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Date of Issuance 6/7/2021

Decision 21-06-013 June 3, 2021

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

Order Instituting Rulemaking to  
Consider Revisions to Electric Rule 20  
and Related Matters.

Rulemaking 17-05-010

**PHASE 1 DECISION REVISING ELECTRIC RULE 20 AND  
ENHANCING PROGRAM OVERSIGHT**

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## **PHASE 1 DECISION REVISING ELECTRIC RULE 20 AND ENHANCING PROGRAM OVERSIGHT**

### **Summary**

Electric Rule 20 defines policies and procedures for electric utilities to convert overhead power lines and other equipment to underground facilities at the request of a city, unincorporated county, or private applicant. Electric Rule 20A is a subprogram of Electric Rule 20 that allocates ratepayer-funded work credits to cities and unincorporated counties for projects that meet specific project eligibility criteria.

This Phase 1 decision revises Electric Rule 20 as follows: (a) discontinues new work credit allocations for Electric Rule 20A projects, (b) clarifies Electric Rule 20A project eligibility criteria and work credit transfer rules, and (c) enhances program oversight. This decision also extends the statutory deadline to consider additional changes to the Electric Rule 20 program.

### **1. Procedural Background**

On May 11, 2017, the California Public Utilities Commission (Commission) issued the Order Instituting Rulemaking to Consider Revisions to Electric Rule 20 and Related Matters (OIR). The OIR named certain electric utilities and communications providers as respondents to the rulemaking.<sup>1</sup> The OIR

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<sup>1</sup> Electric utility respondents: Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), San Diego Gas & Electric Company (SDG&E), Bear Valley Electric Service Company (BVES), Liberty Utilities (Liberty), and PacifiCorp. Facilities-based communications provider respondents: Incumbent Local Exchange Carriers, AT&T California, Cal-Ore Telephone Company, Calaveras Telephone Company, Citizens Telecommunications Company of California, Ducor Telephone Company, Foresthill Telephone Company, Happy Valley Telephone Company, Hornitos Telephone Company, Kerman Telephone Company, Pinnacles Telephone Company, Ponderosa Telephone Company, Sierra Telephone Company, Siskiyou Telephone Company, Frontier California, Volcano Telephone Company, Consolidated Communications of California, Winterhaven Telephone Company, and other facilities based communication providers.

described the long procedural history of the program, dating back to 1967. The Commission received 16 sets of comments in response to the OIR.<sup>2</sup>

The assigned Administrative Law Judge (ALJ) held a prehearing conference (PHC) on September 11, 2017, to discuss the issues and the schedule for resolving the rulemaking. On November 9, 2018, the assigned Commissioner issued a scoping memo and ruling outlining the issues and schedule for the first phase of the proceeding, noting that an additional phase of the proceeding may be required. Parties filed comments and proposals in response to the scoping memo on January 11, 2019.<sup>3</sup>

On March 6, 2019, the assigned ALJ issued a ruling to address comments on the scope of issues, notice a workshop, and direct certain electric utilities<sup>4</sup> to serve the latest version of their guidebooks or any other guiding documents for their Electric Rule 20 (Rule 20) programs.

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<sup>2</sup> The following parties filed comments on the OIR: SCE, PG&E, SDG&E, BVES, PacifiCorp, Liberty, The Utility Reform Network (TURN), The Office of Ratepayer Advocates (now known as the Public Advocates Office or Cal Advocates), The City of Laguna Beach, the City and County of San Francisco (CCSF), AT&T, Consolidated Communications (Consolidated), Small Local Exchange Carriers (Small LECs), California Cable & Telecommunications Association (CCTA), and California Association of Competitive Telecommunications Companies (CALTEL).

<sup>3</sup> TURN, PacifiCorp, SCE, SDG&E, PG&E, County of Mendocino, County of Napa, CTIA, CCTA, City of San Jose, Town of Woodside, Frontier California Inc., AT&T Mobility Wireless Operations Holdings, Inc., Santa Barbara Cellular Systems, Ltd, Citizens Telecommunications Company of California Inc., California Association of Competitive Telecommunications Companies, New Cingular Wireless PCS, LLC, Pacific Bell Telephone Company, and Frontier Communications of the Southwest Inc.

<sup>4</sup> Southern California Edison Company, San Diego Gas & Electric Company, Pacific Gas and Electric Company, Bear Valley Electric Service Company, Liberty Utilities, and PacifiCorp.

On April 22 and 23, 2019, the Commission's staff hosted two days of workshops on the Rule 20 programs to present and review data and findings from staff's data request to the utilities on program outcomes and performance.<sup>5</sup>

On June 6, 2019, the assigned ALJ issued a ruling to suspend the electric utility audit requirements of Ordering Paragraph 4 of the OIR. This ruling did not modify the audit requirements for Pacific Gas & Electric Company (PG&E) established in Decision (D.) 17-05-013.

On October 3, 2019, the assigned ALJ issued a ruling to enter into the record responses of PG&E to data requests by the Commission's Energy Division. On December 16, 2019, the assigned ALJ issued a ruling to direct electric utilities to serve updated data request responses. Southern California Edison Company (SCE) and San Diego Gas & Electric Company (SDG&E) filed updated data request responses in April 2020.

On December 20, 2019, the assigned ALJ issued a ruling to enter the audit report of PG&E's Rule 20A program (PG&E Audit Report) into the record.

On February 13, 2020, the assigned ALJ issued a ruling to enter a staff proposal for improving the Rule 20 program (February Staff Proposal) into the record and request comments.<sup>6</sup>

On March 3, 2020, the Commission's Energy Division hosted a workshop to discuss the February Staff Proposal.<sup>7</sup>

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<sup>5</sup> The Commission's Business and Community Outreach team contacted 4,382 local government officials and staff to invite them to attend the April 22-23, 2019 workshop.

<sup>6</sup> The Commission's Business and Community Outreach team contacted 1,747 local government officials and staff to share the February Staff Proposal.

<sup>7</sup> The Commission's Business and Community Outreach team contacted 818 local government officials and staff to invite them to attend the March 2020 workshop.

Parties<sup>8</sup> filed comments on the February Staff Proposal and the PG&E Audit Report in March and April 2020, and parties<sup>9</sup> filed reply comments in May 2020.

On May 7, 2020, the Commission issued D.20-05-026 to extend the statutory deadline for the proceeding until April 10, 2021.

On September 3, 2020, the assigned ALJ issued a ruling to request comments on certain policy questions, a supplement to the PG&E Audit Report (PG&E Audit Supplement), and a staff proposal for winding down the Rule 20A program and establishing budgets for Rule 20B and Rule 20C (September Staff Proposal).<sup>10</sup> Parties filed comments<sup>11</sup> and reply comments<sup>12</sup> in October 2020.

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<sup>8</sup> San Francisco Coalition to Underground Utilities, City of Hayward, City of Laguna Beach, Southern California Edison Company, City of Orinda, City of Hayward, Town of Los Altos Hills, City of Santa Barbara, City of El Cerrito, The City of Berkeley, The City of Berkeley, City of Burlingame, League of California Cities, TURN, County of Tuolumne, City of Chula Vista, Golden State Water Company, City of Napa, SDG&E, County of Napa, County of Marin, County of Sonoma, PG&E, City of San Jose, California State Association of Counties, Clean Power Alliance of Southern California, City of Newport Beach, Los Angeles County, City of Anaheim Public Utilities Department, California Municipal Utilities Association, PacifiCorp, California Cable & Telecommunications Association, AT&T Services Inc., Cal Advocates, The County of San Diego, City and County of San Francisco, City of Del Mar, City of Fresno, City of Culver City, and City of El Cajon.

<sup>9</sup> California Cable & Telecommunications Association, AT&T Services Inc., Liberty Utilities, Cal Advocates, SDG&E, PG&E, PacifiCorp, SCE, California Municipal Utilities Association, City of Anaheim Public Utilities Department, City and County of San Francisco, and City of San Jose.

<sup>10</sup> The Commission's Business and Community Outreach team reached out to 4,124 local government officials and staff to share the September ruling.

<sup>11</sup> City of Menlo Park, California State Association of Counties, PG&E, PacifiCorp, California Municipal Utilities Association, City of Anaheim Public Utilities Department, SCE, TURN, SDG&E, City of San Jose, County of Tuolumne, Los Angeles County, League of California Cities, California Cable & Telecommunications Association, AT&T California and Bear Valley Electric Service, Inc.

<sup>12</sup> City of San Jose, California Municipal Utilities Association, City of Anaheim Public Utilities Department, PG&E, SCE, Los Angeles County, TURN, County of Marin, County of Sonoma, California Cable & Telecommunications Association, AT&T California, City of Whittier and California State Association of Counties.

