

Decision **PROPOSED ORDER OF COMMISSIONER KENNEDY DIFFERENT
FROM PRESIDING OFFICER'S DECISION**
(Mailed 4/5/04)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation Into Southern
California Edison Company's Electric Line
Construction, Operation, and Maintenance
Practices.

Southern California Edison Company,

Respondent.

Investigation 01-08-029
(Filed August 23, 2001)

(See Appendix A for Appearances.)

OPINION FINDING VIOLATIONS AND IMPOSING SANCTIONS

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OPINION FINDING VIOLATIONS AND IMPOSING SANCTIONS**I. Summary**

In this investigation, the Commission examined Southern California Edison Company (Edison) electric line construction, operation, and maintenance practices during 1998 through 2000. This decision fines Edison a total of \$676,000 primarily for 30 violations of the Commission's General Order (GO) 95 and GO 128 specifying the requirements for the construction, operation, and maintenance of overhead and underground utility systems. The decision fines Edison \$20,000 for each of these violations. In each of these cases, we conclude that Edison either knew or should have known of the violation and failed to cure it in a timely fashion. It also fines Edison \$1,000 for each of 56 violations of GO 165 for Edison's failure to identify unsafe conditions, and \$20,000 for exceeding GO 165's inspection intervals.

This decision does not fine Edison for 4,721 observed violations of the GOs that Edison remedied promptly once the Commission's Consumer Protection and Safety Division (CPSD) brought the violations to Edison's attention. Both Edison and CPSD agree that it is impossible for a utility to keep its distribution system in perfect compliance with the safety GOs, and that at any given time, there will be multiple violations on a utility's system. The penalties we assess are intended to encourage Edison to focus its immediate resources and efforts on finding and curing GO violations in a timely fashion and with regard to the potential harm associated with failure to cure.

Thus, for each GO violation involving serious potential harm that Edison failed to cure in a timely fashion we have assessed the maximum penalty of \$20,000, as provided by Pub. Util. Code § 2107. In assessing whether a particular

violation involved potential serious harm, we have looked in most cases to harm that actually occurred. We also assess \$1,000 for each violation concerning Edison's failure to identify safety GO violations in its detailed inspection, and \$20,000 for exceeding GO 165's inspection intervals because of the potential for harm. We have not assessed penalties for the remaining GO violations because Edison had a maintenance priority system in effect during the relevant period and promptly remedied the GO violations as required by CPSD; moreover, CPSD did not demonstrate that the cumulative effect of Edison's GO violations compromised the system's safety or put the violations in any context

II. The Order Instituting Investigation (OII)

The OII alleges that Edison violated three Commission GOs that specify the requirements for the construction, operation, and maintenance of overhead and underground utility systems, including (1) GO 95 (rules for overhead electric line construction); (2) GO 128 (rules for construction of underground electric supply and communications systems); and (3) GO 165 (inspection cycles for electric distribution facilities.)

Based on routine CPSD inspections of Edison's facilities, the OII alleges 4,044 violations of GO 95 requirements on electric poles in Edison's service territory and 677 violations of GO 128 requirements in Edison-owned underground and pad-mounted structures. Additionally, the OII alleges 37 accidents involving Edison's violations of these three GOs and two violations of Rule 1 for providing misleading information to the Commission.

CPSD has the burden of proving that Edison violated the GOs and Rule 1. See *In re Qwest Communications Corporation (Qwest)*, Decision (D.)02-10-059 at 4; *In Re Communication TeleSystems International (CTS)*, D.97-05-089, 72 CPUC2d 621,

642, Conclusion of Law 1. CPSD must prove its allegations by a preponderance of evidence. See *Qwest* at 4; *CTS* at 72 CPUC2d at 642, Conclusion of Law 2.

III. Underlying Policy Dispute Between the Parties

The parties dispute many factual, legal and policy issues. However, the fundamental underlying dispute between them is this: CPSD believes that failure to comply with any provision of any of the Commission's GOs at issue is a violation that can subject Edison to penalties. Edison believes that failure to comply with the GOs in the first instance is only a "nonconformance" or "variance" with the GOs. According to Edison, if a utility has a reasonable maintenance program that prioritizes the correction of a nonconformance, and performs such corrective action according to its priority schedule, it is complying with the GOs.

IV. Summary of Parties' Positions

A. CPSD

CPSD believes that a utility violates a GO if it fails to comply with a GO's provisions. According to CPSD, Edison has been aware for a number of years of the GO provisions, since GO 95 has existed in some form since 1922 and GO 128 was issued in 1967. Therefore, Edison should not be able to develop its own interpretation, compliance standards, and corrective period for these GOs without Commission authorization. CPSD argues that the purpose of the GOs is to establish safety standards for utility distribution systems and that Edison should maintain its system to comply with these GOs.

CPSD alleges that Edison violated GO 95 on 4,044 occasions, GO 128 on 677 occasions, and GO 165 on 94 occasions. Additionally, CPSD alleges that Edison's violations of GO 95 and 128 were at least a factor in 37 accidents involving injury or property damage. CPSD also alleges that Edison committed

two Rule 1 violations in presenting misleading statements regarding two accidents. CPSD believes it is not necessary to prove “intent to mislead” for the Commission to find a Rule 1 violation.

CPSD recommends the maximum penalty of \$20,000 as provided for in Pub. Util. Code § 2107 for each of the GO 95, 128 and 165 violations, for each violation associated with each of the 37 accidents, and for two Rule 1 violations, for a total of \$97,080,000. Although CPSD claims the violations are longstanding, it is willing to forgo seeking daily damages pursuant to Pub. Util. Code § 2108 because the exact period of noncompliance is difficult for CPSD to determine.

B. Edison

Edison argues it should not have to defend its electric line inspection and maintenance program before the Commission has had the opportunity to describe what it regards as reasonable conduct. Edison states that CPSD’s proffered requirement that any noncompliance with the GOs is a violation that should be penalized is an unprecedented and counterproductive standard. Edison argues that this standard will not lead to a safer electric system but only to increased costs. Edison terms noncompliance with the GOs as a “nonconformance,” and argues that a GO violation occurs only if Edison does not remedy the nonconformance during its prioritized maintenance program.

Edison states that it has taken a practical, cost-effective and safety-driven approach in compliance with the GOs. According to Edison, it prioritizes its financial and human resources to serve utility reliability and safety, and no system can, or should, be structured to prevent all nonconformances from occurring.

Edison believes that CPSD has juxtaposed incidents of Edison’s GO nonconformance during the 37 accidents without proving that:

(a) nonconformances existed; (b) the nonconformances caused the accident, or (c) a reasonable inspection program could have been expected to find and correct the problem before the accident happened. Edison also argues that CPSD's raw data of GO 95 and 128 nonconformances contained in its inspection reports did not demonstrate that the problems were excessive, nor did they shed light on the manner in which Edison manages its inspection and maintenance program. Edison charges that CPSD inspected the most vulnerable and problem-laden part of its system, and that the inspectors had inconsistent criteria and conservative definitions of GO compliance. Edison also disagrees with CPSD's interpretation of GO 165, believing that this GO only requires Edison to have specific intervals for various inspection categories and to report and track inspection results and resulting corrective action.

For the above reasons, Edison argues that penalties are not warranted. Alternatively, even if the Commission were to find a failure to comply with the GOs to be a violation, Edison does not believe penalties are in order because this would be a new Commission interpretation of the GOs of which Edison was unaware. Edison also argues that it did not violate Rule 1 because its personnel responded to CPSD's questions with the best available information at the time of the CPSD inquiries. According to Edison, CPSD must prove that Edison acted with intent, recklessness, or blameworthy conduct before the Commission can find a Rule 1 violation.

Edison argues that the OII raises legitimate issues that should be prospectively addressed through the rulemaking process. It recommends that the following issues be transferred either to the existing GO 95/128 Rulemaking (R.) 01-10-001, or another new generic proceeding:

- Development of a single set of GO 95 and 128 inspection methodologies;
- Standardization of CPSD and utility inspector training;
- Guidelines for establishing, evaluating and revising utility corrective action prioritization programs; and
- Criteria for prospectively determining when a utility may be penalized for failure to comply with its inspection and maintenance program requirements.

V. Procedural Background

The Commission issued this OII in August 2001. The matter was originally set for hearings in February 2002. On November 19, 2001, Edison filed a motion to compel discovery and to extend its filing deadline for serving testimony. By ruling dated January 28, 2002, the Assigned Commissioner and Administrative Law Judge (ALJ) denied in part Edison's motion to compel. Because the ruling required CPSD to produce some additional information, the ruling extended the hearing schedule.

On February 4, 2002, Edison filed a petition for writ of mandate in the California Court of Appeal. On February 6, 2002, the Second Appellate District, Division Eight, issued an order staying this investigation pending further order. The Commission thereafter removed the scheduled hearings from its calendar and stayed this investigation pending further order from the Court of Appeal.

On February 28, 2002, the Second Appellate District denied Edison's petition and dissolved its order staying this proceeding. On March 1, the Assigned Commissioner and ALJ reset the evidentiary hearings for June 2002. On May 25, Edison and CPSD believed that settlement prospects were sufficiently promising that they requested a 60-day schedule extension for the parties to discuss settlement. A May 30 Assigned Commissioner and ALJ ruling

gave the parties until July 22 to complete a settlement agreement and established a revised schedule should the parties fail to reach agreement. Settlement negotiations failed and the Commission held evidentiary hearings from August 28 through September 6 and also on September 17, 2002.

On December 9, 2002, the full Commission held oral argument pursuant to Edison's motion. Subsequently, Edison petitioned to set aside submission so the parties could submit evidence on what Edison argued was CPSD's new standard articulated for the first time at oral argument. The Commission permitted the parties to brief the issues Edison raised and held closing argument before the Assigned Commissioner on April 22, 2003, at which time the investigation was deemed submitted.

VI. The General Orders

A. GO 95

The purpose of GO 95 is to formulate uniform requirements for overhead electrical line construction so as to ensure adequate service and secure safety to persons engaged in the construction, maintenance, operation or use of overhead electrical lines, as well as to the general public.¹

Edison argues that GO 95 (and GO 128, discussed below) were never intended to set maintenance standards, as opposed to construction standards, except where explicitly stated. We disagree.

Section 12.2 of GO 95 makes clear that the utilities are to maintain, as well as construct, their systems in conformity with the GO.

¹ GO 95 § 11.

“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.”²

B. GO 128

The purpose of GO 128, which has been effective since 1967, is to formulate uniform requirements for underground electrical supply and communication systems so as to ensure adequate service and secure safety to all persons engaged in the construction, maintenance, operation or use of underground systems, as well as to the general public. Like GO 95, GO 128 sets both construction and maintenance standards. (See § 12.2.)³

C. GO 165

The need for basic maintenance schedules underlies the inspection schedules developed in GO 165. This GO, enacted in 1997, establishes minimum requirements for electric distribution facilities regarding inspection, condition rating, scheduling and performance of corrective action, record-keeping, and

² GO 95 became effective July 1, 1942, superseding GO 64 and GO 64-A, which had been in effect since 1922 and 1928, respectively. The sections of GO 95 addressing line construction and reconstruction apply to lines and extensions of lines constructed after the effective date of the order, and to any portion of a line constructed prior to GO 95's effective date if reconstructed. In this proceeding, Edison does not argue that GO 95 or GO 128 is inapplicable to any of the alleged violations because the lines in question were constructed or reconstructed prior to the effective date of GO 95.

³ Section 12.2 provides that utility systems “shall be maintained in such condition as to secure safety to workmen and the public in general. Systems and portions thereof constructed, reconstructed, or replaced on or after the effective date of these rules shall be kept in conformity with the requirement of these rules.”

reporting, so as to ensure safe and high quality electric service. After considering points raised by staff and evaluating the expected safe lifespan information the utilities submitted, the Commission established several sets of minimum maintenance inspection intervals.

GO 165 provides for different intervals for urban and rural areas and two types of anticipated inspections. The highest level of inspection is a “detailed inspection.” During such inspections, utility personnel are expected to carefully examine and open, if practical and necessary, individual pieces of equipment and structures, and rate and record their condition.⁴ The lower level of inspection is called a “patrol inspection,” which is a simple visual inspection of utility equipment and structures designed to identify obvious structural problems and hazards. Patrol inspections may be carried out in the course of other company business.

VI. Edison is Required to Comply with Commission GOs; the Commission has Inherent Power to Give Notice and an Opportunity to Cure Violations Before Imposing Fines.

The Commission has broad regulatory authority over the safety of utility facilities and operations. (See e.g., Pub. Util. Code §§ 701, 761, 762 and 768.)

Utilities are required to provide reasonable service, equipment, and facilities as necessary to promote the safety, health, comfort, and convenience of their patrons, employees, and the public. (See Pub. Util. Code § 451.) In implementing

its regulatory responsibilities, the Commission has adopted regulations governing safety in the form of GOs, and has also issued decisions giving guidance regarding safety policy.

Utilities are required to comply with relevant safety statutes, Commission GOs, and decisions, and the Commission has the statutory obligation to require utilities to do so. (See e.g., Pub. Util. Code §§ 702, 2101 and 2106.) A utility's failure to comply with these statutes, GOs and decisions may give rise to related Commission enforcement actions or other compliance-related regulatory proceedings.

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. Illustrative of this practice is the tree-trimming settlement we approved in D.00-07-029 in which we allowed PG&E 14 days to trim trees that

⁴ The examinations are visual and routine diagnostic tests, as appropriate.

were closer to power lines than our GOs permit.⁵ We have also been aware of and generally in agreement with Edison's practice of undertaking system repairs in order of severity and urgency, although we do not agree with Edison that it can immunize itself from liability for violations by complying with its own maintenance schedules or the minimum maintenance intervals contained in our GOs.

CPSD has urged us to adopt an interpretation of our GOs that would subject Edison to fines totaling nearly \$100 million based on the existence of violations that we have in the past dealt with by giving Edison an opportunity to cure before imposing a fine. For reasons set forth herein, we reject CPSD's proposal and affirm our historic practice of graduated enforcement measures ranging from warnings with an opportunity to make corrections to substantial fines for serious breaches of our rules.

⁵ We do not cite this case as precedent because Rule 58.1 specifically states that our approval of a settlement does not constitute our approval of, or precedent regarding, any principle or issue in the proceeding or in any future proceeding. Rather we cite the settlement as evidence of the existence of our practice of permitting a utility the opportunity to cure a violation before imposing a fine.

CPSD's approach to correcting violations of our GOs rests in large part on an interpretation of our GOs that requires Edison to maintain its system in an as-new condition at all times. Even though the language of the GOs clearly distinguishes between new construction standards and maintenance standards, CPSD would have us largely ignore the maintenance standards. GO 95 Rule 31.1 requires electrical supply and communication systems to be "maintained in a condition which will enable the furnishing of safe, proper and adequate service." GO 128 Rule 12.2 requires that systems "be maintained in such condition as to secure safety to workmen and the public in general." Rule 17.1 contains a similar standard, requiring that all systems be "maintained in a condition which will provide adequate service and secure safety to workmen, property and the general public." In addition to these general maintenance requirements, each of the cited GOs also contains specific, detailed maintenance requirements, designed to implement and achieve the general purposes.⁶

As these various versions of the maintenance standards make clear, we have directed the electric utilities to meet two broad system maintenance

⁶ Citation to texts of GOs and Rules

requirements: delivery of adequate service and provision of safety to both members of the public and workmen. At a minimum, before we impose fines for violations of our GOs, we have to conclude that the utility failed to meet one or the other of these requirements. In reaching that conclusion, we need to consider whether the utility knew or should have known of the violations.

The MOD-POD correctly observes that there is no qualifying language in the GOs: “Nothing in the language of GO 95, 128 or 165 provides a specified grace period within which to comply with these GOs, or provides that failure to comply is a ‘nonconformance,’ with a violation occurring at a later time determined by the utility in accordance with its maintenance schedules.” (MOD-POD, p.11) The MOD-POD then concludes that the absence of qualifying language in the GO implies that we have no enforcement mechanism available to us other than fines (which we may choose to suspend after a hearing before an ALJ such as occurred in this case). We believe this approach confuses the standards for finding a violation with the means available to deal with a violation.

