

Decision 09-08-029 August 20, 2009

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

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

**DECISION IN PHASE 1 – MEASURES TO REDUCE FIRE HAZARDS
IN CALIFORNIA BEFORE THE 2009 FALL FIRE SEASON**

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DECISION IN PHASE 1 – MEASURES TO REDUCE FIRE HAZARDS IN CALIFORNIA BEFORE THE 2009 FALL FIRE SEASON

Summary

Today's decision implements measures for electric transmission and distribution lines and related communication facilities to reduce fire hazards in California before the start of the 2009 fall fire season. Some of the measures we adopt today apply to those geographic areas in Southern California defined as "Extreme and Very High Fire Threat Zones." We also adopt statewide measures. We direct all entities subject to these measures to use all reasonable means to implement the measures before the 2009 fall fire season starts. We find that each cost-of-service regulated utility is entitled to recover reasonable costs prudently incurred to comply with the measures adopted today. In phase 2 of this proceeding, we will continue our review of fire hazards related to electric transmission and distribution lines and related communication facilities and consider additional measures to address fire safety on a statewide basis.

The measures we adopt today are summarized below:

- An ordering paragraph directing communication infrastructure providers to comply with the requirements of General Order 95 in "Extreme and Very High Fire Threat Zones" in Southern California. In phase 2 of this proceeding, we intend to incorporate language into General Order 95 to explicitly include communication infrastructure providers.
- Minor revisions to Rule 12 of General Order 95 to clarify the broad applicability of this rule to include, among things, communication facilities and communication infrastructure providers. In phase 2, we will continue to evaluate whether further revisions to Rule 12 are needed.
- A new rule, Rule 18, for General Order 95 to establish an auditable maintenance program, a notification procedure for

safety hazards, and a method to prioritize corrective actions for General Order 95 violations.

- References in General Order 95 to a map identifying designated “Extreme and Very High Fire Threat Zones” in Southern California.
- A new rule, Rule 19, for General Order 95 to clarify the existing obligation to cooperate with Commission staff investigations and to preserve evidence. This measure applies statewide.
- Clarification to Rule 35 of General Order 95 to change all references to the existing term “tree trimming” to “vegetation management” due to ongoing confusion over what type of vegetation constitutes a “tree.” This measure applies statewide.
- Interim revisions to Appendix E of General Order 95 to increase the minimum vegetation clearance at the time of trim for “Extreme and Very High Fire Threat Zones” in Southern California. We adopt these revisions as an interim measure pending further review of cost data in phase 2.
- Interim revisions to Rule 37 of General Order 95 to expand the minimum radial vegetation clearances for certain electric lines in “Extreme and Very High Fire Threat Zones” in Southern California.
- Clarify the existing requirement in Rule 38 (Table 2) of General Order 95 of taking known local conditions into account when designing, constructing, and maintaining facilities, specifically conductor separation, in areas subject to high winds. This clarification applies statewide.
- New rule for General Order 95, Rule 44.2, to address public safety issues related to pole overloading and resulting increased fire hazards. Today’s decision adopts statewide application of our new rule to address pole overloading. A related ordering paragraph is also adopted with specific time periods for

exchanging information and exemptions for pole loading calculations. These issues will be revisited in phase 2.

- Changes to General Order 165 to increase the current frequency of patrol inspections in rural areas within the “Extreme and Very High Fire Threat Zones” in Southern California. The costs associated with increase patrols will be addressed in phase 2.

1. Background

The Commission initiated this Order Instituting Rulemaking (OIR) on November 13, 2008 to consider revising and clarifying its regulations designed to protect the public from potential hazards, including fires, which may be caused by electric transmission, distribution, and related communication infrastructure providers’ facilities. The OIR set forth an initial scope for the proceeding that included the following six areas for consideration:

1. Immediate reporting of fire-related incidents and full cooperation with Commission staff.
2. Applying General Order 1651 or similar maintenance and inspection requirements to all electric transmission and communication infrastructure providers’ facilities located on poles owned by publicly-owned utilities.
3. Overloading of utility poles.
4. Prompt reporting and resolution of hazards and violations that one pole occupant may observe in another pole occupant’s facilities.
5. Vegetation management in high risk fire areas.
6. Mitigating of fire hazards in high speed wind area.

¹ General Order 165 can be found at the Commission’s home page, <http://www.cpuc.ca.gov>.

On December 3, 2008, parties filed comments on the appropriate scope of this proceeding. Parties filed reply comments on December 17, 2008. On January 6, 2009, the Assigned Commissioner issued a ruling and scoping memo (ACR) and included the six areas described above in the scope of this proceeding. Importantly, the ACR found that “Electric Utilities and CIPs should not wait for the results of this rulemaking proceeding before implementing reasonable measures to reduce or mitigate potential fire hazards associated with their facilities.”² The ACR also split the proceeding into two phases. The primary focus of phase 1 of the proceeding, as described by the ACR, is to consider measures to reduce fire hazards in Southern California but consideration of statewide measures is also permitted.³

Five days of workshops were held in February. During these workshops, the Commission’s Consumer Protection and Safety Division (CPSD) facilitated the meetings and established the agenda. Consistent with the ACR, CPSD offered parties the opportunity to present their positions on measures within each of the six areas identified in the OIR for implementation before the 2009 fall fire season in California. Following workshops, on March 6, 2009, CPSD filed its proposed rules as required by the ACR.

The following parties participated in workshops: Pacific Bell Telephone Company d/b/a AT&T California (AT&T); CPSD; the Commission’s Division of Ratepayer Advocates (DRA); California Cable TV Association (CCTA); California Farm Bureau Federation (CFBF); California Municipal Utilities Association

² ACR, pp. 6-7.

³ ACR, pp. 2-3.

(CMUA);⁴ California Association of Competitive Telecommunications Carriers (CALTEL); CTIA-The Wireless Association (CTIA); Comcast Phone of California (Comcast); County of Los Angeles Fire Department (LA County); Cox Communications (Cox); Davey Tree; Los Angeles Department of Water and Power (LADWP); Mussey Grade Road Alliance; Pacific Gas and Electric Company (PG&E); PacifiCorp; Sacramento Municipal Utility District (SMUD); San Diego Gas and Electric Company (SDG&E); Sempra Energy; Sierra Pacific Power Company (Sierra Pacific); Southern California Edison (SCE); The Utility Reform Network (TURN); T-Mobile; Verizon California Inc. (Verizon).

Opening comments on CPSD's proposed rules were filed on March 27, 2009 and reply comments were filed on April 8, 2009. PG&E, SCE, SDG&E, PacifiCorp, and Sierra Pacific filed motions requesting evidentiary hearings. On April 14, 2009, the Commission held a prehearing conference. At this prehearing conference, the investor-owned electric utilities suggested that more progress on the development of workable rules would be made if informal technical workshops were held among the parties, rather than spending time preparing for evidentiary hearings in phase 1.

As a result, on April 20, 2009, Administrative Law Judge (ALJ) Kenney issued a ruling cancelling evidentiary hearings, setting workshops, and making

⁴ CMUA electric utility members are the Cities of Alameda, Anaheim, Azusa, Banning, Burbank, Cerritos, Colton, Corona, Glendale, Healdsburg, Lodi, Lompoc, Los Angeles, Needles, Palo Alto, Pasadena, Rancho Cucamonga, Redding, Riverside, Roseville, Santa Clara, and Vernon, as well as the Imperial, Merced, Modesto, Turlock Irrigation Districts, the Northern California Power Agency, Southern California Public Power Authority, Transmission Agency of Northern California, Lassen Municipal Utility District, Power and Water Resources Pooling Authority, Sacramento Municipal Utility District, the Trinity and Truckee Donner Public Utility Districts, the Metropolitan Water

Footnote continued on next page

other revisions to the procedural schedule. PG&E hosted two days of informal workshops in San Francisco on April 28 and 29, 2009. Following the workshops, parties contributed to the development of the Joint Party Workshop Report (Workshop Report) filed on May 14, 2009.