On May 24, 2021, the Commission issued D.21-03-046 to extend the statutory deadline for the proceeding to August 10, 2021.

## **2. Program Background**

### **2.1. History and Program Design**

Since the late 1960s, most new electric distribution facilities have been designed and installed underground. For communities developed prior to the late 1960s, most electric distribution infrastructure is overhead. Converting an overhead system to underground, known as “undergrounding,” is typically more expensive than maintaining overhead lines, so most existing overhead systems in California remain above ground.<sup>13</sup>

In 1967, the Commission issued D.73078, which adopted the Rule 20 program primarily for aesthetic purposes. The Rule 20 program facilitates municipality-driven and private applicant-driven underground conversion projects in a consistent manner throughout the territories of California’s electric investor-owned utilities. Electric utilities under the Commission’s jurisdiction manage and perform underground conversion projects under electric tariffs filed with the Commission.

In 2001, the Commission issued D.01-12-009, noting that “with very few exceptions, the public favors undergrounding for safety, reliability, aesthetic benefits, and property value increases.” The Commission authorized incremental updates to the Rule 20 program in D.01-12-009, including expanding Rule 20A criteria to include arterial streets and major collectors, and allowing cities to “mortgage” Rule 20A allocations for up to five years (instead of the then-current three years).

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<sup>13</sup> February Staff Proposal.

The Rule 20 program is currently divided into four subprograms that provide diminishing levels of ratepayer contributions to projects, as follows:

- **Rule 20A** projects are 100 percent ratepayer-funded but must meet public interest criteria. The utilities annually allocate Rule 20A work credits (or “work credits”) to cities and unincorporated counties (hereafter, “communities”) to redeem for their undergrounding project costs. Under Rule 20A Section 2, 50 percent of the work credit allocation is based on the ratio of overhead meters in a community relative to the total utility overhead meters. The other 50 percent is based on the ratio of total meters (both overhead and underground-served meters) relative to the utility total system meters.<sup>14</sup> Rule 20A work credit allocations are established through the electric utilities’ General Rate Cases.<sup>15</sup> A community may “borrow” up to five years of future work credits to fund an undergrounding project.
- **Rule 20B** projects may be for any undergrounding purpose but must consist of a minimum of 600 feet. Ratepayers fund around 20 to 40 percent of the costs of these projects. The applicant bears the balance of the project cost. Local government applicants may request the utility initially fund their Rule 20B project’s engineering and design costs and reimburse the utility later provided that the project goes forward.<sup>16</sup>
- For **Rule 20C** projects, the applicant – often an individual property owner or developer – pays for the full cost of undergrounding, less the cost of the estimated salvage value and depreciation of the removed overhead electrical facilities.<sup>17</sup>

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<sup>14</sup> February Staff Proposal.

<sup>15</sup> Rule 20 Tariffs of PG&E, SCE, and SDG&E.

<sup>16</sup> Rule 20 Tariffs of PG&E, SCE, and SDG&E.

<sup>17</sup> February Staff Proposal.

- **Rule 20D** is currently only available in SDG&E's service territory. It applies specifically to undergrounding where it is deemed by SDG&E to be a preferred method for wildfire mitigation. Rule 20D has been in existence since 2014 and SDG&E has not started or completed a single project to date through this program.<sup>18</sup>

Related to the Rule 20 program, telecommunications entities have a program that closely resembles the Rule 20 program. The telecommunications programs are specific to the undergrounding of telecommunications facilities. The telecommunications undergrounding program is not ratepayer funded.

The City of San Diego also has a separate undergrounding program in partnership with SDG&E that is not subsidized by the general ratepayer. For that program, SDG&E submits semi-annual reports to the Commission. In December 2002, the Commission issued Resolution E-3788 to authorize SDG&E to collect a 3.53 percent franchise fee surcharge within the City of San Diego for undergrounding work separate from Rule 20. By using this surcharge program to augment the Rule 20 program, the City of San Diego converted 429 miles of overhead electrical facilities to underground facilities and 1,238 miles remain as of July 2019.<sup>19</sup>

In comparison, since 1967, the February Staff Proposal estimates that the Rule 20A program has funded conversion of around 2,500 out of 147,000 miles (0.017%) of overhead utility lines in California. In recent years, the utilities have collectively completed on average 50 projects per year, equal to approximately 20-25 miles in length under Rule 20A at a cost ranging from \$1.85 million to \$6.1 million per mile. The Rule 20B and 20C programs together facilitate

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<sup>18</sup> February Staff Proposal.

<sup>19</sup> February Staff Proposal.

undergrounding of 15 to 20 miles of lines per year.<sup>20</sup> From 1968 to 2015, the Rule 20 undergrounding program spent approximately \$3.4 billion in all service territories.<sup>21</sup>

In D.17-05-013, the Commission identified \$153 million in unspent and unaccounted for PG&E Rule 20A funds and ordered an audit of PG&E's Rule 20A program.<sup>22</sup> The Commission adopted criteria for this audit in D.18-03-022.

In D.17-05-013, the Commission also directed PG&E to establish a Rule 20A one-way balancing account.<sup>23</sup> In D.20-12-005, the Commission continued the authorization of the one-way balancing account for PG&E's Rule 20A program.<sup>24</sup>

## **2.2. Program Challenges**

The February Staff Proposal identified a number of significant challenges with the existing Rule 20 program, including the following:

- **Inequitable Usage of Ratepayer Funds.** The February Staff Proposal flags the inequitable distribution of Rule 20A funds. A handful of communities have completed projects worth hundreds of millions of dollars funded by ratepayer contributions. On the other hand, 82 out of 503 communities have not completed a single project since 2005. The program's design challenges coupled with the different sizes of communities hinders program participation and project completion.
- **Outdated Program Eligibility Criteria.** Numerous communities expressed eagerness to update Rule 20A

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<sup>20</sup> February Staff Proposal.

<sup>21</sup> PG&E Audit Report at 9.

<sup>22</sup> D.17-05-013 at 72. Unspent funds were defined as the difference between PG&E's authorized annual budget and its recorded expenditures for each year.

<sup>23</sup> D.17-05-013 at 75-77.

<sup>24</sup> D.20-12-005 at 114.

so that they can leverage the program to support wildfire mitigation and meet other community safety and reliability objectives rather than maintain the program's focus on aesthetic enhancement.

- **Flawed Work Credits System.** The February Staff Proposal describes the numerous flaws of the program's system of allocating ratepayer-funded "work credits" to communities. Insufficient work credits and ever-increasing project cost estimates prevents communities from starting and completing projects. In the February Staff Proposal, staff estimated that at least \$489 million in unused and un-committed Rule 20A work credits remain outstanding among the communities served by the electric utilities. After reviewing additional data, the Commission's Energy Division determined that the value of unused and un-committed Rule 20A work credits across all electric utility service territories is over \$1.56 billion as of January 2021. Except for PG&E and SCE, the utilities do not currently have one-way balancing accounts to ensure that any funds collected from ratepayers for Rule 20 programs will exclusively be available for future projects on which communities seek to use their work credit balance. Additionally, 58 communities completed undergrounding projects using work credits borrowed beyond the tariff specified 5-year forward limit, placing them in "work credit debt." At least 20 of these 58 communities have "work credit debt" that exceeds 9 years, including San Francisco (14 years), Napa County (74 years), La Canada-Flintridge (45 years), Laguna Hills (21 years), and San Marcos (47 years). Further, through an unsanctioned secondary work credit marketplace, some communities sell, trade, or donate their unused work credits to other communities. The electric utilities have facilitated these unsanctioned work credit transfers.

- **High Project Costs and Project Delays.** Communities shared many instances where project costs exceeded design cost estimates and project timelines have been drawn out seven years or longer. Further, project costs have increased in real terms by 33 percent and 44 percent in PG&E's and SCE's territories since 2005. Insufficient program oversight resulted in higher project costs, longer project timelines, and fewer completed projects.

In D.17-015-013, the Commission ordered an audit of PG&E as a result of a party identifying \$153 million in unspent and unaccounted for Rule 20A funds. The Commission retained AzP Consulting, LLC to conduct the audit in compliance with D.17-05-013 and D.18-03-022. The PG&E Audit Report uncovered additional major concerns with PG&E's administration of the Rule 20A program, which are discussed further in Section 4 below.

### **3. Issues Before the Commission**

The scoping memo of this proceeding set forth an expectation that this proceeding would be conducted in phases. This decision addresses the Phase 1 issues set forth in Section 2 of the scoping memo regarding Rule 20 program operations, management, and near-term improvements.

