

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Communications Division  
Carrier Oversight & Programs Branch

RESOLUTION T-17397  
May 9, 2013

R E S O L U T I O N

Resolution T-17397. This Resolution approves the request of Verizon California Incorporated (U-1002 C) for a deviation from Public Utilities Code § 320 regarding the placement of overhead distribution facilities absent Commission approval in 2004, on existing electric utility poles along State Route 395 in Mono County from Mile Marker 76.8 to Mile Marker 104.8, subject to mitigation measures and payment of a \$5,000 fine.

By Advice Letter (AL) No. 12415 filed June 18, 2009, and Advice Letter No. 12415-A filed on November 16, 2009.

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**Summary**

This Resolution approves Verizon California Incorporated (Verizon) request for a deviation from Public Utilities Code § 320, upon the completion of the following: (1) the mitigation of glare from aluminum cable dampers within 1,000 ft. of four crossings on Scenic Highway 395; (2) completion of an audit by Verizon for compliance with General Order 95 on Scenic Highway 395; (3) the implementation of a plan by Verizon for future construction of overhead facilities; and (4) remittance of a fine in the amount of \$5,000.

**Background**

Section 320 was enacted in 1971, Chapter 1697, reads in relevant part as follows:

The legislature hereby declares that it is the policy of this state to achieve, whenever feasible and not inconsistent with sound environmental planning, the undergrounding of all future electric and communication distribution facilities which are proposed to be erected in proximity to

any highway designated a state scenic highway pursuant to Article 2.5 (commencing with § 260) of Chapter 2 of Division 1 of the Streets and Highways Code and which would be visible from such scenic highways if erected above ground. The Commission shall prepare and adopt by December 31, 1972, a statewide plan and schedule for the undergrounding of all such utility distribution facilities in accordance with the aforesaid policy and the rules of the Commission relating to the undergrounding of facilities. The Commission shall require compliance with the plan upon its adoption.

The Commission is responsible for the administration of § 320. After hearings conducted in Case 9364, the Commission, through state legislation, implemented D.80864, which states:

In order to facilitate administration, letter requests for deviations will be accepted, reviewed by the Commission staff and, where appropriate, approved by Commission resolution. (74CPUC 457, D.80864)

Decision 80864 stipulates that no communications or electric utility shall install overhead distribution facilities "in proximity to" and "visible from" any prescribed corridor on a designated Scenic Highway in California unless a showing is made before the Commission and the Commission finds that undergrounding would not be feasible or would be inconsistent with sound environmental planning. The Decision also defines "in proximity to" as being within 1,000 feet from each edge of the right-of-way of designated State Scenic Highways.

D.80864 further stipulates that when repairs or replacement of existing overhead facilities in the same location do not significantly alter the visual impact of the Scenic Highway, they should not be considered as new construction and need not be converted to underground. Therefore, based on D.80864, opportunities to seek exemptions to § 320 are permitted when undergrounding would be economically infeasible and would not significantly alter the visual impact of the scenic highway.

CD received a letter from a resident of Mono County reporting a possible § 320 violation along Scenic Highway 395. CD Staff asked Verizon whether there was any instance of other overhead facilities placed along Scenic Highways in California. Verizon conducted

an analysis and responded by filing Advice Letters 12412, 12413, 12414 and 12415 requesting “waivers” from § 320.

This Resolution concludes a review of Advice Letter (AL) 12415, one of the four ALs filed by Verizon on June 18, 2009, requesting a deviation<sup>1</sup> from § 320, which requires that all communications facilities or electric utilities within 1,000 feet of a Scenic Highway be undergrounded.<sup>2</sup> In 2004, Verizon placed overhead distribution facilities along State Route 395 in Mono County from the junction of State Route 108 to north of Bridgeport, California without first obtaining a deviation from the CPUC pursuant to § 320. Verizon only requested this deviation after the overhead facilities were installed.