The Workshop Report contains the final version of the proposals by CPSD. The Workshop Report also sets forth the various positions of other parties and alternative language or proposals for the Commission's consideration. Because this decision contains numerous references to the Workshop Report, it is included as **Attachment A** hereto. Parties filed opening and reply briefs in phase 1 of this proceeding on May 22, 2009 and June 1, 2009, respectively. This proceeding remains open for consideration of issues in phase 2.

2. Overarching Principles and Issues

Parties raised a number of overarching issues that impact the outcome of phase 1 of this proceeding. Rather than addressing the merits of these arguments separately, we address these arguments, with one exception, in the following discussions on specific proposals. The one issue we address now is whether the adopted rule revisions or ordering paragraphs implicate the California Environmental Quality Act (CEQA). This matter is addressed here because the issue is not raised in the context of any rule proposal but instead only appears in broader discussions. We find that CEQA does not apply to the measures adopted today. The measures do not require any activity that would be considered a project under CEQA.

District of Southern California, and the City and County of San Francisco,
Hetch-Hetchy.

3. Jurisdiction Issues

As required by the Public Utilities Code, “[e]very public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities ... as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.” (Pub. Util. Code § 451.) In our broad grant of jurisdiction over public utilities in California, we are authorized to “do all things, whether specifically designated in ... [the Public Utilities Act] or in addition thereto, which are necessary and convenient” to our regulation of public utilities, including, though not limited to, adopting necessary rules and requirements in furtherance of our constitutional and statutory duties to regulate and oversee public utilities operating in California. (Pub. Util. Code § 701.)

This Commission has comprehensive jurisdiction over questions of public health and safety arising from utility operations. (San Diego Gas & Electric v. Superior Court, (1996) 13 Cal.4th 893, 923-924.) Our jurisdiction to regulate these entities is set forth in the California Constitution and in the Public Utilities Code. (Cal. Constit., Art. 12, §§ 3, 6; Pub. Util. Code §§ 216, 701, 768, 1001.) While such utilities are required to “obey and comply with every order, decision, direction, or rule made or prescribed by the [C]ommission” (Pub. Util. Code § 702; see §§ 761, 762, 767.5, 768, 770), the Commission is also obligated to see that the provisions of the Constitution and state statutes affecting public utilities are enforced and obeyed. (Pub. Util. Code § 2101.)

Under Pub. Util. Code §§ 8002, 8037, and 8056, the Commission’s jurisdiction extends to publicly-owned utilities for the limited purpose of adopting and enforcing rules governing electric transmission and distribution facilities to protect the safety of employees and the general public. As stated in the ACR, this proceeding will not litigate the “Commission’s determination in

the OIR [that it has jurisdiction over municipal utilities]" for this limited purpose. Accordingly, this issue is settled and will not be revisited here.

Our jurisdiction over questions of public health and safety arising from utility operations is not constrained by federal law. In 1978, Congress enacted the Pole Attachments Act (47 U.S.C. § 224) which gave the Federal Communications Commission (FCC) jurisdiction to regulate the rates, terms, and conditions of attachments by cable television operators to the poles, ducts, conduits or rights of way (ROW) owned or controlled by utilities. In the Telecommunications Act of 1996 (the "Telecom Act") Congress expanded the scope of § 224 to include pole attachments by telecommunications carriers.

As set forth in § 224(c)(1), however, the FCC does not have "jurisdiction with respect to rates, terms, and conditions, or access to poles, ducts, conduits, and rights-of-way as provided in subsection (f) for pole attachments in any case where such matters are regulated by a State." We certified to the FCC that we regulate the rates, terms, and conditions of access to poles, conduits, ducts, and ROW in conformance with §§ 224(c)(2) and (3). (*Order Instituting Rulemaking on the Commission's Own Motion Into Competition for Local Exchange Service* (1998) 82 CPUC2d 510, 531, *modified by* 6 CPUC3d 1.) The discretion of state and local authorities to regulate in the area of pole attachments is circumscribed by § 253 which invalidates all state or local legal requirements that "prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." However, this restriction does not prohibit a state from imposing "on a competitively neutral basis and consistent with Section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers." (47 U.S.C. § 253 (b); (emphasis added).)

Likewise, the Cable Communications Policy Act of 1984, which clarified the dual system of jurisdiction over cable companies, does not preclude States from asserting direct jurisdiction over cable services and facilities in public safety matters. Under this system, the FCC regulates company ownership and control, leased access, local commercial television signal carriage and educational signal carriage, basic service rates, competition and diversity in programming, subscriber privacy, and other matters. State and local franchising authorities regulate, among other things, facilities and equipment, construction, health and safety. The FCC has not preempted the States with regard to issues related to the construction, maintenance, or operations of cable plant and equipment in a safe manner. The Cable Act specifically states that it must not be construed to restrict a State from exercising jurisdiction over cable services, consistent with the Act. (47 U.S.C. § 556 (b).) Furthermore, the Act specifically grants States jurisdiction over cable service in safety matters. (47 U.S.C. § 556 (a).)

The California Legislature has asserted such jurisdiction. The California Legislature gave the Commission direct authority to regulate cable companies with regard to the safe construction, maintenance and operation of their plant and equipment in Section 768.5 of the Public Utilities Code.

4. Electric Transmission Issues

We defer to phase 2 of this proceeding the issue of whether to apply the maintenance and inspection requirements of General Order 165 to electric overhead transmission facilities. In CPSD's initial proposal for phase 1 of this proceeding, CPSD included this issue in phase 1.⁵ CPSD ultimately withdrew

⁵ CPSD's Proposed Rules to Be Implemented in Time for the 2009 Fall Fire Season filed March 9, 2009, pp. 29-34.

this proposal from phase 1. No party objected. We agree with CPSD's recommendation. Accordingly, we will address this matter in phase 2.

5. Measures to Reduce Fire Hazards before the 2009 Fall Fire Season

Recent wildfires in California may have been linked to electric and communications facilities and have resulted in widespread destruction. Accordingly, we have acted expeditiously to strengthen and clarify rules which govern the safety of electric and communications utilities. Today, we adopt the following measures to reduce fire hazards associated with electric transmission and distribution facilities and related communication infrastructure.

Some local conditions in Southern California, such as the Santa Ana winds present especially hazardous condition and potentially contribute to the ignition of fires related to utility infrastructure. The proliferation of communications infrastructure sharing poles with electric facilities may also increase the likelihood of more devastating fires if facilities and poles are not properly maintained.

Many of these safety measures adopted today apply exclusively in areas defined in this decision as "Extreme and Very High Fire Threat Zones" in Southern California. However, a few of the measures apply statewide. We have incorporated these measures into specific rules found in General Order 95,⁶ General Order 165, or specific directives in the ordering paragraphs of this decision. Some of our measures are designated as interim. We expect to address the future applicability of such interim measures in phase 2.

⁶ General Order 95 is available at the Commission's home page, <http://www.cpuc.ca.gov>.

5.1. Ordering Paragraph—Inspections of Overhead Facilities by Communication Infrastructure Providers

We adopt the ordering paragraph set forth below in response to concerns expressed by CPSD that communication infrastructure providers may need additional guidance in performing inspections of overhead facilities installed on electric infrastructure equipment and structures.

This ordering paragraph requires communication infrastructure providers to begin to take specific inspection and corrective actions within the next few months. By requiring certain preventative actions be taken, we are promoting public safety in high fire threat areas. This ordering paragraph serves to temporarily supplement General Order 95 and will remain in effect until we issue a decision in phase 2 of this proceeding. In phase 2, the Commission may decide to incorporate all or part of this ordering paragraph into final rules adopted at that time.

All terms used in this ordering paragraph shall be defined consistent with the terms set forth in General Order 95. The definition of the term “Communication Infrastructure Provider” is included in this ordering paragraph and is defined as any entity that has attached facilities to an electric utility’s poles for the purpose of providing communication services.⁷

As explained in the Workshop Report, attached hereto at **Attachment A**, CPSD initially proposed changing Rule 31.2 of General Order 95 to include a specific inspection directive for communication infrastructure providers. In

⁷ Workshop Report (**Attachment A** hereto), p. 16: SCE expressed concern that “communication infrastructure providers” is an undefined term. SCE offered a proposed definition. No other party provided comments on this proposal or offered a definition.

response, parties suggested that, due to the narrow geographic focus of CPSD's proposal, an ordering paragraph rather than changes to General Order 95 would be more appropriate. We agree.