The purpose of the maintenance requirements of our GOs is not to create an enforcement regime where every failure to comply, no matter how minor, no

matter what its cause, no matter whether it has been corrected, puts a utility in jeopardy of substantial daily fines. On the contrary, their purpose is to ensure safe, reliable operation of the electrical system. It is within our broad discretion under Public Utilities Code §§ 701 and 702 to establish an enforcement regime that achieves this purpose in a flexible and cost-efficient way, as we have historically done, in cooperation with the utility, and in full recognition that improvements are always possible and fines are sometimes necessary.

Although the MOD-POD accepts CPSD's interpretation of our GOs, it wisely rejects most of the requested fines, implicitly recognizing that without a demonstration that the utility has failed to furnish adequate service or safe conditions, there is little reason to impose a fine. While this approach is prudent and practical, it leads to the anomalous result that once we find a violation of a GO, our only options are either to impose a fine or to impose no fine. In this case, the ALJ found there had been over 4,000 violations for which she imposed no fines. Her stated reason for refusing to impose fines was that CPSD had failed to show that the violations had resulted in any harm or compromised the safety or reliability of the electrical distribution system. (MOD-POD p. 29)

While the result is one with which we broadly agree, the ALJ's approach too narrowly construes our remedial powers. Even where a violation has been found, we have inherent power to do more than impose a fine. We can do what we have done for decades, namely, give the utility notice of the violation and a reasonable period of time within which to cure it. And, indeed, that is what happened in this case. Edison cured more than 4,000 violations (many involving signage and similar requirements) that CPSD brought to its attention. That should have been the end of the matter as to those violations. Instead, the utility was forced to defend itself in this proceeding against the possibility of nearly \$100 million in fines for violations that caused no harm to anyone and which it had already cured.

Imposing fines for cured violations that involved no harm to anyone removes most of the utility's incentive to cure. Conversely, providing an opportunity to avoid fines by curing violations not only creates a significant incentive to cure, it also fosters an atmosphere of cooperation between our inspectors and the utility's maintenance personnel who share a common purpose: to make the electrical system as safe and reliable as possible.

We turn now to the cases in which the MOD-POD proposes to fine the utility because of a “nexus” between a violation and injury or death to an employee or a member of the public. Edison and some of the commentators on this part of the decision have urged us to adopt a civil liability standard of negligence rather than the “nexus” approach of the MOD-POD. We decline to adopt either the negligence standard urged by the utilities or the “nexus” approach of the MOD-POD. Instead, we apply the same approach to imposing fines for violations of our general orders to these cases as to the others. We will articulate this approach more fully in order to provide guidance and a rationale in regard to our future actions.

As noted above, we decline to apply the negligence rules of civil litigation to our enforcement actions. Were we to adopt the civil litigation concepts of negligence and proximate cause, we would find ourselves embroiled in full-scale trials analogous to those that occur in the civil courts. In addition to being enormously wasteful of our limited resources, such an approach fundamentally misconstrues our mission. The goal of civil litigation is to recompense injured parties for their losses. The goal of our regulatory regime is to maximize the safety and reliability of the electric distribution system. The system of notices

and fines that we have historically employed to accomplish that goal balances encouragement to the utility to correct violations in order to avoid fines, on the one hand, with fines for failures to act, on the other. In short, we believe the proper enforcement policy is to impose fines in situations where

(a) there is a violation of a GO of which the utility either knows or should have known; and

(b) after acquiring either actual or constructive knowledge of the violation, the utility fails to cure it within a reasonable period.

This approach allows the utility a limited defense in situations where death or injury occurs. For example, under this approach we would not fine the utility for an injury caused when a passerby touches a power line downed by a storm before the utility learned of the damage. On the other hand, if the utility knew of the downed line and unreasonably delayed sending a crew to repair it, we would impose a fine.

Edison has argued that if it has complied with the maintenance intervals of GO 165, it should be excused from liability for other violations, for example, if a tree has grown enough since its last inspection that it is less than 18 inches from a power line. We do not agree. GO 165 sets minimum intervals for maintenance

inspections. Circumstances may dictate that shorter intervals are required in particular cases. For example, an exceptionally wet or mild winter may result in faster vegetation growth. Simply complying with the minimum intervals set by our GO will not be sufficient to deal with that situation and the utility should be presumed to know that. In the same vein, we note that we may also impose choose to fines if we become convinced that a utility is gaming the system by deliberately allowing violations to pile up until we give them notice.

Edison has also objected that by treating all failures to comply with our general orders as violations, we raise their risks in associated civil suits. Because violation of a commission safety standard may be introduced in a related civil action as *prima facie* evidence of negligence, Edison argues that if we find a violation in a case where injury or death has occurred without also finding that Edison was negligent and its negligence proximately caused the harm, we unfairly handicap them in any related civil action for injury or wrongful death. We recognize that by finding a violation we may indeed affect a related civil suit, but we note that at most our finding shifts the burden of proof to Edison. That is the type of inquiry that civil courts are well equipped to handle. We are not.

Having affirmed the principle that we do not base our enforcement actions on general negligence principles, we need to frankly acknowledge that certain of our general orders contain language that incorporates negligence-related concepts. Rule 17.1 of GO 128 is an example. It requires the utility to use “due care” to reduce hazards of accidental injury to a minimum.⁷ “Due care” is a negligence-based concept that implies an inquiry into standards of care, causality, contributory negligence and the like. By way of example, the first case discussed in Appendix B to this decision involves an alleged violation of the “due care” standard of Rule 17.1. An Edison contractor sub-contracted certain maintenance work without Edison’s knowledge. An employee of the sub-contractor sawed a lock off a transformer case and was injured when he touched the transformer. CPSD alleged a violation of the “due care” standard in Edison’s failure to prevent its contractor from sub-contracting the work. We do not reach the “due care” issue in this case because it is undisputed that the contractor concealed the fact of the sub-contract from Edison. Therefore Edison did not know, and could not reasonably have known, of the sub-contract. Failure to

⁷ Cite Rule 17.1

correct a situation that has been deliberately concealed cannot be the basis of liability.

However, not every case that involves a potential violation of a “due care” standard can be disposed of in this way. Given the wording of our Rules, there are cases where an inquiry into the utility’s degree of care is unavoidable. These cases fall into two broad categories, consistent with the principles we articulate in this opinion. In one group are cases where the utility had actual knowledge of a violation, an opportunity to correct it, and failed to do so. In such situations, we will assume a lack of due care and impose a fine in proportion to the severity of the violation. In the second group are cases where we conclude the utility should have known of the violation. We frankly acknowledge that reaching a conclusion that the utility “should have known” something is an unavoidably subjective exercise. However, given the wording of our Rules, on the one hand, and our reluctance to convert our proceedings into full-scale trials, on the other, we will endeavor on a case-by-case basis to determine from the record before us whether such a conclusion is warranted. When we find that it is warranted, we will impose fines on the same basis as we would in cases involving actual knowledge.

We discuss and dispose of the cases in Appendix B by applying the general principles articulated above.

VIII. The Role of a Maintenance Priority System in This Investigation

As stated above, when Edison violates a GO, it is subject to a penalty as provided by statute. (See, e.g., § 2107.) However, the Commission has discretion to provide notice and a cure period in lieu of a penalty, as well as discretion in determining whether and how much to penalize Edison for uncured violations of the GOs. The range of possible penalties is set by applicable statutes; criteria to be considered in making a penalty determination are set out D.98-12-075, 84 CPUC 2d 155. The fact that a utility has limited resources and may not be able to correct every violation instantly may be a factor in assessing penalties. Penalties may also be imposed in order to encourage a utility to focus its system maintenance and repairs so as to prevent death, injury, and property damage. Before discussing the penalty issue, we discuss the issue of a maintenance priority system and its role in this investigation.

Edison believes there are different safety risks associated with different types of violations, and implementing a maintenance priority system is the most cost-effective and efficient way to maintain a safe and reliable system. According to this argument, treating all failures to comply with GOs as violations will either mean that the maintenance program will be unduly expensive or that dangerous violations may be overlooked while personnel are concentrating on minor ones. Edison explains that some violations create a clear risk of serious injury or death and must be corrected immediately. Other violations create a lesser risk, and, in Edison's view, should only be corrected when workers are in the area for another reason. This is because immediate corrective action may expose workers to

unnecessary risks by bringing them into a hazardous zone they would not otherwise need to enter at the time, and by distracting workers from concentrating on finding and correcting more serious violations.

In keeping with this philosophy, Edison currently uses a five-tier maintenance priority system.⁸ Priority 1 corrections require immediate attention because Edison believes they pose the greatest risk to public safety and system reliability. Edison assigns to Priorities 2 through 4 items that in Edison's opinion pose much less risk to public safety or system reliability, with the following intervals as a typical repair or replacement period: (a) for Priority 2 items, 60 days (or within one year for a wood pole); (b) for Priority 3 items, one year for underground facilities, 18 months for overhead facilities, and three years for wood poles; and (c) for Priority 4 items; three years for underground facilities and five years for overhead facilities and wood poles. Priority 5 items are those in which Edison believes the safety risk to employees in performing the repair is greater than the risk to the public or to system reliability in leaving the problem uncorrected. Therefore, Edison's system provides that Priority 5 items will be corrected at the next time a crew is at that structure to perform other tasks at that work level. (Edison also calls Priority 5 "opportunity maintenance.")

CPSD, on the other hand, hesitates to acknowledge that there may be useful distinctions between the timing to correct different types of violations. In

⁸ Edison's maintenance priority system has changed over the course of the years that are the subject of this investigation. Prior to January 2001, Edison used a six-point numerical rating scale for its system, with the highest priority items ranked Priority 6 and the lowest priority items at Priority 1.

CPSD's view, every rule in the GOs was adopted for sound safety reasons, and any violation of any rule creates an unacceptable risk.

In this case, we find ourselves largely in agreement with Edison. While the existence of a maintenance priority system is not a defense to a violation of a GO, it is only common sense to recognize that some violations create more serious hazards than others. For example, live electrical wires hanging into the street are more critically in need of immediate correction than replacing a cracked or missing high voltage sign at the power line level.

We disagree with Edison's suggestion that some violations are so unimportant that they don't require regular preventive maintenance. This is especially the case for many of the Priorities 3-5, which may take a year or longer to repair.⁹ To use the automotive analogy, Edison wants to schedule maintenance starting when the brakes fail rather than when the car leaves the showroom. Indeed, to some extent Edison's approach creates a second maintenance timeframe that begins only after the original maintenance schedules established in GO 165 have run. Ideally, Edison should be inspecting for and repairing violations of GO 95 and 128, and also should be taking corrective action to the extent possible in order to forestall violations of the GOs. Refining its maintenance priority system may help Edison achieve this goal.¹⁰

Developing more precision in Edison's maintenance priority system will also enable the utility to better comply with GO 165. That GO requires the utility

⁹ Even under Priority 2, it may take one year to repair a wood pole.

¹⁰ We note that Edison states it has further refined its maintenance priority system in response to recommendations from an expert Edison retained for this proceeding.

to report a date certain by which required corrective action scheduled to occur during the GO's reporting period is actually performed. Similarly, GO 165 requires utilities to report numbers and percentages of equipment in need of corrective action, with a scheduled date beyond the reporting period, classified by the amount of time remaining before the scheduled action.

There should be ways to distinguish between hazards requiring immediate correction and hazards for which more time may be taken that do not involve multi-tiered and years-long corrective action schedules. This proceeding is not the forum to approve Edison's maintenance priority system or to refine it with particularity. However, we direct that Edison, in consultation with CPSD, refine its maintenance priority system, considering the following, as well as other appropriate goals:

- Decrease the amount of time for making system repairs;
- Achieve a more defined period within which system problems are repaired;
- To the extent possible, the inspectors should be capable of fixing observed system problems at the time of the inspection (i.e., the persons inspecting should also be trained to fix routine problems);
- Where Edison recommends opportunity maintenance, such as repairing high voltage signs, determine how to isolate the problem and how to make more immediate repairs that might in part remedy the problem. (See the discussion of high voltage signs below for examples.)

IX. High Voltage Signs

We briefly discuss high voltage signs because cracked or missing high voltage signs at the primary power level constitute a significant number of CPSD's alleged violations. Edison believes that these signs should only be repaired on an opportunity maintenance basis, or whenever a worker is in the

area for another purpose. Edison alleges that an increase in worker accidents occurs as the result of entering the primary power level for the sole purpose of replacing a high voltage sign. Edison also believes that high voltage signs at that level are not useful, pointing out that numerous states no longer have such a requirement.

The high voltage sign requirement is not only contained in GO 95 but also is a California statutory requirement in certain instances. (See Pub. Util. Code § 8029.¹¹) Thus, Edison's rationale does not excuse compliance. If Edison believes the signs are no longer necessary, it should seek to change the applicable GOs and statutes to more meaningful criteria.

Although it may be dangerous for a worker to make a special trip to the primary power level solely to repair a high voltage sign, there may be less dangerous methods to achieve similar warnings. For example, a worker might be able to post a sign at a lower level on the power pole, warning of high voltage wires above. Or there might be other places where such warnings could be placed with less danger to achieve the same result. We direct Edison and CPSD to meet and confer in a cooperative effort to determine whether adjustments to the high voltage sign requirement would achieve the same results as the sign. If

¹¹ Pub. Util. Code § 8029 states that "no person shall run, place, erect, or maintain any wire or cable which conducts at any one time more than 600 volts of electricity, without causing each crossarm, or such other appliance as is used in lieu thereof, to which such wire or cable is attached to be kept at all times painted a bright yellow color, or, on such crossarm, or other appliance used in lieu thereof, shall be placed signs, providing, in white letters on a green background, not less than three (3) inches in height the words 'high voltage' on the face and back of each crossarm. The provisions of this section do not apply to crossarms to which are attached wires or cables conducting more than 10,000 volts of electricity, and which are situated outside the corporate limits of a city." Violation of § 8029 is a misdemeanor pursuant to Pub. Util. Code § 8038.

useful alternatives emerge, the parties may wish to raise them in R.01-10-001, or another appropriate forum, or in requesting legislative amendments. A similar exercise may be useful for other items where Edison or CPSD believe the safety repairs pose a disproportionate risk to utility workers. In the meantime, Edison's maintenance priority system should develop a more defined timeframe to repair such violations.

X. Edison's Defenses

A. Nondelegable Duty

In some instances where Edison has contracted its duties to comply with GOs to independent contractors, Edison argues that it is not liable for a violation of the GOs because it is not responsible for the failure of its contractor to properly perform contracted work. We disagree.

Edison is responsible for complying with these safety GOs and cannot escape this responsibility by delegating it to independent contractors. This responsibility is consistent with California law and Commission precedent.

In *Snyder v. Southern California Edison Company* (1955) 44 Cal.2d 793, the California Supreme Court held that the duty imposed on Edison by Pub. Util. Code § 702 and GO 95 could not be delegated to an independent contractor so as to insulate the utility from liability.

In *Snyder*, the plaintiffs were linemen and employees of the independent contractor J. W. Wilson Company, which Edison hired to repair and construct power lines. Plaintiffs were injured when the wire-supporting pole they had climbed fell to the ground. The pole was less than 6 ½ feet into the ground, while Rule 49.1C of GO 95 required the poles be set at least 6 ½ feet into the ground and even deeper where, as in this case, the soil was not firm.

The Court reasoned as follows:

“Utility companies, either electric, telephone or telegraph, are responsible for nearly all pole installations. In the law relating to such utilities there is no express provision that such duties may be delegated. The requirements in section 702 of the [Public] Utilities Code that the utility must do everything necessary to secure compliance with the law and rules by its agents and officers is nothing more than an additional precautionary measure to prompt the utilities with regard to compliance by those persons. It does not mean that it may evade the duty by the independent contractor device or limit the scope of its duties thereby. It does not negate the existence of a nondelegable duty.” (*Snyder*, 44 Cal.2d at 801-802.¹²)

In reaching its holding, the Court relied on the common law principle to impose liability upon franchised common carriers, reasoning that the “effectiveness of safety regulations is necessarily impaired if a carrier conducts its business by engaging independent contractors over whom it exercise no control.” (*Snyder*, 44 Cal.2d at 798.) The Court described another group of cases that predicate liability on the part of the employer of an independent contractor for the misconduct of the latter in the performance of certain “intrinsically dangerous” work. (*Id.* at 800.)

The Commission has similarly held that utilities have a nondelegable duty to comply with all applicable safety codes and regulations in certain instances. In D. 00-06-038, the Commission held that Southern California Gas

¹² In tort law, this liability does not ordinarily extend to what the courts call “collateral” or “casual” negligence on the part of the contractor and its employees. (See *Snyder*, 44 Cal.2d at 801.) *Snyder* reads this exception narrowly to mean that the activity in question is not necessarily part of the duty imposed. Thus, in *Snyder*, the Court found that the construction and maintenance of lines, which includes poles, is not included within the exception because that activity is a necessary part of the utility’s business.

