

Decision **DRAFT DECISION OF ALJ WALKER** (Mailed 9/27/2004)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Revise
Commission General Order Numbers 95
and 128.

Rulemaking 01-10-001
(Filed October 2, 2001)

**OPINION ADOPTING CONSENSUS CHANGES
TO GENERAL ORDERS 95 AND 128 AND
DECIDING CONTESTED RULE CHANGES**

1. Summary

The Commission on October 2, 2001, issued this Order Instituting Rulemaking (R.) 01-10-001 to revise General Order (GO) 95 and GO 128, which govern, respectively, the construction of overhead and underground supply and communications systems. Commission staff, industry representatives, labor organizations and the public conducted 16 months of twice-monthly two- and three-day public workshops throughout California. A total of 63 proposed revisions to existing rules were considered. Of these, 40 revisions are supported by consensus of the workshop participants; 15 were withdrawn, and eight are in dispute. This decision adopts the consensus changes as a settlement pursuant to Rules 51, *et seq.*, of the Rules of Practice and Procedure, notes the withdrawn proposals, and discusses and resolves the eight disputed change proposals. Additionally, we give the parties direction to provide for future Commission review of GO 95 and GO 128.

2. Procedural Background

GO 95 covers Rules for Overhead Electric Line Construction. GO 128 covers Rules for Construction of Underground Electric Supply and Communication Systems. The Commission is charged with ensuring that electric and communications utilities operating in California comply with the provisions of the Public Utilities Code and relevant laws and regulations, such as GO 95 and GO 128.

When this proceeding was initiated, Commission staff in the Consumer Protection and Safety Division (CPSD) suggested 13 proposed changes to the rules in GO 95 and GO 128. In written comments by a variety of companies and individuals filed on December 4, 2001 and on February 4, 2002, the number of proposed changes expanded to 63. Most of the parties filing comments asked that a workshop be convened. The administrative law judge (ALJ) agreed, and the first workshop session was held on May 7, 2002. Between 20 and 30 workshop participants representing 10 to 12 parties attended each workshop, and about 70 different participants attended at least one of the workshops.

At the first workshop, the parties agreed to retain a professional facilitator, with costs of approximately \$180,000 paid by six of the utility participants.¹ At the second workshop, the parties agreed on protocols for evaluating each of the proposed rule changes. Substantive discussion of the proposals began at the third workshop. In total, approximately 50 days of workshops were held in

¹ The facilitator's costs were paid by Pacific Gas and Electric Company, San Diego Gas and Electric Company, Southern California Edison, Verizon, SBC California, and the California Municipal Utilities Association.

San Francisco, Sacramento, Oakland, San Diego, Los Angeles, Santa Barbara, Irvine and Ontario, California.

The parties included the Commission's CPSD, headed by technical representative Raffy Stepanian, along with investor-owned utilities, municipal utilities, telecommunications companies, cable providers, labor unions, and a variety of independent consultants. (A list of workshop participants is appended to this decision as Appendix 2.) The workshops were publicly noticed, open to the public, and held in cities throughout California, generally alternating between Southern and Northern California.

A formal Workshop Report, prepared on behalf of 13 of the parties and filed by Commission attorney Travis Foss, explains that the parties reached consensus on most of the proposed rule changes. Other proposed changes were withdrawn, and the eight disputed rule changes were presented in the Workshop Report for Commission review and resolution. The proponents of each of the disputed proposals prepared rationales in support of their positions. By ALJ Ruling dated February 4, 2004, the parties and the public were invited to file comments and briefs on the Workshop Report within 30 days and reply comments and briefs 15 days thereafter. Any request for formal hearing was to be supported by a showing that a disputed fact or issue was material to resolution of the matter. By ALJ Ruling dated June 18, 2004, formal hearing was deemed unnecessary, and this proceeding was submitted for Commission review on that date.

The Workshop Report is posted on the GO 95/128 Rulemaking Committee webpage at <http://www.go95-rc.com/files.html>, along with consensus proposed rule changes (Appendix A) and contested proposed changes (Appendix B). The website also contains a recommended procedure for future workshop

proceedings on GO 95 and GO 128 (Appendix C) and an alternative procedure (Appendix D).

3. Consensus Proposed Changes

The parties agreed to support 40 proposed rule changes, generally after several hours of debate and discussion by the workshop participants. The parties did not simply vote “yes” or “no” on the proposals. Instead, they agreed to use a “level of consensus” voting system. Consensus was achieved if all of the parties present or by proxy voted one of four different levels of consensus. Even if not an enthusiastic supporter of a proposal, a party could still support it by, at a minimum, not “blocking” it, a “block” being the equivalent of voting “no.” After the discussion concerning a given proposal had been concluded, each party indicated its “level of consensus.”

The levels of consensus were defined as follows:

- (1) I am enthusiastic about this decision. I am satisfied that the decision is an expression of the wisdom of the group.
- (2) I find the decision is the best choice. It is the best of the real options that we have available to us.
- (3) I can live with the decision; I’m not especially enthusiastic about it.
- (4) I do not fully agree with the decision and need to register my view about it. However, I do not choose to block the decision and will stand aside. I am willing to support the decision because I trust the wisdom of the group.
- (5) I do not agree with the decision and I feel the need to block this decision being accepted as consensus.

- (6) I feel that we have no clear sense of unity in the group. We need to talk more before consensus can be reached.

Consensus was achieved if all of the voting parties voted a 1, 2, 3 or 4. A 5 or 6 vote by a single party, even if all others voted a 1, forced the workshop to continue discussing the proposal. If there appeared to be no possibility of obtaining a consensus, then the group would move the proposed rule change to a Multiple Alternative Proposals process.

After consensus was achieved on a proposed rule change, the item was placed on the consent calendar. This provided workshop participants time to consider their vote and explore with others at the participant's company or institution whether their vote should be changed. Any participant could change its vote at any time up to the call of the consent calendar at the next workshop session. In other words, the parties had at least two weeks to change their minds about their approval of a given rule change. After call of the consent calendar, no vote changes were allowed.

The participants were also entitled to add to the Workshop Report any "remaining concerns" they had about a given proposal. Regardless of those concerns, however, all consensus proposed rule changes are supported by all of the parties who voted on those changes, and all of the parties have asked the Commission to adopt the consensus proposed rule changes.

The following table briefly describes those proposed rule changes, identified on the table as "PRC," for which consensus was reached. Appendix A of the Workshop Report, available at <http://www.go95-rc.com/files.html>, contains the rationale, remaining concerns, original rule, strikeout and underline versions and final proposed rule for each of these rule changes.

PRC	Rule(s)	Description
1	GO 95, Rule 17	New rules require investigation of major accidents by electric

	and GO 128, Rule 18	utilities as well as gas utilities.
2	GO 95, Rule 22.3-A	Definition of public thoroughfares expanded to include vertical clearance requirements for mobile home parks and other small residential developments.
3	GO 95, Rule 31.6	Defines “permanently abandoned” lines as those determined by their owner to have no foreseeable future use.

5	GO 95, Rule 37	Establishes clearance requirement between overhead lines and antennas that are not part of the overhead line system.
6	GO 95, Rules 44.1 and 44.2	Requires design of new or reconstructed structure to take into account loading requirements of facilities planned for the structure.
8	GO 95, Rule 81.3-A	Ensures that wood pole safety factor may not fall below a certain factor.
10	GO 128, Rule 17.8	Adds requirement for identification of sub-surface and self-contained surface-mounted equipment enclosures.
12	GO 128, Rule 33.4-A(3)(a)	Establishes clearance between supply cables and gas transmission lines and eliminates conflict with other rule and code requirements.
13	GO 128, Rule 35.2	Clarifies rule regarding enclosure of live parts.
14	GO 95, Rule 37	Expands conditions under which conductor clearance reductions are permitted.
15	GO 95, Rule 31.1 and GO 128, Rule 17.1	Replaces “due care” standard with “accepted good practices” standard.
19	GO 95, Rule 54.6B	Permits minor separation, warping and/or cracking of ground wire molding provided the ground wire is not exposed.
20	GO 95, Rules 22.2-A and 22.2-B	Allows alternative non-conductive coverings for insulated ground wires and updates certain code references.
21	GO 95, Rules 54.10-E, 20.8-G and 21.4	Clarifies that airspace is an appropriate insulator under certain circumstances.
22	GO 95, Rule 35	Adds definitions of conductor strain and abrasion and states when corrective action should be initiated.
23	GO 95, Rule 49.1	Establishes allowances for poles originally set in firm soil that has subsequently been excavated or eroded.
28	GO 95, Rule 12.5	Defers certain GO 95 requirements during emergency conditions such as localized storms and natural disasters.
29	GO 128, Rule 34.3-B	Defines allowable gap between equipment enclosures and pad structures.
30	GO 95, Rule 83.4	Eliminates exemption of utility-owned electric communications messengers or guys from bonding requirement.
31	GO 95, Rule 92	Revises clearance requirements between conductors and cables on jointly used poles.
33	GO 95, Rule 37	Clarifies that minimum clearance requirements pertain to a particular location on a given span and not the entire span.
34	GO 95, Rule 20.3 and GO 128, Rule 20.2	Revises definitions of cable to take into account the development of various fiber optic cable technologies.
35	GO 95, Rule 20.8-H	Defines the term “trolley contact conductor.”
36	GO 95, Rule 22.0-C	Expands definition of pole reinforcement techniques.
38	GO 95, Rule 48.2	Replaces obsolete standard for yield point and tensile strength of structural steel with current standard.