CPSD raised other meritorious issues regarding the application of General Order 95 to communication infrastructure providers and suggested modifications to General Order 95 to address these issues. CPSD's suggestions have merit but, due to the complicated administrative nature of revising General Order 95, we find that these questions and any resulting modifications to General Order 95 should be addressed in phase 2 of this proceeding. Today we clarify that General Order 95 applies to communication infrastructure providers.

Regarding objections by parties to the specific provisions of this interim ordering paragraph, we reject or defer these arguments to phase 2. We reject the CIP Coalition's⁸ proposal to address these inspection and maintenance issues by incorporating a set of rules into General Order 95 that exclusively applies to communication infrastructure providers. This proposal needlessly complicates a

⁸ The CIP Coalition includes a number of active parties, including AT&T and New Cingular Wireless PCS, LLC, CALTEL, the California Cable & Telecommunications Association, Comcast Phone of California, LLC, Cox California Telcom LLC, CTIA-The Wireless Association®, the Small LECs, SureWest Telephone and the Verizon companies⁸ (collectively, the "CIP Coalition"). The Small LECs include the following: Calaveras Telephone Company, Cal-Ore Telephone Co., Ducor Telephone Company, Foresthill Telephone Co., Happy Valley Telephone Company, Hornitos Telephone Company, Kerman Telephone Co., Pinnacles Telephone Co., The Ponderosa Telephone Co., Sierra Telephone Company, Inc., The Siskiyou Telephone Company, Volcano Telephone Company, and Winterhaven Telephone Company. As reflected in the Workshop Report (**Attachment A** hereto), the Small LECs and CALTEL support the CIP Coalition Proposal with the exception of the proposal for Rule 122B. The Verizon Companies include the following: MCI Communications Services, Inc., d/b/a Verizon Business Services, MCI Metro Access Transmission Services, d/b/a Verizon Access Transmission Services, TTI National, Inc., d/b/a Verizon Business Services, Verizon California Inc., and Verizon West Coast.

general order that already applies to these utilities. The CIP Coalition also suggested postponing the date for inspection compliance until December 31, 2010. We reject this suggestion as the proposed date falls beyond our goal of implementing these measures before the 2009 fall fire season.

We do not modify the language of the interim ordering paragraph in response to complaints that the boundaries of the Fire Threat Map are ambiguous. While we agree with PG&E that the map is an imperfect tool, we find CPSD's language sufficient for the purpose of this interim ordering paragraph and we will modify this language as needed in phase 2.

We also reject arguments that corrective actions and documentation are unnecessary or excessively burdensome. Corrective action is critical to achieve our goal of fire prevention. Documentation is needed to verify adequate inspections and corrective actions. As stated by SDG&E, "it makes no sense for the CIPs to be allowed to ignore safety problems they uncover during their inspections, and to keep no records of their inspections. Public safety requires more than unverifiable inspections two winters from now that lead to no corrective actions."⁹

The interim ordering paragraph adopted today is set forth below:

⁹ Workshop Report (**Attachment A** hereto), p. 25.

Interim Ordering Paragraph: The term “Communication Infrastructure Provider” or “CIP” is defined as any entity that has attached facilities to an electric utility’s poles for the purpose of providing communication services. 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 boundaries of the Fire Threat Map shall be broadly construed, and CIPs should use their own expertise and judgment to determine if local conditions require them to adjust the boundaries of the map. The CIPs’ 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. The CIPs shall take appropriate corrective action of any safety hazards or violations of General Orders 95 that are identified during the patrol inspections. The patrol inspections shall be completed no later than September 30, 2010. CIPs shall maintain documentation which would allow Commission staff to verify that such inspections and corrective actions were completed, including the location of the poles/equipment inspected, the date of inspection, and the personnel that performed the inspection and corrective action. Such documentation shall be retained for five years. “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.

5.2. General Order 95, Rule 12: Applicability of Rules to Communication Facilities

We adopt minor revisions to Rule 12 of General Order 95 in an effort to clarify the applicability of this general order. Consistent with SCE’s recommendation, we replace the term “lines” in Rule 12 with the more comprehensive and modern term “facilities.” We also incorporate the term “non-electric utilities” into Rule 12 in an effort to clarify the broad application of this rule and that it includes communication facilities and communication infrastructure providers. In phase 2 of this proceeding, we will continue to evaluate whether further revisions to Rule 12 are needed. The revisions adopted today do not rely on any findings that communication facilities cause or contribute to fires. We simply clarify that General Order 95 includes communication facilities.

SCE suggested that “non-electric utilities” may not have been properly noticed of this rulemaking. We disagree. The Commission noticed this proceeding consistent with our Rules of Practice and Procedure. Nothing further is warranted.

CPSD recommended that we change the focus of Rule 12 by including the term “owners.” We reject this suggestion. At this point in the proceeding, we find that this recommendation would create ambiguity rather than clarify the rule.

CPSD also recommended that we adopt language expressly stating that General Order 95 applies to municipal electric utilities. CPSD makes this recommendation in response to CPSD’s claim that it encounters resistance from publicly-owned utilities when seeking to enforce the Commission’s rules and regulations concerning the safety of overhead and underground electric transmission and distribution facilities. In response to CPSD’s concerns, we urge greater cooperation with CPSD. We agree with SCE that Rule 12 is sufficient to bind all entities that fall within the Commission’s jurisdiction and again restate that under Pub. Util. Code §§ 8002, 8037, and 8056, the Commission’s jurisdiction extends to publicly-owned utilities for the limited purpose of adopting and enforcing rules governing electric transmission and distribution facilities to protect the safety of employees and the general public.

We find that the rule modifications adopted today are consistent with the scope of phase 1 of this proceeding and disagree with the argument that these changes will not enhance fire safety in Southern California during the upcoming fall fire season.

We also reject the CIP Coalition’s suggestions that the Commission adopt four new rules to General Order 95 to specifically address communication

facilities and fire hazards in Southern California. The CIP Coalition's proposal needlessly complicates General Order 95.

The adopted revised Rule 12 of General Order 95 is set forth below:

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:

[The remainder of Rule 12 has been omitted here, but shall remain unchanged.]

5.3. General Order 95, Rule 18: Reporting and Resolution of Safety Hazards Discovered

We add Rule 18 to General Order 95 to establish an auditable utility maintenance program, provide a framework for notification of safety hazards involving equipment owned by one company and discovered by another company, and prioritize corrective actions for General Order 95 violations. While CPSD offered its proposal to incorporate a new Rule 18 to ensure, among other things, adequate recordkeeping, some parties, including SDG&E, pointed out that certain companies already operate under their own comprehensive rules for the purpose of maintenance. These rules relate to the utilities' existing General Order 165 maintenance programs. SDG&E suggested that these companies should be permitted to continue to rely on their existing rules. To the extent that the purpose of these existing rules is consistent with Rule 18, we agree. As a result, we adopt SDG&E's proposed revisions to CPSD's recommendation. We also note that the added Rule 18 is not intended to preempt any stricter local rules establishing priority systems for correcting safety hazards.

The CIP Coalition and other parties argued that the addition of this Rule 18 should be rejected because the reporting requirements are burdensome, overly prescriptive, and unduly costly. The addition of Rule 18 adopted today will, in certain circumstances, require significant changes to the reporting, notification, and repair procedures used by those companies that currently have no such procedures in place. While the adopted procedures can always be improved upon, we find these rules preferable to the current situation, operating in the absence of rules. In other words, for those companies that failed to adopt a comprehensive plan in the past, we provide such a plan for them now and implementing this plan will take time and money. This investment is required to address public safety concerns. The term “non-electric utilities” refers to companies such as Southern California Gas Company.

In response to arguments that these new requirements will impose excessive costs without improving fire safety, we disagree. Without the documentation required by the proposed Rule 18, we lack critical evidence to ensure safety hazards are promptly corrected. Such actions are essential to improving fire safety in Southern California before the upcoming fall fire season. These measures should be implemented on a prioritized basis in the Southern California Extreme and Very High Fire Threat Zones. Rule 18 is adopted to immediately improve documentation of maintenance, repairs, and inspections of overhead lines. As stated above, we make no findings as to the causation of fires.

