BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Petition to Adopt, Amend or Repeal a Regulation Pursuant to Public Utilities Code Section 1708.5 and Commission Decision 05-01-030.	Petition 07-07-020 (Filed July 25, 2007)
Order Instituting Rulemaking to Establish Uniform Construction Standards for Pole-Top Antennas.	FILED PUBLIC UTILITIES COMMISSION DECEMBER 6, 2007 SAN FRANCISCO OFFICE RULEMAKING 07-12-001

ORDER INSTITUTING RULEMAKING TO ESTABLISH UNIFORM CONSTRUCTION STANDARDS FOR POLE-TOP ANTENNAS

Summary

We initiate this rulemaking for the purpose of developing uniform construction standards for the installation of wireless antennas between or above supply lines, generally referred to as "pole-top antennas." This proceeding builds on the work we began in previous rulemakings in which we established uniform construction standards for overhead lines to insure worker safety and system reliability. In Decision (D.) 07-02-030, we adopted uniform standards for the installation of wireless antennas on jointly used utility poles and towers, but because of the lack of a proposal, we did not adopt rules for pole-top antennas at the same time. We did, however, recognize in that decision the need to create pole-top antenna rules and expressed an interest in examining such rules in the future. This rulemaking will be the forum in which we continue our efforts to

revise the regulations of overhead lines for the safety of the general public, electric utilities' customers, and utility employees.

Attached to this order as Appendix A are the proposed revisions to General Order (GO) 95 submitted to the Commission on July 25, 2007 by the General Order 95/128 Rules Committee (Rules Committee)[1] proposing to add uniform guidelines for pole-top antenna installations to the Commission's GO 95. Appendix B contains the response of the Commission's Consumer Protection and Safety Division (CPSD) to the Rules Committee's petition. The Commission invites comments from the affected utilities and other interested parties on the Rules Committee's proposed changes and CPSD's response, and whether the proposed rule changes adequately address safety measures for pole-top antenna installations. Comments should also address if hearings are needed and, if so, why. The assigned Commissioner or the assigned Administrative Law Judge (ALJ) may convene a prehearing conference after receipt of the opening and reply comments to determine necessary steps for the development of the record.

Background

GO 95 governs the construction of overhead supply and communication lines. In recent years, the Commission has issued two rulemakings and several decisions expanding the requirements of GO 95. On October 2, 2001, the Commission issued Order Instituting Rulemaking (R.) 01-10-001 to consider, among other things, a proposal by parties to add Rule 94 that would have

[1] The Rules Committee is comprised of California supply and communications professionals knowledgeable in the application of GO 95 and GO 128. It meets regularly to consider and make recommendations on these technical issues.

established minimum construction requirements for attaching wireless antennas to poles and towers. While the Commission revised GO 95 in D.05-01-030 by adopting additional requirements for overhead lines, the Commission determined that issues related to construction standards for attaching wireless antennas to jointly used poles and towers (the proposed new Rule 94) should be examined in more detail in a new rulemaking. Subsequently, the Commission initiated R.05-02-023 to further examine the issues related to wireless antenna installation and, more specifically, to seek additional input on the proposed Rule 94. Parties in R.05-02-023 supported a consensus proposal for attaching wireless antennas below supply lines on utility poles, but were unable to propose requirements for installation of antennas between or above supply lines, generally referred to as "pole-top antennas," at the same time. D.07-02-030 adopted the parties' proposal and new Rule 94 in GO 95, establishing construction and clearance requirements for antennas constructed below supply lines, and encouraged the members of the Rules Committee to work on achieving a statewide consensus on a proposal for pole-top antenna installation for the Commission to consider.

On July 25, 2007, the Rules Committee submitted a petition requesting certain amendments to GO 95 related to installation of pole-top antennas. The proposed amendments contain revisions to the existing Rule 94 and new construction requirements for antennas affixed above supply and communication lines, and/or between supply lines on jointly used utility poles. The Rules Committee notes that the proposed rules represent a consensus of the

Rules Committee and its work over several months.[2] The Rules Committee also notes that its Executive Board met with the CPSD staff about the proposed rules and included some, but not all, of CPSD's recommendations in the proposed rules.

CPSD and the Wireless Parties[3] filed responses to the Rules Committee's petition. CPSD recommended several clarifications and revisions to the proposed rules, which were not addressed in the Rules Committee's petition. The Wireless Parties only supported the initiation of a rulemaking to consider adoption of pole-top antenna installation rules, but did not support or oppose the revisions contained in the petition.

Discussion

The purpose of GO 95 is to establish uniform rules for overhead electric line construction to insure adequate service and secure safety to persons engaged in the construction, maintenance, operation or use of overhead electrical lines and the public in general.[4] The Commission has comprehensive jurisdiction over questions of public health and safety arising from utility operations (*San Diego Gas & Electric v. Superior Court* (1996), 13 Cal. 4th 893, 923-24) and is charged with ensuring that electric utilities operating in California comply with the provisions

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[2] Although the proposed rules represent consensus of the Rules Committee, the petition notes that the committee did not reach full and complete agreement on the rules pertaining to vertical clearances. See Appendix A, p. 40.