During the review of AL 12415, CD Staff found Verizon’s service list to be insufficient, since it omitted parties of interest to the deviation request, and requested from Verizon a more comprehensive list to include additional parties.<sup>3</sup> Verizon complied with this request by filing AL 12415 A on September 18, 2009, which included the revised service list. On November 3, 2009, CD Staff received a letter from Mr. Stephen Kalish, a resident of Mono County, stating that while his name was on the service list for AL 12415, he never received a copy of the AL, and therefore missed the twenty day window for submitting comments. Verizon responded by serving Mr. Kalish a copy of AL 12415-A on November 16, 2009.

### **Notices/Protests**

On November 23, 2009, Stephen Kalish, a resident of Mono County, filed a protest to Verizon AL 12415-A, requesting that the Commission reject the deviation request and, instead, require Verizon to underground all aerial facilities along Scenic Highway 395.

On December 2, 2009, Verizon responded to Mr. Kalish's protest by apologizing for the omission, and further stating that it would not object to submission of comments after the twenty-day window. Verizon, however, defended its deviation request:

[Verizon]...provided all information requested by (CD) staff...The relief requested is consistent with law and Commission precedent...the protest be dismissed and the relief requested in the ALs be granted.

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<sup>1</sup> In its filing Verizon refers to its request for a “waiver”. The language in § 320 is “deviation”.

<sup>2</sup> California Public Utilities Commission Decision (D) 80864, December 16, 1972.

<sup>3</sup> The parties are: Mono County, the City of Bridgeport, Cal Trans, Bureau of Land Management, United States Department of Transportation, United States Forest Service, Sierra Club-Toyabe Chapter, and Mr. Stephen Kalish.

## Discussion of § 320 Deviation Request

CD Staff considered the following in evaluating Verizon's § 320 deviation request: (1) the nature of the project; (2) local government recommendations; (3) the visibility, aesthetical and environmental impacts of the project; and (4) the economic feasibility of the project. CD Staff is basing its recommendation on tangible evidence from field visits, data requests and the subsequent analysis of these factors.

### 1. Nature of Project

#### A. Project Description

In AL 12415 Verizon identified the placement of overhead distribution facilities along Scenic Highway 395 in unincorporated Mono County from Mile Marker (MM) 76.8 to 104.8. Verizon placed approximately 65,000 feet of 48-fiber aerial cable, 0.79 inches in diameter, black in color. The overhead distribution facilities were placed on existing power poles with existing power line lead, and along existing copper cable leads adjacent to other cables within the Scenic Highway Right of Way (ROW). The existing poles are overhead electrical distribution facilities which Southern California Edison (SCE) placed in 1962 and 1963, and which have been shared under a joint pole agreement with Verizon's predecessor, GTE California since 1963.<sup>4</sup> Verizon also placed overhead distribution facilities at three crossings across Scenic Highway 395 at MM 80.6, 85.7 and 93.7. The elevation for this placement ranges from 6,500 to 7,600 ft. The project serves 58 Plain Old Telephone Service (POTS) telephone lines, 7 DS1s,<sup>5</sup> and 3 DSOs.<sup>6</sup> In AL 12415, Verizon did not state whether the overhead distribution facilities were placed to upgrade existing facilities, or to serve additional customers. Verizon placed these facilities in 2004, after the designation of Scenic Highway 395 in 2000. Verizon did assert that delays in restoration would result if the facilities were undergrounded.

#### B. Identification of Scenic Highway 395

In response to a resident complaint that Verizon may have failed to comply with § 320 in Mono County, CD asked Verizon in 2009 if it had deployed overhead distribution facilities subject to § 320 elsewhere in California without seeking a deviation from the

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<sup>4</sup> Verizon's immediate predecessor was GTE California or GTEC. GTEC was preceded by General Telephone of California (General Telephone), which changed its name to GTEC in 1987. GTEC became Verizon in 2005.

<sup>5</sup> Digital Signal Level 1: 1.54 million bits per second.

<sup>6</sup> Digital Signal Level 0: 64,000 bits per second.

Commission. Verizon undertook an analysis to identify the placements of overhead distribution facilities along any Scenic Highway after the highway received such designation, and any associated § 320 deviations the Commission had granted. This analysis identified Scenic Highway 395 in Mono County along which Verizon (or GTEC or General Telephone) placed overhead distribution facilities without obtaining a deviation pursuant to § 320.

