

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA



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

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

**THE CONSUMER PROTECTION AND SAFETY DIVISION'S  
REPLY TO PROPOSED RULES FOR PHASE 2**

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**I. INTRODUCTION**

Pursuant to the Assigned Commissioner's Ruling and Scoping Memo filed November 5, 2009 (Phase 2 Scoping Memo), as revised by the Administrative Law Judge's Ruling Revising the Workshop Schedule for Phase 2 filed November 23, 2009, the Consumer Protection and Safety Division (CPSD) submits its reply to the proposed rules filed by other parties for consideration in Phase 2 of this proceeding. In addition to CPSD's proposals, seven other sets of proposals or comments were filed by the following parties: (1) Joint Proposals by Southern California Edison Company (SCE), San Diego Gas & Electric Company (SDG&E); (2) Individual Proposals by SDG&E; (3) Individual Proposals by PG&E; (4) Mussey Grade Road Alliance (MGRA); (5) Communication Infrastructure Provider (CIP) Coalition; (6) California Municipal Utilities Association (CMUA); and (7) Los Angeles County (LA County). In addition, Coxcom, Inc. and Cox California Telecom LLC (Cox) submitted a filing indicating that Cox joins the CIP Coalition in supporting revisions to General Order (GO) 95, Rule 18, Part B, and Rule 44.2. Cox takes no position regarding the remaining proposed rule changes (PRCs) of the CIP Coalition. The California Farm Bureau Federation (CFBF) also submitted a filing that contains no specific PRCs, but indicates the CFBF's continuing support for an exclusion to increased vegetation management clearances for agricultural properties.

CPSD addresses each of the PRC submissions below. For each PRC, CPSD will indicate whether it supports or opposes the PRC, as well as state the reasons for its support or disagreement, or other concerns it may have regarding the PRC.

## II. DISCUSSION

### A. **Certain PRCs Should Be Excluded From Discussion at the Workshops Because They Are Outside the Scope of This Proceeding**

As discussed in more detail below, certain proposals do nothing to reduce hazards associated with utility facilities, and are merely attempts to reduce legal liability on the part of the utilities. The Commission and the parties should not lose sight that the overarching goal of this proceeding is to promote public safety and mitigate the risk of catastrophic fires. As the Order Instituting Rulemaking (OIR) stated, this proceeding was initiated “to consider revising and clarifying the Commission’s regulations designed to protect the public from potential hazards, including fires, which may be caused by electric utility transmission or distribution lines or communications infrastructure providers’ facilities in proximity to the electric overhead transmission or distribution lines.” (OIR, p. 1.) The Phase 2 Scoping Memo also clearly states that “the scope of Phase 2 excludes matters that are focused on reducing utilities’ legal liability.” (Phase 2 Scoping Memo, p. 8.) Thus, watered-down, ineffectual rules which would do more harm than good as far as safety is concerned, and rules that are meant to reduce or limit utility liability are not within the scope of this proceeding. Pursuant to the OIR and the Phase 2 Scoping Memo, and for the reasons discussed more particularly below, the following PRCs should be excluded from consideration in Phase 2 of this proceeding:

- **Joint Electric Utilities’ PRC No. JEF-2** (GO 95, Rule 31.1 “Clarification of obligations”). This PRC adds a definition of “accepted good practices” that would basically allow these three electric utilities to collude to come up with whatever design, construction, and maintenance practices they see fit. Then, if a utility followed those self-prescribed “accepted good practices,” that utility would be deemed in compliance with GO 95, and avoid any liability as a consequence. This PRC would make Rule 31.1 meaningless and unenforceable.

- **Joint Electric Utilities’ PRC No. JEF-3** (GO 95, Rule 35, First Paragraph and Exception 2). This PRC provides that a “utility shall not be responsible for the consequences of failing to trim or remove such vegetation” whenever a property owner obstructs access to overhead facilities for vegetation management activities. It further attempts to “clarify” when a utility shall be deemed to have made a “good faith effort” to obtain permission to trim. These revisions are designed to limit utility liability and should be excluded from this phase of the rulemaking.
- **SDG&E’s PRC No. 2** (GO 95, Rule 12.7). This PRC would add a new section to Rule 12.7 requiring contractors working on or near electric facilities as well as third parties attaching to electric poles to maintain levels of liability insurance up to five hundred million dollars (\$500,000,000). This PRC is clearly designed to limit or reduce utility liability or financial risk, and is specifically excluded by the Phase 2 Scoping Memo.

