

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

RESOLUTION E-4329
April 22, 2010

R E S O L U T I O N

Resolution E-4329. Southern California Edison (SCE).

PROPOSED OUTCOME: SCE's proposal to delete the applicant and customer option of placing new or modified distribution system terminal equipment (not conductors) underground under Tariff Rules 2, 15 and 16 is partially approved as requested in AL 2334-E-A, for premises of nongovernmental applicants and customers (private property), as described, and for other property only with the agreement of local authorities on a case by case basis. SCE's proposal to modify current practices to delete the underground equipment option, with respect to public rights of way and all other locations is denied without prejudice.

ESTIMATED COST: None.

By Advice Letter 2334-E filed March 27, 2009 and
Supplemental Advice Letter 2334-E-A Filed on March 12,
2010.

SUMMARY

SCE's proposal to delete the applicant and customer option of placing new or modified distribution system terminal equipment underground under Tariff Rules 2, 15 and 16 (effectively requiring above-ground equipment) is partially approved as requested in AL 2334-E-A. The change is approved only on private property in cases of new construction or when use or occupancy changes, and for public property only as agreed with the local public authority in each case. These rule changes apply to equipment such as transformers, switches, capacitors, and junction bars (Equipment) on applicant and customer premises only. Rule 20 concerning conversion of overhead conductors to underground is unaffected.

SCE's current practices to consider or actually place or retain equipment underground are unchanged by this resolution where not specifically approved, for example with respect to public rights of way and public locations.

Protests to SCE's advice letter raise a number of factual, legal, and policy questions that are inappropriate for resolution via an informal advice letter process. If SCE wishes to propose application of its proposed rule changes where not specifically approved by this resolution, it must file a formal application with the CPUC.

BACKGROUND

Current Tariff

Currently, when applicants request new service, SCE's standard design calls for distribution system components, such as transformers, switches, capacitors, and junction bars (Equipment), to be located above ground. However, SCE's Rule 15, Distribution Line Extensions, and Rule 16, Service Extensions, allow for applicants to choose underground installation of conductors and Equipment at additional cost to the applicant.

Proposed Tariff Changes

SCE proposes to eliminate the option for customers to elect underground installation of Equipment. SCE proposes to insert the following language into Rule 2 - Description of Service, Rule 15 - Distribution Line Extensions, and Rule 16 - Service Extensions.

"Following a Transitional Grace Period of 90 Days after the date SCE receives Commission approval of AL 2334-E-A, SCE will no longer accept requests under the Added Facilities provision of Rule 2, Section H, for underground distribution systems that call for specified pieces of electrical Equipment to be installed in below-ground structures in circumstances where it is technically feasible to install the Equipment above ground. For purposes of this provision, specified pieces of Equipment include all primary voltage from 4 kV to 35 kV electrical distribution system Equipment, including, but not limited to, transformers, switches and fuses, capacitors, and junction bars.

Where SCE has existing primary voltage distribution Equipment installed in below-ground structures, the Equipment will continue to be operated and

maintained below ground. Should the existing below-ground Equipment fail and result in an unplanned outage, service will be restored using below-ground Equipment when replacement Equipment is available. Where, however, existing below-ground Equipment is installed on customer's premises and is scheduled or required to be replaced in a planned process, such as a maintenance program or capacity upgrade, the replacement will be made on the customer's premises with similar, above-ground Equipment, to the extent technically feasible."

"Technically feasible" refers to the availability of the required physical space, either readily available or through architectural design, that can be set aside to accommodate the required electrical distribution Equipment necessary for SCE to serve the customer. The required space is defined by existing design standards within the operation and maintenance requirements that are in compliance with applicable safety codes and regulations such as CPUC General Order 128."

Under SCE's proposal, the distribution conductors themselves will still be located above or below ground according to existing Rules 15, 16, and 20.

