



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

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Order Instituting Investigation into the Creation  
of a Shared Database or Statewide Census of  
Utility Poles and Conduit in California.

Investigation 17-06-027

And Related Matter.

Rulemaking 17-06-028

**SOUTHERN CALIFORNIA EDISON COMPANY'S (U 338-E) OPENING COMMENTS**  
**ON RULING REQUESTING COMMENTS ON "ONE-TOUCH MAKE-READY"**  
**REQUIREMENTS IN CALIFORNIA**

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Pursuant to the schedule set forth in the March 9, 2021 *Administrative Law Judge’s Ruling* (“Ruling”), Southern California Edison Company (“SCE”) respectfully submits the following comments to the California Public Utilities Commission (“Commission” or “CPUC”) on the proposed sea change to integrate the Federal Energy Commission’s (FCC) One-Touch-Make-Ready (OTMR) procedures into the Commission’s 1998 Right-of-Way (ROW) rules.

The incumbent local exchange carriers (ILECs) and electric investor owned utilities (IOUs) have been providing nondiscriminatory access to their poles and conduits to qualified telecommunication providers for well over 20 years under the CPUC’s ROW rules. As seen in Attachment A to the Ruling, incorporation of the OTMR procedures to the ROW rules represents a sweeping change that should not be adopted until thoroughly and thoughtfully vetted. SCE has observed that the Ruling does not identify the “next steps” the Commission contemplates in the process, other than the submission of reply comments. SCE strongly urges that the Commission conduct workshops to provide stakeholders with the necessary opportunity to address the issues associated with OTMR, given the breadth of the proposed revisions to the ROW rules.

Moreover, incorporation of the OTMR procedures has serious safety implications. Under SCE’s pole license agreement, SCE has the right to perform final inspections of

attachments after they are placed on poles. In 2020, SCE found that 61% of poles that it inspected failed inspections because attachments were unauthorized, violated GO 95 or SCE standards, constructed in a manner not authorized, attached after SCE's denial, or not constructed at all. Because of the truncated timeline to review and approve attachments under the OTMR procedures proposed by the Commission, including the automatic approval of applications without the utility's review (even if the attachments are unsafe), the Commission should not implement OTMR until it has assured itself that there are no negative safety implications of its proposed changes.

## I.

### **INTRODUCTION AND BACKGROUND**

As a preliminary matter, allowing qualified telecommunication carriers to place telecommunication attachments on SCE's electric poles that were constructed for the provision of electric service is not always a simple process. However, SCE generally believes the Commission's current ROW rules are sufficient and have worked reasonably well to facilitate the relationship between SCE and attachers. Currently, SCE has approximately 275,000 poles with attachments that were made pursuant to the ROW rules.

Given that the FCC has revised its rules (for non-reverse preemption states) on several occasions since 1996,<sup>1</sup> SCE also recognizes the value in evaluating whether changes adopted by the FCC are appropriate or necessary for California (a reverse preemption state). However, SCE is concerned that the March 9, 2021 Ruling seems to have already pre-determined that the OTMR procedures can be adopted after only two rounds of written comments. This approach runs directly counter to the cooperative and collaborative approach that has been the hallmark of this proceeding, which notably resulted in a "Track 1," "Track 2," and "Track 3" process for

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<sup>1</sup> Telecommunications Act of 1996, Pub. LA. No. 104-104, 110 Stat. 56 (1996).

developing and/or updating pole databases.<sup>2</sup> Thus, SCE strongly believes that pole owners, pole attachers, and the Commission would benefit greatly from a series of technical workshops to review the FCC's rules (including OTMR), identify the provisions suitable for adoption and implementation in California, and address safety issues.

For example, SCE does not believe a sufficient record has been established in this proceeding to warrant the proposed changes to the ROW rules that would impose a 'shot clock' on IOUs for processing requests for access (RFA) applications, whereby applications would be automatically approved even if they are unsafe.<sup>3</sup> In addition to the serious safety consequences of allowing attachments to be deemed approved without going through the necessary steps in the RFA process, including receiving a response from the responsible pole owner, the proposed new time frames poses administrative challenges. Since RFA requests are customer driven and thus unpredictable, if an attacher or attachers wish to submit a single RFA request or multiple RFA requests for a large quantity of attachments (for example, a RFA request or requests impacting 500 poles) at a single point in time, there would need to be a significant adjustment to internal staffing at SCE to respond within 45 or 60 days. As indicated in its prior comments<sup>4</sup> SCE stated that the current ROW rules, specifically Section III and IV were working, and that all pole owners should not be held to the same response timeframes as the ILECs such as AT&T and Frontier. SCE also provided data for years 2015-17 regarding the total number of RFA poles and requests and the average turnaround time. At that time (Oct. 2018), SCE had received 967 RFA applications encompassing 9,380 poles with a slightly longer than average turnaround time. SCE has little control over the inflow of requests making it difficult to forecast SCE's staffing needs. SCE has had to reassign staff, which has included removing staff from performing core

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<sup>2</sup> ALJ Ruling Approving Recommendations/Next Steps from the SCE Workshop Report for Workshops Held on November 15, 2018 and January 22.23, 2019, dated June 4, 2019, p. 3.

<sup>3</sup> *ALJ Ruling*, Attachment A (Proposal), ROW rules Section IV (et al).

<sup>4</sup> I.17-06-028/R/17-06-027, Southern California Edison Company's (U 338-E) Comments on OIR Questions Set Forth in Section 3 of August 8, 2018 Scoping Memo and Ruling, pp. 2-3.

electric work to maintain safe and reliable electric service for customers, in order to meet reasonable timeframes. A mandatory timeframe would exacerbate this problem.

If the Commission decides to impose a strict deadline for RFA approvals by electric utilities, the Commission must address the fact that the electric IOUs' work is primarily customer driven, which can vary significantly month-to-month and, as stated above, outside of the IOUs' control. During 2020, for example, the number of poles reviewed by SCE due to RFA requests under the ROW decision varied month-to-month, ranging from 263 poles/month to 1,241 poles/month. When combined with foreign joint pole attachment (FJPA) requests, the month-to-month range in 2020 was 988 poles/month to 3040 poles/month. As such, any CPUC imposed timeframe for RFA approval must allow flexibility and recognize varying work volume and other factors, such as property access issues, weather conditions, and statewide and electric emergencies.

Workshops are also needed to address the problems that could occur because the timelines can be easily skirted by breaking a single inquiry into several inquiries. Thus, the deadline must be driven by the total volume of poles received by a utility in a month from all attachers. SCE believes if the volume increases significantly over a short period of time, as SCE experienced, there must be flexibility to allow the utility longer response times. The CPUC's proposed revisions to Section IV in the March 9, 2021 Ruling would only allow time extensions for completing make ready work for applications with 3,000 poles or 5 percent of the utility's poles. Such a provision is too narrow and does not provide the IOUs with the flexibility they need to respond to the varying number of RFA and FJPA requests the IOUs receive each month, which is customer driven and outside of the IOUs' control.

Finally, as the Commission appears poised to adopt OTMR quickly, SCE respectfully points out that other aspects of the ROW rules also come into question and should be addressed before any wholesale changes are made. For example, it is SCE's contention that the current

\$500 unauthorized attachment penalty in the ROW rules<sup>5</sup> is not a sufficient deterrent and it remains unclear whether a pole attacher that subverts a provision of the proposed OTMR rules would be subject to a financial penalty or enforcement action by the Commission.

## II.

### **SCE'S RESPONSES TO THE RULING'S QUESTIONS**

#### **1. Should the Commission adopt OTMR requirements? If so, why? If not, why not?**

SCE believes the Commission should not adopt the proposed OTMR requirements. Aside from the serious safety concerns these new proposals raise, which are described below in SCE's response to Question 2 below, SCE is unaware of any statutory, legal, or regulatory mandate for California or other reverse preemption states to adopt OTMR rules that are identical to those adopted by the FCC. Further, no evidence has been presented in this proceeding that OTMR is needed or that OTMR will speed up the construction and deployment of broadband infrastructure in California. The proposed OTMR requirements also raise issues regarding unionized labor. It is SCE's understanding that some communication companies use non-union labor for much of their work. To the extent a Commission directive to implement new OTMR requirements could move work from represented labor to non-represented labor, the effects on IOU and ILEC workers must be carefully considered by the Commission.

#### **2. Would the proposed OTMR requirements further the Commission's utility safety objectives? Why or why not?**

SCE believes the proposed OTMR requirements could hamper the Commission's utility safety objectives. SCE takes its safety obligations seriously. SCE's RFA application process includes a thorough review of the pole attacher's make-ready documents, and SCE routinely identifies pole loading calculations with incorrect or incomplete information and erroneous safety factor results. Analyzing pole load calculations is a critical but time-consuming process

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<sup>5</sup> See D.98-10-098, Section VI.D.

and only part of the process for reviewing an application on its merits. The proposed revisions to Section IV (B)(2) indicate that if this review is not completed in 45 days (or 60 days for applications of more than 3,000 poles) the applicant can assume approval. SCE believes this provision is in opposition to the Commission's safety objectives because the timeline is unrealistic and if missed will invariably result in overloaded poles both within and outside of the Commission's High Fire Threat District.

