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

Order Instituting Rulemaking to Revise and Clarify Commission Regulations Relating to the Safety of Electric Utility and Communications Infrastructure Provider Facilities.

R.08-11-005
(Filed November 6, 2008)

**OPENING BRIEF OF PACIFIC GAS AND ELECTRIC
COMPANY (U39E) ON FINAL PROPOSED RULES OF
CPSD AND OTHER PARTIES IN PHASE 1 OF R.08-11-005**

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I. INTRODUCTION AND PROCEDURAL HISTORY

The *Administrative Law Judge's Ruling Revising the Proceeding Schedule and the Contents of the Joint Workshop Report*, issued on May 4, 2009, states:

The workshop report and the briefs shall together provide a comprehensive summary of each party's position on Phase 1 issues, including jurisdictional issues. These documents may be used as a primary source of material for drafting the proposed decision. Parties should assume that if a particular fact, argument, recommendation, etc., does not appear in (or is not cited in) the workshop report or briefs, it may not appear in the draft decision. (Ruling at p.5-6.)

The *Joint Party Workshop Report For Workshops Held April 28-29, 2009* (Workshop Report) filed by Pacific Gas and Electric Company (PG&E) on behalf of the workshop participants on May 14, 2009, sets forth CPSD's final proposed Phase 1 rules, as well as proposed alternative rules that purport to address the same issues as those addressed by CPSD (but through different approaches), and includes the parties' positions and comments about each proposed rule or alternative rule.

PG&E's *Opening Brief* will: 1) summarize PG&E's position on each of CPSD's Phase 1 Proposed Rule Changes (PRCs) as well as relevant alternative proposals; 2) identify PG&E's remaining concerns with the adoption of several of CPSD's Phase 1 proposals; and 3) discuss several general or overarching issues associated with Phase 1 issues. PG&E will not address here any issue or proposed rule that has been reserved for Phase 2 of these proceedings.

The Commission initiated this *Order Instituting Rulemaking (OIR)* on November 6, 2008, to consider revising and clarifying its regulations designed to protect the public from potential hazards, including fires, which may be caused by electric transmission, distribution, or communications providers' facilities. The OIR set forth an initial scope for the proceeding that included the following six areas for consideration:

1. Immediate reporting of fire-related incidents and full cooperation with Commission staff. This proceeding will not consider the extent that entities may deny access to documents, information, and witnesses that they deem protected by attorney-client privilege and/or the attorney work product doctrine.
2. Applying GO 165 or similar maintenance and inspection requirements to all electric transmission and CIP facilities, including CIP facilities located on poles owned by publicly owned utilities;
3. Overloading of utility poles.
4. Prompt reporting and resolution of hazards/violations that one pole occupant may observe in another pole occupant's facilities, including ways to improve (i) safety-related communications between pole occupants (e.g., marking CIP facilities with contact information), and (ii) the process used by CPSD to determine if the hazard/violation reported by one pole occupant to another has been resolved;
5. Vegetation management in high risk fire areas; and
6. Mitigating high speed wind dangers.

On December 3, 2008, parties filed comments on the appropriate scope of this proceeding. Parties filed reply comments on December 17, 2008. In the *Assigned Commissioner's Ruling and Scoping Memo*, issued on January 6, 2009, these six areas were

included in the scope of the proceeding, but the proceeding was split into two phases. The Memo stated:

The first phase will consider measures to reduce fire hazards that can be implemented in time for the 2009 autumn fire season in Southern California. As contemplated by the OIR, the scope of Phase 1 will be limited to measures proposed by the Commission's Consumer Protection and Safety Division (CPSD) following input from the parties. Phase 2 will address measures that require more time to consider and implement, such as proposed measures that require a formal environmental review. (ACR, pp. 2-3)

Five days of workshops were held in February^{1/}. During those workshops, CPSD facilitated the proceedings and established the agendas. The workshops were webcast, so that interested parties would be able to participate in the proceedings remotely. CPSD offered parties the opportunity to briefly present their positions on each of six areas identified in the OIR. CPSD submitted its proposed rules on March 6. An additional workshop was scheduled for March 16 to give parties an opportunity to respond and discuss CPSD's proposals. *Opening Comments on CPSD's Proposed Rules* were filed on March 27, and *Reply Comments* were filed on April 8. Parties requesting evidentiary hearings were to file a *Motion for Evidentiary Hearings* on April 3. PG&E, along with Southern California Edison (SCE), San Diego Gas and Electric Company (SDG&E), PacifiCorp, and Sierra Pacific, filed motions requesting evidentiary hearings.

On April 14, the Commission held a Prehearing Conference in this proceeding. At that conference, PG&E and the other investor-owned electric utilities suggested that, rather than prepare for evidentiary hearings, more progress on the development of workable rules would be made if informal technical workshops were held among the parties. In addition to attempting to reach consensus on proposed rule changes, another goal of the workshops was to crystallize the positions of CPSD and the other parties on the remaining proposed rule changes, and develop a

^{1/} February 4, 5, 17, 18, and 26.

workshop report that would assist the Commission in resolving the issues in Phase 1 of this proceeding.

On April 20, ALJ Kenney issued his ruling cancelling evidentiary hearings, setting a workshop, and making other revisions to the proceeding schedule. PG&E hosted two days of informal workshops in San Francisco on April 28 and 29. Subsequent to the workshops, parties contributed to the development of the *Joint Party Workshop Report*, which PG&E filed on May 14, 2009. That report distills all of the disparate potential Phase 1 issues that have been raised in this proceeding into nine final *CPSD Proposed Rule Changes*. It also sets forth parties' positions on each of the proposals, and alternative language or proposals for the Commission's consideration.

II. OVERARCHING PRINCIPLES AND ISSUES

A. Summary of PG&E's Issues

PG&E supports the Commission's effort to adopt rules to mitigate the catastrophic fire risk in California, and has actively participated in this proceeding to help craft workable rules that potentially will have an impact on reducing the fire risk. In addition to responding to each of CPSD's PRCs, PG&E makes the following points in this brief:

- Only those rules that have the potential to mitigate the risk of catastrophic fires should be adopted in this phase of this proceeding
- Given the expedited nature of this phase of this rulemaking, PG&E suggests that whichever proposals the Commission adopts should be in the form of either Ordering Paragraphs in a decision or Interim Rules to allow more time for appropriate deliberation before finalizing any rules revisions or new rules for the General Orders;
- PG&E should be provided the opportunity to recover all incremental costs associated with implementing the rules adopted in this proceeding. PG&E proposes a cost recovery mechanism for costs incurred prior to PG&E's next General Rate Case, which will take effect January 1, 2011.