Past Commission support of pad mount design

Prior to the Commission's approval of Rule 16 language identifying pad mount Equipment as part of SCE's standard installation, the Commission issued Decision (D.) 92-03-065 which supported SCE's position concerning pad mount Equipment by stating that SCE's "standard transformer in a residential subdivision is a pad mount transformer." Thus, the Commission has already approved above-ground facilities as the default option, but has allowed underground equipment where requested at additional cost.

Advice Letter AL 2334-E

The original AL 2334-E dated March 27, 2009 proposed elimination of the Equipment undergrounding option for all distribution system Equipment. AL-2334 was protested by 24 cities, several State Assembly and Senate members, and various governmental agencies and associations. These and new parties filed comments on the Commission's withdrawn draft resolution E-4241.

The Commission encouraged SCE to address those comments and concerns, and sponsored a workshop at its Los Angeles offices on November 13, 2009 for these

purposes. On February 25, 2010 the CPUC withdrew draft resolution E-4241 awaiting a modified proposal from SCE.

Following that workshop and additional communications among interested parties that followed it, SCE has submitted supplemental AL 2334-E-A (Supplemental filing). That Supplemental filing reduces the scope of the approval SCE requests. Therefore the Commission will only address in this resolution : 1) new construction situations, 2) circumstances in which capacity upgrades, conversions, and relocations are required due to customer driven renovations of existing structures, or due to other building activities resulting in a change of use or occupancy as defined in state of local law, and 3) situations in which above ground retrofit of above ground Equipment previously installed underground is technically feasible and is agreed to by the local authority on a case by case basis.

NOTICE

Notice of AL 2334-E and AL 2334-E-A was made by publication in the Commission's Daily Calendar. SCE states that a copy of the Advice Letter was mailed and distributed in accordance with Section 3.14 of General Order 96-B.

PROTESTS

SCE requests that the CPUC not reopen the protest period because this supplemental AL reduces the scope of SCE's proposal and addresses protests that have already been filed on its previous, more expansive proposal. We have considered the protests on the previous version of the AL and the comments on the withdrawn draft resolution, E-4241, in drafting this resolution. Because the supplemental AL does not raise any new issues beyond the scope of the original AL, the protest period is waived for the supplemental advice letter. This resolution, however, was recirculated for a full comment period by interested parties.

DISCUSSION

Energy Division has reviewed the supplemental AL 2334-E-A. The section below presents analysis and rationale for Commission disposition of the issues raised in the advice letter, as well as a discussion of issues raised by protests to the

original advice letter and by comments on the withdrawn Draft of this Resolution.

Advisability of Installing Underground vs. Above-Ground Equipment

In general, SCE's proposal to eliminate the customer option to have Equipment placed below ground is advisable, as discussed further below.

Disadvantages of below-ground equipment installations

Distribution Equipment in underground enclosed spaces (vaults, enclosures, etc.) is generally more difficult to install and maintain than above-ground Equipment. Although rare, Equipment failures in these underground spaces can occur and require significant safety precautions to repair.

Operating, maintaining and repairing below-ground Equipment in confined underground enclosures is difficult work. Electric service outages last longer than those occurring above ground since it takes longer to locate and repair a failed underground component. Once located, complex safety procedures are required for vault entry including heat scans for hot spots and testing for gases. Often water or contaminants must be trucked away, and the facilities steam or pressure washed before electrical work starts.

Equipment degradation is more likely below-ground because of corrosion when Equipment is submerged in run-off water and contaminants.

Advantages of above-ground equipment installations

Electrical service may be restored sooner when Equipment is located above ground than when it is installed in below-ground structures. Routine maintenance takes longer, for example when multiple vaults are accessed for circuit switching each one must be opened and tested for gases.

While underground installations are relatively safe with proper precautions, transformers and other Equipment failures involving high pressures and hot gas can be catastrophic. Moving away from underground installations advances safety goals and reduces concentration of contaminants.

Some SmartGrid technologies, which enhance reliability, require that controls and antennas be located above ground, to support integrating them into SCE's electrical system.

