**Mailed 12/12/2001**

ALJ/CAB/avs

Decision 01-12-009 December 11, 2001

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

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| Order Instituting Rulemaking Into Implementation of Assembly Bill 1149, Regarding Underground Electric and Communications Facilities. | Rulemaking 00-01-005 (Filed January 6, 2000) |

# INTERIM OPINION REVISING THE RULES FOR CONVERTING OVERHEAD LINES TO UNDERGROUND

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# INTERIM OPINION REVISING THE RULES FOR CONVERTING OVERHEAD LINES TO UNDERGROUND

## I. Summary

This Decision revises the rules governing the State's program to convert overhead electric and communications distribution and transmission lines to underground. In brief, this order expands Rule 20A criteria; extends the use of rule 20A funds; allows cities to mortgage 20A funds for five years; requires standardized reporting from the utilities; improves communication between utilities and residents; and orders the creation of an up-dated Undergrounding Planning Guide.

This decision also identifies issues for a Phase 2 proceeding. In Phase 2, we will address issues that we were unable to fully cover in Phase 1 without hearings. Some issues we will explore in Phase 2 are: 1) whether or not to establish standards for conversion projects so third parties can competitively bid on projects with no compromise of quality, safety, or reliability; 2) whether incentive mechanisms are an effective cost management tool; 3) whether there should be a "breakpoint"[1] in allowing new overhead pole and line installations; or whether the current exemption process is working; 4) whether there are benefits to listing the charges for undergrounding as a line item on utility bills; 5) whether there is a fair and equitable, competitively neutral recovery mechanism for telecommunications carriers and cable companies to recover their

[1] In this context, a break point would denote where there would be no further installations of overhead lines. The granting of exemptions for new construction is frustrating the overall goals of the program.

undergrounding costs; 6) whether adjustments in the Rule 20A allocation formula is appropriate; 7) whether there are reforms to the statewide conversion program that are more properly within the legislative domain.[2]

## II. Background

On January 6, 2000, the California Public Utilities Commission (CPUC/Commission) issued an Order Instituting Rulemaking (OIR), Rulemaking (R.) 00-01-005, to look into the implementation of Assembly Bill (AB) 1149, (Aroner) (Stats. 1999, Ch. 844).[3] This legislation requires the Commission to study ways to amend, revise, and improve the rules for the conversion of existing overhead electric and communications lines to underground service and to submit a report to the Legislature by January 1, 2001. While the Commission has yet to submit that report, Commissioner Duque, the Assigned Commissioner herein, submitted his own report to the Legislature in April 2001.

## III. Tariff Rules Governing the Conversion of Overhead Lines to Underground Lines

The current undergrounding program was instituted by the Commission in 1967 and consists of two parts. The first part, under Tariff Rules 15 and 16, requires new subdivisions (and those that were already undergrounded) to

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[2] Possible reforms to suggest to the legislature include the creation of an Ombudsperson to oversee all conversion projects; designing different financing mechanisms for communities for Rule 20B and C projects including addressing the tax implications associated with these projects; the funding of an appeal process at the Commission for any aspect of the conversion project; and identifying the state's goal for the undergrounding program and determining if the current level and method of funding the program is sufficient.

[3] Hereinafter AB 1149.

provide underground service for all new connections. The utilities, both electric and telephone, then bear the costs of cables, switches, and transformer, and developers bear other costs. Parties can seek an exemption from these rules by petitioning the Commission.

The second part of the program governs both when and where a utility may remove overhead lines and replace them with new underground service, and who shall bear the cost of the conversion. The ratepayers' current share of the cost of conversion appears to be between $130 and $180 million annually. At this current rate of expenditure, it could take many decades to underground the entire state's distribution system.

Underground conversion has been undertaken by the electric and telephone companies under the jurisdiction of the Commission. Pacific Gas and Electric Company's (PG&E)[4] Conversion Tariff, Rule 20, is the vehicle for the implementation of the underground conversion programs. Rule 20 dictates three levels, A, B, and C, of ratepayer funding for the projects.[5]

| **Rule** | **Ratepayer Contribution[6] Through Utility Rates** | **Contribution of Customer Receiving Undergrounding** |
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[4] For convenience, participants and CPUC personnel refer to all of the conversion tariffs as "Rule 20" since the other electric utilities have tariffs that mirror PG&E's Rule 20.

[5] Like all other utility investments, the utility does not collect from the ratepayers on undergrounding projects until the project is put into service. Under Rule 20, the Commission authorizes the utility to spend a certain amount of money each year on conversion projects, the utility records the cost of each project in its electric plant account for inclusion in its rate base upon completion of the project. Then, the Commission authorizes the utility to recover the cost from ratepayers until the project cost is fully depreciated.

[6] All percentages are gross approximations.

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| 20A | 80% plus | cost from street to residence |
| 20B | 20% | 80% |
| 20C | de minimus | 100% |

In summary, under Rule 20C, any electric customer may convert to undergrounding as long as it reimburses the utility for all costs, less the estimated net salvage value and depreciation of the replaced overhead facilities. The customer must make a non-refundable advance to the utility equal to the cost of the underground facilities, less the estimated net salvage value and depreciation of the replaced overhead facilities.

Rule 20B provides limited ratepayer funding for the cost of an equivalent overhead system, and any work on overhead facilities, but the balance of the costs, including cables, conduits, transformers, and structures, must be paid by the customer requesting undergrounding. Rule 20B projects must 1) be agreed to by all property owners served by the overhead lines; 2) include both sides of the street; and 3) extend for a minimum footage. Additionally, the lines must be along public streets and roads or other locations mutually agreed upon.

Under Rule 20A, however, the utility ratepayers bear most of the costs of the undergrounding conversion. Rule 20A funds are only available when undergrounding is "in the public interest" for one or more of the following reasons:

a. Such undergrounding will avoid or eliminate an unusual heavy concentration of overhead electric facilities;

b. The street or road or right-of-way is extensively used by the general public and carries a heavy volume of pedestrian or vehicular traffic ; and

c. The street or road or right-of-way adjoins or passes through a civic area or public recreation area or an area of unusual scenic interest to the general public.