## **B. Cost Recovery Issues**

In the Phase 1 Decision (D.) 09-08-029, the Commission stated the following with regard to cost recovery:

We will address cost more fully in phase 2 and expect cost-of-service regulated utilities to provide cost data. We will decide the appropriate forum for seeking recovery of these costs in phase 2. In phase 2, we will also develop an appropriate tracking mechanism for these additional costs and decide how to incorporate these costs into each utility’s general rate case.

(D.09-08-029, p. 43.) CPSD notes that the Joint Electric Utilities did not submit a specific proposal for cost recovery, but will request that time be set aside during the workshops to consider mechanisms for cost recovery issues. As there is no specific proposal, CPSD does not submit any comments at this time.

However, CPSD also notes that the Commission specifically rejected AT&T’s request for an explicit Commission-ordered surcharge to recover the costs associated with rule changes adopted in this proceeding for entities with deregulated rates, including incumbent local exchange carriers (ILECs). (D.09-08-029, pp. 43-44.) The Commission further stated that, “To the extent that a telecommunications company with rate flexibility seeks to place a line-item on its bill to recover such costs, however, it must not falsely

imply that such a charge is CPUC-mandated or approved.” (D.09-08-029, p. 43; Finding of Fact 25.) In their joint proposal, the CIP Coalition ambiguously claim that, “Because some of the CIPs are not regulated rate-of-return companies, the costs for these carriers may be either absorbed by the inspecting CIPs or recovered through price increases or a line-item charge on bills as allowed by the Phase 1 Decision.” (CIP Coalition Proposed Rule Changes, p. 2). The CIP Coalition also state that “companies that are not rate-of-return regulated can recover costs in any legally permissible manner, including though line-item charges or increased fees for services.” (CIP Coalition Proposed Rule Changes, p. 20). CPSD opposes any attempt by the CIPs to relitigate the issue of cost recovery for entities with deregulated, market-based rates. This issue has already been addressed and resolved by the Commission in Phase 1 of this proceeding, and there is no provision in the Phase 1 decision or the Phase 2 Scoping Memo to further address this issue in Phase 2.

### **C. Joint Proposals by SCE, SDG&E, and PG&E**

#### **1. GO 95, Rule 18 Part B**

Although CPSD agrees in principle to some of the revisions to clean up the rule, CPSD opposes limiting the application of this rule to exclude electric transmission facilities. Limiting the application of this rule to only electric distribution facilities is not in the best interest of safety. Under this proposal, a company that notices a “safety hazard” on a transmission facility while inspecting its facilities is under no obligation to report that safety hazard. CPSD has already addressed the applicability of GO 95 and GO165 to electric transmission in its December 16, 2009, Proposed Rules for Phase 2, at pp. 4-8, 25-26.

CPSD is indifferent to the proposal to change the following sentence: “The notification shall be ~~in writing~~ documented and such documentation must be preserved by all parties for at least five years.” The other proposed revisions to clean up the language of this part of the rule may be further discussed in the workshops.

## **2. GO 95, Rule 31.1**

CPSD opposes this proposal in its entirety. First, the definition of “Accepted Good Practice” is vague as to the meaning of a “significant portion of the relevant industry.” For example, it is unclear whether this would refer to California, the Western United States, or the entire United States. The way it is written, “accepted good practice” would mean whatever these three utilities want it to mean. The Commission should reject this attempt to let the fox guard the henhouse. Second, the proposal would insert the following language into the rule:

“A supply or communication company is in compliance with this rule if its designs, constructs and maintains a facility in accordance with the particulars of this Order or in accordance with Accepted Good Practices. This rule shall not be interpreted to create in and of itself a basis for a penalty or any other sanction that would not exist absent this rule.”

This language, along with the added definition of “Accepted Good Practice,” would make Rule 31.1 meaningless and unenforceable. It would basically allow these three electric utilities to collude to come up with whatever design, construction, and maintenance practices they see fit, and then avoid any liability as a consequence. This proposal does nothing to reduce hazards associated with utility facilities, and is merely an attempt to reduce legal liability on the part of the utilities. The Phase 2 Scoping Memo clearly states that “the scope of Phase 2 excludes matters that are focused on reducing utilities’ legal liability.” (Phase 2 Scoping Memo, p. 8.) Accordingly, CPSD objects to this PRC as outside the scope of this proceeding.