Existing underground Equipment operating normally will remain below ground

Where SCE has existing underground primary voltage distribution Equipment installed in below-ground structures, the Equipment will and should continue to be operated and maintained below ground. Should existing below-ground Equipment fail and result in an unplanned outage, service will be restored on an emergency basis using below-ground Equipment when replacement Equipment is available.

Aesthetic Considerations

SCE says that it has assembled a team to research various options which would make pad mounted Equipment better blend, visually, into the surrounding landscape. Other utilities, vendors, and cities have been surveyed for relevant ideas. Safety, Equipment performance (heat dissipation, corrosion, etc.), operability, inspection, installation and replacement are issues that must be considered simultaneously for this Equipment.

SCE has developed a catalog of various approved aesthetic improvement options available to customers and developers for above-ground pad mounted Equipment. The catalog (*Above Ground Equipment Initiative Aesthetic Improvement Manual* or AIM) includes aesthetic treatments and enhancements for above-ground Equipment, such as use of certain colors, screening and landscaping. Aesthetic treatments may be available, at the customer's expense, subject to tariffs and applicable safety laws and regulations. SCE states it is open to suggestions from its customers and will evaluate them and include them in the catalog as options, upon approval.

In addition, several parties raise the issue of graffiti abatement for above-ground facilities. In all cases, SCE is responsible for the abatement of any graffiti on its facilities. SCE should respond within 48 hours (two business days) to any requests for graffiti abatement, absent inclement weather or other extenuating circumstances.

Issues Related to Placement of Above-Ground Facilities in Public Rights of Way (ROW)

Protesters to the original advice letter and commenters on the withdrawn Draft Resolution E-4241 raise legal, policy, and factual issues with respect to the application of SCE's new above-ground proposal to public property and public rights of way. As summarized below, these issues relate to compliance with local, state, and federal laws, CPUC authority, easement costs, and aesthetic considerations. Due to the complexity of these issues and the significant number of protests, disposition of such matters is inappropriate for the informal advice letter process with respect to public property and the public right of way.

Thus, at this time this Resolution denies SCE's requested rule changes for above-ground Equipment installations in public areas and rights of way, except where local authorities consent to the placement of Equipment above ground. Application of the proposed rule changes is only authorized via this Resolution as specified in the Findings and Order, generally limiting the above ground requirement to new construction, changes of use or occupancy, and case by case to the public areas and rights of way if the local authority agrees. If SCE wishes to propose application of the rule changes to public property and public rights of way, or to other situations not explicitly addressed in this Resolution, SCE must file an application to do so.

Compliance with local, state and federal laws governing vehicular and pedestrian safety

Protesters of the original AL stated that use of the public ROW for pad mounted Equipment could impede traffic, restrict parking, impede sight at intersections and driveways, and be exposed to vehicle strikes. Furthermore, cities are obligated to comply with the Americans with Disabilities Act (ADA) for clearances. Natural disasters may increase the liability from damage to above-ground Equipment.

SCE responded that these concerns arise where its concept of "technically feasible" is not understood. Sometimes there is no room for above-ground Equipment and SCE's Supplemental AL repeats that, since it holds public safety paramount, it will neither place Equipment above ground where there is not enough space, nor in areas that would impede traffic or ADA compliance. The size of SCE's Equipment is comparable to other utility equipment, such as

telecommunication cabinets, and some of it is smaller than a traffic signal control box.

SCE prefers private easements from the requesting applicant for service over public ROW installations, and states that its pad mounted Equipment enclosures meet rigorous industry standards for the safety and security of employees and the public. It asserts that these considerations are not new since more than 80% of all SCE service connections made over the last two years for example have been above ground.

Where SCE is choosing to move Equipment above ground, SCE states it would not bring an eminent domain action to obtain an easement but would negotiate with a property owner. If an easement cannot be obtained at a reasonable price, there is often more than one candidate property where Equipment can be electrically located. Otherwise SCE states that it will reach agreement with the city for an acceptable location before making an installation above ground in the public ROW.