The Phase 1 issues before the Commission are as follows.

- a. How can the Rule 20A Program be improved within its current structure in the near future? Should the Commission modify, replace, or discontinue the Rule 20A program at this time?
- b. Is the recent and current management (utility and Commission) of the electric IOUs' Rule 20A programs reasonable? Should the Commission modify Rule 20 program management requirements or enhance oversight of the Rule 20 program?

#### **4. Whether to Modify, Replace or Discontinue the Rule 20A Program**

##### **4.1 Project Eligibility Criteria**

Projects that meet the Rule 20A “public interest criteria” for eligibility may underground electric facilities at ratepayers’ expense. The current Rule 20A public interest criteria focus on aesthetics. In the February Staff Proposal, the Commission’s staff recommended expansions to the Rule 20A public interest criteria to include additional safety, reliability and emergency-related criteria. Many parties strongly supported the addition of wildfire and emergency-related criteria.<sup>25</sup>

On September 3, 2020, ALJ Wang requested comments on whether it remains reasonable to continue to commit ratepayer funds to a Rule 20A program focused on enhancing aesthetics. In October 2020 comments, the vast majority of commenters agreed that the Commission should continue to authorize ratepayer funding for Rule 20A projects with a greater focus on safety, reliability, and emergency-related purposes. The City of Menlo Park asserted that first responders benefit from not having equipment overhead. The County of Los Angeles urged the Commission to add new project eligibility criteria focusing on safety and reliability, including wildfire mitigation, emergency evacuation routes and visibility. County of Tuolumne, California Municipal Utilities Association (CMUA) and City of Anaheim similarly urged the

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<sup>25</sup> In April 2020 comments, the following parties specifically supported inclusion of wildfire safety, reliability and emergency related criteria: City of Laguna Beach, City of Berkeley, Counties of Mendocino, Napa, and Sonoma, Town of Los Altos Hills, City of Santa Barbara, City of El Cerrito, City of Menlo Park, City of Burlingame, League of California Cities, Tuolumne County, Golden State Water Company on behalf of Bear Valley Electric Service Division, City of Napa, California State Association of Counties, San Diego County, Culver City, Liberty CalPeco, PacifiCorp.

Commission to continue the Rule 20A program for wildfire safety and reliability purposes.

The Utility Reform Network (TURN) and SCE each filed comments in support of sunsetting the Rule 20A program. TURN argued in its October 2020 comments and reply comments that given the pandemic and the associated economic crisis, continuing a program primarily for aesthetics purposes at this time is not reasonable.

TURN and the investor-owned utilities also raised concerns that expansion of the Rule 20A program for wildfire mitigation purposes would be impractical and an inefficient use of ratepayer funds. In January 2019 comments, SCE, PG&E and SDG&E commented that undergrounding for public safety is considered by each investor-owned utility as part of its overall system hardening efforts. PacifiCorp commented in January 2019 that there would be insufficient funds available in PacifiCorp's Rule 20A program to have a significant risk mitigation impact.

Whether the Rule 20A program should promote wildfire safety and emergency-related undergrounding requires further consideration. We will continue to deliberate on whether to make these changes to project eligibility criteria for Rule 20A in Phase 2 of this proceeding.

The February Staff Proposal also included recommendations to clarify project eligibility criteria. Under current Rule 20A criteria, applicants may propose projects that consist of a minimum of 600 feet or one block (whichever is less) and meet one or more of the five listed criteria.

The February Staff Proposal recommended clarifying the existing Rule 20A project criteria as follows:

- i) Such undergrounding will avoid or eliminate an unusually heavy concentration of overhead electric facilities. This is defined as poles that serve circuits in addition to a single primary and secondary circuit.
- ii) The street or road or right-of-way is extensively used by serves as a major thoroughfare for the general public and carries a heavy volume of pedestrian, bicycle, rail, vehicular, or other traffic. Heavy traffic volume means a minimum of 5,000 average trips per day among all personal and public transportation forms collectively.
- iii) Wheelchair access is limited or impeded by existing above ground electric and/or telecommunications infrastructure including pad mounted facilities on sidewalks or in other areas in the pedestrian right-of-way that is otherwise not compliant with the Americans with Disabilities Act.<sup>26</sup>
- iv) The street or road or right-of-way adjoins or passes through a civic area or public recreation area or an area of unusual significant scenic, cultural, and/or historic interest to the general public; or
- v) The street or road or right-of way is considered an arterial street or major collector as defined in the Governor's Office of Planning and Research General Plan Guidelines by the California Department of Transportation's California Road System functional classification system.

Local governments generally opposed refinements to project eligibility criteria that would reduce flexibility for how Rule 20A funds may be used. The City of Brisbane and City of Orinda argued that defining heavy traffic volume as 5,000 vehicle trips per day is too high.<sup>27</sup> City of Laguna Beach objected to defining heavy concentration of wires without considering the overhead

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<sup>26</sup> The SDG&E tariff is currently the only Rule 20A tariff that includes a criterion for limited or impeded wheelchair access. The February Staff Proposal recommended clarifying this criterion and expanding application to other utilities' tariffs.

<sup>27</sup> City of Brisbane's and City of Orinda' April 2020 comments.

communications lines.<sup>28</sup> The City of Newport Beach similarly argued that the proposed refinements to the first three criteria would create roadblocks to projects.<sup>29</sup>

Most parties did not oppose the proposed modifications to the fourth or fifth criteria. On the other hand, PG&E supports each of the proposed modifications to existing project eligibility criteria listed above, except for the proposed modifications to the fourth criterion, which it asserts remains too vague.<sup>30</sup> While we recognize that the proposed standard of “significant scenic, cultural, and/or historic interest” remains broad, the proposed standard provides more direction than the current standard of “unusual scenic interest.”

SCE proposes a different modification to the first criterion and argues against defining “heavy traffic volume” as proposed for the second criterion since it does not account for traffic levels varying by community. SCE disagrees with limited or impeded wheelchair access as a standalone qualifying criterion for Rule 20A but recommends instead that wheelchair access be considered when defining the boundaries of projects that otherwise qualify for Rule 20A under one of the qualifying criteria.

In light of our plan to address Rule 20A project eligibility criteria more broadly in Phase 2, we are inclined to avoid unnecessary changes to the existing project eligibility criteria at this time. Based on party comments, we decline to implement the February Staff Proposal’s recommended modifications to the first two project eligibility criteria.

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<sup>28</sup> City of Laguna Beach’s April 2020 comments.

<sup>29</sup> City of Newport Beach’s April 2020 comments.

<sup>30</sup> PG&E’s April 2020 comments.

However, we will adopt modifications to the Rule 20A program to implement the recommended modifications to the fourth and fifth project eligibility criteria. To enhance consistency across utility service territories, we will also direct all utilities to include a criterion regarding limited or impeded wheelchair access that is not compliant with the Americans with Disabilities Act.

#### **4.2 Inequitable Usage of Ratepayer Funds**

In February 2019, the Commission adopted an Environmental and Social Justice (ESJ) Action Plan. The ESJ Action Plan includes nine goals, including the goal of consistently integrating equity and access considerations throughout Commission proceedings and other efforts.

The February Staff Proposal identified the inequitable usage of Rule 20A funds. A handful of the 503 communities that pay into the program have completed projects worth hundreds of millions of dollars funded by ratepayer contributions. On the other hand, 82 eligible communities have not completed a single project since 2005. It is unknown how many of these 82 communities may have completed projects prior to 2005.

In the February Staff Proposal, the Commission's staff recommends reducing ratepayer contributions to Rule 20 projects in light of these funding disparities. The February Staff Proposal outlined a plan to sunset the Rule 20A program and increase ratepayer contributions for certain Rule 20B and Rule 20C projects to up to 50 percent. The proposal aimed provide a moderate amount of funding to Rule 20 projects, moving away from the current approach of funding 100 percent of Rule 20A project costs while funding only 20-40 percent of eligible Rule 20B project costs. In the September 3, 2020 ruling, ALJ Wang requested comments on whether underserved and disadvantaged communities would participate in the Rule 20A program in light of the recession. The

September 2020 ruling also attached a staff proposal (September Staff Proposal) proposing budget limits for Rule 20B and Rule 20C ratepayer contributions.

Many parties opposed the staff proposals to sunset Rule 20A and increase ratepayer contributions and capping funding for Rule 20B and Rule 20C. Several parties argued that underserved and disadvantaged communities would be less likely to participate in the Rule 20 program if they are required to contribute a portion of project costs.<sup>31</sup> Multiple parties argued that any additional Rule 20B and Rule 20C funding will primarily benefit wealthy communities and private developers.<sup>32</sup>

After review of party comments, we decline to sunset the Rule 20A program or modify the Rule 20B or Rule 20C programs at this time. We will consider in Phase 2 of this proceeding whether to further modify the Rule 20A program to support projects located in underserved or disadvantaged communities.

