



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)

**THE CONSUMER PROTECTION  
AND SAFETY DIVISION'S PROPOSED RULES TO BE IMPLEMENTED  
IN TIME FOR THE 2009 FALL FIRE SEASON**

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With the permission of Administrative Law Judge Kenney, the Consumer Protection and Safety Division is filing this pleading one day late.

**I. INTRODUCTION**

**A. The Compelling Need for Expeditious Action**

Pursuant to the Order Instituting Rulemaking issued herein on November 13, 2008 (OIR) and the Assigned Commissioner's Ruling and Scoping Memo filed January 6, 2009 (ACR), the Consumer Protection and Safety Division (CPSD) submits its proposed rules to be implemented in time for the 2009 autumn fire season. (*See* Attachment A). CPSD's proposed rules either clarify existing safety regulations or augment them with additional requirements designed to reduce the fire hazards posed by electric distribution and transmission lines and communications facilities in the proximity of electric distribution and transmission lines. The OIR 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 wires or communication infrastructure providers' (CIPs) facilities sharing poles with electric wires. As discussed more fully below, it is imperative that the Commission adopt new rules that clarify right away additional safety requirements, particularly in Very High and Extreme Fire Threat areas in Southern California. These local conditions are well known, and warrant

enhanced safety requirements that can be implemented prior to October, 2009 when the Santa Ana Winds will undoubtedly return.

For more than 97 years, the Commission has tried to safeguard the public from the fire hazards posed by electric lines by requiring clearances between the electric lines, communications lines and vegetation. Indeed, fires ignited by electric power lines have been responsible for some of the largest wildland fires in California's history, including the recent Witch Fire in October, 2007. In the middle of the Commission's workshops about fire safety, the reality of how destructive wildland fires can be was unfolding in Australia, which experienced the worst and deadliest wildland fire in its history, killing more than 200 people. The speed and destructiveness of the fire were due to the same dry conditions and other global warming effects, which currently exist in certain parts of Southern California.

Certain entities have attempted to minimize the need for the Commission to take any action in advance of the inevitable Santa Ana Winds in October, 2009 and would have the Commission act like Nero fiddling while Rome burned. Although in the long-term, the Commission can further study how to comprehensively address certain of the significant safety issues in Phase 2 of this proceeding, the constitutional and statutory duty of the Commission to protect the public requires Commission action now in Phase 1 in advance of the autumn of 2009. CPSD therefore urges the Commission to expeditiously adopt certain safety requirements developed after five days of workshops in Phase 1 of this proceeding, and urges the Commission to require the utilities, including CIPs, to begin implementing these measures as soon as possible.

The OIR identifies six issues which may require clarification or additional new rules: (1) immediate reporting of fire related incidents and full cooperation with Commission staff; (2) applying General Order (GO) 165 or similar maintenance and inspection requirements to all communication infrastructure

providers and electric transmission facilities; (3) pole overloading; (4) prompt reporting and resolution of violations discovered by pole tenants; (5) vegetation management in high fire risk areas; and (6) mitigating high speed wind dangers.

## **B. The Procedural Background**

The ACR set the schedule for two phases. In Phase 1, the ACR set a schedule to consider measures to reduce fire hazards that are within the scope of the six issues in the OIR and that can begin being implemented prior to the 2009 autumn fire season. Phase 2 will address measures that would require more time to consider and be implemented. The ACR, pp. 7-8, provided that by January 21, 2009, CPSD and other parties should submit proposed rules for Phase 1. The ACR set a schedule for two two-day workshops in Phase 1 for parties to review and discuss the proposed rules in a formal collaborative process, and required CPSD to be responsible for arranging and running the workshops. (ACR, p. 10). Thereafter, by February 27, 2009, CPSD would submit a final set of proposed rules in Phase 1, which would then be subject to another workshop and written opening and reply comments prior to a Commission decision. (ACR, p. 10).

Pursuant to the ACR, on January 21, 2009, the CPSD and certain parties submitted proposed rules to be discussed at the workshops. To the extent that CPSD felt that the proposed rules could possibly begin being implemented in time for the 2009 autumn fire season, CPSD included them in its agenda for Phase 1. To the extent that CPSD believed that certain proposed rules could not begin being implemented prior to autumn, 2009, CPSD listed them for Phase 2.

After extensive discussions at the two-day workshop on February 4 and 5, 2009, CPSD scaled back further proposed rules for Phase 1, leaving some very significant issues (i.e., certain proposed rules for vegetation or for high wind areas) for Phase 2, which CPSD did not believe could be examined adequately and adopted prior to autumn, 2009. There were extensive discussions on the proposed rules at the February 17 and 18, 2009 workshop. At the end of the February 18,

2009 workshop, there was a general consensus that it would be helpful prior to CPSD's submission of its final set of proposed rules to have an additional one-day workshop on February 26, 2009 primarily focused to discuss limited vegetation management issues, criteria for defining "high fire hazard areas" and "very high fire hazard areas" and measures to facilitate better communication between electric companies and CIPs. After the Assigned Commissioner and Administrative Law Judge agreed to the additional workshop, on February 26, 2009 there were further discussions on the above-mentioned issues at the workshop. George Gentry, Executive Officer of the California Board of Forestry and Fire Protection, also participated and provided very beneficial information on the issues in this workshop.<sup>1</sup>

CPSD had also filed a motion for a short extension in the procedural schedule in light of the additional workshop. On February 25, 2009, CPSD's motion was granted, and the date for CPSD to submit its proposed rules was extended from February 27, 2009 to March 6, 2009 with a corresponding extension in deadlines for the workshop (i.e., to March 16, 2009) and to opening and reply comments on the proposed rules.

Recognizing that the goal of Phase 1 of this OIR is to try to minimize the risks of further fires by adopting and begin implementation of proposed rules before October, 2009, and in full consideration of all of the extensive comments by parties in five days of workshops, CPSD submits these proposed rules to revise or clarify existing safety regulations. CPSD does not believe that evidentiary hearings are necessary or that meaningful evidentiary hearings could be possible (and still meet the autumn, 2009 implementation deadline) for Phase 1. Accordingly, CPSD has not proposed herein potentially meritorious proposals, which could require evidentiary hearings and unduly delay the Commission's

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<sup>1</sup> Each of these workshops were webcast, so there is a record of all of the statements at the workshops.

adoption of clarifications or revisions to its regulations in this Phase 1. Instead, CPSD has already screened those proposals and postponed their review until Phase 2. Therefore, CPSD urges that the Commission follow the bifurcated approach of the ACR to expeditiously adopt the Phase 1 proposed rules, attached hereto, after reviewing the comments thereon, and then set a prehearing conference to determine the procedures to consider the important proposals in Phase 2.

## **II. DISCUSSION**

### **A. The Jurisdictional Issues**

At the workshop, various parties raised jurisdictional issues. However, in order to spend the limited time at the workshops more constructively discussing proposed clarifications and rules, CPSD offered to address jurisdictional issues in this pleading. In this way, parties could respond in their written opening comments and reply comments, instead of consuming valuable workshop time.

As a general matter, the Commission already addressed most of the jurisdictional issues in its OIR in this proceeding. Thus, citing its constitutional authority (i.e., Cal. Const. Article XII, §§ 3, 6), its statutory authority (i.e., Cal. Pub. Util. Code §§ 216, 451, 701, 702, 761, 762, 767.5, 768, 768.5, 770, 1001, 2101 and 8001, *et seq.*), and *San Diego Gas & Electric v. Superior Court (Covalt)* (1996), 13 Cal.4<sup>th</sup> 893, 923-924 for the Commission's comprehensive jurisdiction over questions of public health and safety arising from utility operations, the Commission stated in the OIR at 5-6 that:

GO 95, GO 128 and GO 165 are orders of the Commission setting forth rules and regulations for electric utilities operating and providing service in California. GO 95 and GO 128 also set forth Commission rules for Communications Infrastructure Providers. The rules are designed to protect the safety of the general public, electric utilities' and

Communications Infrastructure Providers' customers and their employees.

**1. Electric Overhead and Underground Electric Facilities**

One of the parties at the workshop which had questioned the jurisdiction of the Commission over publicly-owned utilities was the California Municipal Utilities Association (CMUA). However, the Commission had previously rejected CMUA's arguments in its rehearing order in D.98-10-059, after it had clarified in D.98-03-036 that the Commission's GO inspection and maintenance requirements applied to municipalities' electrical supply systems. In D.98-10-059, 82 CPUC 2d 598, 599, the Commission had stated that:

We have jurisdiction over safety aspects of the electrical systems of publicly-owned utilities. The California Constitution, Article XII, section 5, permits the Legislature to grant such jurisdiction to the Commission. *County of Inyo v. Pub. Util. Com'n* (1980) 26 Cal.3d 154, 164, held that Article XII, section 5 authorizes the Legislature's grant of jurisdiction to the Commission over the operations of municipally owned utilities.

