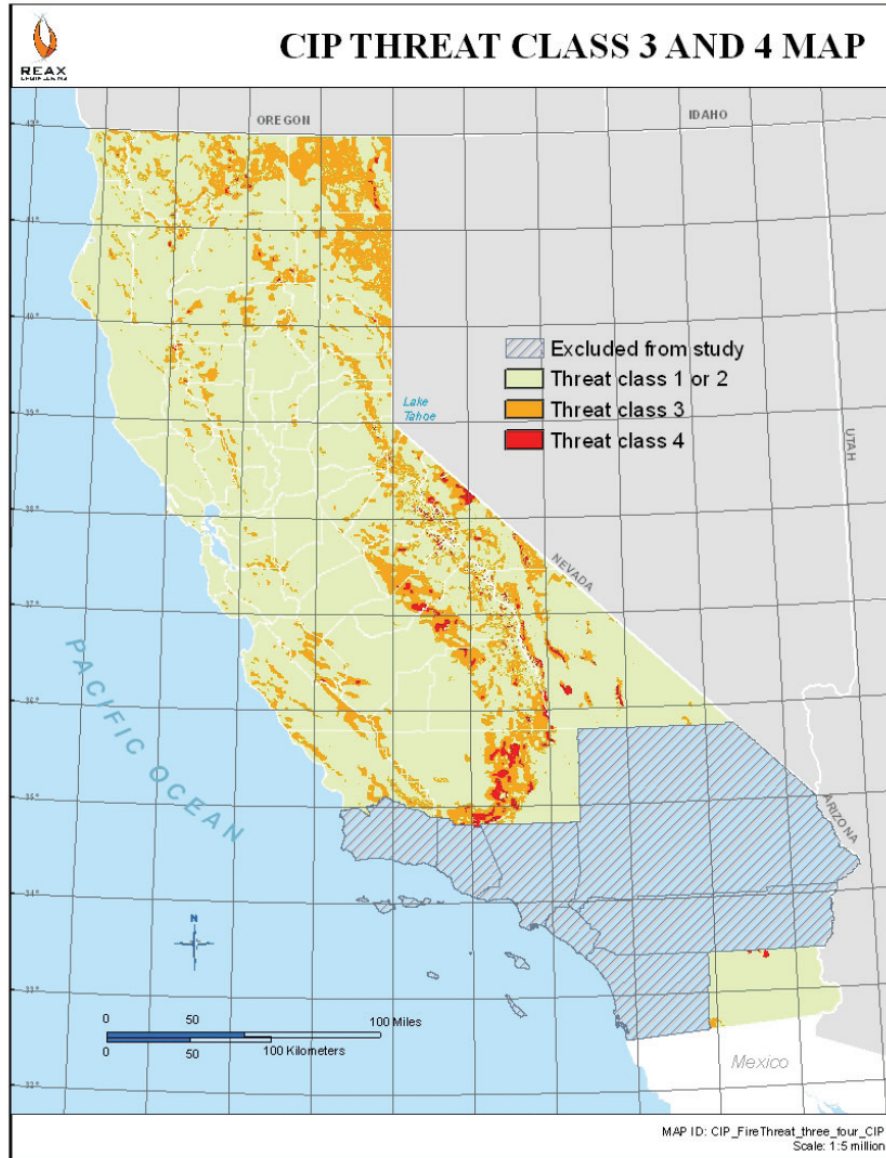


Figure 24. CIP fire threat class three and four map. (three\_4\_cip.jpg)

Figure 90

## 2. Rationale

The critical aspect captured by the highlighted language contained within the PRC detailing the elements of CIP inspections is the defined geographic area in which inspections should occur to ensure focused, cost effective reduction in fire hazards associated with CIP facilities in close proximity to overhead electric power lines. Specifically, the proposed language, consistent with the Decision in Phase 1 of this proceeding, establishes a delineation between Southern and Northern/Central California by defining “Specified Fire Areas” for the former as the Very High and Extreme Fire Threat Zones as identified in Cal Fire’s Fire and Resource Program Fire Threat Map (FRAP Map), while defining “Specified Fire Areas” for the latter consistent with the two highest threat zones identified on a Fire Threat Map prepared in this Phase 2, as described below.

In adopting the FRAP Map for the use of identifying, among other things, the designated CIP inspection areas in Southern California, the Commission acknowledged the map’s limitations<sup>46</sup> and made clear that the use of this map to establish “Extreme and Very High Fire Threat Zones” in Southern California does not necessarily mean we will use the map to establish these zones in Northern California.<sup>47</sup> In this regard, the Phase 2 Scoping Memo clearly set forth as an item for consideration in Phase 2 whether “the Fire Threat Maps should be used to establish the geographic scope of the CIP inspection rule in Central and Northern California.”<sup>48</sup> Related issues were identified as (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, and (ii) whether a better, utility-specific map can be developed.<sup>49</sup>

In order to better assess the fire hazard areas in Northern / Central California, the CIP Coalition retained fire experts from Reax Engineering and the University of California at Berkeley to develop a map which specifically characterizes the fire threat in Northern and Central California by taking into account, among other things, high resolution, statewide variation in wind conditions which are widely recognized as critical in assessing fire risk and which are otherwise not accounted for in the FRAP maps (REAX Maps). The methodology employed by REAX, while based on the FRAP Map framework, applied several enhancements including capturing localized terrain effects and using weather prediction to assess the impact of elements leading to fire initiation associated with joint use utility poles such as wind induced pole/line failure, ignition source and fire spread behavior. The end result was the creation of a map which takes into account more extensive and more recent data than the FRAP maps and more accurately delineates the geographic areas in Northern and Central California that entail relatively higher fire threats.<sup>50</sup> Consistent with targeting the Very High and Extreme threat Zones designated on

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<sup>46</sup> See Opening Comments of Cal Fire on Proposed Rules, R. 08-11-005 (March 23, 2009) at p. 2 (noting that the Fire Threat Map does not emphasize the spatially dependent consideration important to fire propagation such as the continuity of wild land fuels nor does it address the nature and frequency of high wind events that are likely influential in causing electrical facility ignition).

<sup>47</sup> Decision 09-08-029, at p. 23.

<sup>48</sup> Phase 2 Scoping Memo, p. 5

<sup>49</sup> *Id.*, p. 6.

<sup>50</sup> In discussing improved mapping, Cal Fire has stated that a couple of items were imperative, specifically, “updated or expanded data on vegetation and localized wind data and other weather data but particularly extreme winds is



the FRAP Map for CIP inspections in Southern California, the language incorporated into the CIP Inspection Rule delineating the geographic area for inspections in Northern / Central California focuses on the two highest “threat categories” (three and four).

### 3. Justification

- The specific electric utilities, CIPs, and others affected by the PRC.

The language at issue has been inserted into a proposed rule pertaining to the inspection of CIP facilities in Specified Fire Areas, as such any CIPs with facilities in those Specified Fire Areas would be impacted.

- The current text of the affected General Order(s), if any.

See above.

- 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.

See above.

- The specific fire hazard(s) addressed by the PRC and/or other objectives accomplished by the PRC.

The objective accomplished by the proposed language is to define the geographic parameters of the CIP inspection obligations as such pertain to the detection of fire hazards. This has been accomplished through the creation of a map which more accurately delineates the relative fire threat associated with Northern and Central California.

- How the PRC reduces or otherwise addresses the fire hazard(s) and/or achieves other objectives.

The REAX Maps allow CIPs to focus their inspections on the areas of highest relative fire threat which will allow for more targeted and cost effective CIP inspections. The continued use of the FRAP Map in Southern California, while not as current or accurate as the REAX Maps, serves a similar function.

- The anticipated costs of the PRC, including, if available, costs incurred by investor owned utilities, POUs, CIPs, and customers.

The cost of the creation of the REAX Map has been incurred by certain members of the CIP Coalition. Any costs associated with operationalizing the map would fall under the proposed CIP Inspection Rules discussed in Section VII.

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critical to dealing with mapping that is responsive to the kinds of things that impact utility[ies].” See Transcript R. 08-11-005 (May, 25, 2010) p. 24, lines 10-16 (Cal Fire-Cromwell).