B. Given the Expedited Nature of This Proceeding, The Commission Should Adopt Interim Rules or Ordering Paragraphs, Rather Than Rule Changes to the General Orders

PG&E fully supports the Commission's efforts to evaluate its existing safety rules and modify or adopt new rules that will help mitigate the risk of catastrophic fires. Given the catastrophic fires experienced in 2007 in southern California, it is understandable that the Commission wishes to expedite this proceeding so that actions can be taken prior to the next fire season.

PG&E has struggled, however, with this process of developing general order rule changes in such a hurried manner. The Commission's General Order 95 is a several-hundred page document that addresses technical design and construction rules for overhead supply and communications lines in California. It also includes broad inspection and maintenance requirements applicable to electric and communications companies. These rules are what guide electric and communications companies' design and construction practices state-wide, and changes to these rules have broad ramifications throughout the state. Because of this, most changes to GO 95 are discussed, reviewed and formulated in a deliberative process by a broad industry group (called the GO 95/128 Rules Committee). This committee is made up of representatives of all of the major utilities in California, as well as the Commission's staff, and their meetings are open to the public. This group of experts review propose rule changes to determine not only their appropriateness from a technical or engineering perspective, but also whether the proposals are consistent with the rest of the rules and directives contained in GO 95. The Commission has also relied on industry input through broad rulemaking proceedings, which involve many technical and policy-type workshops, with many discussions and rule iterations occurring prior to the adoption of final rules. This review process is time-consuming, but necessary to ensure the Commission has cohesive and implementable rules governing the design and construction of the electric and communications infrastructure in California and to avoid creating downstream problems or unanticipated and unintended consequences.

In Phase 1 of this rulemaking proceeding, the Commission did not avail itself of this industry review process. Rather, it placed the responsibility on CPSD to propose rule changes to reduce the risk of catastrophic fires from occurring. CPSD took this responsibility very seriously and proposed many rules that (from CPSD's perspective) were intended to mitigate fire risk. What was evident from the feedback provided by parties to this proceeding, many of CPSD's proposals were overly broad, inadequately drafted, inconsistent with other parts of General Order 95, or not directed at reducing fire risk in southern California, consistent with the scope of Phase 1.^{2/}

To CPSD's credit, they made many changes to address concerns raised by parties. Indeed, after every workshop, CPSD made modifications to their proposed rules based on constructive feedback provided by parties in the proceeding. By the time of the Prehearing Conference in April, CPSD's proposals had been narrowed down to nine PRCs. However, two months to work on significant GO rule changes is just not enough time to reach consensus among all parties who will be implementing and enforcing the new rules. Not only does the Commission normally allow much more time to adopt modifications or new rules to its general orders, it is common practice in the 49 other states to have a multi-year process for evaluating

^{2/} PG&E takes issue with CPSD's comments in response to PRC 1, where they characterize CPSD, LA County, DRA, and TURN as "Public Interest Parties" and distinguish them from the other parties in this proceeding by alleging that they "often voted for or neutral on proposals for less safety in regulations than the limited, safety requirements in CPSD's further revised proposals for Phase 1". CPSD also claims that "the weight given to the votes of the Public Interest Parties should be greater than the weight given to the number of votes from the regulated entities".

First, it is wrong of CPSD to believe that they are more concerned with public safety than the utilities whose livelihood is dependent upon providing safe and reliable service. PG&E certainly takes its safety obligations extremely seriously, and routinely implements procedures in excess of minimum safety requirements. PG&E's issues with CPSD's proposals were centered around whether the proposals were drafted in such a way as to achieve the intended outcome. CPSD's intent was to improve safety, but many of their proposals as written would not achieve their intent.

Second, the reason CPSD made the changes to their proposals was not to compromise the proposals and lessen the protections to the public – it was to attempt to make their proposals implementable. CPSD's proposals were often much too detailed and process-driven, making them very difficult for large and diverse entities to implement. In response to the broad, and inartfully written proposals, parties used their best efforts to help modify the proposals to make them more able to be successfully implemented. With more time, PG&E believes there is a greater potential to achieve consensus on most of the rules. However, there remain significant problems with several of the proposals, which will be the subject of this brief.

and adopting new rules. For example, the National Electric Safety Code is updated on a five-year cycle in a formalized process where parties propose rules, discuss them in subcommittees, modify them, issue them for comment, and finalize them. This process takes the full five years to complete.^{3/} While the April workshops and the resulting Joint Party Workshop Report resulted in significant narrowing of the issues for consideration and clarified parties' positions and rationale for alternative proposals, only one of CPSD's PRCs reached consensus, and the rule was more in line with guidance rather than a requirement to comply with.

To accommodate this expedited situation, PG&E urges the Commission to adopt new regulations or modifications as "interim" in nature, or as ordering paragraphs to its decision, rather than permanent changes to the General Orders. This will allow parties an opportunity to fully analyze and vet the changes prior to their adoption, and propose modifications that will allow the rules to be successfully implemented, and achieve their intended outcome.

C. There will Be Additional Incremental and Other Significant Costs Incurred Associated with Any Revised or New Rules.

There are significant cost issues that must be addressed associated with the implementation of these proposed rules.

First, there are specific incremental costs associated with the revision or addition of some of the proposed rules. Of the southern California counties identified for Phase 1 action, PG&E has overhead electric distribution facilities only in Santa Barbara County. PG&E has attempted to estimate those incremental costs in Santa Barbara County in the summary table below, rule by rule. Because the Phase 1 application to PG&E is fairly limited, PG&E's additional incremental costs may appear relatively modest in some cases. However, costs incurred before 2011 (when the next rate case becomes effective) were not anticipated and have not been provided for in PG&E's current revenues. Section VI, A below will discuss the appropriate cost recovery mechanism for PG&E to recover these costs.

^{3/} See, Exhibit A: Excerpts from the National Electrical Safety Code pertaining to the procedures for the revision of the code.

Second, most of PG&E's 2.3 million wood poles are not individually identified or numbered. A number of the proposed rules (which concern the reporting and resolution of safety hazards, intrusive testing, pole loading and additional construction, safety factor calculations, etc.) contemplate either improved communication among the utilities that occupy space on the poles or require additional documentation and tracking of information associated with the poles. To effectively implement the communication and documentation required, all of PG&E's poles must be numbered and made part of an asset registry. The estimated cost to number all PG&E's wood poles is \$14 million, and it would take approximately 3 years to complete the numbering.

The total estimated additional or incremental costs associated with CPSD's proposed revised or new rules that were not anticipated in PG&E's current rate base is approximately \$17.3 million.

