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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

**ASSIGNED COMMISSIONER'S
THIRD AMENDED SCOPING MEMO AND RULING**

This *Third Amended Scoping Memo and Ruling (Third Amended Ruling)* sets forth the category, issues, need for hearing, schedule, and other matters necessary to scope Phase I of the Order Instituting Investigation (OII), as well as the Order Instituting Rulemaking (OIR) portion of this OII/OIR proceeding pursuant to Public Utilities (Pub. Util.) Code § 1701.1 and Article 7 of the Commission's Rules of Practice and Procedure (Rules).

1. Background

On June 29, 2017, the Commission issued Investigation (I.) 17-06-027 and Rulemaking 17-06-028 (OII/OIR proceeding) to consider strategies for increased and non-discriminatory access to poles and conduit by competitive communications providers, the impact of such increased access on safety, and how best to ensure the integrity of the affected communications and electric supply infrastructure going forward. The Commission also expressed its intention to:

- Investigate the feasibility of a data management platform that will allow stakeholders to share key pole attachment and conduit information;¹
- Consider rules that will allow broadband Internet access service providers to attach facilities to poles and to use conduit following their classification as public utility telecommunications carriers in the FCC's 2015 *Open Internet Order*;² and
- Consider rules specific to conduit, and better pole management practices.³

2. Procedural Developments

2.1. The Scoping Memo and Ruling

The assigned Commissioner issued his *Scoping Memo and Ruling* on August 8, 2018, setting forth the category, issues, schedules, and other matters related to the OII Phase I Scope, allowing for collaborative workshops where the Commission would hold workshops presenting the potential Use Cases, initiating dialogue, and collecting input and feedback to refine the Use Cases and data fields critical to defined uses. With respect to the OIR portion of this proceeding, the Scoping Memo and Ruling identified specific questions gleaned from prior party comments, prehearing conference (PHC) statements, and oral comments at the PHC. The specific questions addressed the following categories: proposed Right of Way rule amendments; cumulative safety impacts; cumulative competitive impacts; municipal and smart grid issues; and Joint pole association/committee issues.

¹ OII/OIR proceeding, at 1.

² *In re Protecting and Promoting an Open Internet*, Federal Communications Commission (FCC) Report and Order, 30 FCC Rcd 5601 (March 2015) (*Open Internet Order*), at ¶¶ 478-85. The FCC later reversed the Open Internet Order on December 14, 2017.

³ OII/OIR proceeding, at 1.

2.2. The Amended Scoping Memo and Ruling

On February 6, 2020, the assigned Commissioner Marybel Batjer (President Batjer) issued her *Amended Scoping Memo and Ruling* which adopted a schedule that called for this proceeding (both the investigatory and rulemaking proceedings) to be concluded by the end of 2020, with decisions issued in Tracks 1, 2, and 3 of I.17-06-027 and a decision issued in Decision (D.) 20-07-004.

2.3. Decision 20-07-004

On July 21, 2020, the Commission issued its decision *Approving Track 1 Workshop Report Work Plans for San Diego Gas & Electric Company, Southern California Edison Company, Pacific Gas and Electric Company, AT&T, and Frontier Communications of California*. Due to the complexity of the proceeding, this decision took more time than initially contemplated in the Amended Scoping Memo to complete. As a result, more time will be needed to conclude the balance of this proceeding which is reflected in the updated schedule.

2.4. The Second Amended Scoping Memo and Ruling

On December 15, 2020, President Batjer issued her *Second Amended Scoping Memo and Ruling* which set forth the attachment data proposal and posed a number of related questions to the parties regarding costs, data management, and sharing.

2.5. The One-Touch-Make-Ready Ruling

On March 9, 2021, the assigned Administrative Law Judge (ALJ) issued his *Ruling Requesting Comments on One-Touch-Make-Ready Requirements in California (OTMR Ruling)*. The *OTMR Ruling* included a staff proposal and asked the parties to address a series of questions. Parties filed opening comments on April 12, 2021, and reply comments were filed on April 28, 2021.

2.6. Decision 21-10-019

On October 26, 2021, the Commission issued D.21-10-019 *Adding Attachment Data to Pole Owner Databases Ordered in D.20-07-004*. With this decision the Commission imposed on the five major pole owners in California the duty to include granular information about each electric attachment and communications attachment to each pole in each major pole owner's data base.

3. Issues⁴

3.1. Oil Track Three (Conduit Data)

The issues will be identified by a subsequent ruling from either the assigned Commissioner or the assigned ALJ.

3.2. OIR Track One "One-Touch Make Ready"

The *OTMR Ruling* asked the parties to address a series of questions which we repeat here and incorporate into the scope of this proceeding:

- Should the Commission adopt OTMR requirements? If so, why? If not, why not?
- Would the proposed OTMR requirements further the Commission's utility safety objectives? Why or why not?
- Would the proposed OTMR requirements enhance competition among communications service providers and expedite high speed broadband deployment? Why or why not?
- 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.

