

DRAFT

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

**I.D. # 11419
RESOLUTION E-4493
September 13, 2012**

R E S O L U T I O N

Resolution E-4493. California Pacific Electric Company (CalPeco), Golden State Water Company (GSWC), Pacific Gas & Electric Company (PG&E), Pacific Power Corporation (PacifiCorp), San Diego Gas and Electric Company (SDG&E), Southern California Edison Company (SCE), collectively "IOUs" (Investor Owned Utilities).

PROPOSED OUTCOME: This Resolution approves with modifications IOUs' Advice Letters (AL) listed below.

ESTIMATED COST: None

By ALs CalPeco 15-E filed March 15, 2012, and GSWC 265-E, PG&E 4012-E, PacifiCorp 470-E, SDG&E 2336-E and SCE 2709-E, filed March 12, 2012.

SUMMARY

These are Tier 3 Advice Letters incorporating Decision (D.) 12-01-032, Ordering Paragraph (OP) 7, requiring revisions to Electric Tariff Rules 11(Tariff Rule 11) (Discontinuance and Restoration of Service) and 16 (Service Extensions), stating that the IOUs may shut off power to customers who do not allow access to their property for vegetation management activities for fire hazard prevention, subject to certain conditions.

BACKGROUND

On November 6, 2008, to consider and adopt regulations to reduce the fire hazards associated with overhead power-line facilities and aerial communication facilities in close proximity to power lines, the California Public Utilities Commission (CPUC) issued Order Instituting Rulemaking (R.) 08-11-005. On January 12, 2012, the CPUC issued D.12-01-032, in which among other things, the CPUC required the California IOUs to update their tariffs with new rules for

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shutting off power to customers who do not allow the IOUs access to their electric power lines for vegetation management activities. Specifically, in OP 7 of D.12-01-032, the CPUC ordered that the IOUs shall file and serve a Tier 3 AL to revise their tariffs to state that the IOUs may shut off power to customers who do not allow access to their property for vegetation management activities, subject to the following conditions:

- i. The authority to shut off power is limited to situations where there is a breach of the minimum vegetation clearances for power lines required by General Order (GO) 95, Rule 35, Table 1, Cases 13 and 14.
- ii. The authority to shut off power to customers who obstruct vegetation management activities does not extend to customers that are state and local governments and agencies.
- iii. The authority to shut off power is limited to one meter serving the property owner's primary residence, or if the property owner is a business entity, the entity's primary place of business. This one meter is in addition to shutting off power, if necessary for public safety, at the location of the vegetation-related fire hazard.
- iv. Prior to shutting off power, the IOUs shall follow the then-current procedures and notice requirements applicable to discontinuance of service for non-payment, including the requirements applicable for sensitive customers, customers who are not proficient in English, multifamily accommodations, and other customer groups, except as set forth in Item (v) below. To the extent practical, the applicable procedures and notice requirements shall be completed prior to a breach of the minimum vegetation clearances required by GO 95, Rule 35, Table 1, Cases 13 and 14.
- v. For vegetation hazards that pose an immediate threat to public safety, the electric utility may shut off power to the obstructing property owner's residence or primary place of business at any time without prior notice, except when the customer receives service under a medical baseline allowance. If power is shut off without prior notice, the electric utility shall attempt to contact the property owner for five consecutive business days by daily visits to the property owner's residence or primary place of business, in addition to sending a written notice, to inform the property owner why power has been shut off and how to restore service. If a utility determines

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that it is necessary to shut off power to a medical baseline customer, the utility shall attempt to notify the customer by telephone prior to the shut off.

NOTICE

Notice of ALs 15-E (CalPeco), 265-E (GSWC), 4012-E (PG&E), 470-E (PacifiCorp), 2336-E (SDG&E), 2709-E (SCE) was made by publication in the CPUC's Daily Calendar. The IOUs state that copies of the ALs were mailed and distributed in accordance with Section 4 of General Order 96-B.

PROTESTS

Three protests were received.

All, except CalPeco's AL, were timely protested by the California Farm Bureau Federation (FB). PG&E's AL was additionally timely protested by Kevin Collins, Felton. The County of Santa Cruz (SC) filed a protest to PG&E's AL within the time specified, but failed to serve PG&E.

SCE, SDG&E and PG&E replied timely to the protest by the FB. PG&E also replied timely to the protest by Kevin Collins.

Energy Division (ED) staff agreed to a late response by PG&E to the protest by SC because of SC's failure to serve PG&E.

GSWC and PacifiCorp did not reply to the protest by the FB.

DISCUSSION

1. IOUs' Proposals

All IOUs incorporated OP 7 nearly verbatim in their Tariff Rules 11 and amended the conditions under which they shall have the right to enter and leave an Applicant's Premises in Tariff Rule 16 to include "vegetation management". However, rather than using the OP 7 language "shut off power", where appropriate for consistency, they instead use the term "disconnect service". They do, however use "shutting off power" when talking about a public threat at a particular location.

Analysis: The distinction between "discontinuance of service" and "shutting off power" made by the IOUs in implementing OP 7 appears consistent with the intent of the decision and the wording of other parts of the tariff and should be approved.

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The IOUs tariffs include other minor deviations or additions to OP 7, as follows:

1.1 CalPeco

CalPeco proposes to add the following to OP 7 i. language in its Tariff Rule 11: “. . . or when the company has knowledge obtained through normal operating practices that there is an occurrence of dead, rotten, or diseased trees or dead, rotten or deceased portions of trees that overhang or lean toward and may fall into a span of supply lines; or under the provisions in effect at the time the breach is discovered.”