39	GO 95, Rule 49.1-A	Eliminates restrictions on spliced or stubbed poles and pole top extensions in certain grades of construction.
40	GO 95, Rules 49.2-E and 20.9-D	Establishes strength, size and insulating requirements for guard arms and allows non-wood products.
42	GO 95, Rule 51.6	Revises “high voltage” sign requirements.
43	GO 95, Rule 54.6-B	Clarifies that ground wires need to be covered only when on the face and back of cross-arms and surface of poles.
44	GO 95, Rule 54.7-A(3)	Allows pole restoration techniques in climbing space and requires the stepping of restored poles.
45	GO 95, Rule 54.8, Table 10	Define minimum clearance of insulated conductors from structures.
46	GO 95, Rule 54.8-B(3)	Correct reference to incorrect rule.
47	GO 95, Rules 58.1 and 58.2	Clarify definition of “enclosed,” move provision from one rule to another to increase clarity, clarify transformer winding grounding requirements.
48	GO 95, Rule 61	Add definitions, eliminate exceptions to tower marking requirement, add requirement that tower climbed by unauthorized person be guarded and add requirement that steps/ladders be 7’6” from ground.
49	GO 95, Rules 74.4B-(1) and 77.4-A	Revise to comply with general principle that rules should be stated in their most restrictive condition.
52	GO 95, Rule 84.7-E	Allow pole restoration techniques in climbing space.
53	GO 95, Rule 87.10	Define requirements for the transition of fiber optic cable facilities between supply levels and transitions to or from the communication level.
56	GO 128, Rules 44.1 and 22.9	Prevent conductive communication cables from being placed in same conduit as supply cables.
57	GO 128, Rules 31.6 and 41.6	Require that service lateral ducts be sealed at both ends.
58	GO 95, Rule 12.5 and GO 128, Rule 12.4	Allow reasonable time for utility to correct nonconformance caused by third party.

The parties have unanimously urged the Commission to adopt these proposed changes to the rules in GO 95 and GO 128. There is no opposition to this request. The proposed changes have been thoroughly examined by our staff and by the participating utilities and other parties in 16 months of public workshops held throughout the state. The changes strengthen and clarify the general orders governing the construction of overhead and underground supply and communications systems. We are treating the consensus rules as a partial settlement under our Rule 51, and are analyzing them on that basis. Each of the changes is reasonable in light of the whole record, consistent with law, and in the public interest, thus meeting our criteria for approval of a proposed settlement of this phase of the proceeding.

4. Withdrawn Proposed Rule Changes

After debate and discussion, their proponents withdrew a number of proposed rule changes. Others were withdrawn because the proponent was persuaded that the proposal was unnecessary, or consensus could not be reached and the proponent did not wish to pursue the alternative proposal process. The following chart lists those proposed changes that were withdrawn and briefly describes each proposal.

PRC	Rule(s)	Description
4	GO 95, Rule 35	Incorporate Public Resources Code Section 4293 into Rule; eliminate exception 2; eliminate exception 4; revise language.
7	GO 95, Rule 60	Incorporate National Electrical Safety Code (NESC) generating station and substation standards
9	GO 128, Rule 17.7	Incorporate Gov. Code §§ 4216 <i>et seq.</i> into rule.
16	GO 95, Rules 54.7-A3 and 58.1-B3	Eliminate requirement that bolt covers be used.
18	GO 95, Rule 51.6	Replace “high voltage” sign requirement with language from NESC.
24	GO 95, Rules 54.70A(3)(k) and 54.7-B(2)(g)	Create bolt protrusion limits for climbing and working space.
25	GO 128, Rule 34.3-B	Define allowable gap between pad structures and equipment enclosures.
27	GO 128	Reformat entire rule.
32	GO 95, Rules 11 and 31; GO 128, Rule 11	Revise to eliminate potential conflict with Occupational Safety and Health rules.
37	GO 95, Rule 37	Eliminate clearance restrictions related to rail cars.
41	GO 95, Rules 59.4 and 20.8-I	Replace specification of minimum size and type of conductor with minimum tensile strength.
50	GO 95, Rule 77.4-F(1)	Clarify intent of rule regarding clearances of overhead trolley contact conductors.
51	GO 95, Rule 77.6A(1)	Revise requirement for sectionalizing insulators on span wires supporting one contact conductor.
54	GO 128, Rule 35	Clarify and separate requirements for marking equipment and tagging cables.
55	GO 128, Rules 36.5 and 20.1	Separate requirements for bonding from requirements for grounding and revise definitions of bond/bonding.

No party objects to withdrawal of these proposed rule changes. We note that any or all of the proposed changes may be renewed in subsequent proceedings that consider GO 95/128.

5. Alternative Proposed Rule Changes

Only eight proposed rule changes were neither withdrawn nor approved by the workshop participants. Instead, these proposed rule changes received at least one “5” in the consensus vote and, after the workshop participants concluded that consensus was not possible, the proposed changes moved to the Multiple Alternative Proposals process. The proponent of each change then prepared a rationale, a strikeout and underline version of the rule being revised, and a final version of the rule, all of which are found at the Rulemaking Committee webpage (<http://www.go95-rc.com/files.html>). Any party was able to propose an alternative to a proposed rule change that had entered the process, including leaving the rule unchanged.

Unlike the rationales for the consensus proposed rule changes, which were agreed upon by all of the workshop participants, the rationales for the alternative proposals were prepared solely by the their proponents. A list of the parties supporting each alternative proposal is in the webpage report. The Workshop Report states that each of the alternative proposals was discussed and debated at length, and the inability of the workshop participants to arrive at consensus was the result of genuine differences of opinion, rather than a failure to expend adequate workshop time on the issues of concern. Each of these disputed rule changes and their alternatives are set forth in the table below. The parties have filed briefs and reply briefs dealing with these disputed changes.

PRC	Rule(s)	Description	Alternative Proposal(s)
17	GO 95, Rule 12.2 and GO 128, Rule 12.2	Broaden definition of “conformance” with General Orders to include both preventive and corrective maintenance, instead of solely preventive maintenance.	No change to rules
26	GO 95, Rule 94	Create rules for the construction of wireless antennas on jointly used poles.	Different rules and no rule
59	GO 95, Rule 35	Removes inconsistency between Rule 35 and Electric Rule 16 -- Service Extensions (a tariff rule) -- shall utility or customer trim utility-owned service drop? Customer not qualified, may damage wire or be injured. Requires utility to trim the drop.	No change to rule
60	GO 95, Rule 35	Modifies Exception 2 to allow utility reasonable time for “good faith” effort to resolve refusal to trim. Removes clause, “Rule 35 requirements do not apply.”	No change to rule
61	GO 95, Rule 35	Removes “actual knowledge” clause and gives utility obligation to remove or trim under constructive knowledge.	No change to rule
62	GO 95, Rule 35	Diseased trees and portions of trees “shall,” rather than “should,” be removed. Compares statutes that use “shall.”	No change to rule
63	GO 128, Rule 17.4	Makes joint trenching a required practice.	No change to rule
64	GO 128, Rule 17.7-A	Requires the preparation of joint trench composite plans and require that registered engineers prepare the plans.	No change to rule

We have carefully reviewed the workshop pleadings, as well as the briefs and reply briefs filed by the parties, with respect to these disputed rule changes. What follows is a brief explanation of each proposed rule change, the arguments for and against the proposed change, and our reasoning in deciding how to resolve each of the disputes.

5.1. Proposed Rule Change 17

In relevant part, Rule 12.2 of GO 95 states:

All lines and portions of lines shall be maintained in such condition as to provide safety factors not less than those specified in Rule 44.2. Lines and portions of lines constructed or reconstructed on or after the effective date of this Order shall be kept in conformity with the requirements of this Order.

Twelve parties urge that this rule, as well as the similarly worded Rule 12.2 in GO 128, be changed as follows (changes are underlined):

All lines and portions of lines shall be maintained in such condition as to provide safety factors not less than those specified in Rule 44.2. Lines and portions of lines constructed or reconstructed on or after the effective date of this Order shall be maintained in conformity with the requirements of this Order. Facilities shall be maintained through preventative or corrective type maintenance activities.

The proposed change is opposed only by CPSD, which recommends no change to the existing Rule 12.2 in either general order.

Proponents of the change argue that many of the rules in GO 95 and GO 128 are silent on how utilities are to maintain facilities once they are constructed and installed. The new language, they say, would confirm that (1) failure of various components of distribution facilities is not always predictable, and (2) maintenance of electric distribution facilities should be accomplished through either preventive maintenance practices (as the rule now provides), or through corrective maintenance activities, whichever is most appropriate for the type of facility. In its brief, PG&E argues:

It is important to reiterate that corrective as well as preventive maintenance activities are accepted good practices in maintaining utility facilities. For example, corrective maintenance activities are accepted in the gas distribution and transmission industries as well as in the electric transmission industry, to name only a few. This proposed rule change would merely acknowledge accepted good utility maintenance practices applicable in the electric supply and communications industry in California. (PG&E Brief, at 2.)

