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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Revise and Clarify Commission Regulations Relating to the Safety of Electric Utility and Communications Infrastructure Provider Facilities.

R.08-11-005
(Filed November 6, 2008)

**OPENING BRIEF OF PACIFIC GAS AND ELECTRIC
COMPANY (U39E) ON PHASE 2 JOINT PARTIES'
WORKSHOP REPORT FOR WORKSHOPS HELD
JANUARY – JUNE 2010**

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**OPENING BRIEF OF PACIFIC GAS AND ELECTRIC
COMPANY (U39E) ON FINAL PROPOSED RULES OF
CPSD AND OTHER PARTIES IN PHASE 1 OF R.08-11-005**

I. INTRODUCTION AND PROCEDURAL HISTORY

The *Phase 2 Joint Parties' Workshop Report for Workshop Held January – June 2010* (Workshop Report) was filed on August 13, 2010. The Workshop Report provides a procedural history of this proceeding, along with Appendix A (which contains proposed rules and rule changes (PRCs) for General Order 95 (GO 95) and General Order 165 (GO 165) on which the participants came to consensus) and Appendix B (which contains “Multiple Alternatives Process” (MAP) PRCs on which no consensus was reached and which presents participants’ rationales, justifications, positions and comments).

The Workshop Report is extremely comprehensive and PG&E, along with the other Joint Electric Utilities, Southern California Edison (SCE) and San Diego Gas & Electric (SDG&E), have stated their positions and comments therein as thoroughly as possible.¹ PG&E will not reiterate that information here. Rather, PG&E’s *Opening Brief* will: 1) discuss some overarching principles and issues; 2) focus on PRCs that need emphasis and/or respond to

¹ To avoid overlapping, duplicative argument in this opening brief, PG&E incorporates by reference the rationales and justifications that are contained in the Workshop Report for rules proposed by PG&E or jointly with SCE and SDG&E. PG&E further incorporates by reference comments made by PG&E or jointly with SCE or SDG&E in opposition to rules proposed by others. Finally, PG&E will often agree with a position or comment made by SCE or SDG&E in their Opening Brief for or against a particular rule, and will note that agreement as appropriate to shorten the brief and avoid redundant arguments.

selected comments made by other participants;² and 3) summarize in attached Exhibits A and B PG&E's position and recommendations on each of the proposed rules, which summary is incorporated herein by reference.

The Commission initiated this *Order Instituting Rulemaking (OIR)* on November 6, 2008, to consider revising and clarifying its regulations designed to protect the public from potential hazards, including fires, which may be caused by electric transmission, distribution, or Communication Infrastructure Providers' (CIPs') facilities. The OIR set forth an initial scope for the proceeding that included the following six areas for consideration:

1. Immediate reporting of fire-related incidents and full cooperation with Commission staff. This proceeding will not consider the extent that entities may deny access to documents, information, and witnesses that they deem protected by attorney-client privilege and/or the attorney work product doctrine.
2. Applying GO 165 or similar maintenance and inspection requirements to all electric transmission and CIP facilities, including CIP facilities located on poles owned by publicly owned utilities;
3. Overloading of utility poles.
4. Prompt reporting and resolution of hazards/violations that one pole occupant may observe in another pole occupant's facilities, including ways to improve (i) safety-related communications between pole occupants (e.g., marking CIP facilities with contact information), and (ii) the process used by CPSD to determine if the hazard/violation reported by one pole occupant to another has been resolved;
5. Vegetation management in high risk fire areas; and
6. Mitigating high speed wind dangers.

Over the past almost two years and during two phases of this proceeding (each involving collaborative workshops), the parties have worked together to try to achieve consensus on appropriate changes to existing rules or new rules that will meet these objectives. The agenda has been aggressive, the work hard, and the results mixed. Consensus was achieved on some PRCs, some PRCs were abandoned, and some PRCs ended up in the MAP process.

² As part of the cooperative process of putting the Workshop Report together, the workshop participants agreed they hold any reply to the comments of others for the briefs.

PG&E would like to acknowledge the valuable help and leadership provided by the facilitators in the Phase 2 workshops, Jean Vieth and Angela Minkin. They provided a deliberative approach to the workshop that required not only respect and order among the parties but objective and substantive justifications for the positions taken. PG&E also thanks the other parties, including CPSD, DRA, TURN, the CIP Coalition, the other electric utilities and others, for their diligence, patience, good humor and continuing good faith during the workshop process. Finally, PG&E would like to thank the Sunesys team for their outstanding effort in the production of the Workshop Report.

II. OVERARCHING PRINCIPLES AND ISSUES

A. Jurisdiction and Electric Transmission Issues

PG&E notes that the California Independent System Operator (CAISO), the Federal Electric Regulatory Commission (FERC), the North American Electric Reliability Corporation (NERC), and the Western Electricity Coordinating Council (WECC) have all been granted jurisdiction by various statutes to oversee the operation and maintenance of overhead electric transmission facilities. Therefore, there is a fine line between the Commission's self-described mandate to ensure safety for transmission facilities, the statutory mandate in Public Resources Code section 348 that directs the CAISO to adopt inspection, maintenance, repair and replacement standards for transmission facilities under its operational control, and the federal regulatory framework for transmission lines represented by various rules, requirements and reliability standards adopted by the FERC or involving the NERC along with the WECC.³

A new Section IV has been added to General Order 165 covering the inspection and maintenance of transmission lines. The language in Section IV was crafted to hopefully avoid

³ In Phase 1 of this proceeding, PG&E interposed a jurisdictional and pre-emption objection to any effort of the Commission to regulate transmission lines that conflicts with or duplicates the authority of these entities, and incorporates its arguments and authorities by reference in this brief. (See, *Opening Comments of Pacific Gas and Electric Company (U39) on CPSD's Proposed Rules in Phase 1 of R.08-11-005*, Section VI at p. 27-36.)

conflicting or duplicative oversight by the Commission over transmission facilities, and PG&E has accepted this hope and this language in good faith.⁴

B. The Standard for Adoption of a PRC is Whether the Justifications for the PRC Are Adequate, Not Whether There is “Record Evidence” to Support the PRC, as the CIPs Repeatedly Suggest

Throughout many of the CIP’s arguments in the Workshop Report is language that states a PRC needs to be supported by “record evidence” or “clear and convincing evidence” in order to be adopted by the Commission. They rely on that argument in their opposition to MAP Nos. 6(B), 6(C), 6(D), 6(E), 9, and 12(A).⁵ Such reliance is misplaced in this rulemaking proceeding, in which parties chose to pursue workshops rather than request evidentiary hearings. In the workshops, parties presented information from experts as well as arguments from attorneys representing their respective companies/constituents. The information presented at the workshops was not sworn evidence, nor was it verified data. Rather, the workshops provided parties with an opportunity to share information and positions in an attempt to reach consensus on PRCs.

The Scoping Memo issued in Phase 2 of this proceeding does not require “evidence” to support a proposed rule change. Instead, it requires each proponent to justify the PRC by addressing 11 questions regarding application, costs, benefits, and other relevant issues associated with the PRC.⁶ The Assigned Commissioner and ALJ offered parties an opportunity to request evidentiary hearings during the course of this phase of the proceeding⁷, but no one, including the CIPs, requested hearings. To now oppose proposed rule changes on the basis of a

⁴ See also, SCE’s discussion of electric transmission issues in its Opening Brief, which PG&E incorporates by reference.

⁵ For instance, in its opposition to MAP 9, the CIPs argue, “In the absence of *clear and convincing evidence* that there is a deficiency in the Commission’s existing conductor clearance rules that increases fire risks associated with facilities on joint use poles in material respects and that the Joint Utilities’ PRC will effectively address such deficiencies, there is no justification for adopting the proposed change. The Joint Utilities have presented no such evidence.” (Workshop Report, at B-155.)

⁶ *Assigned Commissioner’s Ruling and Scoping Memo for Phase 2 of this Proceeding* (ACR), November 5, 2009, at pp. 10-11, 13-14.

⁷ ACR, at pp. 16-17.

lack of “record evidence” is inappropriate. Here, the standard for adoption of a PRC is less than “clear and convincing evidence.” Rather, the standard is whether the proponent has met the justifications required in the scoping memo.

Perhaps this reliance on “evidence” in the CIPs’ write-ups is a misnomer, and the CIPs are really arguing that a PRC needs to be adequately justified before the Commission should adopt it. However, their repeated reference to “record evidence” is concerning and needs to be addressed to ensure clarity around the standard for adoption of proposed rule changes.