**3. Would the proposed OTMR requirements enhance competition among communications service providers and expedite high speed broadband deployment? Why or why not?**

SCE is not aware of any communications service providers plans for expansion or constructing new broadband infrastructure in California. Also, SCE is not aware of any evidence presented in this instant proceeding that clearly demonstrates the proposed OTMR requirements would enhance competition. However, SCE is aware that pole loading calculations submitted by pole attachers are often at variance with actual field conditions and SCE's pole load calculations for the same pole(s). Further, SCE routinely identifies deficiencies during the post construction reviews of pole attachers' facilities.

**4. Should the staff Proposal be modified? If so, how should the proposal be modified and for what reasons? Your response must include a mockup of your suggested modifications as an attachment to your comments**

SCE believes the Commission should not adopt proposed OTMR requirements. However, should the Commission determine that certain revisions are needed, these revisions should be thoroughly vetted by pole owners, pole attachers, and Commission staff in technical and legal workshops. SCE is not opposed to using the staff Proposal as a starting point, however, the Commission should acknowledge that the staff Proposal is only a proposal, that other portions of the ROW rules may be impacted and also subject to change, and that parties should strive to reach consensus on any changes to the ROW rules keeping in mind the principals of safety, reliability, and affordability.

Please see section III for a discussion of SCE's suggested modifications and Appendix A.



### III.

#### **RECOMMENDATIONS**

SCE does not believe the proposed revisions to the ROW Rules are necessary, however, should the Commission determine that revisions should be considered in light of the FCC's revisions to its own rules in 2018, SCE recommends that a series of publicly noticed workshops should be convened to establish a robust record and allow parties the opportunity to review, discuss, and modify (as-needed) the Staff Proposal included in the Ruling. Doing so will be beneficial to pole owners, pole attachers, Commission decision makers and staff.

Included below is a brief description of SCE's proposed red-line edits to the Staff Proposal.

#### **A. ROW rules Section II - Definitions**

The Staff Proposal seeks to add seven new definitions. SCE's suggested edits would eliminate the proposed definitions for 'Make ready' and 'Attachments' and modify the existing definition for 'Make ready work', and also modify the remaining five newly proposed definitions - 'Complex make ready', 'Simple make ready', 'Communication space', 'New attacher', and 'Existing attacher'.

For the sake of brevity and expediency a rationale for each of SCE's suggested edits is not included here. However, it is noteworthy that the Commission's original ROW rules did not include these definitions, even though 'Communication space,' for example, was and is an accepted industry term and likely does not need to be defined. SCE notes that the Staff Proposal appears to have cut and pasted pertinent portions of the FCC's OTMR decision into the ROW rules without considering existing terminology or definitions and whether doing so was necessary. Nonetheless, if parties can vet the proposed new definitions and other changes included in the Staff Proposal, SCE is confident the end result will be beneficial.

**1. ROW Rules Section III – Request For Information**

SCE did not provide any red-line edits to this section but notes the use of the term “business day” in this instant section. In subsequent sections of the ROW rules, SCE is recommending the word “day” be revised to “business day” to harmonize the requirements for transmitting or submitting documents or responses.

**B. ROW Rules Section IV – Request for Access to Rights-Of-Way and Support Structures**

In addition to the edits described above, SCE suggests several changes in subsections A – H, most of which are grammatical or self-explanatory.

- IV.(B)(1) (a) - the time allotted for reviewing an application for completeness should be revised from 10 business days to 20 business days.
- IV.(B)(2) - the time allotted for reviewing an application on its merits should be revised from 45 days to 60 business days on top of the 20 business days set forth in Section IV.(B)(1)(a), and also deletes a reference to the 45-day timeframe in the subsequent paragraph.
- IV.(B)(3)(a) - the time allotted for performing a field survey should be revised from 45 days to 45 business days; and from 60 days to 60 business days for larger orders.
- IV.(B)(3)(b) - here and throughout the document, it is suggested the phrase “commercially reasonable efforts” be revised to “reasonable commercially available means.”
- IV.(B)(3)(c) - the time frames specified here should be revised from 15 days to 15 business days; and from 45 days to 45 business days.
- IV.(B)(4) and (B)(4)(a) - self-explanatory edits, and the time frame for providing a detailed cost estimate or withdrawing a cost estimate should be revised from 14 days to 14 business days.

- IV.(C) - suggest changing “immediately” to “timely.”
- IV.(C)(1)(b) - the time allowed for completing make ready in the communication space should be revised from 30 days to 45 business days; and from 75 days to 90 business days.
- IV.(C)(2)(b) - the time allowed for completing make ready above the communication space should be changed from 90 days to 90 business days and from 135 days to 135 business days for larger orders.
- IV.(C)(2)(d) and (e) - 15 days should be revised to 15 business days.
- IV.(D)(2) - revise 300 poles to 100 poles, and 0.5 percent to 1 percent
- IV.(D)(3) - revise 3000 poles to 250 poles, and 5 percent to 2 percent
- IV.(D)(4) - revise 3000 poles to 500 poles
- IV.(D)(5) - revise 3000 poles to 1000 poles, and 5 percent to 10 percent
- IV.(D)(6) - delete the word ‘single’
- IV.(E) (1)(b) - revise “commercially reasonable efforts” to “reasonable commercially available means”.
- IV.(E) (2)(a) - revise “commercially reasonable efforts” to “reasonable commercially available means,” and revised 5 days to 5 business days.
- IV.(E) (2)(c) - revise 15 days to 15 business days, 90 days to 90 business days, 14 days to 14 business days, and add ‘General Order discrepancies’ to the list of items subject to notification following a post construction review. The term ‘code violation’ likely refers to the National Electric Safety Code, aka – Code, and could be removed from this list.
- IV.(F)(1)(a) and (b) - strike the word ‘attachment’ throughout
- IV.(F)(1)(b)(i) - revise 10 business days to 20 business days
- IV.(F)(2) - revise 15 days to 60 business days and 30 days to 90 business days to align with the timeframes in IV.B. A utility should have the same amount of time to review OTMR applications as non-OTMR applications.

- IV.(F)(2)(b) - revise 15-day to 60-day and revise 30 days to 60 business days.
- IV.(F)(3) - revise “commercially reasonable efforts” to “reasonable commercially available means”.
- IV.(F)(4) - strike word ‘attachment’ and revise 15 days to 15 business days.
- IV.(F)(4) (b) and (c) - editorial changes
- IV.(F)(5) - revised 15 days to 15 business days, revise 90 days to 90 business days, and 14 days to 14 business days. Also add ‘General Order discrepancies’ to the list of items subject to notification following a post construction review. The term ‘code violation’ likely refers to the National Electric Safety Code, aka – Code, and could be removed from this list.
- IV.(G)(3) - revise ‘immediately’ to ‘timely’, revise 60 days to 60 business days, and 105 days to 105 business days.
- IV.(H)(6)(a) - revise GO 95 guidelines to GO 95 requirements.
- IV.(H)(6)(c) - add ‘or Qualified Electrical Workers’
- IV.(H)(6)(d) - replace ‘thresholds’ with ‘standards’

#### IV.

#### ROW RULES SECTIONS VIII, IX, AND X

- VI.(D)(2) - revise \$500 to \$2000. As described below, the current unauthorized attachment penalty is too low to deter new market entrants or existing attachers from by-passing the ROW rules and installing facilities without permission.
- VIII.(A) - revise 60 days to 60 business days
- IX – add the word ‘business’ throughout as denoted
- X.(C) - revised 60 days to 60 business days

V.

**CONCLUSION**

For the foregoing reasons, the Commission should adopt SCE's recommendations discussed herein.

Respectfully submitted,

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**Appendix A**

**SCE's Suggested Modifications to the Staff Proposal**

**COMMISSION-ADOPTED RULES GOVERNING  
ACCESS TO RIGHTS-OF-WAY AND SUPPORT  
STRUCTURES OF INCUMBENT TELEPHONE  
AND ELECTRIC UTILITIES**

- I. PURPOSE AND SCOPE OF RULES
- II. DEFINITIONS
- III. REQUESTS FOR INFORMATION
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- VIII. MODIFICATIONS OF EXISTING SUPPORT STRUCTURES
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  - B. NOTIFICATION GENERALLY
  - C. SHARING THE COST OF MODIFICATIONS
- IX. EXPEDITED DISPUTE RESOLUTION PROCEDURES

X. ACCESS TO CUSTOMER PREMISES

XI. SAFETY



## I. PURPOSE AND SCOPE OF RULES

These rules govern access to public utility rights-of-way and support structures by telecommunications carriers, Commercial Mobile Radio Service (CMRS) carriers, and cable TV companies in California, and are issued pursuant to the Commission's jurisdiction over access to utility rights-of-way and support structures under the Federal Communications Act, 47 U.S.C. § 224(c)(1) and subject to California Public Utilities Code §§ 767, 767.5, 767.7, 768, 768.5 and 8001 through 8057. These rules are to be applied as guidelines by parties in negotiating rights-of-way access agreements. Parties may mutually agree on terms which deviate from these rules, but in the event of negotiating disputes submitted for Commission resolution, the adopted rules will be deemed presumptively reasonable. The burden of proof shall be on the party advocating a deviation from the rules to show the deviation is reasonable, and is not unduly discriminatory or anticompetitive.

## II. DEFINITIONS

"Public utility" or "utility" includes any person, firm or corporation, privately owned, that is an electric, or telephone utility which owns or controls, or in combination jointly owns or controls, support structures or rights-of-way used or useful, in whole or in part, for telecommunications purposes.