Aesthetic Considerations

Protesters stated that the underground clearance requirements of General Order (G.O.) 128 could prevent effective visual screening of above-ground facilities and that graffiti would be unsightly. Their suggestions include sufficient set back from the curb, and placement of Equipment in side yards.

SCE agreed to take aesthetic considerations into account. SCE stated that when located in new developments, Equipment can be designed outside public areas and screened with plantings. SCE stated these means will be incorporated in its Aesthetic Improvement Manual. Where relocating Equipment to above ground, SCE states that it plans to continue close consultation with affected stakeholders and to evaluate new industry trends, including film application of landscape scenes and use of portable planters for camouflaging. SCE has contracted with an abatement vendor for removal of graffiti blight within 48 hrs of notification.

SCE believes that most of the concerns of Protesters are sincere but misplaced or misinformed. SCE states that safety of employees and the public is paramount and SCE says that Protesters seek to force a choice between aesthetics and safety

of SCE employees. According to SCE, where Equipment serves multiple customers, the aesthetic concerns of a few could adversely impact service reliability for many.

CPUC authority over design location

A number of Protesters claim that:

- SCE's proposal would impact the cities' authority over private development projects and use of public ROW, including fair compensation for it;
- The proposal fails to allow cities to set standards, e.g. in historic districts, and is contrary to undergrounding ordinances;
- Public Utilities (PU) Code Section 6294 provides:
"The grantee of a franchise shall construct, install and maintain all ... appurtenances in accordance and in conformance with all of the ordinances and rules adopted by the legislative body of the municipality ...and not in conflict with the paramount authority of the State ...;"

and

- PU Code Section 2902 allows cities to maintain control over the use of the public ROW and impose reasonable regulations as to the location of SCE facilities in the ROW.

SCE disputed the claims by local governments of absolute authority in matters relating to the broad authority given by the California Constitution to the CPUC to supervise and regulate public utilities, and it asserted that, relative to local governments, the CPUC's jurisdiction is paramount and exclusive. California courts have held that matters of "statewide concern," such as the design and construction of a utility's electrical infrastructure, are not subject to a "checkerboard of regulations" by local governments. The CPUC has implemented legislative mandates with rules and policies governing the construction and operation of above and below-ground electric facilities, such as General Orders (G.O.) 95, 96, 128, 131-D, and policy documents.

SCE stated that two CPUC decisions affirmed the CPUC's exclusive jurisdiction over power lines and other distribution facilities which local government cannot preempt. D.88642 denied Woodside's authority to require PG&E to underground a distribution system while upgrading it. D.96-02-024 denied the City of Santa Barbara's regulation of lower voltage lines, because the CPUC had

“fully occupied the field of electric power line regulation,” including all “transmission lines, power lines, distribution lines, substations and facilities.” With regard to the electric facilities at issue in the Decision, the Commission stated that “local permit regulation[s] [are] preempted.”

SCE also cited California appellate court decisions to refute the Protesters’ claims. SCE cited *Southern California Gas Co. versus City of Vernon*, which rejected the City of Vernon’s broad claim to regulate facilities in the public ROW. The Court interpreted PU Code Section 2902 to give the city authority over the location of facilities, control of traffic, and the repair of public streets, but not over the design, type, or construction of the distribution facilities themselves.

SCE also cited *Leslie versus Superior Court*, where the court ruled that Ventura County could enforce against SCE the grading standards in the county code because state housing law expressly required the cities to adopt minimum standards for it. The court found that the state housing law and the CPUC’s mandate were of “equal dignity” and noted that the CPUC had never “purported to exercise its authority over” the construction, maintenance or grading of access roads.

Therefore SCE stated that these cases show that the municipalities can neither mandate the design and construction of Equipment, nor whether those facilities are placed above or below ground. The CPUC’s jurisdiction is exclusive because there is no statewide law or policy of “equal dignity.”