The new Rule 18 of General Order 95 is set forth below:

General Order 95 Rule 18 Part 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;
- 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 44.2 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.

Part B: Notification of Safety Hazards

If a company, while inspecting its facilities, discovers a safety hazard on or near a communications facility, electric transmission or distribution facility involving another company, the inspecting company shall notify the other company and/or facility owner of such safety hazard no later than 10 business days after the discovery. The inspecting company shall also provide a copy of the notice to the pole owner(s). The inspecting company shall include in such notice whether the safety hazard which requires corrective action is located in a designated Extreme and Very High Fire Threat Zone in Southern California. To the extent the inspecting company cannot determine the owner/operator of other company, it shall contact the pole owner(s), who shall be responsible for promptly notifying the company owning/operating the facility with the safety hazard. The notification shall be in writing and must be preserved by all parties for at least five years. It is the responsibility of each pole owner to know the identity of each entity using or maintaining equipment on its pole.

5.4. Ordering Paragraph: Definition of Fire Threat Map

The measures we adopt today include a number of references to the Fire Threat Map published by the California Department of Forestry and Fire Protection's Fire Resources Assessment Program.¹⁰ We reference this map as a tool to identify designated "Extreme and Very High Fire Threat Zones" in Southern California. Several parties raised concerns regarding the use of this map. Specifically, parties expressed concern that the map does not establish with sufficient certainty the boundaries of the area referred to as "Extreme and Very

¹⁰ The Fire Threat Map can be found on Cal Fire's Fire and Resource Assessment Program (FRAP) website at <http://frap.cdf.ca.gov/webdata/maps/statewide/ftthreat.map.pdf>.

High Fire Threat Zones.” Another concern raised by Cal Fire was that the map is not routinely updated and the last revisions were issued in 2004.

We address these concerns by adopting additional language proposed by CPSD as an ordering paragraph. The language of this ordering paragraph is intended to give utilities flexibility to adjust the boundaries of the map outward or inward depending on local conditions. The language also serves to emphasize that the map should be used as a tool to establish approximate boundaries and allows those operating within our jurisdiction to adjust the boundaries of the map in a sensible manner so it may be overlaid with maps of utility systems.

With these revisions, certain parties, including SDG&E and TURN, find the map-related language sufficient to provide a workable basis for establishing which areas constitute “Extreme and Very High Fire Threat Zones” because the language specifically allows certain refinements to the application of the map.

The CIP Coalition argued that they lack the expertise to determine whether local conditions require them to adjust the boundaries of the map inward or outward. We reject this argument and remind all those operating within our jurisdiction that they are responsible for determining what the accepted best safety practices are given local conditions.

PG&E presented a different proposal regarding the map boundaries but we find CPSD’s proposal is a more comprehensive response to the questions raised during this proceeding.

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. This issue will be addressed further, if needed, in phase 2.

We also adopt a limited exclusion for the use the map in the context of vegetation management on certain orchards. Our exclusion is consistent with the

recommendation of CFBF and is addressed in greater detail in a separate section of this decision.

The adopted ordering paragraph regarding the map is forth below:

Ordering Paragraph - Fire Threat Map

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 for purposes of this rule. The boundaries of the map are to be broadly construed and utilities should use their own expertise and judgment to determine if local conditions require them to adjust the boundaries of the map.

5.5. General Order 95, Rule 19: Cooperation with Commission Staff and Preservation of Evidence

We adopt a new rule to General Order 95, referred to as Rule 19. CPSD recommended the addition of Rule 19 and offered specific language for this rule in an effort to emphasize the existing obligation to cooperate with Commission staff investigations and to preserve evidence. While we agree with CPSD that this rule is required to emphasize the need for full cooperation with staff investigations, we do not adopt CPSD's recommended language. The provisions of the rule we adopt today are consistent with the recommendations of SDG&E, with the exception that our Rule 19 includes the directive to give CPSD "immediate" access to witnesses and evidence rather than, as suggested by SDG&E, "timely" access to witnesses and evidence.

We adopt the word "immediate" because we agree with CPSD's concern that the word "timely" does not confer the same benefit upon CPSD as the word "immediate." The purpose of Rule 19 is to improve cooperation with

Commission staff. According to the *American Heritage Dictionary*, the word “timely” means occurring at a suitable or opportune time. The word “immediate” means with little or no delay. When Commission staff investigates major accidents, such as fires, staff must have access to all information relevant to an investigation with little or no delay. At the same time, we find certain delay reasonable due to the need for entities to deploy resources to deal with the emergency. For this reason, the use of the word “immediate” is more appropriate than the word “timely.”

The proposals of CPSD and SDG&E differ in a few other notable ways. SDG&E’s proposal recognizes that the attorney work product doctrine applies in any Commission proceeding or investigation. We find including a reference to this doctrine consistent with the existing reference in the proposed rule to the attorney-client privilege. SDG&E’s proposal also includes a reference to CPUC Resolution E-4184 and it removes the words “electric power” before the word “service.” Resolution E-4184 includes a definition of “reportable incident” together with electric utility accident reporting requirements. A citation to this resolution should be included as the resolution provides important additional information. Lastly, SDG&E’s removal of the words “electric power” is minor but important as it provides for the possibility that the service is a type other than electric, such as communication.

Even though SDG&E presented a proposal regarding Rule 19, it and many other parties argued that including Rule 19 in General Order 95 is unnecessary. Specifically, parties contend that the Commission and CPSD already have access to evidence relevant to utility-related incidents and evidence preservation pursuant to existing rules, code provisions, and common law requirements. These parties also correctly point out that failure to cooperate with the Commission or its staff can result in monetary, evidentiary, and even criminal

sanctions. These arguments have merit. However, to the extent that this rule will assist CPSD in investigating fires and enhance cooperation during staff investigations, the rule will contribute to improved public safety in the upcoming fall fire season in California. Accordingly, we find our decision to adopt Rule 19 consistent with the scope of phase 1 of this proceeding.

Our adopted language for Rule 19 is set forth below:

General Order 95 Rule 19: Cooperation with Commission Staff; Preservation of Evidence Related to Incidents

Each utility shall provide full cooperation to Commission staff in an investigation into any major accident (as defined in Rule 17) or any reportable incident (as defined in CPUC Resolution E-4184), regardless of pending litigation or other investigations, including those which may be related to a Commission staff investigation. Once the scene of the incident has been made safe and service has been restored, each utility shall provide Commission staff upon request immediate access to:

- Any factual or physical evidence under the utility or utility agent's physical control, custody, or possession related to the incident;
- The name and contact information of any known percipient witness;
- Any employee percipient witness under the utility's control;
- The name and contact information of any person or entity that has taken possession of any physical evidence removed from the site of the incident;
- Any and all documents under the utility's control that are related to the incident and are not subject to the attorney-client privilege or attorney work product doctrine.

Any and all documents or evidence collected as part of the utility's own investigation related to the incident shall be preserved for at least five years. The Commission's statutory authorization under Cal. Pub. Util. Code §§ 313, 314, 314.5, 315, 581, 582, 584, 701, 702, 771, 1794, 1795, 8037 and 8056 to obtain information from utilities, which relate to the incidents described above, is delegated to Commission staff.

5.6. General Order 95, Rule 35: Tree Trimming/Vegetation Management

We adopt revisions to Rule 35 of General Order 95 to change existing “tree trimming” reference to “vegetation management.” CPSD proposed this modification to Rule 35 to address continuing confusion over what type of vegetation constitutes a “tree.” In support of its recommendation, CPSD explained that the use of the term vegetation management reflects the current industry standard and is commonly used in federal regulations as well as the California Public Resource Code. We agree that additional clarity is achieved by CPSD’s proposal. Some parties complained that the use of the term “vegetation management” fails to resolve problems related to ambiguity because the term itself is undefined. Interestingly, these parties offered no definition of vegetation management for our consideration. We disagree with these parties. The term “vegetation management” is a commonly used term in the industry and is not ambiguous.

