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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking Regarding
Broadband Infrastructure Deployment
and to Support Service Providers in the
State of California.

Rulemaking 20-09-001

**ADMINISTRATIVE LAW JUDGE'S
RULING SERVING PHASE I STAFF PROPOSAL**

This ruling seeks comments from interested parties on the attached staff proposal in the above-captioned proceeding.

On September 10, 2020, the Commission opened Rulemaking 20-09-001 to set the strategic direction and changes necessary to deploy expeditiously reliable, fast, and affordable broadband Internet access services that connect all Californians. The Assigned Commissioner's Scoping Memo and Ruling, issued on December 28, 2020, bifurcates this proceeding into three phases and identifies the issues each phase will consider, along with the schedule, including filing deadlines for Phase I.

Among other items, the scope of issues for Phase I of the proceeding includes a request for parties to file briefs commenting on a staff proposal regarding what requirements, if any, the Commission should impose on communications service providers and California energy Investor-Owned Utilities to facilitate the construction of fiber facilities or other technologies capable of providing a minimum download speed of 100 Mbps when restoring facilities after a disaster. The attached document contains that staff proposal.

Parties interested in commenting on this staff proposal are directed to include those comments within their Phase I briefs and reply briefs and to file those items on or by the deadlines indicated in the Assigned Commissioner's Scoping Memo and Ruling.

IT IS SO RULED.

Dated December 30, 2020, at San Francisco, California.

/s/ THOMAS J. GLEGOLA

Thomas J. Glegola
Administrative Law Judge

ATTACHMENT 1

R.20-09-001 STAFF PROPOSAL – IOU FIBER PILOT PROGRAM

Table of Contents

- I. Executive Summary 2
- II. Background 3
- III. Definitions 4
- IV. Proposal Recommendations 4
 - A. Pilot Program Requirements 5
 - B. Pilot Communities and Responsible Utilities 6
 - C. Pilot Deployment Requirements - Interconnection Point to Customer Premise 7
 - D. Open Access and Accountability Measures 8
 - E. Pilot Funding and Lease Revenues 9
- V. Questions..... 9
- APPENDIX A..... 12
- APPENDIX B 15

I. Executive Summary

This Staff Proposal aims to address the question in the Order Instituting Rulemaking (OIR), “What requirements, if any, should the Commission impose on communications service providers and IOUs [Investor Owned Utilities] to facilitate the construction of fiber when restoring facilities after a disaster such as a fire?”¹ The proposal puts forward an IOU Fiber Pilot Program in which electric IOUs must install fiber optic infrastructure as part of their service restoral and rebuild of communities impacted by the 2020 wildfires and potential 2021 wildfires. This approach of installing fiber and conduit at the time of rebuilding benefits the community by providing access to a fast and reliable broadband network.

Access to broadband is essential for education, economic opportunities, and public safety. For example, emergency notifications and first responders require reliable broadband service, and a lack of broadband infrastructure has real consequences for the public in the affected areas. The California Public Utilities Commission (CPUC) has previously found that a reliable and resilient communications network is urgently needed to ensure public health and safety.² Resilient and dependable communications networks aid first responders and allow the public to communicate in a reliable manner during disasters like wildfires or during public safety power shutoffs (PSPS events). This proposal is intended to promote the safety and reliability of the energy grid as well. Modern energy deployment and use is increasingly dependent on communications services. For example, Internet-connected devices at customer premises that can respond to energy grid operator calls to reduce power consumption to alleviate grid constraints and forestall blackouts, distribution, and transmission monitoring, all depend on fast and reliable Internet access.

To this end, with this Proposal, the CPUC is exploring ways for electric IOUs to incorporate the use and construction of communications fiber infrastructure when feasible. Once the infrastructure is built, the IOU must first

¹ Rulemaking (R.)20-09-001 at 10.

² See, Decision (D.) 19-08-025, slip op. at p. 47

give the local government and Tribal entity the opportunity to lease the infrastructure before offering access to private entities. The IOU must lease the infrastructure on an open access basis.