Nevertheless, pursuant to PU Code Section 6294, SCE states it would comply with local jurisdiction regulations that pertained to health and safety relating to the above-ground installation of electrical distribution Equipment. For example, SCE would: comply with local regulations prohibiting the installation of facilities that would impair a motorists’ vision around corners, it would comply with the ADA when locating facilities within the public ROW, and would obtain non-discretionary local permits and approvals for construction and operation of electrical facilities, where not inconsistent with the CPUC’s areas of exclusive jurisdiction.

SCE concluded that the CPUC has affirmed its primary jurisdiction over distribution facility construction standards. SCE has also committed to continuing consultations with local governments about where to place facilities. The Commission has made clear on numerous occasions that utilities are

expected to engage in meaningful dialogue with local agencies before finalizing the location of facilities.

Easement costs

Protesters of the original AL are also concerned that SCE wants to save money by locating Equipment on public ROW, especially in retrofit projects. Protesters say that SCE has the means to acquire private easements and to enforce eminent domain.

SCE countered that, while it has the right to install Equipment in the public ROW under franchise agreements; it tries to avoid it because it has greater rights on private easements, which applicants must provide at no cost as a condition of service under existing Rules 15 and 16.

We note that a lower rate base and rates result from any capital cost savings that accrue to SCE from placing Equipment in the public ROW instead of acquiring easements. SCE would pay for an easement only when relocating Equipment not dedicated to a specific customer.

As stated above, due to the complexity of the legal, factual, and policy issues raised by the protesters with respect to applicability of the rule changes in the public areas and rights of way, this aspect of SCE's proposal is generally denied without prejudice in this Resolution. At this time SCE's proposed rule changes are approved for applicability only to new construction, to changes of use, and to public property only where the public authority agrees in each case.

SCE should consult with Building Industries Association (BIA)

BIA is not opposed to SCE's proposal, but in response to the original AL asked SCE to clarify these issues:

- Grandfathering existing developments and matching state legislation (AB 333) on extension of tentative tract maps.
- Coordination with cities that require below ground installation.
- Responsibility for claims and litigation at homes less than 10 years old which must accept relocation of Equipment above ground.
- Definition in writing of grandfathered submittal for the transition period.

- Definition in writing that projects with dry utility joint trench installed, but not transformers, and fees paid, are grandfathered.
- Allow extension of active projects for more than 12 months and tariff inclusion of requirement for notification of expiration.
- Relaxing of clearance standards for above ground Equipment, especially on three sides.
- SCE's action to facilitate city acceptance of above ground Equipment within parkway or ROW.
- SCE action to reduce density of transformer locations.

SCE largely responded to BIA's grandfathering (transitioning) concerns, but made no commitment to extend grandfathering to match certain pending legislation on tentative tract maps expiration.

SCE reiterated the need for developers to convene early meetings with the utility and city to reduce the possibility of last-minute issues, and SCE committed to continue working with cities and developers to coordinate solutions. This process would include optimally locating and sizing of transformers.

We note that BIA's concerns deal primarily with the logistics and timing of the proposed tariff changes. SCE responded adequately to these concerns but SCE's tariffs must also specify the events in project schedules after which Equipment must be placed above ground, and they must use the same terminology as SCE's filed forms.

SDG&E and IBEW support SCE's proposal

SDG&E supports SCE's AL based on its own decades-long experience with pad mounted Equipment for new services. SDG&E notes that subsurface Equipment often must be de-energized for servicing and therefore requires longer and geographically larger outages. According to SDG&E, the number of submersible Equipment manufacturers has declined, affecting availability. They also state that reliability of subsurface Equipment is negatively affected by the collection of water with contaminants, which also poses environmental hazards and breeding grounds for mosquitoes, and that subsurface Equipment is 3 to 4 times more expensive than pad mounted Equipment.