The determination of "general public interest" under these criteria is made by the local government, after holding public hearings, in consultation with the electric utility. Given the allocation of costs under Rule 20A and the delineation of serving the public interest, it should be of no surprise, that the demand for the Rule 20A funds is high and the potential for controversy is great.

## IV. Procedural History

AB 1149 required the Commission to study ways to amend, revise, and improve the rules for the conversion of existing overhead electric and communications lines to underground. We were specifically asked to study ways to: 1) eliminate barriers to undergrounding and to prevent uneven patches of overhead facilities; 2) enhance public safety; 3) improve reliability; and 4) provide more flexibility and control to local governments.

On January 6, 2000, the Commission issued R.00-01-005 to implement this mandate. In R.00-01-005, the Commission process focused on hearing from interested parties. This was carried out in two ways. Initially, the Energy Division (ED) convened workshops to encourage discussion among parties on the required AB 1149 issues as well as to discuss which other issues should be addressed. Concurrently, eight public participation hearings were held throughout the state. We proceeded without hearings in this phase of our rulemaking in order to meet the legislative deadline, and to more quickly address those non-controversial actions the Commission could take in order to improve the undergrounding process. We defer to phase 2 of this rulemaking, the Commission's ruling on such matters as third party bidding, incentive mechanisms, unbundled charges on the utility bill, and telecommunications recovery mechanisms because these clearly require hearings. Overtaking events

in the electric industry required the Commission to manage and control its resources such that these important issues had to be deferred to a later phase.

### A. Workshops

Attached to the initiating OIR, was a White Paper prepared by the ED. Respondents and interested parties were directed to submit pre-workshop comments on the White Paper, as these comments were going to help shape the scope of the workshops. ED held eight days of workshops where the attendees[7] included respondent utilities and telecommunications companies, as well as representatives from local governments, interest groups, and concerned citizens. The topics covered in the workshops included the following: 1) identifying the goals of the undergrounding program; 2) quantifying the costs and benefits of undergrounding; 3) identifying the resultant effects of undergrounding on telecommunication and electric competition; 4) exploring the impacts of completion delays; 5) identifying potential tariff rule changes to Rules 20 and 15; and 6) quantifying the funding and rate impacts of changes.

Following the ED workshops, participants were invited to submit comments on what issues the Commission should include in its report to the Legislature. The list of those who commented can be found in Attachment B.

### B. Public Participation Hearings

Concurrently with the ED workshops, the Assigned Commissioner and Administrative Law Judge (ALJ) held eight Public Participation Hearings (PPHs) in San Diego, Los Angeles, Fresno, Sacramento, Eureka, Monterey/Carmel, Oakland/Berkeley, and San Francisco. The CPUC jurisdictional utilities and

[7] The list of workshop attendees can be found in Attachment A.

phone companies disseminated notice of these PPHs by way of billing inserts in their customers' monthly utility bills. Over 140 individuals and organizations presented comments orally at these PPHs and an equal number of people submitted written comments in response to the billing insert notices of the PPHs. These hearings were valuable as a tool to hear from citizens, utility workers, consumer advocacy groups, elected local officials, public works officials, and the utilities (both electric and telecommunication). In summary, the overwhelming percentage of participants spoke in favor of continuingbut improving — the undergrounding program. The major concerns raised by the speakers were the cost of conversion projects and the equitable issue of how to balance those who receive the benefits of undergrounding against those who pay the cost. Other concerns were put forward concerning construction delays associated with the start and completion of underground conversion projects.

More particularly, the citizens talked about their desire to see more of their own neighborhoods and communities undergrounded for safety, reliability, and aesthetic reasons. The most frequent concern raised was the fear that downed power lines created fire and safety hazards as well as contributing to loss of service.

Other citizens discussed equitable issues. Some people complained that they will pay their entire lifetime as ratepayers for undergrounding, yet never live in a neighborhood that will qualify for Rule 20A funding. Other participants brought up the significant demographic and social equity issues that are involved in a city's choice as to what neighborhoods are chosen for Rule 20A funding.

Mayors, city council members, fire chiefs, public works directors, and other city officials attended and advocated giving the local governing agencies

more authority to implement undergrounding within their jurisdiction. Not everyone, however, was in favor of giving the cities more flexibility and control over Rule 20A funds. The utilities and consumer advocates expressed a widely held worry that the cities would direct the funds to the benefit of neighborhoods where influential private individuals resided.

Numerous participants, from all of the groups represented at the PPHs — especially the local governments — voiced their opinion that more undergrounding could be accomplished within the current ratepayer allocations if competitive bidding was allowed for the design, engineering, and construction of undergrounding projects. The utilities' primary expressed concern with competitive bidding was ensuring quality control since the utility is responsible for maintenance, safety, and reliability of the project once it is put into service.

The consumer advocacy groups wanted the Commission to consider the temporal, distributive, and demographic inequities involved in the current Rule 20A criteria, as well as the equitable issues that would arise with many of the proposed revisions to the criteria. In summary, their message was that since Rule 20A and B funds come from all distribution ratepayers throughout the state, the funds must be used for the benefit of the public good, and not for the enhancement of private property.

The utilities themselves, though present at all of the PPHs, did not participate as speakers. Instead, they reserved their suggestions for the written comments.

Following the final PPH, a Preliminary Summary of Issues was distributed by hand and via mail. Parties were invited to submit comments on the summary, as well as to propose suggested amendments to the existing underground rules. A list of those filing comments is included as Attachment B.

### C. Letter to the Legislature in Lieu of a Report

On April 24, 2001, Commissioner Duque submitted a letter to every legislator with his recommendations and a summary of the study results. This is included as Attachment C. The letter proposes four recommendations for legislative consideration and lists actions the Commission could undertake quickly to improve the current UG program. Finally, it highlights the topics ripe for Commission exploration in phase 2 of this proceeding.

## V. Positions of the Parties

After reviewing the draft workshop report prepared by ED, the transcripts from the eight PPHs, and the comments and reply comments submitted by the participants, we can generalize some of the recurring themes expressed. In brief, the municipalities want more autonomy; the utilities want to keep control to ensure that local control is exercised within the framework of a statewide policy and that there is quality control on the projects; and the consumer advocates want 1) to insure demographic and social equity; 2) to explore cheaper ways to achieve undergrounding; and 3) to achieve the aesthetic advantage, along with the perceived safety and reliability benefits — but at no additional rate payer cost.

