

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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Order Instituting Rulemaking to
Consider Proposed Amendments to
General Order 95.

Rulemaking 14-08-012
(Filed August 14, 2014)

**PREHEARING CONFERENCE STATEMENT AND OPENING
COMMENTS OF THE SAFETY AND ENFORCEMENT DIVISION**

I. INTRODUCTION

Pursuant to Administrative Law Judge (ALJ) Kenney's Ruling¹ on September 2, 2014, the California Public Utilities Commission's (Commission) Safety and Enforcement Division (SED) hereby files its Prehearing Conference (PHC) Statement and Opening Comments. The Ruling also provides that these filings should address matters identified on pages 28-30² of the Order Instituting Rulemaking (OIR) to consider Proposed Amendments to General Order (GO) 95.

These three pages in the OIR provide parties the ability to request that the proceeding address issues that are not in the preliminary scope of the OIR and potentially guide the final Scoping Memo that would include the final schedule and scope. Pages 28-30 of the OIR refer twice to the Commission's Rules of Practice and Procedure 6.2. Rule 6.2, regarding Opening Comments, provides:

Any person filing comments on an order instituting rulemaking shall state any objections **to the preliminary scoping memo regarding the category, need for hearing, issues to be considered, or schedule**. Any recommended changes to the proposed

¹ (Administrative Law Judge's Ruling Setting a Prehearing Conference for November 12, 2014).

² *Id.* at 2.

schedule shall be consistent with the proposed category, including a deadline for resolving the proceeding within 18 months or less (ratesetting or quasi-legislative proceeding). All comments which contain factual assertions shall be verified. Unverified factual assertions will be given only the weight of argument.³

The PHC Statement and the Opening Comments overlap because the PHC statement indeed would include “the category, need for hearing, issues to be considered, or schedule⁴” as does the Opening Comments. To prevent duplication and overlaps, SED is filing its Opening Comments and PHC Statement in the instant document.

Furthermore, on page 30 of the OIR, the ALJ refers to Rule 7.1(d). Rule 7.1(d) provides:

Rulemakings. An order instituting rulemaking shall preliminarily determine the category and need for hearing, and shall attach a preliminary scoping memo. The preliminary determination is not appealable, but shall be confirmed or changed by assigned Commissioner's ruling pursuant to Rule 7.3, and such ruling as to the category is subject to appeal under Rule 7.6.

The OIR, pages 28-30 provide parties with further opportunities consistent with the rules such as allowing “any other matters that are relevant to the scope, schedule, and/or conduct of this rulemaking proceeding.” SED appreciates the opportunities to propose modifications to the Scope and other factors of the OIR.

³ (Emphasis added).

⁴ *Supra* Rule 6.3.

II. DISCUSSION

A. Purpose of the OIR

The Commission opened the instant OIR from Petition (P.) 14-02-014 filed by the GO 95/128 Rules Committee. The Petitioners consist of many parties including electric utilities, Communication Infrastructure Providers (CIPs), and numerous other parties. The Petitioners sought to open a rulemaking for the Commission to consider adopting their 29 Proposed Rule Changes (PRCs).⁵ SED understands that a central intent of this OIR is to focus on the specified GO 95 changes. SED attended all-party meetings arranged by the Rules Committee.

These meetings were very productive as they focused on reaching consensus for the PRCs from the Petition. Page 28 of the OIR states that the Rules Committee should chair and work with other parties to reach a consensus or resolve any substantive issues, identify disputed issues, and reach an agreement on the schedules for this proceeding and appropriate procedures for resolving the disputed issues. The Rules Committee will file its PHC statement and address any areas of dispute that might remain among the parties. SED believes that consensus has been reached on the PRCs and other issues, except for SED's recommendations described below.

B. Categorization, Schedule, and Procedure

SED does not anticipate that hearings will be necessary and does not oppose the categorization of the OIR. However, SED seeks to broaden the scope of this proceeding through a second phase, which would modify the schedule.

C. SED Seeks to Broaden the Scope of this Proceeding through a Second Phase for this OIR

During the litigation of the Petition, SED requested a broader rulemaking to modify GO 95 to increase public safety, which some of the rules currently hinder

⁵ There was at least one party at the good-faith party meetings that assumed that the OIR essentially adopted the Petition, rather than understanding that the Commission has not yet issued a decision, which is the only way the PRCs will be either accepted or denied.

(some potential changes to GO 95 and other GOs, are listed below in section D). The legislature has mandated the Commission to ensure that the public is safe from any safety violations. Moreover, the Commission discusses the need for safety throughout the OIR.

SED recommends that the Commission consider modifications to GOs 95, 128 and 165 at the same time, as they are interrelated and apply to the same entities. SED respectfully asks for this proceeding to have a second phase so changes can include GOs 128 and 165, in addition to GO 95. SED agrees that the first Phase could deal with only the PRCs from the Petition.

SED respectfully requests that the final Scoping Memo recognize that certain other issues (including those listed below) should be addressed in a separate phase of this rulemaking. SED proposes this procedural solution, rather than beginning a new rulemaking.

However, if the Commission desires to limit this OIR to only the GO 95 modifications identified in the OIR, a separate rulemaking would be appropriate so that other changes to GO 95, along with changes to GOs 128 and 165, could also be considered.

D. SED asks the Commission to Consider Modifications to GOs 95, 128, and 165

SED asks that the Commission consider modifications to GOs 95, 128, and 165 in the near future, preferably in a Phase 2 to this rulemaking but, if not, in a new rulemaking. Workshops are needed, so that all parties would have an opportunity to discuss possible modifications to these three GOs. While SED could schedule informal workshops outside of a rulemaking, our experience has been that workshops are more successful if held within the structure of a Commission proceeding.

At this time, SED sees a need for the Commission to consider the following changes:

1. Consider changes to GO 95, Rule 18A

Rule 18A was created by Commission D.09-08-029 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.” Although we agree with the intent of the rule, this rule as interpreted and implemented today has become an obstacle to ensure compliance with GO 95, which could jeopardize public safety. This rule allows violations to exist without proper and immediate actions by the responsible party to remedy them. SED believes that this rule should be modified for clarity and effectiveness.

While SED elaborates on this first modification, we request consideration of the other modifications listed below in order to provide an acceptable level of safety and system reliability.

2. Modify GO 165 to delete defined cycles and incorporate risks;
3. Modify Rule 38/Table 2 to clarify that cables of the same circuit can never touch – GO 95;
4. Create a rule that states protective relays have to be set to protect wires from melting/failing – GO 95 and GO 128;
5. Create a rule that requires heat scanning of underground equipment – GO 128 or GO 165;
6. Create a rule that requires utilities to perform trend analysis of equipment failures - GO95 and GO128 (or GO 165);
7. Create a rule that requires trend analysis of fault current, to determine effect on conductor strengths - GO95 or GO165;
8. Create a rule that requires safety training and qualification of employees - GO95 and GO128 (or GO165); and
9. Update Appendix F – GO95.

III. CONCLUSION

SED does not object to the PRCs that have been included in this OIR. SED seeks to ensure that it also has the opportunity to bring its own PRCs to an OIR as well. SED respectfully requests the Commission to adopt the recommendations in

the above PHC statement and Opening Comments in the final Scoping Memo for this proceeding.

Respectfully submitted,

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