## **3. GO 95, Rule 35 (First Paragraph and Exception 2)**

This PRC attempts to deal with customers that refuse to allow utilities to perform vegetation management work on the customer’s property, and attempts to clarify what constitutes a “good faith effort” to obtain permission to trim. In addition, it attempts to clarify that vegetation management requirements apply to all property, including land owned by state and local agencies. CPSD opposes this proposal in its entirety. Under this proposal, whenever a property owner obstructs access to, or fails to make overhead facilities accessible for vegetation management activities, then the utility is deemed not

responsible for the consequences of failing to trim or remove such vegetation, and the utility, at its discretion, may discontinue electric service at any location where that property owner may receive the utility's electric service. First, as written, this proposal is an attempt to limit or reduce the legal liability of the utilities, and is accordingly outside the scope of this proceeding. (See Phase 2 Scoping Memo, p. 8.) For this reason, CPSD objects to including it for discussion at the workshops. Second, the proposal to cut off service to a "refusing" property owner, at *any location where that property owner receives service from the utility*, is an extremely radical and severe reaction. Under this proposal, if a State or City agency blocked a utility from performing vegetation management work at a particular location, the utility could cut off all power to all State or City buildings and facilities (including streetlights and traffic lights). Rule 35 already provides that its requirements do not apply where the utility has made a "good faith" effort to obtain permission to trim or remove vegetation but permission was refused or unobtainable. In CPSD's experience, this exception appears to be working and the utilities have not shown sufficient reason for this proposed rule change.

In addition, the proposal to "clarify" when a utility shall be deemed to have made a "good faith effort" is also misguided and inserts more confusion than clarification to the rule. This proposal also appears to be an attempt to limit utility liability and should be excluded from this phase of the rulemaking.

#### **4. GO 95, Rule 35 (Second Paragraph)**

CPSD supports this proposal to clarify language relating to dead, rotten, or diseased trees.

#### **5. GO 95, Rule 35 (Third Paragraph)**

CPSD supports this proposal to clarify language describing when strain upon a conductor is present.

#### **6. GO 95, Rule 35, Appendix E**

CPSD opposes this proposal in its entirety. First, the proposal increases the minimum clearances that should be established at the time of trimming. This change is unnecessary because this section of GO 95 is a guideline and is not mandatory. In

addition, this section already allows for a utility to go above the clearances specified in the table, so there is nothing prohibiting a utility from having greater clearances. Second, this proposal appears to spell out what constitutes “reasonable vegetation management practices” by listing various factors that a utility may consider in determining additional clearances. Again, the proposal is unnecessary because the Appendix already allows for greater clearances based upon “reasonable vegetation management practices.” This proposal is duplicative and cumbersome, and should be rejected.

**7. GO 95, Rule 38, Table 2**

This proposal would add a footnote to Cases 8-13 that reminds an entity that is adding or reconstructing facilities that the sag of conductors needs to be accounted for in designing and constructing said facilities. This rule change is unnecessary because the rule clearances must already be met at all times, including times of maximum loading, wind, and temperature. Moreover, there is no reason to limit the application of such a footnote to only Cases 8-13, because the principle that an installing utility should account for sag applies to all the Cases in Table 1.

**8. GO 95, Rule 44.1, 44.2, 44.3**

This proposal makes several revisions to Rules 44.1, 44.2, and 44.3 in an attempt to clarify pole loading rules. CPSD is indifferent to the proposal to merge Rules 44.1 and 44.2 into one rule. CPSD also suggests that inserting a definition for the phrase “materially increase” should be discussed at the workshops, as well as a timeframe for the exchange of data necessary to conduct the safety calculation. The other revisions in this PRC should be further discussed at the workshop.

**9. GO 95, Rule 48 (“Will Not Fail” Language)**

This proposal changes the requirements of Rule 48 by eliminating the phrase “will not fail or be seriously distorted.” CPSD strongly opposes this drastic change to Rule 48 because it will reduce the strength requirements for structural materials, and appears to be an attempt to change a rule involved in a formal investigation. Furthermore, there have been recent discussions between CPSD and the electric utilities about the intent and interpretation of this Rule. On December 10, 2009, CPSD staff met with engineers from

PG&E and SDG&E, as well as staff from SCE, in an attempt to reach an agreement on the interpretation of, or possible revisions to, this rule. CPSD and the electric utilities' staff agreed to meet again with the intent of looking at rule changes and to clear up differences of interpretation in order to find a workable rule for the utilities of California that promotes safety and reliability. CPSD is troubled to see that six days after this agreement was made, the electric Utilities filed this proposed rule change. CPSD recommends that due to the complexity and technical nature of the changes to Section IV Rules, CPSD engineers work with the engineers of the electric and communication utilities outside of this proceeding in order to develop a rule that promotes safety and resolves any disputes about the interpretation of this rule.