The revised language adopted for Rule 35 is set forth below:

General Order 95 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 set forth 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, of dead, rotten and diseased trees or portions thereof, that overhang or lean toward and may fall into a span, said trees or portions thereof 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 vegetation and conductor. Scuffing or polishing of the insulating covering is not considered abrasion. Strain on a conductor is present when deflection causes additional tension beyond the allowable tension 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 cables that comply 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 vegetation.
- (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.

- (4) Mature trees whose trunks and major limbs are located more than six inches, but less than the clearance required by Table 1, Cases 13E and 14E, from primary distribution conductors are exempt from the minimum clearance requirement under this rule. The trunks and limbs to which this exemption applies shall only be those of sufficient strength and rigidity to prevent the trunk or limb from encroaching upon the six-inch minimum clearance under reasonably foreseeable local wind and weather conditions. The utility shall bear the risk of determining whether this exemption applies, and the Commission shall have final authority to determine whether the exemption applies in any specific instance, and to order that corrective action be taken in accordance with this rule, if it determines that the exemption does not apply.

5.7. General Order 95 Appendix E: Tree Trimming Guidelines

We adopt interim revisions to Appendix E to General Order 95.

Appendix E supplements Rule 35 and contains the minimum clearances for vegetation established at the time of trim. The revisions to Appendix E that we adopt today increase the minimum clearance at the time of trim for “Extreme and Very High Fire Threat Zones” in Southern California and are consistent with the changes proposed by CPSD.

As recommended by CPSD, we adopt these revisions as an interim measure pending further review of cost data. Consistent with the scope of phase 1 of this proceeding, we find these revisions will improve fire safety in Southern California before the upcoming fall fire season. In phase 2, we will examine cost data related to the increased clearances. 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 Commission will then adopt final revisions to Appendix E.

The interim revisions to Appendix E of General Order 95 adopted today are set forth below:

General Order 95 Interim Revisions to Appendix E: Guidelines to Rule 35		
<p>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:</p>		
<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

5.8. General Order 95, Interim Rule 37: Minimum Allowable Vertical Clearances

We adopt interim revisions to Rule 37 of General Order 95. The revisions we adopt today expand the minimum radial vegetation clearances for certain electric lines in high fire risk areas in Southern California and are found in Table 1 of Rule 37. Expansion of these clearances promotes our goal in phase 1 of reducing risks of fires in certain areas before the upcoming fall fire season and serves to align the minimum clearances set forth in General Order 95 with those provided for in California Public Resource Code § 4293.

The adopted revisions are consistent with CPSD's proposal and, in addition, incorporate a proposal by CFBF. CPSD's proposal includes modifications to Case 14 in Table 1 of Rule 37. These modifications result in a more consistent application of clearance requirements throughout the "Extreme and Very High Fire Threat Zones" in Southern California and require the application of these clearance rules on a year round basis, not just during the fire season. With the exception of CFBF, CPSD's proposal received strong support from parties. We intend to evaluate proposals to further expand vegetation clearances in phase 2 of this proceeding. Accordingly, we designate our revisions as interim.

CFBF initially opposed the increased clearances on the basis that additional clarification was needed regarding the impact of increased minimum clearances on certain orchards. To address its concerns, CFBF proposed a footnote be inserted into Table 1 to exempt fruit, nut or citrus tree orchards that are plowed or cultivated from the increased clearances. CPSD supported CFBF's proposed revision. Several other parties opposed CFBF's proposed exclusion from minimum clearance requirements. These parties argued that the greater clearances would greatly enhance fire safety as well as the safety of workers who

use conductive tools and ladders to pick fruit. Parties also argued against the exclusion on the basis that fire safety is greatly enhanced when vegetation clearance rules apply to abandoned orchards or orchards with no irrigation.

We agree with the concerns expressed by other parties and we intend to address these concerns in phase 2 before adopting final modifications to Rule 37. However, today we adopt CFBF's proposed exclusion for orchards on an interim basis. Our decision is based on the recognition that, generally, cultivated actively managed orchards pose less of a fire hazard than other areas within the "Extreme and Very High Fire Threat Zones" in Southern California. To the extent this exclusion results in greater attention to more vulnerable areas, we find that the exclusion furthers our goal of phase 1 of this proceeding to reduce fire hazards before the 2009 fall fire season. The implementation of these adopted interim revisions shall commence immediately upon the adoption of this decision.

The adopted interim revisions to Rule 37, adding Case 14 in Table 1 and interim footnote (jjj) are set forth below:

General Order 95 Interim Rule 37: Minimum Clearances of Wires above Railroads, Thoroughfares, Buildings, Etc.

[See Revisions to Relevant Excerpts of Table 1, below.]

Case No.	Nature of Clearance	Table 1: Basic Minimum Allowable Vertical Clearance of Wires above Railroads, Thoroughfares, Ground or Water Surfaces; Also Clearances from Poles, Buildings, Structures or Other Objects (nn) (Letter References Denote Modifications of Minimum Clearances as Referred to in Notes Following This Table)						
		Wire or Conductor Concerned						
		A Span Wires (Other than Trolley Span Wires) Overhead Guys and Messengers	B Communication Conductors (Including Open Wire, Cables and Service Drops), Supply Service Drops of 0 - 750 Volts	C Trolley Contact, Feeder and Span Wires, 0 - 5,000 Volts	D Supply Conductors of 0 - 750 Volts and Supply Cables Treated as in Rule 57.8	E Supply Conductors and Supply Cables, 750 - 22,500 Volts	F Supply Conductors and Supply Cables, 22.5 - 300 kV	G Supply Conductors and Supply Cables, 300 - 550 kV(mm)
13	Radial clearance of bare line conductors from vegetation (aaa) (ddd)			18 inches (bbb)		18 inches (bbb)	1/4 pin spacing shown in table 2, Case 15 (bbb) (ccc)	1/2 pin spacing shown in table 2, Case 15
14	Radial clearance of bare line conductors from vegetation in Extreme and Very High Fire Threat Zones in Southern California (aaa) (ddd) (hhh)(jjj)			18 inches (bbb)		48 inches (bbb) (iii)	48 inches (fff)	120 inches (ggg)

General Order 95 Interim Rule 37 Interim Footnotes (fff)(ggg)(hhh)(iii):

- (fff) Clearances in this case shall be increased for conductors operating above 88 kV, to the following:
 - 1) Conductors operating between 88kV and a 110 kV shall maintain a 60 inch clearance
 - 2) Conductors operating above 110 kV shall maintain a 120 inch clearance
- (ggg) Shall be increased by 0.40 inch per kV in excess of 500 kV
- (hhh) 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 for purposes of this rule. The boundaries of the map are to be broadly construed, and utilities should use their own expertise and judgment to determine if local conditions require them to adjust the boundaries of the map. Southern California shall be defined as the following: Santa Barbara, Ventura, San Bernardino, Riverside, Los Angeles, Orange, and San Diego Counties.
- (iii) May be reduced to 18 inches for conductors operating less than 2.4 kV.

General Order 95 Interim Rule 37 Interim Footnote (jjj): Orchard Exclusion

(jjj) Clearances in this case shall not apply to orchards of fruit, nut or citrus trees that are plowed or cultivated. In those areas Case 13 clearances shall apply.

**5.9. General Order 95, Rule 38:
Minimum Clearances of Wires in Areas
Subject to High Winds**

We adopt a modification to Rule 38 (Table 2) of General Order 95 to clarify the existing requirement of taking known local conditions into account when designing, constructing, and maintaining facilities, specifically conductor separation, in areas subject to high winds. This modification is consistent with CPSD's proposal and is incorporated into a new footnote, footnote (zz), to Rule 38 (Table 2).

Most parties offered support for CPSD's recommendation on the basis that it provided guidance on best management practices in high wind areas and could reduce fire hazards in Southern California before the upcoming fall fire season.

Certain parties objected to this clarification because General Order 95 does not define “areas subject to high winds.” We find this objection without merit. Entities that rely on facilities subject to General Order 95 must, as a matter of good practice, take into consideration local conditions when evaluating safety matters, such as fire risks. The addition of footnote (zz) offers a clarification, not a new obligation.

Parties also urged limited application of this revision to “Extreme and Very High Fire Threat Zones.” As this revision is simply a clarification, we do not limit its application to only those areas in “Extreme and Very High Fire Threat Zones” in Southern California. The language we adopt today will apply on a statewide basis. The implementation of these revisions shall commence immediately upon the adoption of this decision.