CPSD argues that addition of “corrective type maintenance” would allow conditions that now are considered violations of the general orders to exist until they are discovered and corrected by utilities, a process that may take lengthy periods of time. CPSD contends that the existing general orders and proposed revisions were drafted with full compliance in mind. It states that where 100% compliance is difficult to achieve, the rules have been revised to create flexibility. For example, consensus rule change 14 allows 5% clearance reductions for wires crossing or along thoroughfares. Consensus rule change 19 permits minor deformities to exist in ground wire moulding. Consensus rule change 23 allows for a 10% reduction in pole depth due to normal soil movement. CPSD states:

The proposed change would make the existing rule less clear about what is a violation. In order to determine when a condition violates the rules, there would be three required elements: (1) an item becomes non-compliant; (2) the utility becomes aware of the non-compliance; (3) the utility fails to take corrective action. Under the current rules, a violation occurs when an item becomes non-compliant. Under the proposed rule change, the utility would not be in violation until the utility became aware of the problem, and then failed to take corrective action. Thus, the definition of a violation would change depending on which utility was involved, which circuit was involved, what the inspection cycle was for that area. (CPSD Alternative Proposal, at B-9.)

While the proposed change has wide support from a variety of parties, we are not persuaded to adopt the change. Our principal concern is that the change creates uncertainty in determining when deterioration of lines is in violation of a general order, particularly since “corrective type maintenance” is undefined and is susceptible to conflicting interpretation. We appreciate the quandary of the utilities in determining when a condition constitutes a “violation” of the rules but, as we acknowledged in D.04-04-065, the Commission does not expect utility systems to remain pristine and newly built 100% of the time. We understand that a utility has limited resources and cannot maintain its distribution system so that there are no GO 95 and 128 violations at a given time.

We did, however, find in D.04-04-065 that although a utility may not be able to predict the precise manner and the exact time a particular piece of equipment or a facility will fail, deterioration is generally predictable, so a utility can determine when a particular class of equipment or facilities is likely to deteriorate to the point that safety or reliability is impaired.

Commission enforcement has taken a variety of forms over many years. In particular, we have enforced compliance with electrical system maintenance obligations in part by notifying the utility from time to time of observed violations and giving it a reasonable period of time within which to make corrections, similar to the “fix-it” ticket that most police departments issue. Illustrative of this practice is the tree-trimming settlement we approved in D.99-07-029 in which we allowed PG&E 14 days to trim trees that were closer to power lines than our GOs permit. This has been our informal practice for many years and was again recognized in Edison’s case in D.04-04-064.

We continue to believe that this practice provides a utility with realistic flexibility to maintain its facilities and do not find it necessary to adopt the

proposed changes to Rule 12.2 of GO 95. If parties feel the need to formalize this practice in the General Order, we encourage parties to consider changes in subsequent proceedings on GO 95/128 changes.

5.2. Proposed Rule Change 26

This proposed change would add a new Rule 94 to GO 95 to set forth minimum construction requirements for attaching wireless antennas to poles and towers. The rule is set forth in its entirety at “MAP No. 8 – Proposal No. 1” at the GO 95/128 Rulemaking Committee webpage at <http://www.go95-rc.com/files.html>. Alternative Proposals 2, 3 and 4 are also set forth in the webpage. Proponents of the rule state that because of wireless antenna technology and its use of radio frequency to transmit its signal, wireless antennas do not fit squarely into any class of circuitry categorized in the general order. The proposed rule would establish uniform construction standards in GO 95 that address the issues of worker safety and system reliability for wireless antennas. The rule is supported by 11 parties, including CPSD, which helped draft the rule. The California Cable & Telecommunications Association (CCTA) objects to the cost of compliance and the possible misuse of a disconnect switch required by the new rule. CCTA suggests that a simpler rule, the National Electric Safety Code Rule 2351, would adequately meet requirements for wireless antennas. In Alternative Proposals 3 and 4, wireless carriers oppose the rule as unnecessary, stating that thousands of such antennas have been installed since 1990 with no reported incidents involving safety. They also raise jurisdictional arguments, noting that the Federal Communications Commission has preempted states from regulating emissions from wireless antenna facilities.

In its utility right-of-way decision in D.98-10-058, the Commission concluded that there was a need for safety requirements for wireless attachments

to utility poles, and it instructed incumbent utilities to establish standards. The incumbent utilities have chosen this proceeding in which to establish construction standards for wireless antenna attachments. The proponents of the new rule have shown that these minimum standards are a necessary and effective way to ensure safety from radio frequency exposure. The wireless carriers in opposing the rule have not made a persuasive argument that minimum standards serve no useful purpose. We adopt the proposed GO 95 Rule 94. In doing so, we note that Commission staff has pledged to continue to provide an advisory role in future discussions and modifications of the rule.

5.3. Proposed Rule Changes 59, 60, 61 and 62

William Adams and the City and County of San Francisco propose changes to GO 95, Rule 35, to impose certain tree-trimming responsibilities on utilities rather than property owners. The proposed changes are opposed by 13 parties, including the major utilities and CPSD. The opponents point out that the changes proposed by William Adams were examined by this Commission in its Rule 35 tree-trimming investigation that was decided in 1997 (I.94-06-012). There, the Commission stated:

The Commission's staff has asked that the issue of trimming around utility service drops be addressed in this proceeding. Adams and Sevier suggest that there is a potential for ambiguity in Rule 35 relative to the responsibility for trimming around service drops, and that the rule should be clarified. We do not find this to be the case. As adopted in D.97-01-044, Rule 35 imposes upon the utility the responsibility to slacken or rearrange the drop, trim the tree, or place mechanical protection on the conductors whenever it has actual knowledge (through normal operating practices or notification) that the drop shows evidence of strain or abrasion from tree contact. We will not impose an additional duty of inspection of each service drop upon the utility beyond what our current regulations require, as we believe that

routine observation and maintenance of landscaping to prevent the occurrences of hazards is more within the customer's control, and the problem is more reasonably addressed through efforts to create public awareness by such measures as including brochures and flyers with bills. We also expect that the utilities' efforts in this regard will be directed toward public education, as developed by Subcommittee III, to enable customers to prevent hazards and determine when they should call upon the utility to rectify a potentially unsafe condition. (D.97-10-056, 76 CPUC2d 118, 125; emphasis added.)

The current version of Rule 35 was adopted seven years ago after 18 months of workshops, several rounds of comments and reply comments, hearings, and briefs. The changes to Rule 35 that are now proposed were examined and dealt with at that time. In light of the recent comprehensive analysis and extensive evidentiary record developed in support of the current Rule 35, we conclude that the reconsideration of Rule 35 proposed in this proceeding is unwarranted.

5.4. Proposed Rule Change 63

William Adams and Utility Design, Inc. (UDI), propose changing GO 128, Rule 17.4, to require joint trench installation as the standard method of construction for all underground utilities except sewer and water facilities. The current rule permits joint trenching but does not require it. Opposing the change are 10 parties, including the major utilities, labor representatives and CPSD.

Proponents of the change argue that the current rule allows a utility that controls the joint trench to exclude participants on a subjective basis. Opponents of the change argue that joint trenching is a common practice, saves time and money, and reduces the impact of trenching on communities. They add, however, that there are times when common trenching is not appropriate, and utilities and ratepayers should not have to incur delay or additional costs to

accommodate latecomers or those with needs that would require a deeper or wider trench. The opponents state:

[This is a] poorly crafted “solution” to a non-existent problem. UDI has failed to show why a clear, sensible and flexible rule that has functioned successfully for over 35 years should be changed. (MAP No. 6, B. Alternative Proposal, at B-46.)

The proponents of this change have failed to show a need for the change. Among other things, the proposal raises jurisdictional issues, since the Commission does not regulate all joint trench applicants. Such applicants would not be subject to Commission sanction if they violated GO 128 standards for depth, clearances and other construction and safety standards. We decline the proposed change.

5.5. Proposed Rule Change 64

UDI, supported by William Adams and the City and County of San Francisco, proposes to change GO 128, Rule 17.7-A, to require that private developers and other parties who add to underground systems provide composite plans of all line extensions or conversions of overhead to underground facilities. The plans would show horizontal and vertical location of covered trenches and all underground facilities installed within the trenches. The current rule requires utilities to maintain such records and make them available to Commission staff.

Proposing no change to Rule 17.7-A are 12 parties, including major telephone and energy utilities, labor representatives and CPSD. These parties argue that excavators are required to ascertain underground facilities pursuant to the Regional Notification Center System, Gov. Code §§ 4216, *et seq.*, by calling record-keeping agencies such as USA and Dig-Alert. They state that a requirement that regulated utilities maintain and provide the public with

composite trench maps will expose the utilities to liability that ultimately would be borne by ratepayers. Opponents of the change state:

UDI has not demonstrated the need for a change to GO 128 Rule 17.7-A. The current rule works well with Government Code section 4216 to safely identify utility facilities locations. UDI's proposed rule change would create unfair legal and financial burdens on the regulated utilities customers, do nothing to enhance safety, and create jurisdictional conflicts with local and state agencies. It should be rejected. (MAP No. 7 – B. Alternative Proposal, at B-52.)

We agree that the need for this proposed rule change has not been demonstrated. We decline to adopt it.

6. Implementation of Rule Changes

In many instances, the adoption of the rule changes at issue in this proceeding will require utilities to change their company standards, communicate the changes to field personnel, and conduct varying degrees of training prior to full implementation of the rule changes. The utilities supporting this workshop report request that implementation of the adopted rule changes become effective no later than 12 months after issuance of the final decision in this proceeding. Our order today so provides.

7. Future Rulemaking for General Order Changes

During the course of the workshop process, Southern California Edison Company (SCE) and other utilities offered a formal proposal for the structure of future rulemaking. The proposal, titled TELRP (Telecommunications and Electric Line Rulemaking Plan), was discussed at length. The CPSD offered an alternative proposal and, because consensus could not be reached, both versions are presented to the Commission in this filing. The TELRP proposals are not part of the alternative proposal process because neither, if adopted, would be

incorporated into the existing general orders. Instead, a TELRP could be incorporated into a Commission decision.

