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

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

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

**ASSIGNED COMMISSIONER'S RULING AND SCOPING MEMO**

This ruling and scoping memo (Scoping Memo) sets forth the scope, schedule, category, and the need for hearings pursuant to Rule 7.3 of the Commission's Rules of Practice and Procedure (Rules). This Scoping Memo also addresses other procedural matters as set forth herein. Pursuant to Rule 7.6., the only part of this Scoping Memo that may be appealed is its determination of the category of this proceeding.

**1. Background**

The Commission issued Order Instituting Rulemaking (OIR) 08-11-005 on November 6, 2008. The main purpose of this rulemaking proceeding is to consider measures to reduce fire hazards associated with (1) electric transmission and distribution facilities, and (2) communication infrastructure provider (CIP) facilities in close proximity to overhead electric power lines. This proceeding was initiated in response to reports that electric utility and CIP facilities may have contributed to the ignition of several devastating wildfires in recent years.

Most of the Commission's rules regarding the construction, operation, and maintenance of electric utility and CIP facilities are contained in General Orders 95, 128, and 165. A primary goal of these General Orders (GOs)

is to minimize the public safety risks, including fire hazards, associated with electric utility and CIP facilities. The GOs are largely successful in this regard. Nonetheless, as recent wildfires have shown, there may be a need for additional safeguards.

Opening comments regarding this proceeding's scope, schedule, and other matters were filed on December 3, 2008. Reply comments were filed on December 17, 2008.<sup>1</sup> This Scoping Memo adopts many of the recommendations contained in the comments.

## **2. Scope of the Proceeding**

### **2.1. Phased Proceeding**

This proceeding will be conducted in two phases. The first phase will consider measures to reduce fire hazards that can be implemented in time for the 2009 autumn fire season in Southern California. As contemplated by the OIR, the scope of Phase 1 will be limited to measures proposed by the Commission's Consumer Protection and Safety Division (CPSD) following input from the

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<sup>1</sup> The following parties filed opening and/or reply comments: AT&T California together with New Cingular Wireless PCS, LLC; the California Cable and Television Association together with Comcast Phone of California, LLC; the California Municipal Utilities Association (CMUA); the Consumer Federation of California; the Commission's Consumer Protection and Safety Division; the County of Los Angeles; CoxCom, Inc. together with Cox California Telecom LLC; CTIA-The Wireless Association; the Mussey Grade Road Alliance; Pacific Gas and Electric Company (PG&E); the Sacramento Municipal Utility District (SMUD); San Diego Gas & Electric Company (SDG&E); Sierra Pacific Power Company (Sierra); Southern California Edison Company (SCE); Verizon Access Transmission Services together with Verizon Business Services, Verizon California Inc., and Verizon West Coast; and a consortium of 13 small local exchange carriers.

parties.<sup>2</sup> Phase 2 will address measures that require more time to consider and implement, such as proposed measures that require a formal environmental review.

## **2.2. The Scope Is Limited to Issues Listed in the OIR**

The overall scope of this proceeding is limited to the following six issues that are listed and described on pages 11 - 14 of the OIR:

1. Immediate reporting of fire-related incidents and full cooperation with Commission staff. This proceeding will not consider the extent that entities may deny access to documents, information, and witnesses that they deem protected by attorney-client privilege and/or the attorney work product doctrine.
2. Applying GO 165 or similar maintenance and inspection requirements to all electric transmission and CIP facilities, including CIP facilities located on poles owned by publicly owned utilities.
3. Overloading of utility poles.
4. Prompt reporting and resolution of hazards/violations that one pole occupant may observe in another pole occupant's facilities,<sup>3</sup> including ways to improve (i) safety-related communications between pole occupants (e.g., marking CIP facilities with contact information), and (ii) the process used by CPSD to determine if the hazard/violation reported by one pole occupant to another has been resolved.
5. Vegetation management in high risk fire areas.
6. Mitigating high speed wind dangers.

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<sup>2</sup> The preliminary schedule set forth in the OIR has only CPSD submitting proposed rules. (OIR, p. 9)

<sup>3</sup> The OIR used the term "pole tenants" to identify entities with facilities attached to utility poles. This Scoping Memo uses the term "pole occupants."

Included in the scope of this proceeding are matters with a direct nexus to the above issues, including the cost and benefits of proposed rules; sharing of costs between electric utilities and CIPs for proposed rules affecting jointly used facilities; recovery of costs from customers; and environmental considerations.