#### **10. GO 165**

According to the Joint Electric Utilities, this proposal incorporates changes which have been previously negotiated and agreed upon by IOUs and CPSD. CPSD would like to point out that these changes were agreed to by the Utility Safety and Reliability Branch (USRB), and not CPSD. That being said, CPSD has submitted similar revisions to GO 165 in its PRC filing, and would like those revisions discussed at the workshops, along with the other revisions to GO 165 that CPSD proposed (including the applicability to electric transmission (see CPSD's Proposed Rules for Phase 2, pp. 25-26)).

#### **11. GO 165 New Section VII**

This proposal would add a new section to GO 165 to create a mechanism for seeking changes to the requirements in GO 165 similar to that found in Rule 15.1 in GO 95. CPSD understands the intent behind this PRC, and looks forward to discussing it further at the workshops.

#### **D. San Diego Gas & Electric Company Individual PRCs**

##### **1. New Tariff Rule 20D**

SDG&E suggests creating a new Tariff Rule 20D concerning the replacement of overhead electric lines with underground electric facilities in very high and extreme fire threat zones. CPSD takes no position on this rule change at this time.

## **2. GO 95 Rule 12.7**

This PRC would add a new section to Rule 12.7 requiring contractors working on or near electric facilities as well as third parties attaching to electric poles to maintain levels of liability insurance up to five hundred million dollars (\$500,000,000). CPSD opposes this PRC for several reasons. First, CPSD disagrees that this PRC is within the scope of Phase 2. SDG&E cites to Issue Nos. 3 and 4 of the Phase 2 Scoping Memo in an attempt to demonstrate that this PRC is within the scope of this proceeding.<sup>1</sup> However, neither of these issues mentions liability insurance. Nor is there any credible explanation as to how this PRC would reduce the dangers of overloaded poles or mitigate the risk of wildfire ignitions due to high winds. Instead, this PRC is clearly designed to limit or reduce utility liability or financial risk, and is specifically excluded by the Phase 2 Scoping Memo. For these reasons, CPSD objects to the inclusion of this PRC in the Phase 2 workshops. Second, this PRC is not needed in GO 95, which concerns the design, construction, maintenance, and operation of overhead lines. A requirement that third party contractors maintain liability insurance should be the subject of contracts between the utilities and the contractors. Third, the PRC is vague as to what is meant by contractors working “near electric facilities,” and it is not clear how this rule can be enforced against a contractor working “near electric facilities” if that contractor is not hired by an electric utility (for example, a contractor painting a private homeowner’s house may be deemed to be working “near electric facilities”).

## **3. GO 95, New Rule 91.5**

This PRC would require that communication cables and conductors be marked as to ownership to facilitate identification. CPSD understands the desire of this proposal, in that it would make it easier for utilities out in the field to identify the owners of communication facilities on joint use poles. CPSD has concerns about how this PRC would be implemented on a going-forward basis, as most communication facilities are

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<sup>1</sup> SDG&E indicates that Issue 4 in the Scoping Memo concerns mitigating hazards posed by high wind speeds. However, Issue 4 concerns the reporting and resolution of hazards identified on another pole occupant’s facilities. CPSD assumes SDG&E meant Issue 6, which deals with mitigating hazards posed by high wind speeds. Regardless, neither Issue 4 nor Issue 6 support the inclusion of this PRC in Phase 2.

not marked to easily facilitate identification. CPSD also notes that there is no requirement as to how often and what type of marking should be used.

#### **4. GO 95, Rule 18A**

This PRC would add violations of wire-to-wire clearance requirements to those safety hazards that must be corrected within 30 days of discovery or notification of said safety hazard. CPSD supports this PRC.