CalPeco does not refer to GO 95, Rule 35, Table 1, Case 14 in Tariff Rule 11, as ordered in OP 7 i. and iv.

Analysis: The additional language tries to implements part of OP 7 i. and iv. but does not refer to GO 95, Rule 35 and the “then current procedures and notice requirements.” However the phrase “. . . or under the provisions in effect at the time the breach is discovered” is unclear.

CalPeco shall clarify this language to say “. . . or under the provisions in G.O. 95, Rule 35 and the notification requirements of Tariff Rule 11 in effect at the time the breach is discovered” by filing a substitute sheet.

GO 95, Rule 35, Table 1, Case 14 requires a larger radial distance of vegetation from bare wires in a “VeryHigh Fire Threat Zone in Southern California” and therefore does not apply at all in CalPeco’s northern California territory. High Fire Threat Zones are defined by the California Department of Forestry and Fire Protection’s Fire and Resource Assessment Program (FRAP) Fire Threat Map.

1.2 GSWC

GSWC proposes to add the following to OP 7 i. language in its Tariff Rule 11: “. . . under the provisions in effect at the time the breach is discovered.” Analysis: See the analysis of CalPeco’s proposal above. We also order GSWC to modify its Tariff Rule 11 identical to the modification ordered for CalPeco above.

1.3 PG&E

PG&E proposes to add Tariff Rule 11, Section N.6.a. Service Restoration: “When a customer’s service has been terminated because access to overhead electric facilities for vegetation management purposes has been obstructed resulting in a breach of the minimum required vegetation

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clearances or an immediate vegetation hazard, the customer's service will not be restored until appropriate vegetation management has been achieved or the vegetation hazard has been mitigated, and payment for all applicable restoration or service charges as provided in Electric Rule 11, Section M, Charges for Termination and/or Restoration of Service have been received."

Analysis: Existing Section M.4 of Tariff Rule 11 details the conditions for termination and restoration of service, among them non-payment of bills and failure to comply with tariffs. The addition of Section N.6.a is therefore within OP 7iv., which invokes the same procedure and charges for restoration of service for failure to pay bills and for obstructing vegetation management.

1.4 PacifiCorp

PacifiCorp's proposed changes to its Tariff Rule 11 does not include the requirement that notice prior to shutting off power shall include "the applicable requirements for sensitive customers, customers who are not proficient in English, multifamily accommodations, and other customer groups."

Analysis: Because PacifiCorp has no such applicable requirements in its current tariffs the proposal complies with OP 7.

1.5 SDG&E

SDG&E proposes to spell out the requirements for restoration of service with reference to its Rate Schedule SE (Service Establishment Charges).

Analysis: This clarification does not add any new requirement to the tariff.

1.6 SCE

SCE proposes to add ". . . under the provisions in effect at the time the breach is discovered" to OP 7 i.

Analysis: In response to ED staff's question for the purpose of this language, SCE explained that the provisions refer to the GO 95 requirements in effect at the time the breach of clearance is discovered. This additional language would eliminate the need to update Tariff Rule 11 whenever GO 95 is revised. For clarity we order SCE to revise its addition to OP 7 i. language to read the same as ordered for CalPeco above.

2. Protests

2.1 California Farm Bureau Federation

FB claims important steps in the IOUs' ALs that must be taken before discontinuing a customer's service are missing. FB says that discontinuance of service for non-payment is objective and disputes are managed, which is not provided for in the proposals in the case of vegetation management power shut-offs. Existing Tariff Rules 8, 10 and 16 which are referenced in Tariff Rule 11 should be revised to reflect any change as well.

FB concern is focused on how the shut off provisions will be used in the context of distribution and transmission easements, which have at most indirect connections with an individual meter; a landowner "may not necessarily match-up with an electric customer."

The following are FB's detailed change requests to the IOUs' proposals:

- 2.1.1** Application of the shut-off rule to an "additional meter" should be prohibited in cases where property is owned by multiple parties. In those cases application of the same rule for shut-off as that for non-payment of bill is insufficient.
- 2.1.2** The difference for a business entity landowner versus a residential landowner must be made explicit to comply with the decision. To achieve this, the following language needs to be included in the tariffs: "No residential meter shall be disconnected where the customer denying access is not a business entity, nor shall a non-residential meter be disconnected when the customer denying access is not a business entity." In addition, where a customer controls multiple meters, the particular meter subject to shut-off must be identified.
- 2.1.3** The Consumer Protection and Safety Division (CPSD) should be notified in a vegetation management dispute. The portion of Tariff Rule 11 that provides for dispute review by the CPUC in the case of a threatened shut-off for non-payment should also apply to vegetation management disputes, but such disputes should be handled by the Utilities Safety and Reliability Branch (USRB). FB proposes the following changes to Rule 11:

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- Documentation of utility's compliance with internal procedures prior to shutting-off of power to a meter in addition to the meter that gives rise to the dispute.
- Require 15 days' notice prior to termination of service to address of additional meter and address of owner/party responsible for the dispute.
- Require review by USBR of the request and information provided by customer and approve or deny the shut-off within 15 days.