- The anticipated benefits of the PRC.

The use of the REAX and FRAP Maps provide for more targeted and cost effective inspections of facilities throughout the highest fire risk areas in the state thereby mitigating the risk of fire.

- Whether and how the costs will be recovered from customers.

The costs of the development of the REAX Map will not be recovered directly from customers.

- Whether and how costs will be shared among electric utilities, CIPs, and others.

The costs of the creation of the REAX Map were borne by the CIPs; those costs will not be shared among CIPs and electric utilities.

- Why it is in the public interest to adopt the PRC.

It is in the public interest to adopt the PRC since as it would define additional geographic areas for imposition of CIP inspection requirements by reference to fire threat maps that, for Central and Northern California, more accurately delineate those areas of the State that entail relatively higher fire risks. The result will be that CIP resources will be more appropriately focused in the areas where they can provide the greatest potential benefit.

- If the PRC applies to electric transmission, why the rule does not conflict with other federal or state regulations.

The PRC does not apply to electric transmission.

- 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.

The PRC does not implicate the requirements of either CEQA or NEPA.

### **3. Parties' Comments**

#### **a. Parties in Support**

##### CIP Coalition<sup>51</sup>

The CIP Coalition supports the PRC for the reasons set forth in the rationale and justification sections above.

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<sup>51</sup> Cox, a member of the CIP Coalition, abstains from taking a position on this rule.

**b. Parties in Opposition**

CPSD

This PRC proposes to adopt a Fire Map for Northern and Central California, which will be used to limit the areas of the inspections for CIPs. This map was created to be used as an alternative to CALFIRE's FRAP map for Northern and Central California. CPSD agrees with the concerns raised by Mussey Grade about implementing this map prior to a thorough technical vetting and peer review. Mussey Grade has raised a number of technical issues and concerns with the CIP map that should be addressed prior to the Commission permanently adopting such a map for public safety purposes. Without the appropriate peer review, CPSD cannot advocate using this map for Northern and Central California. In addition, CPSD supports the idea of creating one statewide high resolution wind map for determining utility fire hazards, rather than using separate maps for Northern and Southern California. The CIP map may be a good starting point for developing such a statewide map. As the REAX representatives stated at the workshops, it was actually more difficult to create a map that excluded Southern California.

TURN

The CIP Coalition proposes to adopt an alternative map to CAL FIRE's FRAP map for Northern and Central California. TURN does not necessarily object to the use of an alternative map, however, TURN agrees with the concerns raised by Mussey Grade and CPSD about implementing such an alternative map prior to a thorough vetting process and peer review. At the very least, the technical issues raised by Mussey Grade should be addressed before the Commission adopts the map for use by the CIPs.

**c. Parties Voting Neutral**

PG&E

PG&E is NEUTRAL on this proposal.

See PG&E comments pertaining to Mussey Grade-CPSD's fire map proposal at MAP 14, Section A.

MGRA

Mussey Grade voted neutral on the adoption of the new maps produced by the CIP Coalition. While we find the CIP efforts and leadership in this area commendable, and agree with the general technical direction taken by the CIP consultants, we also know that the product is new scientific work and should be subject to review. We therefore have submitted a proposal in this proceeding for an Ordering Paragraph to address formal technical review of maps under the purview of CAL FIRE.

Mussey Grade participated in the early mapping workshops, which were led by Fassil Fenikile of AT&T. We also sponsored the participation of Professors Max Moritz of the University of California at Berkeley and David Saah of the University of San Francisco, who are world experts in the technical areas of fire hazard mapping and wind behavior. It has always been the assertion

of the Alliance technical expert that high resolution wind maps are key to identifying the locations where catastrophic power line fires are likely to be ignited, and this was repeatedly raised as a specific requirement for any utility-specific hazard mapping effort, both during the subcommittee sessions and in several conversations between the Alliance expert and the subcommittee chair Mr. Fenikile.

Unfortunately, and despite concerted effort by some participants, it was impossible to agree on a unified approach to the production of hazard maps. The basic problem was legal, rather than technical – Professors Moritz and Saah had provided testimony to the Commission under the supervision of CPSD regarding the 2007 fires, and the CIP Coalition was concerned that their participation in the process could potentially lead to conflicts. The CIP Coalition therefore sought out and hired the Reax consulting group to generate the maps for Northern California.

While a more open process would have been preferable to the Alliance, we are nevertheless gratified that a number of our concerns appear to have been addressed in the CIP mapping effort. The Reax consultants are recognized practitioners in the fields of wildland fire and weather modeling, and their efforts to produce a utility hazard map included a number of improvements over the CAL FIRE threat map and incorporated ignition modeling based on wind conditions, as urged by the Alliance. It was a laudable effort, and may very well form the basis of a novel approach to utility hazard modeling.

However, it is this very novelty that raises legitimate concern over the degree of confidence that can be placed in the results prior to peer review. This is new science, and there are scientific review processes that address the adoption and approval of new science as valid. Even more so, the fact that these maps will be applied to a public safety application increases the necessity and urgency of review.

During Phase 1, the Alliance concurred with other parties that the CAL FIRE threat maps could be used to define areas for enhanced regulation of utilities, despite CAL FIRE's own request that they not be used for this purpose. Our justification was twofold: first, the CAL FIRE threat maps, however flawed and inappropriate, were still far superior to the existing GO 95 definition of high-wind area based solely on elevation; secondly, that these maps would eventually be replaced by utility hazard maps that specifically took wind into account. Likewise, while we believe that the Reax map is likely better and more appropriate than the existing CAL FIRE threat maps, we do not believe that it should be adopted on a permanent basis until and unless a formal review is complete. It is for this purpose that we joined with CPSD in requesting an Ordering Paragraph that would initiate the creation of a formal review process in which CAL FIRE would play a role in the approval of any fire hazard map to be used by the utilities for public safety purposes.

So while the methods used by the Reax consultants may be more appropriate for determining utility fire hazards than other maps previously used (or no maps at all), we do not yet know their degree of accuracy or appropriateness. Errors could lead to areas that are actually "high hazard" being classified as "low hazard", and thereby put customers in those areas in greater risk. Based on our current knowledge, would the Reax map be likely to do "more good than harm"? Probably so. However, "*probably*" is not an appropriate standard to be used for a public safety

application. Formal peer review is essential. Even cursory review of the Reax materials<sup>52</sup> raises some questions and concerns:

- The weather system that was modeled consisted of a high pressure system over the Great Basin, which accounts for Santa Ana winds (in Southern California) and Diablo winds (in the San Francisco Bay area). It is not clear whether this is appropriate for the Santa Barbara area, where catastrophic fires are dominated by “Sundowner winds”, since these occur during summer, rather than in the autumn period used by the study.
- The largest number of catastrophic fires related to utility equipment occurs in Southern California, not Northern California. However, due to the restrictions placed by the proceeding participants and the Commission, the Reax group presented only results for Northern California, even though they purportedly have results available for the whole state. The results for the southern counties are not available for review or use.
- The method for determining hazard consists of creating a threat matrix<sup>53</sup>, with threat being an ordinal ranking between 1 (lowest) and 4 (highest). Each of these rankings is based on a combination of three other ordinal rankings from 1 (lowest) to 3 (highest): failure (how likely a component is to fail and cause a spark), ignition (how likely the spark is to ignite a wildland fire), and behavior (how likely the fire is to grow rapidly into a catastrophic fire). Each of the three component rankings is subjective, as is the manner in which they are combined to determine the overall threat ranking. This ranking method should be closely examined to determine whether the final ranking that is generated is actually indicative of the true level of threat. The Threat ranking by CAL FIRE utilizes a similar, albeit much simpler method of estimating fire threat<sup>54</sup>, yet this underwent a review process prior to being used for public safety purposes. The Reax team has presented a more complicated analysis, with 27 different potential combinations of the three threat components. The assumptions that went into making these threat assignments must be fully reviewed and assessed to determine what relation they have to the objective risk anticipated from power line fires.
- In order to calculate failure probability, the Reax team uses outage data originally presented by the Alliance in CPUC proceeding A.06-08-010<sup>55</sup> and later presented at a conference by the Alliance expert<sup>56</sup>. For their model, they assume 1-hour average wind speed measurement. The outage data collected by the Alliance and

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<sup>52</sup> Chris Lautenberger, et al; Communication Infrastructure Provider Assets in the Wildland Setting; CIP Fire Threat Map; June 9, 2010; Prepared for California CIP Coalition; Reax Engineering Inc. Job # 10-0134.

