



**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

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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)

**REPLY COMMENTS OF THE
LOS ANGELES DEPARTMENT OF WATER AND POWER
TO THE UTILITY REFORM NETWORK'S COMMENTS ON TARIFF RULE 20
SUPPORTING THE EXCLUSION OF THIS ISSUE FROM R.08-11-005**

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Dated: May 21, 2010

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A. INTRODUCTION

The Los Angeles Department of Water and Power (LADWP) submits its Reply Comments to the Comments of The Utility Reform Network (TURN) on Administrative Law Judge Kenney's Ruling on Undergrounding in Tariff Rule 20 in accordance with the Administrative Law Judge's Ruling Granting the Motion to Exclude Tariff Rule 20 from the Scope of this Proceeding dated April 6, 2010. Based upon said ruling, certain parties submitted comments on May 7, 2010 addressing whether the Commission should open a new proceeding to consider adding fire risk to the list of reasons to permit undergrounding under Tariff Rule 20 and, if so, how to provide notice of this proceeding in conformance with Pub. Util. Code § 1708. Reply comments are due on May 21, 2010.

B. REPLY

a. Historically, the Commission managed revisions to Tariff Rule 20 by way of Reopening Case 8209.

The Commission generally handled revisions to Tariff Rule 20 by reopening former Case No. 8209. See *Decision (D.) Nos. 8201118, 90-05-032, and 00-04-002*. Under a unique situation that required the Commission to respond to the enactment of Assembly Bill (AB) 1149 (Stats. 1999, ch. 844), the Commission instituted Rulemaking (R.) 00-01-005 to evaluate how to implement this legislation which required the Commission to study ways to amend, revise, and improve the rules for conversion of existing overhead electric and

communications lines to underground service. See *D. 01-12-009*. LADWP opines that this rulemaking proceeding deviated from the Commission's normal course of action. The Commission should maintain its past practice of reopening Case No. 8209. However, California Cable & Telecommunications Association, Comcast, Time Warner Cable, and Verizon raised a key issue within their combined Opening Comments that the matters relating to R.00-01-005 were not completed. (See Opening Comments of California Cable & Telecommunications Association, Comcast, Time Warner Cable, tw telecom of California, llc, and Verizon on Opening a New Proceeding Related to the Undergrounding Conversion Program, p. 3) To the extent that there are unresolved issues from R.00-01-005 pertaining to Tariff Rule 20, the Commission should consider whether it needs to deviate from its past practice of reopening Case No. 8209 and instead partially reopen R.00-01-005 on its own motion or upon a proper petition. In either case, no revisions to Tariff Rule 20 should be managed in this Rulemaking 08-11-005, especially in light of the procedural constraints imposed by Pub. Util. Code § 1708.

b. Notice of the expansion of R.08-11-005 to include Tariff Rule 20 issues does not conform to Pub. Util. Code § 1708.

Pub. Util. Code § 1708 allows for the rescission, alteration or amendment of prior orders and decisions, upon proper notice to the parties. If the Commission intends to modify Tariff Rule 20, then it should do so by amending its prior decisions and orders relating to either Case No. 8209 or D.01-12-009. By this way, the Commission ensures that it properly evaluates whether any new fact or change of circumstance warrants a modification of its previous decisions. More important, if a party seeks a modification to Tariff Rule 20 that directly or indirectly changes rates, the Commission's approach of

reopening Case No. 8209 or D.01-12-009 avoids any appearance of retroactive ratemaking. Consequently, LADWP opines that any expansion of R.08-11-005 to include Tariff Rule 20 issues is improper pursuant to Pub. Util. Code § 1708.

Dated this 21st day of May, 2010

Respectfully submitted,

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**R. 08-11-005 SERVICE LIST
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