III. JURISDICTION ISSUES

The CPSD deferred to Phase 2 any consideration of its proposed rules changes to General Order 165 pertaining to the maintenance and inspection requirements for electric overhead transmission facilities. (*Reply Comments of the Consumer Protection and Safety Division*, p. 4.) As a result, PG&E will not interpose jurisdictional legal arguments in this brief, as the issue whether the CPUC has or should exert jurisdiction over electric transmission facilities in the form of inspection and maintenance rules is not ripe.

However, PG&E notes that the California Independent System Operator (CAISO), the Federal Electric Regulatory Commission (FERC), the North American Electric Reliability Corporation (NERC), and the Western Electricity Coordinating Council (WECC) have all been granted jurisdiction by various statutes to oversee the operation and maintenance of overhead electric transmission facilities. PG&E would oppose any position the CPSD might take that is inconsistent with that jurisdiction, and incorporates herein by reference Section VI of the *Opening Comments of Pacific Gas and Electric Company (U39) on CPSD's Proposed Rules in Phase 1 of R.08-11-005*, at p.27-36.

IV. ELECTRIC TRANSMISSION ISSUES

See Section III above. Since the CPSD deferred to Phase 2 any consideration of its proposed rules changes to General Order 165 pertaining to the maintenance and inspection requirements for electric overhead transmission facilities, these proposed rules were not discussed at the workshop and PG&E will not present arguments or comments on those proposed rules here.

V. PROPOSED RULES

A. Summary of PG&E’s Concerns and Recommendations for Phase 1 Proposed New or Revised Rules

The table below describes in summary form PG&E’s primary concerns and recommendations concerning each of the CPSD proposals (or alternatives). Please see the Workshop Report for a complete discussion of PG&E’s positions and comments concerning each of the proposed rules.

CPSD Proposed Rule (PRC)	Reference or Rule Number	Estimated Incremental PG&E Costs and Time Needed to Implement	PG&E’s Primary Concerns and Recommendation
1. CIP Inspections of Overhead Facilities (Workshop Report, p. 5-25.)	<p><u>CPSD</u>: Ordering Paragraph</p> <p><u>CIP</u>: GO95, <i>NEW</i> Rule 121</p>	<p>PG&E has no communications facilities in Santa Barbara County that will be affected by this rule.</p> <p>Estimated incremental costs: N/A</p> <p>Time needed to implement: N/A</p>	<p>PG&E supports inspection of CIP facilities in high fire threat areas as identified by CPSD, and the use of an Ordering Paragraph as interim measure pending more thoughtful and comprehensive rulemaking.</p> <p>Recommendation: Adopt CPSD PRC 1.^{4/}</p>

^{4/} References to the CPSD or any other proposed rules include any changes to the proposed rule made at the Joint Workshop as reflected in the FINAL VERSION set out in the Workshop Report.

CPSD Proposed Rule (PRC)	Reference or Rule Number	Estimated Incremental PG&E Costs and Time Needed to Implement	PG&E's Primary Concerns and Recommendation
<p>2. Applicability of Rules (Workshop Report, p.26-40.)</p>	<p><u>CPSD</u>: GO95, Rule 12</p> <p><u>SCE</u>: GO95, Rule 12 Alt.</p> <p><u>CIP</u>: GO95, <i>NEW</i> Rule 120</p>	<p>Estimated incremental costs: N/A.</p> <p>Time needed to implement: N/A</p>	<p>PG&E supports the concept that all electric facilities in California should be subject to the same rules. The SCE alternative language (p.31) is better crafted than CPSD's proposed revised rule and has the advantage that it allows any jurisdictional issues to be resolved outside of the rulemaking.</p> <p>Recommendation: Adopt the SCE Alternative for revisions to Rule 12.</p>
<p>3. Reporting and Resolution of Safety Hazards Discovered by Utilities (Workshop Report, p.41-86.)</p>	<p><u>CPSD</u>: GO95, <i>NEW</i> Rule 18</p> <p><u>SCE</u>: GO95, <i>NEW</i> Rule 18 Alt.</p> <p><u>SDG&E</u>: GO95, <i>NEW</i> Rule 18, Alt.</p> <p><u>CIP</u>: GO95, <i>NEW</i> Rule 122</p>	<p>PG&E has overhead electric facilities in Santa Barbara County that will be affected by this rule.</p> <p>Estimated incremental costs: \$40,000.</p> <p>There will be incremental mapping and training costs to ensure the more thorough documentation and tracking contemplated by this proposed rule.</p> <p>Time needed to implement: A full tracking and documentation system will not be able to be implemented before September 30, 2009.</p>	<p>The CPSD's proposed rule is confusing, conflicts with other rules and is simply unworkable. PG&E already has a hazard notification system in place. If any action is to be taken, that action should be only to establish simple, non-prescriptive guidelines in a decision or on an interim basis to provide notification of "safety hazards" on others' facilities only in southern California.</p> <p>Recommendation: Defer consideration of this proposed new rule to Phase 2 <u>or</u> adopt the language from CIP Alternative, Rule 122, Part A (see p.75-76) in an <u>ordering paragraph</u> to the decision -- but make it only applicable to high fire risk</p>

CPSD Proposed Rule (PRC)	Reference or Rule Number	Estimated Incremental PG&E Costs and Time Needed to Implement	PG&E's Primary Concerns and Recommendation
			areas in southern California.
<p>4. Fire Threat Map Language</p> <p>(Workshop Report, p.87-98.)</p>	<p>Applicable to various rules in GO 95 and possibly to GO 165.</p> <p><u>CPSD:</u> Proposed language</p> <p><u>PG&E:</u> Alternative language</p>	<p>See other rules.</p>	<p>The FRAP maps are an imperfect tool to identify high fire risk areas, but are acceptable as a reasonable surrogate – so long as the utilities’ use of the maps is assessed on a due diligence (and not an absolute or prescriptive) standard.</p> <p>Recommendation: Adopt the PG&E’s Alternative Language (p.94), which provides flexibility and some discretion in identifying the appropriate high fire risk areas.</p>
<p>5. Cooperation with Commission Staff; Preservation of Evidence Related to Incidents</p> <p>(Workshop Report, p.99-115.)</p>	<p><u>CPSD:</u> GO95, <i>NEW</i> Rule 19</p> <p><u>SDG&E:</u> GO95, <i>NEW</i> Rule 19 Alt.</p>	<p>PG&E already cooperates with the CPSD and other authorities on the investigation of incidents and retains relevant evidence.</p> <p>Estimated incremental costs: None – unless the CPSD requires the unnecessary retention of physical evidence not directly relevant to major incidents.</p> <p>Time needed to implement: N/A</p>	<p>PG&E objects to this rule in its entirety since it merely repeats the CPSD’s established authority that is codified in the statutes cited in the proposed rule. GO 95 is not a place to adopt references to statutes – it is a design and construction standard. PG&E objects to the CPSD language primarily because the requirement for “immediate” access to evidence/witnesses, ignores due process and business realities, and (most importantly) the rule deliberately omits attorney work product doctrine protections.</p>

