

## ATTACHMENT

### **R.05-02-023: Order Instituting Rulemaking to Revise Commission General Order Number 95 pursuant to D.05-01-030.**

Pursuant to Public Utilities Code § 311(e), the digest of the substantive differences between the proposed decision (mailed to you on October 10, 2006) and the alternate proposed decision of Commissioner Brown, mailed on November 9, 2006, is as follows:

This Order Instituting Rulemaking considers uniform safety rules pursuant to Public Utilities Code § 451 and § 761 for attaching wireless antennas to jointly used utility poles. The proposed decision ultimately rejects those provisions of Rule 94 that would provide warning signs on high intensity radio frequency antennas and provisions for powering down or disconnecting power when safety so requires. Instead, the proposed decision imposes an annual reporting requirement on wireless carriers and approves and adopts a settlement providing contractual rules analogous to Rule 94, applicable to certain parties only.

Commissioner Brown's alternate proposed decision adopts in its entirety, pursuant to Public Utilities Code § 451 and § 761 the Rule 94 previously sponsored by the Commission's Consumer Protection and Safety Division (CPSD), the International Brotherhood of Electrical Workers Local 1245, the Communications Workers of America-Ninth District, Pacific Gas and Electric Company and San Diego Gas & Electric Company.

Commissioner Brown's alternate proposed decision also rejects assertions of some parties that elements of the new Rule 94 are preempted by the Telecommunications Act of 1996 and Federal Communications Commission (FCC) rules regulating radio frequency (RF) exposure, concluding instead that acknowledgment of the FCC's RF rules does not preempt a state agency that enacts construction rules intended to provide a safe working environment for those climbing and working on utility poles bearing electrical overhead lines.

Where the proposed decision would adopt a settlement agreement supported by several of the parties, this alternate rejects the settlement agreement because it would remove certain worker safety provisions from Rule 94 and substitute private agreements between some pole owners and some RF antenna owners. The settlement's contractual provisions do not cover all utilities within Commission jurisdiction. Commissioner Brown's alternate proposed decision finds that the settlement agreement is not in the public interest because these private agreements would exclude many utilities that are not signatories to the settlement agreement and would limit this Commission's oversight authority and CPSD enforcement in protecting worker safety.

**(END OF ATTACHMENT)**