



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)

**REPLY BRIEF OF THE
LOS ANGELES DEPARTMENT OF WATER AND POWER ON
THE OPENING BRIEF OF THE CALIFORNIA MUNICIPAL UTILITIES ASSOCIATION
ON THE PHASE 2 WORKSHOP REPORT**

OSCAR A. ALVAREZ
Regulatory Standards and Compliance
Los Angeles Department of Water and Power
111 N. Hope Street, Room 1246
Los Angeles, CA 90012
(213) 367-0677 Office phone
Email: Oscar.Alvarez@ladwp.com

SHANISE BLACK, Deputy City Attorney
Los Angeles Department of Water and Power
111 N. Hope Street, Room 340
Los Angeles, CA 90012
(213) 367- 4520
Email: Shanise.Black@ladwp.com

Dated: September 17, 2010

**REPLY BRIEF OF THE
LOS ANGELES DEPARTMENT OF WATER AND POWER (LADWP) ON
THE OPENING BRIEF OF THE CALIFORNIA MUNICIPAL UTILITIES ASSOCIATION
(CMUA) ON THE PHASE 2 WORKSHOP REPORT**

I. LADWP AGREES THAT THE CALIFORNIA SUPREME COURT'S DENIAL OF ITS PETITION FOR WRIT OF REVIEW DOES NOT RESOLVE ANY JURISDICTIONAL ISSUES

LADWP supports CMUA's comment that the denial of LADWP's Petition for Writ of Review by the California Supreme Court does not resolve the jurisdictional issues among the Commission and publicly-owned utilities. As stated within its Opening Brief, LADWP explained that the summary denial by the California Supreme Court invokes the principle of res judicata against LADWP only. More important, no written opinion was issued, leaving the legal question open for debate.

II. CLARIFICATION IS NEEDED ON THE COMMISSION'S PUBLIC HEALTH AND SAFETY JURISDICTION OVER PUBLICLY-OWNED UTILITIES PURSUANT TO SECTION 8001 *ET SEQ.*

CMUA asserted that the Commission must clarify the specifics of its interpretation of its jurisdiction over publicly-owned utilities.¹ LADWP agrees that at least one conflict exists among General Order 165, D.97-03-070, and a provision of the Public Utilities Code. For the reason set forth below, LADWP joins in CMUA's request for clarification.

The Commission ruled in D.98-03-036 that Sections 8001-8057 confer jurisdiction on the Commission over the safety of electric systems in California and the state's publicly-owned utilities shall comply with the inspection and maintenance standards

¹ See Opening Brief of California Municipal Utilities Association on the Phase 2 Workshop Report dated September 3, 2010, pp. 3-7.

adopted in D.97-03-070. Assuming for purposes of this Reply Brief that General Order 165 applies to publicly-owned utilities, there is at least one provision within General Order 165 that is at odds with a provision of the Public Utilities Code and the Commission's past rulings.

General Order 165 permits Commission staff to examine records of inspection activities "consistent with Public Utilities Code Section 314(a)"². Section 314(a) states that the Commission, each commissioner, and each officer and person employed by the Commission may inspect the accounts, books, papers, and documents of any public utility. While D.98-03-036 ordered publicly-owned utilities to comply with the inspection and maintenance standards adopted in D.97-03-070 which incorporates all of the provisions within General Order 165, such decision failed to explain whether the Commission will attempt to examine the books and records of publicly-owned utilities pursuant to its public health and safety jurisdiction under Section 8001 *et seq.* LADWP knows of several instances where the Commission applied its authority under Section 314 to non-regulated utilities³, but each application was limited to those entities that do business with public utilities, i.e., subsidiaries, affiliates, and holding corporations of electrical, gas, and telephone corporations.⁴ LADWP maintains that Section 314(a) should not be applied to publicly-owned utilities for purposes of General Order 165 based upon the statutory construction of Section 314(a), 224.3, 216, 218, 222, and 234. LADWP respectfully requests the Commission to reconcile this difference by clarifying its

² D.97-03-070, Appendix A, page A-3.

³ See Resolution ALJ-195 dated December 14, 2006.

⁴ See Resolution ALJ-195, p. 3; *PG&E Corporation v. PUC* (2004) 118 Cal.App.4th 1174, 1204-1205; Decision 08-44-062..

position on the application of Section 314(a) as applied to publicly-owned utilities for the proposed rule change to General Order 165, Sections I-IV.