### A. General Characterization of Parties' Positions

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| Munis want more control |
| Utilities want control |
| Consumers want more beauty at no more cost |
| Others want a chance to do the work at cheaper cost |

This section represents only an overview and does not attempt to capture all of the variations or nuances presented by individual participants. It

should also be recognized that positions evolved during this process. For example, many individuals initially advocated increasing the amount ratepayers would contribute to the statewide conversion program, but by the last round of comments, there was almost no promotion of increasing ratepayer contributions. Instead, the emphasis shifted to using the current allotment of funds in a more efficient and cost-effective manner. The overview below is intended to provide a flavor of the debate, rather than a definitive presentation of each party's position.

Many parties, in addition to participating in the proceeding and providing comments, also filed comments and replies to the Draft Decision.[8] The input furnished in these papers provided the Commission with further guidance on the wording and issues for the interim order, and presented additional topics for consideration in Phase 2. Many of the suggestions from the comments and replies are incorporated in this revised decision. Some of the recommendations were echoed by numerous parties, while others were proposed by a single party. Because of the large number of comments and replies, specific reference to the author of the adopted changes was not practical.

### B. Municipalities

Oakland: On June 19, 2000, Oakland filed a Petition to Amend Electric Tariff Rule 20 (Rule 20) that set forth proposed changes to expand the criteria for Rule 20A (20A) projects and give the local governing agencies more flexibility and control.[9] Specifically, Oakland proposes relaxing and expanding the existing

[8] The list of those filing comments and replies in on pages 26 and 27.

[9] Many parties filing comments focused on Oakland's Petition as a springboard for their comments. The Commission did not rule on the Petition, but indicated that it would consider the issues raised in the Petition in its report.

20A criteria to include public safety, service reliability, economic development, and aesthetics, and to give local agencies sole discretion for the allocation of 20A funds within their jurisdiction.

Oakland also advocates 1) annual reporting requirements for the utilities; 2) regular meetings between utilities and the local governments in their jurisdiction; 3) the creation of undergrounding districts; 4) an Ombudsperson position for problem-solving; 5) allowing local governments to accrue 20A funds over several years; and 6) using redevelopment money towards placing utilities underground.

Anaheim: Anaheim has its own local publicly owned utility, and therefore is in a unique posture relative to California's other cities. Anaheim suggests that the Commission require the utilities to participate in programs in communities (such as Anaheim) in which it has no retail customers, but has overhead facilities that serve and benefit its customers in adjoining communities. In addition, Anaheim recommends that the legislature adopt alternative funding mechanisms to provide an ongoing and predictable source of funds for conversion projects.

Berkeley: Berkeley, like its neighbor Oakland, proposes that the Commission add service reliability, economic development, aesthetics, and public safety to 20A criteria. Berkeley suggests more flexibility so 20A funds could be used in the following ways: 1) to assist low income residents with their share of costs; 2) to subsidize low-income 20B projects with 20A funds, with a lien on the property to repay the expended 20A funds at the time of sale; 3) to apportion 20A funds among the conversion recipients with residents paying a proportional share based on their economic ability, so that residents who can pay more, will; 4) to put together city-wide plans for undergrounding, subject to

Commission approval; and 5) to use 20A funds for lateral extensions, panel conversions, design and inspection services, street light conversions, undergrounding of transformers, and engineering studies. In addition, Berkeley recommends that the Commission promote cooperation and coordination between electric and telecommunications utilities, audit utilities' records to determine how conversion funds were spent and to identify delays, and asks the legislature to increase sources of funding for conversion projects.

San Diego: San Diego already has a funding mechanism in place to provide for long term planning and defined undergrounding projects. Based on its experience with undergrounding projects, San Diego urges the Commission to amend 20A criteria to 1) allow cities to make 20A determinations and prioritizations without any veto by the utilities; 2) permit cities to mortgage future 20A allotments as cities see fit; 3) authorize cities to use a competitive bidding process for the design and construction aspects of the project; and 4) build in incentives for utilities to undertake and complete projects in a timely fashion.

City and County of San Francisco: The City and County of San Francisco advocates more accountability from the utilities for maintaining adequate staffing for undergrounding projects and adhering to schedules; having the utilities spend all money allocated for undergrounding; and giving more authority and discretion to the local governing body to make 20A determinations and prioritizations.

City of San Ramon: The City of San Ramon proposes that the Commission 1) review the actual costs of conversion projects; 2) allow 20A funds to be leveraged for implementing larger projects that realize economies of scale; 3) encourage competitive bidding for the design and construction of conversion

projects — with Commission guidelines/standards; 4) investigate the equity of having transmission customers contribute to undergrounding; 5) allow the transfer of 20A funds between cities and counties, with a repayment plan; and 6) establish a "breakpoint" for requiring conversion of burdened overhead lines to underground.

League of California Cities: The League supports the municipalities' position that local governments should have more control to prioritize projects based on public safety, aesthetic, and economic and community development considerations. In addition, the League proposes the following changes: 1) 20A funds should be allowed for design and inspection expenses, street light conversion, and undergrounding of transformers and can be leveraged with other funds, including public and private sources; 2) increase cost effectiveness through innovative design and construction practices; 3) require the utilities and cities to meet once a year (including telecommunication utilities) to discuss potential and ongoing projects; 4) direct the utilities to send annual reports on undergrounding projects to cities and CPUC; 5) allow cities to mortgage allocations for up to five years; and 6) provide incentives to all utilities to adhere to undergrounding schedules.

### C. Utilities

PG&E, Southern California Edison Company (Edison), and San Diego Gas & Electric Company (SDG&E) filed Joint Comments, raising the concern that a "reasonable balance [must] be maintained between gaining the advantages of underground service and controlling expenditures so that unreasonable burdens do not fall upon the general ratepayer." (67 CPUC 490, 510.) In this context, the utilities were cautious about giving the cities more flexibility and control and cautioned that public funds should not be spent purely for private benefit.

