

**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
(November 6, 2008)

**RESPONSE OF THE CIP PARTIES TO THE MOTION OF CPSD, TURN AND DRA TO
EXCLUDE PROPOSED RULE CHANGE CONCERNING UTILITY LIABILITY FROM
PHASE 2 AND THE PHASE 2 WORKSHOP REPORT**

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Dated: June 23, 2010

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Pursuant to Rule 11 of the Commission's Rules of Practice and Procedures, AT&T California and New Cingular Wireless PCS, LLC, the California Cable & Telecommunications Association, Comcast Phone of California, LLC, Time Warner Cable, tw telecom of California lp, Sunesys, LLC, Frontier Communications, and CoxCom, Inc. and Cox California Telcom, L.L.C. (collectively, the "CIP Parties"), hereby respond to the Motion of the Consumer Protection and Safety Division ("CPSD"), The Utility Reform Network ("TURN") and the Division of Ratepayer Advocates ("DRA") (collectively "Moving Parties") to exclude from consideration in Phase 2 of this proceeding and from the Workshop Report for Phase 2, a proposed rule change ("PRC") to General Order ("G.O.") 95, Rule 16 that would clarify the Commission's intent in regard to the effect of G.O. 95 rule changes on the potential civil liability of the utilities and CIPs subject to such rules (the "CIP parties' PRC").

The CIP Parties oppose the Moving Parties' motion on grounds that the Moving Parties have mischaracterized the CIP parties' PRC and fail to acknowledge that it arose in direct response to, and in the course of the natural ebb and flow of, discussions in the Phase 2 workshops regarding a Joint Utility PRC that was as part of the initial set of PRCs to be considered in these workshops. Thus, the issues highlighted by the CIP parties' PRC have been before the workshop participants from the outset and, contrary to Moving Parties' claims, there is

no notice issue regarding the CIP parties' PRC that cannot be fully and fairly resolved by the Commission in its ruling on the motion.

However, if the Commission is inclined to defer the issues raised in the CIP parties' PRC to A.09-08-020, as the Moving Parties advocate,¹ or to another proceeding as provided for by the Scoping Memo,² the Commission should confirm that CIPs will be granted a full and fair opportunity to address these issues in such other proceedings to the same extent as SDG&E, SCE, PG&E and any other party.

I. THE PRC IS CONSISTENT WITH THE OBJECTIVES OF THE OIR

The Moving Parties seek to exclude the CIP parties' PRC on grounds that it is not consistent with the "overarching goal" of this proceeding, which they correctly point out is "to reduce fire hazards associated with utility facilities," and allegedly has no direct effect on fire safety.

Moving Parties are correct in pointing out that the overarching objective of the Commission in this proceeding is to reduce fire hazards associated with utility facilities. The CIP Parties support this objective fully, but does not agree with Moving Parties characterization of the CIP parties' PRC. Adopting new rules that result in additional risk of liability to CIPs and utilities would inevitably affect the working relationships between Commission enforcement staff and the personnel responsible for designing, inspecting and maintaining CIP and utility facilities and for ensuring compliance with rules pertaining to fire safety. Subjecting regulated entities to additional potential civil liability and associated costs inevitably render these relationships more litigious and less cooperative. This kind of change in the dynamic relationship between a regulator and regulated entities and among regulated entities would only

¹ Motion at 5-6.

serve to impair rather than promote compliance, including potentially compliance with safety-related rules.

The Commission has recognized the critical importance of maintaining an “atmosphere of cooperation” between Commission staff and utility personnel for accomplishing its safety objectives.³ Moving Parties fail to understand or acknowledge that the CIP parties’ PRC will enhance G.O. 95 compliance and fire safety by fostering a more cooperative and constructive working relationship between Commission, CIP and utility personnel responsible for compliance and safety issues and thus is fully consistent with the Commission’s overarching objective in this proceeding.⁴

II. THE CIP PARTIES’ PRC RAISES NO NOTICE ISSUE THAT CANNOT BE FULLY ADDRESSED AND RESOLVED BY THE COMMISSION IN RULING ON THE PENDING MOTION

The Moving Parties claim that considering the CIP parties’ PRC would violate due process because the Scoping Memo excluded, “matters that are focused on reducing utilities’ legal liability” from Phase 2.⁵ As a result, Moving Parties claim that other parties have had no notice or opportunity to comment on the CIP parties’ PRC. Moving Parties are mistaken. The CIP parties’ PRC raises no notice issue that cannot be fully, fairly and adequately addressed by the Commission in its ruling on the pending motion.

² Scoping Memo, footnote 4 at 8.

³ *In Re Investigation of Southern California Edison Co.*, D.04-04-025, mimeo at 13-15.

⁴ Parties also note that the objections advanced by CPSD Rule 16 apply with more force to PRCs proposed by CPSD than to the instant PRC. CPSD has, for example, proposed a PRC that would modify G.O. 95, Rule 31.2 and add a new Rule 80.1 expanding the CIP inspection requirements adopted in Phase 1 to include: (a) Patrol inspections and Detailed inspections in urban areas throughout the State where there are no wildland fire risks; (b) Patrol and Detailed inspections in rural areas where there are no special fire risks; and (c) intrusive testing of certain CIP poles that no electric lines or other electric utility facilities. There is no credible evidence in the record of this proceeding that CIP facilities entail any significant fire risk. *See* Exponent Report included as an attachment to the Comments of AT&T in Phase 1 of this proceeding.