2.1.4 Utility procedures for vegetation management should be publicly available. All IOUs should post the process for shut-off of power and vegetation management on their websites, as PG&E does. The procedures referenced in the workshop should be clearly set out.

2.1.5 The prohibition of shut-offs on weekends and holidays, which apply for non-payment of bills should also explicitly be stated and a phone number given for remedy of adverse situations.

2.1.6 The Utilities should provide substantive details about how they will "Minimize Disruption to Farming Operations and Damage to Cultivated Fields" as required by the decision. Providing details would in most cases assure cooperation from the agricultural community. The utilities should notify customers of the upcoming year's vegetation management plans after the harvest to allow the landowners to provide the utility with scheduling constraints. Other elements of a roadmap would be directions about debris disposal and phone contacts to the utility because most vegetation management is done by contractors. The CPUC directive for more transparency to obtain cooperation and minimize disputes and interruptions to agricultural operations is required before the CPUC approves these ALs.

The procedures to accommodate agricultural operations should consider OP 7 iii. as basis for power shut-offs to additional meters being "vegetation-related fire hazard."

D.09-08-029 of Phase 1 of R.08-11-005 recognized cultivated crops, like orchards, pose less of a fire hazard than other areas.

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2.1.7 Added language in SDG&E's AL 2336-E, Tariff Rule 11, Paragraph N.3 should be struck. Subject paragraph provides: " . . . where in the reasonable judgment of the utility . . ." to qualify if vegetation poses an immediate threat to public safety. Ongoing development of standards for vegetation management-related safety assessment continue in Phase 3 of R.08-11-005, including review of the fire threat maps and other matters to guide safety oversight. Proposed decision in Application (A.) 08-12-021 lists factors on Page 31 that will be considered to determine if power shut-off was reasonable. Language in D.12-01-032 reads that the Commissions ongoing directives on safety will be applied. SDG&E's language may eliminate ongoing review of what is appropriate to consider an immediate threat.

2.2 County of Santa Cruz (Protest to PG&E's AL only)

SC supports the CPUC's establishment of reasonable electric utility vegetation management rules, but takes issue with PG&E's vagueness and ambiguity contained in proposed revision to Tariff Rule 11, Section N. There is no explanation what would constitute "obstruction" by the customer. It is unclear if this is limited to a customer blocking physical access to the property or simply wanting to discuss what trimming is proposed? The determination is left to PG&E and there is no right of appeal or requirement for PG&E documentation. Furthermore, residents have complained about trimming materials left on customer's property or near roadways creating safety hazards.

SC proposes the following additions to Rule 11, Section N:

"If requested by the customer, the electric utility shall describe the vegetation activities proposed for the customer's property and how the trimmed vegetation shall be disposed. If consistent with vegetation management guidelines, the electric utility may consider reasonable modifications proposed by the customer "and

"For purposes of this Rule, a customer asking questions or seeking clarification about proposed vegetation management activities shall not be deemed to have obstructed such activity. If the electric utility determines that a customer has acted to obstruct vegetation management activities, the basis of such obstruction shall be

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documented in writing and included with the notice provided to the customer as set forth in item (OP 7) iii.”

2.3 Kevin Collins (Protest to PG&E’s AL only)

Mr. Collins objects to PG&E’s proposal in general because it lets PG&E and its contractors use the rule in “any manner it pleases,” regardless of the actual distance to power lines in any specific situation.

He also objects to the right of PG&E to enter and leave premises at all times; in his words “even the sheriff needs a warrant for entering if against property owner’s will.”

Furthermore, Collins objects to the provision of only having to attempt to notify medical baseline customers by phone of impending power shut-off and forcing them to have an Uninterruptible Power Source (UPS) ready.

Collins mentions experiences where trees growing on opposite sides of power lines along State highways were cut and left in heaps or trunks of dead trees are left leaning out over roadways.

Collins wants PG&E’s AL denied because there is no “established and financially independent government authorized review authority to hear appeals in this proposal.”

Collins mentions that he informed the SC Board of Supervisors of PG&E’s AL.

3. Utilities’ Responses to Protests

3.1 PG&E

3.1.1 PG&E opposes FB’s protests in its entirety as an attempt to re-litigate issues that have already been extensively discussed throughout the course of Phase 2 of R.08-11-005 in workshops and litigation. It notes that D.12-01-032 justified the proposed language by stating: “We recognize that shutting off of power to a customer is a harsh remedy, but public safety and welfare is placed at grave risk when there is a breach of the required minimum clearances.” FB was an active participant throughout the proceeding. Public Utilities Code (PUC) Sections 1709 and 1731(b) do not allow relitigation through a protest. PG&E argues that FB’s protest should be rejected by the Commission for the following reasons.