#### **E. Pacific Gas & Electric Company Individual PRCs**

##### **1. GO 95, Rule 31.2**

This PRC would add the following language to Rule 31.2 Inspection of Lines: “All pole owners shall perform intrusive pole inspections.” According to PG&E, this PRC would make it clear that the obligation to perform intrusive pole inspections lies with the pole owner, not just the electric companies that own poles. CPSD agrees in principle with this rule change. However, CPSD would recommend that time intervals are included in the PRC, because CPSD staff has had numerous conflicts with utilities’ staff over how often inspections should be conducted. CPSD recommends moving the time intervals from GO 165 into Rule 31.2, to eliminate any confusion over how often an intrusive inspection should be conducted.

#### **F. Los Angeles County PRCs**

LA County recommends adding the following language to Tariff Rule 20 regarding the undergrounding of overhead electric lines: “(5) the undergrounding will reduce the potential fire danger posed by the overhead electric facilities.” LA County also proposes to add new language to Tariff Rule 20 that would allow for undergrounding projects to be funded by a combination of funding sources, including cities and counties, in addition to funds allocated by the utilities. CPSD agrees with the intent of this PRC, but would like to discuss the PRC further in the workshops.

## **G. California Municipal Utilities Association PRCs**

### **1. GO 95, Rule 18B (First Notification of Safety Hazards)**

CMUA proposes changes to Rule 18B that would allow an inspecting company to notify only the pole owner of a safety hazard discovered on another company's facilities, rather than attempt to notify the offending company first. CPSD opposes this PRC, because eliminating the requirement that the inspecting company attempt to first notify the offending company would slow down the notification process. The way the rule is currently written attempts to cut out the middleman in the notification process, and there is no reason to adopt this PRC.

### **2. GO 95, Rule 18B (Notification of Safety Hazards During Emergency Situation)**

This PRC would provide that if an inspecting company discovers a safety hazard during an emergency condition, the inspecting company may notify the other company, facility owner, or pole owner in any effective manner, including verbal, written, and electronic methods of communication and need not identify whether the safety hazard is located in an Extreme or Very High Fire Threat Zone in Southern California. CPSD agrees with the intent of this PRC, although the specific language may need to be further refined in the workshops. During an emergency condition, the importance should be on correcting the safety hazard as quickly as possible.

## **H. Mussey Grade Road Alliance PRCs**

### **1. GO 165, Proposed Rule Regarding Fire Data Collection**

This PRC would require electric utilities to collect information on all fire incidents which are attributable or allegedly attributable to their electric distribution or transmission lines, and provide that data to CPSD on an annual basis. CPSD originally included this proposal in its *Proposed Rules to be Implemented in Time for the 2009 Fall Fire Season* (March 9, 2009) (CPSD's Phase 1 Proposed Rules), but decided to defer consideration of this PRC to Phase 2. CPSD continues to support the intent and purpose of the rule. However, CPSD has concerns with the language in the PRC which states:

“Collected data shall be provided electronically annually to the Director of CPSD or its successor, which may then make it available to state or local fire agencies or members of the public.” CPSD is concerned about the release of potentially confidential information to the public, and would like to discuss possible revisions to this language in the workshops.

**2. GO 95, Rule 35, Proposed Rule Regarding Property Owner’s Vegetation Management Rights and Responsibilities**

This PRC would add to Rule 35 a definition of “reasonable” vegetation management practices to mean a trim of no more than two years of anticipated growth as determined by a certified arborist for healthy non-hazard trees. Trimming in excess of this amount would require permission of the property owner. CPSD understands the desire to put a cap on the amount of trimming a utility can do, however CPSD is concerned about capping the amount of trimming because a utility may have reasons to trim other than growth of vegetation. The PRC should be fully vetted in the workshops.

**3. Proposed Rule Regarding Wind and Vegetation Hazard Maps and Areas**

The goal of this PRC is to initiate a study into the production of wind maps that would replace the Cal Fire Threat Zone maps with maps that combine the Cal Fire Threat map vegetation data with expected geographic wind intensity variations during “Santa Ana” wind conditions based upon analytical wind modeling of the Southern California region. MRGA expects that an Ordering Paragraph will be issued directing how such maps will be prepared and updated, with the language to be proposed in the workshops. CPSD supports this PRC and agrees that a map combining wind and fire data would be beneficial to utilities. However, CPSD believes that the map should not be limited to Southern California. CPSD supports the inclusion of this PRC for discussion at the workshops.