7.1. TELRP Proposal A

Although their views on substantive matters diverge widely, the participants in the workshops agreed on the need for the Commission to adopt a procedure for future proposed changes to GO 95 and GO 128 to be addressed in an open and streamlined process. They also agreed that proposed general order changes relating to overhead and underground electric, telephone, and cable television lines and wireless carriers should be considered in a process that brings to bear the technical skill and field experience of the utilities, Commission staff, and other stakeholders. The goal of such a process is to enable the Commission to timely issue informed decisions on proposed rule changes.

SCE's proposed procedure would provide for a publicly noticed discussion of proposed rule changes within a structured framework following a predetermined schedule. The proposal also includes a procedure for the timely resolution of differences of GO 95 and GO 128 rule interpretation between the utilities and the Commission's enforcement staff during the years between the periodic adoption of rule changes.

The workshop participants had several principles in mind as they developed the proposed procedure. In order to be successful (that is, to be seriously considered by the Commission and, if adopted, to effectively serve the needs of the many stakeholders), the procedure must:

- Satisfy the requirements of due process;
- Facilitate the participation of stakeholders of modest means as well as well-funded regulatory practitioners;

- Enable stakeholders, and the Commission and its staff, to deploy their resources in an orderly and cost-effective manner;
- Enable new proposals to be made, considered, and decided without undue delay;
- Allow for the orderly and authoritative resolution of disputes about the interpretation and enforcement of rules during the years between the Commission's periodic adoption of rule changes; and
- Serve as the vehicle for consideration of rule changes proposed by any stakeholder or combination of stakeholders, be they individuals, utilities, Commission staff, or existing or future "Rules Committees."

In Version A, the proposed process contemplates a rulemaking for changes to GO 95 and GO 128 to be instituted every two years, and provides that the entire process - from issuance of an Order Instituting Rulemaking to issuance of the final decision - will be completed in one year. The TELRP uses a petition for modification of GO 95 and/or GO 128 as the procedural vehicle for parties to propose changes and signal the Commission of the need to institute a rulemaking. Any interested party would be able to file a TELRP petition, although joint petitions would be encouraged. Depending on the scope and complexity of the proposals, workshops from one to a maximum of 75 days in length would be proposed. The TELRP includes a set of workshop protocols, derived from the parties' experience in the current workshops, to facilitate discussion of the proposed rule changes.

One of the most important components of the Version A proposal is a process to obtain timely resolution of disputes regarding the interpretation and enforcement of GO 95 and GO 128. The proposed TELRP includes a three-stage

process for addressing these disputes. The first stage in the interim dispute resolution process is for the utility and Commission staff to attempt to resolve the dispute, resulting in issuance of a letter by the director of CPSD stating CPSD's official interpretation of the rule. If a utility disagrees with the CPSD's interpretation of a rule, it may challenge that interpretation through a second stage, analogous to the procedure the Commission already uses to resolve discovery disputes. This stage would be initiated by a motion to be ruled on by the ALJ assigned to the TELRP docket.

Supporters state that the intent of this proposed procedure is that most GO 95 and GO 128 rule disputes and questions would be resolved at Stage 1 or, where necessary, Stage 2. However, some rule disputes may raise such serious concerns that it would be necessary for the Commission itself to render a decision to guide future actions of both the utilities and the CPSD. The proposal calls for the Commission to issue a decision on a Stage 3 TELRP motion within 75 days of the date the motion is filed.

SCE's proposed TELRP procedure is supported by all of the major utility and labor participants in the workshops.

7.2. TELRP Proposal B

CPSD sponsors an alternative version of the TELRP, which extends the two-year cycle to a three-year cycle, in line with a General Rate Case plan, and simplifies the dispute resolution process set forth in SCE's proposed TELRP.

CPSD's proposal contains the same provisions for rulemakings as contained in SCE's version, but differs in that it recommends deleting the provisions for interim dispute resolution. CPSD states that it would delete the provisions because they contain strict deadlines that would unduly burden CPSD, the ALJ Division and the Commission, and would create more litigation

and provide less certainty in interpretation. As an alternative, CPSD recommends that it and the utilities be required to meet and confer in good faith to resolve any disputes involving interpretation and application of GO 95 and GO 128 that may arise between rulemakings. CPSD states:

The interim dispute resolution procedures set forth in Alternative A are restrictive, complex, time-consuming, and will lead to greater uncertainty in rule interpretation. The procedures set forth in Alternative A are as follows: first, if a question arises regarding the rules in between the rulemaking workshops, the utility may request a rule interpretation at any time on any rule (even if it is only a hypothetical question), and CPSD's director must respond in writing within 30 days with CPSD's "official interpretation" of the rule in question. Second, if the utility disagrees with CPSD's interpretation, it may file a motion challenging CPSD's interpretation with the ALJ Division. Parties would have only 10 days to respond to the motion, and the ALJ Division is required to issue a ruling within 30 days. Third, if the utility disagrees with the ALJ's ruling, it may file a motion to the full Commission requesting modification of the ALJ's ruling. The Commission would be required to issue a decision within 75 days after the utility files the motion for full Commission reconsideration. In addition, utilities may file an application for rehearing if they disagree with the Commission decision, and then may file an appeal with the Court of Appeals. Alternative B deletes these provisions, and recommends a simplified meet-and-confer process consistent with current practice. (CPSD Brief, at 9-10.)

The CPSD proposal is supported by Commission staff and by William Adams.

7.3. Adopted Procedure

We support the principles of both TELRP procedures and endorse the procedure in which a utility initiates a meet-and-confer discussion with CPSD management when there is a disagreement in rule application. That tracks the

informal process that is in place today. We attach TELRP Proposal B to this decision as Appendix 1 for the guidance it provides to the parties in resolving rule disputes and establishing the protocols for any subsequent Rule 95/128 workshops that may be conducted.

We decline, however, to adopt either TELRP Proposal A or TELRP Proposal B. We also decline to adopt a new petition for modification of GO 95 and/or GO 128 as the procedural vehicle for parties to propose changes and signal the Commission of the need to institute a rulemaking. Instead, following good-faith meet-and-confer discussions with CPSD, parties (preferably jointly) should file a petition to adopt, amend or repeal provisions of GO 95 and/or GO 128 pursuant to Pub. Util. Code § 1708.5 and Rule 14.7 of the Rules of Practice and Procedure.

Section 1708.5 and Rule 14.7 are recent additions to the Code and the Rules. They provide that “interested persons” may file a petition for a change in a regulation, state the justification for the proposed change, and set forth specific proposed wording for that regulation. (Rule 14.7(c).) The petition must state whether the issues raised have, to the petitioner’s knowledge, been litigated previously by the Commission, along with results of that litigation. Factual assertions made in the petition must be verified if they are to be given weight beyond that accorded a party’s argument.

Section 1708.5 petitioners are to confer with the Public Advisor to develop a service list of entities upon which the petition must be served. Responses to the petition must be filed and served within 30 days, and replies to the responses may be filed within 10 days. The Commission may either deny a Section 1708.5 petition (stating the reasons for denial) or implement a rulemaking proceeding that presumably would be similar to the one in which the parties have engaged

here. The Commission will not entertain a petition for rulemaking on an issue upon which the Commission has taken action or declined to take action in the previous 12 months.

We believe that utilizing an existing procedure that has all or most of the procedural safeguards of the TELRP proposals is preferable to establishing an entirely new procedure. The 1708.5 process has the advantage of permitting petitions for change at any time (subject to the restriction on proposed changes that have been considered in the previous year), rather than on a fixed two- or three-year cycle as envisioned by the TELRPs.

Section 1708.5 provides that the Commission may take up to six months, or longer, to consider a petition for change. (Section 1708.5(b)(1) and (2).) It is the sense of the Commission that in a petition for change in GO 95/128, a petitioner may request and the Commission should consider a shortened time for consideration. Our order today so provides, and GO 95/128 petitioners should cite to today's decision if they seek consideration in less than six months.

It is also the sense of this Commission that the procedures followed by the parties in this proceeding, including workshops, consensus approvals and, if necessary, appointment of a facilitator, are favored in major GO 95/128 rulemakings. These procedures have worked well in this proceeding, and they are endorsed and set forth in detail in both TELRP proposals.

8. Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. While most parties support all or most of the proposed decision, they note that a listing of the 40 consensus proposed rule changes inadvertently excluded 10 of those changes. That error has been corrected in the final decision.

The Wireless Carriers,² NextG Networks of California and Omnipoint Communications, Inc., oppose adoption of new Rule 94 related to the placement and control of wireless antennas on jointly used poles, arguing that FCC standards preempt the Commission from dealing with radio frequency emissions. By contrast, the California Cable & Telecommunications Association, which opposed new Rule 94 during the workshops, takes a neutral position in its comments and, in fact, commends the rule because it exempts certain antennas that are low power and not commercially licensed. The International Brotherhood of Electrical Workers Local 1245 filed comments strongly supporting adoption of the antenna rule, stating that “the vital elements of hazard posting, distance from the center-line of the pole, and a disconnect device will foster a much safer work environment for cable television, hard wire communications and electrical workers who routinely perform work on overhead structures.”