"Support structure" includes, but is not limited to, a utility distribution pole, anchor, duct, conduit, manhole, or handhole.

"Pole attachment" means any attachment to surplus space, or use of excess capacity, by a telecommunications carrier or CMRS carrier for a communications system on or in any support structure owned, controlled, or used by a public utility.

"Surplus space" means that portion of the usable space on a utility pole which has the necessary clearance from other pole users, as required by the orders and regulations of the Commission, to allow its use by a telecommunications carrier or CMRS carrier for a pole attachment.

"Excess capacity" means volume or capacity in a duct, conduit, or support structure other than a utility pole or anchor which can be used, pursuant to the orders and regulations of the Commission, for a pole attachment.

"Usable space" means the total distance between the top of the utility

pole and the lowest possible attachment point that provides the minimum allowable vertical clearance.

“Minimum allowable vertical clearance” means the minimum clearance for communication conductors along rights-of-way or other areas as specified in the orders and regulations of the Commission.

“Rearrangements” means work performed, at the request of a telecommunications carrier or CMRS carrier, to, on, or in an existing support structure to create such surplus space or excess capacity as is necessary to make it usable for a pole attachment. When an existing support structure does not contain adequate surplus space or excess capacity and cannot be so rearranged as to create the required surplus space or excess capacity for a pole attachment, “rearrangements” shall include replacement, at the request of a telecommunications carrier or CMRS carrier, of the support structure in order to provide adequate surplus space or excess capacity. This definition is not intended to limit the circumstances where a telecommunications carrier or CMRS carrier may request replacement of an existing structure with a different or larger support structure.

“Annual cost-of-ownership” means the sum of the annual capital costs and annual operation costs of the support structure which shall be the average costs of all similar support structures owned by the public utility. The basis for computation of annual capital costs shall be historical capital cost less depreciation. The accounts upon which the historical capital costs are determined shall include a credit for all reimbursed capital costs of the public utility. Depreciation shall be based upon the average service life of the support structure. As used in this definition, “annual cost-of-ownership” shall not include costs for any property not necessary for a pole attachment.

“Telecommunications carrier” generally means any provider of telecommunications services that has been granted a certificate of public convenience and necessity (CPCN) by the California Public Utilities Commission (Commission). The definition of “telecommunications carrier” includes Competitive Local Exchange Carriers (CLEC) that have been granted a CPCN by the Commission to provide facilities-based competitive local exchange service.

These rules, however, exclude interexchange carriers from the definition of “telecommunications carrier.”

“Commercial Mobile Radio Service (CMRS) carrier” is an entity that

holds (1) a current Wireless Identification Registration with the California Public Utilities Commission, or (2) a current Certificate of Public Convenience and Necessity issued by the California Public Utilities Commission that authorizes the holder to provide Commercial Mobile Radio Service.

“Cable TV company” as used in these rules refers to a privately owned company, that provides cable service as defined in the PU Code and is not certified to provide telecommunications service.

“Right-of-way” means the right of competing providers to obtain access to the distribution poles, ducts, conduits, and other support structures of a utility which are necessary to reach customers for telecommunications purposes.

“Make ready” ~~work~~ means the process of completing rearrangements on or in a support structure, or replacing a utility pole to create such surplus space or excess capacity as is necessary to make it usable for a pole attachment.

“Modifications” means the process of changing or modifying, in whole or in part, support structures or rights-of-way to accommodate more or different pole attachments.

“Incumbent local exchange carrier” refers to Pacific Bell and GTE California, Inc., Roseville Telephone Company, and Citizens Telecommunications Company of California, for purposes of these rules, unless explicitly indicated otherwise.

~~“Make ready” means the modification or replacement of a utility pole, or of the lines or equipment on the utility pole, to accommodate additional facilities on the utility pole.~~

“Complex make-ready” means transfers and/or work within the communications space that would be reasonably likely to cause require a service outage(s) or cause facility damage, including work such as splicing of any communication cables attachment or relocation of existing wireless attachments. Any and all wireless activities, including those involving mobile, fixed, and point-to-point wireless communications and wireless internet service providers, are to be considered complex.

~~“Simple make-ready” means make ready where existing attachments in the communications space of a pole could be transferred and/or work within the communication space not likely without any~~

~~reasonable expectation of to require a service outage or cause facility damage. Such work typically and does not require splicing of any existing communication attachment or relocation of an existing wireless attachment.~~

~~“Communications space” means the lower usable space on portion of a joint use utility pole, which typically is reserved for low voltage supports wireline or wireless communication facilities. s equipment.~~

~~“Attachment” means any attachment by a cable television system or provider of telecommunications service to a pole owned or controlled by a utility.~~

~~“New attacher” means any jurisdictional entity described in Section I- cable television system or telecommunications carrier requesting to attach new or upgraded facilities to a pole owned or controlled by a utility.~~

~~“Existing attacher” means any jurisdictional entity described in Section I with equipment on a utility pole.~~

### III. REQUESTS FOR INFORMATION

A utility shall promptly respond in writing to a written request for information (“request for information”) from a telecommunications carrier, CMRS carrier, or cable TV company regarding the availability of surplus space or excess capacity on or in the utility’s support structures and rights-of-way. The utility shall respond to requests for information as quickly as possible consistent with applicable legal, safety, and reliability requirements, which, ~~in the case of Pacific or GTEC,~~ shall not exceed ~~10~~ 15 business days if no field survey is required and shall not exceed ~~20~~ 60 business days if a field-based survey of support structures is required. In the event the request involves more than 500 poles or 5 miles of conduit, the parties shall negotiate a mutually satisfactory longer response time.

Within the applicable time limit set forth in paragraph III.A and subject to execution of pertinent nondisclosure agreements, the utility shall provide access to maps, and currently available records such as drawings, plans and any other information which it uses in its daily transaction of business necessary for evaluating the availability of surplus space or excess capacity on support structures and for evaluating access to a specified area of the utility’s rights-of- way

identified by the carrier.

The utility may charge for the actual costs incurred for copies and any preparation of maps, drawings or plans necessary for evaluating the availability of surplus space or excess capacity on support structures and for evaluating access to a utility's rights-of-way.

~~Within 20 business days of a request, anyone who attaches to a utility-owned pole shall allow the pole owner access to maps, and any currently available records such as drawings, plans, and any other information which is used in the daily transaction of business necessary for the owner to review attachments to its poles.~~ Is this the correct section for this paragraph? The utility may ~~request up-front payments of~~ require an advanced engineering fee for its estimated costs for any of the work contemplated by Rule III.C., Rule IV.A. and Rule IV.B. The utility's estimate will be adjusted to reflect actual cost upon completion of the requested tasks.

#### IV. REQUESTS FOR ACCESS TO RIGHTS-OF-WAY AND SUPPORT STRUCTURES

##### A. INFORMATION REQUIREMENTS OF REQUESTS FOR ACCESS

The request for access shall contain the

following:

1. Information for contacting the telecommunications carrier, CMRS carrier, or cable TV company, including project engineer, and name and address of person to be billed.
2. Loading information, which includes grade and size of attachment, size of cable, average span length, wind loading of their equipment, vertical loading, **point loading** and bending movement.
3. Copy of property lease or right-of-way document.
4. A statement Cclearly specify in the attachment application if indicating the applicant is electing the one-touch make-ready process, identification of y the simple make-ready that will be performed, and substantiation certify that the intended make-ready is simple.

##### B. RESPONSES TO REQUESTS FOR ACCESS

1. Application Completeness. A utility shall review a new attacher's ~~attachment~~ request for access application (application) for completeness before reviewing the application on its merits.
  - a. Completeness Requirements. A new attacher's attachment application is considered complete if it provides the utility with the information necessary under its procedures, as specified in a master service agreement or in requirements that are available in writing publicly at the time of submission of the application, to begin to survey the affected poles.
  - b. Completeness Evaluation. A utility shall determine within 10-20 business days after receipt of a new attacher's attachment application whether the application is complete and notify the attacher of that decision. If the utility does not respond within 10-20 business days after receipt of the application, or if the utility rejects the application as incomplete but fails to specify any reasons in its response, then the application is deemed complete. If the utility timely notifies the new attacher that its attachment application is not complete, then it must specify all reasons for finding it incomplete.
  - c. Resubmission for Completeness. Any resubmitted application need only address the utility's reasons for finding the application incomplete and shall be deemed complete within 15 business days after its resubmission, unless the utility specifies to the new attacher which reasons were not addressed and how the resubmitted application did not sufficiently address the reasons. The new attacher may follow the resubmission procedure in this paragraph as many 1 times as it chooses without additional processing fees so long as in each case it makes a bona fide attempt to correct the reasons identified by the utility, and in each case the deadline set forth in this paragraph shall apply to the utility's review. If the application is still deemed incomplete after the 1<sup>st</sup> resubmission, the application must start back at the beginning of the process.
2. Application Review on the Merits. A utility shall respond in writing to the written request of a telecommunications carrier, CMRS carrier, or cable TV company for access (“request for access”) to its rights-of-way and support structures as quickly as possible, by granting access or denying access within 45-60 business

days of receipt of a complete application to attach facilities to its utility poles (or ~~60-90 business days in the case of larger orders over 500 poles, or within a satisfactory longer time frame as needed by the pole owner~~) which, in the case of Pacific or GTEC, shall not exceed 45 days. The response shall affirmatively state whether the utility will grant access or, if it intends to deny access, shall state all of the reasons why it is denying such access.