[3] The Wireless Parties consists of Crown Castle USA Inc., NextG Networks of California Inc., Omnipoint Communications, Inc. dba T-Mobile, Sprint Nextel and Verizon Wireless.

[4] GO 95, Rule 11.

of the Public Utilities Code and relevant laws and regulations. As noted above, in D.07-02-030, we adopted rules for the installation of wireless antennas to jointly used utility poles and towers to insure the safety of the general public, electric utilities' customers and utility employees, and indicated an interest in considering pole-top antenna rules in the future.

The Rules Committee's petition is in response to that decision. We agree that construction standards for pole-top antennas are needed to allow safe access to utility pole and towers. In addition, this Commission encourages better system coverage by the competitive wireless communication systems serving this State in order to further important goals of enhancing public safety and the reliability of our wireless communications systems. Given new technologies that are evolving in the wireless arena such as Wi-Fi and Wi-MAX, this Commission wishes to encourage the placement of wireless facilities on utility poles where feasible. Uniform construction standards throughout the state will enhance this goal.

However, we do not adopt the Rules Committee's proposed rules at this time for procedural reasons and also because we want to solicit additional input to address the concerns raised by some of the parties.

First, because the Rules Committee's petition contains proposed changes to the Commission's rules and regulation of overhead lines, consistent with Pub. Util. Code § 1708.5(a)[5] and Rule 6.3 of the Commission's Rules of Practice and

[5] "The commission shall permit interested persons to petition the commission to adopt, amend, or repeal a regulation."

Procedure[6] (Rules), we must treat it as a petition to open a new rulemaking to amend regulation.

Second, it appears that despite the consensus of the Rules Committee to create pole-top antenna rules, some components of the petition were not supported by all its members. In addition, CPSD has raised several concerns with the petition and requests clarification or revisions to some of the proposed rules. Without examining the Rules Committee's petition in more detail and evaluating the merits of CPSD's concerns, we cannot adopt the proposed rules.

Pub. Util. Code § 1708.5(b)(1), states:

> The commission shall consider a petition and, within six months from the date of receipt of the petition, either deny the petition or institute a proceeding to adopt, amend, or repeal the regulation.

In light of the above, and consistent with Pub. Util. Code § 1708.5(b)(1), we initiate this rulemaking to develop uniform construction standards for pole-top antennas that are well-designed and technically sound, with the opportunity for input from the public, affected utilities, and anyone else interested. We encourage broad participation in this rulemaking to assist us in developing a complete and robust record.

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[6] "(a) Pursuant to this rule, any person may petition the Commission under Pub. Util. Code § 1708.5 to adopt, amend, or repeal a regulation. The proposed regulation must apply to an entire class of entities or activities over which the Commission has jurisdiction and must apply to future conduct."

This rulemaking will consider the following topics as described in the Rules Committee's petition, proposed revisions 1 through 4, and CPSD's response:

- Proposed Revisions to Rule 94:
  - Material strengths of support elements;
  - Clearance of antennas, supporting elements and associated equipment;
  - Climbing space;
  - Stepping (Rule 91.3); and
  - Risers and vertical runs.
- Proposed Revisions to GO 95, Rule 91.3:
  - Stepping.
- Proposed Revisions to GO 95, Rule 92.1:
  - Vertical clearances.
- Proposed Revisions to GO 95, Rule 38, Table 2, Case 21:
  - Minimum vertical clearances for third-party antennas and supply lines.

Preliminary Scoping Memo: Scope of the Proceeding

We invite comments from interested entities and individuals on the Rules Committee's proposed changes as well as CPSD's response (Appendices A and B to this order), and whether the proposed changes adequately address safety measures and system reliability for pole-top antenna installations. The preliminary issues in this proceeding are listed above.

As we noted earlier, in the course of adopting rules for wireless antennas in R.05-02-023, we have developed a large amount of information on antenna installation that may overlap with the scope of this rulemaking. We ask parties

to comment on whether and, if so, the extent to which the record in R.05-02-023 should be incorporated in this proceeding by reference.

Proceeding Schedule and Comments on New Rulemaking

The preliminary schedule for this proceeding is as follows:

Opening comments due: January 14, 2008
Reply comments due: February 15, 2008

The assigned Commissioner in this proceeding may convene a prehearing conference after receipt of the opening and reply comments to determine necessary steps for the development of the record.

In conformance with Section 1701.5, we anticipate that this proceeding will take no longer than 18 months to complete.