**4. GO 95, Rule 18, Proposed Rule Regarding Contingency Planning For Extreme Wind Events**

This PRC would require electric utilities to have in place contingency plans for identifying foreseeable hazard conditions that exceed wind loadings of Rule 43 in

Extreme and Very High Fire Threat Zones during periods of high fire danger. Although CPSD agrees with the intent of this proposal, the PRC should be fully vetted in the workshops.

## **I. CIP Coalition PRCs**

### **1. GO 95, Rule 31.2 (CIP Inspection Cycles)**

This PRC would add specific inspection requirements for CIPs for specified fire areas, including a patrol inspection cycle of once every five years. CPSD opposes this PRC for several reasons. First, the PRC is too limited in its geographic scope. Rule 31.2 requires lines to be inspected “frequently and thoroughly” and is applicable throughout the entire state of California. Requiring patrol cycles only in certain “specified fire areas” does nothing to clarify how often CIPs should be inspecting their lines in the rest of the state. Second, the five-year patrol cycle is too long, and does not comport with the current requirement to inspect lines “frequently.” A five-year patrol inspection cycle would allow violations to exist for several years before being inspected and discovered. Third, the record retention language should be revised so that CIPs are required to maintain documentation that would allow CPSD staff to verify that inspections were completed within the given timeframe. CPSD would recommend that records be retained for at least two inspection cycles. Fourth, the CIP proposal only requires patrol inspections, which are simple visual inspections. The PRC does not address detailed inspections, which are more comprehensive and designed to capture more violations.

The CIPs argue that the five-year inspection cycle “reflects the findings of the Exponent Study presented in Phase 1 of this proceeding which concluded that the contribution of communication lines/wireless equipment to fire risk is ‘negligible.’” (CIP Coalition PRCs, p. 2.) The findings of the Exponent Study were thoroughly addressed by CPSD in its April 8, 2009, Reply Comments (pp. 25-29) filed in Phase 1 of this proceeding, and CPSD incorporates by reference those comments into this pleading. As CPSD previously explained, the Exponent Study’s main point is to suggest that CIP facilities would not be potential causes of wildland fires, because the CIPs’ insulated cables do not contain sufficient electricity which could result in fires. However, most of

the CIP facilities are attached by lashing wires. (A point which is supported by the Exponent Study at p. 8.) Lashing wires are uninsulated metal wires, which if not properly maintained, can break and a strong wind can blow them into the electric wires, or an inadequate clearance could result in arcing, which could cause fires. Therefore, the modern CIP facilities argument provides no justification refusing to recognize the inherent dangers of poorly maintained CIPs facilities on joint poles with electric wires.

CPSD pointed out several other ways that fires could potentially be caused due to improperly installed or maintained CIP facilities on joint-use poles:

First, is if poles are overloaded with too much weight from all of the CIPs' facilities, then the poles with the electric lines could break, and the electric lines could then create fires from landing on vegetation or from sparks if the electric lines contact each other (after the poles break before the lines hit the ground). Secondly, a sagging communications cable could become so low, such that if a truck or train were to run into it, it could pull or brake one or more of the attached poles with the electric lines. Besides the hazards to the general public from that situation, it could also cause a fire if the electric lines were to land on vegetation or cause sparks on the way down. Third, up until now the discussion has centered on CIP facilities below electric power lines. However, in D.08-10-017, on October 3, 2008 the Commission issued pole-top antennas requirements to go into effect nine months later (i.e., July, 2009). To the extent that in the future these CIP facilities were not frequently and thoroughly inspected to make sure they remain in good condition after the initial installation, then wind and gravity could cause these CIP facilities to fall onto the electric wires and this could potentially lead to fires.

(CPSD April 8, 2009, Reply Comments, p. 27.) For these reasons, CPSD recommends that the CIP proposal be rejected, and that CPSD's proposal concerning CIP inspection cycles be adopted.

## **2. GO 95, Rule 18A (Resolution of Safety Hazards)**

This PRC appears to be a complete reworking of Rule 18A concerning the resolution of safety hazards and GO 95 violations, which was adopted in Phase 1 of this proceeding. CPSD objects to the inclusion of this PRC for discussion at the workshops.