As to the wireless carriers’ jurisdictional argument, the Commission in its Right-of-Way (ROW) decision (D.98-10-058) concluded that the FCC does not have jurisdiction with respect to access to poles and rights-of-way where such matters are regulated by a state. (D.98-10-058, 82 CPUC2d 510, 530.) The Commission went on to state that it may, under the Pole Attachments Act, 47 U.S.C. § 224, impose on a competitively neutral basis utility pole requirements necessary to protect the public safety and welfare. In short, the Commission has jurisdiction over the safety of overhead electric line construction, operation and maintenance, and it may assert that jurisdiction as to the installation of wireless

² AT&T Wireless Services of California, LLC; Sprint Spectrum L.P. (as agent for WirelessCo, L.P. and Sprint Telephony PCS, L.P.); and Verizon Wireless, LLC.

antennas (or, for that matter, any other attachment, such as fixtures or signs) on electric utility poles. PG&E notes:

The Wireless Carriers' claims that PRC 26's provisions are overly burdensome and anticompetitive are repudiated by the fact that in PG&E's service territory, wireless carriers are currently *required* under contracts with joint pole owners to install a disconnect switch, and to maintain certain clearances from communication and supply facilities. If the wireless carriers are currently working within these contractual arrangements, adopting these same requirements in GO 95 should create no additional burden. (PG&E Reply, at 3; emphasis in original.)

Intervenor William Adams recommends a number of typographical and stylistic changes in the text of the proposed decision, and those changes have been made where appropriate. He also argues that proposed rule changes 60, 63 and 64 should be subject to evidentiary hearings. We disagree. As PG&E notes, the detailed analyses of the proposed changes contained in the Workshop Report provide the Commission with the requisite foundation for adopted those changes. In addition, the thorough vetting of the issues in dispute, through detailed positions articulated in Appendix B of the Workshop Report, and the extensive comments submitted by parties, provide ample justification for resolving the disputed changes.

SDG&E contends that consensus rule change 56 inadvertently omitted an exception for electric supply telecommunications facilities. SDG&E explains that the majority of the cable/conductors used in this aspect of the electrical system are non-dielectric. The exception allows supply companies to use non-dielectric communication cables in the same chamber or conduit that is used for the operation of the supply companies' electrical system. SCE joins with SDG&E on this issue, commenting that if the rule were to be approved without the exception

that had long applied to this application, the ability of supply companies to install equipment vital to the control of their systems would be hamstrung.

In reply comments, Verizon and SBC California suggested a revision in the exception language proposed by SDG&E to make it clear that the exception applies only to private communication systems used exclusively for the operation and maintenance of a supply system. The revised language has been reviewed and approved by SDG&E and SCE. Our examination of the record persuades us that the exception was inadvertently omitted when the new Rule 56 was presented to workshop participants. Accordingly, we have added an Ordering Paragraph instructing staff to insert the revised exception language as part of Rule 56.

SCE provides further comments generally praising the process by which these rules were addressed. It states:

The Commission, the participants, and the public got an excellent result from the participants' 2-year effort, as captured in the Workshop Report. SCE manifestly did not get everything it hoped to achieve in this rulemaking. Five of SCE's proposals met with eventual consensus, three were withdrawn, and one went forward under the non-consensus Multiple Alternative Proposal (MAP) protocol described in the Draft Decision. The overall result reflected a healthy amount of give-and-take on everyone's part, and like most parties, SCE achieved some, but not all, of the rule changes it sought.

Some might have predicted that there would be a polarization of utilities on one side and staff and public participants on the other. The reality was that party alignments were highly dynamic throughout the workshops, and there were sometimes significant differences between the electric and telecommunications utilities, and even among the electric utilities themselves. Frankly, the Commission should take comfort in that diversity of viewpoints, as they should in the fact that parties argued their positions candidly and passionately. The dialog was informed throughout by the

presence of engineers, lawyers and people with real-world construction, inspection and maintenance experience. Throughout their work together, they held several principles in common: that the Commission expects and deserves our best judgment and skill in crafting improvements to these important rules, and that public and employee safety would depend on the quality of our efforts. (SCE Opening Comments, at 2.)

SCE went on to state that even as to the changes it proposed that were not adopted, SCE does not take issue with the reasoning of the decision. It stated that this is because the Commission's comments in D.04-04-065 in SCE's line maintenance investigation provide much of the assurance that utilities sought with respect to Commission enforcement of GO 95 and GO 128.

9. Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Glen Walker is the assigned ALJ in this proceeding.

Findings of Fact

1. GO 95 and GO 128 govern, respectively, the construction of overhead and underground supply and communications systems.
2. The Commission on October 2, 2001, issued this Order Instituting Rulemaking to revise GO 95 and GO 128.
3. Commission staff, industry representatives, labor representatives and the public conducted 16 months of twice-monthly two- and three-day public workshops to consider revisions to GO 95 and GO 128.
4. Of 63 proposed revisions to existing rules in GO 95 and GO 128, 40 were supported by consensus of workshop participants, 15 were withdrawn, and eight were in dispute.
5. Proposed Rule Change 17 would add "corrective type maintenance" to rules regarding line maintenance.

6. Proposed Rule Change 26 would add minimum construction requirements for attaching wireless antenna to poles and towers.

7. Proposed Rule Change 59 would impose certain tree-trimming responsibilities on utilities rather than property owners; Proposed Rule Changes 60, 61 and 62 deal with other aspects of tree trimming.

8. Proposed Rule Change 63 would require joint trench installation as the standard method of construction for all underground utilities except sewer and water facilities.

9. Proposed Rule Change 64 would require utilities to maintain and provide composite plans of all line extensions or conversions of overhead to underground facilities.

10. Workshop participants have asked the Commission to implement a TELRP procedure for future rulemaking involving GO 95 and GO 128.

Conclusions of Law

1. The 40 proposed rule changes approved by consensus of workshop participants should be approved as a partial settlement that is reasonable in light of the whole record, consistent with law, and in the public interest.

2. Proposed Rule Change 17 should not be approved at this time.

3. Proposed Rule Change 26 should be approved.

4. Proposed Rule Changes 59, 60, 61 and 62 should not be approved.

5. Proposed Rule Change 63 should not be approved.

6. Proposed Rule Change 64 should not be approved.

7. The adopted rule changes should become effective 12 months after issuance of the final decision in this proceeding.

8. In seeking subsequent rulemaking proceedings, the parties should reply on Pub. Util. Code § 1708.5.

O R D E R**IT IS ORDERED** that:

1. General Order (GO) 95 and GO 128 are amended to incorporate 40 revisions approved by workshop participants in this Order Instituting Rulemaking. The 40 revisions are set forth in Appendix A of the Workshop Report posted on the GO 95/128 Rulemaking Committee webpage at <http://www.go95-rc.com/files.html>.
2. Proposed Rule Change 26 adding a new Rule 94 to GO 95 regarding wireless antennas is approved. The text of Rule 94 is set forth in the Workshop Report posted on the GO 95/128 Rulemaking Committee webpage.
3. Proposed Rule Changes 17, 59, 60, 61, 62, 63 and 64 are not approved at this time. The text of these proposed rule changes is set forth in the Workshop Report posted on the GO 95/128 Rulemaking Committee webpage.
4. Rule 56 is amended to add language following Paragraph D as follows:

EXCEPTION: Private communication systems owned and operated by a supply utility and used exclusively for the operation and/or maintenance of a supply system are exempt from the requirements of this rule.
5. The revisions of GO 95 and GO 128 authorized today will become effective one year after the date of today's decision.
6. The Consumer Protection and Safety Division is directed to revise GO 95 and GO 128 in conformance with our order today, and to publish the revised general orders on or before one year from the date of today's decision.
7. The Telecommunications and Electric Line Rulemaking Plan (TELRP) to govern future rulemaking proceedings for GO 95 and GO 128 is not approved; however, TELRP Proposal B is attached to this decision as Appendix 1 for the

guidance it provides in preliminary meet-and-confer procedures for rule changes and for the protocols it sets forth for any subsequent GO 95 and GO 128 workshops.

8. Following good-faith meet-and-confer discussions, parties (preferably jointly) should file a petition to adopt, amend or repeal provisions of GO 95 and GO 128 pursuant to Pub. Util. Code § 1708.5 and Rule 14.7 of the Rules of Practice and Procedure.

9. It is the sense of the Commission that in a petition for change in GO 95 or GO 128 under Pub. Util. Code § 1708.5, a petitioner may request and the Commission should consider a shortened time for consideration.

10. Rulemaking 01-10-001 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX 1

TELRP Proposal B

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

Order Instituting Rulemaking To Revise)
Commission General Order Numbers 95)
And 128.)

R.01-10-001

**TELECOMMUNICATIONS AND ELECTRIC LINE RULEMAKING PLAN
(TELRP) FOR COMMISSION REVIEW OF PROPOSED GENERAL ORDER
95 AND 128 RULE CHANGES AND FOR INTERIM DISPUTE RESOLUTION**

VERSION B (WITHOUT REDLINE)

Supported by William Adams and CPSD

**TELECOMMUNICATIONS AND ELECTRIC LINE RULEMAKING PLAN
(TELRP) FOR COMMISSION REVIEW OF PROPOSED GENERAL ORDER
95 AND 128 RULE CHANGES AND FOR INTERIM DISPUTE RESOLUTION**

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**TELECOMMUNICATIONS AND ELECTRIC LINE RULEMAKING PLAN
(TELRP) FOR COMMISSION REVIEW OF PROPOSED GENERAL ORDER
95 AND 128 RULE CHANGES AND FOR INTERIM DISPUTE RESOLUTION**

I.