CPSD Proposed Rule (PRC)	Reference or Rule Number	Estimated Incremental PG&E Costs and Time Needed to Implement	PG&E's Primary Concerns and Recommendation
			<p>Although this proposed rule is <u>outside the scope</u> of this rulemaking, PG&E can support the SDG&E alternative (p.108).</p> <p>Recommendation: Reject Rule as unnecessary in a General Order. In the alternative, approve the SDG&E Alternative language for new Rule 19.</p>
<p>6a. Tree Trimming (Workshop Report, p.116-123.)</p>	<p><u>CPSD:</u> GO95, Rule 35</p>	<p>Estimated incremental costs: See PRC 6c. Time needed to implement: See PRC 6c.</p>	<p>The changes to Rule 35 provide clarification to certain terminology and incorporate a reference to the proposed new Case 14E in Rule 37, Table 1.</p> <p>Recommendation: Adopt CPSD PRC 6a for changes to Rule 35.</p>
<p>6b. Guidelines to Rule 35 (Workshop Report, p.124-136.)</p>	<p><u>CPSD:</u> GO95, Appendix E. <u>PG&E:</u> GO95, Appendix E Alt.</p>	<p>Estimated incremental costs: See PRC 6c. Time needed to implement: See PRC 6c.</p>	<p>Effective vegetation management and tree trimming is <u>essential</u> to avoiding fires as well as ensuring reliability and public safety around electric line. However, tree trimming is not always popular with property owners and can be contentious – in part because the regulations do not fully explain how reasonable trimming decisions are made. PG&E supports the reasonable increases in minimum vegetation clearances and guidelines as proposed by the CPSD, but seeks</p>

CPSD Proposed Rule (PRC)	Reference or Rule Number	Estimated Incremental PG&E Costs and Time Needed to Implement	PG&E's Primary Concerns and Recommendation
			<p>additional language that explains how clearances are obtained and maintained.^{5/}</p> <p>Recommendation: Adopt PG&E's Alternative (p.131) for changes to the Rule 35 Guidelines.</p>
<p>6c. Interim New Case 14 to Minimum Allowable Vertical Clearances</p> <p>(Workshop Report, p.137-151.)</p>	<p><u>CPSD:</u> GO95, Rule 37, Table 1, <i>NEW</i> Case 14</p> <p><u>CA Farm Bureau:</u> <i>NEW</i> fn (jjj)</p>	<p>PG&E will be affected by this rule, which expands clearances from vegetation for certain electric lines to 4 feet in high fire risk areas in southern California.</p> <p>Estimated incremental costs: \$850,000. An additional 6,700 trees will need to be pruned or removed to comply with the increased minimum clearances</p> <p>Time needed to implement: PG&E estimates that it can bring 10% of these trees into compliance between the time of the possible Decision on August 20 and September 30, 2009, and can bring the entire Santa Barbara County area into compliance</p>	<p>PG&E is neutral on the CPSD's new Case 14.</p> <p>As to the proposed footnote (jjj), PG&E believes it is more prudent and better fire safety practice to address fire risks in a comprehensive and consistent way with a bias towards increased minimum clearances. Footnote (jjj) seeks to <u>exempt</u> plowed or cultivated orchards from the scope of GO95's minimum clearance requirements in high fire risk areas. PG&E opposes such a blanket exemption. There can be other potential vegetative fuel that may pose fire risks in and around orchards, which are bounded by other trees, bushes and vegetation, traversed by streams, roads and ditches, and may be allowed to go fallow.</p>

^{5/} Note that portions of the CPSD's comments in the Workshop Report do not apply to the PG&E Rule 35 Guidelines Proposed Alternative. Rather, much of the CPSD argument is focused on various extreme SDG&E clearance proposals, which PG&E does not support and has never supported. Attached as Exhibit B to this brief is a presentation PG&E made at the February workshops ("Why greater than 4 Feet"), which provides additional information and explanation about why the minimum clearances must be only the starting point for a responsible and reasonable vegetation management program.

CPSD Proposed Rule (PRC)	Reference or Rule Number	Estimated Incremental PG&E Costs and Time Needed to Implement	PG&E's Primary Concerns and Recommendation
		within one year.	Recommendation: Do <u>not</u> adopt the California Farm Bureau proposed footnote (jjj).
<p>7. New Footnote to Minimum Clearances from Wires to Other Wires</p> <p>(Workshop Report, p.152-158.)</p>	<p><u>CPSD:</u> GO95, Rule 38, Table 1, <i>NEW</i> fn (zz)</p>	<p>Estimated incremental costs: None.</p> <p>Time needed to implement: N/A.</p>	<p>PG&E supports the addition of this footnote to Table 1, which provides guidance to utilities that have facilities in high wind areas.</p> <p>Recommendation: Adopt CPSD PRC 7 for a new footnote to Rule 38, Table 1.</p>
<p>8. Additional Construction</p> <p>(Workshop Report, p.158-184.)</p>	<p><u>CPSD:</u> GO95, Rule 44.2, 44.3</p> <p><u>SDG&E:</u> GO95, Rule 44.2 Alt.</p> <p><u>SCE:</u> Ordering Paragraph</p> <p><u>CIP:</u> GO95, <i>NEW</i> Rule 123</p>	<p>Estimated incremental costs: \$100,000 to develop the process, and \$1 million/year to process and document the expected additional requests for pole loading information.</p> <p>Time needed to implement: PG&E anticipates that it will take at least a year to develop the process, train employees and get a database up and running.</p>	<p>This proposed pole loading rule is outside the scope of Phase 1, and needs much more work. It ignores existing joint pole agreements, fails to recognize the complexities and business impacts in setting up a pole loading information exchange process, has not provided any engineering basis for the safety factor percentages used, and requires the arbitrary exchange of possibly stale and useless information.</p> <p>Recommendation: PG&E <u>strongly urges</u> that consideration of this proposed new rule <u>be deferred to Phase 2.</u> If some action must be taken, the SDG&E (p.169) or the SCE (p.174) Alternatives to Rule 44.2 should be adopted. CPSD PRC 8</p>

