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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

**ADMINISTRATIVE LAW JUDGE’S RULING
REQUESTING RESPONSES ON REMAINING PROCEEDING ISSUES**

This Ruling sets forth questions and directives for party responses on remaining issues identified in the proceeding’s Scoping Memo and Ruling (Scoping Memo), past decisions, and recent party comments.

1. Unauthorized Attachments

In comments on the Proposed Decision to adopt the Federal Communications Commission’s One-Touch Make-Ready and Self-Help regulations, Southern California Edison Company (SCE) and Pacific Gas and Electric Company (PG&E) proposed that the penalties for unauthorized attachments and delays in implementation be increased from \$500 to either \$2,000 (SCE) or \$2,500 (PG&E). They point out that the \$500 penalty fee was established over 25 years ago, and that unauthorized attachments have continued to occur since 1998. Specifically, PG&E claims that its postconstruction inspections of attachments have shown that approximately 25 percent of denied pole access applications have resulted in unauthorized attachments by applicants. Further, PG&E argues that due to the increased labor costs to initiate,

track, and follow-up on attachment issues, the \$500 existing penalty is not an effective deterrent and does not provide PG&E with sufficient funds to effectively administer such a program. In light of these comments, the following directives and questions must be addressed:

- The five major pole owners are directed to provide data on the unauthorized attachments their companies have identified over the past 5 years. The data shall be provided as an addendum to their opening comments. The data shall include the following for each incident:
 - The year the unauthorized attachments were identified;
 - The unauthorized attacher, if known;
 - Number of unauthorized attachments;
 - The penalties imposed, if applicable; and
 - The outcome/resolution of the incident.

Any respondent claiming that all or part of the provided information is confidential shall follow the protocol set forth in section 8 of this Ruling.

- Why should the penalty for unauthorized attachments be increased?
- Should the Commission require the five major pole owners to annually report on unauthorized attachments to the Commission?

2. One-Touch Make-Ready and Self-Help Safety Requirements

In comments on the Proposed Decision to adopt the Federal Communications Commission's One-Touch Make-Ready and Self-Help regulations, Communications Workers of America, District 9 (CWA) and Coalition of California Utility Employees (CUE) proposed revisions that they suggest would further the CPUC's safety objectives. The proposals included requiring attachers to use utility vetted and approved contractors; requiring

contractors to show proof of workers compensation insurance; requiring contractors to certify their employees have an OSHA 10 card; and enforcing contractor requirements by creating a publicly accessible electronic database for contractor verification. Parties are directed to answer the following questions:

- Are any of these proposals reasonable?
- How would these proposals improve utility and public safety?
- Would adopting these proposals mitigate concerns of contractors working above the communications space in the limited “Self-Help” instances, as approved in Decision (D.) 22-10-025?
- Would it be helpful to have a publicly accessible electronic database for contractor verification for safety, regulatory, and competitive purposes?
- How would this database be implemented, funded, and maintained?

3. Pole Replacements

Various communications attachers have indicated over the course of this proceeding that delays in replacing overloaded utility poles – or utility poles that would become overloaded with placement of additional attachments – causes significant delays in deploying broadband infrastructure. These attachers suggest that these delays may result in additional project costs, make projects infeasible, and ultimately may hinder achievement of the state’s broadband deployment objectives. Parties are directed to answer the following questions:

- What data is available to quantify how frequently poles are overloaded and how frequently they cause delays in deploying broadband infrastructure?
- How can pole replacements be expedited when safety violations are identified through the pole attachment process?

- What are the barriers and complications to expediting pole replacements?
- Each of the major pole owners are directed to identify if they hire contractors to replace poles and identify the complications and barriers to allowing a prospective attacher to hire those same contractors to perform pole replacements.
- How are pole replacement costs shared between pole owners and attachers?

4. Conduit Data

This proceeding was opened to investigate the feasibility of a database requirements to enable sharing of key pole attachment and conduit information. The Commission has adopted database requirements for poles and pole attachments for the state's major pole owners. These questions seek to develop the record on adoption of database requirements for conduit information.