III. PROPOSED RULES

A. The Consensus Rules Should Be Adopted To Improve Fire Safety and Mitigate the Risk of Catastrophic Fires in California

The consensus PRCs, found in Appendix A of the Workshop Report, are a product of both a spirit of cooperation and good faith among the parties as well as sheer hard work. Much credit should be given to the Commission facilitators who helped the parties to work through the issues and arrive at consensus. No party got exactly what it wanted, but the combined result of each of the proposed consensus rules was something that all parties believe they can live with.

The Workshop Report’s discussion of the consensus rules also reflects a high degree of cooperation among the parties. Since there was consensus on these rules, it was agreed that the rationale and justifications should reflect the opinion of all the parties; no additional or individual comments were allowed in the Workshop Report.⁸ The Workshop Report thoroughly discusses each consensus rule, and PG&E has also listed and described each one in Exhibit A to this brief.

While PG&E supports the adoption of all seven consensus rules, PG&E feels very strongly that the three PRCs discussed below especially should receive favorable treatment.

- **Vegetation Management (GO 95, Rule 35, Paragraphs 1-3)**. The PRCs in the first three paragraphs of Rule 35 are all refinements or clarifications that have long been needed and that will improve that rule. They make it clear that: 1) regulatory vegetation clearances apply to all facilities in California, including those on state or local agency lands; 2) healthy trees or limbs that overhang or lean toward conductors are permissible; and 3) “strain” on a conductor occurs when vegetation

⁸ It is possible that some parties will elaborate in their briefs on some aspect of one rule or another.

contact significantly compromises the structural integrity of the supply or communication facilities. These changes should be adopted.

- **Safety Factors and Pole Loading (GO 95, Rule 44.1, 44.2 and 44.3).** These PRCs make it clear that: 1) designs include consideration of mechanical strength as well as structural loading; 2) both electric and telecommunications companies are expected to perform and share pole load calculations; and 3) the addition of facilities is a reason why safety factors might be reduced. As to the reserved “cooperation” piece of the rule, PG&E agrees with SCE that Rule 44.2 already sufficiently requires “cooperation”, that existing joint pole agreements are the place where such procedures should be negotiated and set out, and that the proposed “cooperation” language proposed in MAP 10 is not necessary.⁹ These changes should be adopted.
- **Inspection Requirements for Electric Distribution and Transmission (GO 165).** GO 165 has been both streamlined and expanded. The revision to the distribution inspection requirements reflects a long time acknowledgement by both CPSD and the electric utilities that the rule as written was burdensome and not particularly useful – especially as to the reporting requirements.¹⁰ GO 165 was also expanded to include all electric facilities (including transmission) and (as to transmission) added Section IV, which has two parts: 1) it directs each electric utility to prepare and follow procedures for conducting inspection and maintenance activities for transmission facilities; and 2) states that Commission staff may inspect records and procedures associated with those activities. These changes should be adopted.

PG&E supports all the consensus PRCs and urges the Commission to adopt these rules with all deliberate speed.

B. The MAP PRCs Should be Carefully Scrutinized to Ensure They are Helpful, Realistic and Tailored to Achieve the Goals of This Fire Safety Proceeding

There are a large number of MAP PRCs under consideration, and the Workshop Report is an excellent record of the proposed changes, the rationales and justifications and the various parties’ comments, both in favor or in opposition of the PRCs. PG&E will not duplicate that information here. In an effort to help in the review, PG&E has summarized each of the MAP

⁹. Further, the General Orders should provide high level direction and should **not** get into process and procedures. PG&E agrees with SCE’s comments on this subject in its Opening Brief in the context of Consensus Rule 18B and MAP No. 1(A) re Rule 11, which comments are incorporated herein by reference to avoid duplicative argument. However, if the Commission is inclined to put “cooperation” process language into GO 95, that language should be provided as a guideline in the Appendix, not made part of the rule – as proposed by the Joint Electric Utilities in MAP No. 10(B). (Workshop Report, at pp. B-166 to B-172.)

¹⁰ The Commission’s Utility Safety and Reliability Branch (USRB) and the then affected electric utilities had substantially agreed to a streamlined reporting process in 2008, but that agreement was never put into effect. Most of the changes proposed in this revision come straight from that earlier agreement; CPSD also submitted similar revisions in its PRC filing. (*CPSD Reply to Proposed Rules for Phase 2*, at p. 8.)

PRCs in Exhibit B to this Opening Brief along with its comments, concerns and recommendations as to each one of the MAP PRCs. Below, PG&E focuses on just a few of the more important MAP PRCs.

1. **MAP No. 5, GO 95, Rule 31.1 Design, Construction and Maintenance: The Proposed Changes Are Intended to Clarify the Commission’s Expectations of Utilities and Entities Subject To Its Jurisdiction, Not Diminish Its Regulatory Authority**

General Order 31.1 currently reads in pertinent part:

For all particulars not specified in these rules, design, construction and maintenance should be done in accordance with *accepted good practice* for the given local conditions known at the time by those responsible for the design, construction, or maintenance of [the] communication or supply lines and equipment. (Emphasis added.)

Over the years, CPSD has used the existing Rule 31.1, with its vague directive to design, construct and maintain facilities to furnish safe service, as a “catch-all” provision to allege misconduct and “violations” on the part of the electric utilities and CIPs – without pointing to a violation or nonconformance of any other General Order rule or any specific accepted industry practice or engineering standard to support its finding. This is not appropriate enforcement.¹¹

The electric utilities proposed changes to Rule 31.1 in this proceeding in an effort to make clear the Commission’s expectations regarding what constitutes regulatory compliance with the General Orders or other standards covering design, construction, and maintenance of their facilities. This proposed rule change adds an additional paragraph to the rule, which states:

For all particulars specified in this Order, a supply or communications company is *in compliance* with this rule if it designs, constructs and maintains a facility in accordance with such particulars. For particulars not specified in this Order, a supply or communications company is *in compliance* with this rule if it designs, construct and maintains a facility in accordance with *accepted good practice*. (Emphasis added.)

Under this added paragraph, a utility is in full compliance if it follows the rules and requirements in the General Orders. Further, since not all design, construction, and maintenance

¹¹ Compare the civil arena, where courts have ruled that a utility that faithfully and conscientiously builds and maintains its facilities according to the Commission’s General Orders and good engineering practices cannot as a matter of law have breached a duty of care. (*Krongos v. PG&E* (1992) 7 Cal.App.4th 387, 397-98.)

requirements can be contained in the General Orders, the electric utilities propose to be held to an “accepted good practice” standard for compliance purposes. Such a standard is not revolutionary. The standard of “accepted good practice” is a well-understood concept in regulation and in the utility and other industries.¹² Indeed, the term **has already been used in the preceding paragraph of Rule 31.1.**

Yet CPSD (the sole party opposing this rule) now attacks its use in the proposed new paragraph on the grounds that the utilities will somehow manipulate that concept to their own advantage. This simply makes no sense. The electric, gas, and communication industries have been regulated ever since their inception; they are subject to extreme scrutiny – both public and regulatory. Industry standards are developed through open collaboration and communication among industry participants through trade associations as well as through peer benchmarking. None of these activities is hidden from regulators; indeed, regulators are participating members of trade associations and industry committees at which standards are developed. To assert that the electric utilities and CIPs have the intent, let alone the ability, to manipulate the development of industry standards to the detriment of public safety demonstrates a total misunderstanding of how industry standards are developed, and an unfounded and insulting suspicion of the electric utilities and CIPs.

CPSD also suggests that the electric utilities are proposing these changes in an effort to diminish the Commission’s regulatory authority; CPSD believes the electric utilities and CIPs will “collude” to come up with an accepted good practice that somehow compromises the safety

¹² The California Public Utilities Code directs the Commission to consider a number of factors when setting its standards, including “national electric industry practices”. (Pub.Util.Code §364(b).) Also, the National Electric Safety Code (the equivalent code to GO 95 that applies to the 49 other states in the U.S.) also relies on accepted industry practices. (NESC, Rule 12(C).) FERC, in its *Glossary of Terms*, also recognizes industry practice. It defines “Good Utility Practice” as “Any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result of the lowest reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region and consistently adhered to by the Transmission Provider.”

of the public; CPSD believes the electric utilities and CIPs will manipulate the definition of “accepted good practice” in order to “skirt obligations” to ensure what is best for public safety and the people of California. None of these allegations bear any truth, and PG&E strenuously objects to CPSD’s unfounded insinuations. CPSD’s suspicions of malevolence on the part of the electric utilities and the CIPs are wholly misplaced.¹³

First, the electric utilities and CIPs intend clarity from these proposed changes, not a reduction of oversight. There is no trickery in these proposed changes. That clarity will help the utilities and CIPs, as well as CPSD, to ensure compliance with articulated standards, and avoid disputes after events when utilities or CIPs are accused of “violating” the vague requirements of Rule 31.1. Providing clarity in the rules benefits both utility and regulator. Clarity of rules is also in the public interest.