#### **4.3 Rule 20A Work Credit System**

The February Staff Proposal highlighted major problems with the Rule 20A work credit system.

- The February Staff Proposal estimates that at least \$489 million in unused and un-committed Rule 20A work credits remain outstanding. The Commission's Energy Division confirms that the value of unused and un-committed Rule 20A work credits across all electric utility service territories is over \$1.56 billion as of January 2021.
- Through an unsanctioned secondary work credit marketplace, some communities sell, trade, or donate their unused work

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<sup>31</sup> October 2020 opening comments of City of Menlo Park, California State Association of Counties (CSAC), PG&E, SDG&E.

<sup>32</sup> October 2020 opening comments of City of Hayward, City of Menlo Park, League of California Cities, City of Tuolumne, City of San Jose, and CSAC.

credits to other communities that need them to complete a project.

- As of March 2019, 57 communities borrowed beyond the 5-year forward limit permitted under Rule 20A program rules, placing them in “work credit debt”.
- The work credit system lacks transparency and is hard to regulate.

In comments, parties highlighted an additional problem with the work credit system. Many communities cannot accrue enough work credits for a single project.<sup>33</sup> Other communities have a higher demand for work credits than the allocation system can satisfy.

In light of these and other challenges, the February Staff Proposal recommends winding down the use of work credits over 10 years and banning work credit trading. Similarly, the PG&E Audit Report recommended that the Commission modify the Rule 20A program to prevent work credit trading and to limit ratepayer obligations to contribute to the program to communities that participate in the program.<sup>34</sup>

Multiple parties filed comments opposing the September Staff Proposal to wind down the use of Rule 20A work credits over 10 years, including requirements for communities to prove that they will be active in the program to use the funds.<sup>35</sup>

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<sup>33</sup> SCE, PG&E and SDG&E jointly commented on January 11, 2019: “Given the current annual budget for Rule 20A and the current allocation methodology, a number of municipalities may receive an allocation of less than \$15,000 per year. Therefore, it is not likely that many cities will be able to accumulate enough allocations for even a small Rule 20A project. To illustrate, in constant dollars, it may take these municipalities 30 years or more to accumulate enough allocations to fund a small project.”

<sup>34</sup> PG&E Audit Report recommendations at Exhibit A.

<sup>35</sup> October 2020 opening comments by City of Hayward, City of Menlo Park, League of California Cities, PG&E, CMUA & City of Anaheim, SDG&E, and County of Los Angeles.

We recognize the importance of providing stability and certainty to local governments who plan to use accrued Rule 20A work credits to complete projects. Accordingly, we will not establish a wind down period for the use of existing work credits at this time.

However, in light of the myriad problems with the work credit system on the record of this proceeding, we will discontinue approval of new work credits for allocation by electric utilities after December 31, 2022. Electric utilities shall not allocate new Rule 20A work credits after December 31, 2022. We will also clarify that utilities shall not have the discretion to allow communities to borrow work credits from future allocations beyond any 2022 allocation.

This decision does not set a deadline for the use of work credits created on or before December 31, 2022. Communities may continue to use existing work credits on Rule 20A projects after December 31, 2022. Many Rule 20A proponents opposed the February Staff Proposal's suggestion of authorizing a grant program as an alternative to the existing work credit system without proposing a preferred alternative.<sup>36</sup> We recognize the potential for the suspension of new work credit allocations to strand some active projects. In Phase 2 of this proceeding, we will consider opportunities for supporting active Rule 20A projects.

In comments on the proposed decision, several parties requested clarifications to this decision to support active Rule 20A projects before Phase 2 of this proceeding. We clarify that this decision does not modify two existing pathways for completing projects. First, local governments may contribute funds

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<sup>36</sup> April 2020 comments by County of Santa Cruz, City of Orinda, League of California Cities, City of Burlingame, PG&E, SDG&E, CSAC, City of Chula Vista, City of Newport Beach, City of Fresno, and City of San Jose.

to their Rule 20A projects. Second, electric utilities continue to have authority to reallocate unused work credits to active Rule 20A projects in accordance with their respective tariffs.

In Resolution E-4971, the Commission explained the work credit reallocation policy that “Rule 20A allows for reallocation of work credits from inactive communities to communities in need.”<sup>37</sup> The Commission further explained the implications of Rule 20A Section 2.c, as follows: “When amounts are not expended or carried over for the community to which they are initially allocated, they shall be assigned when additional participation on a project is warranted or be reallocated to communities with active undergrounding programs.”<sup>38</sup> The Commission further noted:

... The reallocation provision in Rule 20A is only to be invoked for communities with projects already underway, within existing undergrounding districts, that experience unforeseen funding shortfalls, and have demonstrated that all alternatives for obtaining funding for the project have been exhausted. This provision does not allow for unrestricted reallocation of work credits to active communities.<sup>39</sup>

In order to facilitate reallocations of unused work credits, we will direct each electric utility to take the following steps to provide an accounting of unused work credits available for reallocation and active projects in need of additional funding:

1. Notify each community within 30 days of this decision of the community’s status (active or inactive), the community’s current work credit balance, and if applicable, how to change its status from inactive to active;

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<sup>37</sup> Resolution E-4971 at 10.

<sup>38</sup> *Id.* at 11.

<sup>39</sup> *Ibid.*

2. Serve on the service list of this proceeding by February 1, 2022, a list of currently inactive communities, as defined in Resolution E-4971, and the unused work credit balances of these currently inactive communities;
3. Serve on the service list of this proceeding by February 1, 2022, a list of currently active communities, as defined in Resolution E-4971, with current work credit balances, projected work credit balances (as of December 31, 2022), all Rule 20A projects (proposed and under construction) per community, current Rule 20A project cost estimates, and projected work credit shortfall (the difference between projected work credit balances and total Rule 20A estimated project costs).

In comments on the proposed decision, SDG&E asserts that since it does not have a reserve of unused credits, active projects in progress that had expected to borrow up to 5 years of credits will be forced to stop. We plan to address this issue for communities across all utilities at the beginning of Phase 2 of this proceeding. We expect communities across all utilities to have similarly situated active Rule 20A projects that cannot reach completion without either reallocated work credits or additional program funding of some kind. We encourage the utilities to continue to work with Rule 20A active communities to advance undergrounding projects to the extent feasible, and we will prioritize addressing these active projects in Phase 2 of this rulemaking.

We also clarify that the unregulated practice of work credit trading in secondary markets is banned effective immediately, including the practice of donating or bartering work credits. Electric utilities shall not facilitate unauthorized trades of work credits between communities executed after the effective date of this decision.

We will provide exceptions for intra-county donations of work credits from a county government to cities and towns within the county or from a city or

town to its county government, and to allow credit pooling amongst two or more adjoining municipalities for a project with community benefit for the adjoining municipalities. In April 2020 comments, the following parties supported this approach: City of Berkeley, SCE, Clean Power Alliance of Southern California, Cal Advocates, Counties of Marin, Napa and Sonoma, County of San Diego, and City of Napa. The utilities will maintain documentation pertaining to, and report on to the Commission, any intra-county donations of work credits. This information will be included in utility annual reports to the Commission.

Many parties opposed the staff recommendation to ban work credit trading between communities.<sup>40</sup> Several of these parties argued that work credit trading is necessary to ensure that communities who do not have the resources to advance Rule 20A projects still benefit from the program.

We do not find this argument compelling. The existing practice of work credit trading has been conducted outside the oversight of the Commission. The investor-owned utilities should not have the discretion to facilitate and recognize these unauthorized transfers of work credits. As the PG&E Audit Report points out, unregulated work credit trading exacerbates the inequitable distribution of ratepayer-funded services through the Rule 20A program.<sup>41</sup> Further, there is no statutory or other legal basis for communities to engage in unauthorized work credit transactions.

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<sup>40</sup> See April 2020 comments by City of Brisbane, City of Tracy, City of Laguna Beach, County of Santa Cruz, City of Orinda, League of California Cities, City of Burlingame, Bear Valley Electric Service, CSAC, TURN, City of Chula Vista, City of Newport Beach, City of San Jose, Culver City, City of Fresno, and City of Del Mar.

<sup>41</sup> PG&E Audit Report at 106-107.

**5. Whether to Modify Program Management Requirements or Enhance Oversight of the Rule 20A Program.**

**5.1 PG&E Audit Report**

For the period of January 1, 2007 through December 31, 2016, the PG&E Audit Report found that PG&E underspent \$123 million (22%) of Rule 20A authorized budgets.