In AL 12415, Verizon responded as follows:

“ [Verizon] undertook an analysis to identify all scenic highways in Verizon's service territory; any placements of overhead distribution facilities along scenic highways after the highway received such designations, and any associated Section 320 waivers [Verizon's language] granted by the Commission. This analysis identified the portion of Scenic Highway 395 in Mono County from Bridgeport to South of Walker (MM 76.8-104.8) as one route along which Verizon placed overhead distribution facilities without obtaining a waiver pursuant to P.U. Code Section 320. Verizon has advised staff of its analysis and is working cooperatively to remedy this oversight...”

CD Staff deems the term "waiver," which Verizon used in AL 12415, inappropriate, and instead, uses the term "deviation", which appears in D.80864.

In AL 12415, Verizon provided five reasons why it utilized overhead distribution facilities instead of undergrounding as stipulated in § 320:

1. The facilities were placed on existing power poles.
2. Because of the elevation of the project, undergrounding could delay restoration of services.
3. The cost of undergrounding would be twelve times the cost of building overhead distribution facilities.
4. The addition of the fiber cable to existing facilities would not create additional visual adverse effects to the highway.
5. If the fiber cable were placed underground, the existing facilities would still remain in place.

### C. Scenic Highway Area Description

Portions of State Route 395 including a segment from the junction of State Route 108 to north of Bridgeport, CA. received designation as Scenic Highway on June 5, 2000. Scenic Highway 395 traverses along the slope of the east edge of the Sierra Nevada Mountains, near the Nevada state line. The elevation is around 7,000 ft., and the terrain is typical of a high desert plateau. It is an open, pristine expanse of grazing ranges and meadows with the Sierra Nevada range in plain sight to the west. There are a few structures visible from Scenic Highway 395 consisting of homes, ranches and barns.

### D. Existing Facilities

The overhead distribution facilities, as referenced in AL 12415 were placed on joint pole attachments to existing overhead distribution electrical facilities on existing power line lead, and along existing copper cable lead adjacent to other cables within the Scenic Highway Right of Way (ROW). Southern California Edison (SCE) initially constructed the existing overhead distribution electrical facilities along Scenic Highway 395 in 1962, while General Telephone placed the copper aerial facilities in 1963. The facilities placement across Scenic Highway 395 at MM 79.0 is copper and was placed by General Telephone in 1963. The crossings at MM's 80.6, 85.7 and 93.7 consist of fiber and were placed by Verizon in 2004, after the designation of Scenic Highway 395 in 2000.

On November 9, 2009, CD Staff met with representatives from Verizon and Caltrans to conduct a site visit and evaluate the overhead distribution facilities. CD Staff was taken on a tour of the overhead distribution facilities along Scenic Highway 395 from north of Bridgeport to the junction of Highway 108 from MM 76.8 to 104.8. Both Caltrans and Verizon identified the same aerial crossings at MM 80.6, 85.7 and 93.7. All the facilities were in stable condition.

## **2. Coordination with Local Government Agencies**

Verizon did notify Caltrans, and was granted a permit to construct overhead distribution facilities in its Right-of-Way along Scenic Highway 395 in Mono County. Verizon asserts it attempted to contact governmental agencies with jurisdiction or interest in Scenic Highway 395. CD Staff was unable to find any record of an "expression of opinion" from appropriate local government agencies or representatives in support of the project as required by § 320. In the future, Verizon must be more diligent in working with local agencies with interest or jurisdiction over Scenic Highways.

Caltrans issued Verizon a Standard Encroachment Permit Application on Jan. 19, 2004 for the placement and construction of overhead distribution facilities along Scenic Highway 395 in Mono County at MM's, 80.6, 85.7 & 93.7. In AL 12415, Verizon did not include an Environmental Impact Statement prepared by any public agency having permit authority over the project, or a list of other public agencies from which approval had been obtained or would be required as per D.80864, Ordering Paragraph 3 B.

