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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)

**JOINT OPENING COMMENTS OF BEAR VALLEY ELECTRIC SERVICE (U 913-E), A
DIVISION OF GOLDEN STATE WATER COMPANY, CALIFORNIA PACIFIC
ELECTRIC COMPANY (U933-E), PACIFIC GAS AND ELECTRIC COMPANY (U 39-E),
PACIFICORP (U 901-E), AND SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E)
ON ORDER INSTITUTING RULEMAKING 08-11-005
PHASE III – TECHNICAL PANEL 2 REPORT**

BARBARA H. CLEMENT
Pacific Gas and Electric Company
77 Beale Street, B30A
P. O. Box 7442
San Francisco, CA 94120
Telephone: (415) 973-3660
Facsimile: (415) 973-5520
E-Mail: BHC4@pge.com

Attorney for
PACIFIC GAS AND ELECTRIC COMPANY

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I. INTRODUCTION

In accordance with Rule 1.8(d) of the California Public Utilities Commission's (CPUC or Commission) Rules of Practice and Procedure and pursuant to the June 1, 2012 Assigned Commissioner's Ruling and Scoping Memo for Phase 3 of This Proceeding (Scoping Memo), Pacific Gas and Electric Company (PG&E) respectfully files these Joint Opening Comments on the Phase III -- Technical Panel 2 Report (Panel 2 Report) on behalf of the following investor-owned utility (IOUs) parties¹: Bear Valley Electric Service (BVES), a Division Of Golden State Water Company, California Pacific Electric Company (CalPeCo)², PG&E, PacifiCorp, and Southern California Edison Company (SCE) (collectively, the Joint Utilities).

¹ Pursuant to Rule 1.8(d), PG&E has been authorized to tender these opening comments on behalf of the other IOUs listed in this paragraph.

² CalPeco also does business in California as "Liberty Utilities-California Pacific Electric Company, LLC."

The Scoping Memo set up a two-stage workshop process. Stage 1 consists of Technical Panels composed of interested parties who would convene in an informal workshop format to develop consensus recommendations. Technical Panel 2 was tasked to develop and review a proposed plan for IOUs to report data regarding fires associated with overhead power-line facilities to the Consumer Protection and Safety Division (CPSD) for its use to identify and assess systemic fire-safety risks and to formulate cost effective measures to reduce those risks. After the Stage 1 informal workshops were completed, Technical Panel 2 filed and served a final written report on September 28 as directed by the Scoping Memo. Interested parties could file comments and reply comments on the filed written report by October 16 and October 30 respectively. Those deadlines were later extended for Technical Panel 2 to October 23 and November 6 respectively.³

Stage 2 will be facilitated all-party workshops.

II. TECHNICAL PANEL 2 WAS NOT ABLE TO REACH FULL CONSENSUS ON A FIRE DATA COLLECTION PLAN

A. The Panel Focused on One Proposal Developed by CPSD

Technical Panel 2 held 7 workshops in an attempt to reach consensus on a plan for collecting utility-related fire data.⁴ Because CPSD was designated as the organization that would be responsible for receiving and using any reported power-line fire data, this Technical Panel focused on one proposal developed by CPSD, which lists information CPSD believes will be useful for tracking and trending to identify operational trends relevant to fire risk mitigation. This CPSD Proposal appears in Appendix A of the filed Panel 2 Report.

While most parties agreed that at least some of the data proposed by CPSD to be collected would be relevant and helpful for tracking and trending ignition sources of utility

³ ALJ Kenney's September 28, 2012 e-mail ruling granted motion for extension of time.

⁴ Parties participating in those workshops are listed in Appendix C of the Phase III – Technical Panel 2 Report.

related fires, there was disagreement on the need for some of the data fields proposed by CPSD as well as some strong disagreement about some of the terminology used by CPSD to describe those data fields. There was also disagreement on some proposals made by certain participating parties that would have added requirements to the CPSD Proposal and, as a result, those proposals were not included in the CPSD Proposal.

Appendix B to the Panel 2 Report contains the specific comments and exceptions to CPSD's Proposal as well as some additional proposals from some of the other parties. The Joint Utilities incorporate by reference any comments or exceptions they made either collectively or individually in Appendix B, and specifically reserve the right to discuss both more fully in the upcoming facilitated workshops and in written comments any proposals made by other parties that are contained in Appendix B and that are not reflected in the CPSD Proposal.