<sup>53</sup> Ibid; Table 2; p. 10.

<sup>54</sup> Ibid.; p. 3.

<sup>55</sup> MUSSEY GRADE Phase 1 Direct Testimony, Appendix A; Sunrise Powerlink Transmission Project; Application No. 06-08-010; APPENDIX A – POWER LINE OUTAGES AND WIND; May 31, 2007.

<sup>56</sup> Mitchell, J.W., “Power Lines and Catastrophic Wildland Fire in Southern California,” *Proceedings of Fire and Materials 2009*, 2009.

shown in the plot by Reax<sup>57</sup>, however, were 3-second wind gust speeds averaged over three physically separated RAWS weather stations in San Diego. While the general behavior would be expected to be the same, this would shift the data points on the graph in Figure 12 over to the left about 30%.

- The maximum failure category calculated by the group is for 1-hour wind speed above 28 mph, and their model assumes that failures will be proportional only to pressure, which varies as the square of wind speed. We are concerned that other effects, such as metal fatigue, would be expected to show a much steeper dependence on wind speed. Another effect that might come into play at higher speeds would not be failure but rather contact between conductors and other objects (branches, other conductors). The Alliance expert argues in his 2009 presentation that the number of faults could exhibit a steep rise as more and more components begin to make contact at higher wind speeds<sup>58</sup>. The relevance to the Reax analysis is that the highest risk category for failure potential might be too broad, and also that it might require heavier weighting when calculating the overall hazard.

This should not be considered a definitive list of all potential issues with this study. Only a formal review will suffice to reveal these. Conversely, we do not claim that any of these concerns are necessarily “show-stoppers” or render the Reax map dangerous for the inspection purposes for which the CIP coalition proposes to use it. Some of the same types of criticism could be applied to the CAL FIRE threat maps as well. We assert that a formal review should be conducted, and that this review should be applied not only to the CIP maps (or any other maps that might be proposed) in Northern California, but additionally to Southern California. The true value of having high-resolution wind hazard maps for utilities is not only to define areas for inspection and vegetation treatments, but their potential for future use in identifying extreme hazard areas where focused application of preventative treatments such as system hardening, undergrounding, and line insulation could be carried out in a cost-effective manner.

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<sup>57</sup> Lautenberg, et al.; p. 5, Figure 12.

<sup>58</sup> Mitchell, J.W., 2009.

#### 4. Record of Voting

<b>PARTIES</b>	<b>NOT PRESENT</b>	<b>YES</b>	<b>NEUTRAL</b>	<b>NO</b>
AT&T		X		
CAISO	X			
CALTEL		X		
CCTA		X		
CFBF	X			
CMUA	X			
COMCAST		X		
COX			Abstain	
CPSD				X
CTIA		X		
DRA				X
EXTENET	X			
FACILITIES MANAGEMENT	X			
FRONTIER		X		
IBEW 1245		X		
LA COUNTY			X	
LADWP			X	
MUSSEY GRADE			X	
OSMOSE UTILITIES SERVICES	X			
NCPA	X			
NEXTG		X		
PACIFICORP		x		
PG&E			X	
SCE			X	
SDG&E			X	
SIERRA PACIFIC			X	
SMALL LECS		X		
SMUD			X	
SPRINT NEXTEL		X		
SUNESYS		X		
SURE WEST		X		
TIMEWARNER CABLE		X		
T-MOBILE		X		
TURN				X
TW TELECOM		X		
VERIZON		X		
DAVEY TREE	X			
BILL ADAMS			X	

**C. Designation of Specified Fire Maps for Purpose of CIP Inspections (CIP 2) (Highlighted Language and Map), Proposal by CIP Coalition<sup>59</sup>**

**1. Proposed Rule Change**

**a. Current Rule**

**31.2 Inspection of Lines**

Lines shall be inspected frequently and thoroughly for the purpose of insuring that they are in good condition so as to conform with these rules. Lines temporarily out of service shall be inspected and maintained in such condition as not to create a hazard.

**b. Strikeout/Underline**

**31.2: Inspection of Lines**

(a) Lines shall be inspected frequently and thoroughly for the purpose of ensuring that they are in good condition so as to conform with these rules. Lines temporarily out of service shall be inspected and maintained in such condition as not to create a hazard.

(b) For the purpose of the remaining subsections of this Rule:

(i) "Patrol" means a simple visual inspection designed to identify obvious structural problems and hazards. Patrols may be carried out in the course of other company business.

(ii) For the following Southern California counties: Santa Barbara, Ventura, Los Angeles, Orange, San Diego, Riverside, and San Bernardino, Specified Fire Areas shall be defined as the Extreme and Very High Fire Threat Zones as identified in Cal Fire's Fire and Resource Assessment Program Fire Threat Map. For the remaining counties in the State of California, Specified Fire Areas are defined as the areas designated as Threat Class 3 and 4 identified on Threat Class 3 and 4 Map attached as Appendix G, Figure 90. Communication Infrastructure Providers shall have the discretion to use their own expertise and judgment to determine if local conditions require them to adjust the boundaries of the maps.

(c) Patrols shall encompass overhead communication lines installed on joint use poles with electric distribution facilities, as well as those facilities that are one span away in the Specified Fire Areas. Each Specified Fire Area shall be inspected not less than once every five (5) years.

(d) Records demonstrating compliance with subsection (B) of this Rule shall be maintained. Company records shall specify the plant, area or equipment inspected, the name of the inspector and the date of the inspection. Such documentation shall be retained for five (5) years.

<sup>59</sup> Cox, a member of the CIP Coalition, abstains from taking a position on this rule.