### **2.3. Electric Lines Belonging to Non-Electric Utilities**

The scope of this proceeding encompasses electric lines that belong to non-electric utilities, including Southern California Gas Company (SoCalGas).<sup>4</sup>

### **2.4. Publicly Owned Electric Utilities**

This proceeding will not litigate the Commission's determination in the OIR that it may adopt safety-related regulations for publicly owned utility (POU) electric transmission and distribution facilities. As explained in the OIR, the Commission has authority under Pub. Util. Code §§ 8002, 8037, and 8056 to adopt and enforce rules for POU electric transmission and distribution facilities for the purpose of protecting the safety of employees and the general public.<sup>5</sup>

### **2.5. Electric Transmission Facilities**

The scope of this proceeding includes electric transmission facilities. As noted by CPSD, the Commission's jurisdiction over transmission facilities is fairly broad. The Energy Policy Act of 2005 provides in its "Savings provision," 16 U.S.C. § 824o(i)(3), that it does not preempt the action taken by a State to protect the safety, adequacy, and reliability of electric service within that State, as

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<sup>4</sup> On December 23, 2008, the assigned Administrative Law Judge sent an email to SDG&E and Sempra that asked them to inform SoCalGas that it might be affected by issues being considered in this proceeding and that SoCalGas may wish to be added to the service list. SDG&E responded that it would inform SoCalGas.

<sup>5</sup> OIR, p. 6.

long as such action is not inconsistent with the reliability standards issued by an Electric Reliability Organization (ERO) that is certified by the Federal Energy Regulatory Commission (FERC). None of the six issues identified in the OIR appears to conflict with reliability standards issued by a FERC-certified ERO. Similarly, although the California Independent System Operator (CAISO) has jurisdiction over electric transmission facilities “under its control” pursuant to Pub. Util. Code § 348, there are many transmission facilities in California that are not under CAISO’s control.<sup>6</sup>

To ensure harmony with other jurisdictions, any party that submits proposed transmission-related rules should specify which transmission facilities the proposed rules apply to (e.g., facilities not under CAISO control) and explain why the proposed rules do not conflict with other federal and State regulations.

## **2.6. SDG&E’s Application 08-12-021**

This rulemaking proceeding will not decide issues that will be resolved in the Commission’s decision on SDG&E’s Application (A.) 08-12-021 filed on December 22, 2008, in which SDG&E asks the Commission to review SDG&E’s plan to shut off power to high fire risk areas during certain extreme weather conditions.

## **2.7. Concurrent Commission Investigations**

As set forth in the OIR, this rulemaking proceeding will not determine the cause of particular wildfires or resolve issues that will be addressed in pending

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<sup>6</sup> CPD’s reply comments, pp. 3-4.

investigations of wildfires.<sup>7</sup> This rulemaking proceeding may, at some point, consider the findings that are ultimately reached in the pending investigations.

## **2.8. Utilities Should Not Wait to Implement Safety Measures**

Utilities have authority under Pub. Util. Code § 451 to implement measures they deem necessary to protect the safety of their employees and the general public.<sup>8</sup> For example, SDG&E states in A.08-12-021 that it is currently implementing the following measures on its own initiative<sup>9</sup>:

- Replacing wood poles with steel poles, increasing the distance between the power line conductors, and using heavier wire on certain portions of the transmission system in rural communities.
- Expanding aerial and ground inspections of transmission and distribution lines.
- During dry or windy weather in which a Red Flag Warning is declared, disabling electrical switches (re-closers) that are designed to restore the power automatically after an outage.
- Staging personnel in backcountry areas for quicker response during extreme weather conditions.

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. Any additional measures

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<sup>7</sup> OIR, p. 1. The pending investigations include Investigation (I.) 08-11-006 and I.08-11-007.

<sup>8</sup> Pub. Util. Code § 451 states, in relevant part, as follows: “Every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities, including telephone facilities, as defined in Section 54.1 of the Civil Code, as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.”

<sup>9</sup> A.08-12-021, p. 10.

taken by the utilities and CIPs should not be viewed, on their own, as evidence that prior efforts to reduce or mitigate fires hazards were insufficient.

**3. Proceeding Schedule and Procedures**

**3.1. Workshop Set by the OIR is Canceled**

The workshop set for January 14 and 15, 2009, by the OIR is canceled. The Scoping Memo sets new workshops, as described below.