By enacting sections 8001-8057, the Legislature conferred jurisdiction on the Commission to regulate electrical lines for public safety purposes. Sections 8001-8057 give the Commission authority to regulate the maintenance and construction of electrical lines. Sections 8056 and 8037 provide, in pertinent part: 'the commission may inspect all work which is included in the provisions of this article, and may make such further additions or changes as the commission deems necessary *for the purpose of safety to employees and the general public.*' (Emphasis added.) This regulatory jurisdiction is not limited to investor owned utilities. Nothing in the language of Assembly Bill No. 1890, 1996 Regular Session, section 364 alters the



Commission’s regulation of electrical lines under sections 8001-8057.<sup>2</sup>

CMUA completely ignores that in this proceeding’s OIR at 6, the Commission specifically referred to statutory provisions in California Public Utilities Code §§ 8001, *et seq.*, for Commission jurisdiction over the safety of overhead and underground electric transmission and distribution facilities of publicly owned utilities (POUs).<sup>3</sup> These statutory provisions expressly provide Commission jurisdiction over the safety of surface or underground wires used to conduct electricity, and provide that the Commission may adopt additional requirements it deems necessary for the purpose of safety to employees and the general public. (See §§ 8037, 8056.) The Commission’s jurisdiction under §§ 8001, *et seq.*, extends to POUs’ safety, as § 8002 clearly applies these provisions to “any commission, officer, agent, or employee of this State, or of *any county, city, city and county, or other political subdivision thereof*, and any other person, firm, or corporation.” (Emphasis added.)

In addition, as to the electric transmission lines of California investor-owned utilities (IOUs), they cannot seriously question the Commission’s jurisdiction over the safety of transmission lines in California in light of the numerous times in recent years that the electric utilities have applied to the Commission for certificates of public convenience and necessity. For example, in

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<sup>2</sup> Although Pacific Gas and Electric Company’s (PG&E) opening comments also asserted an argument that under state law, California Public Utilities Code § 348, the Commission no longer has jurisdiction over electric transmission facilities turned over to the California Independent System Operator (CAISO), it should be noted that § 348, which was part of Assembly Bill 1890, only provides that the CAISO should adopt standards. Nowhere in § 348 is there any language limiting the Commission’s safety jurisdiction, in contrast to California Public Utilities Code §§ 8036 and 8057 which explicitly require that the Commission enforce the electric transmission safety provisions in California Public Utilities Code §§ 8001, *et seq.* Thus, the Commission’s above-quoted analysis in D.98-10-059, equally applies to PG&E’s arguments. Consequently, there is no conflict in these statutory provisions, and, as discussed in much more detail below, there is similarly no conflict between the Commission’s safety jurisdiction and federal law and/or the CAISO’s Transmission Control Agreements.

<sup>3</sup> Hereinafter, unless otherwise indicated, all statutory references are to the California Public Utilities Code.

D.08-12-058 (December 24, 2008), the Commission recently authorized San Diego Gas & Electric Company's (SDG&E) Sunrise Powerlink Transmission Project (Sunrise) with numerous fire mitigation measures for both the construction *and* the operation of the Sunrise project. Thus, in D.08-12-058, the Commission declared:

We do not take our decision to approve the Final Environmentally Superior Southern Route lightly. Of particular concern is the risk of wildfires created by electric distribution and transmission lines and the risk of power outages as a result of wildfires. The Final EIR/EIS describes these risks, but finds that while there are likely to be increased dual line power outages, the fire risk posed by the Final Environmentally Superior Southern Route is minimized given that the route is comprised of 230 kV and 500 kV lines placed on tall, steel structures. We also require SDG&E to take significant mitigation measures to prevent fire ignition in both the construction *and operation of the line.*<sup>4</sup>

CMUA's opening comments also cite to the Energy Policy Act of 2005, which explicitly provides in its "Savings provision," 16 U.S.C. § 824o(i)(3), that it does *not* 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 of a Federal Energy Regulatory Commission (FERC) certified Electric Reliability Organization. Other parties similarly argue that the Commission cannot take actions which would be inconsistent with the reliability standards of the North American Electric Reliability Corporation (NERC). The Commission, however, is not proposing herein to adopt rules to enhance reliability. The Commission is only considering the adoption of rules or clarification of rules to enhance safety. No party has

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<sup>4</sup> D.08-12-058, at p. 7 (Emphasis added). *See also* D.08-12-058, Appendix D for fire mitigation measures.

shown how any of the six issues in the OIR's preliminary scoping memorandum would be inconsistent with the reliability standards of the NERC.

Indeed, FERC itself noted in its rulemaking proceeding, RM06-16-000, where it proposed to adopt 83 of NERC's 107 reliability standards:

NERC's comments, IEEE 516-2003, and the vegetation management standard itself all make clear that the minimum "clearance 2" distances based on IEEE 516-2003 are adequate in some, but not all, circumstances. The minimum clearances that a transmission owner must identify and document depend on a variety of conditions including, but not limited to, transmission line voltage, temperature, wind velocities, altitude. Accordingly, we interpret the FAC-003-1 to require trimming that is sufficient to prevent outages due to vegetation management practices under all applicable conditions.

*See* 71 Fed. Reg. 64770, 64809 at P 380, (November 3, 2006). In footnote 177 referenced at the end of the above paragraph, the FERC explicitly clarified:

Nothing in this Reliability Standard should be interpreted as preempting the authority and responsibility of the states to set and enforce minimum clearances, such as those delineated in the National Electric Safety Code, to protect the safety of the public.

*See* 71 Fed. Reg. 64770, 64809 at P 380, n. 177 (November 3, 2006).

In addition, when the FERC issued its final rule in that rulemaking proceeding, RM06-16-000, where it adopted 83 of NERC's 107 reliability standards, FERC clarified:

Regarding SDG&E's concern that serious damage to transmission equipment could occur if the transmission operator is not able to take immediate action during an emergency, we believe this is adequately addressed under Requirement R3 of TOP-001-0 which provides that operating entities need not comply with directives from reliability coordinators when such actions would

violate safety, equipment, regulatory or statutory requirements.

*See* 72 Fed. Reg. 16416, 16471 at P 523 (April 4, 2007).

Finally, certain parties have argued that the Commission has no jurisdiction over the safety of transmission facilities operated by the CAISO. First, it should be noted that many of the transmission facilities in the State of California have not been turned over to the control of the CAISO. Although PG&E may have turned over control of their transmission facilities to the CAISO, Southern California Edison Company (SCE) only turned over control of its transmission facilities which are 200 kV and above. Moreover, while certain municipalities may have turned over control of their electric transmission facility entitlements to the CAISO, many of the POU's, as well as the IOUs in California (e.g., PacifiCorp and Sierra Pacific) have not turned over control of their transmission facilities to the CAISO.

Secondly, 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.<sup>5</sup> Indeed, in the TCAs' Appendix C, "ISO Transmission Maintenance Standards," Section 10 explicitly provides:

**10. Compliance With Other Regulations/Laws**

Each PTO shall maintain and the ISO shall operate Transmission Facilities in accordance with Good Utility Practice, sound engineering judgment, the guidelines as outlined in the Transmission Control Agreement, *and all other applicable laws and regulations.* (Emphasis added).

More to the point, in the TCAs' Appendix C, "ISO Transmission Maintenance Standards," Section 10.1 explicitly provides:

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<sup>5</sup> The TCAs can be found on the CAISO's website at <http://www.caiso.com/docs/2005/10/08/2005100817510214319.html>

## **10.1 Safety**

Each PTO shall take proper care to ensure the safety of personnel and the public in performing Maintenance duties. The ISO shall operate Transmission Facilities in a manner compatible with the priority of safety. *In the event there is a conflict between safety and reliability, the jurisdictional agency regulations for safety shall take precedence.* (Emphasis added).

Consequently, it is clear that the FERC, CAISO and the TCAs are all consistent with the Energy Policy Act of 2005, 16 U.S.C. § 824o(i)(3), in avoiding preemption of States' safety requirements. Just as the FERC had made clear that the NERC reliability standards should not preempt State clearance requirements designed to protect the safety of the public, there likewise is no basis for an argument that the CAISO's TCAs preempt such state safety requirements, as well.

### **2. Communication facilities utilizing electric poles**

The CIPs did not raise jurisdictional issues at the workshop. However, just to be complete, CPSD would note that the Commission's OIR comprehensively addressed this matter as well. In the OIR at 6-7, the Commission explained that although the Federal Communications Commission (FCC) was given jurisdiction in 1978 under the Pole Attachments Act (47 U.S.C. § 224) to regulate the rates, terms, and conditions of attachments by cable television operators to the poles, ducts, conduits or rights of way (ROW) owned or controlled by utilities, and the Telecommunications Act of 1996 (Telecom Act) expanded the scope of § 224 to include pole attachments by telecommunications carriers, the FCC does not have jurisdiction with respect to "pole attachments in any case where such matters are regulated by a State." (47 U.S.C. § 224(c)(1)). In D.98-10-058, as modified by D.00-04-061, the Commission certified to the FCC that the Commission regulates the rates, terms, and conditions of access to poles, conduits, ducts, and ROW in conformance with 47 U.S.C. §§ 224(c)(2) and (3). (*Order Instituting Rulemaking on the Commission's Own Motion Into Competition for Local Exchange Service*

(1998) 82 CPUC 2d 510, 531, *modified by* 6 CPUC 3d 1.) The OIR at p. 7 also made clear that the States continue to have discretion to regulate in the area of pole attachments “on a competitively neutral basis ... requirements necessary to *protect the public safety and welfare*” (47 U.S.C. § 253 (b)) (emphasis added), and similarly, the Cable Communications Policy Act of 1984 specifically grants States jurisdiction over cable service in safety matters. (47 U.S.C. § 556 (a)).