Second, the notion that the electric utilities and CIPs will “collude” to come up with design, construction, and maintenance standards in order to benefit themselves to the detriment of public safety is ridiculous. As CPSD witnessed during this proceeding, the CIPs and the electric utilities are not similarly situated on most issues related to the General Orders, and are not likely to “collude” with each.

The PRC attempts to eliminate the vagueness of this rule so that those entities subject to the Commission’s General Orders understand up front what is expected of them and how they can ensure that their facilities are in compliance with established, articulated standards. A utility cannot operationalize a vague “make it safe” standard; and should not be expected to do so.¹⁴ CPSD should welcome such clarity, rather than spurn it.

PG&E is hopeful that the Commission will recognize that the intent of this proposed rule is clarity, and that the proposed rule with its “accepted good practice” standard will improve the

¹³ It should be noted that the “accepted good practice” language proposed here is the same language that was included in the consensus rationale supporting the latest changes to Rule 31.1, which CPSD supported. (R.01-10-001, *Workshop Report, Appendix A*, October 28, 2003, at p.A-27.)

¹⁴ The general orders should be “capable of *definite interpretation* sufficient to form the basis of working specifications for overhead electric line construction”. (GO 95, Preface at p.x.)(Emphasis added.)

Commission’s compliance enforcement activities to the benefit of public safety. This proposed rule change has the support of virtually every participant in the workshop, and should be adopted.

2. MAP No. 7, GO 95, Rule 35, Paragraph 4 – Vegetation Management: The Proposed New Paragraph Provides That Utilities May, After Appropriate Notice, Terminate Power to Customers Who Cause A Potential Public Safety Hazard

Every year, a very small number of property owners refuse to allow electric utilities either: 1) to access their property for vegetation management inspections; or 2) to do necessary tree trimming/removals to keep the electric power lines clear of vegetation. These “refusal” owners place their communities in jeopardy of potential fires, power outages and/or injury to workers and the public.¹⁵

PG&E already has the right to deny or terminate service *immediately and without notice* to any customer who threatens to create a hazardous condition (PG&E Tariff rule 11(H)(1)(b)) or with reasonable notice if “any of the required clearances between the existing Service Facilities and any object becomes impaired under any applicable laws, ordinances, rules, or regulations”. (PG&E Tariff rule 16(F)(3)(b).) These rules are available to address situations when there is a hazardous vegetation condition at the location where the customer receives service. However, this proposed rule (by allowing the termination of power *at any location* where the owner may receive service) solves the problem of a vegetation hazard at a location different from the regular service location. Following are a couple of examples of common problems that this rule will address that cannot be solved by using the existing Tariff Rules -- because the property owner is not receiving service at the location or from the line where he/she is refusing to cooperate with necessary vegetation management work:

- The absentee owner of a cabin in the mountains who refuses to allow vegetation management activities on his mountain property. This rule would allow the utility to terminate power at the year-round residence of the absentee landowner who may live 300 miles away from the problem location.

¹⁵ The Workshop Report provides a description of the comprehensive “refusal process” that PG&E uses to provide explanations to the recalcitrant property owner to try to work with the refusing customer. (Workshop Report, at p. B-113.)

- The owner of property across which runs a major distribution or transmission line. The property owner receives service from another line (on which there are no clearance issues). He refuses to allow access or vegetation management work on the line crossing the property. This rule would allow the utility to terminate service at the residence of the refusing customer – even though there is no vegetation problem on the line providing that service.

Only four participants opposed this proposed rule. California Farm Bureau Federation raised the specter of possible abuse of this “tempting tool,” arguing that a utility might take the “dramatic step” of shutting-off all of a customer’s accounts where there is a problem related to only one parcel. CPSD suggested that the rule is an “extremely radical and severe reaction,” and that a utility might cut off power to all State or City buildings or facilities if a utility were denied access to a single State or City location. These arguments and statements ignore the economic realities of being an electric power provider. An electric power company is in the business of making money from providing service, and no company makes any money when it is forced to terminate power to a customer -- especially at multiple locations. Such action stops the meter(s) from running and guarantees an even unhappier customer. It simply runs counter to basic business incentives. Termination of power at one location to enforce vegetation management clearances is not something that a utility wants to do – although it may be forced to do so in extreme situations. Termination of power at multiple locations is the last thing that a utility wants to do. This PRC is intended as an extreme, counterintuitive measure to address an emergency situation.

This fire safety proceeding was instituted to mitigate the risk of serious wildland fires. There is a significant risk of wildland fires and other potential harm if incompatible vegetation is allowed to come into contact with electric power lines. This proposed rule is carefully crafted to ensure that a utility can obtain the regulatory vegetation clearances mandated by this Commission, which in turn will mitigate fire risk and other safety considerations. The rule is balanced: it provides for termination only when a utility **cannot inspect** its lines, or when there

is an **imminent threat** of violations of clearance requirements.¹⁶ The Commission should adopt this important tool.

3. **MAP No. 8, GO 95, Rule 35, Appendix E (Guidelines only): Adding an Explanation About the Factors That are Considered When Determining Appropriate Clearances at Time of Trim Will Be Helpful to Utilities**

The Joint Electric Utilities have proposed a rule change to the guidelines contained in Rule 35, Appendix E. This is a very important rule change for the electric utilities who are obtaining vegetation clearances from the power lines. The PRC does two things: 1) it clearly states that “each utility may determine and apply additional appropriate clearances beyond clearances listed below” (referring to the Appendix E table with recommended clearances to obtain at time of trim); and 2) it provides a list of factors that are considered by the utility when it is determining appropriate clearances. Some of those factors include, for example, line sag, planned maintenance cycles and vegetation growth rates and characteristics.

A customer who refuses to allow necessary vegetation management work is potentially placing the entire community at risk of fire, power outages and potential injury to workers or the public. These rule changes are intended to prompt and support discussions with property owners who might otherwise be opposed to vegetation management work on their property. The list of factors will be especially helpful in discussions with a property owner who, for example, is not familiar with the characteristics of electric power lines (lines can sag many feet during high loads or hot weather), who does not understand that it is worse for a tree to be trimmed frequently rather than on a longer planned maintenance cycle, or who has planted an incompatible redwood tree under power lines. The list of factors is also helpful in discussions with property owners who read the clearance requirements literally, and do not understand why the power company

¹⁶ TURN has indicated that it intends to propose modifications to the rule that will ensure adequate notice and an opportunity for appeal. CPSD has noted that the rule might better be placed in a tariff, rather than in General Order 95. PG&E has no objections to further refinements to the rule, and would be happy to work with both TURN and CPSD so long as the tool of termination of service to enforce vegetation management for refusal customers is not lost.

does not just get the 18 inches required under Rule 37, Table 1 at time of trim as opposed to the four plus feet recommended in Appendix E.

Mussey Grade Road Alliance and the California Farm Bureau Federation in a separate proposed rule have proposed additional language, which should NOT be adopted. This proposal adds the phrase “*for the purposes of public safety, reliability or tree health*” as well as a parenthetical “*(including when feasible appropriate tree crop production manuals)*” to the proposal above. These additions, while well intentioned, are not helpful. The first phrase is not necessary because all of GO 95 is intended to safeguard the public safety and reliability. Also, by specifying three specific “purposes” in the rule itself, the phrase actually limits the flexibility a utility must have to properly manage its program and will generate more opposition from recalcitrant tree owners. The phrase “tree health” (which has nothing to do with the overarching safety and reliability purposes of GO 95) especially could cause extended disagreements with property owners who might argue that the health of their tree will be damaged by any pruning at all.

The parenthetical about “crop production manuals” also is misplaced. In the first place, the utilities already work around the orchard growing season as much as possible. Orchards are usually pruned during the winter or early spring when they are dormant. In the second place, crop production manuals have nothing to do with appropriate utility line clearances. This phrase simply gives orchard owners an excuse to refuse appropriate utility line clearing. The fact is that orchard trees threaten power lines just like any other trees (walnut trees are especially hazardous to power lines, as their branches can grow vertically 18’ in one season).

Thirdly, utility line tree trimming is designed to protect the power lines in a cost effective yet responsible way as dictated by the Commission through GO 95 as well as CAISO and FERC/NERC; it will probably be incompatible with “maximizing crop production”. An incompatible orchard tree that has been planted under power lines by definition will not experience maximum crop production. In the summer time, the two are in complete conflict: the tree experiences its maximum growth at the same time as the weather is the hottest and the

overhead electric lines are carrying maximum load.¹⁷ Maximizing crop production must take a back seat to ensuring that no tree makes contact with power lines and cause a fire, outage or pose other safety problems. The NERC's reliability rules, which carry with them heavy fines for noncompliance, make this choice abundantly clear.¹⁸

PG&E strongly opposes the Mussey Grade/Farm Bureau additions.