Additionally, General Orders 95 and 165 set forth the relevant standards for overhead electric line construction and inspection cycles for electric distribution facilities, but are silent on the enforcement of these orders. Once again, LADWP agrees with CMUA that the Commission needs to clarify its enforcement authority pursuant to Section 8001 *et seq.* Section 8037 currently reads that any violation of Article 2 of Division 4, Chapter 5 of the Public Utilities Code is a misdemeanor. Likewise, Section 8058 declares an identical penalty for violations of Article 3. LADWP respectfully requests the Commission to clarify that the penalty against a publicly-owned utility for any violation of the rules promulgated in this proceeding relating to General Order 95 and/or General Order 165 is a misdemeanor.

Dated this 17th day of September, 2010

Respectfully submitted,

OSCAR ALVAREZ
SHANISE BLACK, ESQ.

/s/ SHANISE BLACK
Shanise Black, Deputy City Attorney
Los Angeles Department of
Water and Power
111 N. Hope Street, Room 340
Los Angeles, CA 90012
(213) 367-4520 Office phone
Email: Shanise.Black@ladwp.com

CERTIFICATE OF SERVICE

I, hereby certify that, pursuant to the Commission's Rules of Practice and Procedure, I have served a true copy of **REPLY BRIEF OF THE LOS ANGELES DEPARTMENT OF WATER AND POWER ON THE OPENING BRIEF OF THE CALIFORNIA MUNICIPAL UTILITIES ASSOCIATION ON THE PHASE 2 WORKSHOP REPORT** on this 17th day of September, 2010 on all parties identified on the attached service list(s).

I effectuated service by transmitting the copies via e-mail to all parties identified on the Service List for R.08-11-005 as controlled and maintained by the California Public Utilities Commission. For those parties who did not participate with the email service provided by the California Public Utilities Commission, first class mail will be used at the addresses provided by such parties.

Executed this 17th day of September, 2010 at Los Angeles, California

/s/ THAN AUNG

Than Aung
Los Angeles Department of Water and Power
Power System
Regulatory Standard and Compliance Group
111 North Hope Street, Room 1246
Los Angeles, California CA 90012
Phone: 213-367-3367
E-Mail: Than.Aung@ladwp.com

R. 08-11-005 SERVICE LIST
LAST CHANGED: September 13, 2010

Sent via E-Mail:

abb@eslawfirm.com
Adam.Sherr@Qwest.com
amy.bartell@cityofpaloalto.org
anitataffrice@earthlink.net
ATrial@SempraUtilities.com
bats3@cruzio.com
bcarnahan@scppa.org
bds@cpuc.ca.gov
bfinkelstein@turn.org
bfs@cpuc.ca.gov
bhc4@pge.com
Blain@tbmlawyers.com
blaising@braunlegal.com
bl@tid.org
bmcc@mccarthy.com
bob.ritter@crowncastle.com
bwilde@creatint.com
californiadockets@pacificcorp.com
case.admin@sce.com
cbk@eslawfirm.com
cg2@cpuc.ca.gov
Charlie.Born@frontiercorp.com
chilen@nvenenergy.com
cindy.manheim@att.com
cjhashimoto@tid.org
CPUCCases@pge.com
craig.hunter@wilsonelser.com
cwl@cpuc.ca.gov
daryl.buckley@ladwp.com
dbrown3@smud.org
DDohren@SempraUtilities.com
ddowney@nctimes.com
deyoung@caltel.org
dj0conklin@earthlink.net
dkl@cpuc.ca.gov
douglas.garrett@cox.com
edm@cpuc.ca.gov
edwardoneill@dwt.com
elaine.duncan@verizon.com
ELK3@pge.com
esther.northrup@cox.com
eyc@cpuc.ca.gov
facilitiesmanagement@cox.net
fassil.t.fenikile@att.com
ferpello@newton.berkeley.edu
gayatri@jbsenergy.com
gblack@cwclaw.com
geoffspreter@amslawoffice.com
Grant.Kolling@cityofpaloalto.org
GWalters@SempraUtilities.com
gwen.johnson@att.com
heide.caswell@pacificcorp.com
hilary@newsdata.com
hym@cpuc.ca.gov
info@tobiaslo.com
irene@igc.org
jacque.lopez@verizon.com
james.lehrer@sce.com
janewhang@dwt.com
jarmstrong@goodinmacbride.com
jcole@osmose.com
jeffgray@dwt.com
Jerome@calcable.org
jesus.g.roman@verizon.com
jhendry@sfwater.org
jjg@eslawfirm.com
jmh@cpuc.ca.gov
john_gutierrez@cable.comcast.com
jon.dohm@crowncastle.com
jordan.white@pacificcorp.com
joshdavidson@dwt.com
joyw@mid.org
JPacheco@SempraUtilities.com
jsadler@osmose.com
jsanders@caiso.com
jtodd@fire.lacounty.gov
jwmitchell@mbartek.com
keith.krom@att.com
Kevin.Saville@frontiercorp.com
kjl@cpuc.ca.gov
KMelville@SempraUtilities.com
kmills@cbbf.com
Kristin.L.Jacobson@sprint.com
larry.abernathy@davey.com
ldri@pge.com
LEarl@SempraUtilities.com
lee@cpuc.ca.gov
lesla@calcable.org
lex@consumercal.org
lhj2@pge.com
liddell@energyattorney.com