Introduction

Although their views on substantive matters diverge widely, the participants in the current General Order (GO) 95 and 128 workshops agree on the need for the California Public Utilities Commission (CPUC) to adopt a procedure for future proposed changes to GO 95 and 128 to be addressed in an open, streamlined and cyclic process. They also agree that proposed GO changes should be considered in a process which brings to bear the technical skill and field experience of the utilities, CPUC staff, and other stakeholders. The goal of such a process is to enable the CPUC to timely issue informed decisions on proposed rule changes.

The proposed procedure described in this document, if adopted by the Commission, would provide publicly-noticed discussion of proposed rule changes within a structured, yet reasonably flexible framework following a predetermined schedule based on a three-year cycle, and would enable issuance of a CPUC decision approximately one year following the initial filing of the proposed rule changes.

II.

CONCEPTUAL FRAMEWORK

The workshop participants had several principles in mind as they developed the following proposed procedure. In order to be successful (that is, to be seriously considered by the Commission and, if adopted, to effectively serve the needs of the many stakeholders), the procedure must:

Satisfy the requirements of due process;

Facilitate the participation of stakeholders of modest means as well as well-funded, regulatory practitioners;

Enable stakeholders, and the Commission and its staff, to deploy their resources in an orderly and cost-effective manner;

Enable new proposals to be made, considered, and decided without undue delay; and

Serve as the vehicle for consideration of rule changes proposed by any stakeholder or combination of stakeholders, be they individuals, utilities, Commission staff, or existing or future “Rules Committees.”

A. Rulemaking As The Proposed Forum For Periodic Rule Changes

The proposed process relies on rulemaking pursuant to Article 3.5 of the CPUC’s Rules of Practice and Procedure as the forum for accomplishing the review and adoption of future proposed changes to GO 95 and 128. Rule 14.2(b) provides that the CPUC may use a rulemaking to consider “the adoption, repeal or amendment of General Orders.”

1. Flexibility In Use Of Workshops And Other Rulemaking Vehicles

Although rulemakings generally proceed upon written comments instead of evidentiary hearings (Rule 14.1), the CPUC has long authorized the use of workshops as an adjunct to rulemakings, as a means to gather parties' views and to attempt to narrow disagreement or achieve consensus. This proposed procedure would be a flexible process in which – within the legal framework of a publicly-noticed rulemaking – parties use written comments as the initial means of responding to proposed rule changes. Depending on the scope and complexity of, and the amount of contention relating to, the proposals, workshops from one to a maximum of 75 days in length could be conducted. In addition to their inherent and historical flexibility, rulemakings provide the support and oversight of an assigned administrative law judge and assigned commissioner, and assure public notice and opportunity to participate.

2. Use Of A Rate Case Plan-like Triennial Schedule

The proposed process borrows the idea of the Rate Case Plan (RCP) from the general rate cases of the larger utilities. The RCP enables the CPUC to “stage” the filing and processing of a general rate case so that its work, and that of its staff, can proceed in an orderly fashion. The RCP is, in effect, a critical path schedule with designated milestones or due dates for the steps in the rate case process. If the deadlines are adhered to, the CPUC decision can be timely issued without undue strain on public and private resources. The critical path steps are known to everyone in advance, so that they can plan well in advance to meet the due dates and to fulfill their procedural and substantive obligations. The proposed process -- called the “Telecommunications and Electric Line Rulemaking Plan” (TELRP) -- contemplates a rulemaking for changes to GO 95 and 128 to be instituted no more

than once every three years, and that provides that the entire process -- from issuance of the Order Instituting Rulemaking (OIR) to issuance of the final decision -- will be completed in one year. Again borrowing from the RCP, “Day 1” is the date -- that occurs once every three years -- on or after which any entity seeking to modify GO 95 or 128 must file a petition for that purpose. All the other points on the TELRP timeline are measured from the date of issuance of the OIR: “Day R.”

B. Telecommunications and Electric Line Rulemaking Plan (TELRP)

The proposed process uses a petition for modification of General Order 95 and/or 128, as the procedural vehicle for interested parties to propose changes to GO 95 or 128 and thereby signal the Commission of the need to institute a rulemaking. The petition for modification proposed in this document is analogous, but not identical, to the Rule 47 petition for modification of a prior Commission decision.¹ Pursuant to Public Utilities Code section 1708, the Commission may at any time “rescind, alter, or amend any order or decision made by it.” The Rule 47 petition for modification has been the means for interested parties to request changes to prior decisions. Rule 47 sets forth a complete procedure for filing and responding to petitions for modification, and specifies the substantive support that

¹ Petitions for modification pursuant to Rule 47 require the petitioner to specify the prior commission decision proposed to be changed. Because of the long and complex history of GO 95, it may be difficult (especially for stakeholders having modest resources and experience) to identify with certainty all of the prior Commission decisions that might have to be changed to accomplish a rule change. This aspect of Rule 47 seems an unnecessary obstacle in the context of proposed changes to GO 95 and 128, and is the primary reason an analogous, though somewhat different, procedure has been proposed as part of the TELRP.

a petitioner must include in order for its proposal to be considered. For purposes of the TELRP, the Rule 47 model has been modified in the following respects:

(1) Opening and reply comments were substituted for “responses” and “replies,” and ALJ permission is not required to file reply comments; and

(2) Rule 47 petitions must be filed within one year of the decision sought to be modified, or good cause must be shown for filing later than one year after the decision in question. The TELRP petition eliminates this requirement, since the procedure contemplates that petitions may be filed on or after a triennial start date.

Any interested party may file a TELRP petition, although joint petitions are encouraged in the interest of administrative efficiency. For example, utilities and other parties that participate in the General Order 95/128 Rules Committee may elect to propose rule changes initially in that forum with any resulting agreed-upon rule changes to be included in a TELRP Petition filed by that organization on behalf of its members.

Once the petition(s) have been filed, the Commission should issue an OIR, and consolidate the petitions (if more than one) into the OIR docket for further processing. The OIR should state that it will be processed in accordance with the TELRP.

The proposed process gives the interested parties flexibility in how the workshops are run (assuming workshops are determined to be necessary). They may, (1) request the General Order 95 Rules Committee to serve as facilitator, (2) contract for the services of a professional facilitator or (3) request that the ALJ or Assigned Commissioner serve as chair or facilitator. If they don't select one of those options, it will be necessary for them to designate one party's representative to serve as chair or facilitator.

After Opening and Reply Comments on the Petition(s) are filed (Days R+30 and R+40, respectively), the proposed process calls for the ALJ to preside over a pre-workshop conference, at which the parties will identify themselves and the schedule and procedures for workshops will be discussed and decided among the parties. In the event consensus among the parties cannot be reached on these points, the ALJ will take them under submission and issue a ruling on them within one week.

It is hoped that the establishment of a regular three-year cycle for TELRP rulemakings will reduce the possibility of there being too many proposed rule changes to address in one OIR. In the event a large number of proposals are filed, an important task for the pre-workshop conference will be to subject the proposals to a "triage," in which priority should be given to proposals which have the greatest potential to (1) increase public and employee safety, (2) increase utility service reliability, (3) reduce costs, or (4) enhance efficiency. Proposals that involve relatively minor corrections or clarifications of existing rules should be given lower priority. Proposals that are poorly-defined or that lack supporting rationale should not be considered. Proposals that are similar in nature should, if possible, be combined into one proposal; in such cases it may be feasible for one or more parties to withdraw their proposal(s) in favor of a similar proposal filed by another party. Parties are encouraged to agree on prioritization of the proposals; however,

disagreements on prioritization that are not resolved at or before the pre-workshop conference will be resolved in the ALJ's ruling.

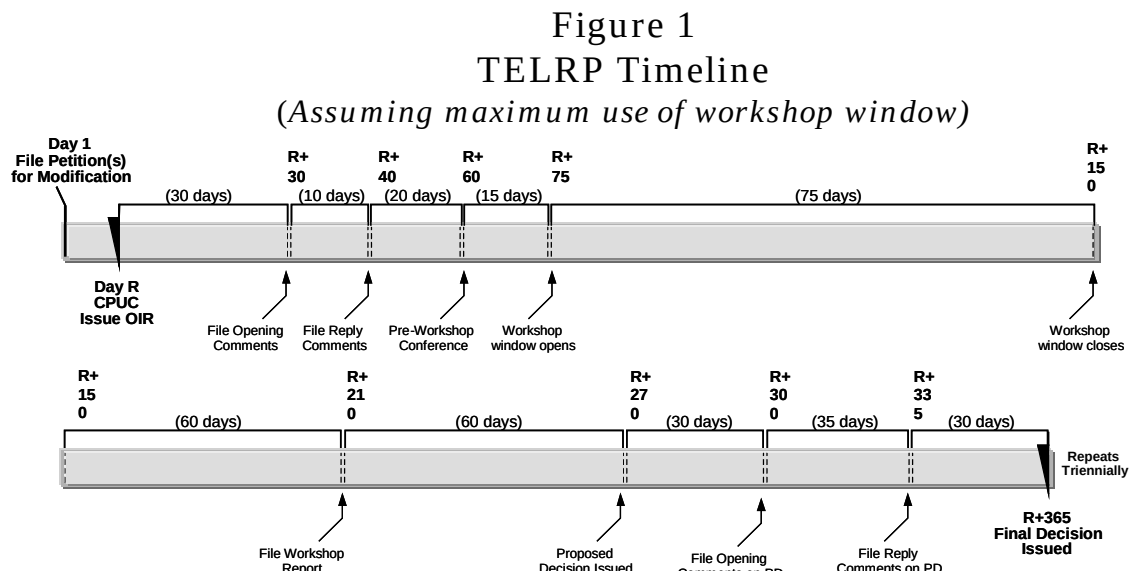
The proposed process provides a window for workshops that opens on Day R+75 and closes on Day R+150, thus providing about two and one half months for parties to engage the issues in a collaborative effort. A written report summarizing the results of the workshops is to be filed not later than Day R+210.

