



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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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 THE CONSUMER PROTECTION
AND SAFETY DIVISION**

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I. INTRODUCTION

Pursuant to Rule 13.11 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure, and the Assigned Administrative Law Judge's (ALJ) Ruling Granting the Motion to Extend the Schedule for Phase 2, filed in this proceeding on May 7, 2010, the Consumer Protection and Safety Division (CPSD) hereby submits its opening brief on the proposed rule changes contained in the Phase 2 Joint Parties' Workshop Report. The Joint Parties' Workshop Report in Phase 2 for Workshops Held January – June, 2010, was filed on August 13, 2010. (Workshop Report) CPSD filed a verification of CPSD's comments contained in the Workshop Report on August 16, 2010.

The Order Instituting Rulemaking (OIR) issued herein on November 13, 2008 was prompted by some of the devastating fires in Southern California, which occurred in October, 2007, and October, 2008, and may have been caused by electric supply lines or communication infrastructure provider (CIP) facilities sharing poles with electric supply lines. In Phase 1, the Commission considered measures to reduce fire hazards that could begin being implemented prior to the 2009 autumn fire season. The Commission adopted several such measures in Decision (D.) 09-08-029. The purpose of Phase 2 is to address measures that require more time to consider and implement.

Although the November 5, 2009 Assigned Commissioner’s Ruling and Scoping Memo for Phase 2 of this Proceeding (Phase 2 Scoping Memo) allowed other parties to offer proposals for mitigating fire hazards, the Scoping Memo also made it clear that, “[c]onsistent with the OIR 08-11-005, proposals submitted by CPSD will receive priority consideration in Phase 2....” (Phase 2 Scoping Memo, p. 9.) A complete list of the proposals sponsored or co-sponsored by CPSD is set forth in Attachment A. CPSD’s proposed rules either clarify existing safety regulations or augment them with additional requirements designed to reduce fire and other safety hazards posed by electric distribution and transmission lines and communications facilities in the proximity of electric distribution and transmission lines. CPSD recommends that the Commission adopt these measures.

However, there are a number of Proposed Rule Changes (PRCs) that CPSD believes are actually detrimental to safety, and/or are merely designed to reduce the legal liability of the electric utilities and CIPs. Specifically, CPSD recommends that the Commission reject the following PRCs contained in the Multiple Alternatives Process (MAP) section of the Workshop Report Appendix B:

MAP No. 5 –General Order 95, Rule 31.1 proposal by Joint Electric Utilities (Workshop Report, p. B-58);

MAP Nos. 6A and 6B –General Order 95, Rule 31.2 Inspection proposals by CIP Coalition members (Workshop Report, p. B-67 and p. B-76) (and associated fire maps in MAP Nos. 14B and 14C);

MAP No. 7A –General Order 95, Rule 35 Paragraph 4 proposal by Joint Electric Utilities (Workshop Report, p. B-112);

MAP No. 7B –General Order 95, Rule 35 Paragraph 3 proposal by Joint Electric Utilities (Workshop Report, p. B-121);

MAP No. 11A –General Order 95, Rule 48 proposal by Joint Electric Utilities (Workshop Report, p. B-175).

As the Phase 2 Scoping Memo made clear, “The overarching objective of Phase 2 is to consider measures to reduce the fire hazards associated with utility facilities.” (Phase 2

Scoping Memo, p. 8.) For reasons explained in more detail below, these PRCs do not enhance safety, and in fact serve to water down the effectiveness of Commission safety rules, and should accordingly not be adopted by the Commission.

II. OVERARCHING PRINCIPLES AND ISSUES

A. There is a Continuing Need and Justification for More Comprehensive Rules to Prevent Fires and Other Hazards Associated with Electric and Communications Facilities.

CPSD has already generally addressed in Phase 1 the dangers inherent in electrical supply lines and the hazards associated with communications facilities sharing poles with electric supply lines, including how improperly or poorly maintained communications facilities that share space with electric facilities may lead to fires. (*See, e.g.*, CPSD's March 9, 2009, Proposed Rules, pp. 11-19; CPSD's April 8, 2009, Reply Comments, pp. 24-28.) In CPSD's March 9, 2009 filing at pp. 13-19 (verified by its March 27, 2009, Opening Comments and incorporated by reference herein), CPSD provided five basic factual matters justifying the need for CPSD's proposed rules in Phase 1 in this proceeding: 1) live electric lines pose a safety hazard, including a fire hazard, if clearances are not maintained; 2) wildfires linked to contact with electric power lines have resulted in widespread destruction; 3) the fire dangers are enhanced by the dry conditions caused by global warming; 4) the proliferation of communication facilities sharing poles with electric power lines increases the likelihood of more devastating fires if the communication facilities are not thoroughly and properly maintained; and 5) California cannot afford to have wildfire deaths and destruction, such as the 200 deaths which Australia recently experienced. These factual matters apply equally to CPSD's proposed rules in Phase 2, and CPSD relies on them generally in support of its Phase 2 PRCs.

In addition, the California Climate Action Team recently released the *2009 California Climate Adaption Strategy* (2009 CCAS), a report detailing the impacts of

global warming specifically on California.¹ The report states that climate driven changes have led to increased average temperatures, more extreme hot days, and a lengthening of the growing season in California. (2009 CCAS, Executive Summary, at p. 3.) With respect to wildfires, the report notes that:

The wildfire season already appears to be starting sooner, lasting longer, and increasing in intensity. Burned wildland acreage has increased in the last several decades. Over 48 million acres, or nearly half of the state, is at a high to extreme level of fire threat.

(*Id.*, at p. 111[footnotes omitted].) The report also discusses the impact larger and more frequent wildfires will have on California's economy, as they increase fire suppression and response costs, result in damages to homes and structures, as well as increase damages to timber, recreational uses, tourism, and water supplies. (*Id.*) The drier conditions faced by California and the widespread nature of wildfires provides further support for the need for additional safety requirements.

The State of California is and has been facing conditions which require this Commission to expeditiously act to strengthen and clarify rules which govern the safety of electric and communications utilities. In its prior pleadings, CPSD extensively discussed the recent wildfires that occurred in this State and which may have been linked to electric and communications facilities; the fact that at least four of the 20 largest wildland fires in California history were attributable to power lines, which have resulted in widespread destruction;² local conditions, such as the Santa Ana winds, which may contribute to the power lines' ignition of fires, and are also the conditions which can quickly cause the fires to spread; the substantial increase in the amount of communications facilities that share poles with electric utilities; and the fact that fire

¹ A copy of the report can be found at <http://www.climatechange.ca.gov/adaptation/>. The report was issued in response to Governor Arnold Schwarzenegger's Executive Order S-13-08 (November 14, 2008).

² See Cal Fire's web sites: www.fire.ca.gov/communications/downloads/fact_sheets/20_LACRES.pdf and www.fire.ca.gov/communications/downloads/fact_sheets/20_LSTRUCTURES.pdf. The Witch Fire refers to both the Witch Fire and the Guejito Fire, which both merged into one fire. The fact that Cal Fire's reference to the Witch Fire in these charts includes the Guejito Fire is evident from the amount of acres destroyed and the fact that it was the Guejito Fire that resulted in two casualties.

dangers are enhanced by the dry conditions caused by global warming. (*See* CPSD’s March 9, 2009, Proposed Rules, pp. 13-21 (verified by CPSD’s March 27, 2009, Opening Comments); *see also*, CPSD’s verified April 8, 2009, Reply Comments, pp. 24-29.) Indeed, at the public agency workshop held in this proceeding on May 25, 2010, Mr. George Gentry, Executive Officer of the California Board of Forestry and Fire Protection, stated that climate change has resulted in longer fire seasons. According to Mr. Gentry, California has “one continual fire season that doesn’t start and doesn’t stop.” (5/25/10 Public Agency Workshop Transcript (Tr.), p. 6.) All of these circumstances result in an urgent need for the Commission to strengthen existing safety requirements and adopt additional safety requirements.

B. The Utilities and CIPs Should Not Be Allowed To “Vote” on How They Wish To Be Regulated.

On a number of occasions the utilities or CIPs point to the number of votes that a particular PRC received to support their arguments as to why it should be adopted by the Commission. (*See, e.g.*, rationale in support of MAP No. 5 Rule 31.1 at p. B-60 of the Workshop Report, where the utilities state: “...the fact that all parties but CPSD either supported this PRC, voted neutral, or abstained, indicates that the language proposed in this PRC was close to achieving consensus.”) CPSD submits that the significance of the number of parties voting for or against an item should not count as much as who the entities are that voted for or against a proposed regulation, as well as the consistency of the parties’ position with the Commission’s purpose in issuing the OIR “to adopt additional requirements and clarifications, which may be necessary in order to further reduce the risk of hazards, including fires.” (OIR, p. 4.) CPSD submits that it defies the reason for this Commission’s existence to simply let the regulated entities “vote” on how they wish to be regulated. The voting process was used as a tool at the workshops to see how far along parties were in reaching consensus. It was not intended to be, and should not be interpreted as a “majority rules” process.