APPENDIX G

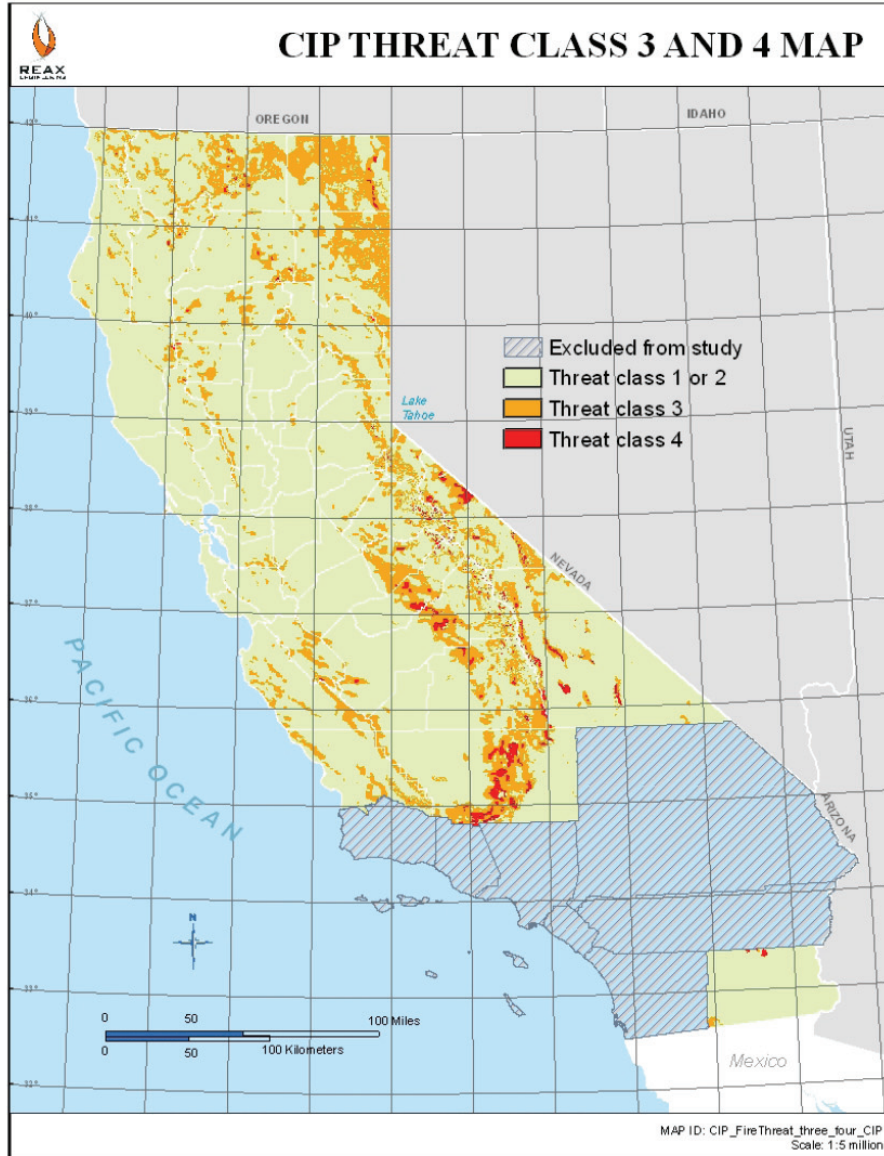


Figure 24. CIP fire threat class three and four map. (three\_4\_cip.jpg)

Figure 90

**c. Proposed Final Rule**

**31.2: Inspection of Lines**

(a) Lines shall be inspected frequently and thoroughly for the purpose of ensuring that they are in good condition so as to conform with these rules. Lines temporarily out of service shall be inspected and maintained in such condition as not to create a hazard.

(b) For the purpose of the remaining subsections of this Rule:

(i) "Patrol" means a simple visual inspection designed to identify obvious structural problems and hazards. Patrols may be carried out in the course of other company business.

(ii) For the following Southern California counties: Santa Barbara, Ventura, Los Angeles, Orange, San Diego, Riverside, and San Bernardino, Specified Fire Areas shall be defined as the Extreme and Very High Fire Threat Zones as identified in Cal Fire's Fire and Resource Assessment Program Fire Threat Map. For the remaining counties in the State of California, Specified Fire Areas are defined as the areas designated as Threat Class 3 and 4 identified on Threat Class 3 and 4 Map attached as Appendix G, Figure 90. Communication Infrastructure Providers shall have the discretion to use their own expertise and judgment to determine if local conditions require them to adjust the boundaries of the maps.

(c) Patrols shall encompass overhead communication lines installed on joint use poles with electric distribution facilities, as well as those facilities that are one span away in the Specified Fire Areas. Each Specified Fire Area shall be inspected not less than once every five (5) years.

(d) Records demonstrating compliance with subsection (B) of this Rule shall be maintained. Company records shall specify the plant, area or equipment inspected, the name of the inspector and the date of the inspection. Such documentation shall be retained for five (5) years.

APPENDIX G

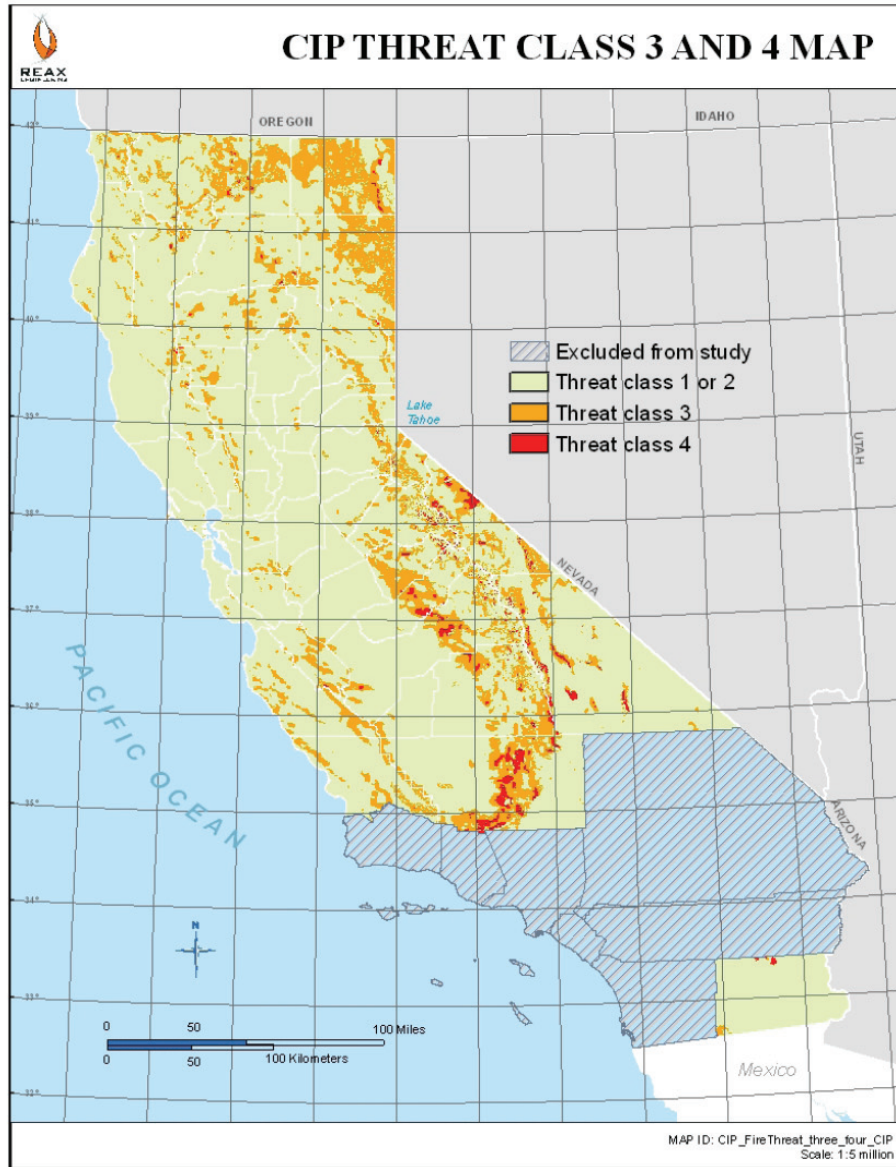


Figure 24. CIP fire threat class three and four map. (three\_4\_cip.jpg)

June 9, 2010

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Reax Engineering, Inc.  
Job # 10-0134

Figure 90

## 2. Rationale

The language is the same as that which was inserted into the first of the two inspections PRCs offered by various CIPs. Accordingly, the rationale for the PRC is the same as that presented in Section XV.B. 2, above.

## 3. Justification

The language is the same as that which was inserted into the first of the two inspections PRCs offered by various CIPs. Accordingly the justification for the PRC is the same as that presented in Section XV.B.3, above.

- The specific electric utilities, CIPs, and others affected by the PRC.

See above.

- The current text of the affected General Order(s), if any.

See above.

- 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.

See above.

- The specific fire hazard(s) addressed by the PRC and/or other objectives accomplished by the PRC.

See above.

- How the PRC reduces or otherwise addresses the fire hazard(s) and/or achieves other objectives.

See above.

- The anticipated costs of the PRC, including, if available, costs incurred by investor owned utilities, POUs, CIPs, and customers.

See above.

- The anticipated benefits of the PRC.

See above.

- Whether and how the costs will be recovered from customers.

See above.

- Whether and how costs will be shared among electric utilities, CIPs, and others.

See above.

- Why it is in the public interest to adopt the PRC.

See above.

- If the PRC applies to electric transmission, why the rule does not conflict with other federal or state regulations.

The PRC does not apply to electric transmission.

- 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.

The PRC does not implicate the requirements of either CEQA or NEPA.

