

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



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

Rulemaking No. 08-11-005  
(Issued November 13, 2008)

**MUSSEY GRADE ROAD ALLIANCE REPLY COMMENTS TO  
PHASE 2 DRAFT DECISION COMMENTS**

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## MUSSEY GRADE ROAD ALLIANCE REPLY COMMENTS TO PHASE 2 DRAFT DECISION COMMENTS

### I. INTRODUCTION

Pursuant to Rule 14.3(d) of the Rules of Practice and Procedure of the California Public Utilities Commission (Commission) the Mussey Grade Road Alliance (MGRA or Alliance) files these reply comments in response to the party comments on the Draft Decision<sup>1</sup> for Phase 2 of R.08-11-005.

### II. COMMENTS BY PROPOSED RULE CHANGE

#### A. Contested Proposal 4 re: GO 95, Rule 18C

##### 1. The Alliance Opposes PG&E's Comments and Proposed Changes

The Alliance opposes changes proposed by PG&E<sup>2</sup> to the wording and timing of the proposed rule.

PG&E seems not to comprehend the basic purpose of this proposed rule, which is to require utilities to have plans in place to prepare for and respond to weather conditions exceeding design standards and therefore likely to cause multiple wildfire ignitions:

*“PG&E does not agree that it is necessary to require a formal plan specific to fire prevention. PG&E already has contingency plans that cover a number of events, including fires, and already has operational requirements that address utility work during high fire risk times, such as fire training for its operations personnel and emergency responders, pole and asset pre-treatment to reduce asset damage and improve restoration cycle time, clearing of vegetation, limiting activities at time of high fire risk areas and many other measures.”*<sup>3</sup>

This simply reiterates argument made during the comment and briefing period.<sup>4</sup> With this attitude continuing into the Decision phase of the proceeding, we do not trust that PG&E's comments on this contested proposal are intended to improve the final decision.

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<sup>1</sup> R.08-11-005; Draft DECISION ADOPTING REGULATIONS TO REDUCE FIRE HAZARDS ASSOCIATED WITH OVERHEAD POWER LINES AND COMMUNICATION FACILITIES; June 10, 2011. (Draft Decision)

<sup>2</sup> R08-11-005; OPENING COMMENTS OF PACIFIC GAS AND ELECTRIC COMPANY (U39E) ON PROPOSED DECISION IN PHASE 2; June 30, 2011. (PG&E Comments)

<sup>3</sup> PG&E Comments; p. 15.

<sup>4</sup> Draft Decision; p. 45.

The Alliance takes issue with PG&E’s claim that the sole point of this rule is prevention, rather than preparedness and response, thus making it inappropriate for GO 166:

*GO 166, Standard 1 is focused solely on emergency preparedness and response, not prevention. A preparedness plan provides the organization and operational framework for a response to an emergency; a prevention plan by definition is designed to prevent the emergency in the first place.*<sup>5</sup>

While there may be prevention elements in the required fire plan, its primary purpose, as explained in significant detail in the Draft Decision,<sup>6</sup> is to ensure that the utility has sufficiently **prepared to respond** to weather conditions (extreme winds under dry conditions) – these constitute the “**emergency**” – in order to prevent the “emergency” from escalating into a full-scale disaster (multiple fire ignitions under extreme weather conditions). Once again, this clearly demonstrates that PG&E either does not understand or accept the concept underlying this proposed rule. Any suggestions that they make regarding it must therefore be carefully scrutinized in this light.

The Alliance also strongly opposes moving the approval of this rule to Phase 3, as proposed by PG&E. The primary justification for this delay – that new maps need to be developed – has been addressed in the Draft Decision, which specifies that interim hazard maps are to be used until statewide maps are available.<sup>7</sup>

## **2. The Alliance concurs with SDG&E’s concern about wind speed definition**

SDG&E raises concerns<sup>8</sup> about the Draft Decision’s definition of wind speed as “sustained” wind speed as the average speed for two minutes, adopted from the National Weather Service.<sup>9</sup> This echoes the Alliance’s own comments on this issue, for which we proposed the remedy of adopting the concept of “basic wind speed” as 3 second gust speed at 10 m. used in national engineering standards.<sup>10</sup> SDG&E instead proposes to simply eliminate the word “sustained” from the Decision.<sup>11</sup> The Alliance proposal provides a clean definition that is consistent with the one already used by SDG&E. However, we would still find the SDG&E remedy preferable to use of the

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<sup>5</sup> Id.