Failure ~~of Pacific or GTEC~~ to respond within 45 days the timeframe described above shall be deemed an acceptance of the request for access, unless a longer time frame is needed by the pole owner. A utility may not deny the new attacher pole access based on a preexisting violation not caused by any prior attachments of the new attacher.

a2. If, pursuant to a request for access, the utility has notified the telecommunication carrier, CMRS carrier, or cable TV company that both adequate space and strength are available for the attachment, and the entity seeking access advises the utility in writing that it wants to make the attachment, the utility shall provide this entity with a list of the rearrangements or changes required to accommodate the entity's facilities and an estimate of the time required and the cost to perform the utility's portion of such rearrangements or changes. (see above Advanced Engineering Fee)

b3. If the utility does not own the property on which its support structures are located, the telecommunication carrier, CMRS carrier, or cable TV company must obtain written permission from the owner of that property before attaching or installing its facilities. The telecommunication carrier, CMRS carrier, or cable TV company by using such facilities shall defend and indemnify the owner of the utility facilities, if its franchise or other rights to use the real property are challenged as a result of the telecommunication carrier's, CMRS carrier's, or the cable TV company's use or attachment.

### 3. Survey.

a. A utility shall complete a survey of poles for which access has been requested-approved within 45 business days of transmittal receipt of a complete, approved application to the new attacher.

~~attach facilities to its utility poles~~ (or within ~~60~~ 90 business days in the case of larger orders as described in paragraph (D) of this section).

- b. When requested A utility shall permit the new attacher and any existing attachers on the affected poles to be present for any field inspection conducted as part of the utility's survey. A utility shall use ~~reasonable~~ commercially ~~reasonable~~ available means ~~efforts~~ to provide the affected attachers with advance notice of not less than 3 business days of any field inspection as part of the survey and shall provide the date, time, and location of the survey, and name of the contractor performing the survey.
- c. Where a new attacher has conducted a survey pursuant to paragraph (F)(3) of this section, a utility can elect to satisfy its survey obligations in this paragraph by notifying affected attachers of its intent to use the survey conducted by the new attacher pursuant to paragraph (F)(3) of this section and by providing a copy of the survey to the affected attachers within the time period set forth in paragraph (B)(3)(a) of this section. A utility relying on a survey conducted pursuant to paragraph (F)(3) of this section to satisfy all of its obligations under paragraph (B)(3)(a) of this section shall have 15 business days to make such a notification to affected attachers rather than a 45 business day survey period.
4. **Estimate.** Where a new attacher's request for access is ~~not denied~~ approved, a utility shall ~~present~~ provide to the new attacher a detailed, itemized estimate, on a pole-by-pole basis where requested, of charges to perform all necessary make-ready within 14 business days of providing the response required by paragraph (See AEF link above) (B)(1) of this section, or in the case where a new attacher has performed a survey, within 14 business days of receipt by the utility of such survey. Where a pole-by-pole estimate is requested and the utility incurs fixed costs that are not reasonably calculable on a pole-by-pole basis, the utility present charges on a per-job basis rather than present a pole-by-pole estimate for those fixed cost charges. The utility shall provide documentation that is sufficient to determine the basis of all estimated charges, including any projected material, labor, and other related costs that form the basis of its estimate. (See AEF link



above)

- a. A utility may withdraw an outstanding estimate of charges to perform make-ready work beginning 14 business days after the estimate is presented.
- b. A new attacher may accept a valid estimate and make payment any time after receipt of an estimate, except it may not accept after the estimate is withdrawn. Invoice must be paid within xx days of the final approved invoice.
- c. Final invoice: After the utility completes make-ready, if the final cost of the work differs from the estimate, it shall provide the new attacher with a detailed, itemized final invoice of the actual make-ready charges incurred, on a pole-by-pole basis where requested, to accommodate the new attacher's attachment. Where a pole-by-pole estimate is requested and the utility incurs fixed costs that are not reasonably calculable on a pole-by-pole basis, the utility may present charges on a per-job basis rather than present a pole-by-pole invoice for those fixed cost charges. The utility shall provide documentation that is sufficient to determine the basis of all estimated charges, including any projected material, labor, and other related costs that form the basis of its estimate.
- d. A utility may not charge a new attacher to bring poles attachments, or third-party equipment into compliance with current published safety, reliability, and pole owner construction standards guidelines if such poles, attachments, or third-party equipment were out of compliance because of work performed by a party other than the new attacher prior to the new attachment.

### C. MAKE-READY

Upon receipt of payment specified in paragraph (B)(4)(b) of this section, a utility shall notify ~~immediately~~ timely and in writing all known entities with existing attachments that may be affected by the make-ready.

1. For attachments in the communications space, the notice shall: a. Specify where and what make-ready will be performed.

- b. Set a date for completion of make-ready in the communications space that is no later than ~~30~~ 45 business days after notification is sent (or up to 75-90 business days in the case of larger orders as described in paragraph (D) of this section).
  - c. State that any entity with an existing authorized attachment may modify the attachment consistent with the specified make-ready before the date set for completion.
  - d. State that if make-ready is not completed by the completion date set by the utility in paragraph (C)(1)(b) in this section, the new attacher may complete the make-ready specified pursuant to paragraph (C)(1)(a) in this section.
  - e. State the name, telephone number, and email address of a person to contact for more information about the make-ready procedure.
2. For attachments above the communications space, the notice shall:
- a. Specify where and what make-ready will be performed.
  - b. Set a date for completion of make-ready that is no later than 90 business days after notification is sent (or 135 business days in the case of larger orders, as described in paragraph (D) of this section). (work order process)
  - c. State that any entity with an existing authorized attachment may modify the attachment consistent with the specified make-ready before the date set for completion.
  - d. State that the utility may assert its right to 15 additional business days to complete make-ready. (work order process)
  - e. State that if make-ready is not completed by the completion date set by the utility in paragraph (C)(2)(b) in this section (or, if the utility has asserted its 15-day right of control, 15 business days later), the new attacher may complete the make-ready specified pursuant to paragraph (C)(1)(a) of this section.
  - f. State the name, telephone number, and email address of a

person to contact for more information about the make-ready procedure.

3. Once a utility provides the notices described in this section, it then must provide the new attacher with a copy of the notices and the existing **authorized** attachers' contact information and address where the utility sent the notices. The new attacher shall be responsible for coordinating with existing attachers to encourage their completion of make-ready by the dates set forth by the utility in paragraph (C)(1)(b) of this section for communications space attachments or paragraph (C)(2)(b) of this section for attachments above the communications space. **Note if this work is taking place in jointly owned space, the customer will need to contact the owner of that space for rental information.**
4. A utility shall complete its make-ready in the communications space by the same dates set for existing attachers in paragraph (C)(1)(b) of this section or its make-ready above the communications space by the same dates for existing attachers in paragraph (C)(2)(b) of this section (or if the utility has asserted its 15-day right of control, 15 **business days** later).

#### D.C. TIME FOR COMPLETION OF MAKE READY WORK

1. If a utility is required to perform make ready work on its poles, ducts or conduit to accommodate a telecommunications carrier's, CMRS carrier's, or a cable TV company's request for access, the utility shall perform such work at the requesting entity's sole expense. Such work shall be completed as quickly as possible consistent with applicable legal, safety, and reliability requirements, which, ~~in the case of Pacific or GTEC shall occur within 30 business days of receipt of an advance payment for such work. If the work involves more than 500 poles or 5 miles of conduit, the parties will negotiate a mutually satisfactory longer time frame to complete such make ready work.~~ shall occur for the purposes of compliance with the time periods in this section:
2. A utility shall apply the timeline described in paragraphs (B) through (C) of this section to all requests for attachment up to

the lesser of ~~300~~ 100 poles or 0.51 percent of the utility's poles in a state.

3. A utility may add 15 days to the survey period described in paragraph (B) of this section to larger orders up to the lesser of ~~3000~~250 poles or 52 percent of the utility's poles in a state.
4. A utility may add 45 days to the make-ready periods described in paragraph (C) of this section to larger orders up to the lesser of ~~3000~~500 poles or 5 percent of the utility's poles in a state.
5. A utility shall negotiate in good faith the timing of all requests for attachment larger than the lesser of ~~3000~~1000 poles or 5-10 percent of the utility's poles in a state.
6. A utility may treat multiple requests from a ~~single~~-new attacher as one request when the requests are filed within 30 days of one another.

#### E. SELF-HELP REMEDY

1. **Surveys.** If a utility fails to complete a survey as specified in paragraph (B)(3)(a) of this section, then a new attacher may conduct the survey in place of the utility and, as specified in paragraph (H), hire a contractor to complete a survey.
  - a. A new attacher shall permit the affected utility and existing attachers to be present for any field inspection conducted as part of the new attacher's survey.
  - b. A new attacher shall use ~~reasonable~~ commercially ~~reasonable~~ ~~available~~ ~~mean~~ ~~efforts~~ to provide the affected utility and existing attachers with advance notice of not less than 3 business days of a field inspection as part of any survey it conducts. The notice shall include the date and time of the survey, a description of the work involved, and the name of the contractor being used by the new attacher.
2. **Make-ready.** If make-ready is not complete by the date specified in paragraph (C) of this section, then a new attacher may conduct the make-ready in place of the utility and existing attachers, and, as specified in paragraph (H), hire a contractor to

complete the make- ready.