III. JURISDICTIONAL ISSUES

Although various parties raised jurisdictional issues in Phase 1 of this proceeding, in the Phase 2 workshops it appeared that only the publicly-owned utilities (POUs) continued to challenge the Commission's jurisdiction over POUs for the limited purpose of adopting and enforcing rules governing the safety of electric transmission and distribution facilities. It was decided at the workshops that this jurisdictional issue would be addressed in parties' opening and reply briefs, rather than in the Workshop Report. CPSD will address any other jurisdictional arguments raised by the parties in its reply brief.

In the Phase 1 decision, the Commission clearly stated that the "Commission's jurisdiction extends to publicly-owned utilities for the limited purpose of adopting and enforcing rules governing electric transmission and distribution facilities to protect the safety of employees and the general public. As stated in the ACR, this proceeding will not litigate the 'Commission's determination in the OIR [that it has jurisdiction over municipal utilities]' for this limited purpose. Accordingly, this issue is settled and will not be revisited here." (D.09-08-029, *mimeo*, pp. 8-9.)

Despite this clear direction, the POUs and their representatives, including the Los Angeles Department of Water and Power (LADWP), Sacramento Municipal Utility District (SMUD), and the California Municipal Utilities Association (CMUA) continued to challenge the Commission's jurisdiction at the workshops. CPSD questions what additional arguments the POUs have challenging the Commission's jurisdiction in this proceeding. LADWP in particular cannot question the Commission's jurisdiction over publicly owned utilities for the limited purpose of adopting and enforcing safety rules. LADWP was the only party that challenged D.09-08-029, claiming that the Commission erroneously asserted jurisdiction over publicly owned utilities, and that LADWP in particular was exempt from the Commission's jurisdiction. The Commission rejected these arguments in D.10-02-034, its decision denying rehearing of D.09-08-029. LADWP subsequently filed a Petition For Writ of Review of that decision in the California Supreme Court, again alleging that the Commission committed legal error in

asserting its safety-related jurisdiction over POU, and LADWP in particular. The Supreme Court summarily denied LADWP's petition on June 30, 2010. (*LADWP v. Public Util. Comm'n*, Case No. S181305.) That denial constitutes a decision on the merits and is *res judicata* against LADWP. (See, *Leone v. Med. Bd.* (2000) 22 Cal. 4th 660, 670; *Consumers Lobby Against Monopolies v. CPUC* (1979) 25 Cal. 3d 891, 901 (1979).

As explained below, CPSD is again requesting that the Commission specifically mention publicly owned electric utilities in the applicability sections of both General Order 95 and 165. Although the Commission declined to adopt this recommendation in Phase 1, finding that the language was sufficient to bind all entities that fall within the Commission's jurisdiction, CPSD has provided additional information to support its request. Given the POU's continued resistance in this proceeding to the Commission's jurisdiction, CPSD does not think it sufficient for the Commission to simply "urge greater cooperation with CPSD" as it did in the Phase 1 decision. As the Supreme Court's denial of LADWP's petition indicates, there is no legal obstacle to the Commission specifically clarifying that GOs 95 and 165 apply to POU.

IV. PROPOSED CONSENSUS RULES

Parties were able to reach consensus on five proposals at the workshops. For the reasons discussed below, CPSD supports the adoption of these proposals.

A. General Order 95, Rule 18: Term "Nonconformance" (Workshop Report, p. A-2)

This consensus PRC revises Rule 18A to use the term "nonconformance" instead of "violation." CPSD voted neutral on this item not because it agrees with the utilities' perceived legal significance of the term "nonconformance", but because CPSD is indifferent as to which term is used. This is because, despite the utilities' characterization of the term "nonconformance", the Commission has clearly stated that a "nonconformance" or failure to comply with a general order is a violation. (See, D.04-04-065, 2004 Cal. PUC LEXIS 207 at *18: "Nothing in the language of GO 95,

128 or 165 provides a specified grace period within which to comply with these GOs, or provides that failure to comply is a “nonconformance,” with a violation occurring at a later time determined by the utility in accordance with its maintenance schedules.”) It is with this understanding of the term “nonconformance” that CPSD voted neutral on this PRC. In fact, CPSD does not believe that this change is necessary or that it will improve system safety in any way.

B. General Order 95, Rule 35, Paragraphs 1-3 (Workshop Report, p. A-15)

This proposal makes three changes to Rule 35, paragraphs 1-3. The first paragraph clarifies the applicability of vegetation management requirements associated with electric and communication facilities to state and local lands. The utilities have stated that they have had trouble accessing land owned by state and local agencies to perform vegetation management activities. This clarification is one of the more reasonable proposals suggested by the utilities to give them additional tools to deal with customers that refuse to allow utilities to perform vegetation management work on the customer’s property, and CPSD accordingly voted neutral on this item.

The second paragraph clarifies circumstances under which “hazard” trees must be removed. CPSD supports this proposal to clarify language relating to dead, rotten, or diseased trees.

The third paragraph clarifies language concerning strain from vegetation applied on electric lines and communication cables energized at 750 volts or less. CPSD supports this proposal to clarify language describing when strain upon a conductor is present.

C. General Order 95, Rule 37, Table 1, Case 14 and Associated Footnotes (Workshop Report, p. A-20)

In Phase 1, the Commission adopted, on an interim basis, revisions to the minimum radial vegetation clearances set forth in Table 1, pending further evaluation of vegetation management proposals in Phase 2. (D.09-08-029, p. 31.) A new Case 14 was

added to Rule 37, Table 1 which increased Vegetation Management requirements in Extreme and Very High Fire Areas in Southern California that are Local Responsibility Areas (LRAs). The rule change copied the requirements of the Public Resource Code § 4293. In addition, the Commission adopted an exclusion to the clearances for orchards. This consensus proposal simply makes permanent the revisions adopted in the Phase 1 decision and removes their status as interim measures. It also corrects some typographical errors. CPSD sponsored this proposal and supports its adoption as a permanent measure. Harmonizing vegetation clearances in Extreme and High Fire Threat Zones in Southern California with the Public Resource Code is necessary due to the fact that an overhead conductor in an LRA has the same possibility of starting a fire as a conductor in a State Responsibility Area (SRA), and thus should have the same clearance requirements. CPSD also believes the exclusion for cultivated, actively managed orchards is a reasonable accommodation to ameliorate the effects of the rule on agricultural lands.

**D. General Order 95, Rules 44.1, 44.2, 44.3 and 23.0
(Workshop Report, p. A-27)**

As described in the Workshop Report, this consensus proposal makes certain clarifications to remove ambiguity with regard to what safety factors should be met under which circumstances. CPSD supports adoption of these revisions as they should ensure that the correct safety factors are used during pole loading calculations. It is important to keep the safety factors above the required values because if they fall too low this increases the likelihood that a pole will fail and result in a death or fire.

**E. General Order 165, Sections I-IV (Workshop Report,
p. A-34)**

CPSD supports the adoption of these proposed revisions to General Order 165 for the reasons stated in the Workshop Report. As noted in its previous pleadings, CPSD deferred to Phase 2 the issue of applying the maintenance and inspection requirements of General Order 165 to electric transmission facilities. This PRC makes it possible for

CPSD to ensure that transmission facilities in California are adequately inspected and maintained, without creating duplicating requirements for those entities that have been turned over to the control of the CAISO. Although certain parties have previously argued that the Commission has no jurisdiction over the safety of transmission facilities operated by the CAISO, CPSD has addressed these arguments in its March 9, 2009, filing (*see* pp. 10-11). As CPSD explained, there is no conflict with other state or federal regulations because (1) many of the transmission facilities in the State of California have not been turned over to the control of the CAISO; (2) for those entities which have turned over their transmission facilities to the CAISO, their Transmission Control Agreements (TCAs) with the CAISO make clear that there would be no conflict between the CAISO and state safety requirements;³ and (3) the Energy Policy Act of 2005, 16 U.S.C. § 824o(i)(3) provides that “Nothing in this section shall be construed to preempt any authority of any State to take action to ensure the safety, adequacy, and reliability of electric service within that State, as long as such action is not inconsistent with any reliability standard....” Indeed, as stated above, even the CAISO stated that its TCAs require participating transmission owners to “adhere to such regulations where they already exist.” (CAISO April 8, 2009, Reply Comments, p. 4.)