- 3.1.1.1** FB's protest is not valid because it is not based on any of GO 96-B Energy Industry Rule 7.4.2 grounds for a protest.
- 3.1.1.2** PG&E's proposal is almost verbatim the language of OP 7.
- 3.1.1.3** The CPUC considered "collateral harm" or "harmful disruption" to innocent third parties. Shut off of power is a last resort tool and the parties involved are known by then. All property owners are legally responsible for hazards on their property and any of them could be held responsible (for damage).
- 3.1.1.4** The CPUC did note two remedies for disputes with a utility not involving CPSD; legal action through the courts for violation of the easement agreement and filing of a complaint pursuant to Rule 4.1 of the CPUC's Rules of Practice. The notice language in OP 7 allows flexibility for future changes in Commission rules, while the decision provided explicit directives for shut offs in cases of public safety threats from vegetation.
- 3.1.1.5** FB's proposed change to publicize the procedures for vegetation management has nothing to do with the proposed shut off tariffs, which are public. Knowledge of the earlier specific steps taken by the utility in its "refusal" process would only provide more opportunity to abuse the process and delay the vegetation management work.
- 3.1.1.6** While prohibition of termination of service on weekends and holidays follows the rules for non-payment of bills, this is not appropriate for shut-off of power because of a public safety hazard. Fires do not take weekends and holidays off.
- 3.1.1.7** The risk of fire for cultivated areas was considered during the rulemaking proceeding and reflected in GO 95 Rule 37, Table 1 and Exception (jjj). There is no need for further details on how the utility "minimizes disruption to farming operations and damage to cultivated fields" because PG&E already works with growers to schedule vegetation management. This issue is not relevant to the proposed shut off tariff.

- 3.1.2** PG&E opposes SC's protest as elaborated below and in part because it deals with issues outside the scope of the AL.
- 3.1.2.1** SC's assertion that the proposed Tariff Rule 11 changes are vague and ambiguous is false, because they were reached after vigorous debate and are almost verbatim as ordered in OP 7. The CPUC recognized that power shut off is a harsh remedy, but put public safety and welfare first.
- 3.1.2.2** PG&E's AL is not unjust and unreasonable and does not require clarification of what constitutes "obstruction" by the customer because the procedures reflect the CPUC's order after robust discussion and consideration, is limited to a situation of actual breach of minimum vegetation clearance, and requires specific notice procedures before power is shut off. PG&E takes the following steps when working with customers who are preventing utility vegetation management work: a customer contact by a field inspector, his/her supervisor, research of the property rights and a letter to the customer followed by a 10 days waiting period.
- 3.1.2.3** As to concerns about aggressive vegetation removal and material left on customer's property or near roadways, PG&E will contact SC directly. PG&E also reminds that their local Governmental Relations representative and customer service phones are available.
- 3.1.3** PG&E rejects Collins' protest for the same reason stated above and responds to his specific protest as follows:
- 3.1.3.1** Collins' statement that the proposed rule changes are "outrageous and astounding" is contrary to the fact that they reproduce with minor modifications OP 7. These provisions were heavily analyzed in Phase 2 of R.08-11-005 and the Commission "recognized that shutting off power to a customer is a harsh remedy, but public safety and welfare is placed at grave risk when there is a breach of the required minimum clearance. In our judgment the remedy is commensurate with the circumstances."
- 3.1.3.2** As to Collins' claim that "no action by any utility to cut off electricity service based upon this fire prevention pretense as

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defined by PG&E . . . can be allowed without a formal legal appeal process before an established and financially independent government authorized review authority”, PG&E refers to the decision which states: 1) “If a utility conducts vegetation management activities in a way that violates its easement agreement with a property owner, the property owner may pursue legal remedies through the courts”; and 2) “Any landowner who believes an electric utility is conducting vegetation management activities in a way that violates today’s decision . . . may file a complaint pursuant to Rule 4.1 of the Commission’s Rules of Practice,” which may include the granting of injunctive relief.

3.1.3.3 Regarding notice, PG&E will comply with the “then current procedures and notice requirements that are applicable to discontinuance of service . . . including the requirements applicable for sensitive customers, customers who are not proficient in English, multifamily accommodations and other customer groups . . .” as ordered by the CPUC.

3.1.3.4 PG&E responds that Collins’ other protest issues are outside the scope of the AL, but that PG&E will contact Collins about his concerns with tree boles leaning over a roadway. Collins is further encouraged to report environmental issues to PG&E.

3.2 SCE

SCE echoes PG&E’s response 3.1.1.1 and 3.1.1.2 and responds to FB’s specific issues as follows:

3.2.1 The CPUC specifically noted FB’s objection to shutting off power to all service locations of a non-cooperative customer and articulated that: “in deciding this issue, our main concern is the prevention of wildfires and outages caused by property owners who refuse to allow access to power-line facilities for vegetation management activities,” but limited the service discontinuance to only one service location of a non-cooperative customer.

- 3.2.2** The requested clarification is unnecessary because OP 7 iii. makes a distinction between 1) shutting off power at the location of the fire hazard in addition to 2) disconnecting service at one meter at the primary residence for an individual customer or place of business for a business entity.
- 3.2.3** The CPUC already considered CPSD oversight of the disconnection of service process and did not adopt it in D.12-01-032, instead ordered that the utility “follow the then current procedures and notice requirements applicable to discontinuance of service for non-payment.”
- 3.2.4** SCE’s tariff rules, including Tariff Rule 11 pertaining to discontinuance of service for non-payment are posted on SCE’s website. This rule governs the basic procedures for shut-off ordered in OP 7 iv, which does not require prior notice, except for medical baseline customers, for vegetation fire hazards that pose an immediate threat to public safety.
- 3.2.5** Per proposed Section M.5 of Tariff Rule 11, SCE will apply the same procedures to disconnection for vegetation management as it would to disconnection due to non-payment. Existing Section B (7) states: “Service will not be disconnected by reason of delinquency in payment for electric service on any Saturday, Sunday, legal holiday, or at any time during which the business offices of SCE are not open to the public.” However, service can be disconnected at these times when there is an immediate threat to public safety.
- 3.2.6** FB’s request that disruption to farming operations be minimized has been considered by the CPUC in the decision by stating that:
- “Although electric utilities have a duty to keep power lines clear of vegetation in order to maintain reliability and protect public safety, they should do so in a way that minimizes disruption to farming operations and damage to cultivated fields. When possible, electric utilities should schedule vegetation management at times mutually convenient to the utility and the farmer. In general, electric utilities should avoid scheduling vegetation management activities immediately after planting, during harvest, and after pesticide

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applications and when an intrusion onto cropland can be costly for the farmer and/or dangerous for the vegetation management crew.”