⁴ Issues previously identified in the *Scoping Memo and Ruling*, the *Amended Scoping Memo and Ruling*, and the *Second Amended Scoping Memo and Ruling* are incorporated herein by reference.

3.3. Future OIR Tracks

A ruling or rulings requesting comment on remaining issues that parties have raised through the duration of this proceeding will be released to assist with the identification of any future tracks in the combined proceedings. These issues include, but are not limited to, pole/conduit rate documentation, pole construction standards and transparency, and reviewing the Commission's dispute resolution process.

4. Need for Evidentiary Hearing

There are no issues of material disputed fact. Accordingly, evidentiary hearings are not needed.

5. Schedule

The following schedule is adopted here and may be modified by the ALJ as required to promote the efficient and fair resolution of the Investigation and Rulemaking:

OTMR Decision: Third Quarter 2022

Conduit Data Ruling: Fourth Quarter 2022

Conduit Data Decision: First Quarter 2023

Based on this schedule, the proceeding will be resolved within 18 months from the dated of this *Third Amended Ruling* as provided by Pub. Util.

Code § 1701.5 (b). This has been a complex combined investigation and rulemaking. Considering the number of issues, working group meetings, party cooperation, and coordination, it has not been possible to resolve the issues within 18 months from the date this proceeding was initiated.

6. Category of Proceeding/ Ex Parte Restrictions

This *Third Amended Ruling* confirms the Commission's determination that this OII/OIR proceeding is quasi-legislative. Accordingly, *ex parte*

communications are permitted without restriction or reporting requirements pursuant to Article 8 of the Commission's Rules.

7. Public Outreach

The *Scoping Memo and Ruling* reported that the Commission sought the participation of those likely to be affected by this matter by noticing it in the Commission's monthly newsletter that is served on communities and businesses that subscribe to it and posted on the Commission's website. In addition, the *Scoping Memo and Ruling* states:

... the OII/OIR proceeding directed the Commission's Business and Community Outreach Office to reach out to associations of local governments to inform these associations about the OII/OIR proceeding. The outreach consisted of the following: in the first week of July 2017, the information release (CPUC TO EXAMINE UTILITY POLE SAFETY AND COMPETITION; CONSIDERS CREATION OF POLE DATABASE) regarding the OII/OIR proceeding was distributed to a network of contacts and local governments throughout California, including city and county managers and public works officials. Information regarding the OII/OIR proceeding was also distributed to the League of CA Cities, CA Counties Associations, CA Council of Governments Association, and the Southern California Associations of Governments.⁵

8. Intervenor Compensation

In accordance with Pub. Util. Code § 1804 (a)(1), which states: "In cases ... where new issues emerge subsequent to the time set for filing, the commission may determine an appropriate procedure for accepting new ... notices of intent," this *Third Amended Ruling* allows any parties wishing to do so to file a new Notice of Intent to Claim Intervenor Compensation no later than December 30, 2022.

⁵ *Scoping Memo and Ruling*, at 23.

New Notices of Intent so filed must comply with Pub. Util. Code §§ 1801-1812 and Rule 17.1 of the Commission's Rules.

9. Response to Public Comments

Parties may, but are not required to, respond to written comments received from the public. *See* Pub. Util. Code § 1701.1(g). Parties may do so by posting such response using the "Add Public Comment" button on the "Public Comment" tab of the docket card for the proceeding.

10. Public Advisor

Any person interested in participating in this proceeding who is unfamiliar with the Commission's procedures or has questions about the electronic filing procedures is encouraged to obtain more information at <http://consumers.cpuc.ca.gov/pao/> or contact the Commission's Public Advisor at 1-866-849-8390 or 1-415-703-2074 or 1-866-836-7825 (TYY), or send an e-mail to public.advisor@cpuc.ca.gov.

11. Service of Documents on Commissioners and Their Personal Advisors

Rule 1.10 requires only electronic service on any person on the official service list, other than the ALJ.

When serving documents on Commissioners or their personal advisors, whether or not they are on the official service list, parties must only provide electronic service. Parties must NOT send hard copies of documents to Commissioners or their personal advisors unless specifically instructed to do so.

12. Assignment of Proceeding

President Alice Reynolds is the assigned Commissioner and Robert M. Mason III is the assigned Administrative Law Judge for the proceeding.

IT IS RULED that:

1. The scope of this proceeding is described above.
2. The schedule of this proceeding is as set forth above.
3. Evidentiary hearings are not needed.
4. The category of the proceeding is quasi-legislative.

This order is effective today.

Dated June 15, 2022, at San Francisco, California.

 /s/ ALICE REYNOLDS

Alice Reynolds
Assigned Commissioner