CPSD also supports including the addition of “publicly owned electric utilities” to the applicability section of GO 165.⁴ Publicly owned utilities must conform to the same GO 165 requirements as California’s investor-owned utilities. As explained more fully below in Section V.B, ensuring that all entities that are subject to the Commission’s jurisdiction over safety matters follow these rules will have a positive impact on safety

³ The TCAs can be found on the CAISO’s website at <http://www.caiso.com/docs/2005/10/08/2005100817510214319.html>

⁴ As with General Order 95, Rule 12 (see below), the parties agreed to bracket the term “publicly owned electric utilities” in the applicability section of GO 165. However, this bracketed term was inadvertently omitted in the Workshop Report, although the Workshop Report clearly indicates that this was an issue reserved for briefs. (Workshop Report, p. A-49.) Therefore, the applicability section should read: “This General Order applies to all electric distribution and transmission facilities (excluding those facilities contained in a substation) that come within the jurisdiction of this Commission, located outside of buildings, including electric distribution and transmission facilities that belong to non-electric utilities [and publicly owned electric utilities].” The brackets would be removed if the Commission adopts CPSD’s recommendation to specifically include POUs in the applicability section.

and further the goals of this OIR to prevent or minimize the risk of fires. The Commission has statewide responsibilities for the safety of electric and communications facilities, and, therefore, it does not make sense to have gaps in these safety requirements simply because the facilities happen to be in certain municipalities.

V. MULTIPLE ALTERNATIVE PROPOSALS

A. MAP No. 1 –General Order 95, Rule 11 (Workshop Report, p. B-4)

There are two proposals concerning Rule 11 on the table. Both proposals add the words “design” and “maintenance” to the described purpose of the rules, since certain rules in General Order 95 already concern the design and maintenance of overhead supply and communication lines. Both proposals also eliminate the word “uniform” from Rule 11 to acknowledge the fact that the requirements for overhead supply communications lines are not necessarily uniform. No party opposed these revisions to Rule 11. However, CPSD’s version removes the term “electrical” as a modifier to “lines” in the rule. (Workshop Report, p. B-4.)⁵ The CIP version retains the word “electrical.” (Workshop Report, p. B-10.) Contrary to the CIPs’ assertion that CPSD was unable to provide a justification for the removal of this term, as CPSD states in the Workshop Report: “Removing the term “electrical” should eliminate any confusion over what types of lines the General Order applies to, and ensures that all companies understand that all overhead lines must be designed, constructed, and maintained in accordance with the General Order.” (Workshop Report, p. B-5.) For this reason, CPSD prefers its version. However, CPSD supports either version because, as explained in the Workshop Report, when this rule was originally adopted in 1922, both supply lines and communications lines conducted electricity. Thus, historically, the term “electrical lines” as used in this

⁵ Although the “Strikeout/Underline” version of CPSD’s PRC shows the strikeout of the two instances where the word “electrical” appears, the “Final” version shown in the Workshop Report still contains one use of the term “electrical”. This was an inadvertent oversight. The “Proposed Final Rule” should accordingly read: “The purpose of these rules is to formulate, for the State of California, requirements for overhead line design, construction, and maintenance, the application of which will ensure adequate service and secure safety to persons engaged in the construction, maintenance, operation or use of overhead lines and to the public in general.”

rule includes “communications lines.” Therefore, retaining the term “electrical lines” does not change the fact that GO 95 applies to “communications lines” as well as supply lines.

B. MAP No. 2 –General Order 95, Rule 12 (Workshop Report, p. B-16)

This proposal clarifies that publicly owned utility electric supply facilities are subject to GO 95 safety rules. CPSD similarly proposes that GO 165 specifically mentions POUs in the applicability section. Ensuring that all entities that are subject to the Commission’s jurisdiction over safety matters follow these rules will have a positive impact on safety and further the goals of this OIR to prevent or minimize the risk of fires. The Commission has statewide responsibilities for the safety of electric and communications facilities, and, therefore, it does not make sense to have gaps in these safety requirements simply because the facilities happen to be in certain municipalities.

CMUA objects to the rule change because, according to CMUA, it incorrectly asserts Commission jurisdiction over POUs. CPSD has addressed the POUs’ jurisdictional arguments above. However, the very fact that the POUs are still contesting the Commission’s jurisdiction over POUs demonstrates exactly why the Commission should explicitly clarify in its General Order that the safety rules therein do apply to POUs.

Contrary to CMUA’s assertion, CPSD has provided additional justification for the adoption of this rule. As explained in the Workshop Report, CPSD has been unable to engage in safety audits with some POUs, which use the fact that they are not specifically mentioned in the applicability section of GO 95 to turn down staff’s requests for audits. In addition, certain POUs have stated that they will only take corrective action if they feel it is appropriate, thus potentially leaving safety violations uncorrected. Although the Commission has oversight of the safety of publicly-owned electric utility facilities, the Commission’s enforcement staff has been unable to verify compliance with Commission safety rules. This is directly attributable to the fact that GO 95 and GO 165 do not specifically mention POUs. The fact that CPSD is again offering this proposal for

consideration underscores the importance in having the Commission adopt this rule change. As Pacific Gas & Electric Company (PG&E) noted in the Workshop Report, ensuring that all electric utilities in the state follow the same safety-related rules should enhance the Commission’s goal of having a safe, reliable and efficient California electrical grid.

C. MAP No. 3 – General Order 95, Rule 18A (Workshop Report, p. B-23)

MAP No. 3 contains two proposals to revise and clarify Rule 18A, one offered by the CIPs and one offered by San Diego Gas & Electric Company (SDG&E). Rule 18A was adopted in Phase 1 of this proceeding in order to provide an explicit requirement that a utility have an auditable maintenance program and correct safety hazards and violations discovered on its facilities. CPSD originally opposed the CIPs’ proposed revisions to Rule 18A. However, during the workshops the proposal was reworked and CPSD now believes it retains the core elements of the original rule while offering additional clarity. CPSD agrees that the CIP proposal (Workshop Report, p. B-23) provides utilities and CIPs with sufficient flexibility to prioritize conditions that need attention, and supports adoption of that proposal.

D. MAP No. 4 –General Order 95, Rule 18C (Workshop Report, p. B-49)

This PRC would require electric utilities to have in place contingency plans for identifying foreseeable hazard conditions that exceed wind loadings of Rule 43 in areas designated as having high fire risk during periods of high fire danger. Although CPSD agrees with the intent of this proposal, contingency planning is something utilities should already be applying in their daily operations. Therefore CPSD voted neutral on this item.

E. MAP No. 5 –General Order 95, Rule 31.1 (Workshop Report, p. B-58)

CPSD strongly opposes this proposal by the Joint Electric Utilities. Rule 31.1 is used by the Commission’s enforcement staff to cite utilities for unsafe conditions not covered by other rules. The utilities argue this rule provides no “specific guidance” to

utilities for the design, construction and maintenance of utility facilities, and is therefore not capable of being “operationalized.” (Workshop Report, p. B-60.) However, the Commission relies on several such “general maintenance” requirements to ensure the safe, reliable operation of utilities’ systems. For example, GO 95 Rule 31.1 requires electrical supply and communication systems to be “designed, constructed, and maintained for their intended use...to enable the furnishing of safe, proper and adequate service.” GO 128 Rule 12.2 requires that systems “be maintained in such condition as to secure safety to workmen and the public in general.” GO 128, Rule 17.1 contains a similar standard, requiring that all systems be “maintained in a condition which will provide adequate service and secure safety to workmen, property and the general public.” Public Utilities Code § 451 requires utilities to furnish “just and reasonable service, instrumentalities, equipment, and facilities as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.”

The Commission has acknowledged that these are broad requirements:

In addition to these general maintenance requirements, each of the cited GOs also contains specific, detailed maintenance requirements, designed to implement and achieve the general purposes....As these various versions of the maintenance standards make clear, we have directed the electric utilities to meet two broad system maintenance requirements: delivery of adequate service and provision of safety to both members of the public and workmen.

(OII into Southern California Edison’s Electric Line Construction Operation, and Maintenance Practices, D.04-04-065, mimeo, p. 12) However, these general requirements are important in ensuring safe, reliable operation of utility systems. Rule 31.1, as it is currently written, is absolutely critical for ensuring safety of utility facilities. CPSD relies on this rule, and other general maintenance requirements, to cite unsafe conditions that are not specifically covered by other, more specific provisions in the General Orders. As the utilities point out in their rationale, their PRC would require CPSD to articulate a specific “requirement” that is being violated, so that utilities will have “clarity around what is expected for compliance.” (Workshop Report, p. B-60.)