As remedy to property owners that believe the utility acted in an inappropriate manner the CPUC further stated in the decision:

“Any landowner who believes an electric utility is conducting vegetation management activities in a way that violates today’s decision or another Commission decision, order, or rule may file a complaint pursuant to Rule 4.1 of the Commission’s Rules of Practice of Procedure. Upon a showing of good cause, the Commission may grant temporary injunctive relief that prohibits the alleged violation from continuing until the complaint is decided by the Commission.”

3.3 SDG&E

SDG&E also maintains that its AL fully conforms to the terms of the decision and states that FB is in large parts simply rehashing matters that it raised during the proceeding. Public Utilities (P.U.) Code Section 1731(b) bars collateral attacks where an aggrieved party to a proceeding has failed to file an application for rehearing of a CPUC decision.

SDG&E reminds the CPUC to heed its statement that “in deciding this issue [i.e., whether to “allow electric utilities to terminate service at any location where a customer receives service, not just the location where the customer obstructs vegetation management”], our main concern is the prevention of wildfires and outages caused by property owners who refuse to allow access to power-line facilities for vegetation management activities.”

SDG&E then responds to each of the issues raised by the FB in detail and echoes the responses given by PG&E and SCE as described above. SDG&E admits that the CPUC could well be moved to adopt one or more of FB’s proposals or tariff amendments – “each is articulately stated and appears to be sober and reasonable in its own right.” But to adopt any one or all would undermine the protection from high-risk hazards to the public.

- 3.3.1** The CPUC actually constrained discontinuance of service to only one of multiple landowners for obstructing vegetation management, even though all are culpable for fire hazards. The FB now wants to have rules for the utilities to determine which of the multiple owners is most guilty. The gaming and evasion and continuous monitoring of such rules could only be imagined.
- 3.3.2** FB proposes to disallow service discontinuance to a residence in the case where a business entity is the owner of the property where vegetation management is refused, and vice versa. This proposal only serves to obfuscate the application of the simple rule. The decision states that service discontinuance may be applied to “one meter serving the property owner’s principal residence or if the property owner is a business entity, the entity’s primary place of business.” Under FB’s proposal, an individual owning property may well qualify as a “business entity” – sole proprietorships, DBAs, closely held S corporations or LLCs could be the registered owner of the property, operating from the residence of its single owner and employee. In these instances FB’s proposal would allow these owners to escape enforcement altogether. SDG&E also opposes FB’s proposal for lengthy notice and dispute resolution processes as in the case for non-payment. SDG&E notes that non-payment does not threaten public safety.
- 3.3.3** SDG&E agrees with the FB proposal to make available a description of the processes the utilities will follow prior to invoking the authority described in the ALs and refers to its public websites. SDG&E invites the FB to provide further details that should be included. Since this proposal raises a matter well beyond the scope of the AL this should, however, not be grounds to reject or suspend it.
- 3.3.4** As to FB’s protest regarding power shut-offs on weekends and holidays, SDG&E echoes PG&E’s response in 3.1.1.6.

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3.3.5 FB's proposal for providing details explaining procedures that minimize disruption when coordinating with farmers on vegetation management is also considered fair by SDG&E. Again, SDG&E invites the FB and local farmers to meet SDG&E to improve its existing procedures, but does not see this as ground to reject or suspend the AL.

3.3.6 SDG&E is uncertain as to FB's protest against proposed language in Tariff Rule 11.N.3 allowing SDG&E discontinuing service at an off-location meter "where in the reasonable judgment of the Utility vegetation hazards pose an immediate threat to the public safety." There is no "potential for insulating [SDG&E] against the ongoing review of what is appropriate to consider an immediate threat" because that is specified by GO 95, Rule 35. The CPUC does give the IOUs discretion, (saying "may" rather than "shall"), to affect off-location service discontinuance in the absence of notice in the case of immediate public threat. In D.09-09-030 the CPUC held that IOUs have statutory duty and authority to protect public safety.

4. Analysis

4.1 We agree with the common reply to FB's, Collins' and SC's protests by all responding IOUs that the protests do not state a valid basis for rejecting the ALs, as required by GO 96-B, Section 7.4.2. The extensive workshop reports are evidence that the issues brought up by the protests have been discussed and D.12-01-032 ordered the basic language to be included in the tariffs to achieve the goal of fire prevention by vegetation management. The Decision states that the measures for shut off of power are "harsh," but public safety was put ahead of concerns about their consequences to individual customers.

While the FB notes that the tariff provisions for power shut-offs for non-payment of bills and for refusal of vegetation management differ in many respects, these differences are intentional because of the severe consequences to public safety of the latter. Time is of the essence.