CPSD Proposed Rule (PRC)	Reference or Rule Number	Estimated Incremental PG&E Costs and Time Needed to Implement	PG&E's Primary Concerns and Recommendation
			should NOT be adopted. See fuller discussion below.
<p>9. Proposed Revisions/Additions to GO 165</p> <p>(Workshop Report, p.185-216.)</p>	<p><u>CPSD</u>: GO 165, Parts I, II, III, IV and New V</p> <p><u>SCE</u>: GO 165 revision(s), alternate proposal</p>	<p>Estimated incremental costs: Assuming that PG&E could reach agreement with CPSD on what a “violation” is for purposes of this rule, the costs to comply with the requirement that PG&E document “any and all violations,” would be approximately \$6.3 million for maintenance inspector and troublemen time, hand-held device costs, development of systems and processes, as well as implementation of the new tools and process.</p> <p>There would be no additional costs associated with the incident reporting requirement</p> <p>Time needed to implement: PG&E is currently complying with the incident reporting requirement, and the annual patrol requirement applies only to Santa Barbara in PG&E’s territory.</p> <p>If PG&E were required to record “any and all” violations, it will take at least one year from the time PG&E can reach</p>	<p>These proposed changes to General Order 165 are entirely outside the scope of Phase 1 and possibly outside the scope of this entire proceeding. PG&E does not record every problem it sees and fixes in the course of its inspections or patrols. The requirement to report and record “any and all” violations is unnecessary, an inefficient and ineffective use of resources, and will require changes in PG&E’s long-established work processes and data systems as well as additional training of personnel.</p> <p>The addition of the incident report section is not appropriate for General 165, which has to do with inspections and maintenance, and is unnecessary.</p> <p>Finally, General Order 165 is in need of a full and comprehensive review and revamping. This proposed rule totally ignores gains made via prior MOU’s and substantial negotiations on the subject.</p> <p>Recommendation: Defer any consideration on this proposed rule to Phase 2.</p>

CPSD Proposed Rule (PRC)	Reference or Rule Number	Estimated Incremental PG&E Costs and Time Needed to Implement	PG&E's Primary Concerns and Recommendation
		consensus with CPSD on what "violations" means for purposes of this rule to develop new processes and tools and get the workforce trained.	If some action must be taken, adopt the SCE Alternate proposal (p.205-210), which is focused on mitigating fire risk in southern California.

B. Proposed Rules Posing Special Problems

1. CPSD PRC 8, Proposed New GO 95, Rule 44.2 Regarding Pole Loading Is Not Ready and Any Consideration Should be Deferred

PG&E supports the concept and the development of a rule to address improved communication among the parties regarding pole loading information. However, as noted in PG&E's comments in the Workshop Report, the CPSD version of the rule has not been fully developed and should not be adopted. There are a number of reasons why consideration of this proposed rule should be deferred.

First, by setting prescriptive requirements (such as the 15 day deadline), the proposed rule ignores the guiding principles and purpose of General Order 95. General Order 95, Rule 13 states:

These rules are not intended as complete construction specifications, but embody only the requirements which are most important from the standpoint of safety and service. Construction shall be according to accepted good practice for the given local conditions in all particulars not specified in the rules.

The General Order 95 rules are not intended to be complete construction specifications. Under normal General Order rule development, the choice of materials, methods and techniques is left to the utilities. The processes to coordinate with all the various entities involved in constructing overhead lines are also left to the utilities. There have rarely or never been any time limits or time requirements in General Order 95. In directing each utility to provide data to

others within arbitrary time frames (and it doesn't matter what that time frame is), the CPSD would be entering an area that was never intended to be governed by specific construction rules.^{6/} By inserting itself into the daily decision making process of utilities, the Commission is getting into the business of running a utility – instead of setting high level goals and objectives and leaving the utilities to figure out how to manage to those goals.

Second, the proposed rule displays a fundamental lack of knowledge or understanding of existing Joint Pole Agreements among the utilities. For example, while CPSD acknowledges that there is a business agreement among the utilities for sharing of pole replacement costs, it ignores that same agreement by imposing an arbitrary fifteen-day turnaround time to share pole test and other facility information. This ignores the fact that there are already timeframes currently used by utilities or joint pole associations.^{7/} The proposed rule does not allow for other utility priorities (such as emergency or storm response, new business applications, customer requests, etc.), establishes unnecessary and onerous notification/documentation requirements and unfairly puts the entire burden on the responding utility. There are no requirements placed on the requesting utilities/companies, such as identifying the minimum information needed that would constitute a valid request. Artificial deadlines ignore the realities of utility operations, overlook potential causes for delay, improperly favor or give priority to potential pole occupants over utility customers, and virtually assures controversy between utilities -- with the utilities keeping defensive records and the Commission playing “joint pole policeman” (which is not productive for any of the parties or the Commission). All such details should be left to the parties to work out in business agreements.

Third, CPSD opposed SDG&E's alternate proposal due to the possibility of CIP projects being delayed and “thus thwarting federal law goals and the Commission's own certification

^{6/} It should also be noted that universally accepted codes such as the NESC do not attempt to prescribe specific requirements applicable to each attachment request.

^{7/} Timeframes in agreements are outside limits, and not all requests take the maximum time. Urgent requests can also be accommodated. However, there is also the expectation that a utility adding facilities has performed adequate planning, given appropriate notice and provided sufficient information.

requirements allowing CIPs to install facilities on electric poles”. (Workshop Report, p. 173.) However, California adopted the Right-of-Way decision (D.98-10-058) in October 1998. Thus, it has been ten and one-half years that CIPs have been installing facilities per the rules adopted in that proceeding. There was no evidence of need produced during any of the workshops to show that the time frames for sharing information and responding to pole work during that time have been inadequate and have caused federal laws to be thwarted. If problems exist, they should be addressed with the pole owners, whether they are a single owner or owned jointly and administered through the existing joint pole agreements. If there are real timing problems that exist and can’t be resolved with discussion and negotiation, the appropriate forum would be through rule making associated with the ROW decision, not G.O. 95. At a bare minimum, there certainly needs to be more discussion as to need, as there was none established in the workshops.

Fourth, the proposed rule fails to understand the costs and complexity associated with any implementation of this rule. As regards PG&E and Northern California, currently there is no common platform or established process for sharing this data. Implementation will require the analysis and development of procedures for information sharing and the creation of a database or IT system, if that is the solution. There will be costs to create, maintain and provide technical support for a shared and secure database (if that is the solution), costs of document/information sharing (sharing pole test data and facility information), costs of training employees, costs of modifying existing Joint Pole Association agreements, costs of sustaining additional billing and other related processes. It is far better to allow the parties to assess such process needs in advance of establishing any rule so that the rule will work for the parties.