Footnote (zz) to Rule 38 (Table 2) of General Order 95 is set forth below:

General Order 95 Rule 38 [Revisions to Relevant Excerpts of Table 2, below]												
Table 2: Basic Minimum Allowable Clearance of Wires from Other Wires at Crossings, in Midspans and at Supports (Letter References Denote Modifications of Minimum Clearances as Referred to in Notes Following This Table) All Clearances Are in Inches												
		Other Wire, Cable or Conductor Concerned										
		Supply Conductors (Including Supply Cables)										
Case No.	Nature of Clearance and Class and Voltage of Wire, Cable or Conductor Concerned	A Span Wires, Guys and Messengers	B Trolley Contact Conductors 0 – 750 Volts	C Communication Conductors (Including Open Wire, Cables and Service Drops)	D 0 – 750 Volts (Including Service Drops) and Trolley Feeders (a)	E 750 - 7,500 Volts	F 7,500 - 20,000 Volts	G 20,000 - 35,000 Volts	H 35,000 - 75,000 Volts	I 75,000 - 150,000 Volts	J 150,000 - 300,000 Volts	K (kk) 300,000 - 550,000 Volts
	Horizontal separation of conductors on same crossarm											
15	Pin spacing of longitudinal conductors vertical conductors and service drops (v, w, zz)	-	-	3 (x)	11–1/2 (h, x)	11 1/2 (x)	17–1/2 (x)	24 (x)	48	60 (ff)	90 (gg)	150 (hh)
	Radial separation of conductors on same crossarm, pole or structure— incidental pole wiring											
16	Conductors, taps or lead wires of different circuits (v, y, s, zz)	-	-	3 (x)	11–1/2 (h, x)	11 1/2 (x)	17–1/2 (x)	24 (x)	48	60 (ff)	90 (gg)	150 (hh)
16a	Uncovered, grounded, non-dielectric fiber optic cables on metallic structures, in transition (ss)	-	15	15	15	18	18	18	18	24	36	120
17	Conductors, taps or lead wires of the same circuit (v, s, aa, zz)	-	-	3	3	6	6	12	24	60 (ff)	90 (gg)	150 (hh)
(zz) In areas that are subjected to high winds, a utility may need to take extra measures to maintain all required separations. Measures may include but are not limited to, spacer bars and increased pin spacing.												

5.10. General Order 95, Rule 44.2: Pole Overloading; Rule 44.3 (Renumbered); Related Ordering Paragraph

We adopt a new rule for General Order 95 to address issues related to pole overloading. This new rule is numbered Rule 44.2 and existing Rule 44.2 is renumbered 44.3 of General Order 95, consistent with CPSD's proposal. Overloaded poles may break and thereby contribute to increased fire hazards. Therefore, it is critical that we adopt this new rule now in phase 1 to address pole overloading before the upcoming fall fire season.

Currently, General Order 165 requires electric utilities to conduct inspections on the poles to determine compliance with the pole loading regulation in General Order 95. However, no rules exist to require utilities to share this information with other pole owners. CPSD's proposal seeks to ensure information is shared to improve pole loading calculation data.

Our decision today finds that statewide application of this new rule is preferable to limiting the application of this new rule to "Extreme and Very High Fire Threat Zones" in Southern California. The majority of parties objected to CPSD proposal for one or more reasons. We address these objections below and also explain our decision to revisit these matters in phase 2. Many parties objected to the statewide application of this new rule and cited the limited scope of this proceeding to support their position. We acknowledge that the rule we adopt today extends beyond the "Extreme and Very High Fire Threat Zones" in Southern California, which is the focus of phase 1. However, statewide applicability of this rule is needed to ensure consistent progress in this critical area. In phase 2, we will consider any area specific rules, if needed.

Parties also objected to CPSD's proposal on the basis that the 5-year document retention policy set forth in Rule 19 is burdensome in this instance. These parties advocated for a 3-year document retention policy for matters

specifically related to Rules 44.2 and 44.3 and, specifically, pole loading calculations. We adopt CPSD's recommendation of 5 years. This policy is consistent with established Commission policy, as reflected in Pub. Util. Code § 314.5.

The CIP Coalition recommended that we permit utilities to proceed with installation of pole attachments based on "reasonable assumptions" if requested pole loading information is not provided within 15 business days. The CIP Coalition's proposal is unacceptable because it may facilitate two problems we seek to eliminate, pole overloading and inappropriate attachments, by allowing load calculations based on assumptions rather than existing conditions. While we reject the CIP Coalition's proposal, we acknowledge that the time periods for exchanging pole loading data may warrant additional evaluation and we would benefit from additional review in phase 2. Accordingly, we will adopt the time period of 15 business days in an ordering paragraph now. No time period will be incorporated into Rule 44.2.

Similarly, we will not adopt any specific percentage of load change in Rule 44.2 that exempts the performance of a load calculation. Instead, we will adopt this language in an ordering paragraph and revisit the language exempting load calculations in instances when load increase occur in phase 2. The ordering paragraph will include language exempting load calculations when the load increase is less than five percent of the current load or 10% over a 12 month span. While CPSD requested that this language be incorporated into Rule 44.2 now, it also agreed that this specific issue should be further refined in phase 2. We find that incorporating this language into an ordering paragraph now is a reasonable compromise.

In sum, while we adopt CPSD's proposed modifications to General Order 95, we also agree with the concerns voiced by parties regarding the complexity of the issue and the possible need for further evaluation. Accordingly, we include this entire matter within the scope of phase 2 of this proceeding. Furthermore, we note that the Rules Committee may provide recommendations on the technical aspects of the proposed rule change, recommendations that the Commission may, in its discretion, consider in Phase II.

In phase 2, we will consider refinements to the 15 business days response time requirement to determine whether it provides a reasonable amount of time to gather pole loading data or whether contractual agreements or other arrangements are sufficient. Many parties expressed concern regarding their ability to comply with this 15 business day requirements. In response, we acknowledge that this response time may be challenging. Accordingly, we direct utilities to track their response time and present that data in phase 2 of this proceeding. This information will be used to assist with refining the rules. This information will not be used to find a utility in non-compliance.

The adopted language for Rule 44.2 is set forth below. The revision to Rule 44.3, which just reflects the renumbering of this rule, is also set forth below. The adopted ordering paragraph for the exchange of pole loading information and the exemptions from pole loading calculation are also set forth below.

General Order 95, 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 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. As an interim measure, the necessary data shall be provided upon request within fifteen business days of the request; however, if circumstances do not allow for the data to be provided within fifteen days, the utility or CIP providing the data shall inform the requesting party and CPSD (or its successor) of the delay, reason for the delay and the estimated date the data will be provided. Also for interim purposes, additional facilities that “materially increase the load on a structure” refers to an addition which increases the load on a pole by more than 5 percent per installation, or 10 percent over a 12 month span of the utility’s or CIP’s current load.

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.

General Order 95 Rule 44.3 Replacement

Lines or parts thereof shall be replaced or reinforced before safety factors have been reduced (due to deterioration) in Grades “A” and “B” construction to less than two-thirds of the construction safety factors specified in Rule 44.1 and in Grades “C” and “F” construction to less than one-half of the construction safety factors specified in Rule 44.1. Poles in Grade “F” construction shall also conform to the requirements of Rule 81.3-A.

In no case shall the application of this be held to permit the use of structures or any member of any structure with a safety factor less than one.

5.11. General Order 165: Patrol Inspections in Rural Areas

We adopt changes to General Order 165 to increase the current frequency of patrol inspections in rural areas that lie within “Extreme and Very High Fire Threat Zones” in Southern California. CPSD initially proposed this change together with numerous more controversial proposals.

The limited revisions that we adopt today are consistent with SCE’s suggestion that, in phase 1, we only adopt a small part of CPSD’s proposal. While SCE expressed its preference for the Commission to address all matters related to General Order 165 in phase 2 of this proceeding, SCE presented an alternative proposal after acknowledging the value of limited changes to General Order 165 in phase 1 to increase patrols in certain areas. We find SCE’s limited proposal preferable to CPSD’s proposal because it is consistent with the limited scope of phase 1. The costs associated with increase patrols will be addressed in phase 2.