The remainder of the TELRP timeline gives the ALJ two months (until Day R+270) to draft a Proposed Decision (PD), followed by Opening and Reply Comments on the PD to be filed on Days R+300 and R+330, respectively. The final decision is due by Day R+365. The Rulemaking docket will remain open for processing interim disputes (see Section D, below), until the next Rulemaking is initiated pursuant to the TELRP. The TELRP steps in which full 75-day workshops are conducted are summarized below.

Day 1	File Petition(s) for Modification ²
Day R	CPUC Issues OIR
Day R+30	File Opening Comments
Day R+40	File Reply Comments
Day R+60	Pre-workshop Conference
Day R+75	Workshop window opens
Day R+150	Workshop window closes
Day R+210	File Workshop Report
Day R+270	Proposed Decision issued
Day R+300	File Opening Comments on PD
Day R+330	File Reply Comments on PD
Day R+365	Final Decision issued

The TELRP timeline, assuming the maximum workshop window is utilized, is shown graphically in Figure 1:

² Interested parties should seek support from other potential parties prior to Day 1 and, if possible, should petition jointly.



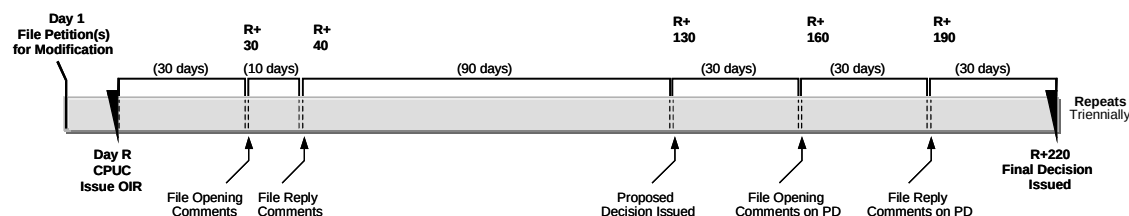
As previously noted, the TELRP can also proceed without workshops, if the ALJ, in consultation with the Assigned Commissioner, finds that the subject matter is amenable to a more traditional rulemaking. In that case, the TELRP steps required to address the proposed rule changes through written comments are summarized below.

Day 1	File Petition(s) for Modification
Day R	CPUC Issues OIR
Day R+30	File Opening Comments
Day R+40	File Reply Comments
Day R+130	Proposed Decision issued
Day R+160	File Opening Comments on PD
Day R+190	File Reply Comments on PD
Day R+220	Final Decision issued

As shown in Figure 2, the timeline for the TELRP is much shorter (220 days as opposed to 365 days) if carried out through written comments rather than workshops.

Figure 2
TELRP Timeline

(Assuming written comments in lieu of workshops)



C. Protocols For TELRP Workshops

The workshop participants in R.01-10-001 expended considerable effort at the start of the workshops to agree on a process for discussing and resolving rule changes. A particularly challenging problem was to achieve efficiency (in the sense of completing discussion of each proposal within a reasonable time) without compromising fairness (which necessitated giving all viewpoints a full airing). An attempt was made to strike this balance early in the workshops, through the proposal of a set of protocols derived from prior Commission workshops.

This initial effort to establish protocols led to a realization that seems especially relevant to the subject of GO 95 and 128 rule changes. The workshop participants were unable, despite their best efforts, to agree on the meaning of “consensus” for purposes of dealing with proposed rule changes. In part, this was because of the representative roles played by the participants. The CPSD was represented by either one or two persons. Each of the investor-owned electric and telecommunication utilities was represented by from two to six persons (depending on the issue under consideration), and represented labor usually had two or three people – from different locals and the CIO – in attendance. Two of the union representatives were also representatives of the General Order 95/128 Rules Committee, a private organization to which most of the utilities belong. CPSD and several other participants voiced concern that if consensus was defined as a

majority vote of the participants, the utilities would always prevail because they brought the most participants. They felt this would be true even if each party was limited to one vote, on the assumption the utilities would usually vote en bloc. On the other hand, many participants expressed concern that if consensus was defined as “unanimity,” an individual hold-out could indefinitely stall an otherwise overwhelmingly supported proposal. These concerns may continue to be of concern in future workshops dealing with GO 95 and 128 rule changes. The workshop participants evolved a set of protocols which in large part addresses the concerns regarding “consensus,” and (once the participants “got the hang of it”) has proved reasonably efficient. The workshop participants recommend that the Commission adopt these protocols as an integral part of the TELRP, for use in future workshops conducted pursuant to that procedure. The protocols should serve equally well whether the workshops are facilitated by a third party facilitator, the ALJ, or one of the workshop participants. Although it is not our intent to stifle innovation in the workshop process, we are concerned that future workshops under TELRP, limited as they are to a maximum of 75 calendar days, not be slowed by having repeatedly to “re-invent” the rules for conducting the workshops.

The “consensus” problem was overcome by substituting several mechanisms – designed to operate sequentially – in place of voting. After the rationale for a proposed rule change (“PRC”) has been explained by the proponent of the change, and positive perceptions and concerns are expressed by the other participants, the “levels of agreement” are tested by polling the parties present. Each party (through one designated spokesperson) states its level of agreement according to the following scale:

- 1 - I am enthusiastic about this PRC. I am satisfied that this PRC is an expression of the wisdom of the group.

- 2 - I find the PRC to be a good choice. It is the best of the options that we have available.
- 3 - I can live with the PRC; I am not especially enthusiastic about it.
- 4 - I will not block consensus on the PRC.
- 5 - I do not agree with the PRC and I feel the need to block it from being agreed upon by the group.
- 6 - I feel that we have no clear sense of unity in the group. We need to talk more before agreement can be reached.

These levels of agreement are recorded by the facilitator. If no party gives the PRC a “5” or a “6,” the PRC is agreed upon as submitted. However, if it is blocked or held for further discussion, the PRC is either:

- (1) Submitted to a smaller working group or committee to refine outside of the workshop process, to be brought back for later consideration;
- (2) Assigned to a Multiple Alternatives Process (“MAP”) in which one or more parties, individually or in small working groups, return to a later workshop meeting with alternative PRC(s); or
- (3) In the case of a level “6,” the workshop participants continue to work as a full group to address the parties’ concerns and reach agreement.

These options enhance the opportunities for workshop participants to reach agreement through compromise, while assuring that one or more parties that hold strong views in opposition will have an opportunity to put those views before the Commission (in the event an alternative PRC developed through the MAP does not lead to agreement).

These and the other protocols recommended for use in future TELRP workshops are described in the Appendix.

D. Interim Resolution of Rule Interpretation Disputes

One of the most important principles underlying the proposed TELRP is the establishment of a process to obtain timely resolution of disputes regarding the interpretation and enforcement of GO 95 and 128. Even if the TELRP is adopted as proposed, a utility may have to operate under a problematic rule interpretation or enforcement procedure for up to three years before it can propose a clarification or change. The proposed TELRP recommends a meet and confer process for addressing these disputes. It is fundamental that the Commission and its staff be timely engaged in resolving such disputes in a fair, deliberate and coordinated manner.

1. Interim Rule Interpretations at the CPSD Staff Level

When disputes or questions arise regarding the interpretation of GO 95 and 128 rules, they tend to arise in the course of CPSD's periodic compliance audits, field inspections of utility overhead and underground systems, and investigations conducted by CPSD following an accident. When such disputes or questions arise, it is in the interest of the utilities to resolve them quickly in order to avoid delay in carrying out their inspection and maintenance duties, and it is in the interest of the Commission and its staff to obtain a result by which the utilities uniformly comply with the GOs in a timely and appropriate manner. The interests of utility employees and the public are also served by timely and appropriate compliance with the GOs.

Accordingly, the utility and CPSD staff should attempt to meet and confer to resolve the dispute or question through a frank dialog and deliberate consideration of the various points of view relating to the issue. This dialog is initiated when the utility sends a letter to CPSD's Director,

with copies to other CPSD personnel involved in the issue, clearly describing the dispute or question and providing documentary support such as photographs, diagrams, schematics, or other material to facilitate the understanding and discussion of the problem. The questions posed by the utility should not involve generic hypotheticals.

The response, which shall be served on the originating utility and shall be posted on the Commission's website shall state CPSD's application of the rule in the context of the dispute presented, and may be received in subsequent CPUC proceedings as evidence of CPSD's position until such time as CPSD changes its defined application of the rule by a subsequent writing. CPSD's response letter issued pursuant to this procedure will not bind the Commission or be interpreted as a delegation of the Commission's decision-making authority; however, the intent of this proposed procedure is that in subsequent Commission deliberations relating to enforcement of GO 95 and 128, the CPSD response letters shall be considered by the Commission and given such weight as the Commission deems appropriate in the specific circumstances.

Appendix

Recommended Protocols for TELRP Workshops

1. PURPOSE OF WORKSHOP

The purpose of the workshop in [INSERT RULEMAKING DOCKET NUMBER] is to collaboratively explore the proposed rule changes (PRCs) relating to General Orders 95 and 128 previously filed in this proceeding, and to the extent possible to agree on specific PRCs to be recommended for adoption by the Commission.