The changes the CIPs seek to insert are similar to those that have already been considered, and rejected, by the Commission in Phase 1. Rehashing these arguments would not be a productive use of valuable workshop time. More specifically, the proposal to change the term “violation” to “nonconformance” does nothing to “clarify” the rule, and appears to be merely an attempt to limit the utilities’ civil liability. According to the Commission in D.04-04-065, 2004 Cal. PUC LEXIS 207 at \*18, a “nonconformance” or failure to comply with a general order is a violation. (“Nothing in the language of GO 95, 128 or 165 provides a specified grace period within which to comply with these GOs, or provides that failure to comply is a “nonconformance,” with a violation occurring at a later time determined by the utility in accordance with its maintenance schedules.”) In addition, the CIP Coalition proposes eliminating record keeping requirements that are necessary for CPSD to audit a utility’s inspection and maintenance program. CPSD also opposes the proposal to eliminate the 30-day timeframe for correcting certain safety hazards in Extreme and Very High Fire Threat Zones, and safety hazards that present a significant risk to a utility’s employees. Certain clearance violations or pole overloading violations that occur in high fire threat areas, as well as hazards that significantly affect worker safety, should not be subject to the 0-59 month time span for correction that is currently provided for “Level 2” priorities. Furthermore, CPSD opposes the CIPs’ proposal to remove language requiring utilities to “take action at or before the next detailed inspection” and replace it with “take action as appropriate” for Level 3 priorities. It is unreasonable to allow a violation to continue for a period longer than an inspection cycle. Finally, the proposed elimination of the various factors that a utility must consider in establishing a maintenance program leaves too much discretion in the hands of the utilities and would be difficult for CPSD to enforce, and should be rejected.

### **3. GO 95, Rule 18B (Notification of Safety Hazards)**

This PRC makes certain revisions to Rule 18B concerning notification of safety hazards discovered by an inspecting company on another company’s facilities. CPSD agrees in principle with these changes, but believes they should be further discussed in the workshops.

#### **4. GO 95, Rule 44.2 (Pole Loading Calculations)**

The CIPs submit revisions to Rule 44.2 which they claim clarify that pole loading calculations should be performed to ensure that the addition of facilities does not reduce safety factors below minimum safety thresholds for specified grades of construction. The PRC also provides for a 15-day or mutually agreed upon timeframe for exchanging data relating to facilities on the subject pole. CPSD supports the inclusion of a 15-day or mutually agreed upon time frame for the exchange of relevant data. This would require the utilities and CIPs to work together, and would address the CIPs' concern of minimizing delays in installing or replacing infrastructure. However, there are two areas that CPSD recommends changes to in order to eliminate confusion. First, CPSD recommends that an explanation or definition for "materially increases the load" be inserted into the rule. This would reduce or eliminate disputes between utilities, or between CPSD and utilities over what constitutes a "material increase" in the load. Second, the section of the PRC subtitled "Obligation to Perform Pole Loading Calculations" appears to be a restatement of current Rule 44.3, but without the sentence that states, "In no case shall the application of this rule be held to permit the use of structures or any member of any structure with a safety factor less than one." CPSD opposes this part of the PRC because it is duplicative of Rule 44.3, and omitting the sentence regarding the use of structures with a safety factor less than one could result in confusion between Rule 44.2 and Rule 44.3. CPSD suggests that the language in this section that is a partial restatement of Rule 44.3 be removed.

### **III. CONCLUSION**

Although there are certain PRCs which should be excluded as outside the scope of this proceeding, CPSD looks forward to having productive discussions of the various proposals at the workshops.

Respectfully submitted,

/s/ KIMBERLY J. LIPPI

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January 11, 2010

**VERIFICATION**

I, Raymond Fugere, represent the Consumer Protection and Safety Division (“CPSD”) of the California Public Utilities Commission and am authorized to make this verification on its behalf. The contents of this document are true based upon my personal knowledge, except as to matters that are stated on information and belief. As to those, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 11, 2010, at Los Angeles, California.

/s/ Raymond Fugere

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Raymond Fugere

Senior Utilities Engineer  
Consumer Protection and Safety Division  
California Public Utilities Commission

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of “**THE CONSUMER PROTECTION AND SAFETY DIVISION’S REPLY TO PROPOSED RULES FOR PHASE 2**” to each party of record on the official service list in **R.08-11-005** via electronic mail.

Parties who did not provide an electronic mail address, were served by U.S. mail with postage prepaid listed on the official service list.

Executed on January 11, 2010 at San Francisco, California.

/s/ ROSCELLA V. GONZALEZ

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