Finally, this rule is out of scope for Phase 1. The proposed rule will not have any significant impact on potential fire threats this fall and realistically won’t materially impact safety or pole failures in the near term.

This subject should be deferred to Phase 2 where a more thorough review can be undertaken. While the concept is worthwhile, any positive impacts will be incremental while the

negative impacts of a rushed and improvident rule will be immediate. The parties just need more time to work on the various versions of the proposed rule before it is adopted.^{8/}

2. CPSD PRC 9, Proposed Revisions/Additions to General Order 165 Should Not Be Adopted As They Are Out of Scope of Phase 1 of this Proceeding

CPSD's proposed rule changes in GO 165, with the exception of the requirement to conduct annual patrols in southern California, will have absolutely no impact on reducing the fire risk in southern California. CPSD has failed to articulate in any of their justifications how making specific word changes to GO 165 that relate to documentation requirements of "violations" will make the state of California safer from catastrophic fires this coming fire season. While doing nothing to prevent catastrophic fires, CPSD's proposed word changes will cause utilities to perform unnecessary analysis to determine whether they can (1) figure out how to define "violations" in the context of this proposed rule change since a "violation" of GO 95 can be simply a minor asset condition that may number in the thousands; (2) (assuming the utilities determine an appropriate definition for "violations") develop the training materials to effectively and efficiently communicate this new requirement to ensure compliance; (3) develop systems to collect and store this information, whether those systems are manual (as they currently are for PG&E) or electronic; and (4) determine how to establish controls in its processes to ensure that its employees are consistent complying with the new requirement. As stated above, PG&E estimates over \$6 million to comply with the proposed word changes. PG&E submits that the costs of adopting CPSD's proposed changes to GO 165 far outweigh the unsubstantiated benefit from the proposal, and should be rejected.

VI. ANCILLARY ISSUES

A. The Commission Should Provide That Costs Associated With Any Changes In The Rules Be Recovered Through Appropriate Cost Recovery Mechanisms

In the ACR, the Assigned Commissioner and the ALJ recognized that the adoption of new rules may result in increased costs, and asked each rule proponent to state the anticipated

^{8/} If some action must be taken, the SDG&E or the SCE Alternatives to Rule 44.2 can act as an interim measure until a more thoughtful rule can be adopted.

costs and benefits of the proposed rule, as well as whether and how those costs will be recovered from customers (ACR, p. 9).

PG&E has reiterated several times in its papers in this proceeding that there will be incremental costs associated with any proposed new or revised rules. In its March 27, 2009 Opening Comments, PG&E provided preliminary cost estimates associated with those increased costs, and has now provided above specific estimates for the Phase 1 proposed new or revised rules. The remainder of these comments will discuss the appropriate cost recovery mechanisms necessary for PG&E to recover its costs to implement CPSD's proposals if adopted in this proceeding.

Given that PG&E's next General Rate Case will be filed for Test Year 2011, PG&E proposes to record any incremental implementation costs associated with any Phase I Proposed Rule Changes (PRCs) incurred in the years 2009 and 2010 into a memorandum account, with the expectation that PG&E would recover such incremental implementation costs in its 2010 and 2011 Annual Electric True-Up filings. Additionally, PG&E proposes it be allowed to seek cost recovery in the 2011 GRC, or via a separate filing, of forecasted Phase I PRC costs associated with the implementation of the Commission's Phase I Decision. Lastly, PG&E proposes that any Phase II related PRC costs, not expected to be included in its 2011 GRC, be recorded into a memorandum account for recovery through its Annual Electric True-Up filings.

PG&E proposes that the Commission include the aforementioned cost recovery proposals as Ordering Paragraphs in its Phase I Decision, as follows:

1. Pacific Gas and Electric Company (PG&E) is authorized to create a memorandum account to record any incremental implementation costs associated with any Phase I Proposed Rule Changes (PRCs) incurred in 2009 and 2010 for cost recovery in PG&E's 2010 and 2011 Annual Electric True-Up filings, respectively.

2. PG&E is authorized to include in its 2011 GRC application any forecast of Phase I PRC costs associated with the implementation of the Commission's Phase I Decision.

3. PG&E is authorized to record any Phase II related PRC costs, not expected to be included in its 2011 GRC forecast, into a memorandum account for recovery through its Annual Electric True-Up filings.

At this point, given that the PRCs are not finalized, PG&E requests that the Commission acknowledge the appropriateness of PG&E's cost recovery proposals and incorporate those proposals as Ordering Paragraphs in its OIR Phase I Decision.

B. Any Approval of New or Revised Rules Should Allow for Reasonable and Methodical Implementation

There are a number of issues associated with implementation of a new rule – and many of them may not be obvious to an observer. Implementation will require the analysis and development of procedures, the development of training tools and processes, the possible addition of personnel, and the possible creation or supplementation of an IT system or database for documentation requirements. In addition, there will be added costs (not in current budgets) to: create, maintain and provide support for the new or supplemented processes; maintain and house the documentation; train employees, modify existing agreements, etc.

According to the current schedule, the earliest any proposed decision will be considered by the Commission is August 20, 2009. That timing makes it unlikely that any substantive implementation can be achieved by the end of September or before the Santa Ana winds are known to start blowing. However, PG&E agrees with the CPSD that it is important to at least get started on the implementation of any rule changes as soon as possible. PG&E has attempted to indicate in its PRC summary table how much it can get done by September 30, and how long it will take to implement full compliance with the proposed rules.

VII. CONCLUSION

PG&E urges the Commission to focus its attention on those activities that can really make a difference this year in mitigating the risk of catastrophic fires in California, and address in Phase two of this proceeding other rule changes that require more time and effort to finalize.

Respectfully Submitted,

LISE H. JORDAN
BARBARA H. CLEMENT

By: _____ /s/
BARBARA H. CLEMENT

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Attorney for
PACIFIC GAS AND ELECTRIC COMPANY

Dated: May 22, 2009

Exhibit A

Excerpts from the

**National Electrical Safety Code Committee
Procedures for the Review and Revision of the
National Electrical Safety Code,
American National Standard C2**

Section 10: Revision of the National Electrical Safety Code

Nov 2008

**National Electrical Safety Code Committee
Procedures for the Review and Revision of the
National Electrical Safety Code,
American National Standard C2**

Revised December 11, 2008
Revised September 20, 1995
Revised November 19, 1993
Revised April 6, 1988
National Electrical Safety Code Committee
ANSI Re-Accreditation of NESC Committee
May 6, 1996

Secretariat
The Institute of Electrical and Electronics Engineers, Inc.
345 East 47th Street
New York, NY 10017

10. REVISION OF THE NATIONAL ELECTRICAL SAFETY CODE.

10.1 Preparation of proposals for Amendment.

10.1.1 A change proposal may be prepared by any;

- (1) Substantially interested person;
- (2) Interested organization;
- (3) NESC subcommittee
- (4) Member of the NESC Committee or its subcommittees.