- All parties that own and operate utility infrastructure are directed to provide an overview of how they maintain information on their conduit infrastructure, the format in which this information is stored (including database type and data fields), and how they make this information available to other utilities upon request.
- Utility poles and conduit have extensive requirements for joint use (*e.g.*, D.98-10-058, D.16-01-046, D.18-04-007, *etc.*). Please explain:
 - How do the joint use requirements function in practice for conduit?
 - Do electric, Incumbent Local Exchange Carriers (ILEC), Competitive Local Exchange Carriers (CLEC), and other communications companies make their ducts and conduit available openly and on reasonable terms?
 - If not, what are the difficulties for accessing this duct and conduit infrastructure?

- Do parties have any suggestions to expedite accessing ducts and conduits and installing facilities?
- Should fiber optic cable conduit information be included in the portals developed over the course of this proceeding? Identify the necessary data fields for conduit information.

5. Potential Applicability of ROW Rules to Additional Entities

In D.98-10-058, the CPUC adopted “Right of Way Rules,” which govern nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned and operated by specified telephone companies and electric utilities.¹

- In adopting the Right of Way Rules, the CPUC determined it did not have the express statutory authority to apply the rules to facilities owned and operated by municipal utilities and local governments.² Increasingly, however, these public entities are deploying competitive communications networks offering broadband Internet access services as additional choices for consumers. Deployment of these networks may require access to facilities owned by the investor-owned utilities (IOUs) regulated by the CPUC.
- Do local government agencies and Tribal entities have nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned and operated by IOUs? Under what authority?
- Does the Commission have the authority to grant licenses and/or authority to local government agencies and Tribal entities to ensure nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned and operated by IOUs?
- In adopting the Right of Way Rules, the CPUC declined to extend the applicability of the Right of Way Rules to

¹ D.98-10-058, Appendix A.

² *Ibid.* (See Section III. G. Applicability of Rules to Municipalities and Government Agencies, at 28-40.)

facilities owned and operated by other categories of IOUs such as gas, water, rail, and steam utilities.³ The Rules only apply to large and mid-sized ILECs, CLECs, and to the major electric utilities. Recently, however, Southern California Gas (SoCalGas) submitted a Petition for Modification to amend the Right of Way Rules to apply the rules to their company. SoCalGas operates poles for maintenance and monitoring of their gas network and seeks to eliminate regulatory uncertainty for other entities that seek to attach to these poles.

- Should the Commission extend the applicability of the Right of Way Rules to SoCalGas?
- Should the Commission extend the applicability of the Right of Way Rules to other Water, Gas, and other Public Utilities that own and operate poles, ducts, conduits, and rights-of-way? Please explain your reasoning.
- Should the Commission extend the applicability of the Right of Way Rules to all other communications companies that own and operate poles, ducts, conduits, and rights-of-way? Please explain your reasoning.

6. Applicability of Pole Database Requirements to Publicly Owned Utilities

The Commission previously indicated it will consider whether the requirements adopted in this proceeding through D.20-07-004 and D.21-10-019 should be extended to Publicly Owned Utilities (POUs) as well as smaller pole owners.

- These decisions found substantial safety and competition benefits to requiring the maintenance and upkeep of data on the millions of poles and pole attachments managed by the state's five largest pole owners.

³ *Ibid.* (See Section III. A. Utility Categories Covered Under ROW Rules, at 14-16.)

- Would these extension of these requirements to POU's as well as smaller pole owners provide similar safety and competition benefits? Please explain your reasoning.
- Should the requirements apply only to POU's and pole owners of a certain size? And if so, how should that be determined?
- Should any modifications to the decisions be made to tailor the requirements to POU's and smaller pole owners?
- CMUA has contended throughout the course of this proceeding that the CPUC does not have any authority to impose requirements on POU's. Contrary to CMUA's claim, the Commission has previously found it has authority over the safety and reliability of all of the utility infrastructure in the state, including infrastructure owned and operated by POU's.⁴
- Are there additional legal arguments or developments that the Commission should consider that have not previously been addressed?