Parties and Service List

All regulated electrical corporations subject to our jurisdiction are made respondents to this rulemaking. This order instituting rulemaking will be served on parties to R.05-02-023 and those who filed P.07-07-020 or responded to P.07-07-020, and on all regulated electrical corporations subject to our jurisdiction and municipal electric utilities operating in California. Respondents and persons who file comments in response to this rulemaking will be added to the Official Service List as "Parties" pursuant to Rule 1.4. Persons served with this order will not automatically be placed on the Official Service List for this rulemaking, unless they become parties pursuant to Rule 1.4. Non-parties who wish to receive electronic service of all documents in this rulemaking may request addition to the Official Service List as "Information Only" by providing their names, addresses and telephone numbers, and email addresses to the Commission's Process Office (process_office@cpuc.ca.gov).

Any party interested in participating in this rulemaking who is unfamiliar with the Commission's procedures should contact the Public Advisor's Office in Los Angeles at (213) 576-7056, or in San Francisco at (415) 703-2074, (866) 836-7875 (TTY – toll free) or (415) 703-5282 (TTY).

Parties are encouraged to serve documents electronically, in accordance with Rule 1.10 and Resolution ALJ-188. Consistent with those rules, a hard copy of all pleadings shall be concurrently served on the assigned ALJ.

Preliminary Categorization of the Proceeding and Need for Hearing

Pursuant to Rule 7.1.d., as a preliminary matter, we determine that this proceeding is "quasi-legislative," as defined in Rule 1.3(d). Although we hope that the issues in this proceeding may be resolved through a combination of workshops and formal comments, we preliminarily determine that limited evidentiary hearings may be necessary. After considering the comments on the preliminary scoping memo, the assigned Commissioner will issue a scoping ruling making a final category determination; this final determination is subject to appeal as specified in Rule 7.6(a).

Ex Parte Communications

In accordance with Rule 8.4(b), *ex parte* communications in this proceeding are allowed pursuant to Rule 8.2(a).[7]

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[7] An *ex parte* communication is defined in Rule 5(e) as:

> …a written communication (including a communication by letter or electronic medium) or oral communication (including a communication by telephone or in person) that:
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> (1) concerns any substantive issue in a formal proceeding;
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> (2) takes place between an interested person and a decisionmaker; and

Footnote continued on next page

Findings of Fact

1. GO 95 currently does not address pole-top antenna installations.

2. The Commission has expressed its support for establishing uniform construction requirements for pole-top antenna installations.

3. The Rules Committee's petition proposes revisions to Commission's GO 95.

4. CPSD has raised several concerns with respect to the Rules Committee's petition.

Conclusions of Law

1. The Commission should treat the Rules Committee's petition as a petition to amend a Commission regulation.

2. The Commission should initiate a new rulemaking to amend GO 95 to set forth rules for the construction of pole-top antennas on utility poles and towers.

Therefore, **IT IS ORDERED** that:

1. A rulemaking is instituted to establish uniform rules for the construction of wireless antennas that would be installed on top of jointly used utility poles and towers.

2. All electrical corporations subject to our jurisdiction are made respondents to this proceeding.

3. Interested entities and individuals are invited to file opening comments responding to the issues raised in this order instituting rulemaking. Comments shall conform to the Commission's Rules of Practice and Procedure (Article 6) and shall be filed with the Commission's Docket Office and served no later than

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(3) does not occur in a public hearing, workshop, or other public setting, or on the record of the proceeding.

January 14, 2008. Responses to opening comments shall be filed and served no later than February 15, 2008.

4. The Executive Director shall serve this Order Instituting Rulemaking on the parties to R.05-02-023, those who filed P.07-07-020 and those who responded to P.07-07-020, and on all regulated electrical corporations subject to our jurisdiction and municipal electric utilities operating in California.

5. Respondents and persons who file comments in response to this rulemaking will be added to the Official Service List as "Parties" pursuant to Rule 1.4. Persons served with this order will not automatically be placed on the Official Service List for this rulemaking, unless they become parties pursuant to Rule 1.4. Non-parties who wish to receive electronic service of all documents in this rulemaking may request addition to the Official Service List as "Information Only" by providing their names, addresses and telephone numbers, and email addresses to the Commission's Process Office (process_office@cpuc.ca.gov).

6. Any party that expects to request intervenor compensation for its participation in this rulemaking shall file its notice of intent to claim intervenor compensation in accordance with Rule 17.1 of the Commission's Rules of Practice and Procedure.

7. The category of this rulemaking is preliminarily determined to be "quasi-legislative" as that term is defined in the Commission's Rules of Practice and Procedure, Rule 1.3(d).

8. The assigned Administrative Law Judge, in consultation with the assigned Commissioner, may make any adjustments to the schedule and service list for this proceeding.

This order is effective today.

Dated December 6, 2007, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners

APPENDIX A

http://www.cpuc.ca.gov/EFILE/PR/70599.pdf

APPENDIX B

http://www.cpuc.ca.gov/EFILE/RESP/71741.pdf