II. Background

California is in the midst of its worst Wildfire Season on record. Between August 1, 2020 and October 26, 2020, the Federal Emergency Management Agency (FEMA) Declared Disaster in 21 areas of California.³ The impacted areas may require IOU service restoral and rebuilds to the destroyed infrastructure. Further, IOU infrastructure occupies rights-of-way throughout California which offers siting opportunities for communications infrastructure. IOU infrastructure is currently host to many wireless cell sites and many miles of fiber infrastructure by private industry. This proposal will offer additional opportunities that directly benefit the public by expanding communications infrastructure while IOUs rebuild communities devastated by fire in 2020 and 2021. This proposal includes leveraging all opportunities overhead and underground for middle-mile and last-mile broadband infrastructure deployment when feasible.

Other states have adopted models where an IOU builds out broadband infrastructure to provide access to unserved areas. For example, the Virginia State Corporation Commission approved Appalachian Power Company's pilot program to provide broadband capacity to Internet Service Providers (ISPs) in unserved areas, like Grayson County, Virginia.⁴ Virginia mandated this pilot program and finds that broadband capacity provided through IOUs in the pilot program is in the public interest.⁵

Further, Governor Newsom issued Executive Order (E.O.) N-73-20 on August 14, 2020 directing state agencies to bridge the digital divide. The E.O. finds that the COVID-19 pandemic has amplified the extent to which broadband

³ FEMA Fire Declared Disasters in California 2020. See https://www.fema.gov/disasters/disaster-declarations?field_dv2_state_territory_tribal_value=CA&field_year_value=2020&field_dv2_declaration_type_value=All&field_dv2_incident_type_target_id_selective=49121&page=0

⁴ Virginia State Corporation Commission March 5, 2020 Order.

⁵ HB 2691 Electric utilities; provision of broadband services to unserved areas. See [LIS > Bill Tracking > HB2691 > 2019 session \(virginia.gov\)](#).

is essential for public safety, public health, and economic resiliency. Specifically, Ordering Paragraph 8 directs the CPUC to “leverage utility infrastructure to increase access to existing fiber and cost-effectively deploy new fiber.”⁶

III. Definitions

Conduit – Any underground duct, conduit, tubing, or other underground facilities such as manholes and vaults, used in the provision of utility or communication provider service.

Open access – A model wherein the infrastructure provider offers non-discriminatory access to any interested providers on reasonable and equitable terms.⁷

Restoral and rebuild – The replacement or repair of Investor Owned Utility facilities after a disaster.

Service drop – A fiber optic drop connecting the terminal of a distribution cable to a subscriber's premises and can be installed aerially, underground (in conduit) or directly buried.

IV. Proposal Recommendations

Investor Owned Utilities’ services should be expeditiously restored after a disaster that damages electric or gas facilities.⁸ The goal of this pilot proposal is that, with the restoral of the IOU service after the 2020 wildfires or potential 2021 wildfires, the IOU will concurrently install fiber infrastructure and conduit as necessary to facilitate the operation of an open access fiber network in and near the community impacted. By taking advantage of IOU service restoral and rebuilds to install a fiber network, the impacted community can benefit from

⁶ N.73-20-08

⁷ For guidance on open access definitions, terms, requirements, and processes see Broadband USA Fact Sheet: Broadband Technology Opportunities Program Nondiscrimination and Interconnection Obligations (Nov. 10, 2020), Attachment 2 to CETF Opening Comments on Rulemaking 20-08- 021, available at <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M346/K842/346842785.PDF>.

⁸ See, e.g., General Order 166, which specifies standards for emergency planning and restoration of service following a disaster; see also Cal. Pub. Util. Code §§ 325, 451, 364, 768.6, 8386. This proposal is not intended to supersede any service restoral requirements or any other wildfire requirements.

reliable broadband infrastructure constructed by the IOU. This approach is intended to provide the community with an open access, reliable and resilient broadband network that would not be built outside of this opportunity.

The fiber network built by IOUs will provide the foundational infrastructure for multiple service providers to offer a variety of services to all customers, beginning with local government, Tribal nations, and other public entities, and especially serving residential and small business customers.⁹

Fiber infrastructure and conduit installation will serve the community devastated by wildfire and during an unprecedented reliance on the internet at home due to the risks of COVID-19. This fiber infrastructure could also strengthen the IOUs' operations and opportunities to advance systems such as microgrids.