In light of these considerations, the utilities rewrote 20A expanding the public interest criteria to include collector roads and intersecting block patches. The utilities also suggested that the Commission explore the following: 1) revisiting the current allocation formula; 2) allowing 20A funds to fund 20B project engineering costs, with the 20A account reimbursed if the project is completed, or charged against the 20A account if the project is abandoned; 3) allowing cities to leverage three years worth of allocation; 4) allowing 20A funds for street light conversions that are owned by the utilities; 5) addressing cost-recovery ratemaking for telecommunications and cable companies so that their funding constraints do not cause any delays to conversion projects; 6) encouraging cities to work with Rule 20B and C neighborhoods to coordinate Rule 20A projects; 7) having regular meetings between utilities and cities; and 8) when undergrounding projects are underway, having meetings to establish a completion date, discuss delays, and meet and confer on any issue thwarting timely completion.

### D. Consumer Advocacy Groups

CAUSE: California Alliance for Utility Safety and Education (CAUSE) wants hearings on complete line life cycles so consumers can know whether the costs of undergrounding are justified on safety and reliability grounds. CAUSE also suggests that 20A criteria should be expanded to include schools, sensitive areas, tree-lined streets, and historic districts; urges a new Planning Guide;[10] the

[10] Many participants favor the rewriting and reissuance of the Underground Utilities Conversion Planning Guide, prepared in 1996 by the League of California Cities, PG&E, and Pacific Bell (PacBell). The original authors have already agreed to collaborate and write a new, updated version of the Planning Guide that is more helpful to cities and residents.

creation of an Ombudsperson program; the development of an audit procedure; and a review of any utility waivers on undergrounding new construction projects.

CCAE and FUND: Citizens Concerned About EMFS (CCAE) and Fund for the Environment (FUND) advocate the following: 1) require the utilities to keep data on undergrounding costs, life cycle costs, service reliability, and safety; 2) allow local governments to be the sole determiners of what projects are in the "general public interest;" 3) approve the merger of 20A and B funds as long as they are distributed fairly to the rich and poor neighborhoods; 4) permit cities to engage in competitive bidding and to choose lowest bidder; and 5) the legislature should promote alternative sources of financing.

The Utility Reform Network (TURN), California Small Business Roundtable (CSBRT), and California Small business Association (CSBA), filed a Joint Comment and Joint Reply: In its comments TURN, CSBRT, and CSBA suggest having the utilities identify the monthly charge for undergrounding on each customer's bill as a separate line item and allocating the conversion costs on a cents per kilowatt hour basis. In general, they reject any proposals that could lead to cost increases for ratepayers, or break down the critical differences between 20A and B projects [public interest], and instead encourage the Commission to focus on ways to reduce costs and improve accountability.

OFFICE OF RATEPAYER ADVOCATES (ORA): ORA recommends a moratorium on any rate increase in this current time of high electric rates, and in fact, suggests that conversion projects should be tied to rates — when rates are low, conversion can go forward, when high, impose a moratorium. ORA voices support for the Commission considering the following proposals that were suggested by others: 1) establishing a flat universal 20% credit for 20B projects;

2) revamping revenue allocation formulas so that 20A funds are based on overhead meters; 3) allowing cities to trade allocated funds with a referendum vote; 4) requiring a city to use, or lose, designated funds within a five year period; 5) using a generation-based collection method for funds; 6) giving new communities a credit [since they have already paid for their own undergrounding]; 7) permitting affected telecommunication carriers to seek rate recovery for undergrounding as a limited exogenous expense; 8) having the Commission promote coordination and cooperation by establishing loose guidelines; 9) providing an appeal process for delays and performance problems, and some redress for citizens affected by delays in 20B and C projects; and 10) authorizing competitive bidding for projects as long as the utilities have control of the design and specifications and all projects are subject to utility review and approval.

### E. Telecommunications

PacBell; California Cable Television Association; AT&T Communications of California, Inc. and Worldcom, Inc.; and Verizon California Inc., and Verizon West Coast: Each of the above telecommunications and cable companies submitted individual comments. However, the sum and substance of the individual comments was that the Commission needs to devise a competitively neutral compensation mechanism to ensure that all service providers that incur conversion costs are compensated.

### F. Others

Comments from others, including private citizens of community and neighborhood groups, ranged from concerns over downed power lines in fire and earthquakes disasters and their impediment to emergency response, to advocating competitive bidding for the engineering, design, and construction of

conversion projects. Additional issues raised by these commenters include allowing 20A money to be pooled with other public and private funds; authorizing the increase of 20B funding from 20% to 80%; allowing 20A funds to seed 20B projects; allowing ratepayer money to seed the first 25% of any conversion project (A, B, or C); and exploring alternative methods of financing conversion projects. Many questioned why overhead pole and line installation is still continuing, and in fact, proceeding at a faster pace than conversion projects, which results in a sum loss each year of undergrounding. In addition, some inquired into whether 20A funds were ever intended for purely residential streets, or whether the primary purpose was always public interest.

## VI. Discussion

With very few exceptions, the public favors undergrounding for safety, reliability, aesthetic benefits, and property value increases. The value of the workshops and the PPHs was to affirm the reasonableness of the current undergounding program, and to identify some non-controversial measures that would immediately improve the current program administration of undergrounding. While some parties initially proposed increasing the funding for conversion projects once the energy crisis took hold, there was no further discussion of increasing ratepayer contributions to the program. It makes sense to revisit this topic after the Commission obtains better cost data in phase 2 of this proceeding.

The conversion of existing overhead lines to underground is historically expensive. The alleged cost is $1 million per mile, and under the current funding

mechanism, 130 to 180 miles are converted each year.[11] At the current rate, it will take many, many decades to underground the entire state's distribution system. In phase 2 of this proceeding, we will evaluate the cost data and explore whether or not more undergrounding could be performed if we adopted incentive mechanisms or third party bidding. These issues could not be resolved without hearings.

Currently, the state is facing an energy crisis, with ratepayers seeing increased electric and gas bills. The Commission, therefore, is interested in ways to improve the existing system without increasing the cost to ratepayers. Although the actions contemplated in this decision would not increase the current funding amounts, it is likely they will increase the costs and rates; but only within the limits of the existing funding level.