⁵ Motion at 6, and *see* also Motion at 1, citing Scoping Memo at 8.

The Moving Parties also fail to acknowledge that the CIP parties' PRC is closely related to and a natural outgrowth of the prior PRC of Joint Utilities regarding Rule 31.1 that was included in their December 2009 proposals for consideration in Phase 2 and which has been discussed in numerous workshops since then. As a result, it is not at all clear that other parties have not had sufficient notice and opportunity to comment on the CIP parties' PRC.

More importantly, however, the motion of Moving Parties clearly raises the issue of whether the CIP parties' PRC is within the proper scope of this proceeding and will be considered in Phase 2. As a result, the Commission's ruling on the motion can and should provide ample notice to all parties regarding the scope of the proceeding and whether the issue raised by CIP parties will be considered. The Commission's ruling will effectively confirm and, to the extent necessary, clarify the scope of this proceeding. It should also provide ample time for any party to comment on the CIP parties' PRC. If the motion is denied, and the CIP parties' PRC is included in the Workshop Report, any party that desires to do so may comment on the PRC in its opening brief, currently due September 3, 2010, reply brief, currently due September 17, 2010, and in comments on the Proposed Decision, which are not likely to be due until sometime in December 2010. The Commission's ruling on Moving Parties' motion should thus provide ample notice and opportunity to comment to fully comply with due process.

III. IF THE ISSUES RAISED BY THE CIP PRC ARE DEFERRED TO ANOTHER PROCEEDING, AS MOVING PARTIES ADVOCATE, CIPS MUST BE AFFORDED A FULL AND FAIR OPPORTUNITY TO PARTICIPATE

The Moving Parties also seek to exclude the CIP parties' PRC from this proceeding on grounds that considering "limitations on liability through contracts, tariffs, or other means" is already "occurring in the Wildfire Expense Balancing Account proceeding, A.09-08-020" filed

by SDG&E, PG&E, SCE, and SoCalGas.⁶ Moving parties state that “any measures aimed at reducing utilities’ liability for fires should be addressed in that proceeding.”⁷

For the reasons explained above, the CIP Parties disagree with Moving Parties claim that the issues raised by the CIP parties’ PRC should be addressed in A.09-08-020. If, however, the Commission is inclined to defer the issues raised by the CIP parties’ PRC to A.09-08-020, as the Moving Parties advocate,⁸ or to another proceeding, as provided for by the Scoping Memo,⁹ it should do so in a manner that provides CIPs, as well as other parties, with a full and fair opportunity to address these issues. A.09-08-020 was filed by SDG&E, PG&E, SCE, and SoCalGas in order to obtain Commission authorization for each of these utilities to establish a balancing account for recovery of costs associated with fires caused by their facilities. To the best of the CIP Coalition’s knowledge, no CIP or other electric utilities are currently parties to A.09-08-020. As a result, if the Commission defers the issues raised by the CIP parties’ PRC to A.09-08-020, as the Moving Parties advocate, no CIP or other electric utility will have an opportunity to be heard on these issues unless the Commission broadens the scope of the A.09-08-020 to include consideration of the Commission’s intent in regard to potential limitations on liability associated with G.O. 95 and permits other affected parties, including CIPs, to participate fully in the proceeding.

IV. CONCLUSION

For the reasons stated, herein, the CIP Parties urge the Commission to: deny Moving Parties’ motion and confirm that the CIP parties’ PRC regarding G.O. 95, Rule 16 is within the scope of the issues to be considered in Phase 2 of this proceeding and will be included in the

⁶ Motion at 5-6.

⁷ Motion at 6.

⁸ Motion at 5-6.

Phase 2 Workshop Report. Should, however, the Commission be inclined to grant the motion and defer consideration of the issues raised in the CIP parties' PRC to A.09-08-020 or another proceeding, the Commission should do so in a manner that permits CIPs a full and fair opportunity to participate in the proceeding and be heard on the issues.

Respectfully submitted this June 23, 2010 at San Francisco, California.

Respectfully submitted on behalf of the CIP
Parties,

/s/ Edward W. O'Neill

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June 23, 2010

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⁹ Scoping Memo, footnote 4 at 8.

CERTIFICATE OF SERVICE

I, Judy Pau, certify:

I am employed in the City and County of San Francisco, California, am over eighteen years of age and am not a party to the within entitled cause. My business address is 505 Montgomery Street, Suite 800, San Francisco, CA 94111.

On June 23, 2010, I caused the following to be served:

RESPONSE OF THE CIP PARTIES TO THE MOTION OF CPSD, TURN AND DRA TO EXCLUDE PROPOSED RULE CHANGE CONCERNING UTILITY LIABILITY FROM PHASE 2 AND THE PHASE 2 WORKSHOP REPORT

via electronic mail to all parties on the service list R.08-11-005 who have provided the Commission with an electronic mail address and by First class mail on the parties listed as “Parties” and “State Service” on the attached service list who have not provided an electronic mail address.

/s/

Judy Pau

VIA EMAIL AND US MAIL

Commissioner Timothy A. Simon
Administrative Law Judge Timothy Kenny
Administrative Law Judge Angela Minkin
Administrative Law Judge Jean Vieth

VIA EMAIL

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