The following sections detail the requirements of the proposal.

A. Pilot Program Requirements

This proposal recommends an IOU Fiber Pilot Program in which electric IOUs must install fiber optic infrastructure and conduit as part of their service restoral and rebuild of communities devastated by the 2020 wildfires and potential 2021 wildfires. Appendix A identifies the list of 2020 wildfires in California designated as Declared Disasters by FEMA. The rebuilding of infrastructure as a result of these wildfires is subject to this proposal. This proposal applies even if IOU restores service with temporary infrastructure in these communities.

The fiber and conduit should be engineered and installed from the service address to a logical location such as remote terminal or interconnection point for network operations. All overhead and underground infrastructure will be leveraged for middle-mile and last-mile when feasible. The network should be designed to provide points of interconnection that could be accessed by a third party, essentially creating opportunities for an open access network where access consists of nondiscriminatory interconnection that is offered at reasonable and equitable terms to any interested communications provider.

⁹ Small business, for purposes of this proposal, is defined as a business of 50 or fewer employees.

Further, this proposal requires the IOU to lease this fiber communications infrastructure installed during rebuild first to the local government and/or the local Tribal nation. Thereafter, the IOU may lease the fiber in a non-discriminatory manner at just and reasonable rates to a communications provider requesting access.

The IOU will request a meeting with the local government to inquire on their interest no later than 60 days after the commencement of the rebuild. For Tribal governments, the IOU will use the CPUC's Tribal Consultation Policy.¹⁰

Thereafter, the IOU must offer to lease the fiber in a non-discriminatory manner at just and reasonable rates to any communications provider who applies to the IOU to use the communications fiber infrastructure. If the IOU does not have terms to govern such installation and operations, it shall enter into good faith negotiations to make all reasonable attempts to reach terms in a timely manner.

IOUs will be required to provide annual reports on lease agreements. Annual reports will report on miles installed and demonstrate the IOUs' attempts to secure agreements with local government and extent of Tribal engagement. Specific information requested in annual reports is set for in Appendix B.

Requiring IOUs to include fiber and conduit infrastructure when rebuilding after disasters, such as fires, is an opportunity to provide fast, reliable, and future proof infrastructure to communities to enhance safety in future events.

B. Pilot Communities and Responsible Utilities

On August 22, 2020, President Trump approved California's request for a Presidential Major Disaster Declaration to bolster the state's emergency response to wildfires burning in Northern California and support impacted residents in Lake, Napa, San Mateo, Santa Cruz, Solano, Sonoma, and Yolo counties.

¹⁰ <https://www.cpuc.ca.gov/tribal/>

On September 6, 2020, Governor Newsom declared a State of Emergency in Fresno, Madera, and Mariposa counties for the Creek Fire, in San Bernardino county for the El Dorado Fire, and in San Diego county for the Valley Fire.

Between August 1, 2020 and October 26, 2020, FEMA declared Disaster in 21 areas of California (see Appendix A). Communities in these 21 areas will be eligible for the IOU Fiber Pilot Program. Further, communities devastated by potential 2021 wildfires, that are FEMA declared disasters, will be eligible for this Pilot. Electric IOUs must install communications fiber infrastructure as they restore electric service in the communities when feasible.

The following utilities are subject to this proposal because the 2020 wildfires identified in Appendix A impacted counties in their service territory:

- Bear Valley Electric Service
- Liberty Utilities
- Pacific Gas and Electric
- PacifiCorp
- Southern California Edison
- San Diego Gas and Electric

C. Pilot Deployment Requirements - Interconnection Point to Customer Premise

The IOU will be responsible for placing sufficient fiber distribution cable infrastructure (cable, interconnection points, pedestals and associated facilities), and a service drop to each premise (residence and small business) in the eligible community when feasible.¹¹ The service drop must be placed in conduit (provided by IOU) and capped off at or near the location of the current or proposed network interface device (NID) to ensure the drop is protected until the customer subscribes to internet service. Once a customer orders service, the fiber lessor (e.g. municipality, Tribal operator, ISP) will complete the installation of any required auxiliary equipment, e.g., optical network terminal at the premises and provision service.