The PG&E Audit Report uncovered additional major issues with PG&E's administration of the Rule 20A program, including:

- PG&E reprioritized Rule 20A funds and resources away from the program without retaining documentation of where these funds were spent.
- The final costs of Rule 20A projects completed during the audit period exceeded initial estimates by 35 percent.
- PG&E's underspending on the program resulted in project delays which increased project costs.
- PG&E systematically underspent on the program compared with its forecasts over nearly the entire audit period.
- Based on a benchmarking study, PG&E's undergrounding costs per mile were higher than the industry maximum for suburban and rural areas.
- Since the start of PG&E's implementation of purported improvements to the program, the average number of Rule 20A projects PG&E completed has declined and underspending has increased.
- PG&E lacks appropriate documentation and records maintenance protocols to enable the Commission to ensure that Rule 20A authorized funds will be used appropriately going forward.

The PG&E Audit Report makes 50 recommendations for improving PG&E's management of the program and enhancing the Commission's oversight of the program. Most of the recommendations fall within the following transparency and accountability categories.

- PG&E should maintain detailed accounting documentation.
- PG&E should provide more information to the Commission and participants through annual reports and communications.
- PG&E should document Rule 20A program procedures and guidelines in publicly available and accessible formats, including a program handbook.
- PG&E should implement documentation and workpaper retention policies to enable the Commission to ensure that Rule 20A authorized funds will be used appropriately going forward.
- PG&E should improve or outsource project cost estimates and increase transparency and accountability for cost overruns.
- The Commission should require balancing accounts for programs that are routinely over- or under-funded.
- The Commission should disallow recovery of forecast Rule 20A program expenditures to the extent that (a) PG&E has previously recovered those costs in rates and deferred expenditures, or (b) costs of projects exceed cost estimates due to PG&E's mismanagement.

## **5.2 Rule 20 Program Improvements**

In light of the PG&E Audit Report's findings and recommendations, we consider opportunities to improve the Rule 20 program.

TURN filed April 2020 comments to support the PG&E Audit Report recommendations regarding disallowing PG&E recovery of certain forecast Rule

20A program expenditures and urge the Commission to issue a credit to ratepayers for the \$123 million of overcollected Rule 20A funds.

On its first point, TURN recognized that the record does not contain sufficient information to determine the amount of the disallowance. TURN urged the Commission to order an analysis or follow-up audit to be conducted in order to determine the disallowance amount. However, there are insufficient records of past expenditures to determine a disallowance amount; the PG&E Audit Report underscores that PG&E failed to retain adequate documentation for the Rule 20A program. We decline to order another audit at this time. Instead, we will direct PG&E to enhance its records keeping, enabling thorough audits of future periods and potential disallowances.

On TURN's second point, the PG&E Audit Report indicates a general lack of documentation of how the \$123 million in underspent Rule 20A funds were reprioritized. PG&E argues that while it underspent on Rule 20A, it overspent in other major work categories during the audit period.<sup>42</sup>

We agree with TURN's comments that the PG&E Audit Report shows that the PG&E Rule 20A program has not been prudently managed, that the underspending has resulted in higher project costs, and that poor documentation and document retention practices raise "fraud risk factors." Accordingly, we will adopt several of the PG&E Audit Report's recommendations to strengthen PG&E's management and the Commission's oversight of PG&E's Rule 20A program. Coupled with our previous direction to PG&E to create a one-way balancing account in D.17-05-013, we will have the tools to prevent chronic underspending and prohibit reprioritization of Rule 20A funds going forward.

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<sup>42</sup> PG&E's April 2020 comments on the PG&E Audit Report.

Prior to D.17-05-013, the Commission had not issued direction to prohibit reprioritization of Rule 20A funds for other electric distribution infrastructure purposes. Accordingly, this decision will focus on enhancing oversight and requirements for Rule 20A programs going forward.

PG&E argued that many of the audit recommendations are unnecessary for various reasons, including the lack of a future audit requirement, previous implementation of some of the recommendations, and existing General Rate Case and balancing account processes.<sup>43</sup> The first argument is disturbing. Electric utilities must create and retain appropriate documentation to support an audit without prior notice and without a pending audit requirement. As for the second and third arguments, we have reviewed the audit recommendations with existing Commission processes and past direction to PG&E in mind.

SCE filed April 2020 comments to oppose the PG&E Audit Report recommendations to require PG&E to provide detailed invoices of Rule 20A projects to the Commission, arguing that such information may be confidential and would be burdensome to provide. Since utilities routinely provide confidential information to the Commission under seal and to parties subject to nondisclosure agreements, we do not find the confidentiality argument persuasive. Further, the PG&E Audit Report underscored the need for higher documentation standards that justify the inconvenience for utilities. Accordingly, we conclude that this requirement is appropriate.

We direct PG&E to implement the following Rule 20 program improvements based on recommendations from the PG&E Audit Report. Further, we also direct each electric utility to implement the following Rule 20

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<sup>43</sup> PG&E's April 2020 comments on the PG&E Audit Report.

program improvements as well to ensure that the lessons learned and best practices from the PG&E Audit Report enhance all Rule 20 programs and the Commission's oversight of these programs.

**Program Guidebook.** PG&E, SCE and SDG&E shall work together to draft updated Rule 20 Guidebooks. These three utilities shall meet and confer with Liberty, PacifiCorp, the League of California Cities, the California State Association of Counties, local governments, and representatives of rural communities such as Rural County Representatives of California, and communications carriers to draft a joint Rule 20 Guidebook. The program guidebooks of each utility may diverge on details of certain procedures but should be consistent regarding major rules.

The guidebook will detail costs and responsibilities of each party at each stage of projects on an average project timeline per subprogram. The guidebook shall also provide IOU contacts for projects pertinent to each subprogram, a timeline to anticipate annual reports, and links to the Rule 20 program webpages of the Commission and the IOUs. Within 120 days of the effective date of this decision, PG&E, SCE and SDG&E shall each file and serve a Tier 2 advice letter to update its Rule 20 Guidebook. Within 90 days of the date that the first Rule 20 Guidebook is approved in accordance with this decision, Liberty and PacifiCorp shall each file and serve an updated guidebook for its Rule 20 programs, based on the approved Rule 20 Guidebook for large utilities. The Rule 20 Guidebook shall include any overhead fees charged by the utility and a standard nondisclosure agreement for communities to obtain access to confidential information. Electric utilities shall post their updated Rule 20 Guidebooks to their Rule 20 websites.

**One-Way Balancing Accounts.** Rule 20 program funding should not be used for any other utility purpose. Utilities must establish or modify an existing Rule 20 one-way balancing account, with subaccounts for tracking actual program expenses for each Rule 20 subprogram.<sup>44</sup> Each utility must track actual expenditures and seek cost-recovery periodically through the General Rate Case applications. Utilities should not propose Rule 20 program rule changes or funding changes through General Rate Case applications. Each account must track all costs to be included in the Rule 20 Annual Report, in addition to any figures typically tracked in a balancing account. Any funds authorized in a General Rate Case for the purpose of a Rule 20 Program, shall be reserved exclusively for the purpose and benefit of the Rule 20 Programs as authorized in the Rule 20 tariff. Rule 20 Program funds may not be reallocated to any other purpose unless the Commission expressly authorizes it.

**Rule 20 Annual Report to the Commission.** Electric utilities should report to the Commission annually information about all of the projects, expenditures, and work credit balances for all communities in its service territory. By April 1 each year, each electric utility shall (i) serve a confidential version of the Rule 20 Annual Report to the Commission's Energy Division, and (ii) serve to the service list of this proceeding (and the service list of any successor proceeding) and post a public version of the Rule 20 Annual Report on its Rule 20 webpage. The Rule 20 Annual Report shall follow the guidelines for formatting and content on the Commission's webpage for Rule 20.<sup>45</sup> The public

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<sup>44</sup> In D.19-05-020, the Commission directed SCE to establish a one-way balancing account for its Rule 20A program. SCE filed Advice Letter 4014-E to establish this balancing account.

<sup>45</sup> The Commission's Energy Division will post guidelines for Rule 20 Annual Reports and Rule 20 Annual Updates on the Commission's Rule 20 webpage by November 1 each year. The Commission's Rule 20 webpage is currently located at [www.cpuc.ca.gov/Rule20](http://www.cpuc.ca.gov/Rule20).

version of the Rule 20 Annual Report shall include nonconfidential information about the Rule 20 subprograms at the level of detail described in Attachment A.<sup>46</sup> The confidential version of the Rule 20 Annual Report shall also include information about Rule 20 projects at the level of detail described in Attachment B. This new reporting requirement will replace previous requirements to provide annual reports to the Commission on January 1, 2022.