4. MAP No. 11, GO 95, Rule 48, Ultimate Strength of Materials: "Will Not Fail" Language Sets an Impossible Standard and Should Be Eliminated From This Rule

Rule 48 is currently written with language that mandates that overhead line structures or parts "will not fail". This mandate sets an impossible standard, and is inconsistent with other sections of the General Orders, which use strength properties that are not absolute minimum values for the respective materials. The Commission's Energy Division¹⁹, the CIPs and the electric utilities all agree that this rule should be changed.

The Joint Electric Utilities have proposed a rule that eliminates the "will not fail" language and instead requires that structural members and other elements of overhead lines be designed and constructed in accordance with the loading criteria in Rule 43 and safety factors in Rule 44. This change reasonably aligns the rule with the rest of GO 95 as well as generally accepted engineering principles. Only 3 workshop participants voted against this proposed rule change.²⁰

CPSD, although it acknowledged in the workshop discussions of this PRC that the "will not fail" standard was an impossible standard, continues to object to the rule change. It cites a

¹⁷ High heat and maximum load cause power lines to sag -- often to the minimum allowable ground clearance levels.

¹⁸ NERC Reliability Standard FAC-003-1. *North American Electric Reliability Corporation*, 121 F.E.R.C. P61,033 (October 18, 2007) (NERC should calculate maximum violation amount at \$1 million per violation per day).

¹⁹ December 14, 2009 Ken Lewis (Energy Division) letter to GO 95 Rules Committee requesting the Rules Committee to delete the first two paragraphs of Rule 48, stating: "These paragraphs impose a design standard that we believe violates standard practice and, if literally interpreted, would result in unnecessarily expensive transmission and distribution lines." (Attached as Exhibit "C")

²⁰ CPSD, IBEW 1245 and L.A. County.

number of reasons; most are unpersuasive. PG&E will address here a few of the CPSD objections.

First, CPSD argues that safety requirements will be lowered by the removal of the phrase “will not fail”; that the PRC is “nothing less than an attempt to lower the utilities’ obligations and civil liabilities”; and that the rule is weakened because it has been changed from a performance standard to “just a design standard.” These arguments demonstrate a complete misunderstanding of the PRC. Utilities will continue to design and build as they have in the past, taking a number of factors into consideration while always conforming to the minimum criteria set in Rules 43 and 44. There would be no lowering in actual construction standards.

Second, the CPSD cites an outlandish example that the PRC would allow a pole to fail when no wind is present without any consequence to the utility owning the pole. A pole designed and constructed in accordance with Rules 43 and 44 and any other applicable GO 95 requirements obviously should not simply fail. If that extremely unlikely failure event occurs, the problem event should be investigated to determine the root cause so appropriate action, as may be necessary, can be taken. CPSD’s example is unpersuasive.

Third, the CPSD then reverses its position completely and argues that the rule should not be adopted because the entire Section IV of GO 95 needs revision, and that a “piecemeal” approach to revising Section IV is ill-advised from an engineering point of view. However, it is even more “ill-advised” to allow an impossible engineering standard to remain in place when a simple change in the rule will address the problem.

There is a common theme among the three parties who opposed this proposed rule change: they all fear that the change will allow utilities to design and construct their systems in accordance with the minimum standard and not “go beyond the engineering design” or “design for the worst case scenario”. They misunderstand the purpose of the General Orders and the concept of a minimum standard.

The Preface to General Order 95 clearly outlines its purpose. It states: “It is recognized that the rules are not complete construction specifications, but they do embody *minimum*

requirements which are capable of definite interpretation sufficient to form the basis of working specifications for overhead electric line construction.” GO 95 sets minimum but definitive standards. GO 95 was never intended to set impossible and impractical engineering standards, nor does it contemplate that utilities should always “design for the worst case scenario”. It is well recognized that a system designed for the “worst case scenario” would be prohibitive in cost to build as evidenced by the Energy Division letter cited in Footnote 19.

This proposed rule change is a simple one: it eliminates an impossible engineering standard. The Commission’s own Energy Division has requested that the whole paragraph be eliminated. The PRC should be adopted.

5. **MAP No. 13, Data Collection: Mussey Grade’s Data Collection Proposal Should Not be Adopted or, in the Alternative, CPSD Should be Ordered to Confer with the IOUs About the Usefulness of Such Data**

This proposed rule was opposed by every CIP and electric utility for a number of good reasons:

- There is no demonstrated need. In fact, PG&E used to report fire data to the CPSD. That data was apparently never used and CPSD finally agreed with PG&E that it was a waste of resources and ended the practice.
- There are already several collections of fire data that can be “mined”, including data compiled by Cal Fire, the National Fire Protection Association and FEMA’s National Fire Incident Reporting System.
- Commission resources are stretched thin, and there is no provision for funding or staffing for the necessary independent review and verification of the data.
- Utilities will have to create additional systems and data gathering methods to collect all the information requested. This will be an unnecessary cost to be born by ratepayers for a questionable benefit.
- The proposal is incomplete because it does not require the CIPs to collect similar data.
- The proposal infringes on due process and privilege issues.

If the Commission is determined to consider this idea and before adopting a rule that requires a full blown data collection effort, PG&E strongly urges that the Commission **instead adopt the PG&E alternative proposal**. This alternate requires the electric utilities and CPSD

to meet and confer about whether the CPSD is receiving the fire-related data that it needs, and whether there is other data that might be useful. The discussions would be conducted so as to protect the confidentiality of the utilities' data, and a report regarding the results of the discussions would be submitted to the Executive Director of the Commission.

6. MAP No. 14, Development of Fire Maps: The Evaluation of Fire Maps Is Complex and Not Yet Completed; To Be Adequately Addressed, There May Need to Be a Phase 3 of This Proceeding For This Topic

There are several proposed rules changes that have to do with fire maps. All the proposals have one thing in common: the Commission in Phase 1 ordered that certain additional special activities (inspections, tree trimming, etc.) must take place in areas of high fire risk, limited to certain counties in Southern California. For the purposes of the Phase 1 rules, the Commission chose to use Extreme and Very High Fire Threat Zones as defined by the California Department of Forestry and Fire Protection's Fire and Resource Assessment Program (FRAP) Fire Threat Maps. Since then, the parties have been struggling with the challenge of how to operationalize the special requirements using FRAP maps that admittedly are not specifically tailored to utility use or as finely detailed as might have been desired.

A workshop technical group spent many hours in an attempt to develop a better map, but failed because there was simply insufficient expertise. SDG&E used its internal resources to better define the FRAP map areas so it could operationalize its additional needed work; it no longer needs additional mapping work. The CIPs hired REAX Engineering to develop a better, more focused map for use by CIPs in the remaining portions of California. This has been mostly completed, although it still needs peer review and further study. The CPSD has indicated that it would also need to review the map.

CPSD and Mussey Grade have now proposed that the mapping effort be started all over again. The ultimate goal of this proposed rule is the development and maintenance of "utility-specific high resolution maps combining wind and vegetation data that specify areas at the greatest risk of catastrophic power line wildland fire ignitions" – to be funded by the investor

owned utilities and the CIPs. This proposal would virtually start the process all over again, and **should be rejected outright**. It overreaches in many respects, including the fact that it proposes that the maps be funded by the IOUs and the CIPs.

If the Commission determines that it is appropriate to develop a separate fire threat map and rather than starting from scratch again on yet another effort to develop a fire threat map, the reasonable course is to allow CPSD time to review the REAX report, complete the peer review and publishing, and then have the Commission consider the adoption or approval of the REAX maps for CIPs use. This effort may be more appropriate for a Phase 3 of this proceeding.

7. **Map No. 15, Cost Recovery: The Commission Should Provide That Costs Associated With Any Changes In The Rules Be Recovered Through Annual Cost Recovery Mechanisms**

The Commission's Phase 1 Decision D.09-08-029 found that "each cost of service regulated utility is entitled to recover reasonable costs prudently incurred to comply with the changes to the Commission's [adopted] rules". The Phase 1 Decision also directed PG&E to record any incremental implementation costs associated with any Phase 1 Proposed Rule Changes (PRCs) incurred in the years 2009 and 2010 into a memorandum account, which PG&E has been doing. The Decision deferred until Phase 2 any discussion about what the proper mechanism should be to obtain cost recovery.²¹

As set out in the Workshop Report, the cost-of-service electric utilities (including the Small LECs) could not reach consensus with TURN and DRA on what the cost recovery mechanism should look like. As a result, there are two MAP cost recovery mechanism proposals. The difference between the two proposals is very simple. TURN and DRA want to delay the review and approval of costs until a future general rate case. The electric utilities and Small LECs want to recover their costs on an ongoing annual basis through established procedures. (PG&E would use its Annual Electric True-Up filings or perhaps an advice letter filing – depending on the amount of the costs.)