The utilities want a specific list of every possible unsafe condition that they could be cited for, but this is simply not possible. Nor does the law require the Commission to do so. The Commission resolves investigations on a case-by-case basis. When citing a provision such as Rule 31.1 or the Public Utilities Code section 451's "safe and reasonable" service standard, the Commission looks to see if the utility possessed or should have possessed information sufficient to put a reasonable person on notice that its practices were unsafe. (*See e.g., Carey v. PG&E* [D.99-04-029]; *In re Pacific Bell Wireless* [D.04-09-062].) The utilities have long and often complained that provisions such as Rule 31.1 lack the requisite specificity to provide proper notice as to what would constitute a violation. However, the Commission, and the courts, have rejected these arguments as often as the utilities have made them. (*See e.g., Carey v. PG&E* [D.99-04-029]; *In re Pacific Bell Wireless* [D.04-09-062]; *Cingular Wireless v. CPUC* (2006) 140 Cal.App.4th 718.)

CPSD believes that this PRC falls well outside the scope of this proceeding as it is merely intended to reduce the utilities' liability, both at the Commission and in civil courts, by attempting to narrow the circumstances in which it may be used to cite utilities for unsafe conditions. Moreover, this is an attempt to revise a rule that is currently the subject of open investigations into the 2007 Southern California fires. This PRC does nothing to *improve safety* and should accordingly be rejected.

F. MAP No. 6 –General Order 95, Rule 31.2 (Workshop Report, p. B-67)

MAP No. 6 contains 5 separate proposals concerning CIP inspections. MAP 6C (Workshop Report, p. B-83) is CPSD's proposal governing patrol and detailed inspections of communications lines. CPSD also proposes a rule which would require intrusive inspections for wood poles supporting only communication lines or equipment that are adjacent to or interest with joint use poles supporting electric supply lines. (See MAP 6E, Workshop Report, p. B-103.) CPSD will address each of the proposals in more detail below, but first wishes to address in general the need for more comprehensive rules governing CIP inspections.

As discussed in Phase 1 of this proceeding, currently there is no explicit requirement in GO 95 setting minimum inspection cycle lengths on CIPs. Although these utilities are already obligated to inspect and maintain their facilities in a safe manner under Cal. Pub. Util. Code § 451, and Rule 31.2 of GO 95 explicitly requires that electrical supply and communications lines must be “inspected frequently and thoroughly,” certain CIPs and other utilities have not complied with this requirement. CPSD has found numerous facilities of CIPs which have not been properly maintained and which utilize electric poles. At the very minimum, there is not a uniform interpretation of what the phrase “inspected frequently and thoroughly” means. CPSD also found that certain CIPs did not maintain records indicating that they are frequently and thoroughly inspecting their facilities. (CPSD’s March 9, 2009 Proposed Rules, at p. 30.) It is a fundamental aspect of GO 95, however, to have an auditable inspection and maintenance program, in order to ensure that the rules are being complied with.

In response to these concerns, in D.09-08-029, the Commission adopted an ordering paragraph directing CIPs to begin taking specific inspection and corrective actions. (D.09-08-029, pp. 12-15, Ordering Paragraph No. 1.) Pursuant to Ordering Paragraph No. 1, these initial inspections are to be completed by September 30, 2010. The Ordering Paragraph explicitly provides for these initial inspections to begin in Extreme and High Fire Threat Zones in Southern California. There is still a need, however, to incorporate explicit requirements governing the frequency of patrol and detailed inspections for CIPs in general, for all of California. As discussed in CPSD’s prior pleadings, electric wires are hazardous if they come in contact with vegetation or telephone wires. Lashing wires are uninsulated metal wires, which if not properly maintained, can break and a strong wind can blow them into the electric wires, or an inadequate clearance could result in arcing, which could cause fires.

In addition, just by sharing the same poles with electric power lines, there are at least three potential other ways that fires could be caused due to improperly installed or maintained CIP facilities. First, if poles are overloaded with too much weight from all of the CIPs’ facilities, then the poles with the electric lines could break, and the electric

lines could then create fires from landing on vegetation or from sparks if the electric lines contact each other (after the poles break before the lines hit the ground). Secondly, a sagging communications cable could become so low, such that if a truck or train were to run into it, it could pull or break one or more of the attached poles with the electric lines. Besides the hazards to the general public from that situation, it could also cause a fire if the electric lines were to land on vegetation or cause sparks on the way down. Third, up until now the discussion has centered on CIP facilities below electric power lines. However, on October 3, 2008 in D.08-10-017, the Commission issued pole-top antennas requirements to go into effect nine months later (i.e., July, 2009). To the extent that these CIP facilities are not frequently and thoroughly inspected to make sure they remain in good condition after the initial installation, wind and gravity could cause these CIP facilities to fall onto the electric wires and this could potentially lead to fires.

In addition, CPSD heard from various parties, including electric utility workers and LA County Deputy Fire Chief John Todd, at the workshops both in Phase 1 and Phase 2 about failures of wood poles supporting only CIP lines and equipment, which then cause problems with adjacent supply lines or create other public safety issues such as blocking evacuation routes or causing the loss of reverse 911 in emergency situations.

These examples demonstrate the need to clarify the inspection rules for CIPs, including a requirement for intrusive pole testing for CIP-only poles that are in close proximity to poles supporting electric supply lines. As addressed in more detail below, neither of the CIP inspection proposals (MAP No. 6A or 6B) are sufficient to address the potential hazards associated with CIP lines and equipment on joint use poles with electric wires. Nor do they address the deficiencies in past CIP practices concerning inspections and maintenance of their equipment.

1. MAP No. 6A (CIP-1 Proposal) (Workshop Report, p. B-67)

This PRC, like the CIP-2 proposal addressed below, is too narrow in its geographic scope and application. This is because the CIPs do not acknowledge the potential hazards associated with CIP lines and equipment on joint use poles with electric

supply lines. Instead, the CIPs continue to rely on the Exponent Report and insist that there is little or no fire risk associated with communication lines. CPSD has already addressed the numerous flaws in the Exponent Report in its previous filings, and have also explained how the assertions made in the Exponent Report actually provide record support for the adoption of CPSD's rules. (*See, e.g.,* CPSD's April 8, 2009, Reply Comments, pp. 24-29.) As CPSD previously explained, a closer review of the Exponent Report's assertions not only reveal ample record support for CPSD's proposed rules, but that there is no dispute between the Exponent Report's assertions and CPSD's evidence. (*See* CPSD's April 8, 2009, Reply Comments, pp. 24-29.) Suffice to say, the Exponent Report does not provide a basis to ignore the inherent dangers of electric supply lines and the hazards associated with poorly maintained CIP equipment located on or near joint poles with electric supply lines.

The CIPs are trying to severely limit the scope of inspections, and this OIR, by advocating measures only apply in certain "specified fire threat zones". While these areas may warrant additional attention, they are not the only areas where threats of fire or other public safety hazards exist. As explained above, there are dangers associated with CIP facilities on electric supply line poles, not just on poles located in "specified fire areas." High fire threat areas may be areas that warrant additional attention, they should not be used to limit inspection activities to only those areas, while ignoring the rest of the State.

Specifying inspection cycles in only certain "specified fire areas" does nothing to clarify how often CIPs should be inspecting their lines in the rest of the State. Instead, this PRC relies on the text of "frequent and thorough" in the existing rule, which has been misinterpreted by CIPs in a way that does not ensure that their entire systems are inspected in any specified period of time. Many CIPs have interpreted "frequent and thorough" to mean performing a quick visual scan only when a customer calls with a service problem. Otherwise, there is no program in place to ensure that all lines are eventually inspected.

Another problem with this proposal, as with the other CIP-2 inspection proposal, is that it relies on the CIP-developed fire threat map to identify the “specified fire areas” for Northern and Central California. As discussed more thoroughly below, CPSD does not believe the Commission should adopt this map and incorporate it into GO 95 safety rules unless and until the map has undergone a thorough peer review by fire experts, including CAL FIRE.

2. MAP No. 6B (CIP-2 Proposal) (Workshop Report, p. B-76)

The CIP-2 proposal purports to incorporate the inspection requirements adopted by the Commission in Phase 1, and only would require CIPs to perform patrol inspections of their lines, and only in “specified fire areas.” CPSD first notes that the CIP inspection proposal put forth in Phase 1 was a compromise to lessen the burden of beginning inspections for those CIPs that were not performing any inspections whatsoever (which was most of them). CPSD wanted the CIPs to get started doing some inspections to at least catch the most obvious safety hazards before the 2010 fall fire season in Southern California. It should not be used now to limit the application of a more comprehensive inspection rule for CIPs in Phase 2.

This PRC suffers from the same problem as CIP-1 proposal above, in that it is too narrow in its geographic scope, and ignores CIP facilities located on joint use poles outside the “specified fire areas.” In addition, this PRC would have CIPs performing patrol inspections on a five-year cycle. This is simply too long and could allow safety hazards to exist for several years before being inspected and discovered. The five-year cycle does not comport with the current requirement that lines be inspected “frequently.”