**Rule 20 Annual Updates to Communities.** Electric utilities should provide annual updates to each community about its Rule 20 projects, expenditures, and work credit balance. By April 1 each year, each electric utility shall send a Rule 20 Annual Update to each local government in its service territory. The Rule 20 Annual Updates shall follow the guidelines for content on the Commission's webpage for Rule 20. Each Rule 20 Annual Update shall include information about the status of a local government's projects and work credits at the level of detail described in Attachment A.

**Records Documentation and Retention.** Each electric utility shall retain, starting from the effective date of this decision, the following documentation for each of its Rule 20 programs for a minimum of fifteen years from the completion of the project: (a) all project bids, purchase orders, contracts, invoices, and payments, and (b) all calculations of overhead costs and any other charges for the utility's work on a project by line item. Each electric utility shall provide a copy of this information to any local government or ratepayer advocate within 30 days of written request enclosing a signed nondisclosure agreement in the standard form attached to the Rule 20 Guidebook.

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<sup>46</sup> This is substantially the level of detail of the electric utilities' responses to data requests by the Commission's Energy Division, which informed the February Staff Proposal.

We also revisit the electric utility audit requirements of Ordering Paragraph 4 of the OIR. On July 18, 2017, the respondent electric utilities served proposed audit scopes on the service list. On August 7, 2018, the director of the Energy Division sent a letter to the respondent electric utilities modifying and approving the audit proposals of PG&E, SCE and SDG&E. The letter waived the audit requirements for PacifiCorp, BVES, and Liberty Utilities. On June 6, 2019, the assigned ALJ issued a ruling to suspend the audit requirements of SCE and SDG&E. Although the audit is currently suspended, the utilities should maintain all Rule 20 project files that would be subject to the audit (as described in the audit scope) in the event the audit is reinstated over the course of this proceeding.

Rather than wait for additional audit reports for SCE and SDG&E, we direct SCE and SDG&E to implement the same Rule 20 program improvements that we directed PG&E to implement based on the PG&E Audit Report. Accordingly, we waive the audit requirements of the OIR for SCE and SDG&E. However, we may audit any of the IOUs' Rule 20 programs in the future to assess the implementation of process improvements required by this decision.

In comments on the proposed decision, PG&E and SCE proposed to hire and recover the costs of a third-party facilitator to assist with developing the Rule 20 Guidebooks. This is a reasonable request. We will permit PG&E, SCE and/or SDG&E to hire a third-party facilitator to assist with the joint development of the Rule 20 Guidebooks and absorb this modest expenditure through their existing Rule 20 budgets.

In comments on the proposed decision, BVES requested an exemption from the new administrative requirements until BVES receives Rule 20 funds through a General Rate Case or other applicable proceeding before the

Commission. BVES asserts that it has no operational Rule 20 program, no Rule 20 funds, and no Rule 20A projects completed between 2005 and the present. BVES asserted that it is unlikely to have a Rule 20 program in the near future. BVES points out that the Commission has exempted it from administrative requirements in the past due to its small size. No party opposed this request. We conclude that it is appropriate to exempt BVES from the new requirements of Sections 4 and 5 of this decision until the Commission authorizes Rule 20 funding for BVES.

## **6. Phase 2 Issues and Extension of Statutory Deadline**

We note that the scoping memo included 29 sub-questions related to the Phase 1 issues. After conducting workshops in April 2019, the Commission's Energy Division developed the February Staff Proposal to recommend solutions to address the most pressing questions. After review of party comments on the February Staff Proposal, the assigned ALJ issued a ruling requesting party comments on additional questions and the September Staff Proposal.

Based on our review of the record, this decision resolves the Phase 1 issues identified in Section 3 of this decision. We also determine here that it is not necessary for this proceeding to address all of the 29 sub-questions listed in the scoping memo.

We will address the following issues in Phase 2 of this proceeding:

- a) Whether to add Rule 20A project eligibility criteria for wildfire safety and emergency-related undergrounding or otherwise modify Rule 20A project eligibility criteria;
- b) Whether to modify the Rule 20A program to support projects in underserved and disadvantaged communities;
- c) Whether to take additional steps to support the completion of active Rule 20A projects; and
- d) Whether to modify or discontinue the Rule 20D program.

We find that it is not feasible to conclude the proceeding by the current statutory deadline, August 10, 2021. For Phase 2 of this proceeding, we extend the statutory deadline imposed by Public Utilities Code Section 1701.5(a) for 12 months after the effective date of this decision.

## **7. Comments on Proposed Decision**

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure.

Comments were filed on April 27, 2021, by City of Hayward, Town of Los Altos Hills, California Cable & Telecommunications Association, City of San Jose, City of San Marcos, Los Angeles County, Cal Advocates, TURN, SCE, City of Anaheim Public Utilities Department and California Municipal Utilities Association, BVES, City of Del Mar, League of California Cities, City of Chula Vista, PG&E, City of Laguna Beach, City of Berkeley, SDG&E, Pacific Bell Telephone Company d/b/a AT&T California and AT&T Mobility, Citizens Telecommunications Company of California Inc. d/b/a Frontier Communications of California, Frontier Communications of the Southwest Inc. and Frontier California Inc., PacifiCorp, and California Association of Counties.

Reply comments were filed on May 3, 2021, by California State Association of Counties, California Cable & Telecommunications Association, City of Anaheim Public Utilities Department and California Municipal Utilities Association, SDG&E, SCE, PG&E, PacifiCorp, Pacific Bell Telephone Company d/b/a AT&T California and AT&T Mobility, Citizens Telecommunications Company of California Inc. d/b/a Frontier Communications of California, Frontier Communications of the Southwest Inc. and Frontier California Inc.

Clarifying revisions have been incorporated throughout this decision to address party comments, where appropriate.

## **8. Assignment of Proceeding**

President Marybel Batjer is the assigned Commissioner and Stephanie S. Wang is the assigned Administrative Law Judge in this proceeding.

### **Findings of Fact**

1. By augmenting the SDG&E Rule 20 program with a surcharge program authorized in 2002, the City of San Diego has undergrounded 429 miles of overhead electrical facilities and 1,238 miles remain as of July 2019.
2. Since 1967, the Rule 20A program has funded conversion of around 2,500 out 147,000 miles (0.017 percent) of overhead electrical facilities to underground in California.
3. From 1968 to 2015, the Rule 20 undergrounding program spent approximately \$3.4 billion.
4. As of January 2021, the value of unused and uncommitted Rule 20A work credits, across all electric utility service territories, is over \$1.56 billion.
5. Only a handful of the 503 communities eligible for the Rule 20A program have completed projects worth hundreds of millions of dollars funded by ratepayer contributions. On the other hand, 82 eligible communities have not completed any Rule 20A projects since 2005.
6. As of March 2019, 57 communities have borrowed beyond Rule 20A's five-year forward limit placing them in "work credit debt."
7. Many communities cannot accrue enough Rule 20A work credits for a single project. Other communities have a higher demand for work credits than the Rule 20A allocation system can satisfy.

8. Through an unsanctioned secondary work credit marketplace, some communities sell, trade, or donate their unused Rule 20A work credits to other communities that need them to complete a project.

9. The PG&E Audit Report recommended modifying the Rule 20A Tariff to prevent work credit trading.

10. The PG&E Audit Report recommended that the Commission modify the Rule 20A Tariff to limit obligations to contribute to the program to ratepayers in communities that participate in the program.

11. For the period of January 1, 2007 through December 31, 2016, the PG&E Audit Report found that PG&E underspent \$123 million (22 percent) of Rule 20A authorized budgets.

12. The PG&E Audit Report uncovered additional major concerns with PG&E's administration of the Rule 20A program, including:

- a. PG&E reprioritized Rule 20A funds and resources away from the program without retaining documentation of where these funds were spent;
- b. The final costs of Rule 20A projects completed during the audit period exceeded initial estimates by 35 percent;
- c. PG&E's underspending on the program resulted in project delays which increased project costs;
- d. PG&E systematically underspent on the program compared with its forecasts over nearly the entire audit period;
- e. Based on a benchmarking study, PG&E's undergrounding costs per mile were higher than the industry maximum for suburban and rural areas;

- f. Since the start of PG&E's implementation of purported improvements to the program, the average number of Rule 20A projects PG&E completed has declined and underspending has increased; and
- g. PG&E lacks appropriate documentation and records maintenance protocols to enable the Commission to ensure that Rule 20A authorized funds will be used appropriately going forward.