<sup>6</sup> Draft Decision, pp. 49-50.

<sup>7</sup> Id.; p. 139.

<sup>8</sup> R.08-11-005; COMMENTS OF SAN DIEGO GAS & ELECTRIC COMPANY (U902E) ON PROPOSED DECISION OF COMMISSIONER SIMON; June 30, 2011; pp. 4-5. (SDG&E Comments)

<sup>9</sup> Op Cit; p. 49.

<sup>10</sup> R.08-11-005; MUSSEY GRADE ROAD ALLIANCE COMMENTS ON PHASE 2 DRAFT DECISION; June 30, 2011; pp. 4-5. (MGRA Comments)

<sup>11</sup> SDG&E Comments; p. 5.

“sustained wind” definition unless the engineering justification for the use of sustained wind speed in this context is clearly laid out in the Final Decision.

## **B. Contested Proposal 5 re: GO 95, Rule 31.1**

### **1. The Alliance opposes the request by Cox to rehabilitate the ‘Exponent Report’**

The Alliance fully supports the conclusion put forward in the Draft Decision that “The Exponent Report relied on databases of historical fires that do not track power-line fires that were caused, at least in part, by CIP facilities.”<sup>12</sup> In contrast, Cox seeks a remedy to rehabilitate the Exponent Report, requesting that the Commission “[a]cknowledge the scope and breadth of the analysis and conclusions in the Exponent Report.”<sup>13</sup> Comments by the CIP Coalition echo these sentiments.<sup>14</sup>

The Alliance is familiar with the Exponent report in the context of the data collection rule deliberations. In fact, we were able to demonstrate that at least some of the data presented by the report was insufficient to support any real or implied conclusion it made regarding fire causes.<sup>15</sup> Specifically we were able to demonstrate that the NFIRS database examined by the report provides insufficient detail to determine the exact cause of power line fires, based on data that the Exponent Report itself provides. As the Draft Decision indicates, SDG&E noted this issue as well as a similar one regarding the Exponent Report’s use of the CalFire fire database.<sup>16</sup> To imply, as the Exponent Report does, that data were searched and no evidence of an effect was found using data sets where no effect would be expected is to urge the reader into a “absence of evidence is evidence of absence” fallacy. Not to evaluate the appropriateness of data set for testing a hypothesis (i.e. demonstrating that the test *would* find an effect if it exists) is at best erroneous scientific methodology and at worst deliberately misleading. This draws into question other claims made in the Exponent Report as well.

Commissioner Simon’s Draft Decision is correct in giving the Exponent Report little weight.

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<sup>12</sup> Draft Decision; p. 74.

<sup>13</sup> R.08-11-005; OPENING COMMENTS OF COXCOM LLC AND COX CALIFORNIA TELCOM LLC (U-5684-C) ON PROPOSED DECISION OF COMMISSIONER SIMON IN PHASE 2; June 30, 2011; Subject Index. (Cox Comments)

<sup>14</sup> R.08-11-005; OPENING COMMENTS OF THE CIP COALITION; June 30, 2011; p.6. (CIP Comments)

<sup>15</sup> R.08-11-005; MUSSEY GRADE ROAD ALLIANCE OPENING BRIEF FOR ORDER INSTITUTING RULEMAKING R.08-11-005 PHASE 2; September 3, 2010; p. 35. (MGRA Phase 2 Opening Brief)

<sup>16</sup> Draft Decision; p. 75.