10.1.2 Change proposals shall be submitted to: Secretary, National Electrical Safety Code Committee using the change proposal form via the IEEE NESC website.

10.1.3 Each separate topic shall begin on a separate change proposal form. The change proposal shall consist of:

- (1) A statement, in NESC rule form, of the exact change, rewording or new material proposed;
- (2) The name of the submitter (organization or individual as applicable);

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- (3) Supporting comments, giving the reasons why the NESC should be so revised.
- (4) The Secretary shall determine if the change proposal is in the proper format and contains all information necessary to make it acceptable for processing. If it is incomplete or otherwise fails to meet the requirements for processing the Secretary shall return it to the submitter for completion or revision.

10.2 Secretariat Action. The Secretariat shall:

- (1) Acknowledge receipt of proposals for revision. (If the submitter does not receive an acknowledgment within 30 days of mailing his/her proposal, the submitter should contact the Secretariat);
- (2) Distribute to each member of the appropriate NESC subcommittee all of the proposals received, arranged in a coordinated sequence.

10.3 Subcommittee Recommendation. The NESC subcommittee responsible shall consider each proposal and take one or more of the following steps:

- (1) Endorse the proposal as received;
- (2) Prepare a proposed revision or addition for the NESC (this may be a coordination of several comments, or a subcommittee consensus on a modification of a proposal);
- (3) Refer the proposal to a technical working group for detailed consideration;
- (4) Request coordination with other NESC Subcommittees;
- (5) Recommend rejection of the proposal for stated reasons.

For each item, a subcommittee voting statement shall be prepared, accompanied by all members' statements concerning their votes (cogent reasons are required for negative and abstention votes). Steps (3) and (4) are intended to result, eventually, in a proposal of category (2).

Action under steps (3) or (4) shall be completed and reported to the subcommittee before the beginning of the public review period if the item is to be included in the upcoming revision.

10.4 Preprint of Proposals. The Secretariat shall organize and publish a preprint of proposed C2 revisions including:

- (1) The original proposal as received from the submitter;
- (2) The recommendation of the subcommittee with respect to the proposal (including a voting statement and subcommittee members' statements);
- (3) Copies of submittal forms for comments.
- (4) The category of each subcommittee member shall be listed along with his/her affiliation.
- (5) Each Main and Executive Committee member identified by category.

The preprint shall be distributed to all members of NESC subcommittees and the representatives of the organizations comprising the NESC Committee. Copies shall be available for sale to other interested parties. Notice of availability of the preprint shall be submitted to ANSI for publication in ANSI Standards Action. The preprint shall carry information on how to submit comments on the proposals and the final date for such submissions.

10.5 Final Processing of Proposed Revisions and Comments.

10.5.1 Following the public review period, the Secretariat shall organize and distribute for subcommittee

consideration all comments received.

10.5.2 The preprint and the comments received shall be reconsidered by the subcommittees. No new change proposals may be considered. Substantive changes in the ballot draft from the recommendations in the preprint shall be appropriately noted.

(1) The subcommittee may recommend adoption or rejection of the proposal by majority vote;

(2) When extended technical consideration or resolution of differing or conflicting points of view is necessary, the subcommittee shall refer the problem to a working group of the subcommittee for proposed resolution. If expeditious consideration is not possible, the subject shall be held on the docket.

Each working group shall provide, to its parent subcommittee, recommendations on matters considered as a result of subcommittee referrals under items 10.5.2(1) and 10.5.2(2).

Each subcommittee shall prepare a report showing its proposed revisions and all items to be held on the docket together with a plan for their disposition.

10.5.3 The Secretary shall provide commentators with copies of reports of actions taken on the rules affected by their comments, and shall make all such reports available for examination upon request.

10.6 Final Approval.

10.6.1 Based upon the subcommittee reports, the Secretariat shall prepare a draft revision of the NESC and distribute copies to:

(1) The NESC Committee for approval by a six-week letter ballot;

(2) The American National Standards Institute Board of Standards Review for concurrent 60-day public review.

10.6.2 Comments received in response to the letter ballot and public review shall be considered by the Executive Subcommittee. Since new technical changes are not allowed during this time, (see section 10.5.2) any new technical change that is suggested shall be sent by the Executive Subcommittee to the appropriate cognizant technical subcommittee for consideration for the next revision cycle. The Executive Subcommittee shall be responsible for the timely processing of unresolved comments. Those items on which consensus cannot be reached shall be considered by the appropriate cognizant technical subcommittee during the next revision cycle. Unless a consensus for revision is established, as defined in Section 8.4, the requirements of the current edition shall carry over to the proposed edition.

10.6.3 ANSI Approval. When resolution of comments received in response to letter ballot and public review has been completed, the proposed new edition of the NESC shall be submitted to ANSI for approval. The edition shall list the category of each Main, Executive and subcommittee member along with his/her affiliation.

Exhibit B

“Why Greater Than Four Feet”

Required Minimum Clearances: Only a Starting Point for a Responsible and Reasonable Vegetation Management Program

Required Minimum Clearances: Only a Starting Point for a Responsible and Reasonable VM Program

PG&E disagrees with CPSD's Statement:

“CPSD recommends giving the electric utilities a presumption of reasonableness of expenses incurred for trimming up to 48 inches. Beyond 48 inches, utilities should not be entitled to a presumption of reasonableness, but should be required to demonstrate why trimming beyond 48 inches is reasonable.”



Current Required Legal Clearances

VOLTAGE (kV)	Minimum Clearance Distance (feet)					
	4-21	60	70	115	230	500
GO 95, Rule 35	1.5	1.5	1.5	1.6	2.6	10
Rule 35, Appendix E	4	6	6	10	10	15
PRC 4293	4	4	4	10	10	10
PG&E CAISO Agreement	4	4	4	10	10	10
NERC FAC-003-1	na	na	1.3	2.5	5.1	14.7

- Rule 35, Appendix E, Guidelines: “Vegetation Management practices may make it advantageous to obtain greater clearances than those listed...”
- NERC Standard FAC-003-1: “Transmission Owner to determine...appropriate distances to be achieved at time of ...vegetation work based on local conditions and [next] vegetation management work. ...Distances *shall* be greater than [minimum required clearances].