13. The PG&E Audit Report shows that PG&E did not prudently manage its Rule 20A program; PG&E's systematic underspending on the Rule 20A program has resulted in higher project costs, and PG&E's poor documentation and workpaper retention processes for Rule 20A raise "fraud risk factors".

14. The PG&E Audit Report included 50 recommendations for improving PG&E's management of the program and enhancing the Commission's oversight of the program.

15. BVES does not have an operational Rule 20 program and does not have any Rule 20 funding authorized by the Commission.

16. Because significant issues remain for Phase 2, this proceeding cannot be completed by the current statutory deadline, August 10, 2021.

## **Conclusions of Law**

1. Each electric utility should modify the project eligibility criteria in its Rule 20A Tariff to provide as follows: "(iii) Wheelchair access is limited or impeded in a manner that is not compliant with the Americans with Disabilities Act; (iv) The street or road or right-of-way adjoins or passes through a civic area or public recreation area or an area of significant scenic, cultural, and/or historic interest to the general public; or (v) The street or road or right-of way is considered an arterial street or major collector as defined by the California Department of Transportation's California Road System functional classification system."

2. The Commission should not sunset the Rule 20A program or modify the Rule 20B or Rule 20C programs at this time.
3. The Commission should discontinue authorization of new Rule 20A work credits for allocation after December 31, 2022.
4. Electric utilities should not allocate new Rule 20A work credits after December 31, 2022.
5. It is reasonable to direct electric utilities to report on the active or inactive status of each community (in accordance with Resolution E-4971) and provide an accounting of unused work credits of inactive communities and communities in need of work credits or funding to complete active Rule 20A projects.
6. The Commission should not establish a wind down period or deadline for the use of Rule 20A work credits at this time.
7. The Commission should clarify that the unregulated practice of work credit trading in secondary markets is banned effective immediately, including the practice of donating or bartering work credits. Electric utilities should not facilitate unauthorized trades of work credits between communities executed after the effective date of this decision. The Commission should provide exceptions for intra-county donations of work credits from a county government to cities and towns within the county or from a city or town to its county government, and to allow credit pooling amongst two or more adjoining municipalities for a project with community benefit for the adjoining municipalities.
8. The Commission should direct each electric utility to clarify in its Rule 20A Tariffs that (i) unauthorized work credit trading is not permitted, except for intra-county donations of work credits from a county government to cities and towns within the county or from a city or town to its county government, and

pooling of work credits amongst two or more adjoining municipalities for a project with community benefit for the adjoining municipalities, and (ii) the utility does not have the discretion to allow communities to borrow work credits from future allocations beyond any 2022 allocation.

9. PG&E, SCE and SDG&E should jointly draft consistent Rule 20 Guidebooks.

10. The program guidebooks of each utility may diverge on details of certain procedures but should be consistent regarding major rules.

11. PG&E, SCE and SDG&E should meet and confer with the following utilities and stakeholders and incorporate their input into the guidebook: Liberty, PacifiCorp, the League of California Cities, the California State Association of Counties, local governments, and representatives of rural communities such as Rural County Representatives of California, and communications carriers.

12. The guidebook should detail costs and responsibilities of each party at each stage of projects on an average project timeline per subprogram.

13. The guidebook should also provide clear IOU contacts for projects pertinent to each subprogram, a timeline to anticipate annual reports, and links to the Rule 20 program webpages of the Commission and the IOUs.

14. Within 120 days of the effective date of this decision, PG&E, SCE and SDG&E should each file and serve on the service list of this proceeding a Tier 2 advice letter to update the Rule 20 Guidebook on behalf of PG&E, SCE, and SDG&E.

15. Within 90 days of the date that the first Rule 20 Guidebook is approved in accordance with this decision, Liberty and PacifiCorp should each file and serve an updated guidebook for its Rule 20 programs based on the approved Rule 20

Guidebooks for PG&E, SCE, and SDG&E. Electric utilities should post their updated Rule 20 Guidebooks to their Rule 20 websites.

16. PG&E, SCE and/or SDG&E may hire a third-party facilitator to assist with the joint development of the Rule 20 Guidebooks and absorb the costs of the third-party facilitator through their existing Rule 20 budgets.

17. Each utility should file a Tier 1 advice letter to establish and/or modify an existing Rule 20 one-way balancing account, with subaccounts for each of its Rule 20 sub-programs, within 30 days of this decision. Each account should track all costs to be included in the Rule 20 Annual Report, in addition to any figures typically tracked in a balancing account.

18. Any funds authorized in a General Rate Case for the purpose of a Rule 20 Program should be reserved exclusively for the purpose and benefit of the Rule 20 Programs as authorized in the Rule 20 tariff. Rule 20 Program funds should not be reallocated to any other purpose unless expressly authorized by the Commission.

19. By April 1 each year, each electric utility should (i) serve a confidential version of the Rule 20 Annual Report to the Commission's Energy Division, and (ii) serve to the service list of this proceeding (and the service list of any successor proceeding) and post a public version of the Rule 20 Annual Report on its Rule 20 webpage.

20. The Rule 20 Annual Report should follow the guidelines on the Commission's webpage for Rule 20.

21. The public version of the Rule 20 Annual Report should include nonconfidential information about the Rule 20 subprograms at the level of detail described in Attachment A.

22. The confidential version of the Rule 20 Annual Report should also include information about Rule 20 projects at the level of detail described in Attachment B. This new reporting requirement will replace previous requirements to provide annual reports to the Commission on January 1, 2022.

23. By April 1 each year, each electric utility should send a Rule 20 Annual Update to each local government in its service territory. The Rule 20 Annual Updates should follow the guidelines on the Commission's webpage for Rule 20. Each Rule 20 Annual Update should include information about the status of a local government's projects and work credits at the level of detail described in Attachment A.

24. Each electric utility should retain, starting from the effective date of this decision, the following documentation for its Rule 20 programs for a minimum of fifteen years from the completion of the project: (a) all project bids, purchase orders, contracts, invoices, and payments, and (b) all calculations of overhead costs and any other charges for the utility's work on a project by line item. Each electric utility should provide a copy of this information to any local government or ratepayer advocate within 30 days of written request enclosing a signed nondisclosure agreement in the standard form attached to the Rule 20 guidebook.

25. It is appropriate to exempt BVES from the new requirements of Sections 4 and 5 of this decision until the Commission authorizes Rule 20 funding for BVES.

26. The Commission should waive the audit requirements set forth in the OIR for SCE and SDG&E.

27. This decision resolves the Phase 1 issues identified in Section 3 of this decision. It is not necessary for this proceeding to address all of the 29 sub-questions listed in the scoping memo.

28. We should address the following select issues in Phase 2 of this proceeding:
29. Whether to add Rule 20A project eligibility criteria for wildfire safety and emergency-related undergrounding or otherwise modify Rule 20A project eligibility criteria;
30. Whether to modify the Rule 20A program to support projects in underserved and disadvantaged communities;
31. Whether to take additional steps to support the completion of active Rule 20A projects; and
32. Whether to modify or discontinue the Rule 20D program.
33. The Commission should extend the statutory deadline imposed by Public Utilities Code Section 1701.5(a) for 12 months after the date of this decision to consider Phase 2 issues.

**O R D E R**

**IT IS ORDERED** that:

1. The California Public Utilities Commission shall discontinue authorization of new Electric Rule 20A work credits for allocation after December 31, 2022.
2. Electric utilities shall not allocate new Rule 20A work credits after December 31, 2022.
3. Southern California Edison Company, San Diego Gas & Electric Company, Pacific Gas and Electric Company, Liberty Utilities, and PacifiCorp shall each
  - (a) notify in writing each community within 30 days of this decision of the community's status (active or inactive), the community's current work credit balance, and if applicable, how to change its status from inactive to active;
  - (b) serve on the service list of this proceeding by February 1, 2022, a list of currently inactive communities, as defined in Resolution E-4971, and the unused

work credit balances of these currently inactive communities; (c) serve on the service list of this proceeding by February 1, 2022, a list of currently active communities, as defined in Resolution E-4971, with current work credit balances, projected work credit balances (as of December 31, 2022), all Rule 20A projects (proposed and under construction) per community, current Rule 20A project cost estimates, and projected work credit shortfall (the difference between projected work credit balances and total Rule 20A estimated project costs).

4. The unregulated practice of trading Rule 20A work credits in secondary markets is banned, effective immediately, with exceptions (a) for intra-county donations of work credits from a county government to cities and towns within the county or from a city or town to its county government, and (b) to allow credit pooling amongst two or more adjoining municipalities for a project with community benefit for the adjoining municipalities. Southern California Edison Company, San Diego Gas & Electric Company, Pacific Gas and Electric Company, Bear Valley Electric Service Company, Liberty Utilities, and PacifiCorp shall not facilitate unauthorized trades of work credits between communities executed after the effective date of this decision.