4.1.1 Where property is owned by multiple parties they may be operating under a dba, which may also be the name on an electric account. In that situation, that place of business could be discontinued from service. In any event, if a property owner is obstructing vegetation management, the IOU will know the identity of the individual who

has been obstructing access, and therefore it would be appropriate to terminate service to that individual. In the case of a customer having multiple meters (or multiple owners each having their own residential meter), specifying in advance which particular meter or owner should have power shut off is impractical, given the many different scenarios possible.

4.1.2 The CPUC considered the negative impact to third parties from the authorized power shut offs, but placed public safety above that. In cases where the landowner obstructs access despite the existence of a utility easement that allows access, an “innocent” third party of the power shut-off may seek redress against the landowner in civil court.

4.1.3 In the workshop, the FB already called for opportunity to be heard by an independent entity before power is shut off, and The Utility Reform Network (TURN) proposed that tariff rules be modified to clarify the process by which power shut-offs are conducted, including an opportunity for appeals and stringent notification requirements to ensure that customers (and end users, where the two are not the same) are not unduly or inadvertently harmed by this new rule. The decision referred to the workshops, but did not adopt these proposals. Therefore this issue has been considered by the decision and it is not a legitimate protest by the FB to seek appeal to the USRB before power shut-offs.

4.1.4 We agree with the FB that more information on the process of notification and discontinuance of service and power shut-off by IOUs would be desirable. The IOUs do provide some information on their websites, but we do not believe the tariffs should be encumbered with all of the details of the process each IOU uses when, as a last resort, the IOU discontinues service to a residence or place of business because of a vegetation fire hazard and obstruction of its access.

We welcome SDG&E’s offer to work with the FB and others to improve their website in this regard and encourage the other IOUs to consider requests by their customers to do likewise.

4.1.5 OP 7 i. allows the IOUs to shut off power where there is a breach of the minimum vegetation clearance per GO 95, Rule

35 Cases 13 and 14 if a customer does not allow access to its property for vegetation management. This general authority is the basis for OP 7 iii. through v.

OP 7 iii. recognizes that shutting off power at the location of the vegetation management problem may not sufficiently impact the landowner who is obstructing access. Therefore, OP 7 iii. authorizes shutting power off at one meter at either the landowner's primary residence or primary place of business, in addition to the location where there is a breach of the minimum vegetation clearance. This residence or business shut-off, or service disconnection, is authorized to motivate those obstructing customers to allow access to the location of the breach of minimum vegetation clearance.

OP 7 iv. generally requires compliance with the procedures and notification requirements of Tariff Rule 11, applicable for non-payment, prior to disconnecting service. Those portions of tariff Rule 11 prohibit disconnection on weekends, holidays, etc. However, these procedures and notification requirement are expressly, by the terms of OP 7 iv, not required under the circumstances specified in OP 7 v.

OP 7 v. allows IOUs to forgo the procedures and notification requirements of Tariff Rule 11 before shutting off of power to the obstructing property owner's residence or primary place of business in cases where there is an immediate threat to public safety from a vegetation hazard. Because OP 7 iv. expressly exempts the situations described in OP 7 v. from the otherwise applicable disconnection procedures of Tariff Rule 11, the order clearly allows the IOUs to disconnect service to the primary residence or place of business on weekends, holidays, etc. when there is an immediate threat to public safety. There is nothing in the tariff that requires that this immediate threat to public safety be at the location of the residential or business meter.

Thus, the IOUs may not shut off power to the primary residence or place of business on weekends or holidays, etc. when there is merely a breach of the minimum vegetation clearance requirements. In contrast, they are allowed to shut off power to the primary residence or place of business on weekends or holidays, etc. when there is an immediate threat to public safety. SCE's reply to FB's protest agrees with the foregoing analysis.

4.1.6 The decision stated that "When possible, electric utilities should schedule vegetation management at times mutually convenient to the utility and the farmer. In general, electric utilities should avoid scheduling vegetation management activities immediately after planting, during harvest, and after pesticide applications and when an intrusion onto cropland can be costly for the farmer and/or dangerous for the vegetation management crew." However, the decision did not order substantive details about how the IOUs will "Minimize Disruption to Farming Operations and Damage to Cultivated Fields" but referred instead to the complaint process afforded under Rule 4.1 of the CPUC's Rules of Practice and Procedures. This process may allow a grant of temporary injunctive relief.

Again it is desirable that IOUs work with the FB and others to provide information on their websites on the details of vegetation management scheduling, rather than encumber the tariffs with it.

Furthermore, the Decision did not require that before these important tariffs go into effect that the IOUs provide detailed information about IOU scheduling of vegetation management on farms. We will not impose such a requirement now.

4.1.7 We agree with SDG&E that its additional language "where in the reasonable judgment of the Utility vegetation management hazards pose an immediate threat to public safety" does not shield SDG&E from ongoing review of what is appropriate to consider an immediate threat. What is reasonable to consider an immediate threat will always be based on the Commission's regulations in effect at that time.

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4.2 As to Collins' complaint about dangerous situations created by vegetation management activities, which complaint is also reflected in SC's protest, the proper course of action is to first contact the IOU, and, if no response received, to file a complaint with the CPUC. This same process holds true for other alleged "misdeeds" of IOUs. As a last resort and for matters over which the CPUC has no jurisdiction, e.g. property rights issues, the court system is the proper venue. For this reason alone we have no doubt that the IOUs record their customer interactions without specific mandate.

COMMENTS

Public Utilities Code Section 311(g) (1) generally provides that resolutions must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Accordingly, this draft resolution was mailed to parties for comments, to be placed on the CPUC's agenda no earlier than 30 days from the mailing.