The other problem with this proposal is that it has no requirements for detailed inspections. As CPSD stated in the Workshop Report, patrol inspections are intended to detect obvious safety hazards, and are reactive in nature. Detailed inspections are more proactive and preventative in nature and are intended to detect non-obvious GO 95 safety violations and conditions that may become safety hazards. The scope of each type of inspection is different both in terms of the types of conditions companies should be

looking for, but also in terms of how they are performed (i.e., patrol inspections may be done be aerial flyovers of simple visual scans during the ordinary course of business v. having a dedicated inspector visit every pole for detailed inspections). Detailed and patrol inspections work hand-in-hand, and both are necessary to identify and correct safety violations on a CIP's facilities.

The goal of the Commission's safety rules should be prevention –utilities should inspect and maintain facilities to prevent any safety hazards or problems from occurring. This PRC is not consistent with that goal in that it lacks a detailed inspection requirement and would let safety hazards sit unnoticed for too long before being discovered. In addition, it is insufficient to reduce the fire risks and other hazards associated with CIP facilities on joint use poles with electric supply lines.

3. MAP No. 6C –CPSD's CIP Inspection Proposal (Workshop Report, p. B-83)

This PRC adds language to Rule 31.2 referring to specific inspection requirements for: A) Communication Lines (by referring to new proposed Rule 80.1; and B) Supply Lines (by referring to the inspection requirements in GO 165.) For CIP inspections, proposed Rule 80.1 clarifies the existing obligation in Rule 31.2 to inspect lines “frequently and thoroughly” by doing two things:

- 1) It requires CIPs to have inspection programs in place for all their lines that ensure both detailed and patrol inspections. With the exception of CIP lines that are located on joint use poles or one span away from joint use poles supporting supply lines, the rule does not prescribe any specific cycles for CIP line inspections. Rather, for CIP-only poles the rule allows CIPs to determine maximum allowable intervals between inspections, based on their proximity to electric facilities, terrain, accessibility, and location. CPSD recognizes that CIP companies use many different types of facilities and equipment. This “programmatic” aspect to the CIP inspection

rule is designed to give CIPs maximum flexibility in developing an inspection program that works best for their system.

- 2) For CIP lines that are located on or one span away from joint use poles that support electric supply lines, the rule specifies minimum inspection cycles for detailed and patrol inspections: 10 years for detailed inspections, 1 year for patrol inspections in urban areas, and 2 years for patrol inspections in rural areas. Patrol inspections in rural areas are increased to once per year in Extreme and Very High Fire Threat zones in Southern California. Because of the inherent dangers of supply lines, and the hazards associated with poorly maintained CIP equipment on joint use poles, CPSD believes these requirements are reasonable and justified. CPSD notes, however, that local conditions may require more frequent inspections than the required minimum. In addition, having the CIPs on the same cycle as the electric companies for patrol cycles may facilitate joint inspections and result in cost savings.

CPSD considered going with a purely “programmatically” approach to CIP inspections, which would allow CIPs to develop inspection cycles for all their lines. However, CPSD ultimately opted for this “hybrid” approach, which includes minimum inspection cycles only for CIP lines that are located on or near joint use poles. This is in part due to the hazards associated with CIP lines located on joint use poles, as discussed above, and in part based on CPSD’s experience with CIPs inadequate inspection activities in the past and the uncertainty that CIPs would develop adequate inspection cycles for equipment located on joint use poles. As AT&T made clear in the Workshop Report, it believes that “any inspection requirements above existing practices are unwarranted...” (Workshop Report, p. B-79.) As CPSD explained above, many CIPs “existing practices” do not include any type of inspection program.

The CIPs' comments in the Workshop report essentially attack CPSD's proposal as being too broad and imposing "new obligations" on CIPs. (See Workshop Report, p. B-91.) What the CIPs fail to realize is that this proposal does not embody a new obligation. It only clarifies existing obligations under GO 95 that CIPs "frequently and thoroughly" inspect their lines "for the purpose of insuring that they are in good condition so as to conform with these rules." Thus, there is no "broadening" of any obligation, as the CIPs contend. Rather, the dispute is over what "frequent and thoroughly" means. As explained above, CPSD believes that having CIPs perform patrol inspections for those facilities that are on joint use poles on the same cycle as electric utilities is both reasonable and justified given the risks associated with poorly maintained CIP equipment on joint use poles. In addition, "thorough" should include a method that ensures that all violations and conditions which may become safety hazards are caught -this is why both detailed and patrol inspections are necessary. Contrary to the CIPs' assertions, CPSD does recognize the different risk factors inherent in CIP equipment, and this proposal reflects that acknowledgement. Although CPSD originally proposed in Phase 1 having CIPs on the same 5 year cycle as electric utilities for detailed inspections, CPSD believes that 10 years is a reasonable time frame given the nature of CIP equipment. CPSD also worked with the CIPs both in the workshops and in private meetings to develop a definition of "detailed inspections" that better fit their needs.

The CIPs are correct that the proposal does not specify increased inspection cycles for extreme or very high fire threat zones outside Southern California. Once it became apparent that there was not going to be consensus on the use of a fire map for Northern California, CPSD decided not to rely on such a map in its inspection rule. However, as CPSD noted above, the fire maps should not be used to merely restrict activity to a particular area; rather they should be used to focus efforts or identify where additional measures might be taken. The fact that this PRC does not rely on a map to specify what additional measures should be taken in those areas does not prevent a CIP from increasing patrol inspections in those areas. In fact, the rules already require them to take additional measures if local conditions warrant. In addition, as discussed further below,

if the Commission decides to go ahead with the development of a statewide map (or if the Commission decides to adopt the CIP-developed map after it has been formally reviewed), this rule may be easily revised to incorporate such a map.

**4. MAP No. 6D –SDG&E’s CIP Inspection Proposal
(Workshop Report, p. B-94)**

SDG&E’s proposal is similar to CPSD’s except that it would require detailed inspections for CIP-only poles within three spans of electric supply facilities (CPSD’s proposal only provides for one span), and would decrease the maximum intervals between detailed inspections for communication facilities located in Extreme and Very High Fire Threat Zones in Southern California from the 10 years proposed by CPSD to five years. CPSD understands the desire to have additional attention paid to Southern California, which suffered the devastating fires in 2007 and 2008, and supports this proposal. However, CPSD prefers its proposal and believes it is a reasonable approach to CIP inspections.

**5. MAP No. 6E-CPSD’s Intrusive Inspection Proposal
(Workshop Report, p. B-103)**

This PRC will require intrusive inspections for wood poles that support only communication lines and are physically connected to poles that support supply lines. Although CPSD believes that an intrusive pole inspection works should be part of an overall comprehensive inspection regime, it has offered this as a separate stand-alone PRC from its CIP inspection rule above. Thus, regardless of which CIP inspection rule the Commission adopts, it still may adopt this PRC governing intrusive pole inspections.

As stated in the Workshop Report, an intrusive inspection is currently the only way to determine the remaining strength of a wood pole. Although GO 165 requires all wood poles that support supply lines to be intrusively inspected, there is no specific requirement for poles that support only communication lines. This will reduce the likelihood of a CIP-only pole failing and resulting in problems to the connecting supply lines, for example causing adjacent supply lines to slap and make contact, thus causing

arcing that could lead to fires. Also, as mentioned above, at the workshops electric utility workers expressed concerns about the “cascading” effects of CIP-only pole failures, where several weaker CIP-only poles fall and pull down a pole supporting electric supply lines. Therefore, this PRC would require intrusive pole inspections for CIP-only poles that are one span away from poles that support supply lines.

This requirement would extend to three spans away in Extreme or Very High Fire Threat Zones in Southern California. It also applies to CIP-only poles that are interest between joint use poles supporting supply lines in Extreme or Very High Fire Threat Zones in Southern California. Wood poles that support only CIP facilities have a lower safety factor than poles that support supply lines, and can break more easily in high winds. High wind conditions that can cause CIP-only poles to break are the same conditions that can lead to catastrophic fire events, especially in Southern California which experiences Santa Ana winds.

Contrary to the CIPs’ assertions, this PRC is focused on mitigating fire hazards associated with CIP facilities on or “in close proximity” to joint use poles with electric facilities. It does not require intrusive inspections of all CIP-only poles (although CPSD believes this is a good idea), but only those poles in close proximity to joint use poles with electric facilities. The electric utilities support this measure as a way mitigate fire risk. As Sierra Pacific states, “Any failure by CIP facilities in close proximity or connect to electric facilities can compromise electric facilities and could ignite a fire. Therefore, requiring intrusive inspections of CIP facilities is in the public interest as it will help to locate facilities in need of repair and thereby reduce the risk of fires.” This PRC is narrowly tailored to address the hazards discussed above, and is accordingly within the scope of this proceeding. Furthermore, and contrary to the CIPs’ assertions, the scope of this OIR is *not* limited to adopting measures only in extreme and very high fire threat zones in the State. Nothing in the OIR or the Scoping Memo is so limiting. In fact, the Phase 2 Scoping Memo specifically includes whether the inspection and maintenance requirements of GO 165 should apply to CIP facilities. (Phase 2 Scoping Memo, p. 3.)