### A. Commission Recommendations

Following the year-long study, the Commission determines that the underground conversion program should continue. Because the study did not include any evidentiary hearings, the Commission proposes a two-phase strategy for improving the current undergrounding program. In this order we propose reforms that can be enacted based on the information already in the record of the proceedings. We reserve for phase 2, those actions or proposed changes that could benefit from evidence, testimony, and cross-examination.

What we propose in this order is to 1) expand the Rule 20A criteria; 2) extend the use of rule 20A funds by allowing cities to a) leverage funds with

[11] The actual cost per mile of undergrounding conversion projects is disputed and the Commission has not held evidentiary hearings to reach a consensus on this issue. This is an issue ripe for consideration in Phase 2.

20B funds and b) mortgage 20A funds for five years; 3) improve the communication between the utilities and residents; 4) require standardized reporting from the utilities; and 5) order the creation of an up-dated Undergrounding Planning Guide.

**1. Limited Expansion of the Definition of the Public Interest:**

Because the demand for Rule 20A funds is greatest, there was much focus on this particular rule. Much of the debate and discussion among interested parties was finding the right balance between creating expanded options for cities to define public interest projects versus imposing those program costs on ratepayers. Consumer groups were concerned with granting cities too much freedom for public interest programs because they might by applied unfairly. As a result of the debate, it is reasonable to expand Rule 20A criteria to include a few more areas within the definition of public interest. It makes sense to allow for the application of Rule 20A funds for arterial streets or major collectors.[12]

**2a. Increased Leverage of 20A and 20B Funds:**

In response to the cities' concerns about wanting to accomplish more undergrounding with the same money, it makes sense to allow Rule 20A funds to be used in combination with Rule 20B funds. The value of creating this flexibility might be to allow the following to happen: Rule 20A funds could be used to seed Rule 20B projects;[13] utility owned streetlights and transformers

[12] As defined in the Governor's Office of Planning and Research (OPR) Guidelines used by cities and counties as a reference tool for drafting General Plans.

[13] Rule 20A funds could even be used to help fund the required initial engineering study for Rule 20B projects, with the Rule 20A funds to be reimbursed if the conversion

*Footnote continued on next page*

could be undergrounded; the amount of money apportioned among all affected homeowners could be reduced; and low-income property owners could be subsidized.[14]

### 2b. Allow Cities to Mortgage Rule 20A Allocations For Up to Five Years

Cities are currently allowed to mortgage their undergrounding allocations for three years. Cities have argued that extending that to a five year period would increase the number of large projects they could pursue. Once a city has established a master undergrounding plan and identified a specific project area, the city may mortgage its allotment for a total of five years, whether the funds are retroactive or prospective.

### 3. Improve Communication on the Status of Undergrounding Projects:

Almost all of the non-utility participants expressed frustration with the current program. Parties felt that they were unable to tap into a knowledgeable utility person who could tell them about project delays, or where they were in the queue, let alone general information about the program. It makes sense that each utility would provide a staff person to help customers and local officials understand the conversion process. Therefore, the involved utility and the city shall meet at least once every six months[15] with residents who are in the queue for conversion projects and meet at least once every other month

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project goes forward. Property owners will be asked to advance a fixed percentage of the initial engineering study (the amount of the percentage to be determined in Phase 2) with the owners reimbursed when the project goes forward.

[14] The city would then have a lien on the property to recover the rule 20A funds when the property is sold.

[15] Or more often if requested by the utility, city or residents.

with residents once a conversion project is under way to insure that there is a continuing dialogue concerning the progress of the project, anticipated and unanticipated delays, and a completion date. The city will facilitate the meetings by providing a venue and noticing the affected residents. Once the utility commits to a conversion project, within thirty days of the commitment, the utility must appoint a "point" person who will be readily available to answer questions from residents and the local government and be present at the monthly progress meeting. This access to information and the status of projects will go a long way towards helping customers understand the program and how it is going to affect them. In addition to the above in-person meetings and point person, the utility will also provide a web site for each committed conversion project that will be updated regularly to provide information on the progress of the project.

**4. Improve the Collection of Cost Data Through Standardized Reporting:**

One of the surprises that surfaced during the course of workshops and PPHs was the lack of data on the program. This severely limited the options for Commission consideration in this phase of the proceeding. Among the categories of data lacking were: per mile data, data about the correlation of undergrounding and reliability, and the tracking of the varying technologies that had been implemented. Without this data, the Commission could not pursue such policy determinations as to whether or not third parties could perform undergrounding cheaper, if undergrounding improves reliability, or which technologies should be pursued because they achieved the greatest cost/benefit.

Therefore, the three electric investor owned utilities (utilities) must meet and confer and design a standardized reporting mechanism. Many interested parties, including cities, want to have some input in the design of this

mechanism. Therefore, to begin the process, the utilities shall schedule a workshop, within 90 days of the date this decision issues, and invite the service list to attend. Following the workshop, the utilities, along with Commission staff, will meet, within 90 days of the workshop, and work together to design a standardized data collection and reporting system incorporating ideas from the workshop. Following the meet and confer, the utilities shall file a Joint Statement setting an agreed upon data tracking mechanism that incorporates the key points specified in this order.

This standardized form or mechanism, applicable to all utilities involved in undergrounding conversion projects, will keep data on each circuit, including the percentage of overhead and underground lines, what technology is used, and the age of the equipment. The utilities will then file the data annually with the Commission Energy Division, by March 31, and use the data as the basis for annual reports to the local governments regarding current and pending Rule 20A projects in their local. The goal of the data tracking and standardized reporting is to allow the utilities, the Commission, and interested parties to track the safety, service reliability, and lifetime costs for both overhead and underground projects and make valid and reliable comparisons between systems.

### 5. Improve Coordination Among the Utilities, the CPUC, Municipalities and the Residents Through an Updated Undergrounding Planning Guide

Pacific Gas & Electric, Pacific Bell, and the League of California Cities[16] are ordered to meet and confer on the drafting an updated Undergrounding Planning Guide, and report to the Energy Division as to when the update could be available, both in hard copy, and on the CPUC website.[17]

Such a resource would be valuable to everyone in understanding the process, who to contact, and how the program flows. Much of the updating effort is already underway because of the workshops.