¹¹ See "Pilot Communities and Responsible Utilities" section of this proposal for eligible communities.

The IOU will install fiber in accordance with current technical industry standards, consistent with robust information technology and communications standards, including but not limited to spare capacity (fiber strands) designed and positioned for future growth.

D. Open Access and Accountability Measures

All IOU fiber will be available on an open access basis. The proposed definition for open access is making capacity available on non-discriminatory, reasonable, and equitable terms.

IOUs will be required to provide annual reports on fiber installation including route maps of fiber optic infrastructure (fiber and conduit) in rebuild areas to the CPUC. Appendix B specifies annual report requirements. The CPUC staff will include the fiber route information as an additional layer in the California Interactive Broadband Map.¹² Such fiber route data and information will enhance transparency and inform interested communication providers and other stakeholders.

In the annual reports, the IOU will also provide data associated with its attempts to lease the fiber to local governments, Tribal nations, and other public entities. The IOU will provide data associated with successful lease agreements including rate per mile per lease, percentage of network capacity leased, length of lease, and whether the fiber has been leased to a local government, Tribal nation, other public entity, or a private entity. If an IOU is unable to reach terms with an interested party that would result in a license or lease, it should report this as well. If the IOU seeks confidential treatment of any information provided in the report, it shall comply with the provisions of the CPUC's General Order (G.O.) 66-D with regard to procedures for submission of information to the CPUC with claims of confidentiality. Any claims that the submitted information should be deemed confidential on the basis that it is critical infrastructure information must follow the requirements of Decision (D.) 20-08-031.

¹² California Interactive Broadband Map at <https://www.broadbandmap.ca.gov>.

Any service provider attempting to lease fiber from the IOU that has experienced discriminatory pricing or lack of access may file a complaint at the CPUC.

E. Pilot Funding and Lease Revenues

IOUs will incur costs from installing fiber optic infrastructure as a part of their service restoral in this Pilot Program. The IOUs will also receive revenue from leasing this infrastructure over the life of the infrastructure through its lease agreements. Staff does not put forward a specific method by which to fund the fiber optic infrastructure. Staff request comments on Pilot funding and lease revenue issues by addressing specific questions, included below.

Continued Carrier Obligations

Nothing in this proposal eliminates Carrier of Last Resort (COLR) obligations or modifies the service obligations of a COLR to ensure continuity of customers' basic service. Nor does this proposal intend to confer COLR obligations on IOUs or any provider that leases this infrastructure.

Nothing in this proposal otherwise modifies carrier obligations to restore service after a disaster or power outage. Nor does this proposal modify any of the emergency disaster relief measures or other requirements adopted in the Commission's Rulemaking Regarding Emergency Disaster Relief Program, Rulemaking (R.) 18-03-011.

V. Questions

Parties are encouraged to comment on the following questions on this proposal. The questions correspond with the previous sections in the proposal.

- **Definitions:**

- Please provide comments on the definitions used in this proposal.

Please also provide recommendations or modifications that should be considered to proposed definitions and explain why. What additional definitions are needed and why?

- **Pilot Program Requirements:**

- Should this proposal require that an IOU must install communications fiber even if it restores service with temporary infrastructure in Pilot eligible communities?
 - What are the additional costs an IOU may incur as a result of the above requirement?
- What additional efforts should the IOU make beyond the proposed time frame to offer to lease the fiber to local government and Tribal nations first?
- **Pilot Communities and Responsible Utilities:**
 - Should the CPUC consider additional communities for this Pilot than those listed in Appendix A and potential 2021 wildfire communities?
 - Are there other IOUs not identified in this proposal that should be subject to it?
 - Are there IOUs identified in this proposal that do not have any infrastructure to rebuild in their service territory as a result of the 2020 wildfires?
 - Should the CPUC identify specific communities from the 21 areas in Appendix A that the IOUs can feasibly rebuild with fiber pursuant to this proposal?
- **Pilot Deployment Requirements - Interconnection Point to Customer Premise:**
 - Are there specific technical standards for the communications infrastructure that should be set to ensure quality control?
 - The proposal requires electric IOUs to install communications fiber infrastructure as they restore service in eligible areas when feasible.
 - Should the CPUC establish feasibility standards, and if so, which standards?
 - Should the CPUC establish criteria (e.g. minimum amount of infrastructure damaged) for this proposal to be triggered in an eligible area?
- **Open Access and Accountability Measures**