An essential consideration to the success of this rulemaking is to ensure consensus on the necessity, meaning and intent of each proposed requirement amongst the utilities that must implement the reporting requirement, the CPSD that must enforce the new fire data collection requirements, and other stakeholders (such as consumer advocates and fire agencies). Without such consensus, the new rules will likely not achieve their intended purpose and/or may impose an unreasonable burden and expense on the utilities and their ratepayers. The Technical Panel 2 parties discussed and agreed that (as the Panel 2 Report proposals are more thoroughly vetted in the upcoming facilitated workshops) additional proposals or different approaches will probably be forthcoming that may be productively incorporated into a final consensus approach to the collection and use of utility fire data to mitigate fire risk.

Since the Joint Utilities have already provided specific comments in Appendix B of the Panel 2 Report, these Opening Comments will address only a couple of issues associated with the collection of utility-related fire data that bear special emphasis.

B. The Joint Utilities Are Especially Concerned About Two Fundamental Issues

1. The Fire Data That Will Be Reported Will Often Be Only Raw Data

The CPSD Proposal envisions that the electric utilities will gather data about even *very small* fires associated with electric utility facilities. To accomplish this, the Joint Utilities will have to rely in large part on routine daily reports based on field observations made by utility personnel who are not trained forensic fire investigators – especially for the small fires.⁵ The data fields proposed by CPSD will (in most cases) be populated based on initial field observations or possibly second-hand sources. It is simply not realistic or economic to be able to thoroughly validate the origins of a small fire through any kind of a forensic fire investigation conducted after the fact.

Conceptually, CPSD’s Proposal appears to be sensible and practical in that utilities would be required to report basic fire-related data. Doing so would allow CPSD to develop a simple data base in an effort to identify obvious trends that could be amenable to the future application of cost effective operational measures to reduce the likelihood of certain fires. Because much of the fire data collected by utilities would be reported to CPSD for the purposes of tracking and trending, it is very important to recognize and emphasize that raw, unvalidated data has limits. For this reason, the Joint Utilities support the CPSD Principle 7, which states in part: “The data collected is raw data that is correct to the best of the utility’s knowledge.”

2. The Fire Data Reported Should be Objective and Should Not Attribute Fault or Blame

Because most of the utility fire data that will be collected and reported will be raw data (as explained above), it is also very important to recognize that such data is limited in how it can or should be interpreted. CPSD has stated in the Technical Panel 2 informal panel meetings that

⁵ There is the additional problem that the Joint Utilities will be investigating major fires at the direction of company attorneys in anticipation of possible litigation, the results of which would be protected by the attorney-client privilege and attorney work product doctrine (as recognized by General Order 95, Rule 19).

it intends to use the data only for tracking and trending and that the data would simply be a starting point for further discussions with utilities on ways to improve practices or rules in order to mitigate the possibility of fires. If the raw (unvalidated) data is intended to be used for tracking and trending purposes only, it follows that such data certainly cannot and should not be used to attribute fault or blame for a reported fire incident.

The fact that raw data should not be used to designate fault can be demonstrated by a simple example of a fire that will be reportable according to the CPSD Proposal but where the utility would be the victim of the fire, not the instigator. For instance, where a fire starts when a third party tree worker fells a tree into power lines, the utility would not be at fault. There are many other examples of such incidents. Drawing conclusions about fault or laying blame on a utility based on raw, untested data in those circumstances would be unfair and potentially costly to the utility and its ratepayers if it was forced to defend itself in litigation that was instigated because of improper conclusions drawn from the raw data. It is for this reason that the Joint Utilities support CPSD's Principle 5, which states: "The information reported shall be objective and factual to the best of the utility's knowledge and shall not include speculation or attribution of fault or blame."

However, this Principle (5) is negated when the fire data is characterized as providing information about the "cause" of the fire. When "cause" is used, there is an implication that an investigation was undertaken and that a determination has been made regarding responsibility. In the legal world, identifying the "cause" of a fire can result in allegations of liability for damages associated with that fire or even possible criminal prosecution. Requiring utilities to self-report raw data without a full investigation of the "cause" of a fire will unnecessarily

exacerbate this problem.⁶ It is for this reason that both the Communication Infrastructure Providers (CIPs) and the Joint Utilities have expressed strong concern about the use of any terminology in the CPSD Proposal that uses the word “cause.” The potential for misinterpretation, misuse and mischief is simply too great.