5. Southern California Edison Company, San Diego Gas & Electric Company, Pacific Gas and Electric Company, Liberty Utilities, and PacifiCorp shall each file a Tier 1 advice letter within 30 days of the effective date of this decision with its current Electric Rule 20 Tariff, including the following modifications to implement this decision: (a) clarify that unauthorized work credit trading is not permitted, except for intra-county donations of work credits from a county government to cities and towns within the county or from a city or town to its county government, and pooling of work credits amongst two or more adjoining municipalities for a project with community benefit for the adjoining

municipalities, (b) clarify that the utility does not have the discretion to allow communities to borrow work credits from future allocations beyond any 2022 allocation, and (c) modify the project eligibility criteria in its Rule 20A Tariff to provide as follows: “(iii) Wheelchair access is limited or impeded in a manner that is not compliant with the Americans with Disabilities Act; (iv) The street or road or right-of-way adjoins or passes through a civic area or public recreation area or an area of significant scenic, cultural, and/or historic interest to the general public; or (v) The street or road or right-of way is considered an arterial street or major collector as defined by the California Department of Transportation’s California Road System functional classification system.” Each electric utility shall serve this advice letter on the service list of this proceeding.

6. Southern California Edison Company (SCE), San Diego Gas & Electric Company (SDG&E), and Pacific Gas and Electric Company (PG&E) shall jointly draft Electric Rule 20 Guidebooks. PG&E, SCE and SDG&E shall meet and confer with the following utilities and stakeholders and incorporate their input into the guidebook: Liberty Utilities, PacifiCorp, the League of California Cities, the California State Association of Counties, local governments, and representatives of rural communities such as Rural County Representatives of California, and communications carriers.

7. Within 120 days of the effective date of this decision, Southern California Edison Company (SCE), San Diego Gas & Electric Company (SDG&E), and Pacific Gas and Electric Company (PG&E) shall each file and serve on the service list of this proceeding a Tier 2 advice letter to adopt its Rule 20 Guidebook.

8. Southern California Edison Company (SCE), San Diego Gas & Electric Company (SDG&E), and Pacific Gas and Electric Company (PG&E) shall each

post its approved Electric Rule 20 Guidebook to its Electric Rule 20 website within 15 days of approval of its guidebook.

9. Southern California Edison Company (SCE), San Diego Gas & Electric Company (SDG&E), and Pacific Gas and Electric Company (PG&E) may hire a third-party facilitator to assist with the joint development of the Rule 20 Guidebooks and absorb this modest expenditure through their existing Rule 20 budgets.

10. Within 90 days of the date that the first Rule 20 Guidebook is approved in accordance with this decision, Liberty Utilities and PacifiCorp shall each file and serve a Tier 2 advice letter requesting approval for an updated Rule 20 Guidebook based on the approved Rule 20 Guidebook for Southern California Edison Company, San Diego Gas & Electric Company, and Pacific Gas and Electric Company.

11. Liberty Utilities and PacifiCorp shall each post its approved Electric Rule 20 Guidebook to its Electric Rule 20 website within 15 days of approval of its guidebook.

12. Southern California Edison Company, San Diego Gas & Electric Company, Pacific Gas and Electric Company, Liberty Utilities and PacifiCorp shall each file a Tier 1 advice letter to establish and/or modify an existing Rule 20 one-way balancing account, with subaccounts for each of its Rule 20 programs within 30 days of the effective date of this decision. Each account shall track all costs to be included in the Rule 20 Annual Report, in addition to any figures typically tracked in a balancing account.

13. Any funds authorized in a General Rate Case for the purpose of a Rule 20 Program shall be reserved exclusively for the purpose and benefit of the Rule 20 Programs as authorized in the Rule 20 tariff. Rule 20 Program funds shall not be

reallocated to any other purpose without the express authorization of the Commission. The Rule 20 Annual Report should follow the guidelines on the Commission's webpage for Rule 20.

14. By April 1 each year, Southern California Edison Company, San Diego Gas & Electric Company, Pacific Gas and Electric Company, Liberty Utilities and PacifiCorp shall each (i) serve a confidential version of the Rule 20 Annual Report to the Commission's Energy Division, and (ii) serve to the service list of this proceeding (and the service list of any successor proceeding) and post a public version of the Rule 20 Annual Report on its Rule 20 webpage.

15. By April 1 each year, Southern California Edison Company, San Diego Gas & Electric Company, Pacific Gas and Electric Company, Liberty Utilities and PacifiCorp shall each send a Rule 20 Annual Update to each local government in its service territory. The Rule 20 Annual Updates should follow the guidelines on the Commission's webpage for Rule 20.

16. Starting from the effective date of this decision, Southern California Edison Company (SCE), San Diego Gas & Electric Company (SDG&E), Pacific Gas and Electric Company (PG&E), Liberty Utilities (Liberty) and PacifiCorp shall each retain the following documentation for its Rule 20 programs for a minimum of 15 years from the completion of the project: (a) all project bids, purchase orders, contracts, invoices, and payments, and (b) all calculations of overhead costs and any other charges for the utility's work on a project by line item. PG&E, SCE, SDG&E, Liberty and PacifiCorp shall each provide a copy of this information to any local government or ratepayer advocate within 30 days of written request enclosing a signed nondisclosure agreement in the standard form attached to the Rule 20 guidebook.

17. The statutory deadline of this proceeding is extended for 12 months after the effective date of this decision.

18. The Commission waives the audit requirements set forth in the Order Instituting Rulemaking to Consider Revisions to Electric Rule 20 and Related Matters for Southern California Edison Company and San Diego Gas & Electric Company.

19. All motions not previously ruled on are hereby denied.

20. Rulemaking 17-05-010 remains open.

This order is effective today.

Dated June 3, 2021, at San Francisco, California.

MARYBEL BATJER  
President  
MARTHA GUZMAN ACEVES  
CLIFFORD RECHTSCHAFFEN  
GENEVIEVE SHIROMA  
DARCIE HOUCK  
Commissioners

R.17-05-010 COM/MBL/mph

## **ATTACHMENT A**

## **Attachment A**

### **Annual Reports for Rule 20 Programs**

The Annual Reports for Rule 20 Programs shall include information at the community level as well as at the project level. The Commission's Energy Division will post guidelines for the Annual Reports by November 1 each year on the Commission's webpage for Rule 20, currently located at [www.cpuc.ca.gov/rule20](http://www.cpuc.ca.gov/rule20). The guidelines will include filing guidance, format, definitions, and spreadsheet templates.

#### **Community Level Data**

Community level data shall provide an overview of each community and their participation in each Rule 20 program to date. It shall include, but not be limited to:

- the names of all communities,
- a geographic information system (GIS) shape file,
- the number of primary circuit miles converted to date,
- the total value of projects completed to date,
- the names of relevant applicants, and
- the number of project in each stage.

For the Rule 20A Program, community level data shall include comprehensive work credit data for each local government the utility serves for all years Rule 20A has been in operation, the status (active or inactive) of each local government, and more.

#### **Project Level Data**

Project level data shall include, but not be limited to:

- an overview of each project to date – anticipated, in progress by stage, and completed,
- the number of primary circuit miles (to be) converted,-
- the project timeline to date,
- project area characteristics,
- issues identified (environmental, cultural, and/or others) with date identified,
- total project cost
- total project cost disaggregated by responsible party at current stage and what it pays for,
- project work completed, and
- any remaining poles and other facilities.

For the Rule 20A Program Annual Report, project level data shall include the public interest criteria under which the project qualifies, and the total costs paid with each source of funds (*i.e.* ratepayer, shareholders, community, and etc.). Energy Division may require less detailed reports for Rule 20B and Rule 20C projects.

**(END OF ATTACHMENT A)**

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## **ATTACHMENT B**

**Attachment B**

**Confidential Project Cost Information**

The Annual Reports for Rule 20 Programs shall include confidential project information including, but not be limited to, bid documents, purchase orders, project contracts, invoices, and payments made.

The Commission's Energy Division will post guidelines for the Confidential Project Cost Information component of the Annual Reports by November 1 each year on the Commission's webpage for Rule 20, currently located at [www.cpuc.ca.gov/rule20](http://www.cpuc.ca.gov/rule20). Energy Division may require less detailed reports for Rule 20B and Rule 20C projects.

A summary table of key data points shall include, but not be limited to, the top bid prices, the project tied to those bids, the community/applicant ties to that project, payments made, and date of payment.

**(END OF ATTACHMENT B)**