The International Brotherhood of Electrical Workers (IBEW) also supports SCE's AL in the interests of safety for its members, and shorter outages, and stated that

it raised these issues with SCE in the first place. IBEW states that the changes would avoid high risk environments where members have experienced life-changing or fatal injuries from working inside electrical vaults. IBEW echoed SCE's commitment to working with cities and developers to minimize the visual impact of pad mounted Equipment, and mentions that the utilities of the Cities of Riverside and Azusa are among many utilities that have changed or are changing to pad mounted Equipment designs only.

Transition plans for above-ground installations on private property as authorized in this Resolution

Upon Commission approval of this Resolution, the types of above-ground equipment described above for installation will be required to be located in above-ground pad mounted structures in new installations when technically feasible, whether designed by SCE or third-party developers.

Following a transitional grace period of 90 days after the effective date of this filing, SCE will no longer accept customer or developer requests for underground distribution system installations that call for specific pieces of electrical equipment (all primary-voltage electrical distribution system equipment, including, but not limited to, transformers, switches and fuses, capacitors, and junction bars) to be installed in below-ground structures in circumstances where it is technically feasible to install the equipment above ground in instances of new construction or changes of use on private property, and where agreed to by the local authority on public property or in public rights of way.

SCE believes the proposed Transitional Grace Period of 90 Days, coupled with Stakeholder Outreach activities, will allow customers ample time to prepare for this change and meet above-ground equipment design requirements on private property. SCE should implement this change in an effective and orderly manner.

Implementation will consist of a change in design requirements that will, following the Transitional Grace Period of 90 Days after the effective date of this filing, apply to new residential and commercial developments, as well as customer- and applicant-driven capacity increases (such as remodels and changes of use).

Comments received

The County of LA and others named below filed the following comments:

- The draft resolution required SCE compliance with local zoning ordinances only for above ground equipment on private property but all above ground equipment should comply. We agree and have revised the resolution accordingly.
- The draft resolution does not provide adequate assurance that SCE will comply with local laws protecting public health, safety, welfare and convenience. We have revised the resolution accordingly except for including the term welfare because welfare is not defined or contained in Public Utilities Code Section 2902.
- The draft resolution allows SCE to continue relocating underground equipment to an above ground location on a customer's property simply due to SCE planned maintenance or capacity upgrades. Accordingly we clarify that with respect to SCE's proposal to effectively require above ground Equipment on private property approval is limited to new construction and to changes of use or occupancy.
- The draft resolution failed to require CEQA review of the proposal. We disagree that CEQA applies since the proposal is a rule change not a project, the facilities involved are below 50 kV, and any statements as to cumulative impact would be speculative.
- In Attachment I the County indicates that SCE agreed to respect local land use planning for public projects. We emphasize that SCE's proposal is approved only for new construction and change of use situations on private property and for public property and public rights of way where the local authority agrees.

SCE commented that the draft resolution did not adequately reflect the following points negotiated between SCE and protesters:

- Whether this rule change effectively requiring above ground Equipment only on private property applied to new public projects not in the public right of way, such as parks or transit plazas. We clarify that the tariff changes approved by this resolution do not apply to any public property

or public rights of way, unless the local authority is in agreement with the placement of Equipment above ground.

- Whether the mandate for graffiti abatement should be included in the tariff since the Commission may not authorize rate recovery for it in future General Rate Cases, and other IOUs do not have such a mandate. We agree it should not appear in tariffs for the reasons stated.
- Whether tariffs should include a definition of when inactive projects will be terminated. We agree it is impractical to define inactivity and will not direct SCE to include it in tariffs.
- Ordering Paragraphs have been made consistent with Findings and Conclusions.
- The Commission maintains the primacy of its jurisdiction and authority over IOU system design but declines to further clarify it in the vehicle of this Resolution.

SCE's Reply

- SCE seeks a better definition and distinction between private property and public right-of-way. We emphasize that SCE's AL is approved only for circumstances described and clarified herein.