PG&E commented on the draft resolution on July 16, 2012.

Because of the failure by CPUC to serve the draft resolution on parties without email addresses, FB commented nine days late on July 25. We acknowledge FB's comments and gave the IOUs 5 days from August 30 to file responses to FB's late comments.

PG&E and SCE replied to FB's comments on August 3. The comments, replies and staff analyses are shown below.

1.1 PG&E's Comments

PG&E requested a clarification of Findings and Conclusion 8 to note that the CPUC has exclusive jurisdiction over utility vegetation management.

2.1 FB's Comments

2.2.1 The FB commented that the implementation of the (Shut-off) Rules proposed by the IOUs do not provide clear safeguards to customers in the course of routine vegetation management practices.

2.2.2 The FB found it unfortunate that the draft resolution rejected "pragmatic recommendations" by the FB and others. **2.2.3** The FB then proposed an alternate to incorporation of the "pragmatic recommendations" in the rules, referring to an idea that came up in a CPUC outreach meeting in Fresno in May. An "agricultural

button” on the CPUC’s website to provide information on relevant issues and a phone number on IOU tree trimming operations should be established.

- 2.2.4 The FB again requests greater clarity of procedures for shut-offs when a customer has multiple accounts.
- 2.2.5 The FB requests that IOUs should be ordered rather than just encouraged to show details of their vegetation management procedures in an “agricultural button” on their websites within 30 days. The FB refers to the example by PG&E of the four steps leading to discontinuance of service, as shown in the draft resolution Section 3.1.2.2.
- 2.2.6 The FB requests that clarification on how shut-off for vegetation management would be adapted to rules governing discontinuance of service for non-payment per Tariff Rule 11.
- 2.2.7 The FB requests that the IOUs comply with the decision’s directive to work with agricultural stakeholders on vegetation management practices. The draft resolution is not sufficient in keeping the status quo because the decision language would be rendered meaningless. The complaint procedure is not a substitute for efforts to minimize impact on farmers. The existence of the complaint procedure recognizes the potential for IOU overreach and disputes. Examples of resolutions exist which required IOU website augmentations.
- 2.2.8 The FB requests that the IOUs report to CPSD the number of formal threats to shut-off power for vegetation management and the resolutions of those cases.

3.3 Replies

3.3.1 PG&E’s replies to FB’s comments

PG&E recommends rejecting FB’s comments for the following reasons: 1) they have already been thoroughly vetted and considered during Phase 2 of the proceeding and AL process. As the draft resolution states, the protest does not state a valid basis as required by GO 96-B, Section 7.4.2 and the issues were discussed in a workshop leading to the decision, 2) the comments do not identify any factual, legal or technical error in the draft resolution, and 3) the FB attempts to recast its issues now by proposing website

buttons and tracking/reporting of shut-offs. This should be rejected because of 1 and 2 above. The suggestions have no record in this proceeding. No resolution is required to add information on the Commission's website and PG&E already does provide relevant information on its website.

3.3.2 SCE's replies to FB's Comments

SCE supports the draft resolution. It states that the FB is attempting to relitigate the same positions that were raised in the workshop and in comments to the proposed decision preceding D.12-01-032. The FB reiterates the importance of its issues and proposes another means by which the Commission may address them (i.e. an "agricultural button"). The FB's objections to D.12-01-032 balancing the interests in the adopted language for vegetation management shut-off rules is not a valid reason for revising the tariffs.

3.4 Analysis

3.4.1 We have reviewed PG&E's comment on Finding and Conclusion No. 8 and have clarified it to read: "Alternatively, the court system is available for matters the CPUC has no jurisdiction over (e.g. property rights), or for complaints alleging a violation of the IOU's tariffs."

3.4.2 Ordering Paragraph (OP) 7 of the decision is not primarily about routine vegetation management practices, as FB's comments suggest. For complaints concerning routine vegetation management practices there is the CPUC complaint process. OP 7 does limit meter (service) discontinuance to one meter in addition to power shut-off at the location of the fire hazard, as safeguard against overreach by the IOUs

3.4.3 Besides FB, only SC protested about how the order would be implemented and SC mainly proposed language so that PG&E would not consider inquiries by customers on the specific vegetation management plan "obstruction" and would have to answer such inquiries. It is not practical to add this level of detail to the tariff language already required by the Commission, given the many possible circumstances in which such issues might arise.

- 3.4.4** While FB's idea of a CPUC webpage dedicated to agricultural customers and vegetation management with phone number is interesting, it is not part of the record leading to the Decision. The Fresno meeting was not in connection with the Decision. The purpose of this Resolution is to implement OP 7 of the Decision. CPSD has a phone number for public safety complaints and CPUC has a brochure on its website on tree trimming with references to applicable laws. CPUC does not obtain the IOUs' vegetation management schedules. The FB could consider offering their members a webpage referencing the relevant information collected from CPUC and IOU websites.
- 3.4.5** There are too many possible permutations of numbers of meters, locations, customer types and property ownerships to be practical for establishing definitive rules for service discontinuance at meters other than the location of the fire hazard. More specific requirements might also encourage gaming of the rules.
- 3.4.6** It is not practical to require dedicated webpages for every customer type and/or issue. With some effort, information can be extracted from existing websites. This resolution encourages the IOUs to engage with FB and others to develop public information on vegetation management; we have not yet seen the results of this effort. Therefore we refrain at this time from ordering the IOUs to show additional information on their websites. As mentioned before, FB has the option to collate existing information on its website.
- 3.4.7** The complaint process for discontinuance of service for non-payment of bills is readily adaptable to vegetation management issues and the public safety phone number to CPSD on the CPUC website is also available for more immediate safety concerns.
- 3.4.8** The decision did not order the IOUs "to work with stakeholders", as desirable as this may be. The scope of the decision was limited to revision of the tariffs. It is inappropriate for this resolution, prompted by what are basically compliance ALs, to open up a whole process concerning where and what information, in addition to the tariffs, should be publicly available. FB could file a petition for modification or rulemaking to consider these issues. However,