2. WORKSHOP REPORT

The final product of the workshop will be a written workshop report that documents the agreed-upon PRCs and -- if necessary -- alternative PRCs. The workshop report will be filed with the -Commission or otherwise made a part of the official record in this proceeding as directed by the assigned Administrative Law Judge (ALJ).

- 2.1 Each agreed-upon PRC and alternative PRC will include specific text proposed to be added, deleted or modified, and a statement of supporting rationale.

3. WORKSHOP PARTICIPANTS

Workshop "Participant" is defined as any representative of a party to this proceeding who participates in discussing one or more of the PRCs during one or more scheduled workshop meetings. A party may bring as many representatives to participate in the workshop as it deems necessary to address the issues. A primary contact/spokesperson for each party shall be designated for purposes of notices and document distribution.

4. WORKSHOP AGENDA

An agenda for each workshop meeting will be developed by the Participants starting at the beginning of the first meeting, and will be updated through the workshop meetings as agreed by the Participants. The agenda will specify the date, time, location and host /contact person for the meeting and will list the PRCs to be addressed at the meeting.

- 4.1 To the extent possible, PRCs requiring the presence of Participants with special qualifications or expertise are to be scheduled for discussion on the same or consecutive days.
- 4.2 The Participants may agree to defer a PRC if, during discussion, it becomes apparent that participants with special qualifications or expertise, not then present, are needed to adequately address the PRC.
- 4.3 A party represented by a single Participant may request that a PRC of particular interest to them not be addressed on a specific date if they cannot be present on that date. Such request should be made as soon as the party's scheduling constraint becomes known to them, and all reasonable efforts shall be made to accommodate such requests.

5. DISCUSSION PRINCIPLES

- 5.1 The discussion of PRCs will be governed by the following general principles:
 - 5.1.1 Describe the current situation, the reason for the PRC, and identify all material issues associated with the PRC.
 - 5.1.2 Identify and understand the Participants' respective points of view, interests and desired outcomes relative to the PRC.
 - 5.1.3 Obtain (to the extent feasible) data that Participants believe is necessary to understand the issues and make an informed decision on the PRC.
 - 5.1.4 Address all interests insofar as possible.
- 5.2 During meetings, opportunities will be allowed for a brief ongoing evaluation of progress and process ("process checks").

6. DECISION MAKING PROCESS

- 6.1 Agreement should be sought utilizing the "levels of agreement" process:
 - 6.1.1 Agreement is defined as "all parties present when levels of agreement are called for being at level 4 or above on the levels of agreement scale."
 - 6.1.2 Levels of agreement scale:

Level 1 - I am **enthusiastic** about this PRC. I am satisfied that this PRC is an expression of the wisdom of the group.

Level 2 - I find the PRC to be a **good choice**. It is the best of the options that we have available.

Level 3 - I can **live with** the PRC; I am not especially enthusiastic about it.

Level 4 - I will not block consensus on the PRC.

Level 5 - I do not agree with the PRC and I feel the need to **block** it from being agreed upon by the group.

Level 6 - I feel that we have no clear sense of unity in the group. We need to **talk more** before agreement can be reached.

6.1.3 Each party shall state a single level of agreement, regardless of how many Participants it has brought to the workshop meeting.

6.1.4 A “straw vote” to ascertain the level of support for, or opposition to, a PRC may be called for at any time.

6.1.5 Tentative working agreements may be reached on parts of complex PRCs, subject to final agreement on the entire PRC.

6.1.6 If no party gives the PRC a “5” or a “6”, the PRC is agreed upon as submitted. However, if it is blocked or held for further discussion, the PRC is either:

6.1.6.1 Submitted to a smaller working group or Committee to refine outside of the workshop process to be brought back for later consideration;

6.1.6.2 Assigned to a Multiple Alternatives Process (MAP) in which one or more parties, individually or in small working groups, return to a later workshop meeting with alternative PRCs; or

6.1.6.3 In the case of a level “6,” the Participants continue to work as a full group to address the parties’ concerns and reach agreement.

- 6.1.7 If a PRC is assigned to a MAP but does lead to agreement, the proponent(s) of each MAP alternative may submit their alternative(s), with statement(s) of rationale, for inclusion in the Workshop Report (see section 11, below).
- 6.2 Parties are responsible to have a Participant at each meeting who has authority to decide on the topics to be addressed in that meeting, and who will seek management input prior to each meeting in order to expedite the work of the workshop.
- 6.3 Any party that, without prior notice to the other parties, is absent from a meeting at which a PRC is agreed upon, is deemed to have abstained from the determination of levels of agreement, and has waived the opportunity to challenge the PRC or propose an alternative PRC. This protocol may be waived by agreement of the parties at a subsequent meeting in the event the party's absence was due to circumstances beyond its control.
- 6.4 Agreed-upon PRCs will be placed on a consent agenda, to be addressed at the start of the subsequent meeting, in order to allow parties time to seek final approval of the PRCs by their respective managements, when such approval has been stated by parties to be necessary. Any party may remove any PRC from the consent calendar for further workshop consideration, based on their management's direction.
- 6.5 Each Participant is responsible to keep his or her organization/constituency group(s) informed of the progress of the workshops and to timely seek advice, comments and authorization as required.
- 6.6 Participation by Proxy
- Parties represented by a single Participant may designate another Participant to serve as their proxy for purposes of expressing levels of agreement, if they are unable to attend a workshop meeting. In order to utilize a proxy, the party must satisfy the following requirements:
- 6.6.1 The party shall notify the other parties by email or facsimile at least 1 business day prior to the meeting at which they expect to be absent;
- 6.6.2 The party shall provide clear directions to the proxy regarding any limitations on the proxy's authority, in the event the PRC is modified in the course of discussion; and

6.6.3 The proxy must inform the facilitator and Participants of their role at the beginning of the meeting.

7. COMMUNICATIONS AND PUBLIC NOTICE

- 7.1 Any or all Participants may meet or conference call among themselves between workshop meetings as desired or necessary to negotiate an advancement of their work.
- 7.2 Audio and video recording devices are not to be used in meetings for any purpose. Participants are encouraged to explore ideas freely and the only agreements are those explicitly reached.
- 7.3 A Participant shall be designated to keep the assigned ALJ informed of the dates, times, location and host contacts for upcoming workshop meetings, in time for that information to be posted on the Commission's website and to be periodically issued in rulings as the ALJ deems appropriate.

8. INFORMATION MANAGEMENT

- 8.1 A meeting summary will be prepared following each working group meeting stating:
 - 8.1.1 All Participants at the meeting, including their e-mail addresses and telephone and facsimile numbers;
 - 8.1.2 PRCs discussed;
 - 8.1.3 Agreements, if any, with supporting rationale; and
 - 8.1.4 MAP proposals, if any.
- 8.2 The meeting summary will be prepared by the facilitator (see Section 9, below). Meeting summaries will be available the following week and will be emailed or faxed to all Participants. The meeting summary will be reviewed for corrections by the Participants, preferably by email or teleconference between workshop meetings.
- 8.3 The Facilitator will maintain a file containing copies of all written information distributed by the Participants.
 - 8.3.1 Workshop Participants, and the parties they represent, reserve all rights to preserve the confidentiality of information in their possession, and participation in the

workshop shall not be implied or understood to constitute a waiver of such rights.

9. PARTICIPANT ROLES

9.1 The Facilitator

- 9.1.1 Works on behalf of the Participants under the direction of the participants;
- 9.1.2 Makes participation easier and encourages participation by all who wish to participate;
- 9.1.3 Reminds participants of the protocols as necessary;
- 9.1.4 Suggests strategies to move the discussion along, as appropriate;
- 9.1.5 Uses a computer as appropriate; and
- 9.1.6 Carries out such other supportive activities as agreed upon by the Participants or as directed by the ALJ.

9.2 The Secretary or Technographer assists the Facilitator and Participants by taking notes on a computer, flip charts or other media that serve as “workshop memory.”

9.3 The Participants:

- 9.3.1 Listen carefully, ask pertinent questions and educate themselves and others regarding the issues and interests that must be addressed, in a collaborative rather than confrontational manner.
- 9.3.2 Fully and thoughtfully explore the issues before forming conclusions.
- 9.3.3 Search for creative solutions that best serve the issues and interests that must be addressed.

10. WORKSHOP ACCESS AND ACCOMMODATIONS

Workshops shall be scheduled in locations that comply with the Americans with Disabilities Act.

(END OF APPENDIX 1)

APPENDIX 2

List of Workshop Participants

- William Adams
- AT&T Wireless
- California Cable and Telecommunications Association (“CCTA”)
- California Farm Bureau Federation
- California Municipal Utilities Association (“CMUA”)
- City and County of San Francisco
- City of Redding Electric Utility
- Cingular Wireless
- CN Utility Consulting
- Consumer Protection and Safety Division
- Cox Communications
- Davey Tree
- Frontier Communications
- GO 95/128 Rules Committee (non-voting)
- IBEW 47
- IBEW 465
- IBEW 1245
- IBEW Ninth District
- Imperial Irrigation District
- Los Angeles Department of Water and Power
- John McAvoy

- Modesto Irrigation District
- NextG
- Pacific Gas & Electric Company
- Sacramento Municipal Utility District
- San Diego Gas & Electric Company
- SBC
- Southern California Edison Company
- Sprint PCS
- Turlock Irrigation District
- Underground Service Alert
- Utility Design, Inc.
- Verizon
- Verizon Wireless
- Jim Young

(END OF APPENDIX 2)