GO 165 contains an intrusive pole inspection component and is not limited in geographic scope to only Extreme and Very High Fire Threat Zones.

As for the costs, although AT&T claims that it would cost \$11 million for the “first round” of intrusive testing, these costs could be spread out over several years by requiring a gradual implementation schedule. In addition, CPSD notes that the rule would only require intrusive inspections every 20 years after the first intrusive inspection. Therefore, this would not be an annual cost. Moreover, as CPSD stated in the Workshop Report, the rule may be cost effective and actually save CIPs money. According to the Osmose Utility representative at the workshops, wood poles will last approximately 45 years with no treatment, but will last 80 years with 2-3 treatments. Thus, with treatment, poles may need to be replaced less often, saving considerable money.

G. MAP No. 7 –General Order 95, Rule 35 (Workshop Report, p. B-112)

1. MAP No. 7A, Paragraph 4 Proposal by Joint Electric Utilities (Workshop Report, p. B-112)

According to this PRC, whenever a property owner obstructs access to overhead facilities for vegetation management activities, the supply company can discontinue electric service at any location where the property owner receives that company’s electric service. As written, this PRC has no pragmatic limitations on when a utility can shut off service to a customer’s property. The proposal to cut off service to a “refusing” property owner, at *any location where that property owner receives service from the utility*, is an extremely radical and severe reaction. Under this proposal, for example, if a State or City agency blocked a utility from performing vegetation management work at a particular location, the utility could cut off all power to all State or City buildings and facilities. Utilities already have the ability to shut off power if there is an imminent safety hazard. Rather than address the actual hazard on the subject property, this PRC could create additional hazards at other properties. The utilities should not have so much power to shut off services to properties where no demonstrated safety hazard exists.

In addition, this PRC is inconsistent with current provisions in Rule 35 which require a utility to make a “good faith effort” to obtain permission to perform vegetation management activities. As written, this PRC conflicts with these provisions because there is no requirement that a utility make a “good faith effort” to obtain permission before shutting off service. All that is required is a five day written notice. Although the utilities assert this is a “last resort” measure, as written, the PRC does not contain enough safeguards to protect against misuse and ensure that utilities make sufficient “good faith effort” to obtain permission prior to shutting off a customer’s service.

This PRC does not improve safety, and does not belong in General Order 95. If the utilities wish to make vegetation management work a “condition of service” (as they assert in the Workshop Report, at p. B-114), they should attempt to address this in their tariffs.

2. MAP No. 7B, Exception 3 Proposal by Joint Electric Utilities (Workshop Report, p. B-121)

Under this PRC, a utility would not be responsible for the consequences of failing to trim vegetation when a property owner obstructs access to overhead facilities. This PRC should be rejected for several reasons. First, it is clearly an attempt to reduce or eliminate utility liability, and thus is outside the scope of this proceeding. (See Phase 2 Scoping Memo, p. 8.) Second, this PRC does nothing to enhance safety. The utilities claim this PRC is “likely to have particular importance to refusing property owners” which would then allow the utilities to perform vegetation management activities. (Workshop Report, p. B-124.) However, the utilities acknowledge that these property owners are a “very small percentage” (Workshop Report, p. B-125.) On the other hand, shifting liability removes a powerful incentive for utilities and CIPs to adhere to Commission safety rules. Third, this PRC essentially changes what constitutes making a “good faith effort” to obtain permission to trim. Currently the rule provides a minimum standard for demonstrating a good faith effort, including documentation of an attempted personal contact and a written communication. However, the rule further states that this does not preclude other actions to demonstrate a good faith effort. Under this proposal,

the utilities would eliminate the need to deal with refusals on a case-by-case basis, and would shift liability onto the property owner after only the bare minimum amount of effort (one personal contact and one written communication). This PRC is accordingly in conflict with the current standard for demonstrating “good faith effort.” Absolving utilities from liability for failing to adhere to those standards would have a serious impact on safety and is antithetical to the goals of this rulemaking. The parties, and the Commission, should be focused on enhancing safety, not coming up with ways to disincentivize utility compliance with safety rules.

**H. MAP No. 8 –General Order 95, Rule 35 Appendix E
(Workshop Report, p. B-132)**

MAP No. 8 contains a number of proposals to revise the table and text of the guidelines for recommended radial clearances at the time of trim. The Joint Electric Utilities have proposed revisions to both the table and the text of Appendix E, while the Mussey Grade/Farm Bureau proposal changes the text only, and would leave the table as is. CPSD wishes to point out that the Joint Electric Utilities’ proposal for Appendix E’s table does not set new minimum clearance levels for vegetation-to-conductor radial clearances, as the justification implies (see bullet point re anticipated costs, where the utilities state the PRC “could create a one-time cost for companies not currently trimming to the new minimum levels.” Workshop Report, p. B-134). Rather, Appendix E contains guidelines for recommended minimum clearances at the time of trim. The minimum clearance requirements are contained in a separate table. (*See* General Order 95, Section III Requirements of All Lines, Table 1.)

The Appendix E guidelines already allow a utility to go beyond the minimum clearances specified in Table 1, so there is nothing prohibiting a utility from having greater clearances. CPSD believes the current guidelines are adequate and already provide utilities the necessary flexibility to trim beyond the minimum requirements at the time of trim, and that these revisions are not necessary. In addition, the proposals appear to spell out what constitutes “reasonable vegetation management practices” by listing various factors that a utility may consider in determining additional clearances. Again,

the revision is unnecessary because the Appendix already allows for greater clearances based upon “reasonable vegetation management practices.”

Rather than a safety matter, CPSD believes this is a matter of convenience, cost, and aesthetics. Giving utilities the flexibility to obtain greater clearances than those listed in the table is a complicated, multifaceted issue which raises ratepayer, landowner, environmental, and global warming concerns, to name a few. This dispute between the utilities and property owners as to how much a utility may trim beyond the minimum clearances requires a policy determination from the Commission, and CPSD has accordingly voted neutral on these proposals.

**I. MAP No. 9 –General Order 95, Rule 38 Footnote (AAA)
(Workshop Report, p. B-151)**

This proposal would add a footnote to Cases 1-13 in Table 2 that reminds entities that in designing and constructing their overhead lines, the sag of conductors needs to be accounted for in designing and constructing said facilities. This rule change is unnecessary because the rule clearances must already be met at all times, including times of maximum loading, wind, and temperature.

**J. MAP No. 10 –General Order 95, Rule 44.4 (Workshop
Report, p. B-158)**

MAP No. 10 contains two proposals concerning cooperation between CIPs and electric utilities in performing pole loading calculations prior to adding facilities to poles. These proposals would codify what data shall be shared between entities, and how it shall be shared. CPSD prefers the CIP proposal (MAP No. 10A) over the Joint Electric Utilities’ proposal (MAP No. 10B), because it codifies the provisions for cooperation in the rule itself, rather than in guidelines to the rule. CPSD believes this proposal would require the utilities and CIPs to work together, and would address the CIPs’ concern of minimizing delays in installing or replacing infrastructure. However, CPSD supports the adoption of either proposal because either proposal will require greater cooperation and communication between utilities using joint-use poles.

K. MAP No. 11 –General Order 95, Rule 48 (Workshop Report, p. 181)

MAP No. 11 contains two proposals related to Rule 48. For the reasons explained below, CPSD strongly opposes the Joint Electric Utilities’ proposal to revise Rule 48 (*see* MAP No. 11A, Workshop Report, p. B-175). Instead, CPSD urges the Commission to adopt CPSD’s proposal to form a technical working group to examine General Order 95, Section IV as a whole to determine what revisions may be necessary to rules related to the strength of materials. (*See* MAP No. 11B, Workshop Report, p. B-181.)

The Joint Electric Utilities’ PRC eliminates the “will not fail” language from Rule 48, which currently provides: “Structural members and their connections shall be designed and constructed so that the structures and parts thereof will not fail or be seriously distorted at any load less than their maximum working loads (developed under the current construction arrangements with loadings as specified in Rule 43) multiplied by the safety factor specified in Rule 44.” As the utilities acknowledge, this PRC does not address a specific fire hazard. Rather, according to the utilities, it is not “practically or economically feasible” for electric and CIP entities to design and construct facilities to comply with a rule that makes no allowance for failure.

The utilities suggest this change in order to correct a perceived inconsistency between Rules 44 and 48. They state that although under the current rule, no allowance is made for failure, they note that other subsections pertaining to materials refer to strength properties that are not absolute minimum values, citing an example that for wood poles the referenced strengths for the listed species are approximately average values. According to the utilities, the average implies that approximately 50% of the poles will have strengths less than the average. The utilities state that their revision would resolve this inconsistency by recognizing that “failures” of structures and line supports are possible. (Workshop Report, p. B-176.) However, the upshot of adopting this revision is that 50% of the wood poles could fail and there would be no consequences.