**3.2. Schedule for Phase 1**

This proceeding will be conducted in two phases. The first phase will address measures proposed by CPSD to reduce fire hazards that can be implemented in time for the 2009 autumn fire season in Southern California. All parties will have an opportunity to submit proposed rules for CPSD’s review. It will be CPSD’s responsibility to review and refine the proposals, and then submit one set of proposed rules to the Commission for its review. The second phase will address measures that require more time to consider and implement.

The schedule for Phase 1 is as follows:

<b>Phase 1 Milestones</b>	<b>Date</b>
CPSD and Parties File & Serve Proposed Rules to Be Implemented in Time for the 2009 Autumn Fire Season	January 21, 2009
First Workshop on Proposed Rules	February 4 and 5, 2009
Second Workshop on Proposed Rules	February 10 and 11, 2009
CPSD Files & Serves Final Set of Proposed Rules	February 27, 2009
Workshop on CPSD’s Proposed Rules	March 11, 2009
Opening Comments Filed & Served re: CPSD’s Proposed Rules	March 20, 2009
Reply Comments Filed & Served	April 3, 2009
Motions for Evidentiary Hearings Filed & Served	April 3, 2009
Responses to Motions Filed & Served	April 7, 2009

Phase 1 Milestones	Date
Prehearing Conference, If Needed	April 14, 2009 10:00 a.m. Commission Courtroom State Office Building, 505 Van Ness Avenue, San Francisco, CA 94102
Evidentiary Hearings (EHs), If Needed	May 11 - 13, 2009 9:30 a.m. in San Francisco
If EHs Held: Opening Briefs Filed & Served	May 20, 2009
If EHs Held: Requests for Final Oral Argument Filed & Served	May 20, 2009
If EHs Held: Reply Briefs Filed & Served	May 28, 2009
Proposed Decision (PD) re: Phase 1 Issues	July 2009
If EHs Held: Final Oral Argument	July or August 2009
PD Considered at Commission Meeting	August 20, 2009

The Phase 1 schedule may be revised, as necessary, by the assigned Commissioner and/or the assigned Administrative Law Judge (ALJ).

The schedule for Phase 2 will be determined and announced as soon as feasible. The goal is to resolve this proceeding as soon as possible, but in any event no later than 18 months from the date of this Scoping Memo consistent with Pub. Util. Code § 1701.5(a).

### **3.3. Procedures for Phase 1**

The scope of Phase 1 is limited to measures proposed by CPSD to reduce fire hazards that can be implemented in time for the 2009 autumn fire season in Southern California. CPSD shall work collaboratively with interested parties to develop proposed measures. The formal collaborative process shall start with CPSD and interested parties submitting proposed rules on January 21, 2009. The

proposed rules will be reviewed and refined during the subsequent workshop process. Each proposed rule should be accompanied by a detailed description and justification that includes the following information:

- The specific electric utilities, CIPs, and others affected by the proposed rule.
- New and/or revised text for the affected General Order(s), if applicable.
- The specific hazard(s) addressed by the proposed rule.
- How the proposed rule reduces or otherwise addresses the hazard(s).
- The anticipated costs and benefits of the proposed rule.
- Whether and how the costs will be recovered from customers.
- Whether and how costs will be shared among electric utilities, CIPs, and others.
- Why it is in the public interest to adopt the proposed rule.
- If the proposed rule applies to electric transmission, why the rule does not conflict with other federal or state regulations.
- Whether the adoption and implementation of the proposed rule is exempt from the California Environmental Quality Act (CEQA) and, if so, why. If not, what steps need to occur under CEQA before the proposed rule can be adopted and implemented.

There will be a two-day workshop on February 4 - 5, 2009, for parties to review and discuss proposed rules. The ultimate goal of the workshop is to reach a consensus on a single set of proposed rules for submittal to the Commission by CPSD. A second two-day workshop will be held on February 10 - 11, 2009, to resolve any remaining disputes and finalize any consensus reached during the workshop process.

CPSD shall be responsible for arranging and running the workshops set by this Scoping Memo,<sup>10</sup> and CPSD may share these responsibilities with any parties that are willing to help.<sup>11</sup> Parties are encouraged to attend the workshops in person. If this is not possible, CPSD or its designee shall arrange for a call-in telephone number. Parties should use their best efforts to distribute workshop materials to the service list at least two days prior to the relevant workshop.