- a. A new attacher shall permit the affected utility and existing attachers to be present for any make-ready. A new attacher shall use reasonable commercially ~~reasonable efforts~~ available means to provide the affected utility and existing attachers with advance notice of not less than 5 business days of the impending make-ready. The notice shall include the date and time of the make-ready, a description of the work involved, and the name of the contractor being used by the new attacher.
- b. The new attacher shall notify an affected utility or existing attacher immediately if make-ready damages the equipment of a utility or an existing attacher or causes an outage that is reasonably likely to interrupt the service of a utility or existing attacher. Upon receiving notice from the new attacher, the utility or existing attacher may either:
  - i. Complete any necessary remedial work and bill the new attacher for the reasonable costs related to fixing the damage; or
  - ii. Require the new attacher to fix the damage at its expense immediately following notice from the utility or existing attacher.
- c. A new attacher shall notify the affected utility and existing attachers within 15 business days after completion of make-ready on a particular pole. The notice shall provide the affected utility and existing attachers at least 90 business days from receipt in which to inspect the make-ready. The affected utility and existing attachers have 14 business days after completion of their inspection to notify the new attacher of any damage, General Order discrepancies, or code violations caused by make-ready conducted by the new attacher on their equipment. If the utility or an existing attacher notifies the new attacher of such damage, General Order discrepancies, or code violations, then the utility or existing attacher shall provide adequate documentation of the damage, General Order discrepancies, or the code violations. The utility or existing attacher may either complete any necessary remedial work and bill the new

attacher for the reasonable costs related to fixing the damage, ~~General Order discrepancies~~, or code violations or require the new attacher to fix the damage, ~~General Order discrepancies~~, or code violations at its expense within 14 business days following notice from the utility or existing attacher.

3. **Pole replacements.** Self-help shall not be available for pole replacements.

F. ONE-TOUCH MAKE-READY OPTION.

For attachments involving simple make-ready, new attachers may elect to proceed with the process described in this paragraph in lieu of the attachment process described in paragraphs (B) through (C)(4) and (E) of this section.

1. **Attachment application.**

- a. A new attacher electing the one-touch make-ready process must elect the one-touch make-ready process in writing in its ~~attachment~~ application and must identify the simple make-ready that it will perform. It is the responsibility of the new attacher to ensure that its contractor determines whether the make-ready requested in an ~~attachment~~ application is simple.
- b. The utility shall review the new attacher's ~~attachment~~ application for completeness before reviewing the application on its merits. An ~~attachment~~ application is considered complete if it provides the utility with the information necessary under its procedures, as specified in a master service agreement or in publicly-released requirements at the time of submission of the application, to make an informed decision on the application.
  - i. A utility has ~~10-20~~ business days after receipt of a new attacher's ~~attachment~~ application in which to determine whether the application is complete and notify the attacher of that decision. If the utility does not respond within ~~10-20~~ business days after receipt of the application, or if the utility rejects the application as

incomplete but fails to specify any reasons in the application, then the application is deemed complete.

ii. If the utility timely notifies the new attacher that its ~~attachment~~ application is not complete, then the utility must specify all reasons for finding it incomplete. Any resubmitted application need only address the utility's reasons for finding the application incomplete and shall be deemed complete within 5 business days after its resubmission, unless the utility specifies to the new attacher which reasons were not addressed and how the resubmitted application did not sufficiently address the reasons. The applicant may follow the resubmission procedure in this paragraph as many times as it chooses so long as in each case it makes a bona fide attempt to correct the reasons identified by the utility, and in each case the deadline set forth in this paragraph shall apply to the utility's review.

2. **Application review on the merits.** The utility shall review on the merits a complete application requesting one-touch make-ready and respond to the new attacher either granting or denying an application within ~~15-60~~ **business** days of the utility's receipt of a complete application (or within ~~30~~ **90** business days in the case of larger orders as described in paragraph (D) of this section).

a. If the utility denies the application on its merits, then its decision shall be specific, shall include all relevant evidence and information supporting its decision, and shall explain how such evidence and information relate to a denial of access for reasons of lack of capacity, safety, reliability, or engineering standards.

b. Within the ~~1560~~-day application review period (or within ~~30~~ **60** business days in the case of larger orders as described in paragraph (D) of this section), a utility may object to the designation by the new attacher's contractor that certain make-ready is simple. If the utility objects to the contractor's determination that make-ready is simple, then it is deemed

complex. The utility's objection is final and determinative so long as it is specific and in writing, includes all relevant evidence and information supporting its decision, made in good faith, and explains how such evidence and information relate to a determination that the make-ready is not simple.

3. Surveys. The new attacher is responsible for all surveys required as part of the one-touch make-ready process and shall use a contractor as specified in paragraph (H)(5).
  - a. The new attacher shall permit the utility and any existing attachers on the affected poles to be present for any field inspection conducted as part of the new attacher's surveys. The new attacher shall use reasonable commercially reasonable efforts means to provide the utility and affected existing attachers with advance notice of not less than 3 business days of a field inspection as part of any survey and shall provide the date, time, and location of the surveys, and name of the contractor performing the surveys.
4. Make-ready. If the new attacher's ~~attachment~~ application is approved and if it has provided 15 business days prior written notice of the make-ready to the affected utility and existing attachers, the new attacher may proceed with make-ready work using a contractor in the manner specified for simple make-ready in paragraph (H)(5).
  - a. The prior written notice shall include the date and time of the make-ready, a description of the work involved, the name of the contractor being used by the new attacher, and provide the affected utility and existing attachers a reasonable opportunity to be present for any make-ready.
  - b. The new attacher shall notify an affected utility or existing attacher immediately if make-ready work damages the equipment of a utility or an existing attacher or causes an outage that is reasonably likely to interrupt the service of a utility or existing attacher. Upon receiving notice from the new attacher, the utility or existing attacher may either:
    - i. Complete any necessary remedial work and bill the new attacher for the reasonable costs related to fixing the



damage; or

- ii. Require the new attacher to fix the damage at its expense immediately following notice from the utility or existing attacher.
- c. In performing make-ready, if the new attacher or the utility determines that make-ready classified as simple is complex, then that specific make-ready must be halted and the determining party must provide immediate notice to the other party of its determination and the impacted poles. The affected make- ready shall then be governed by paragraphs (B)(4) through (E) of this section and the utility shall provide the notice required by paragraph (C) of this section as soon as ~~reasonably~~ practicable.
5. **Post-make-ready timeline.** A new attacher shall notify the affected utility and existing attachers within 15 ~~business~~ days after completion of make-ready on a particular pole. The notice shall provide the affected utility and existing attachers at least 90 ~~business~~ days from receipt in which to inspect the make-ready. The affected utility and existing attachers have 14 ~~business~~ days after completion of their inspection to notify the new attacher of any damage, ~~General Order discrepancies~~, or code violations caused by make-ready conducted by the new attacher on their equipment. If the utility or an existing attacher notifies the new attacher of such damage, ~~General Order discrepancies~~, or code violations, then the utility or existing attacher shall provide adequate documentation of the damage or the code violations. The utility or existing attacher may either complete any necessary remedial work and bill the new attacher for the reasonable costs related to fixing the damage, ~~General Order discrepancies~~, or code violations or require the new attacher to fix the damage, ~~General Order discrepancies~~, or code violations at its expense within 14 ~~business~~ days following notice from the utility or existing attacher.

G. DEVIATION FROM THE TIME LIMITS SPECIFIED IN THIS SECTION.

1. A utility may deviate from the time limits specified in this section before offering an estimate of charges if the parties have

no agreement specifying the rates, terms, and conditions of attachment.

2. A utility may deviate from the time limits specified in this section during performance of make-ready for good and sufficient cause that renders it infeasible for the utility to complete make-ready within the time limits specified in this section. A utility that so deviates shall immediately notify, in writing, the new attacher and affected existing attachers and shall identify the affected poles and include a detailed explanation of the reason for the deviation and a new completion date. The utility shall deviate from the time limits specified in this section for a period no longer than necessary to complete make-ready on the affected poles and shall resume make-ready without discrimination when it returns to routine operations. A utility cannot delay completion of make-ready because of a preexisting violation on an affected pole not caused by the new attacher.
3. An existing attacher may deviate from the time limits specified in this section during performance of complex make-ready for reasons of safety or service interruption that renders it infeasible for the existing attacher to complete complex make-ready within the time limits specified in this section. An existing attacher that so deviates shall ~~immediately~~ timely notify, in writing, the new attacher and other affected existing attachers and shall identify the affected poles and include a detailed explanation of the basis for the deviation and a new completion date, which in no event shall extend beyond 60 ~~business~~ days from the date the notice described in paragraph (C)(1) of this section is sent by the utility (or up to 105 ~~business~~ days in the case of larger orders described in paragraph (D) of this section). The existing attacher shall deviate from the time limits specified in this section for a period no longer than necessary to complete make-ready on the affected poles.

#### H. USE OF THIRD PARTY CONTRACTORS

1. The ILEC shall maintain a list of contractors that are qualified to respond to requests for information and requests for access, as well as to perform make ready work and attachment and

installation of telecommunications carrier facilities, CMRS facilities, or cable TV facilities on the utility's support structures. This requirement shall not apply to electric utilities. This requirement shall not affect the discretion of a utility to use its own employees.