In view of the above, there is no legal obstacle for the Commission to go forward with this proceeding, and any claims of conflicts with federal agencies or regional electric reliability organizations is purely speculative at this point in time.

**B. The Urgent Need for Proposed Rules in Phase 1 to Be Implemented Prior to the October, 2009 and for More Comprehensive Rules in Phase 2**

The CPSD has discussed above how it is only proposing rules at this point in time that may be adopted and implemented prior to autumn, 2009 and has postponed proposing other potentially meritorious rules, which may require hearings or involve CEQA review and, therefore, CPSD believes should be postponed until Phase 2 of this proceeding.

The ACR states CPSD’s proposed rules for Phase 1 should include a detailed description and justification that includes the following information:

- The specific electric utilities, CIPs, and others affected by the proposed rule.
- New and/or revised text for the affected General Order(s), if applicable.
- The specific hazard(s) addressed by the proposed rule.
- How the proposed rule reduces or otherwise addresses the hazard(s).
- The anticipated costs and benefits of the proposed rule.
- Whether and how the costs will be recovered from customers.
- Whether and how costs will be shared among electric utilities, CIPs, and others.
- Why it is in the public interest to adopt the proposed rule.

- If the proposed rule applies to electric transmission, why the rule does not conflict with other federal or state regulations.
- Whether the adoption and implementation of the proposed rule is exempt from the California Environmental Quality Act (CEQA) and, if so, why. If not, what steps need to occur under CEQA before the proposed rule can be adopted and implemented.

(ACR at p. 9.)

CPSD has already addressed, above in the “Jurisdiction” section, the lack of conflicts concerning the transmission issue. CPSD will also address below each of these other issues. However, it would be most efficient for CPSD to generally discuss the need for its proposed rules first, prior to specifically addressing its proposed rules, and then cross-referencing this general discussion, where it is appropriate to do so, below.

**1. Live Electric Lines Pose a Safety Hazard, Including a Fire Hazard, If Clearances Are Not Maintained**

Courts have long recognized the well known dangerous character of electric supply lines and the need to safely construct, inspect and maintain the lines. *See, e.g., Polk v. City of Los Angeles* (1945) 26 Cal.2d 519, 523. These dangers need to be addressed, among other things, by constructing and maintaining clearances between electric supply lines and communication facilities. *See, e.g., Dow v. Sunset Tel. and Tel. Co.* (1910) 157 Cal. 182, 187. Thus, for more than 97 years, the Commission has regulated clearances between electrical supply lines and telephone lines in California, recognizing that the contact between electric wires and telephone wires may result in a fire. *See Morris v. Sierra and San Francisco Power Co.* (1922) 57 Cal. App. 281, 289-290. GO 95 and previous Commission regulations have already required clearances between electric and communication facilities. In order to protect the general public and the workers of the utilities from safety hazards, such as fires and electrocution, Rule 31.1 of General Order 95 requires electrical supply and communications

systems to be designed, constructed, and maintained in a way that provides safe service. Rule 31.2 of GO 95 requires electrical supply and communications lines to be inspected frequently and thoroughly to ensure that they are in good condition and do not create a hazard.

In addition, the Commission has already required that municipal and publicly-owned electric utilities must also comply with the minimum inspection cycles relating to overhead and underground equipment, which the Commission required for investor-owned California electric utilities. *See* D.98-03-036, 78 CPUC 2d 706, 711-713, *reh'g denied*, D.98-10-059, 82 CPUC 2d 598.

The OIR issued in this proceeding has recognized these previous requirements and the public interest they serve. (OIR at pp. 2-3). As stated in the OIR at p. 4, there have been devastating fires in Southern California in October, 2007 and October, 2008, to which the facilities of electric utilities or CIPs may have been the cause, or at least a contributing factor. Therefore, the Commission stated:

This OIR is being issued to review the current safety requirements and consider possible rule changes that may *further reduce the hazards, particularly fire hazards*, associated with the electric transmission and distribution facilities and communications facilities.<sup>6</sup>

In view of the above, there is no need for an evidentiary hearing that would call into question the existing clearance and other safety regulations. The purpose of the OIR is to enhance safety by improving or clarifying them, particularly in order to reduce fire hazards.

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<sup>6</sup> OIR at p. 5 (Emphasis added).



## 2. Wildfires Linked to Contacts with Electric Power Lines Have Resulted in Widespread Destruction

There is also no dispute of the devastating nature of fires linked to power lines. For example, according to the California Department of Forestry and Fire Protection (Cal Fire), the Witch Fire in October, 2007 was the third largest California wildland fire in terms of structures destroyed and fourth largest wildland fire in terms of acreage burned.<sup>7</sup> In addition, counting the Witch Fire, according to CalFire, at least four of the 20 largest wildland fires in California history were attributable to power lines.<sup>8</sup> Therefore, 20% of the largest wildland fires in California's history (since reliable data has been recorded) have been attributable to power lines. The reason that this is true was explained at the workshop on February 5, 2009 by Los Angeles County Deputy Fire Chief John Todd, where he stated that the local conditions, such as the Santa Ana Winds, which may contribute to the power lines' ignition of fires, are also the conditions which can quickly cause the fires to spread.

The urgency of Phase 1 is due to the need for the Commission to adopt or clarify regulations prior to autumn, 2009, so that further steps can be taken prior to the Santa Ana Winds, which regularly occur in the autumn in California each year and have caused numerous problems in the past.<sup>9</sup>

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<sup>7</sup> See Cal Fire's web sites: [www.fire.ca.gov/communications/downloads/fact\\_sheets/20\\_LACRES.pdf](http://www.fire.ca.gov/communications/downloads/fact_sheets/20_LACRES.pdf) and [www.fire.ca.gov/communications/downloads/fact\\_sheets/20\\_LSTRUCTURES.pdf](http://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.

<sup>8</sup> See *id.*

<sup>9</sup> See, e.g., Cal Fire's web site: [www.fire.ca.gov/fire\\_protection/fire\\_protection\\_2003\\_siege.php](http://www.fire.ca.gov/fire_protection/fire_protection_2003_siege.php) for its report, entitled "California Fire Siege 2003" about fires in October 2003. In its Appendix, Part 1, p. 3, Cal Fire stated that a weather pattern, "known as the Santa Ana Winds, is a phenomenon of strong, dry, east winds that blow from the deserts to the sea. When they surface, a fire not controlled or a new fire start is seemingly impossible to control and firefighters must go on the defensive. Southern California experiences the Santa Ana Winds each year during the fall and winter months."

### **3. The Fire Dangers Are Enhanced by the Dry Conditions Caused by Global Warming**

The widespread nature of the fires, which occurred in October, 2007 and October, 2008, may also be signs of the future as the result of global warming, which is why more safety requirements are necessary.

Indeed, at the February 17, 2009 workshop, CPSD referred to global warming's effects on fires by discussing the United Nations' Intergovernmental Panel on Climate Change's Fourth Assessment Report (UN Report), released in 2007, which observed that drier conditions caused by global warming have resulted in more widespread fires in the past and predicted more extreme fires in the future. Chapter 11 of the UN Report at 509 had predicted with high confidence that as a result of global warming, heatwaves and fires in Australia "are virtually certain to increase in intensity and frequency." During February, 2009, as discussed at the February 17, 2009 workshop, Australia experienced the worst fire in its history with more than 200 people killed by the fire. *See* UPI.com, "Aussie Bush Fire Deaths at 200," February 17, 2009.

Chapter 14 of the UN Report had similarly found that in the western United States, global warming "encourages wildfires through a longer summer period that dries fuels, promoting easier ignition and faster spread," and that "in the last three decades of the wildfire season in the Western U.S. has increased by 78 days, and burn durations of [large fires] have increased from 7.5 to 37.1 days."

These facts are not in dispute. Indeed, when the Commission adopted greenhouse gas emissions performance standards in D.07-01-039 (January 25, 2007), it had relied, in part, on the Final Climate Action Team Report to the Governor and the Legislature, March 2006, pp. 19-27, for finding that greenhouse gas emissions contribute to climate change, and that by "increasing the number of extremely hot days, and the 'frequency, duration, and intensity of conditions conducive to air pollution formation, oppressive heat, and wildfires,' the public health of Californians could be dramatically affected." *See* D.07-01-039 at 214. It

was later that year in October, 2007, that Southern California experienced devastating fires linked to the facilities of electric utilities and CIPs.

At the February 26, 2009 workshop, George Gentry, Executive Officer of the California Board of Forestry and Fire Protection, further explained both the necessity and urgency of Commission action by stating that the conditions in Southern California are rapidly moving towards the conditions that we just saw in Australia due to Southern California's drier climate, types of vegetation, and locations of where people are living. He therefore stated that it was most urgent for the Commission to require further measures to prevent or mitigate fires in Southern California's very high and extreme fire threat areas, because that is where the greatest risk of a catastrophic conflagration may occur.

On February 27, 2009, Governor Schwarzenegger declared a State of Emergency due to water shortages resulting from the fact that California was in its third year of drought. Among his findings were that "the state recently endured one of its worst wildfire seasons in history and the continuing drought conditions increase the risk of devastating fires and reduced water supplies for fire suppression."<sup>10</sup>

**4. The Proliferation of Communications Facilities Sharing Poles with Electric Power Lines Increases the Likelihood of More Devastating Fires if the Communications Facilities Are Not Inspected Frequently and Thoroughly and Properly Maintained**

In addition to the increase in the dry conditions, California has been experiencing a substantial increase in the amount of communications facilities sharing poles with electric utilities. As discussed above, this is a result of mandates of the Pole Attachments Act, as amended by the Telecom Act, to include

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<sup>10</sup> Governor Schwarzenegger's Declaration of State of Emergency can be found at: <http://gov.ca.gov/proclamation/11557/>

pole attachments by cable companies and telecommunications carriers. *See* 47 U.S.C. §§ 224, 253, and 254. It is also the result of Commission decisions, which are consistent with these federal mandates.

