

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

RESOLUTION E-3824
April 3, 2003

R E S O L U T I O N

Governor's State of Emergency Proclamation to prevent catastrophic forest fires due to bark beetle infestation: (1) Utilities are ordered to work in cooperation with the CDF and other appropriate California, federal, and local governmental agencies to take all reasonable and necessary actions to implement the applicable provisions of the Proclamation to mitigate the increased fire hazard by removing dead, dying or diseased trees that could impact their transmission and distribution lines within their rights of way, and comply with existing vegetation clearance statutes, regulations, and ordinances within the zones of infestation; and (2) Utilities should maintain appropriate documentation of expenditures and justification of actions taken to implement applicable provisions of the Proclamation.

To Southern California Edison Company (Edison), San Diego Gas & Electric Company (SDG&E), and Bear Valley Electric District of Southern California Water Company (Bear Valley Electric).

SUMMARY

This Resolution orders Southern California Edison Company (Edison), San Diego Gas & Electric Company (SDG&E), and Bear Valley Electric District of Southern California Water Company (Bear Valley Electric) to take all reasonable and necessary actions to implement the applicable provisions of the Governor's State of Emergency Proclamation, dated March 7, 2003; the requirements of the Public Resources Code Sections 4292 and 4293, and the California Code of Regulations Section 1250 et. Al., Section 1256, Figures 3 and 4; and all applicable local ordinances regarding vegetation clearance from distribution and transmission lines. The utilities are directed to cooperate with the California Department of Forestry and Fire Protection (CDF) and other appropriate California, federal, and local governmental agencies to identify and remove those dead or dying trees

that could impact their distribution and transmission lines so as to remove such hazard in the designated zones of bark beetle infestation within Riverside, San Bernardino, and San Diego Counties.

BACKGROUND

On March 7, 2003, the Governor issued a Proclamation declaring a State of Emergency in Riverside, San Bernardino, and San Diego Counties where an infestation of bark beetles has created the potential for catastrophic forest fires.

According to the Proclamation, shown as Attachment A, hundreds of thousands of trees on more than 150,000 acres have died or are dying after being weakened by drought and attacked by an infestation of bark beetles. An estimated 75,000 residents are threatened by wildfires, injury, and property damage from falling trees.

The Proclamation requested that the Public Utilities Commission direct utility companies with transmission lines in Riverside, San Bernardino, and San Diego Counties to ensure that all dead, dying, and diseased trees and vegetation are completely cleared from their utility right-of-ways to mitigate the potential fire danger.

DISCUSSION

Edison, SDG&E, and Bear Valley Electric are directed to ensure compliance with existing statutes, regulations, and ordinances, and to work in cooperation with the CDF and other appropriate California, federal, and local governmental agencies to identify and remove those trees that are dead or dying and that may fall or contact the utility's distribution and transmission lines within the affected zones of bark beetle infestation in Riverside, San Bernardino, and San Diego Counties.

Because of the declared State of Emergency in the designated Counties, this Resolution and its ensuing orders are not subject to CEQA review, in accordance with Public Resources Code (PRC) Sections 21080 and 21172. As defined in the PRC Section 21060.0 and the CEQA Guidelines Section 15359, and Emergency is defined as, "... a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. Emergency includes such

occurrences as fire, flood, earthquake, or other soil or geologic movements, as well as such occurrences as riot, accident, or sabotage.”

Under the declared State of Emergency, the utilities can invoke their Catastrophic Event Memo Account (CEMA) for fund accounting, and comply with their CEMA tariff requirements. The utilities should maintain appropriate documentation of expenditures and justification of actions taken, which are subject to reasonableness review, to comply with the provisions of the Governor’s Proclamation. The utilities are authorized to make annual advice letter filings requesting recovery of the costs of removal and incremental support costs recorded during a specified period in their CEMAs to allow rate recovery of the amounts determined to have been reasonably incurred.

When the Commission conducts its review of the expenditures booked into the CEMA accounts for responding to this resolution, we will ensure that the utilities recover only those funds used for activities that are above and beyond their pre-existing obligations as specified by the Commission.

Even though the Governor’s proclamation directly addresses only transmission lines, the utilities have an existing obligation under our General Orders (G.O.) to remove trees as necessary from distribution lines, in order to ensure reliable service and public protection. As stated in Rule 35 of G.O. 95, *“When a utility has actual knowledge, obtained either through normal operating practices or notification to the utility, dead, rotten and diseased trees or portions, thereof, that overhang or lean toward and may fall into a span, should be removed.”* The utilities are therefore directed to address the bark beetle infestation problems for all lines, both transmission and distribution.