### **3. Parties' Comments**

#### **a. Parties in Support**

##### CIP Coalition<sup>60</sup>

The CIP Coalition supports the PRC for the reasons set forth in the rationale and justification sections above

#### **b. Parties in Opposition**

##### CPSD

This PRC proposes to adopt a Fire Map for Northern and Central California, which will be used to limit the areas of the inspections for CIPs. This map was created to be used as an alternative to CALFIRE's FRAP map for Northern and Central California. CPSD agrees with the concerns raised by Mussey Grade about implementing this map prior to a thorough technical vetting and peer review. Mussey Grade has raised a number of technical issues and concerns with the CIP

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<sup>60</sup> Cox, a member of the CIP Coalition, abstains from taking a position on this rule.

map that should be addressed prior to the Commission permanently adopting such a map for public safety purposes. Without the appropriate peer review, CPSD cannot advocate using this map for Northern and Central California. In addition, CPSD supports the idea of creating one statewide high resolution wind map for determining utility fire hazards, rather than using separate maps for Northern and Southern California. The CIP map may be a good starting point for developing such a statewide map. As the REAX representatives stated at the workshops, it was actually more difficult to create a map that excluded Southern California.

#### TURN

See TURN's comments on MAP 14, CIP#1.

### **c. Parties Voting Neutral**

#### PG&E

PG&E is NEUTRAL on this proposal.

See PG&E comments pertaining to Mussey Grade-CPSD's fire map proposal at MAP 14, Section A.

#### MGRA

See MGRA comment under "Parties Voting Neutral" in Section XV.C.

#### 4. Record of Voting

<b>PARTIES</b>	<b>NOT PRESENT</b>	<b>YES</b>	<b>NEUTRAL</b>	<b>NO</b>
AT&T		X		
CAISO	X			
CALTEL		X		
CCTA		X		
CFBF	X			
CMUA	X			
COMCAST		X		
COX			Abstain	
CPSD				X
CTIA		X		
DRA				X
EXTENET	X			
FACILITIES MANAGEMENT	X			
FRONTIER		X		
IBEW 1245		X		
LA COUNTY			X	
LADWP			X	
MUSSEY GRADE			X	
OSMOSE UTILITIES SERVICES	X			
NCPA	X			
NEXTG		X		
PACIFICORP		X		
PG&E			X	
SCE			X	
SDG&E			X	
SIERRA PACIFIC			X	
SMALL LECS		X		
SMUD			X	
SPRINT NEXTEL		X		
SUNESYS		X		
SURE WEST		X		
TIMEWARNER CABLE		X		
T-MOBILE		X		
TURN				X
TW TELECOM		X		
VERIZON		X		
DAVEY TREE	X			
BILL ADAMS	X			

**MAP NO. 15 – COST RECOVERY**



**XVI. MAP NO. 15 – COST RECOVERY**

**A. TURN and DRA Cost Recovery Proposal**

**1. Proposed Rule Change**

**a. Current Rule**

None.

**b. Strikeout/Underline**

For IOUs:

(1) Subject to a Commission reasonableness review in a general rate case proceeding, IOUs may be permitted to transfer the costs recorded in the Fire Hazard Prevention Memorandum Account (FHPMA) to the appropriate balancing account for recovery in rates.

(2) Pursuant to Commission rules and regulations, IOUs are required to support their recovery requests for FHPMA recorded costs as reasonable and justified.

For Small LECs:

(1) Each cost-of-service, regulated utility may recover its costs of complying with R. 08-11-015 by filing a general rate case and to the extent such costs are shown to be reasonable and justified.

(2) Utilities seeking to utilize memorandum accounts for rate recovery of these compliance costs must either use an existing memorandum account designated for this purpose or establish, via an advice letter, in accordance with D. 09-08-029 an appropriate memorandum account. Such advice letter should specify the accounting process for recording costs in the memorandum account and the approximate date when the small LECs would file general rate case application to recover such compliance costs.

**c. Proposed Final Rule**

For IOUs:

(1) Subject to a Commission reasonableness review in a general rate case proceeding, IOUs may be permitted to transfer the costs recorded in the Fire Hazard Prevention Memorandum Account (FHPMA) to the appropriate balancing account for recovery in rates.

(2) Pursuant to Commission rules and regulations, IOUs are required to support their recovery requests for FHPMA recorded costs as reasonable and justified.

For Small LECs:

(1) Each cost-of-service, regulated utility may recover its costs of complying with R. 08-11-015 by filing a general rate case and to the extent such costs are shown to be reasonable and justified.

(2) Utilities seeking to utilize memorandum accounts for rate recovery of these compliance costs must either use an existing memorandum account designated for this purpose or establish, via an advice letter, in accordance with D. 09-08-029 an appropriate memorandum account. Such advice letter should specify the accounting process for recording costs in the memorandum account and the approximate date when the small LECs would file general rate case application to recover such compliance costs.

## 2. Rationale

### a. The Joint Electric Utilities' and the Small LECs's (hereafter collectively referred to as "the Utilities") cost recovery proposals are inconsistent with the law.

According to D. 09-08-029, the Phase 1 Decision of R. 08-11-005:

To be clear, we do not find today that all costs incurred to comply with the revised rules will be *automatically* assumed to be reasonable but that, *after the Commission verifies* the reasonableness of costs, recovery will be permitted. [Emphasis added.]

The Utilities' proposals<sup>61</sup> would "automatically" entitle them to transfer costs recorded in a memorandum account "on an annual basis" to a balancing account for recovery in rates. No provision is made for a reasonableness review and approval by the Commission. Therefore, our proposals would require that before the Utilities are allowed to transfer safety compliance costs under R. 08-11-005 from a memorandum to a balancing account for recovery, the Commission would review and approve the reasonableness and justification for these costs in a general rate case proceeding.

### b. The Commission Prefers the GRC as the Review Mechanism for Reasonableness.

In D.09-08-029, it is held that the Commission should verify the reasonableness of the Utilities' safety compliance costs before their recovery in rates is allowed.<sup>62</sup> In a GRC, the Commission is able to review such costs based on a full and complete record and in the context of the Utilities' total revenues, expenses, and assets. By contrast in an advice letter process, less protections and safeguards are afforded ratepayers than in a GRC.<sup>63</sup> If the Commission intended to allow the use

<sup>61</sup> E-mail from B. Fong, DRA, to C.W. Lee, Leg. Div. Staff Cnsel, *et al.*, dated May 27, 2010 at 11:11 a.m., containing Utilities's cost recovery proposals as of that date (e.g., "(1) allow IOUs to transfer the costs recorded in the Fire Hazard Prevention Memorandum Account (FHPMA) on an annual basis to the appropriate balancing account for recovery in rates").

<sup>62</sup> D.09-08-029, p. 43, *available at* [http://docs.CPUC.ca.gov/word\\_pdf/FINAL\\_DECISION/106128.pdf/](http://docs.CPUC.ca.gov/word_pdf/FINAL_DECISION/106128.pdf/).

<sup>63</sup> *See e.g.*, CPUC Gen. Order 96B (2009), sec. 7, p. 10 ("Advice Letter Review and Disposition"), *available at* [http://docs.cpuc.ca.gov/word\\_pdf/GENERAL\\_ORDER/100177.pdf](http://docs.cpuc.ca.gov/word_pdf/GENERAL_ORDER/100177.pdf)

of the advice letter process, it would have specifically stated so. Therefore, when D. 09-08-029 states “the Commission verifies,” this indicates that the GRC is the appropriate mechanism for reviewing the Utilities safety compliance costs.

**c. The Advice Letter Process Would Deprive Ratepayers of their Due Process Right for an Opportunity To Be Heard.**

In the advice letter process, the Industry Division instead of the Commission would decide the reasonableness of the Utilities’ claimed costs based on data submitted *not* under oath and *not* subject to cross-examination by ratepayers or another interested party. Further, ratepayers would not have as a matter of right an opportunity to present written testimony or witnesses.<sup>64</sup> For these reasons, DRA and TURN advise against allowing the Utilities to use the advice letter process in lieu of a GRC, as a mechanism of reasonableness review.

**d. No Circumstances Are Claimed as Outweighing Having the Commission Verify the Reasonableness and Justification for the Utilities Recovery of Compliance Costs.**

During the Workshops in this proceeding, the Utilities did not present any exigent circumstances that would justify automatically authorizing the Utilities recovery or for that matter using an advice letter filing instead of a GRC. While, hypothetically, the compliance costs could amount to millions of dollars, the Utilities did not assert that they are financially unable to carry such costs in a memorandum account, which would be interest-bearing, until their next GRC. Therefore, the Utilities failed to show it is unreasonable to have the Commission verify the reasonableness of the Utilities’ safety compliance costs in a GRC.