2. A telecommunications carrier, CMRS carrier, or cable TV company may use its own personnel to attach or install the carrier's communications facilities in or on a utility's facilities, provided that in the utility's reasonable judgment, the telecommunications carrier's, CMRS carrier's, or cable TV company's personnel or agents demonstrate that they are trained and qualified to work on or in the utility's facilities. To use its own personnel or contractors on electric utility poles, the telecommunications carrier, CMRS carrier, or cable TV company must give 48 hours advance notice to the electric utility, unless an electrical shutdown is required. If an electrical shutdown is required, the telecommunications carrier, CMRS carrier, or cable TV company must arrange a specific schedule with the electric utility. The telecommunications carrier, CMRS carrier, or cable TV company is responsible for all costs associated with an electrical shutdown. The inspection will be paid for by the attaching entity. The telecommunications carrier, CMRS carrier, or cable TV company must allow the electric utility, in the utility's discretion to inspect the attachment to the support structure. This provision shall not apply to electric underground facilities containing energized electric supply cables. Work involving electric underground facilities containing energized electric supply cables or the rearranging of overhead electric facilities will be conducted as required by the electric utility at its sole discretion. In no event shall the telecommunications carrier, CMRS carrier, or cable TV company or their respective contractor, interfere with the electric utility's equipment or service.
3. Incumbent utilities should adopt written guidelines to ensure that telecommunication carriers', CMRS carrier's, and cable TV companies' personnel and third-party contractors are qualified. These guidelines must be reasonable and objective, and must apply equally to the incumbent utility's own personnel or the

incumbent utility's own third- party contractors. Incumbent utilities must seek industry input when drafting such guidelines.

4. **Contractors for self-help complex and above the communications space make-ready.** A utility shall make available and keep up-to-date a reasonably sufficient list of contractors it authorizes to perform self- help surveys and make-ready that is complex and self-help surveys and make-ready that is above the communications space on its poles. The new attacher must use a contractor from this list to perform self- help work that is complex or above the communications space. New and existing attachers may request the addition to the list of any contractor that meets the minimum qualifications in paragraphs (H)(6)(a) through (H)(6)(e) of this section and the utility may not unreasonably withhold its consent.
5. **Contractors for simple work.** A utility may, but is not required to, keep up-to-date a reasonably sufficient list of contractors it authorizes to perform surveys and simple make-ready. If a utility provides such a list, then the new attacher must choose a contractor from the list to perform the work. New and existing attachers may request the addition to the list of any contractor that meets the minimum qualifications in paragraphs (H)(6)(a) through (H)(6)(e) of this section and the utility may not unreasonably withhold its consent.
  - a. If the utility does not provide a list of approved contractors for surveys or simple make-ready or no utility-approved contractor is available within a reasonable time period, then the new attacher may choose its own qualified contractor that meets the requirements in paragraph (H)(6) of this section. When choosing a contractor that is not on a utility-provided list, the new attacher must certify to the utility that its contractor meets the minimum qualifications described in paragraph (H)(6) of this section when providing notices required by paragraphs (E)(1)(b), (E)(2)(a), (F)(3)(a), and (F)(4).
  - b. The utility may disqualify any contractor chosen by the new attacher that is not on a utility-provided list, but such

disqualification must be based on reasonable safety or reliability concerns related to the contractor's failure to meet any of the minimum qualifications described in paragraph (H)(6) of this section or to meet the utility's publicly available and commercially reasonable safety or reliability standards. The utility must provide notice of its contractor objection within the notice periods provided by the new attacher in paragraphs (E)(1)(b), (E)(2)(a), (F)(3)(a), and (F)(4) and in its objection must identify at least one available qualified contractor.

6. Contractor minimum qualification requirements. Utilities must ensure that contractors on a utility-provided list, and new attachers must ensure that contractors they select pursuant to paragraph (H)(5)(a) of this section, meet the following minimum requirements:
  - a. The contractor has agreed to follow published safety and operational guidelines of the utility, if available, but if unavailable, the contractor shall agree to follow Public Utilities Commissions General Order 95 ~~requirements~~; ~~guidelines~~;
  - b. The contractor has acknowledged that it knows how to read and follow licensed-engineered pole designs for make-ready, if required by the utility;
  - c. The contractor has agreed to follow all local, state, and federal laws and regulations including, but not limited to, the rules regarding Qualified and Competent Persons ~~or Qualified Electrical Workers~~ under the requirements of the Occupational and Safety Health Administration (OSHA) rules;
  - d. The contractor has agreed to meet or exceed any uniformly applied and reasonable safety and reliability ~~standards~~~~thresholds~~ set by the utility, if made available; and
  - e. The contractor is adequately insured or will establish an adequate performance bond for the make-ready it will perform, including work it will perform on facilities owned by existing attachers.

7. The consulting representative of an electric utility may make final determinations, on a nondiscriminatory basis, where there is insufficient capacity and for reasons of safety, reliability, and generally applicable engineering purposes.

V. NONDISCLOSURE

A. DUTY NOT TO DISCLOSE PROPRIETARY INFORMATION

1. The utility and entities seeking access to poles or other support structures may provide reciprocal standard nondisclosure agreements that permit either party to designate as proprietary information any portion of a request for information or a response thereto, regarding the availability of surplus space or excess capacity on or in its support structures, or of a request for access to such surplus space or excess capacity, as well as any maps, plans, drawings or other information, including those that disclose the telecommunications carrier's, CMRS carrier's, or cable TV company's plans for where it intends to compete against an incumbent telephone utility. Each party shall have a duty not to disclose any information which the other contracting party has designated as proprietary except to personnel within the utility that have an actual, verifiable "need to know" in order to respond to requests for information or requests for access.

B. SANCTIONS FOR VIOLATIONS OF NONDISCLOSURE AGREEMENTS

1. Each party shall take every precaution necessary to prevent employees in its field offices or other offices responsible for making or responding to requests for information or requests for access from disclosing any proprietary information of the other party. Under no circumstances may a party disclose such information to marketing, sales or customer representative personnel. Proprietary information shall be disclosed only to personnel in the utility's field offices or other offices responsible for making or responding to such requests who have an actual, verifiable "need to know" for purposes of responding to such requests. Such personnel shall be advised of their duty not to disclose such information to any other person who does not have a "need to know" such information. Violation of the duty

not to disclose proprietary information shall be cause for imposition of such sanctions as, in the Commission's judgment, are necessary to deter the party from breaching its duty not to disclose proprietary information in the future. Any violation of the duty not to disclose proprietary information will be accompanied by findings of fact that permit a party whose proprietary information has improperly been disclosed to seek further remedies in a civil action.

## VI. PRICING AND TARIFFS GOVERNING ACCESS

### A. GENERAL PRINCIPLE OF NONDISCRIMINATION

1. A utility shall grant access to its rights-of-way and support structures to telecommunications carriers, CMRS carriers, and cable TV companies on a nondiscriminatory basis. Nondiscriminatory access is access on a first-come, first-served basis; access that can be restricted only on consistently applied nondiscriminatory principles relating to capacity constraints, and safety, engineering, and reliability requirements. Electric utilities' use of its own facilities for internal communications in support of its utility function shall not be considered to establish a comparison for nondiscriminatory access. A utility shall have the ability to negotiate with a telecommunications carrier, CMRS carrier, or cable TV company the price for access to its rights-of-way and support structures.
2. A utility shall grant access to its rights-of-way and support structures to telecommunications carriers, CMRS carriers, and cable TV companies on a nondiscriminatory basis, access to or use of the right-of-way, where such right-of-way is located on private property and safety, engineering, and reliability requirements. Electric utilities' use of their own facilities for internal communications in support of their utility function shall not be considered to establish a comparison for nondiscriminatory access. A utility shall have the ability to negotiate with a telecommunications carrier, CMRS carrier, or cable TV company the price for access to its rights-of-way and support structures.

### B. MANNER OF PRICING ACCESS

1. Whenever a public utility cannot reach an agreement with a telecommunications carrier, CMRS carrier, or cable TV company, or associations thereof, regarding the terms, conditions, or annual compensation for pole attachments or the terms, conditions, or costs of rearrangements, the Commission shall establish and enforce the rates, terms and conditions for pole attachments and rearrangements so as to assure a public utility the recovery of both of the following:
  - a. A one-time reimbursement for actual costs incurred by the public utility for rearrangements performed at the request of the telecommunications carrier, cable TV company, or CMRS carrier.
  - b. An annual recurring fee computed as follows:
    - (1) Except as provided in Section 3 below, for each pole and supporting anchor actually used by the telecommunications carrier or cable TV company, the annual fee shall be two dollars and fifty cents (\$2.50) or 7.4 percent of the public utility's annual cost-of-ownership for the pole and supporting anchor, whichever is greater, except that if a public utility applies for establishment of a fee in excess of two dollars and fifty cents (\$2.50) under this rule, the annual fee shall be 7.4 percent of the public utility's annual cost-of-ownership for the pole and supporting anchor.
    - (2) For each pole and supporting anchor actually used by a CMRS carrier, the annual fee for each foot of vertical pole space occupied by the CMRS installation shall be two dollars and fifty cents (\$2.50) or 7.4 percent of the public utility's annual cost-of-ownership for the pole and supporting anchor, whichever is greater. The per-foot fee for CMRS installations is subject to the following conditions and limitations:
      - (i) The vertical pole space occupied by each CMRS attachment shall be rounded to the nearest whole foot, with a 1-foot minimum.
      - (ii) The 7.4% per-foot fee applies to the pole



space that a CMRS attachment renders unusable for non-CMRS attachments, including (A) the pole space that is physically occupied by the CMRS attachment; and (B) any pole space that cannot be used by communication and/or supply conductors due solely to the installation of the CMRS attachment.