COMMENTS

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. However, Section 311(g)(2) provides that this 30-day period may be reduced or waived in an unforeseen emergency situation.

The 30-day comment period has been waived by a decision where the Commission has determined that public necessity in an emergency situation, as defined in Rule 77.7(f)(9) requires reduction/waiver of the 30-day period.

FINDINGS

1. This Commission Resolution directs Edison, SDG&E, and Bear Valley Electric, in cooperation with the CDF and other appropriate California, federal, and local governmental agencies to take all reasonable and necessary actions to implement the applicable provisions of the Governor's State of Emergency Proclamation and to ensure compliance with existing vegetation clearance statutes, regulations, and ordinances in the bark beetle infestation zones in Riverside, San Bernardino, and San Diego Counties.
2. This Commission directs Edison, SDG&E, and Bear Valley Electric to invoke their Catastrophic Event Memo Account (CEMA) for fund accounting and comply with their CEMA tariff requirements.
3. This Commission finds that CEQA review is not applicable in this emergency situation.
4. The utilities are authorized to make annual advice letter filings requesting recovery of the costs of removal and incremental support costs recorded during a specified period in their CEMAs to allow rate recovery of the amounts determined to have been reasonably incurred.

THEREFORE IT IS ORDERED THAT:

1. Edison, SDG&E, and Bear Valley Electric, in cooperation with the CDF and other appropriate California, federal, and local governmental agencies should take all reasonable and necessary actions to implement the applicable provisions of the Governor's State of Emergency Proclamation to mitigate the increased fire hazard by removing dead, dying or diseased trees from falling or contacting distribution and transmission lines within their rights of way, and to ensure compliance with existing vegetation clearance statutes, regulations, and ordinances in the bark beetle infestation zones in Riverside, San Bernardino, and San Diego Counties.

2. These aforementioned utilities should maintain appropriate documentation of expenditures and justification of actions taken, which are subject to reasonableness review, to implement the applicable provisions of the Governor's Proclamation and enhanced activities to comply with existing vegetation clearance statutes, regulations, and ordinances.
3. The utilities are authorized to make annual advice letter filings requesting recovery of the costs of removal and incremental support costs recorded during a specified period in their CEMAs to allow rate recovery of the amounts determined to have been reasonably incurred.

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 April 3, 2003; the following Commissioners voting favorably thereon:

WILLIAM AHERN
Executive Director

MICHAEL R. PEEVEY
President

CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners

ATTACHMENT A

Proclamation

EXECUTIVE DEPARTMENT

STATE OF CALIFORNIA

P R O C L A M A T I O N

by the
Governor of the State of California

WHEREAS, conditions of extreme peril to the people, property and environment exist within the Riverside, San Bernardino and San Diego Counties due to imminent fire danger caused by the extraordinary number of dead, dying and diseased trees resulting from prolonged drought, overstocked forests and infestation by bark beetles and other decay organisms; and

WHEREAS, the Board of Forestry and Fire Protection declared a Zone of Infestation for bark beetle control within these three counties; and

WHEREAS, the outbreak of the infestation has caused the death of trees and other vegetation on thousands of acres, resulting in conditions of imminent fire danger in these counties and the potential for erosion and other environmental damage; and

WHEREAS, Riverside, San Bernardino and San Diego Counties have proclaimed local emergencies, committed funds for tree removal and other fire abatement measures, and Riverside and San Bernardino Counties have each created a Mountain Area Safety Task Force to provide a coordinated multi-agency response to dead, dying and diseased trees and vegetation; and

WHEREAS, by reason of their magnitude these conditions are beyond the control of the services, personnel, equipment and facilities of the three counties, thereby requiring a proclamation of a state of emergency; and

WHEREAS, Riverside, San Bernardino and San Diego Counties have requested a state Proclamation of Emergency in order to expedite

removal of dead, dying and diseased trees and vegetation, and to assist in providing evacuation routes and fire safe evacuation centers; and

WHEREAS, unless the risks posed by dead, dying and diseased trees and other vegetation are immediately reduced, there will be an increasingly great risk to life and property from catastrophic fire in an area with limited routes for the evacuation of people and emergency response; and

WHEREAS, the number of contractors available to perform tree removal work for private landowners is insufficient to accomplish the work within the time necessary, and

WHEREAS, under the authority of the Emergency Services Act, section 8558(b) of the Government Code, I find that a State of Emergency exists within Riverside, San Bernardino, and San Diego Counties.