**3. Justification**

- The specific electric utilities, CIPs, and others affected by the PRC.

Electric utilities, small LECs.

- The current text of the affected General Order(s), if any.

Not applicable.

- 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.

Not applicable.

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<sup>64</sup> *Id.*

- The specific fire hazard(s) addressed by the PRC and/or other objectives accomplished by the PRC.

Not applicable.

- How the PRC reduces or otherwise addresses the fire hazard(s) and/or achieves other objectives.

Not applicable.

- The anticipated costs of the PRC, including, if available, costs incurred by investor owned utilities, POU's, CIP's, and customers.

Not applicable.

- The anticipated benefits of the PRC.

Not applicable.

- Whether and how the costs will be recovered from customers.

Not applicable.

- Whether and how costs will be shared among electric utilities, CIP's, and others.

Not applicable.

- Why it is in the public interest to adopt the PRC.

Not applicable.

- If the PRC applies to electric transmission, why the rule does not conflict with other federal or state regulations.

Not applicable.

- 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 statues and/or regulations where the exemption is listed. Conversely, any assertion that CEQA and/or NEPA do apply must (1) cite the relevant statues 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.

Not applicable.

#### **4. Parties' Comments**

##### **a. Parties in Support**

###### CPSD

For the reasons stated by TURN and DRA, CPSD supports TURN's and DRA's cost recovery proposal.

##### **b. Parties in Opposition**

###### Small LECS

The Small LECs oppose TURN's and DRA's cost recovery proposal because it will lead to long delays in recovery, and because it ignores existing effective recovery processes. TURN's and DRA's proposal is inferior to the Joint Electric Utilities', Multi-Jurisdictional Electric Utilities', and Small LECs' Cost Recovery Proposal set forth below.

The TURN and DRA proposal, if adopted, would require each of the cost-of-service utility to wait until its next general rate case to recover the costs currently being recorded to comply with the new rules. Assuming each utility is given a three-year GRC cycle, then recovery of costs already incurred would not occur for several years, and the Small LECs would not have the option of recovering costs annually until such costs have been forecasted in a GRC and the memorandum account is closed. The benefits of permitting annual recovery are obvious. First, the costs being recorded should not be allowed to accumulate into a large, interest-bearing balance over a period of four or five years. Second, by stretching out the recovery period, the utilities will be denied the efficient cost recovery benefits of establishing a memorandum account in the first place.

An efficient annual process already exists for recovery of incremental, reasonable costs incurred by Small LECs to comply with "regulatory changes of industry-wide effect." See D.91-09-042, Appendix, Section B, 1991 WL 53188. The Small LECs' annual CHCF-A advice letter process is designed to allow for recovery of precisely these types of costs, and there has not been any indication in this proceeding that the Commission was considering modifying or limiting that recovery mechanism. Those annual CHCF-A filings are Tier III advice letter filings under G.O. 96-B, so the Commission must prepare a resolution approving the funding requests in those filings. This process gives DRA, intervenors, and Commission staff ample opportunity to participate and consider the reasonableness of the proffered costs before a resolution is prepared.

TURN's and DRA's PRC should be rejected in favor of the Joint Electric Utilities', Multi-Jurisdictional Electric Utilities', and Small LECs' Cost Recovery Proposal set forth below.

###### PG&E, SCE, and SDG&E (Joint Electric Utilities)

The Joint Electric Utilities oppose TURN's and DRA's cost recovery proposal because it would lead to long delays in recovery, would be unworkable in practice, and is inferior to the MAP cost recovery proposal below from the Joint Electric Utilities, Multi-Jurisdictional Electric Utilities, and Small LECs.

## Sierra Pacific

Sierra Pacific opposes TURN's and DRA's cost recovery proposal because it fails to provide the flexibility needed to ensure that Sierra Pacific can recover costs and fund programs necessary to comply with the measures adopted in Phase I and Phase II of R.08-11-005 in a timely manner. TURN's proposal only allows utilities to recover costs in a general rate case proceeding, which for Sierra Pacific, only occurs every three years. Although Sierra Pacific currently recovers Phase I costs recorded in its FHPMA in its general rate case, Sierra Pacific only does so because the current costs in its FHPMA are relatively small. However, should those costs increase based on new requirements adopted in Phase II, the option to recover costs on a timelier basis is necessary to ensure that funding exists for programs and measures needed to comply with the Phase I and Phase II decisions. Sierra Pacific should not be limited to recovering costs only once every three years, but should have the option to recover reasonably incurred costs on an annual basis should such costs become significant. For this reason, the Commission should reject TURN's cost recovery proposal and adopt the Joint Electric Utilities', Multi-Jurisdictional Utilities', and Small LECs' cost recovery proposal described below.

## 5. Record of Voting

PARTIES	NOT PRESENT	YES	NEUTRAL	NO
AT&T	X			
CAISO	X			
CALTEL	X			
CCTA	X			
CFBF	X			
CMUA	X			
COMCAST	X			
COX	X			
CPSD		X		
CTIA	X			
DRA		X		
EXTENET	X			
FACILITIES MANAGEMENT	X			
FRONTIER	X			
IBEW 1245	X			
LA COUNTY	X			
LADWP	X			
MUSSEY GRADE	X			
OSMOSE UTILITIES SERVICES	X			
NCPA	X			
NEXTG	X			
PACIFICORP				X
PG&E				X
SCE				X
SDG&E				X
SIERRA PACIFIC				X
SMALL LECS				X
SMUD	X			
SPRINT NEXTEL	X			
SUNESYS	X			
SURE WEST			Abstain	
TIMEWARNER CABLE	X			
T-MOBILE	X			
TURN		X		
TW TELECOM	X			
VERIZON	X			
DAVEY TREE	X			
BILL ADAMS			X	

**B. Joint Electric Utilities, PacifiCorp, Sierra Pacific and Small LECs Cost Recovery Proposal**

**1. Proposed Ordering Paragraph Rule Change**

**a. Current Language Rule**

None.

**b. Strikeout/Underline**

**Proposed Ordering Paragraph:**

Request that the Phase II decision adopt a cost recovery mechanism that would:

1. Entitle each cost-of-service regulated utility to recover reasonable costs prudently incurred to comply with the measures adopted in the Phase I and Phase II decisions of R.08-11-005.
2. Provide each cost-of-service regulated utility the option of recovering the costs of compliance in rate cases and/or through the use of an appropriate memorandum account established to record such costs (i.e. Fire Hazard Prevention Memorandum Account or “FHPMA”).
3. Allow each cost-of-service regulated utility that has established a FHPMA to transfer the costs recorded in the FHPMA on an annual basis to the appropriate balancing account for recovery in rates, if available (i.e. Distribution Revenue Adjustment Mechanism for PG&E, Base Revenue Requirement Balancing Account for SCE, Electric Distribution Fixed Cost Account for SDG&E, and Core and Noncore Fixed Cost Accounts for SoCalGas). Recovery of these costs will be part of annual revenue requirement and rate consolidation process (i.e. Annual Electric True-Up Advice Letter filing for PG&E, ERRA Forecast Proceeding for SCE, and a new annual FHPMA balance tier 3 advice filing for SDG&E and SoCalGas), the CHCF-A advice letter process for the Small LECs, or an appropriate advice letter filing for smaller cost-of-service regulated utilities.
4. Allow each cost-of-service regulated utility to recover the costs recorded in the FHPMA through a periodic Tier 3 Advice Letter filing. Small LECs may recover their costs through the annual CHCF-A adjustment process triggered by the CHCF-A advice letters filed on October 1<sup>st</sup> of each year.