Company has a nondelegable duty under state and federal law to comply with all applicable safety codes and regulations governing its gas lines and cannot avoid the duty of compliance by allowing independent contractors to install earthquake valves on the utility's side of the meter. The Commission reasoned that California case law, GOs, and federal law supported this result.

In summary, the safety GOs in question establish certain duties and standards that Edison must meet to ensure adequate service and safety. California case law and prior Commission precedent require that the responsibilities imposed by the GOs are nondelegable.

B. Employees' Violation of GOs

As a general matter, to the extent that Edison is liable for the violation of the GOs by its own employees, it is also liable for violations by the employees of Edison's independent contractors.

In some of the 37 accidents listed below, CPSD alleges Edison violated the "due care" rule, which requires owners and employees of electrical systems to reduce to a minimum the hazard of accidental injury to their own or fellow employees, to the public and to other utilities.¹³ Edison urges the Commission to adopt the "independent employee act defense," which Cal/OSHA recognizes when an employee is spontaneously negligent (i.e., a rogue employee).¹⁴ Edison

¹³ See GO 95, Rule 31.1; GO 128, Rule 17.1.

¹⁴ Under the Cal/OSHA criteria, the employer may utilize the affirmative defense if it can show: (1) the employee was experienced in the job being performed; (2) the employer has a well-devised safety program which includes safety training; (3) the employer effectively enforces the safety program; (4) the employer sanctions employees who violate the safety program; and (5) the employee caused a safety violation and

Footnote continued on next page

argues that since it is liable under tort law to third parties who may be harmed by such employee conduct, it has the incentive to minimize the negligence of its workforce.

For purposes of the “due care” obligations in GO 95 and 128, if, despite Edison management’s best efforts at achieving on-the-job safety as defined in the Cal/OSHA criteria listed above, an employee is spontaneously negligent, we would find no violation of the utility’s “due care” obligations under these GOs. We apply this principle to the accidents described below.

**C. GO 165 Does not Shield Edison from
GO 95 or 128 Violations**

GO 165 requires that utilities inspect their distribution facilities as often as necessary to ensure reliable, high-quality and safe operation, and establishes a minimum level of inspection frequency with which a utility must comply. A utility conducting only the minimum level of inspections required by GO 165, when more frequent inspections are necessary to ensure reliability, may be found to violate this GO because, under GO 165, utilities are required to use their judgment and conduct inspections as often as necessary to ensure a safe and reliable operation.¹⁵

knew that it contravened the employer’s safety program. See Mercury Service, Inc., Cal/OSHA App. 77-1133, Decision after Reconsideration (October 16, 1980.)

¹⁵ As stated in D.97-03-070, 71 CPUC2d 471, 476 (adopting GO 165): “[T]he standards we adopt today are maximum acceptable lengths for inspection cycles. In certain circumstances, it may be prudent to conduct more frequent inspections to assure high-quality service and safe operations. In those cases, the utilities are responsible to inspect facilities more frequently.”

Furthermore, the plain language of GO 165 states that the GO's requirements are "in addition to the requirements imposed upon utilities under GO 95 and 128 to maintain a safe and reliable electric system. Nothing in this GO relieves any utility from any requirements or obligations that it has under GO 95 and 128." Thus, nothing in GO 165 can shield a utility from a finding of a GO 95 or 128 violation.

D. Inspection Intervals

CPSD alleges Edison has violated GO 165 numerous times because the maximum period between certain inspections exceeds the time intervals specified in GO 165, Appendix A. For instance, according to Appendix A, the maximum period between patrol inspections of overhead conductors in urban areas is one year. CPSD believes that pursuant to this requirement, these inspections must occur every 12 months, i.e., no more than 12 months may elapse between inspections.

In contrast, Edison believes it is in compliance if the required inspections to occur in successive calendar years, i.e., for a patrol conducted on January 1, 2000, the next patrol could be conducted almost two years later (December 31, 2001) consistent with the one-year requirement. Edison argues that it is reasonably interpreting the GO, that it is completing 93% of its circuit patrols within CPSD's definition, and that some flexibility is necessary and customary in the industry to facilitate efficient workforce scheduling. For example, GO 165 permits circuit patrols to be carried out in the course of other company business. Edison argues that it would be more difficult to synchronize the circuit patrols with other company business if the Commission adopts CPSD's interpretation of GO 165. Moreover, Edison points out that the above example (where inspections occurred almost two years apart) could only occur once. If Edison conducted its

annual circuit patrol on December 31, 2001, its next annual inspection would have to occur no later than December 31 of the following year, or 12 months later.

In interpreting GO 165, we first look at the language of this GO. Appendix A sets forth a grid of the maximum allowable inspection intervals for certain parts of a utility's distribution facilities (i.e., overhead and underground transformers, wood poles, etc.) GO 165, Section IV states that each utility shall conduct inspections of its distribution facilities as necessary to assure reliable, high-quality, and safe operation, "but in no case may the period between inspections (measured in years) exceed the time specified in the attached table." (71 CPUC2d at 479.) This language plainly means that the maximum interval between inspections is measured in years (i.e., 365 day increments). If the Commission intended for a utility to have much greater leeway (i.e., up to two years to conduct an annual inspection) it would have said so. Edison's interpretation renders inspection more uncertain, not less so. This is not consistent with the purpose of GO 165 which endeavors to make more certain the periods of inspection.

E. Subjectivity of CPSD Inspectors

Edison also argues it is unfair to require it to comply with all provisions of the GOs because these GOs are often subject to reasonable disagreement among CPSD inspectors. For instance, according to Edison, some CPSD inspectors find a cracked high voltage sign or ground molding to be a violation of GO 95 and others do not.

Although there may be some subjectivity among CPSD inspectors, the record also demonstrates subjectivity among Edison employees as to what constitutes compliance with the GOs. The record demonstrates this is not a

pervasive problem, and Edison did not specifically protest CPSD's audit findings at the time they were made. We therefore do not excuse Edison's violations of the GOs based on this defense.

F. Former CPSD Staff's Interpretation of the GOs

Edison argues that it has not violated the GOs, in part, based on its understanding of former CPSD staff's interpretation of these GOs. Edison argues that the CPSD safety audit letters described Edison's conduct as "nonconforming conditions," "variances," or "noncompliances," but never as a GO "violation." According to Edison, past Commission settlements regarding tree-trimming cases permitted other utilities up to 14 days to resolve tree-trimming "nonconformities," and that therefore its conduct cannot be deemed a violation.¹⁶

We disagree in part and agree in part. As noted in Section VII of this opinion, failure to comply with a GO is a violation of that GO. Further, staff's interpretation of what constitutes a GO violation is not binding on the Commission, nor are past Commission-approved settlements.¹⁷ At the same time, as we have pointed out above, we have discretion not merely to impose or withhold fines, but also to provide Edison with notice and an opportunity to cure violations as an alternative to fines. This has been our informal practice for many years and by this decision we make it our explicit and formal practice.

¹⁶ Edison cites D.99-07-029.

¹⁷ Rule 51.8 of the Commission's Rules of Practice and Procedure states that our approval of settlements does not constitute approval of, or precedent regarding, any principle or issue in the proceeding or in any future proceeding.

G. Achievable Standards

Edison argues that the Commission should not find a failure to comply with these safety GOs a violation, because neither Edison, nor any other utility, can meet the “perfectionist” standard of maintaining its system in complete conformance with the GOs. According to Edison, at any given moment, on any electric distribution system of significant size, there will be scores of nonconforming conditions. Edison believes that when a standard cannot be met in the real world, it ceases to be a meaningful standard at all.

As discussed above, a failure to comply with a GO is a violation. At the same time, we recognize that 100% compliance with these GOs at all times is not realistic. The approach we take in this decision, incorporating notice or knowledge and an opportunity to cure, gives Edison an incentive to engage in maximally effective preventive maintenance.

The Commission resolves investigations on a case-by-case basis, and determining the appropriate penalty is situation specific, according to the criteria set forth in D.98-12-075. In this case, as more fully discussed below, we assess penalties for serious violations that Edison failed to cure on a timely basis. We also assess penalties where Edison failed to find GO safety violations in its detailed inspections, because we want to ensure that the detailed inspection programs are thorough and identify outstanding GO violations for repair.

For less serious GO violations, we do not assess penalties here. If CPSD brings similar enforcement actions in the future, we will expect it to demonstrate that such multiple lesser violations compromise the utility system’s safety or reliability.

XI. GO Violations

A. The 37 Violations Involving Accidents

The 37 violations involving accidents are described in detail in Appendix B.¹⁸ In seven of the cases, we find no GO violation as alleged by CPSD. In the remaining cases, we find GO violations and impose fines because of Edison's failures to correct serious violations in a timely fashion. Our specific reasons for reaching these conclusions are set out in the discussions of the individual cases.

B. Violations of GO 95 and 128

Edison did not contest CPSD's findings of nonconformances with GO 95 and 128 at the time CPSD made them; in fact, once notified, Edison repaired these problems as required by CPSD. We applaud Edison for timely addressing these problems. Nonetheless, we find, based on CPSD's inspection results, 4,044 violations of GO 95 and 677 violations of GO 128.

We address below Edison's further arguments on whether it is appropriate to penalize Edison for these violations.

C. Violations of GO 165

1. Identification of Unsafe Conditions

CPSD states that it conducted a random audit comparing CPSD's and Edison's inspection results. CPSD found 94 GO 95 violations on 46 poles, whereas Edison found 12 violations on the same poles. CPSD therefore

¹⁸ The accidents are set forth according to Edison's categorization of them: (a) No Nonconformance; (b) Nonconformance But No Causation; (c) Nonconformance, Causation, But No Inspection Violation; and (d) Nonconformance, Causation, and a Failure to Detect/Remedy. In Appendix B, we discuss the accidents in detail and reach our own conclusion as to whether Edison violated the GOs as alleged by CPSD.

concludes that Edison committed 82 violations of GO 165 for failing to identify the unsafe conditions CPSD identified in its inspection.

Edison argues that this audit was not random, but rather that CPSD deliberately targeted Edison's earliest detailed inspections with the fewest findings and refused to conduct additional audits on later detailed inspections which Edison believes were more thorough. Edison's expert also testified that CPSD violated audit principles by allowing its inspectors to know in advance the Edison inspection results and denying Edison the right to comment on the audit. Edison also states this audit lacks context because CPSD did not conduct it on any other utility. Finally, Edison states it actively participated in the GO 165 audit, and its recorded results show far more poles inspected and far fewer discrepancies than CPSD's numbers. Edison believes the correct numbers should be 68 GO 95 violations on 70 poles inspected, instead of 94 violations on 46 poles.

Even under Edison's own numbers, a discrepancy between 68 and 12 violations is large. Although we realize this audit occurred on one of the areas where Edison first conducted its detailed inspection, Edison did not go back immediately and re-inspect this area once it refined its inspection techniques. The goal of GO 165 inspections is to make utilities find all matters needing corrective attention, including violations of GO 95 and GO 128. We expect such inspections to be thorough, deliberate, and detailed. We therefore find 56 violations of GO 165 (68 CPSD observed violations minus 12 Edison-observed violations).¹⁹

¹⁹ Cumulatively, we find 4,812 GO violations by Edison, consisting of 34 accident-related violations, a total of 4,721 violations of GO 95 and 128, and 57 violations of GO 165.

2. Period Between Inspections

As stated above, CPSD's interpretation of GO 165's inspection interval requirement is correct, and the maximum interval between inspections is measured in years (i.e., 365 day increments.) We find one violation of GO 165 for Edison's faulty interpretation of this requirement.

3. Scheduling and Performing Corrective Action

CPSD alleges Edison violated GO 165 for failing to perform corrective work in a timely fashion. CPSD argues that during 1998-2000, Edison assigned most of the GO 95 violations it found in annual patrols a low priority repair level, such that the violations were scheduled for repair on an opportunity basis (i.e., the next time Edison visits the facility to perform other work with no time period specified) or within five years. CPSD does not link any of these alleged violations with harm, or demonstrate how they adversely affected the safety or reliability of Edison's system.

As stated above, approval of Edison's maintenance prioritization system is beyond the scope of this investigation; however, Edison should refine its maintenance priority system. In the process of our adoption of GO 165, we stated that for the time being, "standards for maintenance, repair, or replacement should be based on performance, leaving greater management discretion and recognizing that this discretion does not render maintenance, repair, and replacement decisions beyond future regulatory reform or penalties."

(D.96-11-021, 69 CPUC2d 224, 233.) Because CPSD has not demonstrated how the alleged GO 165 violations affect the safety or reliability concerns with the specific GO 165 allegations it alleges, and because GO 165 does not contain times certain by which Edison must repair or replace equipment, we find CPSD has not

met its burden of proof in demonstrating the GO 165 violations pertinent to scheduling and performing corrective action.

B. Alleged Rule 1 Violations

CPSD alleges Rule 1 violations with respect to the June 21, 1998 accident in Lancaster and the May 26, 1998 accident in Newbury Park. Both accidents are summarized in Appendix B. CPSD's alleged Rule 1 violations are based on the belief that Edison gave incomplete or inaccurate information to staff during its investigation of the above accidents.

Rule 1 provides in pertinent part that persons transacting business with the Commission shall never mislead the Commission or its staff by an artifice or false statement of fact or law.²⁰ The Commission has recently held that Rule 1 violations require purposeful intent, recklessness, or gross negligence in regard to communications with the Commission. (See D.02-08-063, *Application of Pacific Fiber Link, L.L.C.*, 2002 Cal.PUC LEXIS 533.) In D.94-11-018, 57 CPUC2d 176, the Commission recognized that a line of prior decisions held that situations involving a failure to correctly cite a proposition of law, a lack of candor or withholding information, and a failure to correctly inform and to correct mistaken information are potential Rule 1 violations, and clarified that a Rule 1 violation can result from such conduct if it is reckless or grossly negligent. 57 CPUC2d at 204.

²⁰ Rule 1 states that "any person who signs a pleading or brief, enters an appearance at a hearing, or transacts business with the Commission, by such act represents that he or she is authorized to do so and agrees to comply with the laws of this State; to maintain the respect due to the Commission, members of the Commission and its Administrative Law Judges; and never to mislead the Commission or its staff by an artifice or false statement of fact or law."

With these standards in mind, we discuss the two allegations.

1. Lancaster

In this accident, a person was fatally injured when he climbed an Edison pole, allegedly to steal Edison property for salvage, and came in contact with an energized transformer fuse holder. CPSD alleges that Edison misled the Commission by stating that the idle transformer had not been removed because there was an outstanding new business meter order for service, when in fact there was no such order.

Edison stated that in this district, there was an outstanding new business order, but this order was created not in response to a new customer but simply to preserve account information for a particular address that might otherwise be lost when service is terminated. Edison states that new business orders were used for this purpose in this district.

We find confusion in Edison's communication practices, but do not find intentional, reckless, or grossly negligent failure to investigate the difference in meaning between the term "new business order" in the various districts.²¹ We therefore do not find a Rule 1 violation here.

2. Newbury Park

CPSD requested information regarding any instructions Edison provided to the subcontractor who was performing work on Edison's transformers in the Newbury Park area. Edison told CPSD that Edison was

²¹ In our discussion of the Lancaster accident, we find a violation of GO 95, Rule 31, and determine that Edison did not make a reasonable inquiry within seven months to determine if the facilities were permanently abandoned. However, this behavior does not translate to a Rule 1 violation.

unaware the subcontractor was accessing the transformers because the main contractor retained the subcontractor without Edison's knowledge. CPSD alleges its further investigation revealed that an Edison employee testified in a deposition that Edison was aware that the subcontractor was repairing the transformers and that the contractor had been given access to work on the interior of the transformers.

Edison believes it gave CPSD accurate information. Edison states that the deposition testimony indicated that, several months prior to the Newbury Park accident, an Edison foreman from a different district provided the subcontractor with a key and cutaway locks for a repair job in Orange County (Newbury Park is not located in Orange County.) According to Edison, CPSD's conclusion is erroneous because, at the time of CPSD's inquiry, Edison did not know the contractor on the Newbury Park job subcontracted the job.

We find miscommunication occurred but, again, not the type of conduct to constitute a Rule 1 violation. There are no circumstances surrounding the accident that should have caused Edison to interview other districts before responding to CPSD's question.