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we strongly suggest that FB engage with the IOUs to see what can be worked out among them, before making any formal filing. We note that SDG&E has expressly stated its willingness to meet with stakeholders to work on improvements to its website.

3.4.9 As mentioned above, some of the information FB requests to appear on websites is already available, but it is beyond the scope of the Decision, and this resolution, to prescribe exactly how, where and what information should be published.

For above reasons we conclude that the ALs, with the modifications discussed above, implement OP 7 of the Decision sufficiently.

FINDINGS AND CONCLUSIONS

1. D.12-01-032, OP 7 instructed the electric IOUs to add to their tariffs specific language regarding discontinuation of service and power shut-off in cases where property owners obstruct IOUs' vegetation management.
2. The IOUs filed Tier 3 ALs implementing OP 7 substantially verbatim, which proposed to amend their Tariff Rules 11 and 16.
3. The Tariff Rules 11 of CalPeco, GSWC and SCE are not clear as to the meaning of "under the provisions in effect at the time the breach is discovered." This needs to be changed to read "under the provisions in G.O. 95, Rule 35 and the notification requirements of Tariff Rule 11 in effect at the time the breach is discovered" (in the last sentence of: CalPeco's and GSWC's Tariff Rule 11, L. 1; and SCE's Tariff Rule 11, M.1).
4. The California Farm Bureau Federation, the County of Santa Cruz and an individual, Collins, protested the ALs on issues that were extensively discussed in workshops resulting in the Decision.
5. The protests attempt to relitigate the issues and do not qualify under any of the GO 96-B, Section 7.4.2 valid reasons for protests or are otherwise outside the scope of this resolution, which is addressing the utilities' tariff filings to comply with OP 7 of the Decision.
6. Additional details on the process for notification of discontinuance of service are shown to various degrees on the IOUs' websites.
7. The decision did not order substantive details about how IOUs will "minimize disruption of farming operations and damage to cultivated fields."

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SDG&E agreed to work with the FB and others to improve its website information and we encourage the other IOUs to join this effort. However we refrain at this time to order such efforts.

8. The different treatment of power shut-offs between the reasons of non-payment of bills and of obstruction of vegetation management is intentional because of the severe consequences of the latter.
9. OP 7, v. clearly allows the IOUs to disconnect service on weekends, holidays, etc., contrary to the Tariff Rule 11 procedures and notification requirements applying in the case of non-payment, to one meter at the obstructing landowner's primary residence or primary place of business, in addition to shutting of power at those location(s) where the vegetation is posing an immediate threat to public safety from vegetation, even if there is no immediate threat to public safety at the location of the additional residential or business meter.
10. In the case where property is owned by multiple parties, the IOU will know the identity of the individual obstructing vegetation management. In other cases it may be impractical to identify in advance which particular meter or owner should be disconnected from service, also to prevent gaming of the rules.
11. The CPUC considered negative impact to third parties from authorized power shut -offs but placed public safety first.
12. The decision did not adopt proposals for an independent entity (e.g. USRB) to hear appeals before power is shut off.
13. What is reasonable to consider an immediate threat to public safety will always be based on the CPUC's regulation in effect and interpretation at the time.
14. PG&E's request for clarification of CPUC's jurisdiction in matters of IOU's vegetation management has been incorporated in this resolution.
15. Violations of tariffs can be brought to the CPUC's attention by a complaint after contacting the IOU first.
16. Alternatively, the court system is available for matters the CPUC has no jurisdiction over (e.g. property rights), or for complaints alleging a violation of the IOU's tariffs.

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17. The tariffs proposed by the IOUs meet the requirements of OP 7 sufficiently, if modified as discussed in Findings and Conclusions 3.

THEREFORE IT IS ORDERED THAT:

1. The Advice Letters 15-E (CalPeco), 265-E (GSWC), 4012-E (PG&E), 470-E (PacifiCorp, 2336-E (SDG&E) and 2709-E (SCE) are approved with the modifications required by Ordering Paragraph 2.
2. Within 10 days of approval of this resolution CalPeco, GSWC and SCE shall file substitute sheets to their respective Rule 11 to replace the phrase "... or under the provisions in effect at the time the breach is discovered" with "...or under the provisions in G.O. 95, Rule 35 and the notification requirements of Tariff Rule 11 in effect at the time the breach is discovered." (in the last sentence of: CalPeco's and GSWC's Tariff Rule 11, L. 1; and SCE's Tariff Rule 11, M.1)
3. The tariffs authorized by Ordering Paragraph 2 shall be effective as of the date of this Resolution.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on September 13, 2012; the following Commissioners voting favorably thereon:

Paul Clanon
Executive Director