lindab@stcg.net
lionmeyer@gmail.com
lkm4@ibew1245.com
lmartin@pacwest.com
lmb@wblaw.net
lmh@eslawfirm.com
lorraine.kocen@verizon.com
lsheehan@ceo.lacounty.gov
LURick@SempraUtilities.com
marcel@turn.org
margaret.dillon@att.com
mariacarbone@dwt.com
Marjorie.Herlth@Qwest.com
Matt.Pawlowski@NextEraEnergy.com
mcf@calcom.ws
mclaughlin@braunlegal.com
MCS@cpuc.ca.gov
mdr@cpuc.ca.gov
Melodie.Durham@fire.ca.gov
mg1@cpuc.ca.gov
mgo@goodinmacbride.com
michael.bagley1@verizonwireless.com
michelle.choo@att.com
mike.roden@att.com
mmitchell@aspenerg.com
mnelson@mccarthylaw.com
mrw@mrwassoc.com
mschreiber@cwclaw.com
MSL7@pge.com
mswlegal@aol.com
MThorp@SempraUtilities.com
myates@wecc.biz
nbingle@osmose.com
ndw@cpuc.ca.gov
nelsonya.causby@att.com
Nick.limberopoulos@crowncastle.com
NQuan@gswater.com
nsuetake@turn.org
Oscar.Alvarez@ladwp.com
pacasciato@gmail.com
peter.hayes@att.com
pm2@cpuc.ca.gov
psp@cpuc.ca.gov
rachel.birkey@ogc.usda.gov
rae@cpuc.ca.gov
rcosta@turn.org
rdelsman@nextgnetworks.net
rdj@att.com
regrelcpuccases@pge.com

rgf@cpuc.ca.gov
RGiles@SempraUtilities.com
robert.f.lemoine@sce.com
robin.harrington@fire.ca.gov
rsm@cpuc.ca.gov
rst@cpuc.ca.gov
rw8914@att.com
sbakk@parks.ca.gov
sberlin@mccarthylaw.com
scaine@cainelaw.com
schristianson@tosdalsmith.com
scohn@smud.org
scott.tomashefsky@ncpa.com
sdunn@dpw.lacounty.gov
Shanise.Black@ladwp.com
Shannon.McWhinney@PacifiCorp.com
shong@goodinmacbride.com
skuhn@counsel.lacounty.gov
smalllecs@cwclaw.com
stanton.snyder@ladwp.com
steve.bowen@bowenlawgroup.com
steve.ford@sce.com
steve@cutility.com
suzannetoller@dwt.com
tciardella@nvenergy.com
thomas.selhorst@att.com
tim@cpuc.ca.gov
tomk@mid.org
william.sanders@sfgov.org
wynne@braunlegal.com

Sent via U.S. Mail:

JUSTIN CASHMER
VERIZON CALIFORNIA INC.
11 S. 4TH ST.
REDLANDS, CA 92373

GARRY J.D. HUBERT
HUBERT & YASUTAKE
1320 WILLOW PASS ROAD, SUITE 590
CONCORD, CA 94520

WILLIAM P.ADAMS
Adams Electrical Safety Consulting
716 BRETT AVENUE
ROHNERT PARK
CA 94928-4012