We make no determination on the merits of the remaining aspects of CPSD’s proposal and defer these issues to phase 2. We acknowledge that the changes proposed by CPSD are worthy of full consideration and that, due to the complexity of CPSD’s proposed changes, the potential costs, and the absence of a clear connection between these changes and the reduction of fire hazards in Southern California, we defer these matters to phase 2. Parties expressed their commitment to “tackle GO 165 changes head-on during phase 2 of this proceeding.”¹¹ We expect parties to uphold that commitment.

¹¹ SCE opening brief, p. 30.

The revised language we adopt today for General Order 165 is set forth below in note 1.

**General Order 165 Public Utilities Commission of the State of California
Inspection Cycles for Electric Distribution Facilities**

GO 165 Table:

Electric Distribution System Inspection Cycles (Maximum Intervals in Years)

	Patrol		Detailed		Intrusive	
	Urban	Rural	Urban	Rural	Urban	Rural
Transformers						
Overhead	1	2 ¹	5	5	---	---
Underground	1	2	3	3	---	---
Padmounted	1	2	5	5	---	---
Switching/Protective Devices						
Overhead	1	2 ¹	5	5	---	---
Underground	1	2	3	3	---	---
Padmounted	1	2	5	5	---	---
Regulators/Capacitors						
Overhead	1	2 ¹	5	5	---	---
Underground	1	2	3	3	---	---
Padmounted	1	2	5	5	---	---
Overhead Conductor and Cables						
Overhead Conductor and Cables	1	2 ¹	5	5	---	---
Streetlighting	1	2	x	x	---	---
Wood Poles under 15 years	1	2	x	x	x	x
Wood Poles over 15 years which-have not been subject to intrusive inspection	1	2	x	x	10	10
Wood poles which passed intrusive inspection	---	---	---	---	20	20

(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.

6. Ancillary Issues

6.1. 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.

Many parties suggested and we agree that CPSD's proposal, which only addresses costs associated with SCE's vegetation management, is insufficient based on the wide range of costs that cost-of-service regulated utilities anticipate incurring to implement these rule modifications.

Regarding those utilities with deregulated rates, including incumbent local exchange carriers (ILECs), we decline to adopt any mechanisms for recovery of costs associated with today's rule changes, as telecommunications companies

with rate flexibility may charge different rates to recover costs without our approval. To the extent that a telecommunications company with rate flexibility seeks to place a line-item on its bill to recover such costs, however, it must not falsely imply that such charge is CPUC-mandated or approved.

Our decision is not “unjustifiably discriminatory,”¹² as AT&T claims, but merely recognizes the fact that certain utilities operate under cost-of-service ratemaking, while others have authority to charge market-based rates. Our decision also recognizes that existing surcharges are legislatively-mandated, such as the Public Purpose Program surcharge that fund public programs and do not constitute profits for AT&T. Moreover, the fact that there may be other unregulated companies, such as Voice Over Internet Providers or VOIPs, that may operate under different safety regulations than telephone utilities, is not a sufficient basis for changing our approach to market-based rates. In fact, while unregulated companies must address issues that regulated companies avoid.

Small local exchange carriers which are on cost-of-service regulation will operate under the same framework set forth above as electric companies.

6.2. Implementation Issues

We direct all entities subject to the revised rules and ordering paragraphs adopted today to take all reasonable measures to immediately begin to implement these directives. We do not adopt any deadlines, except those specifically established in the rules or ordering paragraphs themselves. We do not require compliance plans but, instead, expect each entity to establish a reasonable implementation plan to fit its particular circumstances.

¹² AT&T opening brief, p. 6.

6.3. Initial Framework for Phase 2

We will appoint a neutral facilitator for phase 2 workshops. The neutral facilitator will be one of the Commission's Alternative Dispute Resolution ALJs, the assigned ALJ, or another appropriate staff member. While CPSD fulfilled its role as the facilitator in phase 1 in a commendable manner, we agree with CPSD that a non-party facilitator to assist with workshops would be an effective addition. We also recognize that a number of issues have been deferred to phase 2 and, as a result, the agenda for the last phase of this proceeding will be ambitious. Accordingly, we expect to set a procedural schedule and identify included issues promptly.

7. Comments on Proposed Decision

The proposed decision in this matter was mailed to the parties in accordance with Pub. Util. Code § 311 and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on August 10, 2009 and reply comments were filed on August 17, 2009. To the extent required, revisions have been incorporated to reflect the substance of these comments.

8. Assignment of Proceeding

Timothy Alan Simon is the assigned Commissioner and Timothy Kenney is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. General Order 95 applies to communication infrastructure providers.
2. Communication infrastructure providers may need additional guidance in performing inspections of overhead facilities installed on electric infrastructure equipment and structures.

3. By requiring certain preventative actions be taken by communication infrastructure providers, we are promoting public safety in high fire threat areas.

4. Corrective action is critical to achieve our goal of fire prevention and documentation is needed to verify adequate inspections and corrective actions.

5. Minor revisions to Rule 12 of General Order 95 are needed to clarify the applicability of this general order. In phase 2 of this proceeding, we will continue to evaluate whether further revisions to Rule 12 are needed.

6. The revisions to Rule 12 of General Order 95 that we adopt today do not rely on any findings that communication facilities cause or contribute to fires.

7. The revisions to Rule 12 of General Order 95 clarify that General Order 95 includes communication facilities.

8. The addition of a new rule, Rule 18, adopted today will, in certain circumstances, require significant changes to the reporting, notification, and repair procedures used by those companies that currently have no such procedures in place. This investment is required to address public safety concerns. These new requirements will not impose excessive costs and will improve fire safety.

9. Without the documentation required by Rule 18 of General Order 95, we lack critical evidence to ensure safety hazards are promptly corrected. Such actions are essential to improving fire safety in California before the upcoming 2009 fall fire season.

10. Our revised rules and ordering paragraphs reference the Fire Threat Map published by the California Department of Forestry and Fire Protection's Fire Resources Assessment Program as a tool to identify designated "Extreme and Very High Fire Threat Zones" in Southern California.

11. Ordering Paragraph 2 serves to clarify the applicability of the Fire Threat Map and provides a sufficient basis for establishing which areas constitute “Extreme and Very High Fire Threat Zones”.

12. When using the Fire Threat Map, entities subject to our jurisdiction are responsible for determining what the accepted best safety practices are given local conditions.

13. Revisions to General Order 95 are needed to emphasize the existing obligation to cooperate with Commission staff investigations and to preserve evidence. These revisions are reflected in a new rule, Rule 19.

14. To the extent that Rule 19 will assist CPSD in investigating fires and enhance cooperation during staff investigations, Rule 19 will contribute to improved public safety in the upcoming fall fire season in Southern California.

15. In applying Rule 35 of General Order 95, ambiguity exists around what constitutes a “tree.” The term “vegetation management” is a commonly used term in the industry and, in the context of Rule 35, is not ambiguous.

16. Interim revisions to Appendix E of General Order 95 to increase the minimum clearance at the time of trim for “Extreme and Very High Fire Threat Zones” are needed to improve fire safety in Southern California before the upcoming 2009 fall fire season.

17. Interim revisions to Rule 37 at Table 1 of General Order 95 are needed to expand the minimum radial vegetation clearances for certain electric lines in high fire risk areas in Southern California. The expansion of these clearances promotes our goal in phase 1 of reducing risks of fires in certain areas before the upcoming 2009 fall fire season and serves to align the minimum clearances set forth in General Order 95 with those provided for in California Public Resource Code § 4293.

18. In considering revisions to Rule 37 at Table 1 of General Order 95, generally, cultivated actively managed orchards pose less of a fire hazard than other areas within the “Extreme and Very High Fire Threat Zones” in Southern California.

19. An exemption from the increased clearances in Rule 37 at Table 1 of General Order 95 for fruit, nut or citrus tree orchards that are plowed or cultivated may result in greater attention to more vulnerable areas and thereby further our goal of phase 1 of this proceeding to reduce fire hazards before the 2009 fall fire season.