²¹ (Decision at pp. 43-44.)

TURN and DRA make two very simplistic and unfounded arguments against the utilities' proposal. First, they say that the utilities' proposal would "automatically" entitle them to transfer costs recorded in their memorandum accounts without any provision for a reasonableness review. That is not correct. The existing Annual Electric True-Up filing as well as advice letter filings include a review process for costs recorded in memorandum and balancing accounts. Both include a protest period and full review by the Commission ending with a final resolution, and allow ample time for review by TURN, DRA or other intervenors.

Second, they argue that because the Phase 1 Decision states "after the Commission verifies the reasonableness of costs", the only mechanism possible for cost recovery is a General Rate Case and that if the Commission intended to allow the use of an advice letter that it would have said so. This argument is not compelling given the fact that the Commission specifically stated that it would "decide the appropriate forum for seeking recovery of these costs in Phase 2". Anyone reading this sentence would and should conclude that the Commission had not decided how costs would be recovered.

PG&E and the other IOUs believe that a better, more timely cost recovery mechanism is through existing annual reviews which, as stated above, provide for ample review and results in a decision or resolution.²² This cost recovery proposal would:

- Provide necessary funding for programs and other actions necessary to comply with the measures adopted in R.08-11-05;
- Allow the use of existing processes to recover costs, which include a review process and Commission decision;
- Provide the flexibility of either the Annual True-Up filing or filing an advice letter to recover costs, which will be different for each utility;

²² Please refer to the full discussion as in their proposed alternate rule in the Workshop Report. (Workshop Report, pages B-254 to B-257.)

- Avoid the added complexity of mixing the forecasting of costs for the GRC with the recording of actual costs incurred associated with tracking and recovering current costs;
- Avoid a large accumulation of costs, accrued interest and a higher rate impact by using a more frequent recovery cycle.

The primary concern that is not addressed by the TURN/DRA proposed rule is the timeliness of costs recovery. PG&E's next General Rate Case (for Test Year 2011) is almost complete. As a result, none of the Fire Safety OIR costs is presently included in rates nor will they be included in rates for several more years. PG&E would have to wait until 2014 before it would be able to recover its incurred costs. It means that rate payers are unnecessarily paying interest for costs sitting in an account that could instead be recovered now and used for other needed work or projects.

Further, TURN/DRA are proposing an inappropriate forum for recovery. A General Rate Case is concerned with forecasted and proposed expenditures – work that will be done in the future. The costs associated with the rule changes in this proceeding represent money already spent. The recovery of money already spent has no place in a General Rate Case.

At this point, given that the PRCs are not finalized, PG&E requests that the Commission acknowledge the appropriateness of PG&E's cost recovery proposals and incorporate those proposals as Ordering Paragraphs in its OIR Phase 2 Decision.

IV. ANCILLARY ISSUES: ANY APPROVAL OF NEW OR REVISED RULES SHOULD ALLOW FOR REASONABLE AND METHODICAL IMPLEMENTATION

There are a number of issues associated with implementation of a new rule – and many of them may not be obvious to an observer. Implementation will require the analysis and development of procedures, the development of training tools and processes, the possible addition of personnel, and the possible creation or supplementation of an IT system or database for documentation requirements. In addition, there will be added costs (not in current budgets)

to: create, maintain and provide support for the new or supplemented processes; maintain and house the documentation; train employees, modify existing agreements, etc.

At this point, it is unknown which of the PRCs will be adopted, and what they will require in their final form. Therefore, it would be premature to set a specific timeframe for their implementation. At the end of Phase 1 of this proceeding, the Commission stated:

We direct all entities subject to the revised rules and ordering paragraphs adopted today to take all reasonable measures to immediately begin to implement these directives. We do not adopt any deadlines, except those specifically established in the rules or ordering paragraphs themselves. We do not require compliance plans but, instead, expect each entity to establish a reasonable implementation plan to fit its particular circumstances.²³

PG&E believes that this directive remains appropriate for the implementation of any rules adopted in Phase 2, and suggests that the Commission make the same order for Phase 2 implementation.

V. CONCLUSION

PG&E urges the Commission to adopt all the consensus rules in Appendix A. These proposed rules were developed after much discussion among all parties, and are in the public interest. As to the MAP proposed rules, PG&E also urges the Commission to keep its attention

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²³ Decision at p. 44.

focused on those rules that can make an immediate and substantial difference in mitigating the risk of catastrophic fires in California.

Respectfully Submitted,

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By: _____ /s/
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Dated: September 3, 2010

EXHIBITS

EXHIBIT A

Consensus Proposals

The table below describes in summary form PG&E’s recommendations concerning each of the consensus proposals.

NOTE: To avoid duplicative argument, please see the Workshop Report for a fuller discussion of PG&E’s positions and comments concerning each of the proposed rules, which Workshop Report is incorporated herein by reference. This includes the rationales and justifications that are contained in the Workshop Report for rules proposed by PG&E or jointly with SCE and SDG&E as well as comments made by PG&E or jointly with SCE and SDG&E in opposition to rules proposed by others. Finally, PG&E will often agree with a position or comment made for or against a particular rule in Opening Briefs by SCE (*) or SDG&E(**), which discussions are also incorporated herein by reference as indicated below.

Consensus Rule	App A Reference	Description of Proposed Change	PG&E’s Comments
GO 95, Rule 18A Reporting of Safety Hazards	II.A, page A-2	The term “violation” is replaced with “nonconformance”.	Adopt *
GO 95, Rule 18B Notification of Safety Hazards	II.B, page A-10	The rule (adopted in Phase 1 of the proceedings) is streamlined and clarified. Changes include: <ul style="list-style-type: none"> • A company must be able to determine (not know) the identity of other pole occupants. • The rule applies during the normal course of business, not during emergencies • Requires only that the notice be “documented”, which can take any form. • Provides greater flexibility for pole owners by adding the word “normally” to the five business day hazard notice requirement. 	Adopt
GO 95, Rule 23.0 Definitions: Reconstruction	V, page A-27	The definition of the term “Reconstruction” is supplemented to include a “change in grade of construction or class of circuit”. This change was made in conjunction with changes to Rule 44.	Adopt
GO Rule 35, Paragraphs 1-3 Vegetation Management	III, page A-15	<ul style="list-style-type: none"> • Paragraph 1 is changed to make it clear that the rule applies to all lands, including state lands • Paragraph 2 has some minor changes, among which is a clarification that healthy trees or limbs that overhang lines need not be removed. • Paragraph 3 is changed to clarify when “strain” is present on a conductor. 	Adopt

Consensus Rule	App A Reference	Description of Proposed Change	PG&E's Comments
GO 95, Table 37, Table 1, Case 14 and associated footnotes in, (fff)-(jjj) Clearances in Extreme and Very High Fire Threat Zones in Southern California	IV, page A-20	<ul style="list-style-type: none"> • Case 14 and associated footnotes (fff) through (jjj) are no longer to be considered interim. • Typos in footnote (fff) are corrected. 	Adopt
GO 95, Rules 44.1, 44.2, 44.3 Safety Factors	V, page A-27	Clarifications to Pole Loading Rules include: <ul style="list-style-type: none"> • The design for installation and reconstruction of planned supply and communications now includes consideration of mechanical strength as well as structural loading. (Rule 44.1, Installation and Reconstruction.) • Makes it clear that both communications companies and electric utilities must do loading calculations, the calculations will be kept for five years, and intrusive pole test results and other data should be shared with companies doing pole loading calculations. (Rule 44.2, Additional Construction.) • “Installation of additional facilities” was added to “deterioration” as a reason why safety factors might be reduced. (Rule 44.3 Replacement) 	Adopt *
GO 165, Sections I-IV Inspection Cycles Requirements for Electric Distribution and Transmission Facilities	VI, page A-34	The GO is streamlined and clarified, including: <ul style="list-style-type: none"> • The GO is changed to clarify that it applies to all utilities with electric distribution and transmission facilities under Commission jurisdiction (including facilities owned by non-electric utilities); the GO no longer applies to just distribution facilities or to just five specified utilities. • Excludes substations. • Excludes communications facilities. • Streamlines the inspection, record keeping and reporting requirements. • Allows exemptions to the GO requirements upon an adequate showing of justifications. • Adds a requirement that utilities with transmission facilities must prepare and follow procedures for inspecting and maintaining transmission facilities. Each utility must maintain records, and Commission staff may inspect records and procedures. There is no reporting requirement for the transmission facilities. 	Adopt

EXHIBIT B

Multiple Alternative Proposals

The table below describes in summary form PG&E’s concerns and recommendations concerning each of the MAP proposals.