In D.98-10-058, as modified by D.00-04-061, the Commission certified to the FCC that the Commission regulates the rates, terms, and conditions of access to poles, conduits, ducts, and ROW in conformance with the federal policies. (*Order Instituting Rulemaking on the Commission's Own Motion Into Competition for Local Exchange Service, supra*, 82 CPUC 2d at 531). In D.07-02-030 and D.08-10-017, the Commission further adopted standards for wireless antennas on joint-use utility poles to further expand California's wireless infrastructure. However, each utility still has a duty under California Public Utilities Code § 451 to provide safe services and ensure that its facilities are safe to its customers, employees and the public. The Commission has always insisted that the electric utilities and CIPs continue to comply with the clearance and other safety requirements of GO 95 and other applicable safety regulations. *See, e.g.*, D.98-10-058, *supra*, 82 CPUC 2d at 559. Thus, even with this proliferation of CIPs' facilities on electric poles, no decision has ever amended or exempted the electric IOUs, electric POUs or CIPs from the requirement of GO 95, Rule 31.2 of frequently and thoroughly inspecting and maintaining their facilities to ensure that they are in good condition.

Nevertheless, CPSD has found numerous facilities of CIPS which have not been properly maintained and which utilize electric poles.<sup>11</sup> Moreover, as CPSD stated at the workshop, it has not found records in audits of certain CIPs indicating that they are frequently and thoroughly inspecting their facilities that utilize electric poles, as required by GO 95, Rule 31.2. Indeed, while claiming at the workshop that they were complying with these safety standards, certain CIPs

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<sup>11</sup> *See, e.g.*, Richard W. Clark July 29, 2008 Letter to Jerome Candelaria, CCTA. (*See* Attachment B)

nevertheless resisted any requirement that they patrol their facilities on electric poles on an annual basis or every two years, or maintain records about their inspection programs. Nor could certain CIPs explain how it could be very costly for them to conduct such inspections and simply retain records showing that they were doing these inspections and correcting broken or poorly maintained communications facilities if they were already frequently and thoroughly inspecting their facilities to ensure that they are being maintained in good condition, as required by GO 95, Rule 31.2.<sup>12</sup> Thus, the CIPS, which complained about keeping documents and inspecting all of their facilities using electric poles on a one year or two year cycle, merely confirmed the need for the Commission to clarify that they must do so.

**5. California Cannot Afford to Have the Wildfire Deaths and Destruction, which Australia Recently Experienced**

According to the ACR, CPSD is required to present a cost/benefit analysis for each of its proposed rules. CPSD starts its analysis with the high priority that the Commission has always placed on safety, and the responsibility of the Commission to supervise the electric IOUs, POUs and CIPs (collectively “Utilities”) so that they fulfill their duty to safeguard their customers, employees and the public from hazards associated with the Utilities’ facilities and services. In this regard, with the possibility of fatalities, as the two deaths which happened in the Guejito Fire in 2007, and the more than 200 deaths recently resulting from Australia’s fires, there can be no dispute that the public interest would be best served by clarifying or increasing the safety requirements involving the outdoor facilities of Utilities, which are in close proximity to live electric distribution or

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<sup>12</sup> In fact, SDG&E documented at the workshop numerous instances where they reported safety hazards to CIPs, but which were still not thereafter corrected.

transmission lines, including the CIPs' facilities utilizing the same poles of these electric lines.

At the workshop, parties also reviewed Cal Fire's Fire Threat maps where the "Extreme" and "Very High" fire threats are shown and can reveal to the Utilities where these risks are the greatest, and that the greatest threats of catastrophic conflagration were in certain Southern California counties.<sup>13</sup> It is also true that reliable and affordable utility service is also critical to the health and safety of California citizens and businesses. *See, e.g.*, Sections 330(g), 399(b), 451, 709, 761, and 768 of the California Public Utilities Code. Therefore, the Commission must balance all of these policy issues in this rulemaking proceeding to achieve the Commission's "basic regulatory objective of maintaining the lowest reasonable rates consistent with safe, reliable, and environmentally sensitive utility service." D.04-10-034 at p. 97.

With both George Gentry, Executive Officer of the California Board of Forestry and Fire Protection, and John Todd, Deputy Fire Chief of Los Angeles County, recommending at the February 26, 2009 workshop the urgency of taking actions in Southern California, there appeared to be a consensus among the parties that the increased Phase 1 safety efforts, which the Commission may prescribe, should center on the FRAP Southern California Counties. This does not mean, of course, that current GO 95 requirements or any other safety requirements should not be followed throughout the State by the IOUs, POUs or CIPs. CPSD also did not hear any rationale supporting delays in data gathering by the electric IOUs or supporting anything less than full cooperation with CPSD. Moreover, there also

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<sup>13</sup> The Fire Threat Map can be found on Cal Fire's Fire and Resource Assessment Program (FRAP) website at [http://frap.cdf.ca.gov/webdata/maps/statewide/fthreat\\_map.pdf](http://frap.cdf.ca.gov/webdata/maps/statewide/fthreat_map.pdf). A review of this map makes it readily apparent that more than 95% of the "Extreme" fire threats throughout California can be found in the following counties: Santa Barbara, Ventura, Los Angeles, Orange, San Diego, the western portion of Riverside and southwestern portion of San Bernardino Counties (hereinafter, collectively referred to as "FRAP Southern California Counties").

were constructive efforts by parties to propose a new statewide rule to improve communication requirements between pole owners and tenants. However, for immediate efforts to be implementable before the autumn, 2009, the parties at the workshop appeared to support that the focus should be in the FRAP Southern California Counties.

**C. The Specific CPSD Proposals for Phase 1**

**1.A Immediate Reporting of Accidents, Including Fire Related Incidents**

**a. The specific electric utilities, CIPs, and others affected by the proposed rule.**

This proposed rule applies to California IOUs, which are owners of electric transmission facilities or distribution facilities, including IOUs that have privately owned electric distribution lines that are not dedicated to public use. This reporting requirement did not previously and currently does not apply to California publicly owned utilities owning electric transmission or distribution facilities.

**b. New and/or revised text for the affected General Order(s), if applicable.**

See Attachment A, pp. 12-14 (General Order 165, Section V. Reporting of Accidents and Fire Incidents).

**c. The specific hazard(s) addressed by the proposed rule.**

In October, 2007, certain electric utilities did not report major fires allegedly attributable to their electric distribution or transmission lines within two hours as required by the then current Commission accident reporting rules. *See* D. 06-04-055, Appendix B. The purpose of the two hour time frame was so that CPSD staff would be made aware of a reportable incident as close to the actual timing of the incident as possible. Major fires or other accidents, such as explosions, may require immediate CPSD attention, and delay in reporting by utilities can significantly hinder CPSD's investigations and ability to timely

preserve evidence. On August 25, 2008, in Resolution E-4184, the Commission slightly changed the time for reporting to CPSD a reportable incident, which must now be reported within two hours during business hours or four hours outside of business hours. A reportable incident, includes major fires “allegedly attributable” to the utilities’ electric facilities, because “reportable incident” is defined as those which: (a) result in fatality or personal injury rising to the level of in-patient hospitalization and are attributable or “allegedly attributable” to utility owned facilities; (b) are the subject of significant public attention or media coverage and are attributable or “allegedly attributable” to utility facilities; or (c) involve damage to property of the utility or others estimated to exceed \$50,000 . *See* Resolution E-4184 (August 21, 2008).

The reporting requirements in Resolution E-4184 include a provision for reporting emergencies to Commission staff through the Commission’s web site. However, these provisions are not generally known, because they are not currently included in any General Order. CPSD’s proposed rule remedies this problem by adding the accident reporting requirements to GO 165.

In addition, the proposed rule incorporates a proposal by Cox Communications (Cox) to require electric utilities to report any and all major fire incidents to tenants on joint use poles. As Cox notes, electric utilities have not consistently notified tenants on joint use poles of such incidents, and there is no current requirement that they do so. However, tenants on joint use poles have an interest in the potential impact of such incidents on the safety and reliability of their network facilities and on the proper and timely preservation of any evidence pertaining to such events, as well as their potential cause or causes.

Finally, CPSD’s proposed rule incorporates a revised proposal submitted by Mussey Grade Road Alliance (MGRA) concerning the collection and reporting of data on all fire incidents which are attributable or allegedly attributable to



electric distribution or transmission lines. This rule addresses the specific hazard of fires caused by power lines.

**d. How the proposed rule reduces or otherwise addresses the hazard(s).**

CPSD's proposed rule adds the accident reporting requirements as a provision of GO 165 and clarifies that California IOUs, which are owners of electric transmission facilities or distribution facilities, are required to report to CPSD staff a reportable incident within two to four hours, depending on whether the incident occurs during or outside normal working hours. This clarification includes IOUs that have privately owned electric distribution lines that are not dedicated to public use, but does not include POUs. The inclusion of transmission lines in these accident reporting requirements is necessary, because there are numerous distribution lines, which could be considered transmission lines and which are not under the control of the CAISO, and also, as stated above, would be consistent with the electric utilities' TCAs with the CAISO.