- (iii) The 7.4% per-foot fee applies to CMRS attachments anywhere on the pole.
  - (iv) The 7.4% per-foot fee applies once to each foot of pole height. If multiple CMRS pole attachments are placed on different sides of a pole in the same horizontal plane, the 7.4% per-foot attachment fee shall be allocated to each CMRS attachment in the same horizontal plane based on the total number of attachments in the horizontal plane.
  - (v) The total pole-attachment fees for all CMRS attachments on a particular pole shall not exceed 100% of the pole's cost-of-ownership, less the proportion of the pole's cost-of-ownership that is allocable to the pole space occupied by all other pole attachments.
  - (vi) The 7.4% per-foot fee does not apply to electric meters, risers, and conduit associated with CMRS installations.
- (3) For each pole and supporting anchor actually used by a telecommunications carrier for wireless attachments, the annual fee for each foot of vertical pole space occupied by the telecommunications carrier's wireless and wireline attachments shall be two dollars and fifty cents (\$2.50) or 7.4 percent of the public utility's annual cost-of-ownership for the pole and supporting anchor, whichever is greater. The per-foot fee for the

telecommunications carrier's wireless and wireline attachments is subject to the following conditions and limitations:

- (i) The vertical pole space occupied by each of the telecommunications carrier's wireless and wireline attachments shall be rounded to the nearest whole foot, with a 1-foot minimum.
- (ii) The 7.4% per-foot fee applies to the pole space that the telecommunications carrier's attachment renders unusable for other pole attachments, including (A) the pole space that is physically occupied by the telecommunications carrier's attachment; and (B) any pole space that cannot be used by communication and/or supply conductors due solely to the installation of the telecommunications carrier's pole attachment.
- (iii) The 7.4% per-foot fee applies to the telecommunications carrier's wireless and wireline attachments anywhere on the pole.
- (iv) The 7.4% per-foot fee applies once to each foot of pole height. If multiple pole attachments are placed on different sides of a pole in the same horizontal plane, the 7.4% per-foot attachment fee shall be allocated to each telecommunications carrier pole attachment in the same horizontal plane based on the total number of attachments in the horizontal plane.
- (v) The total pole-attachment fees for all telecommunications carrier attachments on a particular pole shall not exceed 100% of the pole's cost-of-ownership, less the proportion of the pole's cost-of-ownership that is allocable to the pole space occupied by all other pole attachments.
- (vi) The 7.4% per-foot fee does not apply to electric meters, risers, and conduit associated with

telecommunications carrier wireless pole installations.

(vii) The annual fee in Section VI.B.1.b.1, above, shall apply to a telecommunications carrier that has only wireline facilities attached to a pole, even if another telecommunications carrier has wireless facilities attached to the same pole.

(4) For support structures used by the telecommunications carrier, CMRS carrier, or cable TV company, other than poles or anchors, a percentage of the annual cost-of-ownership for the support structure, computed by dividing the volume or capacity rendered unusable by the telecommunications carrier's, CMRS carrier's, or cable TV company's equipment by the total usable volume or capacity. As used in this paragraph, "total usable volume or capacity" means all volume or capacity in which the public utility's line, plant, or system could legally be located, including the volume or capacity rendered unusable by the telecommunications carrier's, CMRS carrier's, or cable TV company's equipment.

- c. Except as allowed by Sections VI.B.1.b.2 and 3, above, a utility may not charge a telecommunications carrier, CMRS carrier, or cable TV company a higher rate for access to its rights-of-way and support structures than it would charge a similarly situated cable television corporation for access to the same rights-of-way and support structures.
- d. Except as allowed by Sections VI.B.1.b.2 and 3, above, a utility may not charge a telecommunications carrier or CMRS carrier a higher rate for access to its rights-of-way and support structures than it would charge a similarly situated telecommunications carrier or CMRS carrier for access to the same rights-of-way and support structures.

## C. CONTRACTS

1. A utility that provides or has negotiated an agreement with a telecommunications carrier, CMRS carrier, or cable TV company to provide access to its support structures shall file with the Commission the executed contract showing:
  - a. The annual fee for attaching to a pole and supporting anchor.
  - b. The annual fee per linear foot for use of conduit.
  - c. Unit costs for all make ready and rearrangements work.
  - d. All terms and conditions governing access to its rights-of-way and support structures.
  - e. The fee for copies or preparation of maps, drawings and plans for attachment to or use of support structures.
2. A utility entering into contracts with telecommunications carriers, CMRS carriers, or cable TV companies or cable TV company for access to its support structures, shall file such contracts with the Commission pursuant to General Order 96, available for full public inspection, and extended on a nondiscriminatory basis to all other similarly situated telecommunications carriers, CMRS carriers, or cable TV companies. If the contracts are mutually negotiated and submitted as being pursuant to the terms of 251 and 252 of TA 96, they shall be reviewed consistent with the provisions of Resolution ALJ-174.

#### D. UNAUTHORIZED ATTACHMENTS

1. No party may attach to the right-of-way or support structure of another utility without the express written authorization from the utility.
2. For every violation of the duty to obtain approval before attaching, the owner or operator of the unauthorized attachment shall pay to the utility a penalty of ~~\$500~~2000 for each violation. This fee is in addition to all other costs which are part of the attacher's responsibility. Each unauthorized pole attachment shall count as a separate violation for assessing the penalty.
3. Any violation of the duty to obtain permission before attaching shall be cause for imposition of sanctions as, in the Commissioner's judgment, are necessary to deter the party

from in the future breaching its duty to obtain permission before attaching will be accompanied by findings of fact that permit the pole owner to seek further remedies in a civil action.

4. This Section D applies to existing attachments as of the effective date of these rules.

## VII. RESERVATIONS OF CAPACITY FOR FUTURE USE

- A. No utility shall adopt, enforce or purport to enforce against a telecommunications carrier, CMRS carrier, or cable TV company any "hold off," moratorium, reservation of rights or other policy by which it refuses to make currently unused space or capacity on or in its support structures available to telecommunications carriers, CMRS carriers, or cable TV companies requesting access to such support structures, except as provided for in Part C below.
- B. All access to a utility's support structures and rights-of-way shall be subject to the requirements of Public Utilities Code § 851 and General Order 69C. Instead of capacity reclamation, our preferred outcome is for the expansion of existing support structures to accommodate the need for additional attachments.
- C. Notwithstanding the provisions of Paragraphs VII.A and VII.B, an electric utility may reserve space for up to 12 months on its support structures required to serve core utility customers where it demonstrates that: (i) prior to a request for access having been made, it had a bona fide development plan in place prior to the request and that the specific reservation of attachment capacity is reasonably and specifically needed for the immediate provision (within one year of the request) of its core utility service, (ii) there is no other feasible solution to meeting its immediately foreseeable needs, (iii) there is no available technological means of increasing the capacity of the support structure for additional attachments, and (iv) it has attempted to negotiate a cooperative solution to the capacity problem in good faith with the party seeking the attachment. An ILEC may earmark space for imminent use where construction is planned to begin within nine months of a request for access. A CLEC, CMRS carrier, or cable TV company must likewise use space within nine months of the date when a request for access is granted, or else will become subject to reversion of its access.

## VIII. MODIFICATIONS OF EXISTING SUPPORT STRUCTURES

### A. NOTIFICATION TO PARTIES ON OR IN SUPPORT STRUCTURES

1. Absent a private agreement establishing notification procedures, written notification of a modification should be provided to parties with attachments on or in the support structure to be modified at least 60 business days prior to the commencement of the modification. Notification shall not be required for emergency modifications or routine maintenance activities.

### B. NOTIFICATION GENERALLY

1. Utilities and telecommunications carriers shall cooperate to develop a means by which notice of planned modifications to utility support structures may be published in a centralized, uniformly accessible location (e.g., a “web page” on the Internet).

### A. SHARING THE COST OF MODIFICATIONS

1. The costs of support structure capacity expansions and other modifications shall be shared only by all the parties attaching to utility support structures which are specifically benefiting from the modifications on a proportionate basis corresponding to the share of usable space occupied by each benefiting carrier. In the event an energy utility incurs additional costs for trenching and installation of conduit due of safety or reliability requirements which are more elaborate than a telecommunications-only trench, the telecommunications carriers should not pay more than they would have incurred for their own independent trench. Disputes regarding the sharing of the cost of capacity expansions and modifications shall be subject to the dispute resolution procedures contained in these rules.

## IX. EXPEDITED DISPUTE RESOLUTION PROCEDURES

- A. Parties to a dispute involving access to utility rights-of-way and support structures may invoke the Commission’s dispute resolution procedures, but must first attempt in good faith to resolve the dispute. Disputes involving initial access to utility rights-of-way and

support structures shall be heard and resolved through the following expedited dispute resolution procedure.