NOTE: To avoid duplicative argument, please see the Workshop Report for a fuller discussion of PG&E’s positions and comments concerning each of the proposed rules, which Workshop Report is incorporated herein by reference. This includes the rationales and justifications that are contained in the Workshop Report for rules proposed by PG&E or jointly with SCE and SDG&E as well as comments made by PG&E or jointly with SCE and SDG&E in opposition to rules proposed by others. Finally, PG&E will often agree with a position or comment made for or against a particular rule in Opening Briefs by SCE (*) or SDG&E(**), which discussions are also incorporated herein by reference as indicated below.

Map #	App B Reference	Proponent	Description of Proposed Change	PG&E’s Comments and Recommendations
<u>MAP No. 1</u> GO 95, Rule 11 Purpose of Rules	II.A., page B-4	CPSD	Clarifies that lines must be designed and maintained in accordance with GO 95 requirements; deletes modifier “electrical.”	PG&E supports deleting the term “electrical” to make it clear that GO 95 also applies to communications lines. PG&E would prefer to keep GO 95 narrowly focused on construction standards only, and is concerned that the proposal to broaden the scope of the rules to include requirements for the “design” and “maintenance” of lines opens the rule to the insertion of inappropriate procedural and other dictates that are then very difficult to change. The General Order should be providing high level guidance that the utilities can then tailor to fit their business, not prescriptive details. Recommendation: Adopt.
<u>MAP No. 1</u> GO 95, Rule 11 Purpose of Rules	II.B, page B-10	CIP Coalition	Clarifies that lines must be designed and maintained in accordance with GO 95 requirements; no other modifications to existing rule.	This version continues the potential confusion that accompanies the current language that refers to “electrical lines”. Although apparently historically the term “electrical lines” included communication lines, a new person reading the rule today – especially with all the changes in technology and the fact that there is a Section VIII in GO 95 that specifically refers to communication lines – could easily interpret the rules as NOT applying to communication lines. Recommendation: Do not adopt.

Map #	App B Reference	Proponent	Description of Proposed Change	PG&E's Comments and Recommendations
<u>MAP No. 2</u> GO 95, Rule 12 Applicability of Rules	III.A, page B-16	CPSD	Clarifies that GO 95 safety rules apply to publicly owned utility electric facilities.	PG&E took a neutral position on this PRC in the Workshops because it was not directly affected. PG&E does, however, strongly agree that all electric utilities in the state, including those publicly owned, should follow the same rules to ensure consistency and safety in California's electric power grid. Recommendation: Adopt.
<u>MAP No. 3</u> GO 95, Rule 18A Reporting and Resolution of Safety Hazards	IV.A., page B-23	CIP Coalition	Modifies existing rule by removing conflicting, unnecessary, and redundant provisions; otherwise maintains requirements to establish auditable maintenance programs and to take appropriate corrective actions.	Rule 18A requires that all companies have an auditable maintenance program for their facilities, although it primarily applies to communication facilities because electric facilities covered by GO 165 are exempt. However, PG&E has an interest in this rule because it has some internal communications facilities that might be covered by this rule. PG&E supports these rule changes because: 1) they vastly improve a rule that is currently confusing and poorly written; and 2) a utility should have the flexibility to prioritize the correction of maintenance conditions to maximize efficiencies. Recommendation: Adopt.
<u>MAP No. 3</u> GO 95, Rule 18A Reporting and Resolution of Safety Hazards	IV.B, page B-35	SDG&E	SDG&E's proposal is the same as the CIP coalition's proposal except that level 2 nonconformances would need to be corrected within 12 months under certain circumstances.	PG&E cannot support this proposed rule change because it has mandatory timeframes for correcting certain identified maintenance conditions. PG&E believes that a utility should have the flexibility to prioritize such conditions. Recommendation: Do not adopt.
<u>MAP No. 4</u> GO 95, Rule 18c Contingency Planning	V, A, page B-49	Mussey Grade	Adds a new rule requiring electric utilities to develop contingency plans for conditions that exceed the wind loading requirements specified in Rule 43 in high fire risk areas.	This proposed rule has no place in GO 95, which is a design and construction standard. Contingency planning is something that any responsible company is already currently doing in a variety of areas. Finally, GO 166 already covers planning for major emergencies, disasters and power outages. The rule is not needed. Recommendation: Do not adopt.*

Map #	App B Reference	Proponent	Description of Proposed Change	PG&E's Comments and Recommendations
<u>MAP No. 5</u> GO 95, Rule 31.1 Design, Construction and Maintenance	VI.A, page B-58	Joint Electric Utilities	Adds a provision to define that a utility is in compliance with Rule 31.1 if its facilities are designed, constructed, and maintained in accordance with GO 95 provisions or, if there are no GO 95 provisions, with "accepted good practice." Defines "accepted good practice."	This is probably the most broadly supported proposed rule change coming out of the Workshops. It was proposed because the rule is being abused by CPSD staff in audits and investigations, who find "violations" based only on the general rule that utility systems should be designed, constructed and maintained for their intended use to furnish safe, proper, and adequate service. The proposed rule change not only clarifies the rule itself and better articulates what is required of utilities in order to comply with General Order 95, it also requires CPSD to articulate exactly what specific standard or industry practice a utility has failed to comply with when CPSD finds a "violation". Such clarity puts everyone on the same page, and prevents counterproductive Monday-morning quarterbacking by CPSD staff. Only CPSD opposed this rule. Recommendation: Adopt.
<u>MAP No. 6</u> GO 95, Rule 31.2 Inspection of Lines	VII.A, page B-67	CIP Coalition members CCTA, Comcast, CTIA, NextG, Sprint Nextel, Sunesys, Time Warner, T-Mobile, TW Telecom and Verizon	Adds new section to existing general inspection rule to require regular CIP patrol and detail inspections in specified high fire areas. (CIP 1)	PG&E has an interest in an effective inspection and maintenance program for CIP facilities because it shares poles with those facilities. CIP facilities can pose safety hazards and contribute to the ignition of fires, whether by obstructing climbing space, having lines get snagged by trucks or pulled down by tree branches below the electric levels, or overloading poles. Of the various proposals, this version seems to be the most balanced. Recommendation: Adopt, but put the rule in Section VIII of GO 95, since it pertains only to communication facilities.
<u>MAP No. 6</u> GO 95, Rule 31.2 Inspection of Lines	VII.B., page B-76	CIP Coalition members AT&T, Frontier Communications and Small LECs	Adds new section to existing general inspection rule to require CIP patrol inspections in specified high fire areas. (CIP 2)	This version of Rule 31.2 requires patrols only every five years and has no detailed inspections. PG&E believes this is inadequate and insufficient to mitigate fire risk in Southern California high fire areas. Recommendation: Do not adopt.

Map #	App B Reference	Proponent	Description of Proposed Change	PG&E's Comments and Recommendations
<u>MAP No. 6</u> GO 95, rules 31.2 and 80.1A Inspection of Lines; Inspection Requirements for Communications Lines	VII.C., page B-83	CPSD	Requires CIPs to have procedures in place to ensure that all of their lines are subject to patrol and detailed inspections, and sets forth an explicit requirement in GO 95 setting minimum inspection cycle lengths for CIPs in certain circumstances.	PG&E supports the patrol and inspection cycles proposed by CPSD, but suggests that it is premature to extend CIP patrols and inspections from Southern California to all of California without better justification and data. The CIPs and Southern California electric utilities are learning a lot from the patrols and inspections that are going on in that part of the state. PG&E suggests that the idea of state-wide CIP inspections be re-visited after more and better information is developed. Recommendation: None, except if a rule is adopted to require CIP patrols/inspections, it should be limited to Southern California and the more appropriate place to locate the rule would be in Section VIII of GO 95, which applies to communications facilities.
<u>MAP No. 6</u> GO 95, rules 31.2 and 80.1 Inspection of Lines; Inspection Requirements for Communications Lines	VII.D, page B-94	SDG&E	SDG&E's proposal is the same as CPSD's proposal except that: (1) communications lines on CIP-only poles within three spans of joint use poles would require inspections and (2) the maximum interval between detailed inspections in Extreme and Very High Fire Threat Zones in Southern California would be 5 years.	See PG&E's comments above. There is some merit to requiring CIP inspections of poles 3 span lengths away from electric facilities. Recommendation: None, except if a rule is adopted to require CIP patrols/inspections, it should be limited to Southern California and the more appropriate place to locate the rule would be in Section VIII of GO 95, which applies to communications facilities.