Edison argues that it is also not required to update CPSD on the information it learned from the deposition, and such a requirement would be never-ending. We understand Edison's concern about updating the Commission in all instances, and we do not find a Rule 1 violation in this instance because of the specific facts of the case.²² However, as a general principle, in accident

²² See discussion in Appendix B. The fact that the subcontractor may have had a key to the transformer was not the cause of the subcontractor's injury, since the key did not work in the transformer involved.

investigations, if Edison discovers that information it has communicated to the Commission in response to the Commission's inquiry is in error, Edison should promptly communicate with the Commission to make appropriate corrections.

Cl. Sanctions

A. Summary

We fine Edison \$576,000 based on a penalty of \$20,000 for each of the 25 accidents where there was a nexus between a GO violation and either personal injury or property damage, \$1,000 for each of the 56 violations of GO 165 for the failure to identify unsafe conditions, and \$20,000 for one violation for exceeding GO 165's inspection intervals. We do not fine Edison for the other GO violations.

One of the reasons we do not fine Edison the maximum penalties for each violation, as advocated by CPSD, is because CPSD failed to put its request in any kind of context or to demonstrate that the number of GO violations compromised the safety or reliability of Edison's system. Edison and CPSD agreed, and we find, that the utility cannot maintain its distribution system so that there are no GO 95 and 128 violations at a given time. For instance, a typical pole on Edison's system has over 100 items that must conform to GO 95, and a typical underground or pad-mount facility has as many as 40 items that must conform to GO 128. Based on this record, we cannot determine whether the 4,812 GO violations compromise the integrity or safety of Edison's system, or place them in any other kind of context. We cannot determine whether these violations serve as the canary in the coal mine, warning us of safety problems on Edison's system, or whether they are at an appropriate level for a utility the size of Edison (provided that they are repaired within a reasonable time.) We therefore weigh this lack of context, as well as the factors set forth below, in setting the appropriate level of penalties.

B. CPSPD's Recommendations

CPSPD recommends the maximum penalty of \$20,000 for each of its alleged 4,854 violations of the GOs or Rule 1 for a total fine of \$97,080,000. Because the exact period of noncompliance is difficult to determine, CPSPD would forgo seeking penalties pursuant to Pub. Util. Code § 2108, for continuing violations.

CPSPD recommends the maximum penalty per incident because of (1) the severity of the offense, in that some of the violations caused death and dismemberment, and all are safety hazards with the potential to cause fatalities and bodily injury; (2) the number of violations, considering that CPSPD has few resources to invest in inspection; (3) no mitigating circumstances; (4) Edison's conduct, first, in taking no responsibility for any of the 37 accidents and, second, in setting up its maintenance program; (5) Edison's financial resources as one of the largest utilities in the country; and (6) the high degree of wrongdoing inherent in a threat to general public health and safety.

C. Edison's Response

Edison argues that there is no basis for imposing any penalty. Edison believes that CPSPD's proposed penalty conflicts with all of the criteria articulated by the Commission. According to Edison, (1) the proposed penalty is out of proportion to the severity of the offenses; (2) Edison's conduct was understandable and did not result in any financial benefit to the utility; (3) there is no demonstrated need for deterrence; (4) the totality of the circumstances call for no fine; and (5) a fine in this context would be wholly unprecedented.

D. Discussion

Section 2107 sets a range of penalties for a utility that violates or fails to comply with an order, decision, rule, demand, or requirement of the Commission in cases such as this, where there is no other statutory penalty. Under § 2107, a

utility is subject to a penalty of not less than \$500 nor more than \$20,000 for each offense. Section 2108 states that, in the event of a continuing violation, each day's continuance represents a separate and distinct offense.

In determining the amount of the penalty, we look to the criteria we established in D.98-12-075, Appendix A, 84 CPUC2d at 188-190 (Penalty Guidelines) which have provided guidance in all subsequent cases in which such issues arise. We stated that the purpose of fines is to effectively deter further violations by the perpetrator or others. We now discuss the relevant criteria in D.98-12-075 to explain how we arrive at today's penalty.

1. Severity of the Offense

The Commission assesses the physical, economic, and regulatory harm surrounding the violations in determining the severity of the offense. According to D.98-12-075, the most severe violations are those that cause physical harm to people or property, with violations that threaten such harm closely following. Economic harm reflects the level of costs imposed upon the victims of the violation and the unlawful benefits gained by the utility. The fact that the economic harm may be difficult to quantify does not itself diminish the need for sanctions. The Commission also considers the harm to the integrity of the regulatory process in setting penalties, because such compliance is necessary to the proper functioning of the regulatory process. D.98-12-075 states that disregarding a statutory or Commission directive, regardless of its effect on the public, will be accorded a high level of severity.

We find that in 25 of the accidents, a GO violation occurred and this violation had a nexus to physical harm or property damage. This is severe harm, which the safety GOs are intended to prevent. The violations of GO 165 for failing to identify GO violations during the detailed inspections, and exceeding

GO 165's maximum inspection intervals have a strong potential for causing such harm, because Edison had the opportunity to find and correct such violations during its inspection program and did not do so. The other violations also have the potential to cause such harm, because they are violations of safety requirements.

Failing to comply with Commission GOs is harmful to the regulatory process. However, Edison met with Commission staff to determine staff's opinion of Edison's maintenance and safety program and received mixed messages from staff as to whether Edison had violated a GO before it had a chance to remedy the violation. When CPSD brought numerous violations to Edison's attention, Edison remedied the problems. These factors mitigate the severity of the offense in all instances except where injury or damage had a nexus to the GO violation.

2. The Utility's Actions to Prevent, Detect, and Disclose and Remedy a Violation

According to D.98-12-075, the utility is expected to take reasonable steps to ensure compliance with Commission directives, including regularly reviewing its own operations to ensure full compliance. In evaluating the utility's efforts to ensure compliance, the Commission will consider the utility's past record of compliance with Commission directives.

A utility should also diligently monitor its activities. Deliberate, as opposed to inadvertent, wrongdoing, will be considered an aggravating factor. The level and extent of management's involvement in, or tolerance of, the offense will be considered in determining the amount of the penalty.

Edison instituted a maintenance priority system in order to comply with the GOs. Edison admits that this system is not perfect and is constantly

undergoing modification and improvement. As stated above, although we do not approve or disapprove this program in this decision, Edison can improve on this program further, by improving its inspections and improving the speed by which it remedies GO violations.

Edison's meetings with Commission staff on GO compliance, and its willingness to promptly repair the GO violations which CPSD found, also serve as mitigating factors.

3. Need for Deterrence

Fines should be set at a level that deters future violations. Effective deterrence requires that the Commission recognize the financial resources of the utility in setting a fine.

Edison is a very large utility with extensive financial resources. Therefore, a large fine for GO violations having a nexus to personal injury or property damage is appropriate, as is a more moderate fine where Edison failed to detect GO violations during detailed inspections. This is intended to ensure that Edison conducts thorough detailed inspections of its distribution system.

4. Totality of the Circumstances in Furtherance of the Public Interest

According to D.98-12-075, setting a fine at a level that effectively deters further unlawful conduct by the utility and others requires us to specifically tailor the package of sanctions, including any fine, to the facts of the case. The Commission will review the facts which tend to mitigate the degree of wrongdoing as well as any facts which exacerbate the wrongdoing. In all cases, the harm will be evaluated from the perspective of the public interest.

a) Mitigating Facts:

- No actual physical harm resulting from 4,787 violations of the GOs;
- Ongoing discussions with Commission staff about the appropriate means of complying with the GOs;
- Mixed messages from Commission staff as to whether Edison has violated a safety GO before the utility had an opportunity to remedy the violation;
- Edison repaired or remedied the 4,721 violations CPSD brought to its attention as required by CPSD;
- Edison made changes to its operations to prevent reoccurrence of some of the accidents (i.e., better communications with its contractors, better training of its employees, etc.)

b) Exacerbating Facts:

- 25 instances of personal injury or death, or property damage which have a nexus to a GO violation;
- Failure to discover and therefore repair 56 GO safety violations during its detailed inspection program;
- Exceeded maximum inspection intervals in GO 165.
- Edison is a very large utility with extensive financial resources.

5. The Role of Precedent

The Commission will consider (1) previous decisions that involve reasonably comparable factual circumstances, and (2) any substantial differences in outcome.

Neither party identified prior decisions with reasonably comparable facts. Edison argues that because the Commission has never penalized a utility for the kind of behavior at issue in this proceeding, it cannot do so here before the Commission warns the utility that it might do so.

As discussed above, Edison and all Commission-regulated utilities are on notice that they must comply with all applicable statutes and Commission orders, including general orders. The Commission does not need to issue a warning before it enforces the law.

6. Constitutional Limitations on Excessive Fines

Under D.98-12-075, the Commission will adjust the size of fines to achieve the objective of deterrence, without becoming excessive, based on each utility's financial resources. We have set the penalty with this principle in mind.

7. Penalty

In sum, based on the factors set forth above, we fine Edison \$20,000 for each of the 30 violations involving accidents where Edison failed to correct a serious violation in a timely fashion, \$1,000 for each of 56 violations of GO 165, for failing to identify unsafe conditions, and \$20,000 for one GO 165 violation for exceeding GO 165's maximum inspection intervals, for a total fine of \$686,000.

CII. Appeal of Presiding Officer's Decision

Edison and CPSD²³ filed an appeal of the POD, and the California Cable and Telecommunications Association (CCTA), Pacific Gas and Electric Company (PG&E), and San Diego Gas & Electric Company (SDG&E) filed petitions to intervene and appeals. We grant the motions of the CCTA, PG&E, and SDG&E to intervene, and we consider their appeals.

²³ CPSD initially titled its timely filed pleading as a request for review, and a day later requested the Commission to accept its corrected appeal. We grant CPSD's motion and treat the initial document as an appeal, because there is no prejudice to any party and the corrections address the form, not substance, of the document.

We deny the appeals but make some modifications and clarifications to the POD. We modify the POD to remove the language that provides future guidance in assessing penalties in safety cases and to add language to strongly encourage CPSD to present more extensive information in certain areas delineated in the decision in future investigations. We also remove the POD's reporting requirement regarding future GO violations. We also make the minor clarifications to the POD discussed below, and make other changes to improve the discussion and to correct typographical errors.

A. Summary of the Appeals

1. Edison

Edison states that if it does not prevail in this appeal, it will challenge the Commission's jurisdiction to recover penalties. Edison argues that Pub. Util. Code § 2104 only permits the Commission to bring actions against utilities to recover penalties in the superior court, and not at the Commission.

Edison also alleges that the POD errs in calling a failure to comply with GO 95 and GO 128 a "violation," instead of a "nonconformance." Edison believes that this word choice is not merely semantics, and use of the term "violation" represents a change in Commission practice. Edison argues that GO 95 and GO 128 are limited to new construction standards, with only a few general "maintenance" requirements [GO 95, § 12.2, § 31.1; GO 128, § 12.2, § 17.1]. Edison also believes that the use of the term "violation" increases Edison's litigation risk because if evidence that Edison violated a safety standard is introduced in a lawsuit for a death or injury associated with the utility's facilities or operations, Edison will be assumed under Evidence Code § 669 to have been negligent. Furthermore, according to Edison, evidence of multiple violations could potentially be used to support a claim against Edison for

exemplary or punitive damages under Pub. Util. Code § 2106 and Civil Code § 3294.

Edison also claims that: (a) the POD's criticism of Edison's maintenance priority program lacks support in the record; (b) the imposition of any penalties for 37 accidents was unfair since CPSD did not prove that Edison's actions or inactions were the legal cause of the accidents under civil law negligence principles; (c) the imposition of penalties for 56 GO 165 inspection failures was not justified since CPSD focused on areas where high numbers of violations were anticipated; (d) the POD's conclusion that GO 165's requirement for "yearly" inspections requires inspections each 365 days, rather in successive calendar years, is wrong, because utilities need more flexibility to schedule inspections efficiently and economically; (e) the POD provides insufficient guidance as to when future enforcement actions will be initiated, and when penalties may be imposed; and (f) issues such as the clarification of what constitutes a violation of GO 95 or GO 128, and how utilities are to report violations to the Commission as required by the POD, should not be addressed in this proceeding, but rather in a second phase of R.01-10-001.

2. CPSD

CPSD claims that the POD appears to create new, unwise, and unnecessary limitations on the Commission's future imposition of penalties for safety violations by stating that Edison will not be fined for 4,812 violations because CPSD failed to demonstrate that the number of violations exceeds the norm for utilities, or compromises the safety or reliability of Edison's system. CPSD states that GO 95 and 128 delineate the requirements of a safe system, and that violations are per se unsafe.

CPSD also believes the POD's determination not to impose penalties for most violations found in incident investigations, unless CPSD demonstrates a nexus, or relationship, between a given violation and an incident involving a fatality, injury, or property damage, is inconsistent with statements in the POD that one purpose of a penalty is to deter unlawful conduct. According to CPSD, the fact that no injury, death, or property damage was linked to the majority of Edison's 4,812 violations was a matter of luck, rather than an indication that the system is safe.

CPSD suggests that the POD be modified to note that the Commission will, in future proceedings, base penalties on the factors recited in D.98-12-075, and to eliminate provisions that may undercut the Commission's ability to enforce compliance with safety requirements. CPSD acknowledges that Commission may wish to refrain from imposing additional penalties here, given the unique circumstances of this first post-GO 165 review of Edison's system.

3. PG&E and SDG&E

Both PG&E and SDGE assert due process violations, claiming that the POD changes Commission practices in a way that affects utilities other than Edison, and that such changes should be made in a rulemaking. For the most part, PG&E and SDG&E's allegations of error mirror Edison's. A unique aspect of SDGE's appeal is its comment that, under GO 165, the Energy Division, not CPSD, governs many aspects of GO 165 inspections, and may approve more flexible inspection intervals. SDG&E states it has negotiated a more flexible schedule with the Energy Division that permits SDG&E to conduct inspections in successive calendar years, rather than once every 365 days.

4. CCTA

The CCTA primarily asserts that the POD's approach to violations may disrupt former relatively harmonious relations between utilities and staff. According to CCTA, staff inspectors are often accompanied by representatives of utilities whose facilities are being inspected, and the utility representatives often point out problems not noted by staff.

B. Discussion

1. Jurisdiction

We disagree with Edison's argument that the Commission lacks authority to impose penalties without bringing an action in superior court. As recently noted in D.03-01-087 at p. 12; 2003 Cal PUC LEXIS 67 *19-20:

“Other utilities have presented this argument to state appellate courts in recent years; those courts have all denied review. (See *Pacific Bell v. CPUC*, petition denied Nov. 27, 2002, No. A098039; *FutureNet, Inc. v. CPUC*, petition denied June 7, 2000; *Conlin-Strawberry Water Co., Inc. v. CPUC*, petition denied July 26, 2001, F 035333; *Southern Calif. Edison Co. v. CPUC*, petition denied Feb. 28, 2002, B156189.) As set forth in the Commission's briefs in those cases, the Commission construes Section 2104 to apply to the recovery of penalties, rather than the imposition of penalties. Qwest's argument that the Commission lacks authority to impose fines is without merit.”

2. The Term “Violation”

Edison, SDG&E, and CCTA argue that the POD is unprecedented in terming a failure to comply with a Commission GO a violation of that GO. We disagree.

Section VII of the POD sets forth the rationale why Edison's failure to comply with a GO is a violation thereof. Moreover, the Commission has in the

past found the failure to comply with a GO a violation of that GO. In Resolution SU-44 (August 1, 1977) for example, the Commission referred to instances of noncompliance with GO 95 high voltage sign requirements as both “violations” and “infractions.”²⁴ Similarly, D.95-08-054, 61 CPUC2d 207, 208, a decision accepting a settlement of a proceeding reviewing SDG&E’s tree-trimming practices, quoted the Order Instituting Investigation issued by the Commission: “It appears that SDG&E has not fully complied with the Commission’s Rule 35 of General Order 95. Accordingly, SDG&E may have **violated** and may be in continued **violation** of the Commission’s General Order 95.” (Emphasis added.)