This proposed rule also increases communications between electric pole owners and tenants by requiring electric utilities to promptly report to joint use pole tenants any and all major fire related incidents. This proposal would assist all utilities with facilities on the pole in determining the causes of such incidents and minimizing the possibility of recurrence.

Finally, the reduction of severe fires depends on the reduction in the number of ignitions. As MGRA stated in their January 21, 2009, filing: "the distinction between 'minor' and 'significant' incidents is artificial, since the severity of an incident usually does not depend upon details of how an ignition occurs, but rather the wind, humidity, and vegetation characteristics of the conditions that lead to rapid fire growth not being present." (MGRA Proposed Rule, January 21, 2009, at p. 3.) Requiring electric utilities to collect data on fire incidents attributable or allegedly attributable to their power lines, whether minor or significant, could be used to develop strategies to avoid catastrophic fires. The

proposed rule is designed to obtain information about power line fires so that specific fire threats can be identified, and means of preventing these fires can be devised. Moreover, pooled data collected by utilities should give a baseline by which the effectiveness of present and future corrective measures can be judged for cost-effectiveness.

**e. The anticipated costs and benefits of the proposed rule.**

As most of the utilities' electric facilities are clearly already under an obligation to report such incidents to CPSD staff, CPSD does not anticipate any significant costs associated with this part of the rule. Nor does CPSD anticipate any significant costs associated with electric utilities notifying pole tenants of major fire related incidents. CPSD leaves it to the utilities to determine how they will accomplish this notification.

As for the part of the proposed rule concerning data collection of all fire-related incidents, CPSD has modified MGRA's original proposal in response to constructive comments made by the utilities at the workshops in order to reduce any burden or costs related to this proposal. First, CPSD has limited the data collection only to fire incidents attributable or allegedly attributable to transmission or distribution lines, rather than MGRA's original proposal of including all fire incidents in any way caused by or related to an electric utility's infrastructure, equipment, or operations. Second, CPSD's proposal would require annual, rather than quarterly, reporting of such information. The proposed rule would likely entail some additional costs in collecting such data, however, as MGRA's Dr. Mitchell pointed out, many electric utilities already collect fire data in one form or another, so it should not be too burdensome for them to present such data in a report. (See MGRA Proposed Rule, January 21, 2009, at p. 4.) Moreover, the rule is intended to collect data that is normally available during the course of regular maintenance and repair obligations.

This annual report of data should be distinguished from the "reportable incidents," which the proposed Accident Reporting Requirements in GO 165

addresses. The criteria for reportable incidents have limited those incidents to major incidents to which the electric IOUS are required to notify CPSD within two to four hours. In contrast, although the present proposed rule would require the investor-owned electric utilities to report of all fire incidents allegedly attributable to their power lines, it would only require that they do so with a summary and on an annual basis. Therefore, CPSD does not believe that this would cause any large expenses for the electric IOUs, and they could recover the annual expense in their general rate cases. Meanwhile, the beneficial knowledge that the Commission, fire agencies and the public could gain from the number of fire incidents and location of fire incidents on a year-to-year basis would be very useful in measuring current fire risks and identifying safety improvements that might be applied by the utilities.

Benefits also include enhancement of public safety and minimizing occurrence of fire ignition from electric power lines. Any reduction in power line fires under extreme weather conditions would have a significant positive impact on public safety and avoided losses. In the long run, data collection on fire incidents should prove economically beneficial as it would allow for the identification of ineffective fire prevention measures, so that these can be eliminated. Moreover, establishing better communication between pole owners and tenants should lead to better cooperation in determining the causes of such fires and minimize the possibility of recurrence.

**f. Whether and how the costs will be recovered from customers.**

Costs will be recovered no differently than today through electric utilities' general rate cases.

**g. Whether and how costs will be shared among electric utilities, CIPs, and others.**

This proposed rule only applies to electric IOUs.

**h. Why it is in the public interest to adopt the proposed rule.**

See Sections II. B. 1-5 regarding the urgent need for these rules and the benefits discussed, above.

- i. If the proposed rule applies to electric transmission, why the rule does not conflict with other federal or state regulations.**

See Section II. A. 1 regarding jurisdiction over transmission facilities, above.

- j. Whether the adoption and implementation of the proposed rule is exempt from the California Environmental Quality Act (CEQA) and, if so, why. If not, what steps need to occur under CEQA before the proposed rule can be adopted and implemented.**

The proposed rule does not implicate CEQA.

#### **1.B Each Utility's Full Cooperation with Staff Investigation**

- a. The specific electric utilities, CIPS, and others affected by the proposed rule.**

This proposed rule would apply to owners of all electrical distribution and transmission facilities that come within the jurisdiction of this Commission, located outside of buildings, including owners of electric facilities that belong to non-electric utilities, electric POU's, and CIPs.

- b. New and/or revised text for the affected General Order(s), if applicable.**

See Attachment A, p. 1 (General Order 95, Rule 12 Applicability of Rules); and p. 3 (New Rule 19 for GO 95, Cooperation with Commission Staff; Preservation of Evidence Related to Incidents).

- c. The specific hazard(s) addressed by the proposed rule.**

When major fires or other accidents, such as explosions, need to be investigated by CPSD for preparing accident reports, providing guidance to the Commission for new rules, or to investigate violations of existing Commission rules or regulations, the recalcitrance of utilities can thwart or significantly delay CPSD's investigations. Moreover, once an adjudicatory Order Instituting

Investigation (OII) is issued, the Commission faces a legislative deadline of 12 months to issue its decision, therefore timely cooperation by utilities is necessary in order to meet this deadline.

For these reasons, it is imperative that the Commission support CPSD's efforts to find the objective facts and evidence in these accident investigations by clarifying that the CPSD is entitled to promptly receive information it requests pursuant to the Commission's authority under Pub. Util. Code §§ 313, 314, 315, 581, 582, 584, 701, 702, 771, 1794, 1795, 8037, and 8056. Moreover, it is also critical to understanding the truth of what occurred to require the utilities to preserve any factual evidence and documents not protected by the attorney-client privilege.

**d. How the proposed rule reduces or otherwise addresses the hazard(s).**

CPSD proposes a new provision in GO 95 which places an obligation on each Utility (as broadly defined above and in the proposed GO 95 Rule 12 Applicability of Rules) to fully cooperate with CPSD staff during investigations, and requires each Utility to preserve factual evidence related to a reportable incident and make that evidence available to CPSD staff immediately upon request. In this regard, CPSD requests that the Commission clarify that with regards to CPSD staff investigating a reportable incident, all of the Commission's statutory authority to gather information from utilities is available to CPSD staff, which is the investigating arm of the Commission. (See Proposed New Rule 19 for GO 95, Cooperation with Commission Staff; Preservation of Evidence Related to Incidents.)

**e. The anticipated costs and benefits of the proposed rule.**

As this rule merely clarifies the utilities' obligation to cooperate with Commission investigations, CPSD anticipates no additional costs associated with the proposed rule. The benefits include the ability of CPSD to prepare accident reports, provide guidance to the Commission for new rules, or to investigate

violations of existing Commission rules or regulations. This ultimately results in enhanced public safety. See also Sections II. B. 1-5 regarding the urgent need for these rules and why they are in the public interest, above.

**f. Whether and how the costs will be recovered from customers.**

Costs will be recovered no differently than today through electric utilities' general rate cases or CIPs' market-based rates.<sup>14</sup>

**g. Whether and how costs will be shared among electric utilities, CIPs, and others.**

Not applicable.

**h. Why it is in the public interest to adopt the proposed rule.**

The public interest in this clarification is already clearly stated in the Commission's OIR, p.11, when it stated:

The CPSD is charged with investigating utility-related incidents and accidents pursuant to the mandate of Pub. Util. Code § 315. If utilities fail to promptly report incidents to CPSD, and/or fail to provide meaningful access to information and evidence, then the critical public safety intent of the statute is frustrated. Regardless of pending litigation and other investigations, which may be related to a CPSD investigation, a utility's obligation to cooperate with CPSD under applicable law should be reinforced. *See, e.g.,* Pub. Util. Code §§ 313, 314, 315, 581, 582, 584, 701, 702, 771, 1794, 1795. Similarly, municipalities providing electric services should fully cooperate with CPSD when they are inspecting the municipalities' electric facilities under Pub. Util. Code §§ 8037, 8056.

More specifically, the Commission may clarify: the need for immediate reporting of any fire related incident to CPSD; the need for preservation of documents; the need for preservation of evidence

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<sup>14</sup> CPSD is aware that some smaller communications companies still are on cost-of service ratemaking. For the sake of convenience, references herein to CIPs' market-based rates are only referring to the CIPS which utilize market-based rates, and not the smaller companies on cost-of-service ratemaking.

implicated by a CPSD investigation; the need for prompt, complete and accurate responses to CPSD's inquiries (whether written or oral); and a utility's obligation not to impede the discovery of information from agents of a utility.

See also Sections II. B. 1-5 regarding the urgent need for these rules and the discussion regarding the benefits of this proposed rule, above.

- i. If the proposed rule applies to electric transmission, why the rule does not conflict with other federal or state regulations.**

See Section II. A. 1 regarding jurisdiction over transmission facilities, above.