The rule as it is currently written provides a minimum level of wind pressure that poles should withstand. This PRC, however, eliminates this requirement so that a wood

pole could fail with little or no wind present and still be in compliance with the rule. This is an absurd result. Just as a policy matter, the Commission should be able to point to some minimum wind speed at which the pole will not fail –it cannot tell the public that poles will fail but that we do not know under what circumstances. Furthermore, this PRC appears to be aimed at reducing utilities’ liability in civil courts because they can point to the fact that they designed the pole correctly. Under the utilities’ proposed rule, as long as a utility designed the pole correctly, it would be in compliance with the rule even if the pole fell down the next day in zero wind.

Although the utilities claim that the “will not fail” language is impossible to meet, in fact utilities can and do design their poles in such a way that the probability of failure is so small that it is unlikely to lead to a violation of the rule. They use larger poles where circumstances warrant them; they also design above the currently listed safety factors. The “no fail” language also provides utilities incentives to improve technologies.

CPSD is also concerned that making this revision to Rule 48 without considering other engineering standards in Section IV would be irresponsible from an engineering standpoint. Adopting the utilities’ revision to Rule 48 would change the strength requirements in Section IV from performance standards to design standards. As currently written, Rule 48 is a performance standard and creates an expectation that a pole should stay up out in the field under certain circumstances. However, a design standard means that the poles do not have to be maintained out in the field once they are installed. Changing Rule 48 from a performance standard into a design standard would necessitate a review of the safety factors and loading conditions in Rules 43 and 44 to determine if they are adequate for California conditions. For this reason, CPSD recommends rejecting this PRC and instead adopting CPSD’s proposal to conduct a more comprehensive review of Section IV.

CPSD acknowledges that this section of the General Order has remained largely unchanged since its adoption in 1941. However, CPSD believes there may be other changes that can be made to Section IV to resolve perceived inconsistencies independently of eliminating the “no fail” requirement. In addition, changes in

technology necessitate a thorough examination of this section with engineers and other technical experts to ensure that the requirements are still appropriate and adequate to ensure the safety and reliability of the electrical and communications systems in California. As stated above, Rule 48 currently provide a performance standard that creates an expectation that a pole should be expected to stay up out in the field under certain circumstances. This PRC would remove any such expectation and replace it with the expectation that 50% of the poles could fail at any time in any location.

L. MAP No. 12 –General Order 95, Rule 91.5 (Workshop Report, p. B-187)

MAP Number 12 contains a proposal by SDG&E to require communication cables and conductors to be marked as to ownership to facilitate identification. CPSD understands the desire for such identification due to the proliferation of communications equipment on joint use poles, and the need for utility workers out in the field to identify the owners of communication facilities on joint use poles. Although CPSD voted neutral on this PRC, this does not mean, as the CIP Coalition intimates, that CPSD opposes the adoption of this PRC, or that there is a “lack of evidence” of a legitimate problem arising from unmarked aerial communication facilities. (See Workshop Report, CIP Coalition comments, p. B-190.) Rather, CPSD has other concerns about the PRC, including how it would be implemented on a going-forward basis, as most communication facilities are not marked to easily facilitate identification, and how often (distance-wise) facilities would have to be marked.

M. MAP No. 13 –General Order 165, Section V (Workshop Report, p. B-194)

CPSD and Mussey Grade’s proposal would add a new section to GO 165 requiring investor-owned electric utilities to provide data to CPSD annually that would allow specific characteristics of power line fires to be identified.⁶ This information could then

⁶ The subheading (A) in Workshop Report (see p. B-194) mistakenly identifies the CPSD-MGRA proposal as a proposed Ordering Paragraph. Rather, as the main heading correctly notes, the proposal is to add a new section to General Order 165, at Section V.

be used to evaluate the effectiveness of current fire prevention measures and formulate future fire safety improvements. CPSD recently obtained funding to create and manage a database to help track safety audits and other safety-related incidents, and is capable of developing the ability to receive, safely store, and analyze this data. As noted in the Workshop Report, there currently is no other data set maintained by fire or public safety agencies that provides specific causal and location information regarding fires started by electrical distribution or transmission equipment. Although CALFIRE tracks information related to powerline-related fires, it does so for fire sizes greater than 100 acres. However, as explained in the Workshop Report, small fires can easily become large ones if the conditions are right. Collecting information and identifying the causes of minor fires will better enable the Commission and the utilities to take proactive steps to eliminate common failure mechanisms. This will, in turn, reduce the likelihood of ignition of major fires.

The CIPs main concern is that they will be identified by the electric utilities as a “cause” of a fire. The CIPs and utilities have also expressed concern about attorneys “scrubbing” the information to make it more favorable to the electric utilities. PG&E also raises issues of increasing liability risks and privilege issues. The CIPs and electric utilities overstate these concerns. The purpose of this rule is to obtain factual data, not legal causation or information subject to attorney-client privilege.

PG&E further claims the PRC would be burdensome and costly as “some” of the data to be collected is not currently collected by utilities. However, most of this data is currently collected by the utilities; in fact, the characteristics listed in the PRC are virtually identical to an example report obtained from SDG&E.

PG&E also points to the fact that the Commission previously eliminated the requirement for electric utilities to report all vegetation-related fires to the Commission. (Workshop Report, p. B-200.) However, this data collection requirement is different than the one PG&E references in two ways. First, the requirement PG&E refers to was narrower and only required reporting vegetation caused fire incidents. It would not, for example, have required reporting an incident where two supply lines slap together.

Second, the old reporting requirement had a different purpose in that it required CPSD to investigate and write up a report. In contrast, CPSD can perform trend analysis on the information provided in this data collection rule in order to evaluate and develop measures to prevent major fires. This data will assist CPSD in identifying trends and patterns in the causes of powerline-related fires and identify correlations between certain inspection and maintenance activities and fire incidents (i.e. whether inspecting less often results in more fires). Identifying the specific failures that are most likely to cause fires could also assist CPSD in identifying engineering issues that need to be addressed.

The utilities do not necessarily oppose providing this type of information to CPSD, as they support PG&E's data collection proposal (see MAP 13B). However, PG&E's proposal would have the interested parties further discuss the issue to determine "whether CPSD is receiving the fire-related data it needs." CPSD strongly believes that this data collection requirement belongs in a General Order, and that there is no need for further discussions pursuant to an ordering paragraph. CPSD is not currently getting this data from the electric utilities, and CPSD and Mussey Grade have clearly identified the type of data that should be collected, as well as identified the purpose for which this data will be collected. Accordingly, there is no need for further discussions, as the Joint Electric Utilities' proposal calls for. CPSD urges the Commission to adopt its proposal (MAP No. 13A) rather than PG&E's proposal (MAP No. 13B).

N. MAP No. 14 –Fire Maps (Workshop Report, p. B-211)

MAP No. 14 contains essentially two proposals concerning the fire mapping effort. The first proposal is an ordering paragraph proposed by CPSD and Mussey Grade to form a working group with the utilities and CAL FIRE to develop a statewide, utility-specific high resolution wind and fuel map to be used in conjunction with certain inspection, maintenance, and vegetation management requirements in GO 95. (*See* Workshop Report, p. B-211.) The second proposal is to adopt a fire threat map

developed by REAX Engineering, a firm hired by the CIP Coalition, to be used solely for the purpose of CIP inspections in Northern and Central California.⁷

During Phase 1 of these proceedings, the Commission decided that the CAL FIRE Fire Resource Adequacy Program (FRAP) fire threat maps were to be used as the basis for the application of certain rule changes in Southern California. CAL FIRE, however, cautioned against the use of these maps, arguing that both the data quality and methodology were not appropriate for this purpose. Nonetheless, many parties (including Mussey Grade and CPSD) favored adoption of the maps on an interim basis, because although imperfect, the maps were the best available tool for identifying high fire threat areas in Southern California. Due to various problems associated with implementing the FRAP maps in Northern California, the Commission did not adopt the map for use outside Southern California. The Commission decided in Phase 2 to consider whether different maps should be used for Central and Northern California, and whether a better, utility-specific map could be developed.

Contrary to the CIPs' comments in the Workshop Report, the point of the fire maps was not just for CIP inspection purposes. Although the Scoping Memo stated that Phase 2 may consider if the Fire Threat Maps should be used to establish the geographic scope of the CIP inspection rule in Central and Northern California, other issues for consideration were how the Fire Threat Maps used by utilities should be updated and the implications for the utilities that relied on previous maps when Cal Fire creates new maps, and whether a better, utility-specific map can be developed. (Scoping Memo, pp. 5-6.) However, rather than collaborate as a group on these issues, the CIPs fractured off early on and decided to create their own map for Northern/Central California, for their own purposes.