### **3. Visual Impact**

The joint electric and telephone overhead distribution facilities are clearly visible from Scenic Highway 395 and have a noticeable cumulative visual impact on the open landscape along the scenic highway corridor. The fiber placed on the overhead distribution facilities is black in color, unlike electrical or copper wire, and its thickness makes it more prominent. Splicer's and terminals, also black in color hang from the fiber creating an additional visual impact.

Since the electrical overhead distribution facilities along Scenic Highway 395 were placed prior to 2000, they are exempt from § 320. The overhead distribution facilities at three of the four crossings sites at MM 80.6, 85.7 and 93.7 constructed after 2000 contribute to the visual impact of the corridor. CD Staff observed that at multiple locations along Scenic Highway 395 and at the four crossings, fiber cable was sagging and was not parallel with the electrical wires. CD Staff requested that Verizon measure the distance from the cable to the roadway at several intervals and document the measurements. These measurements were not reported to CD Staff. Since the sagging fiber cables adversely affect the visual impact of the Scenic Highway, CD Staff recommends that Verizon perform an inspection for compliance with G.O. 95<sup>7</sup> along Scenic Highway 395.

During the site visit, CD Staff also noticed glare from the overhead distribution facilities, which not only posed a safety hazard but also added to the cumulative visual impact of the Scenic Highway corridor. Verizon utilized cable wind dampers (to secure wires together) made from aluminum and the reflection from the sunlight was the source of the glare. Verizon asserted that by replacing the aluminum cable wind dampers with ones painted flat black would mitigate the visual impact and the source of the glare.

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<sup>7</sup> Rules for Overhead Line Construction, August 20, 2009.

#### **4. Economic Feasibility**

Verizon estimates that the cost of undergrounding as per § 320 would be greater than the overhead placement on existing facilities. Verizon estimates the cost of undergrounding at \$41.40 per foot and the cost of aerial construction at \$3.45 per foot. The cost ratio of underground to aerial is 12:1.

#### **Public Utilities Code Violations and Penalties**

##### Violations of Public Utilities Code

Violations of Public Utilities Code can result in the imposition of fines. In D.98-12-075,<sup>8</sup> the Commission concluded as follows:

...disregarding a statutory or Commission directive, regardless of the effects on the public, will be accorded a high level of severity.

Further, P.U. Code § 702 is relevant:

Every public utility shall obey and comply with every order, decision, direction, or rule made or prescribed by the Commission in the matters specified in this part, or any other matter in any way relating to or affecting its business as a public utility, and shall do anything necessary or proper to secure compliance therewith by all of its officers, agents and employees.

In AL 12415, Verizon does not contest that the overhead distribution facilities were constructed after designation of Scenic Highway 395 in violation of § 320, but it does not propose a remedy other than requesting a deviation after the fact. In considering the request for deviation, CD Staff believes that prudent practice requires that all public utilities take reasonable steps to ensure compliance with Commission directives. This includes becoming familiar with applicable laws and regulations regarding telecommunication carriers.

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<sup>8</sup> Rulemaking to Establish Rules for Enforcement of the Standards of Conduct Governing Relationships Between Energy Utilities and Their Affiliates Adopted By the Commission. April 9, 1998



## **Remediation**

### **1. Joint Trenching With Other Telecommunications Infrastructure**

On June 23, 2012, four Resolutions from Advice Letters filed by Verizon seeking deviations from § 320 were placed on the Commission's agenda.<sup>9</sup> Resolutions T-17261, T-17270 and T-17271 were granted deviations with mitigation measures and authorized fines in the amount of \$5,000 for failure to comply with the requirements of § 320. Because of timely comments received from a party of interest, CD withdrew Resolution T-17269, to allow for Verizon to study a proposal to joint trench with another proposed telecommunications infrastructure project along the Scenic Highway 395 ROW.