What Utility Inspectors Must Consider Prior to Trimming

- Tree species types and growth rates
- Tree failure characteristics
- Location (tree to line)
- Anticipated tree or conductor movement
- Line sag
- Local climate and rainfall patterns
- Fire risk
- Environmental impacts
- Customer & site history

All Trees Are Not The Same

- Eucalyptus
 - Cottonwood
 - Walnut
 - Mulberry
 - Redwood
- } Fast Growing*
- Pine
 - Acacia
 - Madrone
- } Med. Growing
- Some Oak
 - Fir
- } Slow Growing

* Most trees in this category can grow 15-20 feet in one year

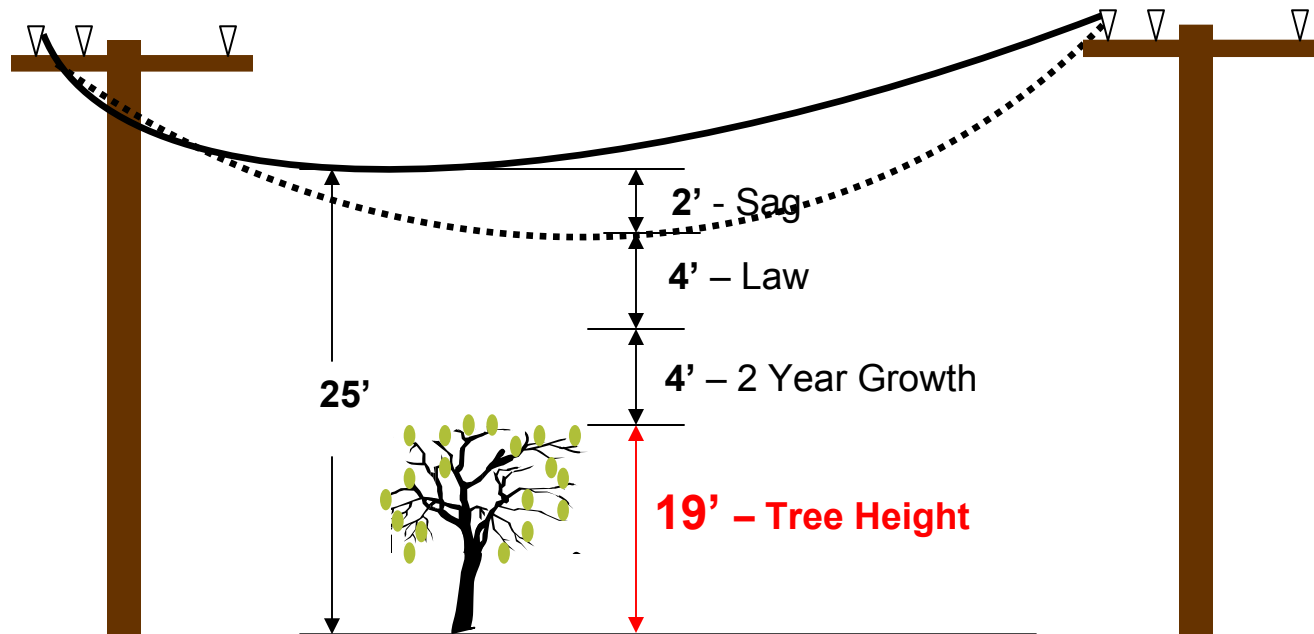
Why Utilities Remove 2-3 Years of Growth

- Reduces fire risk
- Increases electric reliability
- Ensures compliance (provides margin of error)
- Increases public safety (reduces chance of a power line contact)
- Better for the health of the tree (minimizes trauma)
- Minimizes environmental impacts
- Reduces customer impact
- Lowers costs for customers
- Easier to manage

Utilities Are Experts in Tree Evaluations for Utility Line Clearances

- Certified Arborists
- Registered Professional Foresters
- Certified Quality Assurance and Quality Control
- Apply ANSI Standards
(Integrated VM on electric utility rights of way)

Example of responsible VM clearance practice



Customers Are Satisfied

- Contractor performance is judged on customer satisfaction with tree work
- (PG&E survey) 80% of customers understand that the tree work prevents outages (& fires)
- 75% give good – excellent ratings for the work

Summary

- There are overlapping regulatory/statutory minimum clearance requirements
 - A responsible VM program must consider many factors when obtaining clearances
 - Clearance obtained at time of trim must be greater than minimum clearance requirement to ensure safety and reliability
 - Utilities use best practices to achieve effective VM programs
 - Knowledgeable professionals
 - Industry standards
 - Overall, customers understand the need for utility tree trimming and are satisfied
-

VERIFICATION

I, the undersigned, say:

I am an officer for PACIFIC GAS AND ELECTRIC COMPANY, a corporation, am authorized pursuant to Code of Civil Procedure Section 446 and Rule 1.11 of the Commission's Rules of Practice and Procedure to make this verification for and on behalf of said corporation, and I make this verification for that reason.

I have read the foregoing "OPENING BRIEF OF PACIFIC GAS AND ELECTRIC COMPANY (U39E) ON FINAL PROPOSED RULES OF CPSD AND OTHER PARTIES IN PHASE 1 OF R.08-11-005" and am informed and believe that the matters therein are true, and on that ground I allege that the matters stated herein are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at San Francisco, California, this 22nd day of May, 2009.

/s/

Placido J. Martinez
Vice President, Asset Strategy
Pacific Gas and Electric Company
245 Market Street, #1064
Tele: (415) 973-9005
Email: PJMz@pge.com

CERTIFICATE OF SERVICE BY ELECTRONIC MAIL

I, the undersigned, state that I am a citizen of the United States and am employed in the City and County of San Francisco; that I am over the age of eighteen (18) years and not a party to the party to the within cause; and that my business address is 77 Beale Street, B30A, San Francisco, California 94105. I hereby certify that I have this day electronically served the foregoing document(s) upon each member of the official service list of **R.08-11-005** pursuant to Rules 1.9 and 1.10 of the California Public Utilities Commission's Rules of Practice and Procedure:

OPENING BRIEF OF PACIFIC GAS AND ELECTRIC COMPANY (U39E) ON FINAL PROPOSED RULES OF CPSD AND OTHER PARTIES IN PHASE 1 OF R.08-11-005

to the attached e-mail service list, and if no e-mail address was available, the party was served by U.S. Mail.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 22, 2009 at San Francisco, California.

/s/
Jennifer S. Newman
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