Further, it is *not necessary* to use the term “cause” for this data collection effort. The data can be collected just as well (and without all the legal baggage) if the fields in the data reporting tool were titled differently. Both the CIPs and the Joint Utilities have suggested different terminology in their Comments in Appendix B. One such example is to change “Suspected Ignition Cause” to “Suspected Ignition Source” as the CIPs suggest; the Joint Utilities have suggested “Preliminary Ignition Event” in place of that phrase. The Joint Utilities have made other suggestions for different terminology to be used in place of “cause” in the fire data collection fields and descriptors, such as using “The preliminary suspected source of the ignition” for a definition.

III. IT IS TOO SOON TO KNOW WHETHER AN EVIDENTIARY HEARING IS NEEDED AND THE DEADLINE FOR FILING SUCH MOTIONS SHOULD BE EXTENDED

ALJ Kenney’s September 28, 2012 e-mail ruling granting the motion for extension of time also extended to November 6, 2012 the deadline for filing motions for evidentiary hearings. As this Phase III is progressing, the Joint Utilities now understand that this deadline is too early. Evidentiary hearings should only be used when there is a dispute over an issue of material fact. Since there are still facilitated workshops to be conducted, it is not possible to know at this time whether there will be any dispute of material fact or whether there will be a need for evidentiary hearings.

⁶ Requiring utilities to self-report data in a way that might expose a utility to such consequences also can run afoul of constitutional due process protections and prohibitions against criminal self-incrimination.

In addition, the Technical Panel 3 (fire threat mapping) has not yet started. It would be premature to require motions for evidentiary hearings when that effort has not even begun.

Rather than setting the deadline for filing such motions right now (following the informal Technical Panel workshops), the Joint Utilities ***urge that the deadline for filing a motion for evidentiary hearings be extended*** to later in the proceeding to coincide with the submission of comments on the Workshop Report following the facilitated workshops. If a party believes evidentiary hearings are required to consider any aspect of the matters addressed in the facilitated workshops further, that party should file a motion for hearings on the day set for the filing of comments on the Workshop Report. Parties should be allowed to file their responses to that motion on the day set for the filing of reply comments. Upon an adequate offer of proof submitted in support of the motion (*i.e.*, identification of the matters that would be best decided by the taking of specific evidence, any discovery needed, the nature of that evidence, and the identity and qualifications of any witnesses proposed by the moving party, if any), the Assigned Commissioner and ALJ may then grant the motion at their discretion – at a much more appropriate time in the Phase III proceeding.

If evidentiary hearings are held, parties should be provided with an opportunity to conduct discovery, file rebuttal testimony, test the veracity of the evidence offered, and file briefs related to the matters adduced at hearing, and reply briefs thereafter, within twenty (20) and ten (10) days, respectively. The filing of reply briefs would close the quasi-judicial record phase of the proceeding.⁷

⁷ Regardless of the deadline currently set, the Joint Utilities reserve the right to seek evidentiary hearings much later in the Phase III proceeding.

IV. CONCLUSION

The Joint Utilities have participated fully and thoughtfully in the informal Technical Panel 2 workshops. Unfortunately, the parties were not able to reach full consensus on the CPSD Proposal for a fire data collection process, and further discussions will be needed on that subject via the facilitated workshops process. The Joint Utilities are committed to participating in the upcoming facilitated workshops in order to continue to address the potential risk of fires associated with electric utility and communications facilities and to help craft processes and procedures that will efficiently and cost effectively achieve those goals.

Respectfully submitted,

BARBARA H. CLEMENT

By: _____ /s/
BARBARA H. CLEMENT

Pacific Gas and Electric Company
77 Beale Street, B30A
P. O. Box 7442
San Francisco, CA 94120
Telephone: (415) 973-3660
Facsimile: (415) 973-5520
E-Mail: BHC4@pge.com

Attorney for
PACIFIC GAS AND ELECTRIC COMPANY

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