## B. Issues for Phase 2

A number of topics were raised as being significant to improving the current underground conversion program, but the Commission was not able to rule on them at this time. As a result, the Commission will schedule hearings to create a record to develop recommendations on such policy matters as incentives versus competitive bidding, etc. Therefore, the assigned ALJ will notice a Prehearing Conference (PHC) in this proceeding for the purpose of scheduling evidentiary hearings and dates for the service of Phase 2 testimony. The subjects that will be explored in Phase 2 will include, but not be limited to, the following:

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[16] Many cities expressed an interest in participating in the planning of the updated Guide, but the Commission is assured that the League of California Cities will adequately represent the interests of its member cities in this process.

[17] PG&E participated in the drafting of the 1996 Underground Utilities Conversion Planning Guide and represented during the OIR that it was willing to participate in a new draft. If the other electric utilities (SDG&E and or Edison) want to cooperate in the new draft, they are welcome to coordinate their participation with PG&E, PacBell and the League.

- whether or not to establish standards for conversion projects so that third parties can competitively bid on projects with no compromise of quality, safety, or reliability;
- whether incentive mechanisms are a better way to manage costs and encourage timely completion of projects;
- investigate whether there should be a "breakpoint" in allowing new overhead pole and line installation or whether the current exemption process is working;
- explore the value of charging for undergrounding via a line item on utility bills; and
- the creation of a fair, equitable, and competitively neutral recovery mechanism for telecommunications carriers and cable companies to recover their undergrounding costs.
- whether adjustments in the Rule 20A allocation formula is appropriate.
- are there reforms to the undergrounding program that are more properly within the legislative domain.

## VII. Public Review and Comment

The draft decision of the Administrative Law Judge in this matter was mailed to the parties in accordance with Pub. Util. Code §311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on October 24, 2001, and reply comments were filed on November 16, 2001.

Comments were received from City of Berkeley, California Alliance for Utility Safety and Education (CAUSE) California Cable Television Association and AT&T Communications of California Inc. (CCTA/AT&T), Citizens Concerned About EMFS and Fund for the Environment (CCAE/FUND), County of Los Angeles, City of Del Mar, League of California Cities, Town of Los Altos Hills, 19th Street Neighbors, City of Oakland (Oakland), Office of Ratepayer

Advocates (ORA), Pacific Bell Telephone Company, Polaris Group, Pacific Gas and Electric Company (PG&E), Margit Roos-Collins, City of San Ramon, San Diego Gas & Electric Company (SDG&E), City and County of San Francisco, Southern California Edison Company (Edison), The Utility Reform Network (TURN), and Verizon California Inc.

Reply comments were received from CAUSE and CCAE, CCTA/AT&T, Oakland, ORA, PG&E, SDG&E, Edison, and TURN.

## Findings of Fact

1. On January 6, 2000, the Commission issued an Order Instituting Rulemaking (OIR.) 00-01-005, to implement AB 1149. AB 1149 required the Commission to study ways to amend, revise, and improve the rules for the conversion of existing overhead electric and communications lines to underground service.

2. PG&E's Tariff Rule 20 is the vehicle for the implementation of the underground conversion program.

3. As part of the OIR, The Commission conducted workshops, held public participation hearings, and received comments and reply comments from participants.

4. Following the completion of the initial phase of the study, the Commission determined that the conversion program should continue.

5. The reforms set forth in this interim order are reforms that can be enacted based on the information already in the record of the proceedings.

6. Suggested changes that could benefit from evidence, testimony, and cross-examination will be explored in Phase 2 of this proceeding.

## Conclusions of Law

1. We will adopt a model Tariff Rule 20 that will amend, improve, and revise the current rules for conversion of overhead lines to underground.

2. PG&E, SDG&E, and SoCal Edison should meet and confer to draft a model Tariff Rule 20, that will be applicable to the three electric utilities, and incorporates the key changes in the attached Interim Order.

## INTERIM ORDER

**IT IS ORDERED** that:

1. Pacific Gas & Electric Company (PG&E), San Diego Gas & Electric Company, and Southern California Edison Company immediately shall meet and confer to draft a model Tariff Rule 20, that will be applicable to the three electric utilities, and incorporates the key changes in this Interim Order.[18]

2. The utilities shall file an Advice Letter with the Energy Division, within 30 days of this order, setting forth the proposed Model Tariff Rule 20. Parties will then have an opportunity to comment on the proposed Model Rule. The Model Rule shall include the following:

- expanding Rule 20A criteria to includes arterial streets or major collectors;
- allowing Rule 20A funds to be used in combination with Rule 20B funds to promote more conversion projects; and
- allowing cities to mortgage Rule 20A allocations for up to five years.

[18] If possible, the Commission would like the three utilities to file a Joint Recommendation as to the Proposed Model Tariff Rule 20, but if the utilities cannot agree on a joint proposal, separate proposals will be accepted.

3. The utilities shall create a formalized process whereby a point person at each of the utilities will meet, at least once every six months, with the city and residents who are in the queue for conversion projects, and meet, at least once every other month, with residents and the city once a conversion project is under way. It is incumbent upon the utility to insure that there is a continuing dialogue concerning the progress of the project, anticipated and unanticipated delays, and a completion date.

4. The utilities shall meet and confer and design a standardized reporting mechanism by which all utilities involved in conversion projects will keep data on each circuit, including the percentage of overhead and underground lines, what technology is used, and the age of the equipment, and file the data annually with the Commission Energy Division. Before the meet and confer, the utilities will schedule a workshop to solicit input from interested parties as to what should be contained in this data collection and reporting system. The goal of the data tracking and standardized reporting is to allow the utilities, the Commission, and interested parties, to track the safety, service reliability, and lifetime costs for both overhead and underground projects and make valid and reliable comparisons between systems. Following the meet and confer, the utilities shall file a Joint Statement setting an agreed upon data tracking mechanism that incorporates the key points specified in this order.

5. PG&E, Pacific Bell, and the League of California Cities shall meet and confer on the drafting of an updated Undergrounding Planning Guide, and

report to the Energy Division as to when the update will be available, both in hard copy, and on the CPUC website.[19]

6. The Interim Order revising the rules governing the state's program to convert overhead electric and communications lines to underground will stay in place until further order of the Commission.

This order is effective today.