Simply put, if the Commission establishes safety clearances or other safety standards in general orders, and Edison does not “conform” or “comply” with the standards, it violates the general orders.²⁵

²⁴ See, e.g., Resolution SU-44 (August 1, 1997), at pp. 1-2: “1. ... There were no high voltage signs posted. This is a **violation** of Rule 51.6A. 2. SDG&E has been remiss in insuring that high voltage signs are posted in rural areas. High voltage signs are important in warning unskilled persons about the hazards of electric lines. Finding 1: SDG&E was in **violation** of Commission GO 95, Table 1, and Rule 51.6-A. The **violations** were a significant contributing factor to the accident. 2. To resolve these **infractions**, SDG&E agreed to immediately inspect its district in which the accident occurred to correct inadequate line clearances and replace missing high voltage warning signs. ...” (Emphasis added.)

²⁵ See, e.g., D.93105 (1981) 6 CPUC2d 196, 205: “The Commission has the responsibility to ‘require every public utility to construct, **maintain**, and operate its ... system ... in such manner as to safeguard the health and safety of its employees, ..., customers, and the public...’ (Pub. Util. Code § 768, see also §§ 761, 762.) GOs 26-D and 118 were adopted to protect the health and safety of railroad employees. GO 26-D provides the minimum clearance for a man’s body on the widest authorized railroad car and a building or other obstruction. A **violation** of GO 26-D could result in a railroad employee’s being killed or injured ...” (Emphasis added.)

3. New Construction Standards

Edison, SDGE, and PG&E believe that GO 95 and GO 128 provide only new construction standards and a few general directives to maintain facilities in a safe and reliable manner. Thus, these utilities argue that the POD is in error in holding that Go 95 and 128 contain maintenance, as well as construction standards.

We disagree. Section VI cites to sections of GO 95 and GO 128 that make clear that utilities are to maintain, as well as construct, their systems in conformity with the GO. For example, § 12.2 of GO 95 requires all lines and portions of lines to be maintained in such condition as to provide safety factors not less than those specified in § 44.2, and also requires all lines and portions of lines constructed or reconstructed after the effective date of the GO to be kept in conformity with the requirements of the GO. Section 12.2 of GO 128 contains a similar requirement.

In addition to those sections cited in Section VI above, GO 95 and 128 are replete with explicit references to mandatory maintenance obligations. The phrase “shall be maintained” is found, for example, in at least 40 separate sections and sub-sections of GO 95, most frequently in connection with detailed clearance and climbing space measurements.²⁶ Many other sections in the GO

²⁶ See, e.g., the following sections of GO 95: 20.6 [climbing space]; 31.1 [electric supply and communications systems]; 32.3 [collinear lines and crossing lines clearances]; 34-C2 [energized apparatus clearance]; 34-C3 [non-energized apparatus clearances]; 35 [vegetation clearances]; 51.6 [fencing distances] ; 54.4-C3b, D3, D6, D8, H1, I [conductor clearances]; 54.7 [climbing space]; 54.8-B3 [service drop clearances]; 54.9-B2 [climbing space], E [conductor clearances], E3, E4 [climbing space], F [climbing space]; 54.10-A [multiconductor cable clearances], F1 [climbing space]; 54.11-B2 [climbing space], E [conductor clearances], F [climbing space]; 54.12-B2 [climbing space], E [conductor

Footnote continued on next page

state that wires, hardware, etc. “shall have a clearance of,” or “shall be separated by,” or “shall clear” by, a specified number of inches.²⁷ These are minimum, not maximum, clearances, and GO 95 § 14 notes that “more ample spacing or clearances than herein specified may be desirable in some cases and may be provided ... if other requirements are not violated in doing so.”²⁸ Still other sections mandate replacement of certain items, such as insulators, lines, and parts of lines, *before* safety factors have been reduced below a minimum level.²⁹ These provisions create mandatory requirements not tied to construction.³⁰ Thus, the plain language of GO 95 and GO 128 belies the claims of Edison and SDG&E that the GO creates only new construction standards and flexible maintenance rules.

4. Edison’s Maintenance Priority System

Edison asserts that the POD’s criticism of its 5-tiered priority maintenance and corrective action program is not warranted, because violations

clearances], F [climbing space]; 56.2 [guy tautness]; 56.4-C1, C2, D1 [guy and span clearances]; 58.4-C [traffic signal clearances]; 58.5-C [lead wire clearances]; 61.6B2 [fence clearances]; 74.4-C [trolley contact conductor clearances]; 84.7 [climbing space]; 86.2 [guy tautness]; 86.4-C [guy, span and conductor clearances]; and 93 [climbing space].

²⁷ See, e.g., §§ 52.7-C [bond wire and ground wire clearances]; 52.7-D [hardware clearances]; 53.4-A, B [bond wire clearances]; 54.4-A [above ground clearances]; 54.4-C4b, C4c [conductor clearances]; 54.6-A, B [conductor clearances]; 54.8 [service drop clearances]; 56.4-A [guy clearances].

²⁸ See also, GO 128, § 14, which includes identical language.

²⁹ GO 95, §§ 44.1 Table 4 [installation and reconstruction]; 44.2 [replacement].

³⁰ See, e.g., GO 128, §17.2: “Systems shall be inspected by the operator frequently and thoroughly for the purpose of insuring they are in good condition and in conformance with all applicable requirements of these rules.”

are not predictable, decreasing corrective action times will increase costs without increasing safety, and using inspectors to correct violations will significantly delay inspections.

Section VII of the POD addresses the role of a maintenance priority system and makes clear that this proceeding is not the forum to approve Edison's system or to refine it with particularity. The POD directs Edison, in conjunction with CPSD, to refine Edison's maintenance priority system taking in to consideration some listed goals.

Edison objects to these listed goals. However, the goals are consistent with the GOs we seek to enforce in this investigation. We also clarify the POD so that Edison and CPSD can consider other appropriate issues in their discussion in addition to the goals listed in the POD. In other words, the list of goals in the POD should not limit the parties' discussion in improving Edison's system.

Several points associated with these goals deserve further clarification. The philosophy underlying our desire for Edison and CPSD to discuss more refined corrective action periods is primarily that corrective action periods should take into account both the seriousness of potential injuries that may be associated with failures to comply with safety standards, and the probability that an incident and its foreseeable consequences will occur. Short correction periods may be appropriate both when the magnitude of potential injury, or the frequency, is high. Furthermore, consistent with GO 165, Edison should be prepared to discuss a method to identify a date certain by which violations subject to "opportunity maintenance" under its current system will be corrected.

The POD's discussion goal that, to the extent possible, Edison use its inspectors to correct observed violations in the field at the time they are first noticed finds ample support in the direct testimony of Edison witness Dale Shull:

“Almost all of the nonconformances in the Public Level are repaired as found and do not require further corrective action. Our inspectors are equipped with tools and an inventory of parts and materials to enable them to make the majority of necessary repairs at the Public Level immediately.³¹ The remaining nonconformances in the Public Level require follow-up action by a qualified electrical worker or material not readily available to the inspector. These nonconformances are assigned an appropriate priority rating for follow-up action.”³² (Exhibit 209 at p. 26.)

The intent of the POD suggestion was to encourage expansion of this existing practice to the extent practical. We clarify that, where inspectors are not qualified, or lack time to, make extensive repairs, the parties are encouraged to develop steps that Edison can take to safeguard the violation area to limit potentially dangerous contact during the period before corrective action can be taken.

5. Litigation Risk

Edison also argues that the Commission should not find its failure to comply with a GO a violation, because that finding could be used against Edison in potential future civil litigation support a finding of negligence per se.

We have discussed this objection at length in Section VII, above. We do not modify the POD’s holding that a failure to comply with a GO is a violation. To hold otherwise could adversely impact our regulatory efforts, since we expect compliance with our GOs.

³¹ A footnote states that: “During 2001, approximately 100,000 repairs were completed at the time of the inspection.”

³² See, e.g. Edison Witness Pearson, Transcript, Volume 9, p. 840, lines 16-27.

6. GO 165 Inspection Intervals

Edison argues that the POD misconstrues GO 165 as requiring yearly patrol inspections to occur within 365 days of each other. Rather, Edison believes that the appropriate interpretation of GO 165 is that yearly patrol inspections should occur in each calendar year, so that the utility can obtain the needed flexibility to adjust inspection schedules to meet personnel or workload constraints.

Section X.D addresses and rejects Edison's argument. To elaborate briefly, the plain language of GO 165 refers to maximum inspection intervals, measured in years, and a year is in fact 365 days. Thus, not only is the POD's interpretation reasonable, it is mandated by the plain language of the GO. Furthermore, Edison has the flexibility to vary the dates of its inspections, as long as the inspection is within a year of the last inspection.

As explained in Section X.D, Edison argued that its interpretation would be consistent with the intent of GO 165 in having yearly inspections. Edison believes that CPSD's example to the contrary (where inspections held in two calendar years could occur almost two years apart) could only occur once. Edison explained that if it conducted an inspection on January 1 in year one, and on December 31 in year two, that in all subsequent years the inspections would occur 12 months apart, i.e., no later than December 31.

We disagree. Hypothetically, if we adopt Edison's interpretation, the following inspection pattern would technically comply with the requirement of an inspection every calendar year, yet it would result in one inspection every two years: an inspection in year 1 on January 1; in year 2 on December 31; in year 3 on January 1; and in year 4 on December 31. In fact, under this hypothetical

pattern, an inspection would occur every two, as opposed to one year, and this pattern could be repeated.³³

The Energy Division's ability under GO 165 to modify data requirements, definitions, reporting and record-keeping formats and forms when and as necessary,³⁴ as referenced by SDG&E in its appeal, may offer opportunities for additional limited flexibility where necessary, but should not be seen as a wholesale means to sidestep GO 165's minimum inspection intervals on a permanent basis.

7. Penalties

Edison asserts the POD errs in imposing penalties for situations in which CPSD inspectors found violations that Edison inspectors did not find. We disagree. The POD properly notes that Commission expects high quality inspections, and that Edison's failure to identify nearly as many violations as CPSD may indicate quality failures by the utility.

Edison complains that the POD's discussion of a nexus between specific violations and incidents involving death, serious injury, or property damage was unclear, and did not take into account the fact that Edison may not have had an opportunity to find and correct the violation before the incident. Edison also believes that the POD should have made a formal determination of negligence as used in civil litigation before imposing penalties. Edison also complains that the concept of basing penalties in future situations on such factors as a comparison

³³ This problem could be aggravated under Edison's interpretation because GO 165 mandates longer than a yearly inspection cycle in some instances. (The maximum inspection cycle in years is between 2 and 20 years.)

³⁴ See 71 CPUC2d at 479.

of Edison's violations to the "norm" for utilities, is not fair, largely because CPSD did not in this case present evidence of the results of inspections of other utilities.

CPSD criticizes the use of the "nexus" and "norm" language from a different perspective. CPSD asserts that requiring the finding of a relationship or nexus between an violation and an incident unnecessarily and unwisely undercuts efforts to enforce safety standards before such incidents occur. CPSD cites Pub. Util. Code § 2107, under which the Commission may impose a penalty for any violation, regardless of its relationship to an incident, or to any utility "norm."

The POD properly notes that the Commission may impose penalties of from \$500 to \$20,000 for any violation, and has used various factors outlined in D.98-12-075 to determine the size of penalty to be imposed in particular circumstances. The POD chose not to impose penalties for each of the over 4,000 violations found, but to focus instead on Edison's failure to identify as many violations as CPSD in the GO 165 inspections, and upon violations involving deaths or injuries. As we more fully discuss above, while we differ with the POD in our assessment of certain of the specific cases, we agree that it is reasonable to impose the maximum penalty for each incident involving injury, death or property damage where Edison failed to act in a timely manner.

As more fully discussed above, we reject the notion that a finding of negligence is required prior to the imposition of a penalty. Our inquiries into the reasonableness of a utility's conduct, and its compliance with relevant statutes and Commission orders, do not require a finding of legal negligence. In D.99-04-029 [*Carey v. PG&E*], 85 CPUC2d 682, 687, we noted that:

"the Commission is not faced with the question of whether PG&E's conduct was the legal cause of the 1996 Homestead

fire. We are not awarding ... damages ... The Commission is required to determine whether the service or equipment of a public utility *poses any danger* to public safety, and if so, to prescribe corrective measures. That the facts of this incident also give rise to tort litigation does not transform this determination into a tort case. Indeed, we have rejected the application of tort law principles in reviewing utility conduct surrounding accidents.” (Citations omitted, emphasis in the original.)³⁵

We do, however, clarify Section X.G to explain some of the key factors which influenced us in assessing penalties in this case, to provide future guidance for all utilities, and to strongly encourage CPSD to provide evidence on certain issues in future similar proceedings.

Edison and SDG&E also assert that the Commission’s safety program is unconstitutionally vague. We disagree. The Commission need not state in advance every instance in which it will, and will not, impose a penalty for a violation of safety statutes or regulations, especially where the several hundred pages of safety rules set forth in GOs 95, 128, and 165 provide utilities with guidance as to what is required of them.

8. Due Process

SDG&E and PG&E also believe that they have been denied due process because this proceeding was not designated as a rulemaking, and its holdings (such as the holding that failure to comply with a GO is a violation of the GO) may be applicable to them as well. They object, for instance, when the decision addresses “a utility’s,” as opposed to “Edison’s,” obligation to comply with a

³⁵ See also, D.94-03-048, 53 CPUC2d 452, 480, fn. 11: “Commission decisions have not applied tort law principles, including professional negligence, in reviewing utility conduct surrounding accidents.”

general order, stating that generic findings and conclusions have no place in this investigation.

Both SDG&E and PG&E were placed on notice that this investigation concerned Edison's compliance with certain GOs. The penalties ordered by this decision are directed against Edison. To the extent the Commission is required to analyze and interpret the GOs in order to adjudicate this investigation, it has the authority to do so. Some statements of general principals are also appropriate in reaching a specific conclusion as to Edison. However, we clarify the discussion to refer more particularly to Edison where appropriate.

9. Rulemaking

Edison asserts that issues beyond possible revisions of high voltage sign requirements, such as the POD's requirement that utilities notify the Commission promptly regarding noncompliance with GOs 95 and 128, should be addressed in a second phase of the current rulemaking R.01-10-001, which is reviewing possible revisions to GOs 95 and 128. SDG&E and CCTA agree that a rulemaking would be an appropriate forum for considering issues raised in this proceeding that are of concern to other utilities.

We do not modify the POD to defer further issues to R.01-10-001. We eliminate the POD's requirement that Edison and other utilities provide additional routine reports regarding noncompliance to the Commission. However, we fully expect that Edison will cooperate with staff requests for information useful in reviewing safety issues.

XIII. Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner in this investigation and Janet A. Econome is the assigned Administrative Law Judge.

Findings of Fact

1. The Commission does not expect utility systems to remain pristine and newly built 100% of the time; some deterioration is inevitable.
2. 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.
3. Edison currently uses a five-tier maintenance priority system.
4. Some safety GO violations create more serious hazards than others.
5. Edison's maintenance priority system is flawed in that it creates a timetable for corrective action that may begin at the time a violation is noted.
6. The high voltage sign requirement is not only contained in GO 95 but also is a California statutory requirement in certain instances.
7. Although it may be dangerous for a worker to make a special trip to the primary power level solely to repair a high voltage sign, there may be less dangerous methods to achieve similar warnings.
8. The maximum interval between inspections pursuant to GO 165 is measured in years (i.e, 365 days increments).
9. Although there may be some subjectivity among CPSD inspectors, the record also demonstrated subjectivity among Edison employees as to what constitutes compliance with the GOs. The record demonstrates this is not a pervasive problem, and Edison did not specifically protest CPSD's audit findings at the time they were made.

10. It is impossible for a utility to keep its distribution system in full compliance with the safety GOs at all times, and, at any given time, there will be multiple violations on a utility's system.

11. The 37 accidents alleged by CPSD are described in detail in Appendix B. In seven of these accidents, we find no GO violation as alleged by CPSD.

12. Edison did not contest CPSD's findings of "nonconformances" with GOs 95 and 128 at the time CPSD made them; in fact, once notified, Edison remedied these problems as required by CPSD. Based on these CPSD inspection results, we find 4,044 violations of GO 95 and 677 violations of GO 128.

13. We find 56 violations of GO 165 for Edison's failure to identify unsafe conditions, and one violation for exceeding GO 165's maximum inspection intervals.

14. We fine Edison \$676,000 based on a penalty of \$20,000 for each of the 30 violations involving personal injury or property damage, \$1,000 for each of the 56 violations of GO 165 for failure to identify unsafe conditions, and \$20,000 for one violation of exceeding GO 165's inspection intervals.