**c. Proposed Final Ordering Paragraph Rule**

**Proposed Ordering Paragraph:**

Request that the Phase II decision adopt a cost recovery mechanism that would:



1. Entitle each cost-of-service regulated utility to recover reasonable costs prudently incurred to comply with the measures adopted in the Phase I and Phase II decisions of R.08-11-005.
2. Provide each cost-of-service regulated utility the option of recovering the costs of compliance in rate cases and/or through the use of an appropriate memorandum account established to record such costs (i.e. Fire Hazard Prevention Memorandum Account or “FHPMA”).
3. Allow each cost-of-service regulated utility that has established a FHPMA to transfer the costs recorded in the FHPMA on an annual basis to the appropriate balancing account for recovery in rates, if available (i.e. Distribution Revenue Adjustment Mechanism for PG&E, Base Revenue Requirement Balancing Account for SCE, Electric Distribution Fixed Cost Account for SDG&E, and Core and Noncore Fixed Cost Accounts for SoCalGas). Recovery of these costs will be part of annual revenue requirement and rate consolidation process (i.e. Annual Electric True-Up Advice Letter filing for PG&E, ERRA Forecast Proceeding for SCE, and a new annual FHPMA balance tier 3 advice filing for SDG&E and SoCalGas), the CHCF-A advice letter process for the Small LECs, or an appropriate advice letter filing for smaller cost-of-service regulated utilities.
4. Allow each cost-of-service regulated utility to recover the costs recorded in the FHPMA through a periodic Tier 3 Advice Letter filing. Small LECs may recover their costs through the annual CHCF-A adjustment process triggered by the CHCF-A advice letters filed on October 1<sup>st</sup> of each year.

## 2. Rationale

There are two cost recovery proposals presented in this workshop report because consensus was not reached during the workshops on language for a single proposal. The Joint Electric Utilities’, Multi-Jurisdictional Electric Utilities’ (PacifiCorp and Sierra Pacific), and Small LECs’ proposal is based on recognized cost-of-service ratemaking principles and the direction provided in D.09-08-029 (the Phase I Decision). The Phase I Decision provided the following guidance on cost recovery:

We find that each cost-of-service regulated utility is entitled to recover reasonable costs prudently incurred to comply with the changes to the Commission’s rules adopted today. To be clear, we do not find today that all costs incurred to comply with the revised rules will be automatically assumed to be reasonable but that, after the Commission verifies the reasonableness of costs, recovery will be permitted. We direct each cost-of-service regulated utility to record its costs in a memorandum account to avoid retroactive ratemaking.

We will address costs more fully in phase 2 and expect cost-of-service regulated utilities to provide cost data. We will decide the appropriate forum for seeking recovery of these costs in phase 2. In phase 2, we will also develop an appropriate tracking mechanism for these additional costs and decide how to incorporate these costs into each utility's general rate case. We do not, however, agree with SCE's proposal to only track "incremental" costs.

(See page 43.)

The Phase I Decision also provided, in Finding of Fact No. 24: "We find that each cost-of-service regulated utility is entitled to recover reasonable costs prudently incurred to comply with the measures adopted today. Small local exchange carriers which are on cost-of-service regulation will operate under the same cost recovery framework as electric companies."

The rationale for adoption of the Joint Electric Utilities' (JEU), Multi-Jurisdictional Electric Utilities' (MJU), and Small LECs' proposal over the TURN proposal follows.

a. The Phase I Decision, D.09-08-029, provides that "each cost-of-service regulated utility is entitled to recover reasonable costs prudently incurred to comply with the changes to the Commission's rules adopted today."<sup>65</sup> The JEU, MJU, and Small LEC proposal uses similar language to ensure that cost-of-service regulated utilities are entitled to recover reasonable costs prudently incurred to comply with both the Phase I Decision and the Phase II Decision, once adopted. By ensuring that cost-of-service regulated utilities can recover such costs, this proposal will provide necessary funding for programs and other actions necessary to comply with measures adopted in R.08-11-005.

b. The JEU, MJU, and Small LEC proposal utilizes existing processes in place for most of the affected utilities that are already used to review costs recorded in memorandum and balancing accounts (i.e. Annual Electric True-Up Advice Letter filing for PG&E, ERRA Review Proceeding for SCE, and the CHCF-A advice letter process for the Small LECs). Alternatively, the utilities would have the option of filing annually or less often a Tier 3 Advice Letter to recover the costs recorded to date (e.g., SDG&E and SoCalGas propose a new annual FHPMA balance tier 3 advice letter). Each of these processes include at minimum protest periods and full review by the Commission ending with a final decision or resolution.

c. The JEU, MJU, and Small LEC proposal also ensures that each cost-of-service regulated utility can recover reasonably incurred costs in a timely manner while providing flexibility to account for the different characteristics and different cost recovery mechanisms available to the cost-of-service regulated utilities. For example, PacifiCorp and Sierra Pacific currently do not have an annual balancing account process like the other investor owned utilities allowing costs to be trued up and recovered once a year. At this time, the Phase I costs for PacifiCorp and Sierra Pacific have not been significant and justifiably need not be recovered more than every three years in a general rate case. However, should incurred costs increase once

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<sup>65</sup> D.09-08-029, p. 43.

the Phase II Decision is adopted, PacifiCorp and Sierra Pacific need the flexibility to recover such costs on a timely basis. Similarly, the Small LECs already have an annual CHCF-A filing mechanism in place that provides an efficient vehicle for cost recovery. The proposal allows cost-of-service regulated utilities the option of filing an advice letter to recover reasonably incurred costs on a cycle of the utilities' choosing. This will allow the most efficient and effective cost recovery for each individual utility to ensure compliance with any measures adopted in R.08-11-005.

d. The TURN proposal, if adopted, would require that costs recorded in the memorandum account be presented for approval in a future general rate case. The proponents of the JEU, MJU, and Small LEC proposal believe that, in addition to the other problems identified above, this requirement will add unnecessary complexity to the GRC process. Generally, a GRC is used to forecast future expenses. By adding a requirement that the GRC also include a request for recovery of recorded costs, especially when testimony for a GRC is prepared 18 months in advance of a decision (and costs will continue to be recorded up to the date of a decision), the applicant, DRA, and intervenors will have to prepare and argue a separate case within the GRC regarding the reasonableness of those recorded costs. This added complexity is unnecessary when another already tested process for recovering costs in the memorandum account is available. The utility proposal utilizes more traditional procedures for review and recovery of recorded costs, resulting in a more efficient and effective process not only for the utilities, but also for intervening parties.

e. In addition, the TURN proposal, if adopted, would require each of the cost-of-service utilities to wait until its next GRC to recover any of the costs currently being recorded to comply with the new rules. Assuming each utility is given a three-year GRC cycle, then recovery of costs already incurred would not occur until 2014 for PG&E, or 2015 for SCE, SDG&E, and SoCalGas, a delay of four or five years.<sup>66</sup> Under the JEU, MJU, and Small LEC proposal, utilities would have the option of recovering costs annually until such costs have been forecasted in a general rate case and the memorandum account is closed. The benefits of permitting annual recovery are obvious. First, the costs being recorded should not be allowed to accumulate into a large, interest-bearing balance over a period of four or five years. Large accumulation of costs, accrued interest and a higher rate impact can be avoided with a cost recovery mechanism designed on a more frequent cycle than the three-year GRC cycle. Second, by prolonging the recovery period, the benefits of having a memorandum account are diminished, because the utilities lose the ability to use its authorized funds for authorized purposes. And third, in the case of SCE, SDG&E, and SoCalGas, delaying recovery will create a paradox where the forecast costs for these activities will be embedded in their 2012 GRC decisions, but recovery of recorded costs through 2012 will not be recovered until the 2015 GRC decision.

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<sup>66</sup> PG&E, SCE, SDG&E, and SoCalGas have already prepared their NOIs for either a 2011 or 2012 rate case without seeking cost recovery for costs incurred due to the Phase I Decision. Recorded costs for these activities were not included in these filings because (1) such costs had been incurred for a period of only a few months, and (2) because no decision from the Commission setting forth the process for cost recovery has yet been adopted. SCE, SDG&E, and SoCalGas have forecast costs resulting from the Phase I Decision in their 2012 GRCs, and would propose that those costs no longer be recorded in the memorandum account following their respective 2012 GRC decisions.

f. The JEU, MJU, and Small LEC proposal also recognizes that an efficient annual process already exists for recovery of incremental, reasonable costs incurred by Small LECs to comply with “regulatory changes of industry-wide effect.” See D.91-09-042, Appendix, Section B, 1991 WL 53188. The Small LECs' annual CHCF-A advice letter process is designed to allow for recovery of precisely these types of costs, and there has never been any indication in this proceeding that the Commission was considering modifying or limiting that recovery mechanism. Those annual CHCF-A filings are Tier 3 Advice Letter filings under G.O. 96-B, so the Commission must prepare a resolution approving the funding requests in those filings. This process gives both DRA and intervenors ample opportunity to participate and consider the reasonableness of the proffered costs.