20. Modifications to Rule 38 (Table 2) of General Order 95 are needed to clarify the existing requirement of taking known local conditions into account when designing, constructing, and maintaining facilities, specifically conductor separation, in areas subject to high winds. This modification is incorporated into a new footnote, footnote (zz), to Rule 38 (Table 2).

21. The modifications to Rule 38 (Table 2) of General Order 95 simply clarify the rule. Therefore, we do not limit its application to only those areas in “Extreme and Very High Fire Threat Zones” in Southern California. The language we adopt today will apply on a statewide basis.

22. Overloaded poles may break and thereby contribute to increased fire hazards. Added Rule 44.2 of General Order 95 is needed to address issues related to pole overloading. Statewide application of these revisions is preferable to limiting the application to “Extreme and Very High Fire Threat Zones” in Southern California to ensure consistency and due to the public safety hazards associated with pole overloading.

23. Fire hazards could be reduced by increasing the current frequency of patrol inspections in rural areas that lie within “Extreme and Very High Fire Threat Zones” in Southern California. Increased patrols require revisions to

General Order 165. The costs associated with increase patrols will be addressed in phase 2.

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.

25. Regarding those utilities with deregulated rates, including incumbent local exchange carriers, we decline to adopt any mechanisms for recovery of costs associated with today's rule changes, as telecommunications companies with rate flexibility may charge different rates to recover costs without our approval. To the extent that a telecommunications company with rate flexibility seeks to place a line-item on its bill to recover such costs, however, it must not falsely imply that such charge is CPUC-mandated or approved. Our decision recognizes the fact that certain utilities operate under cost-of-service ratemaking, while others have authority to charge market-based rates.

26. We direct all entities subject to the revised rules and adopted ordering paragraphs to take all reasonable measures to immediately begin implementation of these directives.

Conclusions of Law

1. Phase 1 of this proceeding primarily addresses measures to reduce fire hazards in California before the 2009 fall fire season.

2. With regard to CEQA, we find that CEQA does not apply to the measures adopted today. The measures do not require any activity that would be considered a project under CEQA.

3. Under Pub. Util. Code §§ 8002, 8037, and 8056, the Commission's jurisdiction extends to publicly-owned utilities for the limited purpose of

adopting and enforcing rules governing electric transmission and distribution facilities to protect the safety of employees and the general public.

4. As set forth in Ordering Paragraph 1, we find it reasonable to require communication infrastructure providers take specific inspection and corrective actions within the next few months. The ordering paragraph serves to temporarily supplement General Order 95 and will remain in effect until we issue a decision in phase 2 of this proceeding. In phase 2, the Commission may decide to incorporate all or part of this ordering paragraph into final rules adopted at that time.

5. All terms used in Ordering Paragraph 1 shall be defined consistent with the terms set forth in General Order 95.

6. To reduce fire hazards, it is reasonable to adopt revisions to Rule 12 of General Order 95 to clarify that General Order 95 includes communication facilities.

7. It is reasonable to find that the addition of Rule 18 to General Order 95 will reduce fire hazards by establishing an auditable utility maintenance program, providing a framework for notification of safety hazards involving equipment owned by one company and discovered by another company, and prioritizing corrective actions for General Order 95

8. It is reasonable to find that the addition of Rule 18 to General Order 95 will reduce fire hazards by immediately improving documentation of maintenance, repairs, and inspections of overhead lines. We make no findings or conclusions as to the causation of fires.

9. Ordering Paragraph 2 clarifies the use of the Fire Threat Map to determine “Extreme and Very High Fire Threat Zones” in Southern California.

10. It is reasonable to find that Rule 19 of General Order 95 will assist CPSD in investigating fires and enhance cooperation during staff investigations and

thereby contribute to improved public safety in the upcoming fall fire season in California.

11. To address confusion over what type of vegetation constitutes a “tree,” it is reasonable to adopt revisions to Rule 35 of General Order 95 to change existing references to “tree trimming” to “vegetation management.”

12. To reduce fire hazards, it is reasonable to adopt interim revisions to Appendix E to General Order 95 that increase the minimum clearance for vegetation established at the time of trim for “Extreme and Very High Fire Threat Zones” in Southern California. We adopt these revisions as an interim measure pending further review of cost data.

13. It is reasonable to adopt interim revisions to Rule 37 at Table 1 of General Order 95 to expand the minimum vegetation clearances for certain electric lines in high fire risk areas in Southern California.

14. It is reasonable to adopt revisions to clearances at Table 1 in Rule 37 of General Order 95 to further our goal of phase 1 of this proceeding to reduce fire hazards before the 2009 fall fire season.

15. To reduce fire hazards, it is reasonable to clarify existing the requirement in Rule 38 (Table 2) of General Order 95 of taking known local conditions into account when designing, constructing, and maintaining facilities, specifically conductor separation, in areas subject to high winds. This modification is incorporated into footnote (zz) to Rule 38 (Table 2).

16. It is reasonable to add Rule 44.2 to General Order 95 to address fire hazard issues related to pole overloading and to adopt Ordering Paragraphs 3 and 4 to address the exchange of pole loading information and exemptions from load calculations.

17. It is reasonable to revise General Order 165 to increase current frequency of patrol inspections in rural areas that lie within “Extreme and Very High Fire

Threat Zones” in Southern California. Increased patrols could reduce fire hazards. The costs associated with increase patrols will be addressed in phase 2.

18. To reduce fire hazards before the upcoming fall fire season, it is reasonable to direct all entities subject to the revised rules and adopted ordering paragraphs adopted today to take all reasonable measures to immediately begin implementation these directives.

19. It is reasonable to appoint a neutral facilitator for phase 2 workshops. The neutral facilitator will be one of the Commission’s Alternative Dispute Resolution ALJs, the assigned ALJ, or another appropriate staff member.

O R D E R

IT IS ORDERED that:

1. The term “Communication Infrastructure Provider” or “CIP” is defined as any entity that has attached facilities to an electric utility’s poles for the purpose of providing communication services. 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 boundaries of the Fire Threat Map shall be broadly construed, and Communication Infrastructure Providers should use their own expertise and judgment to determine if local conditions require them to adjust the boundaries of the map. 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. The Communication Infrastructure

Providers shall take appropriate corrective action of any safety hazards or violations of General Orders 95 that are identified during the patrol inspections. The patrol inspections shall be completed no later than September 30, 2010. Communication Infrastructure Providers shall maintain documentation which would allow Commission staff to verify that such inspections and corrective actions were completed, including the location of the poles/equipment inspected, the date of inspection, and the personnel that performed the inspection and corrective action. Such documentation shall be retained for five years. "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.

2. 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 for purposes of this rule. The boundaries of the map are to be broadly construed and utilities should use their own expertise and judgment to determine if local conditions require them to adjust the boundaries of the map.

3. When any utility, communication infrastructure provider, or other appropriate entity performs a pole load calculations, the necessary data shall be provided upon request within 15 business days of the request; however, if circumstances do not allow for the data to be provided within 15 days, the utility or Communication Infrastructure Provider providing the data shall inform the requesting party and Consumer Protection and Safety Division (or its successor) of the delay, reason for the delay and the estimated date the data will be provided.

4. For purposes of pole loading and Rule 44.2 of General Order 95, additional facilities that “materially increase the load on a structure” refers to an addition which increases the load on a pole by more than five percent per installation, or 10 percent over a 12 month span of the utility’s or Communication Infrastructure Provider’s current load.

5. We adopt the revisions to General Order 95 and General Order 165 set forth herein. These revisions to General Order 95 and General Order 165 are included at **Attachments B** and **C**, respectively.

6. We direct all entities subject to the revised rules and ordering paragraphs adopted today to take all reasonable measures to begin implementation of these directives.

7. We direct each cost-of-service regulated utility to file an advice letter establishing a memorandum account and to record its costs related to implementing these measures in a memorandum account to avoid retroactive ratemaking.

8. Rulemaking 08-11-005 remains open for consideration of issues in phase 2.

This order is effective today.

Dated August 20, 2009, at San Francisco, California.

MICHAEL R. PEEVEY
President

DIAN M. GRUENEICH

JOHN A. BOHN

RACHELLE B. CHONG

TIMOTHY ALAN SIMON

Commissioners

[D0908029 Attachments A - C](#)