Dated December 11, 2001, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
RICHARD A. BILAS
CARL W. WOOD
GEOFFREY F. BROWN
Commissioners

[19] PG&E participated in the drafting of the 1996 Underground Utilities Conversion Planning Guide and represented during the OIR that it was willing to participate in a new draft. If the other electric utilities (SDG&E and or Edison) want to cooperate in the new draft, they are welcome to coordinate their participation with PG&E, Pacific Bell and the League.

**ATTACHMENT A**
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Summary of workshop participants

Partial List of Participants in Undergrounding Workshops [OIR 00-01-005], including CPUC staff.
(We have the sign up sheets for 6 of the 8 workshops)

| **Name** | **Organization (if any)** |
|---|---|
| Bill Adams | |
| Jack Biggins | California Cable Television Association (CCTA) |
| Garth Black | Cooper, White, & Cooper and 7 Local Exchange Carriers (LECs) |
| Scott Blaising | California Municipal Utilities Association (CMUA) |
| Ellenmarie Blunt | GTE California |
| Derik Broekhoff | City of San Diego |
| Lee Burdick | Prima Legal, counsel for Cox Communications California |
| Patricia Butcher | SCWC (Bear Valley Electric District) |
| Manuel Camara | Pacific Gas and Electric Company (PG&E) |
| John Cannon | City of San Jose |
| John Capstaff | Pacific Bell |
| Jerry Carlin | City of Berkeley |
| Larry Chow | GTE |
| Rocco Colicchia | PG&E |
| John Dawsey | San Diego Gas & Electric Company (SDG&E) |
| Holly Duncan | |
| Connie Easterly | Utility Design Inc. (UDI) |
| Dennis Evans | Pacific Bell |
| Johan Fadeff | City of San Francisco—Department of Public Works |
| Gerald Finnell | City of Del Mar |
| Janice Frazier-Hampton | PG&E |
| Peter Frech | Citizens Concerned About Electro-Magnetic Fields (EMFs) |
| Margot Friedrich | GTE |
| William Gaffney | Energy Division, CPUC |

**ATTACHMENT A**
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|---|---|
| David Geier | SDG&E |
| Eileen Golde | 19th Street Neighbors |
| Ellen Stern Harris | Fund for the Environment |
| Michael Herz | PG&E |
| Elroy Holtman | City of Berkeley |
| Louis Irwin | Office of Ratepayer Advocates (ORA), CPUC |
| Ed Jeffers | Modesto Irrigation District (MID) |
| Karen Johanson | California Alliance for Utility Safety and Education (CAUSE) |
| Larry E. Jones | Southern California Edison (SCE) |
| L.J. Keller | |
| Caroline Kelsey | SDG&E |
| Tom Kimball | MID |
| Chuck Lewis | PG&E |
| David K. Lee | Energy Division, CPUC |
| Carl Lower | The Polaris Group |
| Lesla Lehtonen | CCTA |
| Daniel Markels | AT&T |
| Frank Marsman | SDG&E |
| Dan McLafferty | PG&E |
| Michael McKinney | SCE |
| Karen Norene Mills | California Farm Bureau |
| Jacqueline Mittlestadt | City of San Diego, City Attorney |
| Bill Monsen | MRW and Associates |
| Margie Moore | Sempra Energy |
| John Morgan | San Diego Office, CPUC |
| Robert Munoz | MCI World Com |
| Jeff Nahigian | JBS Energy & TURN |
| Steve Nelson | SDG&E |
| Todd Novak | Safety Branch, CPUC |
| Kevin O'Connor | SCE |
| Lauri Ortenstone | Pacific Bell |
| Virginia Oskovi | City of San Diego |
| Al Oxonian | City of San Jose |
| Carlos Parente | SCE |
| Richard Pontius | City of Oakland |

**ATTACHMENT A**
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| | |
|---|---|
| Roger Poynts | UDI |
| Jonathan Radin | Citizens Communications |
| Steven Rahon | Sempra Energy |
| Mejgan Raouf | CPUC |
| Wayne Reimer | AT&T |
| Margit Roos-Collins | |
| Cindy Sage | Sage Associates |
| Gayatri Schilberg | JBS Energy for TURN |
| Brian Schumacher | Energy Division, CPUC |
| Glenn Semow | CCTA |
| Dave Siino | SDG&E |
| John Sirugo | SCE |
| Paul Stein | TURN |
| Michael Sullivan | Friends of the Urban Forest |
| Steve Sullivan | SCE |
| Susan Sutton | 19th Street Neighbors |
| Clayton Tang | Energy Division, CPUC |
| Tina L. Taverner | County of Orange |
| Jeff Trace | SDG&E |
| Tom Trimbur | City of San Francisco |
| Joan Tukey | CAUSE |
| Hal Tyvoll | CAUSE |
| David Van Iderstein | SCE |
| Greg Walters | SDG&E |
| Janine Watkins-Ivie | SCE |
| Dan Weaver | San Francisco Beautiful |
| Steven Weissman | CAUSE |
| Dick White | City of Berkeley |
| Tony Wilson | SCE |
| Bob Woods | SCE |
| Esmerelda Yans | City of San Diego |
| Jason Zeller | ORA, CPUC |
| Phil Zellers | SDG&E |
| Mark Ziering | Energy Division, CPUC |

**(END OF ATTACHMENT A)**

**ATTACHMENT B**

Summary of those who filed written comments

Cities:
Oakland
Anaheim
Berkeley
San Diego
San Francisco
San Ramon
League of California Cities

Electric Utilities:
Pacific Gas and Electric
Southern California Edison
San Diego Gas and Electric

Telecommunications Utilities and Companies:
Pacific Bell
AT&T Communications
WorldCom Inc
Verizon
California Cable Television Association

Consumer Advocates:
California Alliance for Utility Safety and Education
Citizens Concerned about EMF's
Fund for the Environment
The Utility Reform Network
The Office of Ratepayer Advocates
California Small Business Roundtable
California Small Business Association

Others:

William Adams
Polaris Group
Margit Roos-Collins
Kensington Improvement Club
19th Street Neighbors

**(END OF ATTACHMENT B)**

**ATTACHMENT C**
**Page 1 of 3**

Letter to the Legislature

April 24, 2001

The Honorable «FirstName» «LastName»
«JobTitle»
«Company»
State Capitol
10th & L Streets, «Address1»
Sacramento, CA 95814

Dear «JobTitle» «LastName»:

Assembly Bill (AB) 1149 required the California Public Utilities Commission (CPUC) to study ways to amend, revise, and improve the rules for the conversion of existing overhead electric and communications lines to underground and submit a report to the legislature by January 1, 2001.[20] While the CPUC has yet to issue a formal report, I wish to provide my recommendations as the assigned Commissioner in the undergrounding proceeding[21].