Map #	App B Reference	Proponent	Description of Proposed Change	PG&E's Comments and Recommendations
<u>MAP No. 6</u> GO 95, Rule 80.1B Inspection Requirements for Communications Lines: Intrusive Inspections	VII.E, page B-103	CPSD	Adds a new rule to GO 95 setting forth specific requirements for intrusive inspections for wood poles supporting only communication lines or equipment.	PG&E finds value in its intrusive inspection program, and believes that it is prudent for the Commission to adopt a rule that requires periodic intrusive inspections of communications-only poles that are in close proximity to electric power poles. Obviously if those communications-only poles that are connected to power poles fail, they pose a risk of pulling down the electric power poles and facilities. Recommendation: Adopt.
<u>MAP No. 7</u> GO 95, Rule 35 (paragraph 4) Vegetation Management	VII.A, page B-112	Joint Electric Utilities	Adds a fourth paragraph permitting discontinuance of electric service if a property owner obstructs access to overhead facilities for vegetation management purposes.	Incompatible vegetation cannot be allowed to exist near power lines, but utilities regularly are dealing with customers who refuse to allow that vegetation to be properly trimmed or removed – creating a significant hazard of fire, injury to the public or workers, or major outages. Utilities currently may terminate power when a customer creates a hazardous condition. (PG&E Tariff Rules 11(H) and 16(F)(3)(b).) This carefully balanced proposed rule creates language specific to vegetation management issues that can be used to work with these refusal customers to persuade them to cooperate with the utility and get the vegetation cleared. This proposal is opposed by only four parties at the workshop, and is supported by IBEW, TURN and all the electric utilities. Recommendation: Adopt.
<u>MAP No. 7</u> GO 95, Rule 35 (3 rd exception) Vegetation Management	VIII.B, page B-121	Joint Electric Utilities	Adds an exception 3 to Rule 35 regarding property owners who obstruct access to overhead facilities for vegetation management activities. Also changes “utility” to “supply or communication company” in exception 2.	This proposed exception also addresses the refusal customer. It states that a supply or communication company will not be responsible for the consequences of failing to trim or remove vegetation when a property owner obstructs access to or fails to make facilities accessible for necessary vegetation management activity after the utility makes documented attempts to obtain cooperation. This rule gives utilities one more tool to use in discussions with customers when attempting to ensure compliance with Commission vegetation clearance requirements. Recommendation: Adopt. **

Map #	App B Reference	Proponent	Description of Proposed Change	PG&E's Comments and Recommendations
<u>MAP No. 8</u> GO 95, Rule 35, Appendix E (Table 1) Guidelines to Rule 35: Table: Voltage of Lines	IX.A, page B-132	Joint Electric Utilities	Increases minimum time-of-trim vegetation-to-conductor radial clearances for certain conductors in Extreme and Very High Fire Threat Zones in Southern California.	None of the Commission representatives (CPSD, DRA or TURN) opposed this proposal, which provides a greater safety margin for obtaining clearances from vegetation in high fire areas in Southern California. It is ironic that the same party that expresses the most concern about fire dangers in Southern California also complains about "ham-handed" trimming when utilities attempt to achieve what in their professional opinion is a responsible clearance between electric lines and vegetation. Recommendation: Adopt.**
<u>MAP No. 8</u> GO 95, Rule 35, Appendix E (Guidelines only) Guidelines to Rule 35	IX.B, page B-138	Joint Electric Utilities	Provides a description of the numerous factors to be taken into consideration when determining the appropriate level of additional clearances that need to be obtained at time of trim.	This rule also addresses the refusal customer, and especially the customer who reads the letter of Rule 35 and demands that a utility trim only to the minimum allowable clearances. The Appendix E guidelines clearly contemplate that clearances taken at time of trim may be greater than the minimum allowable clearances. This proposed language provides more information to the customer about the factors that are considered when a utility is determining how much additional clearance to obtain at time of trim. It is a very important addition and PG&E <u>strongly urges that it be adopted</u> . CPSD and DRA are neutral and TURN supports this proposed rule. Recommendation: Adopt.**

Map #	App B Reference	Proponent	Description of Proposed Change	PG&E's Comments and Recommendations
<u>MAP No. 8</u> GO 95, Rule 35, Appendix E (Guidelines only) Guidelines to Rule 35	IX.C, page B-144	Mussey Grade and Farm Bureau	Same as Joint Electric Utilities', except adds rationale for additional clearances and adds tree crop production manuals as a factor to be considered.	<p>This proposal adds the phrase “<i>for the purposes of public safety, reliability or tree health</i>” as well as a parenthetical “(<i>including when feasible appropriate tree crop production manuals</i>)” to the proposal above. These additions, while well intentioned, are not helpful. The first phrase by specifying three specific purposes actually limits the flexibility a utility must have to properly manage its program and will generate more opposition from recalcitrant tree owners. The parenthetical about crop production manuals simply gives orchard owners an excuse to refuse appropriate utility line clearing. The utilities already work around the orchard growing season as much as possible. But the fact is that orchard trees threaten power lines just like any other trees (walnut trees especially, whose branches can grow vertically 18’ in one season) and, at the end of the day, maximizing crop production for incompatible trees that have been planted under power lines must take a back seat to ensuring that no tree make contact with power lines and cause a fire, outage or pose other safety problems. PG&E strongly opposes this proposal.</p> <p>Recommendation: Do not adopt.</p>
<u>MAP No. 9</u> GO 95, Rule 38 Footnote (aaa) Vertical Separation...	X.A., page B-151	Joint Electric Utilities	Adds advisory footnote “aaa” regarding vertical separation requirements for conductors	<p>This note reminds responsible personnel that conductor sag is a function of temperature and loading and that it may be necessary to increased clearance at the pole or support structure in order to maintain specified clearances throughout the span. The proposed new note does not impose new requirements, but it does clarify current requirements.</p> <p>Recommendation: Adopt.*</p>

Map #	App B Reference	Proponent	Description of Proposed Change	PG&E's Comments and Recommendations
<u>MAP No. 10</u> GO 95, Rule 44.4 Cooperation	XI.A., page B-158	CIP Coalition	Adds new rule section to provide for timely cooperation among all utilities and CIPs in sharing pole loading information and, where applicable, to provide reasons for rejection of pole attachment/joint pole applications.	Most of the language in this and the next proposed rule is identical. The only difference between the two proposals is <u>where</u> the language should appear. The CIPs want the language in a rule; the Joint Electric Utilities think that it should be in a guideline. This "cooperation" rule was perhaps the most disputed and difficult issue in the entire Workshop. PG&E opposes the CIP proposed rule because it adds unnecessary and prescriptive process requirements to a general order that are more appropriate for inclusion in joint use agreements between and among the parties. The Commission should not be in the business of dictating in a rule how parties enter into agreements about their joint facilities. On the other hand, if the Commission agrees that some additional language about cooperation is necessary and in recognition of the strong feelings that the CIPs apparently have that some structure is necessary, PG&E believes that putting that language into a <u>guideline</u> as proposed below would be a reasonable alternative. Recommendation: Do not adopt.*
<u>MAP No. 10</u> GO 95, Rule 44.4 and Appendix I Cooperation; Guidelines to Rule 44.4	XI.B, B-166	Joint Electric Utilities	Adds guidelines for timely cooperation among all utilities and CIPs in sharing pole loading information and, where applicable, to provide reasons for rejection of pole attachment/joint pole applications.	See above. This version puts a general requirement that entities should cooperate into Rule 44, and puts the specifics of how that cooperation should be handled into a guideline in the GO 95 Appendix. Recommendation: Adopt.*
<u>MAP No. 11</u> GO 95, Rule 48 Ultimate Strength of Materials	XII.A., page B-175	Joint Electric Utilities	Conforms Rule 48 with other GO 95 rules concerning "material strength" by removing "will not fail" language.	Rule 48, as currently written with language that states that overhead line structures or parts "will not fail", demands an engineering impossibility. This proposed rule change eliminates that impossible engineering standard and conforms the rule to accepted engineering practice. Recommendation: Adopt.*

Map #	App B Reference	Proponent	Description of Proposed Change	PG&E's Comments and Recommendations
<u>MAP No. 11</u> GO 95, Section IV Ordering Paragraph Strength Requirements for All Classes of Lines	XII.B., page B- 181	CPSD	Proposes an ordering paragraph directing CPSD to establish a working group to conduct a comprehensive technical review of the strength requirements for all classes of lines in Section IV of GO 95.	There is no opposition to the proposed ordering paragraph that sets up a technical working group to do a needed review of the entire Section IV of GO 95. NOTE: There is no inconsistency between adopting the proposed rule change for Rule 48 above and setting up this working group. The proposed rule change for Rule 48 simply appropriately eliminates an impossible engineering standard now instead of waiting for the group to do it. Recommendation: Adopt.
<u>MAP No. 12</u> GO 95, Rule 91.5 Marking	XIII.A, page B- 187	SDG&E	Adds a new rule regarding marking of communication cables and conductors.	While this rule appears reasonable on the surface, PG&E has concluded that that the rule is not workable as currently written and that the costs associated with a marking program exceed the benefits. Of particular concern are: <ul style="list-style-type: none"> • The time it would take to get all cables/conductors marked. • The difficulty keeping the marking current, especially for communications companies that frequently change ownership or organizational structure. • The lack of specificity on how cables or conductors should be marked, and where the marking should be. Recommendation: Do not adopt.