7. Remaining Issues to be Considered in the OII/OIR

Over the course of this proceeding, various issues have been identified for further review by past decisions, scoping memos, and parties. Comment is requested to further develop the record on the following items:

- Is the CPUC's dispute resolution process sufficient for resolving issues between attachers and pole owners or for accessing conduit infrastructure?
 - If not, what modifications would you propose?
- Are the rates for access to poles and conduit sufficiently transparent and standardized?

⁴ See D.98-10-059 denying CMUA's Request for Rehearing.

- If not, what processes should the Commission adopt to make the rates for access to poles and conduit sufficiently transparent and standardized?
- Are pole management, maintenance, and ownership costs appropriately shared between electric utility ratepayers and communications companies?
- Overlashing is an industry practice of placing or tying excess cable facilities on existing cable facilities.
 - Is this practice permissible under existing Commission regulations?
 - If it is not, should it be?
 - If so, what should the formal definition and parameters for overlashing be?
- Pole owners may adopt standards that are in addition to and further the objectives of the requirements of the CPUC's General Orders (GOs).
 - Where are these additional standards documented?
 - Is the information about these standards sufficiently transparent for the public and attachers?

8. Protocol for Claiming Confidential Treatment of Responses

If a responding party wants to claim that any information contained in its response should be protected from public disclosure on the grounds of confidentiality, trademark protection, market sensitivity, or any other privilege, or on personal privacy grounds covered by one or more of the exemptions set forth in Government Code § 6254 of the CPRA, the burden shall be on the responding party to do the following:

- The responding party must file a public version of its response, and a confidential version under seal along with a Motion for Confidential Treatment pursuant to Rule 11.4 of the Commission's Rules of Practice. As part of the

Motion for Confidential Treatment, the responding party must adhere to the following requirements:

- The responding party must identify each page, section, or field, or any portion thereof, that it wishes to be treated as confidential.
- The responding party must specify the basis for the Commission to provide confidential treatment with specific citation to an applicable provision of the California Public Records Act. A citation or general marking of confidentiality, such as GO 66 and/or Pub. Util. Code § 583 without additional justification is insufficient to meet the burden of proof.
- If the responding party cites Government Code § 6255(a) (the public interest balancing test) as the basis to withhold information from public release, then the responding party must demonstrate with granular specificity on the facts of the particular information why the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record. A private economic interest is an inadequate interest to claim in lieu of a public interest.
- If the responding party cites Government Code § 6254(k) (which allows information to be withheld when disclosure is prohibited by federal or state law), it must cite the applicable statutory provision and explain why the specific statutory provision applies to the particular information.
- If the responding party claims that the release of its information, or any part thereof, will place it an unfair business disadvantage (as provided in GO 66-D § 3.4), the responding party's competitor(s) must be identified and the unfair business advantage must be explained in detail.
- If the responding party claims that the release of its information, or any part thereof, will violate a trade

secret (as provided by Civil Code §§ 3426 through 3426.11 and Government Code § 6254.7(d) , the responding party must establish that the information (a) contains information such as a formula, pattern, compilation, program, device, method, technique, or process; (b) derives independent economic value (actual or potential) from not being generally known to the public or to other persons who can obtain economic value; and (c) are the subject of efforts that are reasonable under the circumstances to maintain their secrecy.

- The responding party must provide a declaration (executed with personal knowledge and under penalty of perjury) in support of the legal authority relied on to support the confidentiality claims for Government Code §§ 6254(k) and 6255(a), GO 66, Civil Code §§ 3426 through 3426.11, Government Code § 6254.7(d), and any other statute, rule, order, or decision that the responding party is relying upon to support each claim of confidentiality.

IT IS RULED that:

1. Responses to this Ruling and any Motions for Confidential Treatment shall be filed by January 17, 2023.
2. Any replies to the responses and/or Motions for Confidential Treatment shall be filed by January 31, 2023

Dated December 12, 2022, at San Francisco, California.

/s/ ROBERT M. MASON III

Robert M. Mason III
Administrative Law Judge