We heard from citizens, municipalities—including elected and appointed officials and representatives from public work departments, the utilities, utility workers, consumer advocacy groups, and neighborhood/community organizations. In summary, the overwhelming percentage of people spoke in favor of continuing, and escalating, the

[20]The Commission was to study ways to 1) eliminate barriers to undergrounding and to prevent uneven patches of overhead facilities; 2) enhance public safety; 3) improve reliability; and 4) provide more flexibility and control to local governments.

[21]On January 6, 2000, the CPUC issued an Order Initiating Rulemaking (OIR) R.00-01-005 to implement this mandate. Under the OIR, the Energy Division conducted eight days of workshops, the assigned Commissioner and administrative law judge held eight Public Participation Hearings (PPH) throughout the state, and comments were solicited from the electric and telecommunications utilities, municipalities, consumer advocates, and other interested parties. Evidentiary hearings were not possible given that the attention of Commission staff, the utilities, cities, and ratepayers has been focused on the energy crisis.

**ATTACHMENT C**
**Page 2 of 3**

underground conversion program for aesthetic, safety, and reliability reasons. The repeated concerns raised were 1) the costs; 2) lack of accurate information; 3) lack of response and accountability from utilities and cities; and 4) and the demographic and social equity issues involved in the choice of what areas are chosen for Rule 20A

funding.[22] My legislative and CPUC recommendations are cost effective and designed to address safety as well as aesthetic concerns. In Attachment A, you will find the recommendations I will bring before the CPUC in upcoming decisions.

My list of legislative recommendations is:

- provide funding for an undergrounding ombudsperson position and staff to oversee all conversion projects;
- create different financing mechanisms for communities for Rule 20B and C projects;
- fund an appeals process at the CPUC for complaints from citizens and communities on any aspect of the undergrounding process; and
- increase the current level of funding for undergrounding, or add taxpayer funds.

**Ombudsperson**:
The need for an ombudsperson became clear when parties discussed their frustration with "getting the run-around" at the utilities, municipalities, and the CPUC. There is no one source of knowledge, no responsibility or accountability, and a total lack of coordination between the necessarily involved parties. The ombudsperson would meet with all involved parties—cities, utilities, residents and community groups—and facilitate the

[22]Tariff Rule 20 for the major utilities dictates three levels, A, B, and C, of utility company funding for conversion projects. Under Rule 20A the ratepayers pay almost all of the costs—but only for projects which are in the "public interest." Rule 20A funds are very limited, the demand for them is high, and the potential for controversy over these funds is great.

**ATTACHMENT C**
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initiation of conversion projects and serve as a coordinator and trouble-shooter once a project was underway.

**Financing Options**:
The need for creating more financing options became clear when cities expressed their frustration with the current limits on the use of funds especially for Rule 20B and C projects. Options such as bonds, low-interest loans, and how cities can fairly deal with hold-out neighbors need to be addressed. The funding process needs to be streamlined and any unnecessary barriers removed. The ombudsperson would assist communities in creating undergrounding districts and exploring financing options.

**Complaint Resolution**:
In order for conversion projects to proceed seamlessly, there needs to be an appeals process at the CPUC for citizen complaints on allocation of Rule 20 funds; delays by the utilities in starting and completing conversion projects; unresponsiveness by utilities and local governments; and other undergrounding issues.

**Additional Funds**
It became clear that even with improvements to the management and financing of the current undergrounding program, without increasing the present level of spending, the state's goal of universal undergrounding is not possible within the foreseeable future. Many ratepayers will contribute their entire lives to Rule 20 funds, yet never reap the benefit of conversion projects in their community or neighborhood.

I offer these recommendations to the legislature while I pursue a two-phase process at the CPUC. It is anticipated that in Phase 1, the CPUC will issue an Interim Order that adopts the proposals set forth in Attachment A, and in Phase 2, the CPUC will schedule hearings on the topics that can benefit from evidence, testimony, and cross-examination

Cordially,

Henry M. Duque

**(END OF ATTACHMENT C)**

**ATTACHMENT A OF ATTACHMENT C**
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## Phase 1 Interim Order

- expand Rule 20A criteria to add more areas within the definition of public interest (i.e. arterial streets or major thoroughfares, and areas of fire hazard and earthquake risk);
- expand the use of Rule 20A funds to allow more flexibility to the cities to use the funds in combination with Rule 20B funds to promote more conversion projects;
- improve communication links between the utilities and the residents before and during undergrounding projects;
- require standardized reporting from the utilities on the expenditure of funds;
- allow cities to mortgage Rule 20A allocations for up to five years;
- order the creation of an updated Undergrounding Planning Guide; recommend coordination between the League of California Cities, Pacific Bell, and Pacific Gas and Electric Company; and placing the final document on the CPUC website in a timely manner.

## Phase 2 Topics Subject to Evidentiary Hearings

- explore the creation of universal standards for conversion projects so that third parties could competitively bid on projects without compromise of quality, safety, or reliability;
- investigate whether there should be a "breakpoint"* in allowing new overhead pole and line installation;
- explore incentives for utilities so that they will be motivated to engage in conversion projects and to complete them on time and within budget;

* breakpoint – in this context, a breakpoint would denote where there would be no further installations of overhead lines. The granting of exemptions for new construction are frustrating the overall goals of the program.

**ATTACHMENT A OF ATTACHMENT C**
**Page 2 of 2**

- explore whether unbundled charges for undergrounding should appear as a line item on utility bills.
- investigate if there is a fair and equitable competitively neutral recovery mechanism for telecommunications carriers to recover their undergrounding costs;

**(END OF ATTACHMENT C)**