Map #	App B Reference	Proponent	Description of Proposed Change	PG&E's Comments and Recommendations
<u>MAP No. 13</u> GO 165, Section V Fire Incident Reporting and Data Collection Requirements	XIV.A, page B-194	Mussey Grade and CPSD	Requires IOU electric utilities to collect and submit data on fire incidents to CPSD.	<p>This proposed rule was opposed by every CIP and electric utility for a number of good reasons:</p> <ul style="list-style-type: none"> • There is no demonstrated need. In fact, PG&E used to report fire data to the CPSD. That data was apparently never used and CPSD finally agreed with PG&E that it was a waste of resources and ended the practice. • Fire data is already available in several national data collections. • Commission resources are stretched thin, and there is no provision for funding or staffing for the necessary independent review and verification of the data. • Utilities will have to create additional systems and data gathering methods to collect all the information requested. This is just another unnecessary cost to be footed by ratepayers for a questionable benefit. • The proposal is incomplete because it does not require the CIPs to collect similar data. • The proposal infringes on due process and privilege issues. <p>PG&E strongly opposes this PRC. If the Commission is determined to consider this idea, PG&E strongly urges that it adopt the PG&E <u>alternative proposal</u> below before requiring a full blown data collection effort.</p> <p>Recommendation: Do not adopt.</p>
<u>MAP No. 13</u> Ordering Paragraph Usefulness of Collection and Utilization of Fire-Related Data	XIV.B, page B-204	PG&E	Requires IOUs to meet and confer with CPSD to explore the need for and usefulness of a fire data collection effort, with a report on the results to be submitted within 9 month.	<p>See comments above.</p> <p>Recommendation: Adopt.</p>

Map #	App B Reference	Proponent	Description of Proposed Change	PG&E's Comments and Recommendations
<u>MAP No. 14</u> Ordering Paragraph Fire Maps	XV.A., page B-211	Mussey Grade and CPSD	Proposes an ordering paragraph establishing a working group for the purpose of developing and reviewing a statewide, utility-specific fire threat map.	A Workshop technical group spent hours and hours in an attempt to develop such a map and failed because there was simply insufficient expertise. The CIPs then hired REAX Engineering which has done a credible job of creating a CIP fire threat map, and propose to use that map for their inspections. Rather than embarking on yet another effort as proposed here, if the Commission is considering getting into the business of creating fire threat maps, the reasonable course is to allow CPSD time to review the REAX maps, complete the peer review and publishing, and then have the Commission consider approving the use of the REAX maps as requested by the CIPs – perhaps in a Phase 3 of this proceeding. In any case, this particular proposal to start all over again makes little sense and should not be adopted. Recommendation: Do not adopt.
<u>MAP No. 14</u> GO 95, Rule 31.2 Inspection of Lines: Fire Maps (CIP 1)	XV.B, page B-224	CIP Coalition 1	Adds provision to proposed CIP inspection PRC (CIP 1) which provides for the use of FRAP maps for Southern California and Reax (expert) maps for Central and Northern California to demarcate specified fire areas subject to inspection.	See above. Recommendation: None. See above.

Map #	App B Reference	Proponent	Description of Proposed Change	PG&E's Comments and Recommendations
<u>MAP No. 14</u> GO 95, Rule 31.2 Inspection of Lines: Fire Maps (CIP 2)	XV.C, page B-237	CIP Coalition 2	Adds provision to proposed CIP inspection PRC (CIP 2) which provides for the use of FRAP maps for Southern California and Reax (expert) maps for central and Northern California to demarcate specified fire areas subject to inspection.	See above. Recommendation: None. See above.
<u>MAP No. 15</u> Ordering Paragraph Cost Recovery	XVI.A, page B-246	TURN and DRA	Proposes ordering paragraph allowing recovery of reasonable costs incurred to comply with measures adopted in Phase I and Phase II of the instant rulemaking. (General Rate Case process)	TURN and DRA propose that cost recovery occur via the General Rate Case process. This approach is inferior to that proposed by the Small LECs and the Joint Electric Utilities for several reasons: <ul style="list-style-type: none"> • There will be long unnecessary delays (4-5 years) in the ability for utilities to recover costs. • The proposal ignores other existing and more practical methods to recover costs (such as the annual “true up” or advice letter processes already in use by the utilities), which provides adequate review for reasonableness by the ratepayer advocates. • The proposal adds unnecessary complexity to the rate case process, in that these costs are not forecast but already recorded. There will have to be a separate case within the GRC to handle these costs. There is no reason to delay the recovery of the reasonably incurred costs –for a number of years for most of the utilities. This proposal should not be adopted. Recommendation: Do not adopt.*

Map #	App B Reference	Proponent	Description of Proposed Change	PG&E's Comments and Recommendations
<u>MAP No. 15</u> Ordering Paragraph Cost Recovery	XVI.B, page B-253	Joint Electric Utilities, Pacific Corp., Sierra Pacific and Small LECs	Proposes ordering paragraph allowing recovery of reasonable costs incurred to comply with measures adopted in Phase I And Phase II of the instant rulemaking. (Advice Letter process)	See above. Recommendation: Adopt.

EXHIBIT C

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



December 14, 2009

Executive Board, GO 95/128 Rules Committee
C/o Mr. Jerome Candelaria
California Cable & Telecommunications Association
1001 K Street 2nd Floor
Sacramento, CA 95814

Subject: California Public Utilities Commission General Order 95 *Rules for Overhead Line Construction*

Gentlemen:

In its technical advisory role at the CPUC the Energy Division has encountered what we believe to be deficiencies in the Commission's General Order 95. Accordingly we have drafted two rule changes for review and consideration by the GO 95/128 Rules Committee. Should the Committee find these changes have merit, Energy Division asks it to recommend that the Commission adopt them at the next convenient procedural opportunity.

The first proposed rule change would delete the first two paragraphs of Rule 48. These paragraphs impose a design standard that we believe violates standard practice and, if literally interpreted, would result in unnecessarily expensive transmission and distribution lines.

The second proposed rule change would add a third section to Rule 43 to provide a third loading area to complement the Heavy Loading and Light Loading areas. This third area would specify design and construction criteria expressly applicable to fire prone areas.

Thank you for taking up these proposals; should you have any questions regarding the

need for and justification of these proposed rule changes, please feel free to contact Brian Schumacher, a supervisor on my staff, who is conversant with this issue.

Sincerely yours,

/S/

Ken Lewis
Deputy Director, Energy Division

Cc: Julie Fitch, Director
Julie Halligan, CPSD
OIR 08-11-005 Service List

Attachments

CERTIFICATE OF SERVICE BY ELECTRONIC MAIL

I, the undersigned, state that I am a citizen of the United States and am employed in the City and County of San Francisco; that I am over the age of eighteen (18) years and not a party to the party to the within cause; and that my business address is 77 Beale Street, B30A, San Francisco, California 94105. I hereby certify that I have this day electronically served the foregoing document(s) upon each member of the official service list of **R.08-11-005** pursuant to Rules 1.9 and 1.10 of the California Public Utilities Commission's Rules of Practice and Procedure:

**OPENING BRIEF OF PACIFIC GAS AND ELECTRIC COMPANY (U39E) ON
PHASE 2 JOINT PARTIES' WORKSHOP REPORT FOR WORKSHOPS HELD
JANUARY – JUNE 2010**

to the attached e-mail service list, and if no e-mail address was available, the party was served by U.S. Mail.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 3, 2010 at San Francisco, California.

/s/
Jennifer S. Newman
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