- j. Whether the adoption and implementation of the proposed rule is exempt from the California Environmental Quality Act (CEQA) and, if so, why. If not, what steps need to occur under CEQA before the proposed rule can be adopted and implemented.**

The proposed rule does not implicate CEQA.

## **2. Applying Maintenance and Inspection Requirements to All Communication Infrastructure Providers and Electric Transmission Facilities**

- a. The specific electric utilities, CIPS, and others affected by the proposed rule.**

This proposed rule would apply to owners of all electrical distribution and transmission facilities that come within the jurisdiction of this Commission, located outside of buildings, including owners of electric facilities that belong to non-electric utilities, electric POU's and CIPs.

- b. New and/or revised text for the affected General Order(s), if applicable.**

See Attachment A, 1 (General Order 95, Rule 12 Applicability of Rules); pp. 3-4 (General Order 95, Rule 31.2 Inspection of Lines); p. 10 (General Order 165, Section II. Applicability, Section III. Definitions); pp. 11-12 (General Order

165, Section IV. Standards for Inspection, Record-keeping, and Reporting); and pp. 15-16 (Electric Distribution and Transmission System Inspection Cycles).

**c. The specific hazard(s) addressed by the proposed rule.**

Currently, there is no explicit requirement setting minimum inspection cycle lengths on CIPs and owners of California electric transmission facilities. CPSD believes that even though 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. CPSD also has found that certain CIPs do not maintain records indicating that they are frequently and thoroughly inspecting their facilities. At the very minimum, there is not a uniform interpretation of what the phrase “inspected frequently and thoroughly” means.

Requiring utilities to frequently and thoroughly inspect their facilities to ensure that clearance and other safety regulations are met is especially critical in those areas that have been designated Extreme and High Fire Threat zones by Cal Fire. Local conditions in these areas warrant more frequent inspections because of the potential for wildfires to ignite and spread quickly.

**d. How the proposed rule reduces or otherwise addresses the hazard(s).**

CPSD’s proposed rules apply the minimum maintenance and inspection cycle requirements in GO 165 to all owners of electric distribution and/or transmission facilities in California. In addition, although the Commission has stated in D.98-03-036, *reh’g denied*, D.98-10-059, that the requirements of GO 165 apply to municipal and publicly-owned electric utilities, there is nothing in the text of GO 165 that explicitly states that the rule applies to them. CPSD’s proposed rules clarify that the inspection and maintenance cycle requirements of



GO 165 apply to municipal and publicly-owned electric utilities. CPSD's proposed rules also place the requirements of GO 165 on privately owned outdoor electric lines of an investor-owned utility. In addition, CPSD proposes to increase the minimum inspection cycle from two years to one year in rural areas that are located in Extreme and Very High Fire Threat zones in FRAP Southern California counties.

CPSD's proposed rules also clarify minimum maintenance and inspection cycle requirements for CIPs in GO 95. For Phase 1, CPSD has narrowly focused its proposed rule so that the prescriptive minimum inspection cycles for CIPs apply only in Extreme and Very High Fire Threat zones in California, and only to CIP facilities and overhead lines installed on joint use poles with electric distribution or transmission facilities, as well as poles that are one pole length away from such joint use poles. This does not, however, change the CIPs' obligation to frequently and thoroughly inspect their facilities in other areas of the state to ensure that they are in good condition so as to conform with Commission safety regulations.

CPSD believes that clarifying this requirement, such that CIPs, transmission facility owners, and municipal and publicly-owned electric utilities must regularly inspect and maintain their facilities, would lead to more discovery and remediation of potential safety hazards and would therefore mitigate the risk of fires.

**e. The anticipated costs and benefits of the proposed rule.**

CPSD does not believe that these clarifications should result in major additional costs, because the Commission has already stated that the requirements of GO 165 apply to municipal and publicly-owned electric utilities, and CIPs already have an obligation under GO 95, Rule 31.2, to inspect their communications lines "frequently and thoroughly" to ensure that they are in good condition and in conformance with the rules. Utilities are also supposed to take local conditions into account when maintaining their facilities. CPSD's proposal

to place a minimum inspection cycle time frame upon CIPs should accordingly result in minimal, if any, additional costs for those CIPs that are already in compliance with GO 95. This is especially true since, in response to comments made by CIPs at the workshops, CPSD considerably narrowed its original proposal to apply to only those areas that are in Extreme and High Fire Threat zones, in order to minimize any burden on CIPs. If CIPs are not complying with the existing safety requirements, then they may incur additional costs. However, that would be due to their own non-compliance, which jeopardizes the safety of California citizens by not ensuring that their facilities are maintained in good condition to comply with the clearance requirements or other safety features of GO 95. As stated in Section II. B. 4 above, CIPs were unable to explain at the workshops how it could be very costly for them to conduct inspections and retain records showing that they were doing these inspections if they were already frequently and thoroughly inspecting their facilities, as required by GO 95, Rule 31.2.

Moreover, in response to certain CIPs' claims that minimum inspection cycles would result in astronomical costs, an SCE representative at the workshop pointed out that SCE's inspection costs were only about \$1 million per year, which covered not only their patrol inspections, but detailed inspections as well for approximately 1.5 million poles. SDG&E also responded to a CPSD data request, which revealed that for SDG&E's service territory, which is smaller than SCE's, SDG&E's actual patrol inspections in 2009 were approximately \$194,000. (See Attachment C, SDG&E's March 5, 2009 data response to CPSD.) PG&E, which has the largest service territory of the electric IOUs, also provided CPSD with cost data showing that it spends approximately \$5 million per year for patrol inspections of their overhead distribution facilities on approximately 1.3 million poles. (See Attachment D, PG&E 2008 GO 165 Costs and Units.) It should be noted that electric utilities are required to perform minimum inspections every one

to two years over their entire service territory. By contrast, CPSD's proposed rule requires minimum inspection cycles for CIPs only in Extreme and Very High Fire Threat zones, and only on those facilities that are located on joint use poles with electric facilities or one pole away. In addition, this requirement for annual inspections only applies to these zones in Southern California. Therefore, the CIPs' new inspection requirements could not be too costly in light of the above and when reviewing the electric IOUs' empirical data.

For the benefits of this proposed rule, see Sections II. B. 1-5 regarding the urgent need for these rules and the discussion regarding the benefits of this proposed rule, above. Thus, in order to help prevent significant and potentially deadly fires, the costs imposed by this proposed rule are clearly outweighed by the benefits.

**f. Whether and how the costs will be recovered from customers.**

Costs will be recovered no differently than today through electric utilities' general rate cases. CIPs may recover costs from their customers in their market based rates.

**g. Whether and how costs will be shared among electric utilities, CIPs, and others.**

The proposed rules do not require costs to be shared among utilities. However, utilities are free to explore the possibility of performing joint inspections and may determine amongst themselves how to share the cost of doing so.

**h. Why it is in the public interest to adopt the proposed rule.**

See also Sections II. B. 1-5 regarding the urgent need for these rules and the discussion on benefits, above.

**i. If the proposed rule applies to electric transmission, why the rule does not conflict with other federal or state regulations.**

See Section II. A. 1 regarding jurisdiction over transmission facilities, above.

- j. Whether the adoption and implementation of the proposed rule is exempt from the California Environmental Quality Act (CEQA) and, if so, why. If not, what steps need to occur under CEQA before the proposed rule can be adopted and implemented.**

The proposed rule does not implicate CEQA.

### **3. Pole Overloading**

- a. The specific electric utilities, CIPS, and others affected by the proposed rule.**

This proposed rule would apply to owners of all electrical distribution and transmission facilities that come within the jurisdiction of this Commission, located outside of buildings, including owners of electric facilities that belong to non-electric utilities, electric POU's and CIPs.

- b. New and/or revised text for the affected General Order(s), if applicable.**

See Attachment A, p. 4 (General Order 95, Rule 31.7 Identification of Communications Facilities); and p. 9 (General Order 95, Rule 44.1 Installation, Reconstruction, and Additional Construction).

- c. The specific hazard(s) addressed by the proposed rule.**

This proposed rule will address the issue of poles being overloaded by new facilities being added to the pole. Overloaded poles may cause the pole to break, which may lead to fires.

- d. How the proposed rule reduces or otherwise addresses the hazard(s).**

The proposed rule change reduces the aforementioned hazard by codifying the requirement of safety factor calculations to be done prior to adding facilities to a pole. Furthermore, the proposed rule change requires utilities adding facilities to the pole to use all information available such as intrusive pole inspection results.

- e. The anticipated costs and benefits of the proposed rule.**

CPSD notes that the costs to do the safety factor calculation is approximately \$60 (sixty dollars) per pole. However, utilities should currently be performing safety factor calculations prior to adding new facilities to a pole. As CPSD's proposed rule merely clarifies this current obligation, it should not result in increased costs to the utilities. The benefit of the proposed rule is that poles that are overloaded or will become overloaded will be noticed for replacement sooner, thus enhancing public safety and potentially reducing the risk of fires.

**f. Whether and how the costs will be recovered from customers.**

Costs will be recovered no differently than today through electric utilities' general rate cases. CIPs may recover costs from their customers through market-based rates.