- Should the CPUC request information in annual report from IOUs that could demonstrate open and non-discriminatory access?
- Should the CPUC collect any other additional information via annual reports?
- **Pilot Funding and Lease Revenues**
 - How should the cost of the fiber installation in the Pilot be funded?
 - Is there a ratepayer benefit from the fiber installation?
 - Is fiber infrastructure necessary for the provision of electric service?
 - Would this proposal enable ratepayers to engage in IOU electric service programs, demand response, or other energy savings programs?
 - Are there emergency response and preparedness benefits for ratepayers? If so, what are they?
 - Are there other benefits to electric ratepayers that reside in the IOU service territory, but outside the Pilot communities? If so, what are they?
 - Can incremental fiber infrastructure be funded via allocations of revenue earned from leasing the fiber infrastructure built subject to the Pilot, and if so, what should be the lease revenue allocation between ratepayers and IOUs be set at to ensure ratepayer neutrality?
 - If incremental fiber infrastructure costs are allowed to be recovered from ratepayers, what is the best method for recovery?
 - Are there other options or methods available for the utilities to recover costs associated with the Pilot ?
- **Additional Question(s): Potential Societal Benefits of Pilot Program**
 - What benefits, health and safety, economic or otherwise, would this proposal have for the Pilot communities?

APPENDIX A

The following table lists 2020 Wildfires in California designated as Declared Disasters by the Federal Emergency Management Agency (FEMA). The rebuilding of utility infrastructure as a result of these fires is subject to this Staff Proposal.¹³

Table 1: FEMA Wildfire Declared Disasters in California 2020

1. California BOND FIRE (FM-5383-CA)
Incident Period: December 3, 2020 and continuing
Fire Management Assistance Declaration declared on December 3, 2020
County: Orange
2. California BLUE RIDGE FIRE (FM-5381-CA)
Incident Period: October 26, 2020 and continuing
Fire Management Assistance Declaration declared on October 26, 2020
Multiple Counties: Orange, Riverside, San Bernardino
3. California SILVERADO FIRE (FM-5380-CA)
Incident Period: October 26, 2020 and continuing
Fire Management Assistance Declaration declared on October 26, 2020
County: Orange
4. California WILDFIRES (DR-4569-CA)
Incident Period: September 4, 2020 and continuing
Major Disaster Declaration declared on October 16, 2020
Multiple Counties: Del Norte, Fresno, Los Angeles, Madera, Mendocino, Napa, San Bernardino, San Diego, Shasta, Siskiyou, Sonoma, Yuba
5. California ZOGG FIRE (FM-5377-CA)
Incident Period: September 28, 2020 and continuing
Fire Management Assistance Declaration declared on September 28, 2020
County: Shasta
6. California GLASS FIRE (FM-5376-CA)
Incident Period: September 27, 2020 and continuing
Fire Management Assistance Declaration declared on September 27, 2020
Multiple Counties: Napa, Sonoma
7. California BOBCAT FIRE (FM-5374-CA)
Incident Period: September 13, 2020 and continuing
Fire Management Assistance Declaration declared on September 13, 2020
County: Los Angeles

¹³ See https://www.fema.gov/disasters/disaster-declarations?field_dv2_state_territory_tribal_value=CA&field_year_value=2020&field_dv2_declaration_type_value=All&field_dv2_incident_type_target_id_selective=49121&page=0