In a letter to the Director of CD dated October 26, 2012, Verizon estimated the costs for joint trenching to be between \$730,448 and \$747,748 and asserted that since the facilities in question were placed on existing Southern California Edison poles, the undergrounding of Verizon's facilities would not result in any meaningful reduction to the visual impact on Scenic Highway 395. CD Staff accepts Verizon's position as the costs of joint trenching, and the effort required to coordinate with the other infrastructure project would cause a burden on Verizon, while leaving the existing Southern California Edison facilities in place. Instead CD Staff is recommending mitigation measures similar to those approved in T-17261, T-17270 and T-17271.

### **2. Project Specific Remediation Efforts**

Verizon will replace the aluminum cable wind dampers with ones less prone to glare within a 1,000 ft., in either direction, at each crossing. For additional mitigation of the cumulative visual impact to Scenic Highway 395, CD Staff further recommends that Verizon conduct an inspection of overhead distribution facilities along Scenic Highway 395 for compliance with G.O. 95, to ensure that the fiber Verizon places will meet the distance and separation requirements for joint utility poles.

### **3. Remediation Efforts for Future Compliance**

To ensure future compliance of § 320, CD Staff recommends the following remediation procedures:

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<sup>9</sup> T-17261, T-17270 and T-17271, June 23, 2011.

Verizon must submit a plan for future construction of communication facilities within California Designated State Scenic Highways areas. This plan should contain all the actions necessary for construction of communication facilities including procedures for: (a) discerning whether construction of facilities is within a Designated Scenic Highway area; (b) obtaining permits and/or authorization from government agencies from which permits and/or authorization would be necessary; and (c) providing notification to government agencies with interest, including the Commission, and facilitation for public comment by interested parties should Verizon seek additional exemptions to Public Utilities Code § 320.

#### **4. Penalties for Failure to Apply for § 320 Exemption prior to Construction**

In assessing the appropriate penalties for failure to comply with § 320, CD Staff considered the directives in D.98-12-075 such as:

1. Severity of the Offense.
2. Conduct of the Utility.
3. Financial Resources of the Utility.
4. The Role of Precedent.
5. Totality of Circumstances in Furtherance of the Public Interest.

In D.98-12-075,<sup>10</sup> the Commission also held that a fine level should be set such that it effectively deters further unlawful conduct, while being specifically tailored to the unique facts of the case. The facts that mitigate the degree or wrongdoing are balanced with those that aggravate the level of wrongdoing. The amount of the fine is also consistent with the fines approved by the Commission for Verizon's other § 320 violations in Resolutions T-17261, T-17270 and T-17271.

For this deviation request, CD Staff finds that Verizon was negligent in failing to comply with all Commission statutes, rules and regulations governing § 320, prior to seeking this waiver. An imposed penalty amount of \$5,000 will serve as a deterrent for future occurrences, act as restitution for the wrongdoing, confirm Verizon's adherence to all Commission rules and regulations, assure further protection for all California Scenic Highways and finally, protect against a competitive advantage and illegal construction of overhead distribution facilities.

CD Staff recognizes that if Verizon were to underground its facilities at crossings MM 79.0, 80.6, 85.7 and 93.7, the existing overhead distribution facilities (placed prior to 2000) would still retain the cumulative visual impact. Therefore, instead of recommending

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<sup>10</sup> D.2.b. Fines

Verizon underground at the four crossings, CD Staff recommends a fine of \$5,000 in lieu. The amount of the fine is based on a single occurrence of the violation of § 320, and is consistent with fines approved by the Commission for other instances of § 320 violations by Verizon in Resolutions T-17262, T-17270 and T-17271.

### **Safety Considerations**

During the field visit, CD Staff observed drooping wires, fiber and leaning poles along Scenic Highway 395, and requested Verizon to measure the distance between its facilities and the roadway. Although the wires did not appear to create a traffic or fire hazard at that time; CD is recommending in this Resolution that Verizon conduct an audit for G.O. 95<sup>11</sup> and report the results to the Commission within one year of approval of this Resolution. In G.O. 95, Section 1, Rule 11:

The purpose of these rules is to formulate for the State of California, requirements for overhead line design, construction and maintenance, the application of which will ensure adequate service and secure safety to persons engaged in the construction of, maintenance and operation or use of overhead lines and to the public in general.<sup>12</sup>

Since the facilities Verizon placed are on poles owned by Southern California Edison, Verizon will report the results of their audit in an AL filing to the Communications Division and the Safety and Enforcement Division so that they may take the appropriate action for compliance with G.O. 95.