### 3. Justification

- The specific electric utilities, CIPs, and others affected by the PRC.

All the investor-owned electric and gas utilities, including PG&E, SCE, SDG&E, SoCalGas, PacifiCorp, and Sierra Pacific, and all rate-of-return regulated CIPs (the Small LECs).

- The current text of the affected General Order(s), if any.

None.

- 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.

See B.1.b. above, which sets forth the text of the cost recovery proposal that the proponents request be adopted by the Commission in the Phase II Decision. This proposal would not be part of any General Order.

- The specific fire hazard(s) addressed by the PRC and/or other objectives accomplished by the PRC.

This proposal addresses the requirement adopted in D.09-08-029 (the Phase I Decision), Finding of Fact No. 24: “We find that each cost-of-service regulated utility is entitled to recover reasonable costs prudently incurred to comply with the measures adopted today.” The Phase I Decision also stated that the proper forum and process for recovery of these costs would be decided in Phase II (page 43). Additionally, this proposal allows cost-of-service regulated utilities to recover reasonable costs prudently incurred to comply with measures adopted in the Phase I and Phase II Decisions of R.08-11-005. This will provide the funding necessary for these utilities to comply with all applicable fire hazard rules and requirements adopted in R.08-11-005.

- How the PRC reduces or otherwise addresses the fire hazard(s) and/or achieves other objectives.

This proposal achieves the cost recovery objectives specified in the Phase I Decision as well as cost recovery for complying with new Phase II requirements by providing a process for such costs to be reviewed for reasonableness on an annual (or less frequent) basis via either a previously established process for each utility or a Tier 3 Advice Letter. By allowing recovery of reasonable costs prudently incurred to comply with fire hazard rules and measures adopted in Phase I and Phase II, this proposal will ensure that all measures adopted in R.08-11-005 will be adequately addressed and that steps taken to address those measures will be appropriately funded.

- The anticipated costs of the PRC, including, if available, costs incurred by investor owned utilities, POU's, CIPs, and customers.

The adoption of this cost recovery proposal is not expected to have any significant impact on the costs incurred by investor owned utilities, POU's, or CIPs. Although this proposal provides the process for cost-of-service regulated utilities to recover reasonably incurred costs from their customers, the proposal and process itself are not anticipated to have any cost impacts on customers. The costs of complying with other measures adopted in R.08-11-005 are described in the "Justification" section of other proposals.

- The anticipated benefits of the PRC.

This proposal preserves the basic cost-of-service ratemaking principle that utilities are entitled to recover costs of complying with regulations adopted after the last general rate case, and which are not, therefore, included in current rates. The alternative is to delay implementation until such compliance costs are forecast and adopted in a rate proceeding. In this case, all parties agree that immediate implementation of these new rules, and the recovery of the costs that are incurred, is preferable to delayed implementation. This proposal also preserves the utilities' incentives to spend currently authorized revenue where needed rather than diverting such revenue to cover the new forecast costs of compliance. By doing so, this proposal will ensure that cost-of-service regulated utilities have adequate funding to comply with all measures adopted in R.08-11-005 to help reduce fire hazards.

- Whether and how the costs will be recovered from customers.

Not applicable, as there should be no significant costs associated with this proposed process that will need to be recovered. The costs of complying with other measures adopted in R.08-11-005 are described in the "Justification" section of other proposals.

- Whether and how costs will be shared among electric utilities, CIPs, and others.

This proposal provides that each utility will separately seek from its own customers its costs of compliance with the new rules.

- Why it is in the public interest to adopt the PRC.

It is in the public interest to provide certainty of recovery of costs prudently incurred to comply with the new rules because such recovery preserves the utilities' incentives to spend authorized amounts where needed while providing the revenue necessary to cover the additional costs of compliance with the new rules. This ensures that the utilities' compliance activities are sufficient to meet the requirements of the new rules without compromising any other necessary operational activities and will help to reduce fire hazards. Also, this proposal, unlike the alternative proposed by TURN, will result in a more efficient regulatory process, given that cost recovery will take place in a more traditional forum than through a Test Year GRC.

- If the PRC applies to electric transmission, why the rule does not conflict with other federal or state regulations.

Although this proposal does not specifically address electric transmission, to the extent that costs are incurred to comply with new electric transmission rules, such costs, if CPUC jurisdictional, will be included. This cost recovery principle is in harmony with federal and 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.

This proposal is exempt from environmental review under Section 15378 of the California Environmental Quality Act (CEQA) Guidelines because it is not a "project" under CEQA and will not have any potentially significant impact on the environment. NEPA does not apply because adoption of the proposed rule change does not constitute action by a federal agency within the meaning of 42 USC § 4332.

#### **4. Parties' Comments**

##### **a. Parties in Support**

PacifiCorp, PG&E, SCE, SDG&E, Sierra Pacific, and the Small LECs

PacifiCorp, PG&E, SCE, SDG&E, Sierra Pacific, and the Small LECs support this cost recovery proposal for the reasons stated in the rationale.

##### **b. Parties in Opposition**

TURN and DRA

TURN and DRA oppose the cost recovery proposal of the Joint Electric Utilities (JEU) and Small LECs, because the proposal contemplates the recovery of costs through annual advice letters. According to D.09-08-029, the costs incurred to comply with the revised rules should not

be “automatically” assumed to be reasonable. The Commission must verify their reasonableness before recovery is allowed.<sup>67</sup> Using the advice letter process would shift the reasonableness review from the Commission to an Industry Division and thus deny ratepayers due process.

The advice letter process does not provide for formal discovery, nor requires testimony under oath, and does not allow for cross-examination. These mechanisms would afford ratepayers the most effective opportunity to be heard and to probe the reasonableness of the proposed costs. Furthermore, in an advice letter process the Industry Division’s review need not be based on a full and complete record and include specific written findings of fact or conclusions of law. Instead, an advice letter filing may consist of opinions, speculation, or unsupported data.

By contrast, reviewing the reasonableness of incurred costs as part of the utilities’ next GRCs not only would give DRA and intervenors a chance to discover, testify, and cross-examine but also would enable the Commission to review these costs in the context of the utilities’ entire budgets for vegetation management, pole inspection, and maintenance, in a proceeding when parties are already engaged in a close review of similar costs. This would be more efficient and effective use of Commission and intervenor resources than the advice letter process.

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<sup>67</sup> D.09-08-029, p. 43.

**5. Record of Voting**

<b>PARTIES</b>	<b>NOT PRESENT</b>	<b>YES</b>	<b>NEUTRAL</b>	<b>NO</b>
AT&T	X			
CAISO	X			
CALTEL	X			
CCTA	X			
CFBF	X			
CMUA	X			
COMCAST	X			
COX	X			
CPSD			X	
CTIA	X			
DRA				X
EXTENET	X			
FACILITIES MANAGEMENT	X			
FRONTIER	X			
IBEW 1245	X			
LA COUNTY	X			
LADWP	X			
MUSSEY GRADE	X			
OSMOSE UTILITIES SERVICES	X			
NCPA	X			
NEXTG	X			
PACIFICORP		X		
PG&E		X		
SCE		X		
SDG&E		X		
SIERRA PACIFIC		X		
SMALL LECS		X		
SMUD	X			
SPRINT NEXTEL	X			
SUNESYS	X			
SURE WEST			X	
TIMEWARNER CABLE	X			
T-MOBILE	X			
TURN				X
TW TELECOM	X			
VERIZON	X			
DAVEY TREE	X			
BILL ADAMS			X	