**g. Whether and how costs will be shared among electric utilities, CIPs, and others.**

The cost of doing the safety factor calculation will be the responsibility of the utility adding the facilities. However, the cost associated with the replacement of the poles may be shared amongst the utilities if the pole was overloaded prior to the new facilities being added. In the event that new facilities reduce the safety factor, the sharing of costs of necessary pole upgrade or replacement is left up to the contracts that the utilities have amongst themselves.

**h. Why it is in the public interest to adopt the proposed rule.**

It is in the public interest to adopt this proposed rule, because it will cause utilities to conduct safety factor calculations prior to installing facilities that reduce the safety factor of a pole below the limits allowed by General Order 95. 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 a fire.

See also Sections II. B. 1-5 regarding the urgent need for these rules and the discussion of the benefits of the proposed rule, above.

- i. If the proposed rule applies to electric transmission, why the rule does not conflict with other federal or state regulations.**

See Section II. A. 1 regarding jurisdiction over transmission facilities, above.

- j. Whether the adoption and implementation of the proposed rule is exempt from the California Environmental Quality Act (CEQA) and, if so, why. If not, what steps need to occur under CEQA before the proposed rule can be adopted and implemented.**

The proposed rule does not implicate CEQA.

- 4. Prompt Reporting and Resolution of Safety Hazards Discovered by Pole Tenants**

- a. The specific electric utilities, CIPS, and others affected by the proposed rule.**

This proposed rule would apply to owners of all electrical distribution and transmission facilities that come within the jurisdiction of this Commission, located outside of buildings, including owners of electric facilities that belong to non-electric utilities, electric POU's and CIPs.

- b. New and/or revised text for the affected General Order(s), if applicable.**

See Attachment A, pp. 1-2 (General Order 95, Rule 18 Reporting and Resolution of Safety Hazards Discovered by Utilities).

- c. The specific hazard(s) addressed by the proposed rule.**

As discussed above, in its audits of CIPs, CPSD has found numerous instances where facilities of CIPs have not been properly maintained and which utilize electric poles. In addition, several electric companies, including SDG&E, complained at the workshop that they send CIPs notices of safety hazards discovered on joint use poles, but that many of the hazards go uncorrected. If the CIPs' facilities and lines are not properly maintained, their broken equipment may come into contact with electric lines and result in fires. In addition, safety

hazards, including clearance requirements, which are not corrected may pose serious danger to workers and the public, including threat of electrocution.

**d. How the proposed rule reduces or otherwise addresses the hazard(s).**

Although all utilities are required to maintain their facilities in a safe manner, CPSD proposes further clarification with an explicit requirement in GO 95 that a utility *promptly* correct safety hazards once they have been notified by any employee, agent, or other party that their facilities pose a safety hazard. CPSD's proposed rule requires inspecting utilities to promptly notify in writing the other appropriate utilities, as well as appropriate utility pole owners, of any safety hazards they encounter while performing their inspections. CPSD's proposed rule is intended to facilitate better communication between utilities regarding potential safety hazards, and requires utilities to promptly remedy safety hazards posed by their facilities. The proposed rule also explicitly requires utilities to promptly take remedial action and to maintain records showing what corrective action has been taken, and preserve those records so that CPSD may audit them.

In response to constructive comments made by several utilities at the workshops, rather than attach a prescriptive time limit to the requirement that utilities "promptly" correct safety hazards, CPSD has instead proposed a rule whereby each utility is required to establish an auditable priority system for maintaining its facilities and lines, including a timeline for remedial actions following the identification of a safety hazard or GO violation. The proposed rule is based on the Memorandum of Understanding (MOU) developed between CPSD and SCE in response to D.04-04-065 in Investigation (I.) 01-08-029, which examined SCE's electric line construction, operation, and maintenance practices during 1998-2000. The purpose of the MOU was to develop a "Common Platform" for correcting GO 95 and 128 violations, and was created with the goal

of adopting the Common Platform as a statewide guide for prioritized electric distribution system maintenance following the identification of GO 95 and 128 violations.

CPSD's proposed rule is designed to take into account that CIPs and electric utilities have different equipment and facilities, and gives them the flexibility to design their own priority system within certain common parameters. The proposed rule would also give utilities flexibility with regard to the type of documentation they use to record maintenance practices. Thus, utilities are required to design their priority system using the following factors: type of facility or equipment; location; accessibility; climate; direct or potential impact on operations, customers, utility workers, and the general public; and whether the condition is located in an Extreme or Very High Fire Threat zone. However, because the conditions in Extreme or Very High Fire Threat zones warrant extra attention and caution, CPSD's proposed rule does place a prescriptive time limit on correcting safety hazards which violate certain listed clearance or pole overloading requirements in Extreme or Very High Fire Threat Zones. Unless those violations require immediate correction, a Utility must correct such violations within 30 days.

It should be noted, however, that this proposed rule is not intended to preempt any stricter local rules establishing priority systems for correcting safety hazards. For example, Los Angeles County Deputy Fire Chief John Todd stated at the workshops that Los Angeles County uses a three-tiered priority system regarding vegetation, burning, and arcing: those conditions which require immediate attention (i.e., where vegetation is contacting an electric line and causing sparking, the county will stand by with a fire truck until the utility comes out to correct); conditions which require prompt action, which must be taken care of within 24 hours; and lower priority conditions which must be corrected within 2 weeks.



**e. The anticipated costs and benefits of the proposed rule.**

The mere written communication of safety hazards and maintenance of such records in and of themselves should not cause any significant incremental costs. Most, if not all, electric utilities at the workshops stated that they already provide such notices to CIPs when they discover safety hazards presented by CIP equipment. In addition, several CIPs stated at the workshop that they already have a priority system in place for correcting safety hazards, and keep some kind of records reflecting the maintenance performed. Moreover, the actual remedial measures to ensure safety are already required under Cal. Pub. Util. Code § 451, and Rule 31.2 of GO 95.

While the correction part of this proposed rule would result in additional costs, the flexibility provided for prioritizing corrections would mitigate the costs. The exceptions to the flexibility, such as immediate corrections or 30-day limit if the correction is a safety hazard in Extreme or Very High Fire Threat Zones, are obviously necessary, because those corrections are already necessary to ensure safety and to try to prevent fires. There would be much greater costs to a company and the public at large if the company was notified and instead chose not correct the safety hazards.

The benefits include having safe electric and communications systems in California. As discussed above, the clearance and safety requirements in the Commission's General Orders were designed to ensure safe and reliable utility operations, and should be maintained. Moreover, the proposed rule will have the additional benefit of ensuring that extra attention and caution are exercised in Extreme and Very High Fire Threat zones in California, where local conditions increase the risk and likelihood of catastrophic fires. See also Sections II. B. 1-5 regarding the urgent need for these rules and the discussion of the benefits, above.

**f. Whether and how the costs will be recovered from customers.**

Costs will be recovered no differently than today through electric utilities' general rate cases or CIPs' market based rates.

**g. Whether and how costs will be shared among electric utilities, CIPs, and others.**

CPSD does not anticipate that the rule will require any cost sharing among utilities. However, if pole owners and pole tenants wish to make arrangements whereby pole owners performs corrections, they can work out reimbursement amongst themselves.

**h. Why it is in the public interest to adopt the proposed rule.**

See Sections II. B. 1-5 regarding the urgent need for these rules and the discussion of the benefits, above.

**i. If the proposed rule applies to electric transmission, why the rule does not conflict with other federal or state regulations.**

See Section II. A. 1 regarding jurisdiction over transmission facilities, above.

**j. Whether the adoption and implementation of the proposed rule is exempt from the California Environmental Quality Act (CEQA) and, if so, why. If not, what steps need to occur under CEQA before the proposed rule can be adopted and implemented.**

The proposed rule does not implicate CEQA.

**5. Vegetation Management in Very High Fire and Extreme Fire Threat Areas**

**a. The specific electric utilities, CIPS, and others affected by the proposed rule.**

This proposed rule would apply to owners of all electrical distribution and transmission facilities that come within the jurisdiction of this Commission,

located outside of buildings, including owners of electric facilities that belong to non-electric utilities, electric POU's and CIPs. However, the majority of CPSD's proposed rule change will only affect electric utilities.

**b. New and/or revised text for the affected General Order(s), if applicable.**

See Attachment A, pp. 4-6 (General Order 95, Rule 35 Vegetation Management); pp. 6-7 (General Order 95, Rule 37 Minimum Clearances of Wires above Railroads, Thoroughfares, Buildings, Etc.; Relevant Excerpts of Table 1).

**c. The specific hazard(s) addressed by the proposed rule.**

Vegetation that comes into contact with overhead electric lines and conductors causes outages and fires. The California Public Resource Code (PRC), Section 4293, has established vegetation clearance requirements between overhead conductors and vegetation. These clearance requirements are stricter than those clearances established in GO 95, Rule 35. However, these clearances only apply in State Responsibility Areas, as defined by the California Department of Forestry and Fire Protection (Cal Fire), and do not apply to Local Responsibility Areas. Moreover, these clearance requirements only apply during the portion(s) of the year in which Cal Fire determines there is a High Fire Risk. CPSD's proposed rule changes to GO 95, Rule 35 (and Table 1) in the attached red-lined version: 1) make the vegetation requirements of the PRC applicable to Extreme and Very High Fire Threat Zones in FRAP Southern California Counties, thus eliminating the distinction between State Responsibility Areas and Local Responsibility Areas; and 2) make the clearance requirements year round. A more consistent approach is necessary due to the fact that an overhead conductor in a Local Responsibility Area has the same possibility of starting a fire as a conductor in a State Responsibility Area, and thus should have the same clearance requirements. In addition, although the most severe forest fires have recently been in October,

forest fires are not just seasonal events. The potential for a forest fire exists year round, and thus clearance requirements should not change during the year.