COMMENTS

Public Utilities Code section 311(g) (1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g) (2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments on Tuesday, March 23, 2010 and placed on the Commission's agenda for voting no earlier than 30 days from that date.

Comments were timely received from the cities of Cerritos, Whittier, West Hollywood, Culver City and San Francisco, and County of Los Angeles and SCE.

A Reply was timely filed by SCE.

The content of the comments is discussed above.

FINDINGS AND CONCLUSIONS

1. SCE's standard Equipment installations that are paid for in rates are above ground.
2. Currently, when applicants request new service, SCE's standard design calls for the distribution system Equipment needed, such as transformers, switches, capacitors, and junction bars (Equipment), to be located above-ground.
3. Currently, Rules 2, 15 and 16 give applicants the option, at extra cost, to have conductors and/or distribution Equipment installed underground.
4. Over the last two years less than 20% of new SCE distribution system Equipment was requested by applicants for service to be installed underground.
5. Other California utilities have already discontinued the Applicant option of installing Equipment underground.
6. In order to make its Equipment more accessible for installation, maintenance and repair, and safer for employees SCE seeks approval to delete the applicant-requested Equipment underground option where above-ground installation is technically feasible, for 1) new construction situations, 2) circumstances in which capacity upgrades, conversions, and relocations are required due to customer-driven renovations of existing structures or other building activities resulting in a change of use or occupancy as defined in state or local law, and 3) situations on a case by case basis in which the local authority agrees with SCE that it is necessary to relocate above ground into the public right of way Equipment previously installed underground because an underground location is not technically feasible.
7. "Technically feasible" means that enough space is, or can be made, available above ground for the electrical distribution Equipment needed for SCE to serve customers and that other requirements, such as obtaining the required permits, are met. The required space is defined by existing design standards within the operation and maintenance

requirements that are in compliance with applicable safety codes such as the Commission's General Orders 95 and 128.

8. When relocating existing Equipment to above ground, SCE should comply with local jurisdictional mandates in matters of health, public safety, and convenience if those regulations do not directly or effectively require the Equipment to be located underground or otherwise conflict with the design standards contained in SCE's Distribution Design Manual and similar documents, and SCE also would comply with any state law of "equal dignity" to the PU Code, and federal laws, e.g., the Americans with Disabilities Act (ADA).
9. For new line and service extensions or capacity upgrades and relocations as described in Finding 6, the customer must provide a private easement for the Equipment at no cost to SCE, ratepayers or taxpayers, in accordance with SCE's Commission-approved tariffs (e.g., Rule 15 or Rule 16), unless the local authority authorizes placement of the Equipment in the above-ground public ROW.
10. For existing underground Equipment being modified by SCE, above-ground retrofits shall only occur in circumstances in which capacity upgrades, conversions, and relocations are required due to customer-driven renovations of existing structures or other building activities resulting in a change of use or occupancy as defined in state or local law; or when agreed to by the local authority and SCE on a case-by-case basis.
11. Local laws and ordinances may apply aesthetic conditions, maintenance and location requirements (e.g., setbacks, screening requirements, etc.) to Equipment if those conditions and requirements do not directly or effectively prevent Equipment from being located above-ground or otherwise conflict with design standards contained in SCE's Distribution Design Manual or similar documents.
12. SCE states it will abate graffiti on equipment installed above ground in the public right of way under the terms of this Resolution when rates provide cost recovery, and will respond within 48 hours (two business days) to requests for graffiti abatement, absent inclement weather or other exigent circumstance, but will not pay for the cost of maintenance of customer-selected aesthetic mitigation options.
13. It is not useful or practical to conclusively define all Equipment because the future needs of the distribution system require flexibility.
14. SCE's proposed rule changes for above-ground Equipment installation were heavily protested, especially with respect to their application to public rights of way.