1. Following denial of a request for access, parties shall escalate the dispute to the executive level within each company. After 5 business days, any party to the dispute may file a formal application requesting Commission arbitration. The arbitration shall be deemed to begin on the date of the filing before the Commission of the request for arbitration. Parties to the arbitration may continue to negotiate an agreement prior to and during the arbitration hearings. The party requesting arbitration shall provide a copy of the request to the other party or parties not later than the day the Commission receives the request.
2. **Content.** A request for arbitration must contain:
  - a. A statement of all unresolved issues.
  - b. A description of each party's position on the unresolved issues.
  - c. A proposed agreement addressing all issues, including those upon which the parties have reached an agreement and those that are in dispute. Wherever possible, the petitioner should rely on the fundamental organization of clauses and subjects contained in an agreement previously arbitrated and approved by this Commission.
  - d. Direct testimony supporting the requester's position on factual predicates underlying disputed issues.
  - e. Documentation that the request complies with the time requirements in the preceding rule.
3. **Appointment of Arbitrator.** Upon receipt of a request for arbitration, the Commission's President or a designee in consultation with the Chief Administrative Law Judge, shall appoint and immediately notify the parties of the identity of an Arbitrator to facilitate resolution of the issues raised by the request. The Assigned Commissioner may act as Arbitrator if he/she chooses. The Arbitrator must attend all arbitration meetings, conferences, and hearings.
4. **Discovery.** Discovery should begin as soon as possible prior to or after filing of the request for negotiation and should be

completed before a request for arbitration is filed. For good cause, the Arbitrator or Administrative Law Judge assigned to Law and Motion may compel response to a data request; in such cases, the response normally will be required in three working days or less.

5. **Opportunity to Respond.** Pursuant to Subsection 252(b)(3), any party to a negotiation which did not make the request for arbitration (“respondent”) may file a response with the Commission within 15 days of the request for arbitration. In the response, the respondent shall address each issue listed in the request, describe the respondent’s position on these issues, and identify and present any additional issues for which the respondent seeks resolution and provide such additional information and evidence necessary for the Commission’s review. Building upon the contract language proposed by the applicant and using the form of agreement selected by the applicant, the respondent shall include, in the response, a single-text “mark-up” document containing the language upon which the parties agree and, where they disagree, both the applicant’s proposed language (bolded) and the respondent’s proposed language (underscored). Finally, the response should contain any direct testimony supporting the respondent’s position on underlying factual predicates. On the same day that it files its response before the Commission, the respondent must serve a copy of the Response and all supporting documentation on any other party to the negotiation.
6. **Revised Statement of Unresolved Issues.** Within 3 business days of receiving the response, the applicant and respondent shall jointly file a revised statement of unresolved issues that removes from the list presented in the initial petition those issues which are no longer in dispute based on the contract language offered by the respondent in the mark-up document and adds to the list only those other issues which now appear to be in dispute based on the mark-up document and other portions of the response.
7. **Initial Arbitration Meeting.** An Arbitrator may call an initial meeting for purposes such as setting a schedule, simplifying issues, or resolving the scope and timing of discovery.
8. **Arbitration Conference and Hearing.** Within 7 business days



after the filing of a response to the request for arbitration, the arbitration conference and hearing shall begin. The conduct of the conference and hearing shall be noticed on the Commission calendar and notice shall be provided to all parties on the service list.

9. **Limitation of Issues.** The Arbitrator shall limit the arbitration to the resolution of issues raised in the application, the response, and the revised statement of unresolved issues (where applicable). In resolving the issues raised, the Arbitrator may take into account any issues already resolved between the parties.
10. **Arbitrator's Reliance on Experts.** The Arbitrator may rely on experts retained by, or on the Staff of the Commission. Such expert(s) may assist the Arbitrator throughout the arbitration process.
11. **Close of Arbitration.** The arbitration shall consist of mark-up conferences and limited evidentiary hearings. At the mark-up conferences, the arbitrator will hear the concerns of the parties, determine whether the parties can further resolve their differences, and identify factual issues that may require limited evidentiary hearings. The arbitrator will also announce his or her rulings at the conferences as the issues are resolved. The conference and hearing process shall conclude within 3 business days of the hearing's commencement, unless the Arbitrator determines otherwise.
12. **Expedited Stenographic Record.** An expedited stenographic record of each evidentiary hearing shall be made. The cost of preparation of the expedited transcript shall be borne in equal shares by the parties.
13. **Authority of the Arbitrator.** In addition to authority granted elsewhere in these rules, the Arbitrator shall have the same authority to conduct the arbitration process as an Administrative Law Judge has in conducting hearings under the Rules of Practice and Procedure. The Arbitrator shall have the authority to change the arbitration schedule contained in these rules.

**Participation Open to the Public** Participation in the arbitration conferences and hearings is strictly limited to the

parties negotiating a ROW agreement pursuant to the terms of these adopted rules.

14. **Arbitration Open to the Public.** Though participation at arbitration conferences and hearings is strictly limited to the parties that were negotiating the agreements being arbitrated, the general public is permitted to attend arbitration hearings unless circumstances dictate that a hearing, or portion thereof, be conducted in closed session. Any party to an arbitration seeking a closed session must make a written request to the Arbitrator describing the circumstances compelling a closed session. The Arbitrator shall consult with the assigned Commissioner and rule on such request before hearings begin.
15. **Filing of Draft Arbitrator's Report.** Within 15 business days following the hearings, the Arbitrator, after consultation with the Assigned Commissioner, shall file a Draft Arbitrator's Report. The Draft Arbitrator's Report will include (a) a concise summary of the issues resolved by the Arbitrator, and (b) a reasoned articulation of the basis for the decision.
16. **Filing of Post-Hearing Briefs and Comments on the Draft Arbitrator's Report.** Each party to the arbitration may file a post-hearing brief within 7 business days of the end of the mark-up conferences and hearings unless the Arbitrator rules otherwise. Post-hearing briefs shall present a party's argument in support of adopting its recommended position with all supporting evidence and legal authorities cited therein. The length of post-hearing briefs may be limited by the Arbitrator and shall otherwise comply with the Commission's Rules of Practice and Procedure. Each party and any member of the public may file comments on the Draft arbitrator's Report within 10 business days of its release. Such comments shall not exceed 20 pages.
17. **Filing of the Final Arbitrator's Report.** The arbitrator shall file the Final Arbitrator's Report no later than 15 business days after the filing date for comments. Prior to the report's release, the Telecommunications Division will review the report and prepare a matrix comparing the outcomes in the report to those adopted in prior Commission arbitration

decisions, highlighting variances from prior Commission policy. Whenever the Assigned Commissioner is not acting as the arbitrator, the Assigned Commissioner will participate in the release of the Final Arbitrator's Report consistent with the Commission's filing of Proposed Decisions as set forth in Rule 77.1 of the Commission's Rules of Practice and Procedure.

18. **Filing of Arbitrated Agreement.** Within 7 business days of the filing of the Final Arbitrator's Report, the parties shall file the entire agreement for approval.
19. **Commission Review of Arbitrated Agreement.** Within 30 business days following filing of the arbitrated agreement, the Commission shall issue a decision approving or rejecting the arbitrated agreement (including those parts arrived at through negotiations) pursuant to Subsection 252(e) and all its subparts.
20. **Standards for Review.** The Commission may reject arbitrated agreements or portions thereof that do not meet the requirements of the Commission, including, but not limited to, quality of service standards adopted by the Commission.
21. **Written Findings.** The Commission's decision approving or rejecting an arbitration agreement shall contain written findings. In the event of rejection, the Commission shall address the deficiencies of the arbitrated agreement in writing and may state what modifications of such agreement would make the agreement acceptable to the Commission.
22. **Application for Rehearing.** A party wishing to appeal a Commission decision approving an arbitration must first seek administrative review pursuant to the Commission's Rules of Practice and Procedure.
23. The party identified by the arbitrator as the "losing party" shall reimburse the party identified by the arbitrator as the "prevailing party" for all costs of the arbitration, including the reasonable attorney and expert witness fees incurred by the prevailing party.

## X. ACCESS TO CUSTOMER PREMISES

- A. No carrier may use its ownership or control of any right-of-way or support structure to impede the access of a telecommunications carrier, CMRS carrier, or cable TV company to a customer's premises.
- B. A carrier shall provide access, when technically feasible, to building entrance facilities it owns or controls, up to the applicable minimum point of entry (MPOE) for that property, on a nondiscriminatory, first-come, first-served basis, provided that the requesting telecommunications carrier, CMRS carrier, or cable TV provider has first obtained all necessary access and/or use rights from the underlying property owners(s).
- C. A carrier will have 60 business days to renegotiate a contract deemed discriminatory by the Commission in response to a formal complaint. Failing to do so, this carrier will become subject to a fine ranging from \$500 to \$20,000 per day beyond the 60-day limit for renegotiation until the discriminatory provisions of the arrangement have been eliminated.

## XI. SAFETY

Access to utility rights-of-way and support structures shall be governed at all times by the provisions of Commission General Order Nos. 95 and 128 and by Cal/OSHA Title 8. Where necessary and appropriate, said General Orders shall be supplemented by the National Electric Safety Code, and any reasonable and justifiable safety and construction standards which are required by the utility.

- A. The incumbent utility shall not be liable for work that is performed by a third party without notice and supervision, work that does not pass inspection, or equipment that contains some dangerous defect that the incumbent utility cannot reasonably be expected to detect through a visual inspection. The incumbent utility and its customers shall be immunized from financial damages in these instances.

**(END OF ATTACHMENT A)**