15. Based on the record, we cannot determine whether the 4,812 GO violations we find somehow compromise the integrity or safety of Edison's system, or otherwise place these violations in any type of context.

Conclusions of Law

1. CPSD has the burden of proving by a preponderance of the evidence that Edison has violated the GOs and Rule 1.

2. GO 95 and 128 set both construction and maintenance standards.

3. Utilities are required to comply with relevant safety statutes, Commission GOs, and decisions, and the Commission has the statutory obligation to require utilities to do so.

4. If a utility fails to comply with a GO, it is violating that GO.
5. The Commission has discretion to provide utilities with notice and opportunity to cure violations in lieu of fines and to determine whether, and how much, to fine utilities for violations of GOs.
6. The fact that utilities have limited resources, and that a utility may not be able to correct every violation instantly, does not eliminate the existence of a violation, but may be a factor in assessing penalties. Penalties may also be imposed in order to encourage a utility to focus its system maintenance and repairs so as to prevent death, injury, and property damage.
7. Ideally, Edison should be inspecting for and repairing violations of GO 95 and 128, and also should be taking corrective action to the extent possible in order to forestall violations of the GOs.
8. Edison, in consultation with CPSD, should refine its maintenance priority system consistent with the discussion in Section VIII and IX of the Opinion.
9. If Edison believes the high voltage signs are no longer necessary, it should seek to change the applicable GOs and statutes to more meaningful criteria.
10. Edison and CPSD should meet and confer in a cooperative effort to determine whether adjustments to the high voltage sign requirement would achieve the same results as the sign. If useful alternatives emerge, the parties may raise them in R.01-10-001, or another appropriate forum, or in requesting legislative amendments. A similar exercise may be useful for other matters where Edison or CPSD believes that safety repairs pose a disproportionate risk to utility workers.
11. Edison is responsible for complying with the safety GOs at issue in this investigation and cannot escape this responsibility by delegating it to

independent contractors. This responsibility is consistent with California law and Commission precedent.

12. As a general matter, to the extent that Edison is liable for the violation of the GOs by its own employees, it is also liable for violations by the employees of Edison's independent contractors.

13. For purposes of the "due care" obligations in GOs 95 and 128, if, despite Edison management's best efforts at achieving on-the-job safety as defined in the Cal/OSHA criteria set forth in Section X.B of the Opinion, an employee is spontaneously negligent, we would find no violation of the utility's "due care" obligations under these GOs.

14. Nothing in GO 165 relieves any utility from any requirements or obligations that it has under GOs 95 and 128.

15. Edison's violations of the GOs should not be excused because of the alleged subjectivity of CPSD inspectors.

16. While CPSD's past interpretation of GO compliance may be relevant in setting appropriate penalties, staff's interpretations of GOs are not binding on the Commission.

17. The conclusions regarding Edison's GO violations set forth in Appendix B are adopted.

18. Edison's conduct in supplying accident information to the Commission did not violate Rule 1.

19. Weighing the factors set forth in D.98-12-075, Appendix B (Penalty Guidelines), a fine of \$676,000 is warranted.

20. This investigation should be closed.

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

1. Southern California Edison Company (Edison) shall be fined \$676,000 for 30 violations of General Order (GO) 95 and GO 128 and 57 violations of GO 165.

2. No later than 30 days after the date this decision is mailed, Edison shall transmit the amount of the fine (\$676,000) payable to the California Public Utilities Commission. The portion of the fine attributable to GO 95 and GO 128 violations (\$600,000) shall then be deposited to the General Fund of the State of California. The portion of the fine attributable to GO 165 violations (\$76,000) shall be used to offset funding for the California Alternative Rates for Energy Program pursuant to Pub. Util. Code § 364(c). No later than 30 days after this decision is mailed, Edison shall submit an advice letter proposing an accounting method to accomplish this offset.

3. Edison, in consultation with the Commission's Consumer Protection and Safety Division (CPSD), shall refine its maintenance priority system consistent with the discussion in Sections VII and IX of the Opinion.

4. Edison and CPSD shall meet and confer in a cooperative effort to determine whether adjustments to the high voltage sign requirement would achieve the same results as the sign. If useful alternatives emerge, the parties may raise them in Rulemaking 01-10-001, or another appropriate forum, or in requesting legislative amendments. A similar exercise may be useful for other items where Edison or CPSD believe that safety repairs pose a disproportionate risk to utility workers.

5. The motions to intervene of the California Cable and Telecommunications Association, Pacific Gas and Electric Company, and San Diego Gas & Electric Company are granted. CPSD's motion to accept its corrected appeal is granted.

6. This investigation is closed.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX A
APPEARANCES

Charles C. Read
Attorney At Law
O'Melveny & Myers, LLP
400 South Hope Street
Los Angeles, CA 90071

Petrina Burnham
San Diego Gas & Electric Company
8315 Centruy Park Court, CP22D
San Diego, CA 92123-1550

Marcel Hawiger

Attorney At Law
The Utility Reform Network
711 Van Ness Avenue, Suite 350
San Francisco, CA 94102

Gayatri Schilberg
JBS Energy
311 D Street, Suite A
West Sacramento, CA 95605

James M. Lehrer
Attorney At Law
Southern California Edison Company
2244 Walnut Grove Avenue
Rosemead, CA 91770

Gregory Walters
San Diego Gas & Electric Company
8315 Century Park Court, CP 51D
San Diego, CA 92123-1582

Jason J. Zeller
California Public Utilities Commission
Legal Division
505 Van Ness Avenue, Room 5030
San Francisco, CA 94102-3214

Celeste Easton
555 West Fifth Street, Suite 1400
Los Angeles, CA 90013-1011

Michelle L. Wilson
Lise H. Jordan
Pacific Gas and Electric Company
77 Beale Street
San Francisco, CA 94105

Lesla Lehtonen
California Cable &
Telecommunications Assoc.
4341 Piedmont Avenue
Oakland, CA 94611

(END OF APPENDIX A)

APPENDIX B-Accidents**Page 1****A. Accidents for Which Edison Alleges No Nonconformance****1. May 26, 1998 – Newbury Park**

In early 1998, Tri-County Landscape (Tri-County) performed corrosion repairs on Edison's pad-mount transformers in the Santa Ana District of Orange County. In connection with this work an Edison supervisor gave Tri-County a key to access the transformer panels in Santa Ana. Edison states that these transformers were dead-front transformers, i.e., they had no exposed high voltage conductors in excess of 750-Volts. Tri-County performed its work unsatisfactorily and by March 1998 Edison no longer used them. However, Tri-County failed to return the key to Edison.

In May 1998, Edison retained Precision Electric (Precision) to do work in Newbury Park, which is about 100 miles from Santa Ana. The work included repairing the casing of a pad-mount transformer, which required affixing sheet metal with pop rivets over a rusted area on the casing. According to Edison, this work was cosmetic and did not require access to the inside of the transformer box.

Edison states that Precision subcontracted this work to Tri-County without Edison's knowledge. The Tri-County employee selected to do the work, Jasso, was in possession of the transformer key that Edison previously gave Tri-County. According to Edison, he did not have to open the transformer front to do the work. Nevertheless, Jasso decided to open the transformer, which was energized, to see what parts needed to be replaced and to paint the inside of the door. He tried to use the key, which did not work. He then ground off the lock

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and opened the front. Jasso came in contact with energized conductors inside the transformer and sustained burns to his arms and knees.

CPSD determined that Edison's work request to the contractor did not clearly state that the transformer structures were not to be opened, nor did it warn the contractor about the presence of the exposed live conductors inside the structure. CPSD also states that Edison supplied locks to the contractor's employees to be used for locking the transformer casing after accessing the structures, thus indicating that Edison knew that non-Edison employees would be exposed to high voltage facilities but failed to determine whether they were qualified to do so. CPSD found Edison in violation of GO 128, Rule 17.1 which requires that owners of electric systems and their employees exercise due care to reduce to a minimum the hazard of accidental injury to their own or fellow employees, the public and other utilities, due to the presence of such systems. By allowing an unqualified contractor to access energized equipment, CPSD believes that Edison violated Rule 17.1.

Edison believes there is no Rule 17.1 violation because it was unaware that Tri-County was doing the work and had no knowledge that whoever performed the work would open the transformer. According to Edison, failing to retrieve the key from the Tri-County employee is not the cause of the injuries, because Jasso did not use the key to gain access to the transformer. Edison claims if there is any negligence, it is on the part of Precision or Tri-County, for which Edison is not liable.

However, Edison has instituted several new policies as a result of this accident, including clarifying its restrictions on whether contractors may

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subcontract Edison work and which subcontractors they may use. Edison is also more detailed in describing the repair work and who may open transformers. Edison has also increased supervision of these contractors and has re-emphasized to its supervisors to be vigilant about giving and retrieving keys to Edison's facilities from contractors.

Conclusion: No violation of GO 128, Rule 17.1 because the contractor concealed the sub-contract from Edison.

2. June 21, 1998 – Lancaster

A person was fatally injured when he climbed an Edison pole in Lancaster, coming in contact with an energized transformer fuse holder. This individual was alleged to be stealing Edison's property for salvage.

CPSD believes that Edison violated GO 95, Rule 31.6 which states that "lines or portions of lines permanently abandoned shall be removed by their owners so that such lines shall not become a public nuisance or a hazard to life or property." CPSD believes Edison violated Rule 31.6 when it failed to remove the equipment after service was disconnected, even though there were no pending new business meter orders for this location.

In investigating the accident, CPSD requested from Edison an explanation as to why the idle transformer had not been removed. Edison responded that there was an outstanding new business meter order for service. However, Edison could not provide a copy of this business order, and after months of follow-up, told CPSD that the facilities were idle with no pending work order for service. CPSD also alleges a Rule 1 violation for Edison's conduct during CPSD's investigation of this incident.

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Edison disagrees and believes that the line involved in the accident was not permanently abandoned. Pursuant to requests from a county inspector because a house was being demolished, Edison removed the meters and lines actually serving the house and pump. However, Edison did not receive any requests to remove the pole or distribution lines supported by the pole and did not do so. Edison reasoned that a customer might rebuild and it would, therefore, be uneconomic to remove this equipment.

Seven months passed between Edison's first receipt of the request to disconnect service and the accident. Edison argues that even if the property were permanently abandoned pursuant to Rule 31.6, that CPSD has not shown Edison's failure to remove the facilities within seven months is unreasonable. Edison also disputes CPSD's Rule 1 allegations.

Conclusion: Violation of GO 95, Rule 31.6 because in the absence of evidence to the contrary, such as might have been uncovered had Edison made inquiries, the facilities had been permanently abandoned and Edison was obliged to remove them. The Rule 1 allegations are discussed in the text of the decision.

3. August 29, 1998 – Hacienda Heights

During an inspection on August 18, 1998, Edison's tree-trimming contractor Asplundh Tree Expert Company (Asplundh) observed the clearance between Edison's 12,000 volt conductor and Cypress tree branches at a house in Hacienda Heights was only six inches. Asplundh attempted to trim the trees at that location but was refused access to the property. Asplundh reported this denial of access to Edison, which planned to follow up with this property owner after Asplundh finished trimming the grid.

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Eleven days after Asplundh attempted to trim the trees a fire occurred, apparently as a result of the cypress trees contacting Edison's conductors. The fire caused an outage that lasted about two days for about 10 customers. The only property damage caused by the fire was to Edison's facilities, and Edison repaired this damage. Shortly thereafter, the owner of the trees removed them before Edison's tree trimming personnel returned to the location.

CPSD believes that Edison violated GO 95, Rule 35 which requires a minimum clearance of 18 inches between conductors of 750 to 22,500 volts and vegetation. Edison believes it is excused by the customer's denial of access.

Conclusion: Violation of GO 95, Rule 35 because the trees only had 6 inches of clearance at the time of Asplundh's inspection.

4. September 16, 1998 – Santa Ana

An employee of a demolition contractor received flash burns when an underground switch exploded. According to Edison, the contractor's employees working on the demolition removed the cover of the underground structure and then tried to remove the energized cables from inside the structure, causing the explosion.

The switch enclosure cover had recently broken due to trucks driving over it, but Edison received no notification of this. The evidence is conflicting as to whether Edison's name appeared on the switch enclosure cover. CPSD alleges Edison violated GO 128 which requires manholes, handholds, and subsurface equipment enclosures to be marked as to ownership to facilitate identification by persons authorized to work in the area.

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Edison claims that the broken cover had an Edison marking, but even if it did not, the marking would not have made a difference because Edison's name was on the grade ring surrounding the cover and there were electrical diagrams on the switch.

Conclusion: No violation of GO 128 because (i) no clear evidence that Edison's name was not on the switch cover (ii) undisputed evidence that Edison's name appeared on the grade ring surrounding the cover.

5. December 10, 1998 – Corona

An employee of an Edison contractor was replacing downed Edison 12,000-volt energized conductors when he came in contact with one of the conductors and suffered first degree burns to his hand and foot. CPSD found that Edison's Damage Assessment Team (DAT) had patrolled the same circuit and observed an unsafe condition (primary conductor attached to a steel bar using an insulated wire) but had failed to communicate this information to the contractor. CPSD found Edison in violation of GO 95, Rule 31.1 requiring owners and employees of electrical systems to exercise due care to minimize the hazard of accidental injury to their own or follow employees.

Edison explains that the accident occurred after a severe windstorm. DAT identified the downed conductors but the troubleman went to the area in the dark and was unable to observe the downed power lines, and did not receive the DAT report. Edison also explains that the injured worker directly caused the injury because he may have been backhanding it to see if it was energized. This practice is against industry rules.

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Conclusion: Violation of GO 95, Rule 31.1. Edison violated Rule 31.1 by failing to advise the contractor that the downed lines were energized.

5. August 27, 1999 – Hesperia

In August 1999, an eight-acre brush fire ignited in Hesperia, originating from an Edison triplex (a three-wire insulated service drop) cable with insulation that deteriorated from contact with an elm tree. CPSD found Edison in violation of GO 95, Rule 35, which requires a utility that has actual knowledge of evidence of tree abrasion on circuits of 0–750 volts to correct this problem by certain designated actions.

Edison argues that it did not violate Rule 35 because it had not found any evidence of tree abrasion either when it trimmed the tree less than a year before the fire or two months before the incident on a circuit patrol, and thus did not have actual knowledge of the abrasion as required by Rule 35. Edison explains that it has emphasized the importance of detailed inspection for abrasions to all patrol personnel to help prevent possible future occurrences.

Conclusion: No violation of GO 95, Rule 35 because CPSD did not demonstrate that Edison had actual knowledge of the condition as defined by the Rule.

6. November 5, 1999 – Palm Springs

On November 5, 1999, a palm tree burned, causing a fire, which damaged two sheds, landscaping, and the roof of a motel. Edison reported the accident to CPSD on March 14, 2000. CPSD found that the palm tree came in contact with Edison's 4000-volt conductor, thus causing the fire and alleges a violation of GO 95, Rule 35, which requires an 18-inch clearance between conductors of

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750-22,500 volts and vegetation to be maintained at all times. CPSD also found Edison out of compliance with Decision (D.) 96-11-004, Appendix B, which requires Edison to report such accidents to the Commission within two hours of the utility's becoming aware of the accident.

Edison states that it trimmed a palm at the same address about two months before the accident. There were four palms in the area and it is unknown whether the previously trimmed tree, or another of the palms, caught fire. The fire department found that during breezy conditions, one of the trees blew into the primary facilities causing an arc and subsequent fire. Edison seemingly disputes the fire department's report, claiming the cause of the fire is of unknown origin, and one witness describes the fire as burning up the tree.

Edison first learned of the incident in February 2000, and subsequently attempted to obtain more information from the insurance company. Edison confirmed the incident with the fire department on March 14, 2000 and reported the incident to the Commission on the same day.

Conclusion: Violation of GO 95, Rule 35, based on the fire department's finding of the cause of the fire. Also a violation of D.96-11-004 because Edison failed to inform the Commission of the accident until about a month after it learned of it.

7. November 19, 1999 – Valencia

A three-member Edison crew was injured from a flash, which occurred when they cut into an energized 16,000-volt underground cable.

The crew members suffered second- and third-degree burns to their arms and faces.

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CPSD found that the Edison crew identified, de-energized, and tagged a cable, which they believed was the cable they needed to isolate. The crew then began to cut into another cable, assuming it was the cable they had de-energized. According to CPSD, this incorrect assumption was due to the fact that Edison records did not reflect the existence of two cables at the incident location.