⁷ The CIPs have presented the REAX map in the context of their two competing inspection proposals. The CIP inspection proposals are extremely problematic for other reasons, as explained in Section VI, F above. However, the maps used in each proposal are the same, so CPSD is treating the two CIP proposals as one mapping proposal.

As CPSD and Mussey Grade state in the Workshop Report, the CIP map may address some of the problems that were present with using the CAL FIRE FRAP maps, but the methods employed by the REAX experts are novel and have not yet been subjected to professional review. Unfortunately, the CIP map itself was not made available to workshop participants for review until the very last workshop session. There simply was no time to adequately review the map, much less suggest modifications or improvements. CPSD is wary of adopting such a map for utility safety purposes without formal expert review. Indeed, even CAL FIRE indicated additional review of the map is necessary to determine its effectiveness. Dean Cromwell, Chief of Planning and Risk Assessment for CAL FIRE, attended the public safety agency workshop held in this proceeding on May 25, 2010. In discussing the CIP map, Mr. Cromwell stated, “[I]t’s difficult to determine the efficacy of the proposed approach particularly in regard to how you do a numerical estimation for refined wind data. . . . And I think we’re certainly interested in understanding and cooperating more about the REAX kind of engineering methods that were suggested.” (Public Agency Workshop 5/25/10 Tr., p. 26.) As stated in the Workshop Report, based on conversations with CAL FIRE staff, it is CPSD’s understanding that CAL FIRE does not adopt maps until they have been thoroughly vetted and reviewed.

The other problem with the approach taken at the workshops is that there is no high-resolution wind map for Southern California, which historically has proven to be subject to the highest risk of catastrophic power line fires. Instead, the utilities are using CAL FIRE FRAP maps, or modified versions of those maps, which even CAL FIRE believes are not adequate for utility purposes. As Mr. Cromwell noted at the public agency workshop, the CAL FIRE fire threat map is “not of sufficiently fine detail, nor does it take into account localized weather or extreme wind data.” (Public Agency Workshop Tr., p. 20.) Nor is the information on fuels specific enough to precisely determine what the fuel conditions are beneath powerlines. (Tr., pp. 20, 22.) In addition, Mr. Cromwell stated that the resolution of this map is not accurate enough for utility use. (Tr., p. 22). Ultimately, Mr. Cromwell stated that “updated or expanded data on

vegetation and localized wind data...particularly extreme winds is critical to dealing with mapping that is responsive to the kinds of things that impact utility base.... [T]he main thing that's missing is detailed localized wind data, especially extreme events to our modeling." (Tr., pp. 24, 25.)

Contrary to the CIP's assertions in the Workshop Report, it is not CPSD's intent to ignore the work of the workshop participants or "reinvent the wheel" for the purpose of developing a utility-specific map. CPSD's goal is to create a statewide "better, utility-specific map" which incorporates extreme, localized wind data. As even CAL FIRE agrees, that is where the focus should be. As CPSD and Mussey Grade stated in the Workshop Report, the CIP map may very well be a good foundation for a final statewide map, provided that the analysis is found to be adequate by a review involving CAL FIRE. The REAX firm hired by the CIP Coalition purportedly has the capability of extending the analysis they did for Northern California to the Southern California counties as well. In fact, the REAX representatives stated at the workshops that it was actually more difficult to create a map that excluded Southern California. CAL FIRE has expressed its willingness in both the public agency workshop and in conversations with CPSD staff to support the common development and approach to delivering such a map under the auspices of the CPUC, in cooperation with the utilities, CPSD, and other fire agencies and experts.

CPSD urges the Commission to adopt its proposal concerning the development of a statewide, utility-specific high resolution wind and fuel map. Identifying the specific areas where power line fires are likely to occur would allow stronger countermeasures to be brought to bear in a more cost-efficient manner. The value of high resolution wind and fuel maps could also, in the long term, extend beyond the current function of specifying high fire threat areas for additional inspection, maintenance, and vegetation management activities, and could be used to identify extreme risk areas where countermeasures such as undergrounding or system hardening could be applied in a targeted and cost-effective way.

O. MAP No. 15 –Cost Recovery (Workshop Report, p. B-246)

In the Phase 1 decision, D.09-08-029, the Commission stated that it will consider in Phase 2 an appropriate tracking mechanism for additional costs associated with adopted rule changes. (D.09-08-029, *mimeo*, p. 43.) The Commission also made it clear that “we do not find today that all costs incurred to comply with the revised rules will be automatically assumed to be reasonable but that, *after the Commission verifies the reasonableness of costs*, recovery will be permitted.... In phase 2, we will also develop an appropriate tracking mechanism for these additional costs and decide *how to incorporate these costs into each utility’s general rate case.*” (*Id.* (Emphasis added.)) CPSD fully supports TURN and DRA’s cost recovery proposal (MAP No. 15A) because it is the only one that meets the directives set forth in D.09-08-029.⁸ Investor-owned utilities (IOUs) regulated on a cost-of-service basis (i.e., electric utilities, other utilities with outside, privately-owned electric lines, and small local exchange carriers (LECs)) should seek to recover their costs in rate cases, where DRA and other ratepayer representatives can scrutinize the costs to ensure that they were actually and prudently incurred, and otherwise follow other ratemaking principles. This approach makes sense because the issues involving such costs are company specific, and discovery would be necessary on a company by company basis to determine whether the costs are truly incremental, verifiable, and reasonable.

In contrast, the Joint Electric Utilities and Small LECs’ proposal is inconsistent with the directives of the Phase 1 decision. This proposal would automatically allow the utilities and small LECs to transfer costs recorded in a memorandum account “on an annual basis” to a balancing account for recovery in rates. There is no provision for a reasonableness review by the Commission.

⁸ Although styled in the Workshop Report as a proposed rule change, CPSD believes this proposal is meant to be adopted in an ordering paragraph, rather than as a rule to General Order 95.

VI. ANCILLARY ISSUES

A. Cost Recovery

CPSD addresses the cost recovery proposals above.

B. Implementation

CPSD requests the Commission to direct the utilities to begin implementation of these proposed rules immediately. Most of the PRCs can be fully implemented right away. CPSD understands that certain proposals may need some time to be *fully* implemented, such as the CIP inspection requirement and the intrusive pole inspection requirement, and CPSD does not object to a reasonable amount of time to allow the CIPs to come into full compliance with these proposals. For example, the CIPs could be ordered to complete detailed inspections of their systems at a rate of 20% of their system per year for the next five years. The fire incident data collection rule in GO 165 also may take some time for the utilities to implement and provide CPSD with the required data and summaries. CPSD does not believe any of its other proposals would require a longer implementation period.

VII. CONCLUSION

For the reasons discussed above, and in the Workshop Report, CPSD respectfully requests that the Commission adopt CPSD's proposed rules for Phase 2. In addition, CPSD recommends that the Commission reject those PRCs that CPSD has identified as adverse to safety and the public interest.

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Respectfully submitted,

/s/ KIMBERLY J. LIPPI

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September 3, 2010

ATTACHMENT A

CPSD Sponsored PRCs in Workshop Report Appendix A

PRC Description	Page
General Order 95, Rule 37, Table 1	A-20
General Order 95, Rules 44.1, 44.2, 44.3 & 23.0	A-27
General Order 165, Sections I-IV	A-34

CPSD Sponsored PRCs in Workshop Report Appendix B

MAP Number	PRC Description	Page
MAP No. 1(A)	General Order 95, Rule 11 (Clarifies that lines must be designed and maintained in accordance with GO 95)	B-4
MAP No. 2	General Order 95, Rule 12 (Clarifies that General Order 95 safety rules apply to publicly owned utility electric facilities)	B-16
MAP No. 6(C)	General Order 95, Rules 31.2 and 80.1 Part A (Specifies inspection requirements for communications lines)	B-83
MAP No. 6(E)	General Order 95, Rules 31.2 and 80.1 Part B (Specifies intrusive inspection requirements for communications lines on wood poles)	B-103
MAP No. 11(B)	General Order 95, Rule 48 Ordering Paragraph (Review of Strength Requirements for All Classes of Lines in Section IV of General Order 95)	B-181
MAP No. 13(A)	General Order 165, Section V (Fire Incident Data Collection)	B-194
MAP No. 14(A)	Fire Map CALFIRE Coordination Ordering Paragraph	B-211

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the “**OPENING BRIEF OF THE CONSUMER PROTECTION AND SAFETY DIVISION**” in **R.08-11-005** by using the following service:

E-MAIL SERVICE: sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

U.S.MAIL SERVICE: mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses, if any.

Executed on September 3, 2010 at San Francisco, California.

/s/ CHARLENE D. LUNDY
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