**d. How the proposed rule reduces or otherwise addresses the hazard(s).**

This proposed rule reduces the above addressed hazard in two ways. The first way this rule reduces the hazard of vegetation-caused fires is by requiring greater clearance between vegetation and conductors in areas designated by CalFire as Extreme and Very High Fire Threat zones in Southern California, as discussed above. The second way that this rule reduces the aforementioned hazard is by requiring “dead, rotten or diseased trees or portions thereof, that overhang or lean toward and may fall into a span” to be removed or made safe for all conductors on the pole (emphasis added). This is a slight change of replacing the word “and” with “or” so that utilities are required to cut or remove any tree that is suspected of falling into the conductors, not just those that meet all three conditions. Additionally, the rule proposes that if a tree is going to fall into utility facilities it shall be trimmed or removed as to not interfere with any of the facilities on the pole.

**e. The anticipated costs and benefits of the proposed rule.**

There will be an increase in trimming cost of electric utilities because the clearances established by the Public Resource Code (4293) will no longer be limited to just State Responsibility Areas. The increase in cost for this will be minimal, however, because most of the Extreme and Very High Fire Threat zones constitute the same areas as State Responsibility Areas. Therefore, there is not much additional area that a utility would have to trim in that is not already covered by the PRC. Additionally, requiring all dead, rotten or diseased trees that may fall into utility conductors to be removed or cut, so they will not interfere with any utility on the pole may result in an increase of cost; however, most utilities already remove trees that may affect their facilities so the costs should be minimal. In

addition, currently most electric utilities only remove a portion of the tree that will affect their facilities, and leave a portion that could affect the other utilities facilities (CIPs), so there will be a greater cost of trimming for this portion.

**f. Whether and how the costs will be recovered from customers.**

Electric utilities already recover costs for tree trimming from customers through their one-way balancing accounts approved in general rate cases, so there is no need to change the method of recovery for this rule addition. However, CPSD recognizes that there may be a need to allow the electric IOUs a one-time increase in their rate cap on their current accounts due to the increased incremental costs from the proposed rule. However, 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. It may be that local conditions require more frequent inspections and trimming, rather than greater clearance at the time of trimming.

Although these proposed rule changes are not likely to apply to CIPs, any costs that are incurred would be recovered from their customers through market based rates.

**g. Whether and how costs will be shared among electric utilities, CIPs, and others.**

The majority of the cost will be the electric utility's cost. However, there could be cost sharing when a tree that was removed affected other entities on the pole.

**h. Why it is in the public interest to adopt the proposed rule.**

It is in the public interest to adopt this proposed rule because it will cause utilities to have greater vegetation clearance requirements in areas designated

Extreme and Very High Fire Threat zones by Cal Fire, and thus reduce the likelihood of vegetation caused outages and fires.

The removing or cutting of the tree or limb that will fall into the conductors is in the public interest because if a tree falls on a conductor there is a chance that a fire could start. Even a tree that falls on a communication conductor is a fire risk because the resulting force could cause the electric conductors to slap together and result in a fire.

See also Sections II. B. 1-5 regarding the urgent need for these rules and the discussion of the proposed rule's benefits, above.

**i. If the proposed rule applies to electric transmission, why the rule does not conflict with other federal or state regulations.**

See Section II. A. 1 regarding jurisdiction over transmission facilities, above.

**j. Whether the adoption and implementation of the proposed rule is exempt from the California Environmental Quality Act (CEQA) and, if so, why. If not, what steps need to occur under CEQA before the proposed rule can be adopted and implemented.**

CEQA Guidelines Section 15304 lists examples of minor alterations to land which are exempt from CEQA review. For purposes of this proposed rule, the Guidelines provide an exemption for:

Fuel management activities within 30 feet of structures to reduce the volume of flammable vegetation, provided that the activities will not result in the taking of endangered, rare, or threatened plant or animal species or significant erosion and sedimentation of surface waters. This exemption shall apply to fuel management activities within 100 feet of a structure if the public agency having fire protection responsibility for the area has determined in writing, or by written policy or ordinance, that 100 feet of fuel clearance is required due to extra hazardous fire conditions.

In addition, the proposed rule does not constitute a new project or new vegetation management standards which would trigger a CEQA review. Current vegetation management rules set minimum clearance standards, and utilities are already required to take local conditions into account, and have the ability to go beyond the minimum clearances if local conditions warrant such actions. See GO 95, Rule 31.1. This proposed rule only clarifies that local conditions in certain Extreme and High Fire Threat zones in California already require increased minimum clearances. Indeed, the PRC already requires a 48 inch clearance in State Responsibility Areas. As the Commission has stated in D.97-01-044 (70 CPUC 2d 693, at 699), a “reasonable” amount of tree trimming does not require review under CEQA. The Commission clarified that:

The mere adoption of a standard which interprets that term does not expand the obligation that utilities have had all along to keep foliage sufficiently trimmed to prevent it from coming into contact with energized lines....How drastically the utilities elect to prune, or on what cycle, is not mandated as part of this proceeding; we are simply concerned that the specified minimum distance be maintained.

*Id.* Because CPSD’s proposed rule only clarifies what the minimum standards should be in certain areas, given the local conditions there which already required further trimming, it is exempt from CEQA review.

## **6. Mitigating High Speed Wind Dangers**

### **a. The specific electric utilities, CIPS, and others affected by the proposed rule.**

This proposed rule would apply to owners of all electrical distribution and transmission facilities that come within the jurisdiction of this Commission, located outside of buildings, including owners of electric facilities that belong to non-electric utilities, electric POU’s and CIPs.

### **b. New and/or revised text for the affected General Order(s), if applicable.**

See Attachment A, pp. 6, 8 (General Order 95, Rule 38 Minimum Clearances of Wires from Other Wires; Relevant Excerpts of Table 2).

**c. The specific hazard(s) addressed by the proposed rule.**

Strong winds can cause overhead conductors to contact, resulting in sparks, leading to fires. High winds in localized areas can present a fire risk and therefore diligence and caution need to be employed to minimize chances that a fire could be inadvertently ignited.

**d. How the proposed rule reduces or otherwise addresses the hazard(s).**

GO 95, Rule 38, Table 2, Cases 15 and 16 require that conductors have separation at all times. Rule 38 allows this clearance to be reduced up to 10% due to temperature or loading. Additionally, Rule 31.1 states in part “For all particulars not specified in these rules, design, construction, and maintenance should be done in accordance with accepted good practice for the given local conditions known at the time by those responsible for the design, construction, or maintenance of [the] communication or supply lines and equipment.” CPSD’s proposed rule is not changing the requirements of GO 95, Rules 31.1, 38, and Table 2, but instead, simply clarifies to utilities that they need to account for local conditions and gives suggestions for compliance with these requirements of GO 95.

**e. The anticipated costs and benefits of the proposed rule.**

The utilities are already under an obligation to account for local conditions, including high winds in localized areas, when designing, constructing, or maintaining their lines and equipment. The proposed rule change merely provides suggestions for compliance with the requirements of GO 95 in high wind areas. Therefore, utilities should not incur any costs beyond what they already incur to account for these conditions.

The benefits are that the proposed rule gives utilities flexibility to determine what extra precautions might be appropriate to account for high winds



in order to maintain separation of overhead conductors at all locations on the span. This in turn will lessen the chances that these lines will come into contact with each other and spark, and reduce the risk of fires.

**f. Whether and how the costs will be recovered from customers.**

Costs will be recovered no differently than today through electric utilities' general rate cases or CIPs market based rates.

**g. Whether and how costs will be shared among electric utilities, CIPs, and others.**

Not applicable.

**h. Why it is in the public interest to adopt the proposed rule.**

It further minimizes the chances that fires could be ignited due to overhead conductors contacting each other in high wind areas. See also Sections II. B. 1-5 regarding the urgent need for these rules and the discussed benefits, above.

**i. If the proposed rule applies to electric transmission, why the rule does not conflict with other federal or state regulations.**

See Section II. A. 1 regarding jurisdiction over transmission facilities, above.

**j. Whether the adoption and implementation of the proposed rule is exempt from the California Environmental Quality Act (CEQA) and, if so, why. If not, what steps need to occur under CEQA before the proposed rule can be adopted and implemented.**

The proposed rule does not implicate CEQA.

### **III. CONCLUSION**

For the above-mentioned reasons, CPSD respectfully submits the attached proposed rule changes and/or clarifications for the Commission's consideration.

Respectfully submitted,

/s/ KIMBERLY J. LIPPI

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March 9, 2009

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of the **THE CONSUMER PROTECTION AND SAFETY DIVISION'S PROPOSED RULES TO BE IMPLEMENTED IN TIME FOR THE 2009 FALL FIRE SEASON** in **R.08-11-005** by using the following service:

[ X ] **E-Mail Service:** sending the entire document as an attachment to an e-mail message to all known parties of record to this proceeding who provided electronic mail addresses.

Executed on March 9, 2009 at San Francisco, California.

/s/ Kimberly J. Lippi  
Kimberly J. Lippi

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address and/or e-mail address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

\* \* \* \* \*

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