CPSD alleges that Edison violated GO 128, Rule 17.1, which requires owners of underground electric supply systems and their employees at all times to exercise due care to reduce to a minimum the hazard of accidental injury to their own or fellow employees.

Edison states that the map reflected both cables, but admits that the map was geographically inaccurate. Nonetheless, Edison believes it did not violate the due care provisions of GO 128 because the crews know the maps to be geographically inaccurate and the crew followed all safety rules and industry practices.

Conclusion: Violation of GO 128, Rule 17.1 because the map, which was provided to the crew shortly before the accident, did not reflect the correct geographic location of both cables. Edison is presumed to know where its cables are. We note that after the accident, Edison has implemented further safety procedures to prevent this type of accident from reoccurring, such as distributing a bulletin to the workers emphasizing: (a) the safety precautions to be followed in troubleshooting and testing underground cables; (b) wearing protective gear and staying out of the dig hole and as far away as possible from the opening during spiking; and (3) advising review of inventory maps as a supplement to

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circuit maps because the later are electrically correct but not necessarily geographically accurate.

8. December 20, 1999 - Baldwin Park

Two Edison employees were working on the top of a pole located near the Central Elementary School when the pole collapsed causing them both to fall and lose consciousness. The two employees suffered head and back injuries.

CPSD found that a four-foot deep trench was dug down to the base of the pole in preparation for the installation of conduit for Edison-owned cable, which trench affected the pole's integrity and stability. CPSD also found that the depth of the pole did not meet the pole depth requirements in GO 95, Table 6. CPSD therefore found that Edison violated GO 95, Table 6 as well as GO 95, Rule 31.1, which requires owners and employees of electric systems to exercise due care to minimize the hazard of accidental injury.

Edison disputes CPSD's conclusion, arguing that what caused the accident was the workers failing to inspect the pole before climbing it, as required by Edison's safety practices. Edison argues that even if Rule 31.1 were relevant, Edison complied with it through its commitment to employee safety training and compliance.

Conclusion: Violation of GO 95, Rule 31.1. Edison knew or ought to have known that trenching around the base of the pole would eliminate lateral subjacent support and create a risk of injury.

9. January 28, 2000 – Agoura

An employee of an Edison contractor, Sturgeon Electric (Sturgeon) was installing a crossarm on a new Edison pole in Agoura. As the Sturgeon

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employee tried to place the crossarm in position, a bonded insulator pin on the crossarm contacted a 16,000-volt conductor. The contact created a flash, causing first- and second-degree burns to the employee. Sturgeon later fired the employee for failing to adhere to safety rules.

CPSD found that the employee violated several safety rules and the employee's supervisor who was at the scene did not correct his conduct. CPSD alleges that Edison therefore violated GO 95, Rule 31.1, which requires owners and employees of electrical systems to exercise due care to reduce to a minimum the hazard of accidental injury to their own or fellow employees, to the public and other utilities. Edison does not dispute that the conduct of the contractor's employee caused the accident but states that it does not owe a duty of care or liability for injury to an independent contractor's employee.

Conclusion: No violation of GO 95. Rule 31.1 by its terms obligates Edison to use due care to protect its employees and the public. Even if the contractor's employee may be considered a member of the general public for purposes of applying Rule 31.1 to this situation, nothing in the record suggests that Edison either knew or should have known that Sturgeon would assign a careless employee to this job. In the absence of evidence establishing that there was a lack of due care on Edison's part in hiring Sturgeon, the carelessness of Sturgeon's employee cannot be imputed to Edison.

10. March 1, 2000 – Emerald Bay

An employee of a contractor installing water drainage basins was injured when he cut into an Edison underground PVC conduit containing 12,000-volt

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cables. The employee had assumed the conduit was an abandoned water line. He sustained second-degree burns to his right arm.

CPSD found that the contractor had requested a facility mark-out for the excavation through Underground Service Area (USA), a one-call system. USA notifies utilities in the area of the pending permit to dig, and the utilities are required to go to the site and mark the location of their facilities. Edison contracted with Underground Technology Incorporated (UTI) to mark the facilities on its behalf. UTI's technician was unable to find Edison's aperture card for this location and used only visible structures in the area to locate the underground conductors. As a result, he located and marked only the conductors running in an east-west direction but failed to locate and mark the north-south conductors.

CPSD states that Edison failed to mark its underground cable correctly, and is therefore in violation of GO 128, Rule 17.7.

Rule 17.7 provides in pertinent part as follows:

“Each party operating or owning facilities shall, upon request, provide information as to location of its underground facilities to any other party contemplating underground construction or work, in the vicinity thereof. Provision of such information by a party will not relieve such other party of his responsibility to locate accurately such underground facilities and to exercise reasonable care during construction or work.”

Edison believes it did not violate GO 128 because it is not responsible for the independent failure of its contractor to properly perform contracted work. Edison also argues that the party doing the excavation work, and not Edison, has ultimate responsibility for verifying the actual location of the cable.

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Conclusion: Violation of GO 128. Edison is responsible for complying with the GOs. UTI was Edison's agent for purposes of marking the location of the underground utilities and was acting within the scope of its agency when it failed to locate and mark the underground conductors. UTI's failure flows through to Edison.

11. April 7, 2000 – Rancho Palos Verdes

Two Edison employees were burned when they started working on an energized pad-mounted transformer in Rancho Palos Verdes. One employee, Hulstein, suffered fatal injuries, and the second employee, Romano, suffered second- and third-degree burns. Another Edison employee sustained minor burns when he came to the aid of the two employees.

CPSD found that the Hulstein and Romano did not receive clear instructions from their supervisor, who was on the site, regarding the equipment on which the work was performed. CPSD also found that both employees were not using personal protective equipment or tools to perform the work.

CPSD alleges that Edison violated GO 128, Rule 17.1, which requires owners of electric supply systems and their employees at all times to exercise due care to reduce to a minimum the hazard of accidental injury to their own or fellow employees.

Edison explains that due to the emergency nature of the repairs, they were being conducted around midnight. Edison states that the supervisor held several instructional briefings (tailboards) with the crew before it commenced work, going to each of the three transformers and instructing the crew which were energized and which were not. According to Edison, the employees were

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injured when they inexplicably went to transformer 1 instead of the transformer they had been working on (number 3) to install the elbow. Edison states it is unknown why they went to transformer 1 since the tailboards indicated that everything on it was energized, they were never instructed to do work on it, and they were instructed to place the elbows on transformer 3. Edison states that after the explosion, the supervisor heard Hulstein say, "I f-----d up, Mark. I hurt that kid. Save Juan and let me die."

Edison also states that Cal/OSHA determined that Edison did not contribute to this incident and declined to impose penalties on Edison. According to Edison, Cal/OSHA concluded that Hulstein knew the requirements of Edison's safety program but failed to follow those rules.

Conclusion: No violation of GO 128. Consistent with Rule 17.1 Edison had done everything in its power to minimize the risk of injury; in spite of these actions, someone was injured. The Rule does not require Edison to guarantee the safety of its employees, only to minimize their risks.

B. Accidents for Which Edison Alleges Nonconformance But No Causation**1. November 14, 1998-Altadena**

Professional tree trimmer for a landscaping company, Cortez, contacted the 16,000-volt conductors while using a saw attached to a 7-foot 3 ½-inch conductive aluminum swimming pool pole. He was burned and fatally injured. CPSD found that the crossarm on the Edison pole supporting the conductors did not have a high voltage sign as required by GO 95, and alleges that Edison violated GO 95, Rule 51.6A which requires poles that support line conductors of more than 750 volts to be marked with high voltage signs.

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Cortez was a professional tree trimmer and foreman for his employer. He previously told his co-worker to be careful around power lines and was wearing safety gear at the time of the accident. Also, an undamaged high voltage sign was on the other cross arm of the same pole, less than 50 feet from the tree Cortez was trimming.

Conclusion: Violation of GO 95, Rule 51.6A

2. November 17, 1998- Camarillo

Edison lineman Stubbs was working on a pad-mounted transformer in Camarillo when he contacted an energized 16,000-volt conductor. Stubbs received third-degree burns to his right hand and left finger. CPSD alleges that the pad-mounted structure, which contained exposed 16,000-volt conductors, did not have warning signs posted inside the structure, and that Edison was therefore in violation of GO 128, Rule 35.3 which requires warning signs indicating high voltage to be installed inside pad-mounted transformer compartments containing exposed live parts above 750 volts.

Stubbs was an experienced lineman and prior electrical crew foreman who had worked for Edison for 21 years and was aware that the transformer contained exposed energized components. Moreover, although the transformer did not have high voltage warning signs installed inside its box, high voltage warning signs were installed on the exterior.

Conclusion: Violation of GO 128, Rule 35.3

2. November 23, 1998 – Rancho Palos Verdes

An employee of California Communications Company (CCC), a contractor for a cable television company, was installing a copper ground rod and came in

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contact with Edison's underground 12,000-volt cable. The employee sustained second- and third-degree burns to his back, wrist, and lower leg.

CPSD found that the contractor had requested a facility mark-out of the work area through USA. USA notifies all utilities in the area of the pending permit to dig, and the utilities are required to go to the site and mark the location of their facilities. Edison has contracted with the UTI to locate the underground facilities in its service area, providing UTI with copies of its underground maps, aperture cards, and cable locating equipment. UTI marked the approximate location of the cable.

CPSD states that Edison failed to mark its underground cable correctly, and is therefore in violation of GO 128, Rule 17.7, which is quoted in the Emerald Bay accident discussion above.

Edison states it satisfied its GO 128 obligation to locate this underground facility by providing UTI with the information necessary to determine the facility's approximate location as defined by Government Code § 4216 (i.e., within designated dimensions which does not include depth). Edison also explains that it is not responsible for UTI's errors of failing to accurately locate the facilities. According to Edison, it is also not responsible for CCC's failures to properly locate the facilities under Rule 17.7, nor to provide the employee with the proper training. Edison cites to a Cal/OSHA report finding that CCC failed to provide the employee with any training, and argues that the employee arbitrarily placed the rod in a spot located in the middle of the wires without checking for any Edison markings or trying to ascertain the location of the Edison cable.

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Conclusion: No violation. The record did not establish that Edison or its independent contractor inaccurately located the facilities (as opposed to the CCC employee's error occurring through lack of proper training.)

3. December 18, 1998- Inglewood

Tree trimmer Morales was trimming and removing a rubber tree with an 18-foot 3-inch long aluminum pruning pole near Edison's 16,000-volt conductors when he was fatally injured by coming in contact with the conductors. Morales was an experienced tree trimmer who had previously trimmed this tree and knew to be careful near high voltage wires. The CPSD inspector found that at the time of the accident, Edison's 16,000-volt conductors were in contact with the rubber tree.

CPSD alleges that Edison violated GO 95, Rules 35, which requires a minimum of 18 inches to be maintained between conductors of 750 to 22,500 volts and vegetation at all times, and Rule 51.6 A, which requires poles that support line conductors of more than 750 volts to be marked with high voltage signs.

The evidence is conflicting on the alleged violation of Rule 35 requiring Edison to keep a minimum of an 18-inch clearance between the high voltage wire and the tree. CPSD asserts that at the time of the accident, Edison's 16,000-volt conductors were in contact with the rubber tree. Relying on information presented in the wrongful death case, Edison claims the alleged noncompliance with the 18-inch clearance rule is based on a letter from the apartment owner to CPSD, which letter in turn is based on information Morales told the apartment owner when he solicited work from them. Edison states that its contractor had

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trimmed the tree six months before the accident about five to six feet back from the conductors. Edison's tree expert determined the tree had grown only two to four feet since the trim six months before the accident, and thus, no branches of the tree were within 18 inches of the conductor. Edison was not found to be liable in a subsequent wrongful death case.

Conclusion: One violations of GO 95 for a missing high voltage sign.

4. February 5, 1999 – Corona

A worker installing a concrete streetlight pole was injured while in the process of installing a marbelite streetlight pole. A crane was lifting a pole and while the worker was positioning it, the pole came in contact with Edison's 12,000-volt overhead conductors. Visibility was poor but the workers were all aware of the proximity of high voltage lines to the work.

CPSD found that the south face crossarm of the pole north of the point of contact did not have a high voltage sign and therefore Edison violated GO 95, Rule 51.6 which requires marking of poles supporting conductors of more than 750-Volts.

Conclusion: Violation of GO 95.

5 July 20, 1999 – Long Beach

A contractor working for Los Angeles County was installing a sewer main in Long Beach. While boring holes in the asphalt roadway, the auger equipment that was being used came in contact with Edison's underground 12,000-volt cable. One of the contractor's employees was injured in the resulting explosion, receiving second-degree burns to his face, upper chest, and right arm.

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CPSD found that the contractor had requested facility mark-out of the work area, but Edison's marking and locating contractor, UTI, failed to mark the 12,000-volt cable. CPSD also found the aperture cards that Edison provided to UTI to be used for locating and marking Edison's facilities were inaccurate.

CPSD found Edison in violation of GO 128, Rule 17.7 which requires each party operating or owning underground electric facilities to provide, upon request, facility location information to any party contemplating underground work in the vicinity of its underground facilities. (The relevant portion of Rule 17.7 is quoted in the Emerald Bay discussion in Section A.11 above.) CPSD also found Edison in violation of GO 128, Rule 17.7A, which requires each party operating or owning facilities to maintain necessary records to comply with Rule 17.7.

Rule 17.7 A provides:

"The responsibility for the maintenance of necessary records to comply with this rule rests with the party owning or operating the facilities. Such records shall be available for inspection at all times by the Commission or the Commission staff."

Edison states that these "technical infractions" may have occurred, but the responsibility for the accident ultimately lies with Edison's contractor and with the contractor whose employees were injured. Because Rule 17.7 states that provision of information regarding the location of an underground facility by a party does not relieve the requesting party of the responsibility to locate accurately such underground facilities, Edison argues that the failure independently to verify the location of the subject facilities was an independent intervening cause of the accident that cut off any causal link with Edison.

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Conclusion: Violation of GO 128, Rules 17.7 and 17.1. Edison is responsible for complying with the GOs. Although Edison may contract with independent contractors to do its work, it cannot delegate its GO responsibility to an independent contractor so as to insulate itself from liability for failure to comply with the GOs. Edison's compliance should include providing accurate information as to the location of its underground facilities to any other party contemplating underground construction or work in the vicinity thereof, and maintaining the accurate records to comply with such requests.

6. July 23, 1999 – Sun City

Two young men aged 15 and 18 broke into an Edison pad-mounted structure. The young men pried off the security lock, removed a clear Plexiglas safety panel that had three high voltage signs installed on its surface, and used a wooden stick to dislodge the internal fuse. As a result, one of the youths received flash burns.

CPSD states that Edison violated GO 128, Rules 35.3 which requires warning signs on the exterior surface of pad-mounted structures containing exposed live parts above 750 volts.

Conclusion: No violation of GO 128, Rule 35.3. The record is silent as to whether there were high voltage signs on the exterior surface.

APPENDIX B-Accidents**Page 21****7. September 19, 1999-Monrovia**

Wallick used an aluminum pole to try to retrieve his son's toy, a water pressure rocket, that was caught and hung on a 16,000 volt line attached to an Edison pole. In order to access the pole, Wallick first scaled a block wall and climbed a chain link fence. Then he climbed up the pole, straddling a telephone guard arm. Using the aluminum pole, he contacted the rocket several times and at some point contacted the conductor with his aluminum pole, and sustained third-degree burns to about 60% of his body.

CPSD states Edison violated GO 95, rule 51.6A because the crossarm on the pole supporting the 16,000-Volt conductors did not have a high voltage marking. Edison admits that the sign was missing, but states the pole had five other sets of high voltage signs that Wallick should have seen climbing the pole.

Conclusion: Violation of GO 95 Rule 51.6A

8. November 20, 1999 – Pomona

An Edison lineman was climbing a pole in order to transfer existing overhead facilities to a new pole. The lineman lost his footing and fell 20 feet to the ground, injuring his legs. CPSD found the pole was not stepped, and found Edison in violation of GO 95, Rule 91.3 which requires joint poles with vertical risers or runs to be stepped.

Edison states that when it first installed the pole in the early 1990s, it was not a joint pole and thus did not have to be stepped. Edison explains that it is industry custom and practice in California for the cable and telephone companies that subsequently installed their risers and thus, turned it into a jointly used pole, to step the risers. Edison claimed that it did not know, nor should it have

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known, that the other entities had added risers to the pole without stepping it. Edison also states that there is no evidence that the lack of steps caused the lineman to fall, but offers no competing theory of injury.