15. SCE proposed to set an effective date 90 days after the approval of this advice letter to grandfather any designs received before that date which called for below ground installations, but not to address when inactive projects will be terminated since inactivity is not well defined.
16. Because the protests to SCE's proposal, with respect to location of above-ground Equipment on public property and in public rights of way, raise a number of legal, policy, and factual issues, the application of SCE's proposed rule changes to all public property and public rights of way should be denied without prejudice as inappropriate for disposition via an Advice Letter and Resolution.
17. Local governments have a unique obligation as stewards of public property and the public right-of-way, both above- and below-ground and unique responsibilities and prerogatives in matters of land use planning. SCE states that it will continue to respect those roles as it cooperates with local governments, as it does with customers, in providing electric service to public projects.
18. Public property includes any property to which the local authority has rights, including but not limited to, publicly-owned property, public rights of way, transit plazas, parks, and city or county facilities.
19. Nothing in this Resolution is intended to alter CPUC authority, the balance of jurisdiction between the Commission and other governing authorities, or the terms of any franchise agreement, with respect to the matters dealt with herein.

THEREFORE IT IS ORDERED THAT:

1. The tariff language of Electric Rules 2, 15 and 16 to no longer accept Applicant requests to install Equipment underground as proposed by SCE in supplemental Advice Letter AL 2334-E-A is approved in only the following three cases: 1) new construction on any property except public property and public rights of way, 2) circumstances in which capacity upgrades, conversions, and relocations are required due to customer-driven renovations of existing structures or other building activities on any property except public property and public rights of way resulting in a change of use or occupancy as defined in state or local law, and 3) situations on a case by case basis in which the local authority and SCE agree it is necessary to locate Equipment above ground because an underground location is not technically feasible.

2. For existing underground Equipment being modified by SCE, above-ground retrofits shall only occur in circumstances in which capacity upgrades, conversions, and relocations are required due to customer-driven renovations of existing structures or other building activities resulting in a change of use or occupancy as defined in state or local law; or when agreed to by the local authority and SCE on a case-by-case basis.
3. When modifying existing Equipment installed in the above-ground public rights of way, SCE shall comply with local ordinances respecting matters of public health and safety and convenience, to the extent that the same are of general applicability to other utility and public works structures or equipment, regardless of ownership, installed in the public rights of way, do not directly or effectively require the Equipment to be located underground, or otherwise conflict with the design standards contained in SCE's Distribution Design Manual and similar documents.
4. If SCE wishes to propose tariff language changes not specifically approved in this Resolution, SCE must file an application with the Commission for that purpose, and serve any such application on all protesters and parties that commented on either AL 2334-E or AL 2334-E-A, or draft Resolution E-4241 or E-4329.
5. Design and installation of any above-ground Equipment shall comply with the typical installations depicted in SCE's Above-Ground Equipment Aesthetics Improvement Manual and SCE's Distribution Design Manual, as well as land use laws, including local ordinances respecting matters of public health, safety and convenience, that are of general applicability to above ground utility structures regardless of ownership to the extent the same would not directly or effectively require the Equipment to be located underground.
6. SCE shall be responsible for the cost of abating graffiti on equipment installed above ground under the terms of this Resolution, but not for the cost of maintenance of customer-selected aesthetic mitigation options. SCE shall respond within 48 hours (two business days) to requests for graffiti abatement, absent inclement weather or other exigent circumstances.
7. SCE shall set an effective date 90 days after the approval of this advice letter to grandfather designs received before that date which called for below ground installations.
8. SCE shall file a Supplementary Advice Letter within 45 days to modify Rules 2, 15, and 16, where applicable, to comply with Ordering Paragraphs 1, 2, 3, 4, 5 and 7 of this Resolution.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on April 22, 2010; the following Commissioners voting favorably thereon:

/s/ Paul Clanon
Paul Clanon
Executive Director

MICHAEL R. PEEVEY
PRESIDENT
DIAN M. GRUENEICH
JOHN A. BOHN
TIMOTHY ALAN SIMON
NANCY E. RYAN
Commissioners