## **C. Contested Proposal 7A**

### **1. The Alliance shares CFBF concerns regarding “self-help remedies”**

The California Farm Bureau Federation expresses concern that the Commission “if it approves Proposal 7A, is sanctioning the utility to exercise what amounts to a self-help remedy.”<sup>17</sup>

The Alliance echoed similar concerns during these proceedings, as accurately characterized in the Draft Decision: “MGRA asserts the electric IOUs are seeking police powers to force entry onto property. MGRA believes the Commission’s efforts would be better focused on finding ways to enhance law enforcement cooperation with utilities rather than placing the right of enforcement in the hands of utilities.”<sup>18</sup>

The Alliance continues to urge that the utilities be subject to the rule of law, that enforcement powers remain in public hands, and that due process be maintained.

## **D. Contested Proposal 8A re: GO 95, Appendix E**

### **1. The Alliance opposes SDG&E comments and proposed changes regarding minimal radial clearance**

SDG&E<sup>19</sup> requests reconsideration of Commissioner Simon’s decision to leave the minimum radial clearance distances at the current 6.5 feet. Part of the reasoning given by the Draft Decision is that “no party attempted to show that the current guidelines for minimum time-of-trim clearances are unsafe”.<sup>20</sup> No further evidence or argument in this regard was provided in any comment. Rather, SDG&E makes the rather surprising assertion that it needs to be above the law: that in the event of “legal action” that utilities “may only be allowed to trim to the minimum guidelines”.<sup>21</sup> Not only is this a hypothetical problem, the astonishing relief requested is that SDG&E not be subject to due process.

SDG&E does reference a purported recently filed case as being potentially relevant to this issue.<sup>22</sup> This assertion must be accorded no weight unless motion for notice is applied for and granted, since this would constitute new evidence. Even if this new information were to be accepted as evidence, it is irrelevant: it purports to be a description of a recently filed case challenging trim

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<sup>17</sup> R.08-11-005; COMMENTS OF THE CALIFORNIA FARM BUREAU FEDERATION ON THE PROPOSED DECISION OF COMMISSIONER SIMON; June 30, 2011; p. 7. (CFBF Comments)

<sup>18</sup> Draft Decision; p. 86.

<sup>19</sup> SDG&E Comments; p. 7.

<sup>20</sup> Op. Cit.; p. 94.

<sup>21</sup> Op. Cit.

<sup>22</sup> Id. p. 8; Footnote 23. Note that this reference is based on “understanding” on the part of SDG&E and has not been verified.

distances. It is not a ruling or judgment, and should therefore have no bearing on how utilities conduct their trimming. There is still no showing of any type that the current trim guidelines are unsafe. We concur with the Draft Decision that trim distance should remain unchanged.

**E. Contested Proposals 8B and 8C re: GO 95, Rule 35, Appendix E, Guidelines Only**

**1. The Alliance joins with CFBF on proposal 8C.**

The Alliance, a co-sponsor with CFBF of proposed rule 8C, joins Comments of the California Farm Bureau Federation<sup>23</sup> in urging the adoption of Proposal 8C as originally suggested.

**F. Contested Proposals 11A and 11B re: GO 95, Rule 48**

**1. The Alliance shares CPSD’s concern regarding use of “average” strength**

CPSD expresses concern that the Draft Decision’s language in Rule 48 would create a standard based on system averages, and that “a system average ... would be unenforceable”.<sup>24</sup>

The Alliance concurs that use of a system average would be highly inappropriate. Collecting the volume of pole strength data necessary to accurately represent the mean and variance of a utility’s system would almost certainly be extremely expensive and unduly burdensome. This would preclude or hamper enforcement of Rule 48. An unenforceable regulation is no regulation at all.

Respectfully submitted this 8<sup>th</sup> day of July, 2011,

By: /S/ **Diane Conklin**

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<sup>23</sup> CFBF Comments; p. 11.

<sup>24</sup> R.08-11-005; COMMENTS OF THE CONSUMER PROTECTION AND SAFETY DIVISION ON THE ASSIGNED COMMISSIONER’S PROPOSED DECISION ADOPTING REGULATIONS TO REDUCE FIRE HAZARDS ASSOCIATED WITH OVERHEAD POWER LINES AND COMMUNICATIONS FACILITIES; June 30, 2011; p. 12. (CPSD Comments)