Conclusion: Violation of GO 95. Edison cannot shield itself from liability by relying on other entities to fulfill its obligations. When Edison permits another utility to share its pole, Edison retains the obligation to comply with our GOs. At a minimum Edison should seek and receive assurances from such other entities that the pole-stepping requirements have been complied with.

9. August 11, 2000 – Cypress

A roof framer working on the roof of a newly constructed house came in contact with an Edison 12,000-volt conductor and fell from the roof striking a block wall below. He suffered second- and third-degree burns.

CPSD found the vertical clearance of the 12,000-volt conductor over the roof was less than 10 feet and did not meet the minimum clearance requirement of 12 feet specified by GO 95. CPSD also found that Edison was aware that the house was being constructed at the location under its power lines.

Edison explains that it notified the contractor of the dangers of building near power lines and that it should contact Edison to relocate the lines before starting any framing. The contractor contacted Edison in early July. Edison inspected the site at that time and observed no evidence of framing but knew, or should have known, that roof framing would begin with a few weeks at the most. The contractor did not call Edison when it began framing the roof later in July and Edison did not return to inspect the work again before the accident occurred.

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Conclusion: Violation of GO 95. Edison had actual knowledge that a house was being constructed under low-hanging power lines and should have known that roof framing was immanent.

10. September 18, 2000 – Monterey Park

A painter, Daniel Yeager, standing in a metal painter's swing attached to the wall, contacted Edison's 16,000-volt conductor with a metal painting pole. The painter received flash burns on his chest and arms.

The painter's employer had warned Yeager to be careful when working around the power lines, and Yeager had worked in construction nearly his entire working life. Coworkers also knew the wires were dangerous.

CPSD alleges Edison violated GO 95, Rule 51.6 because the crossarm supporting the 16,000-Volt conductor did not have high voltage markings.

Conclusion: Violation of GO 95.

Accidents for Which Edison Admits that it Failed to Comply with a General Order and its Failure Led to an Injury.**Summary**

This section briefly summarizes the accidents in which Edison admits it failed to comply with a GO and that failure led to an injury. As discussed in the text of this decision, failure to comply with a GO is a violation of the GO. We therefore find violations of the GO for the following accidents based on Edison's own admission. However, we briefly summarize the accidents because some of the facts are relevant for our overall penalty discussion.

APPENDIX B-Accidents**Page 24****1. October 15, 1998 – Alhambra**

A lineman working for a cable television company's contractor contacted an energized Edison ground wire and a grounded guy wire while working on a pole. He received an electric shock and fell 15 feet to the ground, suffering fractures to his left arm and rib.

CPSD found that the portion of Edison's ground wire that the lineman contacted had damaged covering and was exposed. CPSD therefore found Edison in violation of GO 95, Rule 54.6, which requires ground wires attached to poles to be covered through their length by a suitable protective covering.

Edison claimed that it could not have discovered the problem in circuit patrols, and this area was not subject to detail inspections at the time of the accident. Edison further explains that other actions (a defective wiring of the nearby air conditioner, Pacific Bell's tapping into Edison's ground wire, and the lineman's failure to wear protective clothing) led to the accident.

2. September 19, 1999 – Simi Valley

A palm tree caught fire in Simi Valley. CPSD found that the fire was caused by the tree's contact with Edison's 16,000-volt conductor, and that Edison violated GO 95, Rule 35, which requires an 18-inch clearance between conductors of 750–22,000 volts and vegetation to be maintained at all times.

Edison states that it trimmed the tree on December 17, 1998 in accordance with established tree-trimming procedures, and on August 19, 1999, patrolled the circuit that included this area and noted no problems with the palm tree's clearance with the conductors. No structures or other property burned in this

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accident and Edison trimmed the tree after the fire was extinguished and removed it about two weeks later.

3. November 15, 1999 – Pomona

A fire damaged an apartment complex in Pomona. CPSD states the fire started when a portion of Edison's 12,000-volt conductor fell across the garages located in the alley at the rear of the complexes. CPSD found that the conductor failed at the splice from material fatigue and that Edison violated GO 95, Rules 44.1 and 44.2, which require safety factors to be maintained for conductors and equipment.

Edison states that the conductor was installed in 1960 and inspected as part of a circuit patrol on April 28, 1999. Edison further believes that CPSD speculates that metal fatigue of the conductor caused it to fail, but it is unknown what caused the failure. Because Edison conducted a circuit patrol of the area a few months before the accident, and because Edison had no actual knowledge that the safety factor had been reduced below the minimum requirement, Edison does not believe it violated the GO.

4. May 1, 2000 – Orange

A telephone company technician was working from a ladder on a pole when she came in contact with an exposed Edison ground wire. She received a shock and fell 12 feet to the ground, sustaining a cracked pelvic bone and sacrum and hand injuries. CPSD found that the ground molding covering the Edison ground wire was broken, causing the ground wire to be exposed. Therefore, CPSD alleges Edison violated GO 95, Rule 54.4 B which requires electric supply

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system ground wires attached to the surface of poles to be covered throughout their length.

Edison states that it conducted a circuit patrol of the area on May 29, 1999, but circuit patrols typically do not detect this type of problem. Edison had not yet conducted a detailed inspection of the area. Thus, Edison states that it was unaware that the condition existed. Although Edison concedes that the broken ground molding may have contributed to the accident, Edison argues that the telephone company technician's action was the primary contributing cause of the accident, because she was aware of the broken ground wire molding before the accident. Additionally, according to Edison, she did not test the pole for voltage, nor was she using proper safety equipment.

5. May 29, 2000 – Santa Fe Springs

A fire ignited in Santa Fe Springs when tree fronds from a palm tree came in contact with Edison's 12,000-volt conductor. This resulted in fault current traveling down the line, causing the conductor to fall onto a garage. Fault current then went through the metal flashing on the roof, causing fire damage to the eaves and damaging appliances inside.

CPSD found Edison violated GO 95, Rule 35, which requires that an 18-inch clearance be maintained at all times between conductors of 750–22,500 volts and vegetation.

Edison states it trimmed the tree on May 29, 1998, and inspected it on a circuit patrol again on April 16, 1999. Edison states it did not note a clearance problem in its circuit patrol. Edison disagrees with CPSD's conclusion that

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Edison did not adequately trim the tree, but instead believes that the tree may have simply grown more than expected after its last trim.

6. July 3, 2000 – Inglewood

An 11-year-old girl attending a swimming pool party came in contact with an Edison service drop wire while climbing a swimming pool slide ladder and was fatally injured. CPSD found that the service drop had only three feet of vertical clearance above the pool slide ladder, the covering on the service drop conductors had deteriorated, and the conductors were bare. CPSD stated that the last circuit patrol of the area was April 29, 1999.

CPSD alleges Edison violated GO 95, Rule 37 which requires an eight-foot vertical service drop clearance over walkable surfaces and Rule 49.4 which requires service drop conductors to be covered. CPSD also found Edison in violation of GO 165 for exceeding the one-year maximum period between circuit patrols.

Edison states that although the homeowner noticed a drooping wire, she did not call Edison to report a problem. However, two days prior to the accident, the homeowner called Edison to report a partial lights problem and then called again to say that the power had been restored.

Edison states that what caused the wire to droop above the pool slide ladder was the mechanical failure of parts supporting the wire. In addition, the weather-resistant covering had worn away in the area where the child contacted the wires. Edison states the area had not yet had a detailed inspection, and states it had no notice of the condition because it had occurred just days earlier and the homeowner did not report it.

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Edison believes it complied with GO 165's inspection requirements because it followed an annual inspection cycle (i.e., it conducted a circuit patrol in 1999 and 2000.) Moreover, according to Edison, an early circuit patrol would not have prevented the accident because circuit patrols are not designed to discover deteriorated coverings.

7. July 31, 2000 – Montclair

An employee of a wireless communication company was installing a wireless FM receiver on a street light pole when he made contact with an Edison 12,000-volt conductor with a metal strap. The employee suffered second- and third-degree burns to his forearm and left hand.

CPSD found that the Edison 12,000-volt conductors were passing directly above the street light pole with a vertical clearance of 4 feet and 5 inches. CPSD therefore alleges that Edison violated GO 95, Rule 37, which requires a minimum six-foot radial clearance between supply conductors of 750–22,500 volts and street light poles.

Edison states that at the time of the accident, the pole supporting the conductors was leaning about five degrees to the south, creating slack in the affected span. Edison states that Comcast Cable Company, which rented space on the pole, had caused the condition earlier in the year when it installed a new communication cable in this span, but had not informed Edison of the problem. Edison states it was therefore unaware of the problem and had not had the opportunity to discover it through its annual GO 165 inspection cycle. Edison also believes the injured employee's employer contributed to the accident by incorrectly representing to the employee that any electrical exposure he might

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receive in installing devices would be of a low voltage. In fact, CalOSHA cited the employer for safety violations.

8. August 8, 2000 – Apple Valley

A fire ignited in Apple Valley causing damage to about 90 feet of the property's wooden fence. CPSD found the fire was caused by a "triplex" service drop cable with insulation that was deteriorated from contact with a tree. CPSD also found that on August 6, 2000, an Edison troubleman had discovered that the insulation on the service drop had deteriorated and had made a temporary repair with the intent of replacing the triplex on August 10. CPSD alleges Edison violated GO 95, Rule 35, which requires tree abrasion conditions on circuits of 0-750 volts to be corrected by slacking or rearranging the line, trimming the tree, or placing mechanical protection on the conductor.

Edison states that the reason that the permanent repairs were scheduled for August 10 was that was the first day a four-wheel drive vehicle, which was necessary to make the repairs, was available. Edison further states that the accident was not caused by Edison's temporary repairs, but rather by the tree coming in contact with the triplex service conductor.

9. October 12, 2000 – Valencia

An Edison lineman installing new conductors on an Edison pole was injured when the new, de-energized 66,000-volt conductor he was installing came in contact with energized 16,000-volt conductors installed on the same pole one level below. The lineman suffered second- and third-degree burns to his face, hands, neck and upper torso.

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CPSD found that the Edison crew working on the installation did not de-energize the 16,000-volt conductors and only covered one of its phases with an insulated covering, even though all three phases were in the vicinity of the work area. CPSD alleges Edison violated GO 95, Rule 31.1, which requires owners and employees of electrical systems at all times to exercise due care to reduce to a minimum the hazard of accidental injury to their own or fellow employees.

Edison admits that its foreman failed to follow Edison's work rules and to exercise due care, although Edison states the foreman was properly instructed by Edison. Edison disciplined the foreman and took steps to ensure that type of accident would not happen again. Edison claimed that nothing it could have reasonably done prior to the accident would have prevented it.

10. December 14, 2000 – Palm Springs

Two Edison employees were slightly injured when the pole they were climbing broke at ground level and fell over. Investigation revealed the cause of the accident to be the failure of a corroded anchor rod located approximately 8 feet below ground.

Edison believes that there was nothing it was required to do under its inspection program to discover that the anchor rod was corroded and would fail, and that CPSD did not prove any negligent act or omission of Edison caused the accident. Edison argues that although the guy wire supporting the pole detached from its anchor and the underground portion of the pole was rotten, neither of these conditions caused the pole to break. According to Edison, what caused the pole to fall over was the unpredictable breaking of the anchor rod 8 feet below the surface, and that because of the broken anchor rod, the pole

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would have broken even if it were new. Edison states that it has investigated ways to examine underground anchor rods for corrosion, but has found no method to ascertain their condition. Edison is monitoring future incidents involving anchor rods but to date has not noted an increased rate of failure for these rods.

11. December 19, 2000 – Ventura

A fire burned 40 acres of grass and vegetation in Ventura. CPSD's investigation found that the through bolt supporting a crossarm with 16,000-volt conductors broke, causing the crossarm to be supported by only two metal flat bars. This resulted in a shock loading effect, causing the conductors to oscillate and one conductor to break from the insulators and fall to the ground. CPSD alleges Edison violated GO 95, Rules 44.1 and 44.2, which specify the minimum safety factors to be established and maintained for crossarms and pole line hardware.

Edison believes the failure of the bolt was spontaneous and unpredictable, and that it did not have the opportunity to discover or remedy the condition under its established inspection program. Edison states the last circuit patrol occurred on September 8, 2000, within the required timeframe for circuit patrols. Edison is monitoring its incident reports to determine if a pattern or increased failure of this type of bolt occurs. So far, none has been reported.

APPENDIX B-Accidents**Page 32****C. Accidents for Which Edison Admits a Violation, Causation, and a Failure to Detect/Remedy the Violation****Summary**

This section briefly summarizes the accidents in which Edison admits it violated a GO, failed to detect or remedy the violation, and the violation led to an injury. As discussed in the text of this decision, failure to comply with a GO is a violation thereof. Therefore, we find violations of the GO for the following accidents based on Edison's own admission. However, we briefly summarize the accidents because some of the facts are relevant for our overall penalty discussion.

1. April 16, 1998 – Marina Del Rey

An aboveground pad-mounted transformer failed, resulting in an explosion and fire that caused minor property damage but no personal injuries.

CPSD found the transformer failed due to low oil level caused by a corrosion leak. CPSD found the transformer was last inspected on February 26, 1998, that the inspection crew noted at that time that the transformer was leaking badly, and that actions had to be taken as soon as possible. CPSD states that Edison failed to take appropriate action. CPSD alleges that Edison violated GO 128, Rule 12.2 which requires Edison to maintain systems in a condition which will secure safety to the public and property.

Edison states that due to human error, the information stating that it was necessary to take action on this transformer as soon as possible was not recorded into Edison's on-line Automated Grid Maintenance System (AGMS), nor was an Additional Repair Request generated concerning the transformer, as required by Edison's Operation and Maintenance Manual. Edison states that even though it

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endeavors to maintain its system in a safe condition at all times, once in a while, through human error, a standard procedure is not followed. Edison also states that it has taken additional measures to emphasize to its employees the rules and procedures they must follow for proper maintenance of facilities.

2. October 5, 1998 – Ontario

A palm tree came in contact with Edison's 12,000-volt conductors causing a fire that damaged a fence, shrubs, and grass in Ontario. CPSD found that the palm tree was listed on Edison's line clearing records to be trimmed on August 18, 1998 but that Edison failed to trim the tree.

CPSD found Edison violated GO 95, Rule 35, which requires a minimum clearance of 18 inches to be maintained at all times between conductors of 750 to 22,500 volts and vegetation.

Edison states that it timely attempted to obtain permission from the property owner to remove the tree because it grew near Edison's power lines, but was unsuccessful. Edison delayed in trimming the tree so that the utility and property owner could negotiate the tree's removal. A month and one half later, the fire occurred. Edison states the fire occurred under extremely windy conditions and therefore, it probably would have occurred even if the tree had been properly trimmed (i.e., even if there had been an 18-inch clearance.) Edison also believed that the property owner's failure to grant Edison permission to

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remove the tree excused Edison's compliance with Rule 35 based on exception 2 to that rule.¹

3. August 4, 2000 – Inglewood

A service drop conductor with deteriorated covering came in contact with the metal roof of an apartment building, causing a fire. The fire caused about \$2,500 damage to a small portion of the roof of the apartment building. CPSD found that the service drop covering had deteriorated as a result of a long and continuous contact with a palm tree. CPSD also found that Edison completed a detailed inspection (which it also considers its annual circuit patrol) on July 27, 2000 but failed to record or correct the problem. CPSD alleges Edison violated GO 165, Section IV, which requires facilities be inspected to insure reliable, high-quality, and safe operation. CPSD also alleges Edison violated GO 165 for exceeding the maximum one-year period between annual patrols.

Edison acknowledges that its inspector should have discovered the service drop was rubbing against the apartment building roof during the detail inspection, but states that human error caused the oversight. Edison believes its

¹ The second exception to Rule 35 states: "Rule 35 requirements do not apply where the utility has made a 'good faith' effort to obtain permission to trim or remove vegetation but permission was refused or unobtainable. A 'good faith' effort shall consist of current documentation of a minimum of an attempted personal contact and a written communication, including documentation of mailing or delivery. However, this does not preclude other action or actions demonstrating 'good faith.' If permission to trim or remove vegetation is unobtainable and requirements of exception 2 are met, the utility is not compelled to comply with the requirements of exception 1."

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circuit patrols were timely according to GO 165 because one occurred annually (i.e., in April 1999 and July 2000).

(END OF APPENDIX B)