Using the input received at the first two workshops, CPSD shall prepare for the Commission's consideration a final set of proposed rules. CPSD shall file and serve the final set on February 27, 2009. CPSD may prepare and submit its final set of proposed rules jointly with other parties. Because the Scope of Phase 1 is limited to measures proposed by CPSD, other parties may not submit competing proposals.

Each proposed rule submitted by CPSD should be accompanied by a detailed description and justification that includes the information specified previously. CPSD shall then hold a workshop on March 11, 2009, where parties may discuss and clarify the nature, intent, and scope of CPSD's proposed rules.

Parties may submit opening and reply comments regarding CPSD's proposed rules on March 20 and April 3, 2009, respectively. The comments

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<sup>10</sup> CPSD should place a notice of each workshop in the Commission's Daily Calendar by contacting the Commission's Docket Office. The notice should appear at least 10 days prior to each workshop and state the time, place, purpose, and contact person for each workshop.

<sup>11</sup> At CPSD's discretion, the parties may pool resources to hire a facilitator to (i) organize and run the workshops under CPSD's supervision, and (ii) perform such other tasks as deemed appropriate by CPSD.

should be limited to addressing CPSD's proposed rules and issues with a direct nexus to the proposed rules.

Parties may file and serve motions for evidentiary hearings on April 3, 2009. Any such motion must identify each factual issue to be litigated, explain why the issue is material and relevant, and describe the nature of the testimony to be offered during the evidentiary hearings. Responses to any such motions will be due on April 7, 2009. A ruling on the motions will likely occur at the prehearing conference (PHC) set for April 14, 2009, or shortly thereafter. The schedule for evidentiary hearings, if held, is set forth the above table.<sup>12</sup>

This Scoping Memo does not prejudice the need for new rules. Rather, it establishes procedures for CPSD to (1) formulate proposed rules in collaboration with other parties, and (2) submit proposed rules to the Commission for its consideration.

### **3.4. Concurrent Consideration of Issues for the Electric Utility and Telecommunications Industries**

There will not be separate procedural tracks at this time to consider proposed rules for electric utilities separately from proposed rules for CIPs. The two industries share many facilities, and it would be inefficient and potentially counterproductive to have separate procedural tracks.

## **4. Proceeding Category and Need for Hearings**

In the OIR, the Commission preliminarily determined pursuant to Rule 7.1(d) that the category of this proceeding is quasi-legislative and

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<sup>12</sup> The PHC and evidentiary hearings will not be held if there are no motions for evidentiary hearings.

that hearings are not necessary. There was no opposition to these preliminary determinations in the parties' comments.

This Scoping Memo confirms that the category for this proceeding is quasi-legislative as defined by Rule 1.3(d). The determination of category may be appealed pursuant to Rule 7.6.

This Scoping Memo also confirms that hearings are not needed. However, the schedule set forth above reserves dates for hearing-related events should evidentiary hearings become necessary. If hearings become necessary, the changed determination on the need for hearings will be placed on the Commission's consent agenda for approval pursuant to Rule 7.5.

## **5. Official Notice of the Record in Other Proceedings**

Written comments may cite the formal record in other Commission proceedings, if relevant. Any party that does so must attach to their comments a copy of the pertinent portion of the transcript, exhibit, or other thing being cited. As noted in the OIR, this rulemaking proceeding will not decide issues that will be addressed in pending investigations of wildfires.<sup>13</sup>

## **6. Ex Parte Communications**

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

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<sup>13</sup> OIR, p. 1.

## 7. **Additional Notice of the OIR and Scoping Memo**

A notice of availability of the OIR and the Scoping Memo will be served on all cities and counties in California. They may be added to the service list and participate in this proceeding in the same manner as other parties.

## 8. **Service List, Service of Documents, and Filing Documents**

The official service list is available on the Commission's website ([http://docs.cpuc.ca.gov/published/service\\_lists/R0811005\\_77981.htm](http://docs.cpuc.ca.gov/published/service_lists/R0811005_77981.htm)).

Parties should confirm that their information on the service list is correct and notify the Commission's Process Office of any errors.