NOW, THEREFORE, I, GRAY DAVIS, Governor of the State of California, in accordance with the authority vested in me by the Emergency Services Act, and in particular, sections 8625 and 8558(b) of the Government Code, HEREBY PROCLAIM A STATE OF EMERGENCY to exist within
Riverside, San Bernardino, and San Diego Counties.

Pursuant to this Proclamation, I issue these orders to be effective immediately:

IT IS ORDERED that the California Department of Forestry and Fire Protection ("CDF"), in consultation with California Department of Transportation, the California Environmental Protection Agency, the Department of Fish and Game, the South Coast Air Quality Management District, the Lahontan, Santa Ana and San Diego Regional Water Quality Control Boards and other state and local agencies as appropriate, shall immediately:

* Assist local jurisdictions in the three counties to prepare public safety plans that provide adequate evacuation routes and fire safe evacuation centers;

* In cooperation with other appropriate state and local entities, expedite the clearing of dead, dying and diseased trees and other vegetation that interfere with emergency response and evacuation needs;

* Reinforce firefighting resources available in the three counties, including assuring that aircraft and fire crews will be immediately available in the event of a fire; and

* Redirect existing resources to assist landowners by giving forest stewardship advice and oversight of tree removal.

IT IS FURTHER ORDERED that all state agencies and departments shall provide personnel, equipment and facilities to assist CDF, as directed by the Office of Emergency Services in consultation with the Department of Finance.

IT IS FURTHER ORDERED that to implement this Proclamation, CDF may enter into contracts and arrangements for the procurement of materials, goods, and services. Pursuant to Government Code section 8571, the provisions of the Government Code and the Public Contract Code applicable to state contracts, including, but not limited to, advertising and competitive bidding requirements, are hereby suspended to the extent they would prevent, hinder, or delay the clearing of public evacuation corridors, fire evacuation centers, and routes for emergency response as necessary to mitigate the effects of this emergency.

IT IS FURTHER ORDERED that CDF, in consultation with all appropriate state and local agencies, shall immediately work to improve public evacuation corridors, fire evacuation centers and routes for emergency response. Pursuant to Government Code section 8567, CDF is hereby authorized to enter onto private property as it deems necessary to remove and dispose of dead, dying and diseased trees and vegetation that threaten public evacuation corridors, fire evacuation centers, and routes for emergency response.

IT IS FURTHER ORDERED that, to assist and encourage landowners to meet their responsibilities for removing dead, dying and diseased trees and clearing fuel breaks on their lands, pursuant to Government

Code section 8571, the requirement for submitting notices to CDF under the provisions of Title 14, California Code of Regulations, sections 1038(b) and (c), prior to beginning timber operations for the removal of dead, dying and diseased trees or the cutting or removal of trees to create fuel breaks and the limitation on the removal of dead, dying, or diseased trees to ten percent of the average volume per acre are hereby suspended. All other provisions of these regulations shall remain in effect.

IT IS FURTHER ORDERED that to expand the number of contractors available to perform services to property owners for cutting and removing trees for fire safety purposes by authorizing use of tree service contractors licensed to perform tree removal work under Business and Professions Code sections 7000 et seq., in addition to timber operators licensed under the Public Resources Code to perform timber operations, pursuant to Government Code section 8571, the provisions of Public Resources Code section 4571(a) providing that only licensed timber operators may perform timber operations are hereby suspended. A licensed timber operator need not obtain a contractor's license under the Business and Professions Code in order to carry out work under this Proclamation.

IT IS FURTHER ORDERED that the Office of Emergency Services work with the Federal Emergency Management Agency to redirect excess federal hazard mitigation funds for the purpose of reducing the fire and other hazards caused by the dead, dying and diseased trees and vegetation.

IT IS REQUESTED that the Public Utilities Commission direct utility companies with transmission lines in Riverside, San Bernardino and San Diego Counties to ensure that all dead, dying and diseased trees and vegetation are completely cleared from their utility right-of-ways to mitigate the potential fire danger.

This Proclamation and these Orders are not intended to, and do not, create any right or benefit, substantive or procedural, enforceable in law or equity, against the State of California, its departments, agencies or other entities, its officers or employees, or any other person.

IT IS FURTHER ORDERED that as soon as hereafter possible, this proclamation be filed in the Office of Secretary of State and that

widespread publicity and notice be given to this proclamation.

IN WITNESS WHEREOF I have hereunto set my hand and
caused the Great Seal of the State of California to be
affixed this the seventh day of March 2003.

/s/ Gray Davis

Governor of California

ATTACHMENT B

Service List

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