### **Conclusion**

CD Staff is basing its recommendations on tangible evidence from field visits, data requests and the subsequent analysis of these factors. As discussed in this Resolution, CD Staff notes that, although Verizon did not comply with § 320, it did conduct an audit of all projects along Scenic Highways in California, did cooperate with CD Staff in providing documents, did respond to data requests and did make their staff available for the site visits. While Verizon did obtain a permit from Caltrans, it should have also undertaken a study to find what cumulative visual impacts the facilities would have on Scenic Highway 395. Verizon should have also been more diligent in providing notice, or in seeking opinions to those persons or entities with interest in AL 12415. Therefore,

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<sup>11</sup> Rules for Overhead Line Construction, August 20, 2009.

<sup>12</sup> D.12-01-032, January 12, 2012.

CD staff recommends approval of the deviation dependent upon the documented completion of the following remediation, consistent with Resolutions T-17261, T-17270 and T-17271, approved on June 23, 2011:

1. Verizon will replace all aluminum cable wind dampers with ones that are less reflective on Scenic Highway 395, within 1,000 ft. on either side at MM 79.0, 80.6, 85.7 and 93.7, and will notify CD in an AL filing within one year of approval of this resolution
2. Verizon will conduct an audit of all overhead distribution facilities along Scenic Highway 395 from MM 76.8 to 104.8 for compliance with G.O. 95 and is directed to report the results in an AL filing to the Communications Division and the Safety and Enforcement Division within one year of approval of this Resolution.
3. Verizon will develop a plan to work with local, state and federal agencies with jurisdiction over overhead distribution facilities for any future construction of overhead distribution facilities, and provide the public an opportunity for comment. Verizon will have one year within approval of this Resolution to meet the conditions in items 1, 2 and 3, and is directed to file a supplemental AL to CD attesting to the completion of these conditions.
4. Verizon will pay a fine in the amount of \$5,000 for the § 320 violation. The fine shall be paid in full, 60 days following approval of this Resolution. Payment shall be made payable to the California Public Utilities Commission and be remitted to the CPUC's Fiscal Office, 3rd Floor, Room 3000, 505 Van Ness Avenue, CA. 94102-3298. The Resolution number and fine amount should be noted in the memo section of the check, and a copy of the transmittal shall be provided to the Director of the Communications Division.

### **Comments**

Public Utilities Code § 311(g)(1) requires the Commission to serve copies of Draft Resolutions on all parties, and make the Draft Resolution available for public review and comment for a period of 30 days or more, prior to a vote by the Commission on the Resolution. On April 9, 2013, the Commission served a copy of this Resolution for comments to all persons on the attached Service List. The Commission did not receive any comments.

## Findings

1. Public Utilities Code § 320 was enacted in 1971.
2. Decision (D.) 80864 (74 CPUC 457) authorizes the California Public Utilities Commission to accept, review and, where appropriate, approve § 320 deviation permission by Commission Resolution.
3. Portions of Highway 395 from Mile Marker 76.8 to Mile Marker 104.8 received designation as a Scenic Highway in 2000.
4. In AL 12415 filed on June 10, 2009, Verizon acknowledges oversight for failure to obtain authorization from the under grounding requirements of § 320. Verizon seeks to resolve the matter by requesting a waiver from § 320 from the Commission for overhead distribution facilities placed along Scenic Highway 395 in Mono County.
5. After review, CD Staff finds the service list for AL 12415 insufficient, and requested from Verizon expanded notification to government agencies and parties with interest.
6. Verizon filed AL 12415-A on September 18, 2009, to serve notice on government agencies and parties of interest in Mono County.
7. CD Staff received comments from a local resident regarding the absence of service of AL 12415 as an interested party; to protest the placement of overhead distribution facilities by Verizon along Scenic Highway 395, and a possible violation of § 320.
8. Verizon responded to the protest on December 1, 2009 by acknowledgement of protest as "timely", and requesting the protest be dismissed and the waiver granted.
9. The California Department of Transportation (Encroachment Permit, January 19, 2004) shows Verizon was approved by the Department to construct overhead distribution facilities along Scenic Highway 395 between MM 76.9 and MM 93.7.
10. There is no "expression of opinion" from other appropriate local government agencies or representatives supporting the project as required by § 320.
11. There is no Environmental Impact Analysis discussing the ramifications of the overhead distribution facilities project as required by § 320.