8. California SQF FIRE COMPLEX (FM-5373-CA)
Incident Period: September 13, 2020 and continuing
Fire Management Assistance Declaration declared on September 13, 2020
County: Tulare
9. California SLATER FIRE (FM-5361-CA)
Incident Period: September 8, 2020 and continuing
Fire Management Assistance Declaration declared on September 9, 2020
County: Siskiyou
10. California BEAR FIRE (FM-5363-CA)
Incident Period: August 17, 2020 and continuing
Fire Management Assistance Declaration declared on September 9, 2020
Multiple Counties: Butte, Plumas, Yuba
11. California CREEK FIRE (FM-5348-CA)
Incident Period: September 6, 2020 and continuing
Fire Management Assistance Declaration declared on September 6, 2020
Multiple Counties: Fresno, Madera
12. California EL DORADO FIRE (FM-5350-CA)
Incident Period: September 5, 2020 and continuing
Fire Management Assistance Declaration declared on September 6, 2020
County: San Bernardino
13. California SHEEP FIRE (FM-5339-CA)
Incident Period: August 17, 2020 and continuing
Fire Management Assistance Declaration declared on August 22, 2020
County: Lassen
14. California WILDFIRES (DR-4558-CA)
Incident Period: August 14, 2020 and continuing
Major Disaster Declaration declared on August 22, 2020
Numerous Counties: https://www.fema.gov/disaster/4558/designated-areas
15. California SCU LIGHTNING COMPLEX FIRE (FM-5338-CA)
Incident Period: August 20, 2020 and continuing
Fire Management Assistance Declaration declared on August 21, 2020
Multiple Counties: Santa Clara, Stanislaus
16. California CZU LIGHTNING FIRE COMPLEX (FM-5336-CA)
Incident Period: August 20, 2020 and continuing
Fire Management Assistance Declaration declared on August 20, 2020
Counties: San Mateo, Santa Cruz
17. California CARMEL FIRE (FM-5333-CA)
Incident Period: August 18, 2020 and continuing
Fire Management Assistance Declaration declared on August 19, 2020
County: Monterey
18. California JONES FIRE (FM-5332-CA)
Incident Period: August 18, 2020 and continuing

Fire Management Assistance Declaration declared on August 18, 2020
County: Nevada
19. California LNU LIGHTNING FIRE COMPLEX (FM-5331-CA)
Incident Period: August 17, 2020 and continuing
Fire Management Assistance Declaration declared on August 18, 2020
Counties: Lake, Napa, Solano, Sonoma, Yolo
20. California RIVER FIRE (FM-5329-CA)
Incident Period: August 16, 2020 and continuing
Fire Management Assistance Declaration declared on August 17, 2020
County: Monterey
21. California APPLE FIRE (FM-5325-CA)
Incident Period: August 1, 2020 and continuing
Fire Management Assistance Declaration declared on August 2, 2020
Morongo Indian Reservation, Riverside County, San Bernardino County

APPENDIX B

Using CPUC provided templates, the IOUs subject to the IOU Fiber Pilot Program must submit annual reports on December 31 beginning in 2021 and concluding in 2023 to the CPUC's Communications Division.

The annual reports must include and answer the following:

- Installation Metrics: miles of fiber cable installed; strand count per fiber section; (identified as either overhead or underground construction); number of feasible points of interconnection and miles of conduit installed.
- Route maps of fiber optic infrastructure (including fiber and conduit) in rebuild areas.
- Demonstration of the IOU's attempts to secure agreements with local governments and Tribal nations within the required 60 days.
- How many contracts, Indefeasible Rights of Use (IRUs), licenses, leases were executed? Of those, how many are IRUs or master agreements and how many are route licenses (executed under a master)?
- How many proposals were made to the IOU by any third party that did not result in a contract, and why not?
- How many cancellations, defaults, terminations occurred this year and why? What was the scope of the cancelled/defaulted/terminated project (i.e. mileage of fiber, site count of antennas, feet of conduit, etc.)?
- Were there any major obstacles to contracting with public entities this year and if so, what are they?
- How much revenue did the leasing of the communications network generate?
- Lease Agreement Data: rate per mile per lease; percentage of network capacity leased; length of each lease; and, whether the fiber has been leased to a local government, Tribal nation, other public entity, or a private entity.

END ATTACHMENT 1