Persons and entities that wish to monitor this proceeding or to actively participate should contact the Commission's Process Office to be placed on the service list for this proceeding. Requests to be placed on the service list can be sent by email (Process\_Office@cpuc.ca.gov) or by postal mail (Process Office, California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, California, 94102). All requests must include the following:

- Docket Number: Rulemaking 08-11-005
- Name and entity represented, if any
- Address
- Telephone number
- Email address
- Request for Party status, State Service status, or Information Only status.<sup>14</sup> **Note:** A party may have only one person listed

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<sup>14</sup> Party status is for those planning to participate actively in this proceeding by attending workshops and/or submitting written comments. State Service status is for employees of the State of California. Information Only status is for those who

*Footnote continued on next page*

in the “Party” section of the service list, but the same party may multiple people listed in the “State Service” or “Information Only” sections of the service list.

When serving documents, parties should use the most up-to-date service list on the Commission’s website. Service of documents shall be done in accordance with Rules 1.9 and 1.10. These rules allow electronic service of documents, in a searchable format, to those listed under the “Party” or “State Service” sections of the service list that have provided an email address. If no email address was provided, service should be made by United States mail or similar means. In this proceeding, parties shall provide concurrent email service to all persons on the service list for whom an email address is available, including those listed under “Information Only.” Parties shall provide paper copies of served documents upon request.

Electronic service of documents shall occur no later than 4:00 p.m. on the date that service is scheduled to occur. All email and electronic documents must adhere to the form and content requirements of Rule 1.10(a). Parties are reminded that written testimony, if any, shall be served on the service list but not filed at the Commission’s Docket Office.

Rules 1.9 and 1.10 govern service of documents but not the filing of documents at the Commission. Parties can find information about electronic filing of documents at [www.cpuc.ca.gov/PUC/efiling](http://www.cpuc.ca.gov/PUC/efiling). All documents filed at the Commission’s Docket Office must include the caption for this proceeding.

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wish to receive all documents filed in the proceeding, but who will not be participating actively.

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

Anyone who is unfamiliar with the Commission's procedures can obtain assistance from the Commission's Public Advisor at:

- (866) 849-8390
- (415) 703-2074
- (866) 836-7825 (TTY-toll free)
- [public.advisor@cpuc.ca.gov](mailto:public.advisor@cpuc.ca.gov)

## **9. Intervenor Compensation**

Any party who intends to seek compensation pursuant to Pub. Util. Code §§ 1801-1812 shall file and serve a notice of intent to claim compensation no later than 30 days after the first day of the first workshop (i.e., no later than February 19, 2009). Parties who intend to seek intervenor compensation must maintain daily records for all hours claimed and a sufficient description for each time entry. Sufficient means more detail than just "review correspondence" or "research" or "attend meeting." In addition, intervenors must track and report time by issue. When submitting requests for compensation, the hourly data should be presented on an Excel spreadsheet.

As set forth in Pub. Util. Code § 1801.3(f) and § 1802.5, all parties seeking an award of intervenor compensation must coordinate their analysis and presentation with other parties to avoid duplication.

## **10. Public Participation Hearings**

Three public participation hearings (PPHs) will be held, one each in San Diego, Los Angeles, and Northern California. The date, time, and location of each PPH will be announced in a future ruling.

Therefore, **IT IS RULED** that:

1. The scope and schedule for Phase 1 of this proceeding are set forth in the body of this ruling. The schedule may be revised, as necessary, by the assigned Commissioner or the assigned Administrative Law Judge (ALJ).
2. The scope and schedule for Phase 2 of this proceeding will be set forth in a future ruling.
3. The category of this proceeding is quasi-legislative.
4. Evidentiary hearings are not needed at this time.
5. The Commission's Consumer Protection and Safety Division (CPSD) shall arrange and manage a series of workshops as set forth in the body of this ruling. CPSD may share these responsibilities with other parties as CPSD deems appropriate.
6. Ex parte communications are allowed in this proceeding without restrictions or reporting requirements pursuant to Rule 8.2(a).
7. Parties serving documents shall comply with Rules 1.9 and 1.10 and provide the assigned ALJ with both (i) a hard copy, and (ii) an electronic copy in Microsoft Word and/or Excel format, to the extent practicable.
8. Notices of intent to seek intervenor compensation shall be filed no later than February 19, 2009.

9. Three public participation hearings (PPHs) will be held, one each in San Diego, Los Angeles, and Northern California. The date, time, and location of each PPH will be announced in a future ruling.

Dated January 6, 2009, at San Francisco, California.

/s/ TIMOTHY ALAN SIMON

Timothy Alan Simon  
Assigned Commissioner

**INFORMATION REGARDING SERVICE**

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

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

Dated January 6, 2009, at San Francisco, California.

/s/ SANDRA M. JACKSON

Sandra M. Jackson