12. CD Staff conducted a site visit to the overhead distribution facilities and found that the project does adversely affect the visual impact of Scenic Highway 395.
13. Verizon provided an estimate of the cost ratio at \$3.45 per ft. overhead to \$41.40 per ft. underground, a ratio of 12:1.
14. Public Utility Code violations may result in fines and/or remediation. Since Verizon has cooperated with CD Staff in providing documents and making staff available for site visits and data requests, CD Staff recommends four actions of remediation in lieu of fines.
15. D.98-12-075 provides guidelines for fines and remediation of violations of Public Utility Codes, General Orders, and Statutes.
16. As a result of timely comments received on the subsequently withdrawn Resolution T-17269, CD requested from Verizon the feasibility for joint trenching with another telecommunications infrastructure project proposed for Scenic Highway 395 Right of Way.
17. In a response to the Director of the Communications Division, Verizon asserted that undergrounding the facilities would be cost prohibitive and would not result in a reduction to the visual impact of Scenic Highway 395.<sup>18</sup> The Commission finds Verizon's deviation request from the undergrounding requirements of § 320 reasonable and should be approved dependent upon the following remediation:
  - a. The mitigation of glare from aluminum cable dampers within 1,000 ft. on either sides of MM 79.0, MM 80.6, MM 85.7 and 93.7 to be completed within one year of approval of this Resolution, and submitted in an Advice Letter filing to the Communications Division.
  - b. The completion of an audit for compliance of General Order 95 along Scenic Highway 395 from MM 78.8 to MM 104.8. Verizon will submit their findings in an Advice Letter filing to the Communications Division and Safety and Enforcement Division within one year of the approval of this Resolution.
  - c. The development and implementation of a plan for future construction of overhead distribution facilities including facilitation for public comment. To be completed within one year of Commission approval of this Resolution and submitted in an Advice Letter filing to the Communications Division.
  - d. A fine in the amount of \$5,000, to be remitted to the Commission within 60 days of approval of this Resolution.

18. Copies of this Draft resolution were sent to all parties on the service list and made available for public review and comment for a period of more than 30 days prior to a vote by the Commission. The Commission did not receive any comments.

THEREFORE, IT IS ORDERED that:

1. Verizon's request for a waiver of Public Utilities Code § 320 along Scenic Highway 395 in Mono County is granted upon the documented completion of the following remediation:
  - a. Replacement of all aluminum cable dampers with ones less prone to glare within 1,000 ft. on either side of MM 79.0, MM 80.6, MM 85.7 and MM 93.7.
  - b. Completion of an audit for compliance with California Public Utilities Commission General Order 95 for overhead distribution facilities along Scenic Highway 395 in Mono County from MM 76.8 to 104.8.
  - c. Development of a plan for future construction of overhead distribution facilities within California. This plan will include procedures in the event overhead distribution facilities are placed along designated Scenic Highways, for notification to government agencies with interest, and facilitation for public comment by interested parties.
  - d. Verizon California Inc. must pay a penalty in the amount of \$5,000 to the Commission within 60 days following the date of this Resolution for failure to comply with the requirements of Public Utilities Code § 320.
2. Verizon will have one year upon approval of this resolution to meet and complete the remediation items a., b., and c. in Ordering Paragraph 1, and will attest to the completion of the above remediation by filing a supplemental Advice Letter.

This Resolution is effective today.

I hereby certify that the Public Utilities Commission adopted this Resolution at its regular meeting on May 9, 2013. The following Commissioners voting favorably thereon:

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PAUL CLANON  
Executive Director